

# **National Analytical Study on Racist Violence and Crime**

## **RAXEN Focal Point for Austria**

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in cooperation with the  
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## EXECUTIVE SUMMARY

In order to provide a better insight into the Austrian situation in regard to racial violence, the report starts off by giving a detailed overview on the political climate and discourse in 2003. Immigration policies pursued by the present government which is composed of the People's Party and the Freedom Party, have been tightened in the course of the last legislative period. Also the present Asylum Act is being described as one of the most restrictive compared to related legislation in other EU member states. Generally, it can be said, that the current political climate rather promotes the perception of migrants and asylum seekers as a social burden and a threat to the Austrian welfare system. Despite this political background recent opinion polls have shown that the Austrian population increasingly perceives the foreign resident population as cultural enriching. Also the opinion that resident foreigners should be entitled to vote in local elections is being increasingly supported.

In regard to Austria's legal framework it can be said that although it provides a whole range of provisions applying to crimes in relation to National-Socialist ideology it is rather weak when it comes to other racially or xenophobically motivated crimes. Although related provisions of the Penal Code apply to especially vulnerable groups determined by ethnic origin, race, nation or religious affiliation they are primarily aimed at maintaining public peace rather than protecting the dignity of the individual member of the mentioned groups.

The transposition of the two EU Anti-Discrimination Directives will substantially extend the protection against racial discrimination by prohibiting discrimination between private contract partners at the workplace as well as in regard to the housing sector and more generally in regard to the access to and supply of goods and services. The prohibition of racial discrimination will furthermore apply to mobbing as well as discriminatory harassment. Whereas presently legal provisions against racial violence focus on Penal Law and therefore predominantly aim at sanctioning the perpetrator, the new amendments due to the transposition will provide a legal basis for compensation claims for the victim's material and immaterial damages. Finally, Austria will have to establish a so-called body for the promotion of equal treatment which could provide a sound framework for the collection of data on cases of racial violence.

There is no comprehensive monitoring system in regard to racial discrimination and violence in place, so far. Although the right-wing extremist scene which is closely related to National-Socialist ideology is being carefully observed by state authorities and related data on complaints and convictions are published in the annual Reports on the Protection of the Constitution, other aspects of racial violence as already mentioned above are not covered by these reports. Related crime statistics can therefore not picture the whole scale of racial violence in Austria as they only refer to the relatively limited scope of provisions applying to racial violence and do not include those cases which have not been reported to the police. NGO reports therefore become a particularly important source of information as they provide information on single cases of racial violence independently of whether or not those cases fall under the application of any penal provision. Furthermore, they also encompass those cases victims did not want to report to the police, which is often the case if a person has an insecure residence status or simply has lost confidence in the police. However, these reports cannot compensate for the establishment

of a sound system of data collection and monitoring as information provided by these sources is of rather qualitative character describing the different patterns of racial violence and discrimination.

This scarcity of data, however, can be identified as a main problem in regard to the improvement in fighting racial violence in Austria. The only information available in regard to victims of racial violence stems from NGO reports and research studies on xenophobic attitudes experienced by resident migrants living in Austria. In regard to perpetrators of racist violence governmental reports entail some valuable information on the structure and strategies of right-wing extremist groups. Furthermore, crime statistics provide data regarding the category of juvenile perpetrators. In order to enhance the protection against racial violence in Austria, it would be important to have data on perpetrators' age, sex as well as socio-economic background. Such information would allow for the identification of efficient preventive measures and positive initiatives.

When identifying specifically vulnerable groups in regard to racial violence research studies and NGO reports indicate that the criteria of "visibility" such as colour of skin or membership to a religious community plays a major role. Other factors, which seem to increase the vulnerability to xenophobic attitudes, seem to be related to insecure forms of residence status which results in diminished institutionalized protection. On the other hand, a higher societal status and better education tend to reduce the probability of a person to become a victim of xenophobic attacks in many societal contexts. Higher education in particular seems to shield persons against discrimination in the contact with authorities. In other contexts, however, such as in regard to discriminatory "access policies" of certain bars and restaurants, the factor of visibility prevailed and persons were prevented from entering these locations irrespectively of their level of education.

Major concerns related to racial violence identified in the report refer to activities by right-wing extremist groups as well as cases of police brutality and ill-treatment in relation to black persons and other visible minorities. Research studies and NGO reports, however, indicate that perpetrators of racial violence are also to be found within the majority population.

Regarding amendments to anti-discrimination legislation, the report describes a positive initiative which was undertaken by the Greens, when introducing an amendment to the Trade Licence Act. According to this amendment the withdrawal of an innkeeper's trade licence shall be mandatory in cases he or she was repeatedly found guilty of having applied discriminatory access-policies according to Art IX para 1 no 3 EGVG (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, Introductory Provisions to the Code of Administrative Procedure). This positive development, which aims at increasing the application of this sanction, was mainly driven by NGO campaigns against locales denying access to black persons and other visible minorities, which attracted considerable media attention. Other important initiatives referred to in the report include awareness-raising campaigns, training initiatives and seminars on history and democracy for juvenile who committed right-wing extremists offences.

As to the successful court cases mentioned in the report, it is especially the Independent Administrative Tribunals, which repeatedly found, that activities by the Austrian police in regard to vulnerable groups were unlawful and in some cases even amounted to violations of the European Convention on Human Rights. A most interesting decision was handed

down by the Austrian Constitutional Court in 2003, which stated that repeated drug controls of a black person could violate the principle of equal treatment under the Austrian Constitution.

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# GLOSSARY OF TERMS AND CONCEPTS USED

## DEFINITIONS OF CONCEPTS OF GROUPS

**Aliens/Foreigners:** All people that are not Austrian citizens.

**Asylum seekers:** Aliens become asylum seekers as soon as they have filed an application for asylum or for the extension of asylum and are still waiting for the decision by the competent authorities (see article 1 paragraph<sup>1</sup> 3 Asylum Act<sup>2</sup>). Former asylum seekers or other foreigners subject to non-refoulement are issued a temporary residence permit and do not have access to the labour market; they are very often not even part of the federal counselling program (*Bundesbetreuung*) and are therefore often forced to work in the informal sector.

**Asylum seekers subject to non-refoulement:** If the application for asylum is rejected, the competent authority has to issue ex officio a notification whether it is permissible to send back or deport the alien to his/her country of origin (see art 8 Asylum Act<sup>3</sup>). Reasons prohibiting the deportation are listed in art 57 Aliens Act<sup>4</sup>. Asylum seekers subject to non-refoulement do not have free access to the labour market like Geneva Convention Refugees, but are subject to the Aliens Employment Act.

**Citizens from the EU and the EEA:** These are citizens from EU and EEA Member States (EU Member States plus Norway, Iceland and Liechtenstein). They have free access to the labour market.

**Geneva Convention refugees:** They are asylum seekers that have been granted asylum if it is satisfactorily shown that they are threatened by persecution in their countries of origin (Geneva Convention Relating to the Status of Refugees article 1 paragraph A (2)) and none of the reasons for termination or exclusion listed in art 1 para C or F of the Geneva Refugee Convention is applicable (see art 7 Asylum Act<sup>5</sup>). Geneva Convention refugees have an unrestricted right of residence and free access to the labour market. Compared to other aliens they also enjoy a preferential status concerning naturalisation and social services.

**“Guest” or migrant workers (Gastarbeiter):** The term was coined in the 1960s, when shortage of labour in Austria caused the Chamber of Commerce and the Trade Union Congress to agree on recruiting temporary labour abroad, which could easily be reduced in times of economic crisis. The concept therefore implies that the workers are only guests that will return to their countries of origin after a certain period of time, a principle never adhered to, as migrant workers have become immigrants. Nevertheless, the term is

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<sup>1</sup> The German legal term „Paragraph” (§) is translated by article (art) and „Absatz” by paragraph (para).

<sup>2</sup> Österreich, BGBl. I/76, (14.07.1997), available at: <http://www.unhcr.at/pdf/248.pdf>, (09.11.2003).

<sup>3</sup> Ibid.

<sup>4</sup> Österreich, BGBl. I/75, (14.07.1997), available at: <http://www.unhcr.at/pdf/200.pdf>, (09.11.2003).

<sup>5</sup> Ibid.

still used to denote workers and their families especially originating from Turkey and former Yugoslavia.

**Migrants:** The term denotes people that have themselves migrated to Austria but also their off-springs that might have been born in Austria. The concept is used irrespective of whether these people are Austrian citizens or not.

**Naturalised citizens:** All people that have become Austrian citizens by way of naturalisation<sup>6</sup>. The Austrian Naturalisation Act is based on the principle of *ius sanguinis*, therefore often second and third generation migrants have still not naturalised.

**Officially recognised autochthonous ethnic groups:** Six autochthonous ethnic groups are officially recognised in Austria: the Slovenes, the Croatians, the Hungarians, the Roma and Sinti, the Czechs and the Slovaks.

**Religious minorities:** The Jewish and Muslim religious communities are two of 12 other churches and religious communities<sup>7</sup> that are officially recognised in Austria. They have among other rights the right to publicly practice their religion, to found private confessional schools and to have religious education at public schools<sup>8</sup>.

**Second or third generation migrants:** Persons who were born in Austria and whose parents or grand parents came to Austria as migrants.

**Third country nationals:** All people that are not Austrian citizens or citizens of the EEA (EU Member States plus Norway, Iceland and Liechtenstein) (see art 2 para 9 Aliens Employment Act<sup>9</sup>). They are subject to the Aliens Employment Act. At this point it also seems worth noting that due to international contracts the status of Swiss citizens is comparable to the status of EEA nationals.

#### DEFINITIONS OF CONCEPTS OF DISCRIMINATION

We define racial violence for the purposes of this report very widely including severe violence directed against any person, group of persons or property, but also less severe acts like vandalism and forms of verbal or symbolic actions such as incitement to racial hatred, threats and defilement of commentaries.

Furthermore, we define incitement to racial hatred like hate speech as spreading the idea of a group of people being superior or inferior to another on the basis of their ethnicity or cultural heritage.

Xenophobia appears to prepare the ground for “racial violence”. In fact, xenophobia is not only directed against persons, but can be directed against any other group, who differs

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<sup>6</sup> For Naturalisation Act, see: Österreich, BGBl 311/1985, available at: <http://www.ris.bka.gv.at/bgbl/>, (09.11.2003).

<sup>7</sup> For a list of them see: [http://www.help.gv.at/82/820100\\_f.html](http://www.help.gv.at/82/820100_f.html), (09.11.2003).

<sup>8</sup> Österreich, RGBl. 142/1867, (23.12.1867).

<sup>9</sup> Österreich, BGBl. 218/1975 last amended by BGBl. I 126/2002, (09.11.2003).

in culture, ethnic decent, language, social differences or lifestyle<sup>10</sup>. Therefore, the phenomenon of xenophobia is being dealt with extensively in regard to the analysis of perpetrators in chapter 5.

#### OTHER IMPORTANT CONCEPTS

**Federal Province (*Bundesland*):** Austria is a federal state (*Bundesstaat*) which comprises the nine federal provinces (*Bundesländer*) Burgenland, Carinthia (*Kärnten*), Lower Austria (*Niederösterreich*), Upper Austria (*Oberösterreich*), Salzburg, Tyrol (*Tirol*), Vorarlberg, Styria (*Steiermark*) and Vienna (*Wien*). The term ‘*Länder*’ common in legal texts is not used in this report in order to distinguish between the German ‘*Länder*’ which have further reaching competencies than the Austrian federal provinces.

**Federal State (*Bundesstaat, Bund*):** This term refers to the level of governance of Austria as a whole.

## 1. INTRODUCTION

This report aims at giving an overview of the current situation and recent developments in regard to racial and xenophobic violence in Austria. The report covers the period since the Focal Point’s last analytical study on racial violence, issued in July 2002, up until November 2003. Furthermore, reference to the previous years is made if necessary.

While the Austrian legal framework focuses predominantly on crimes related to National-Socialist ideology this report bases its analysis on a much broader definition of racial violence which includes any forms of racially motivated physical or verbal attacks directed against a person or a group or acts of vandalism against objects. Other terms and concepts which are used throughout the report are defined and put in the Austrian context in the glossary which is supposed to facilitate the highlighting of differences between Austria and other EU Member States.

Due to the limited scope of this work this report cannot give a complete overview on the entire spectrum of racial violence in Austria but rather picks out the most exemplary incidents and developments and tries to describe observed tendencies as well as related strategies.

The report is generally structured according to the guidelines provided by the EUMC. The gap analysis is mainly integrated in the relevant analysis of chapter 4 and chapter 5.

In order to describe the specific situation in Austria, which is related, on one hand, to its National-Socialist past and, on the other hand its present coalition government involving a far right-wing party, the report starts off by giving a relatively detailed overview of the

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<sup>10</sup> Lebhart, G.; Münz, R. (2003) Migration und Fremdenfeindlichkeit in Österreich – Perception und Perspektiven (Migration and xenophobia in Austria- perception and perspectives) in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, p. 349. [PUBAT0118]

related political climate. The report continues by describing the Austrian legal framework against racial discrimination and related jurisdiction. Chapter 4 deals with qualitative and quantitative data on racial violence provided by governmental as well as non-governmental sources and points out related data gaps.

Due to the fact that in Austria hardly any data on victims and perpetrators of racial crimes is available the related analysis in chapter 5 is mainly based on research studies in relation to xenophobic attitudes. Although the findings of this report therefore might not be directly comparable with other reports dealing only with data on racial violence, we believe that they provide valuable information as xenophobic attitudes constitute one of the root causes of racial violence. The following chapter deals with current strategies combating racial violence and examples of good practices by providing information on legislative amendments, related trainings and NGO-initiatives.

Finally, the “Conclusion” sums up the findings of this report.

The Annex is split in two parts: The first part provides an overview on current legislation and policies concerning the six autochthonous minorities in Austria whereas the second part contains all related tables referred to in the text.

## 2. THE POLITICAL CLIMATE

### 2.1. OVERVIEW ON POLITICAL DEVELOPMENTS

The parliamentary elections of 1999 led to a radical change in the Austrian political scene. In these elections, the Social Democrats (*Sozialdemokratische Partei Österreichs, SPÖ*) and the People’s Party (*Österreichische Volkspartei, ÖVP*), which before were forming a “Grand Coalition”, lost a considerable part of their electorate to the Freedom Party (*Freiheitliche Partei Österreichs, FPÖ*). In the course of these elections, the FPÖ gained 26.9 percent of the votes, becoming the second strongest force after the SPÖ. As, in the aftermath of the elections, the coalition talks between the SPÖ and the ÖVP failed, a coalition between the ÖVP and the FPÖ was formed in February 2000.

The other fourteen EU member states protested against this coalition, which was – as to their view - formed with a xenophobic and right-wing populist party, and resorted to unfriendly measures towards the new government<sup>11</sup>. After a period of several months, they established an expert group of the so-called “three wise men”, with the mandate to assess, whether the new government acted in accordance with European values.

In the **parliamentary elections of 2002**, the FPÖ could not repeat its success of 1999. Due to severe internal conflicts between FPÖ politicians, early elections were called one

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<sup>11</sup> Guterres, A. (2000) President of the European Council in the name of the 14 EU- member states, Lissabon, 31. 1. 2000 available at: <http://www.portugal.ue-2000.pt/uk/news/execute/news.asp?id=425>, (09.11.2003).

year before the end of the regular four years voting period in 2002. In these elections the FPÖ only gained 10.01 percent of the votes, losing 16.9 percent of the electorate<sup>12</sup>.

**Table 1: Result of the parliamentary elections 1999 in comparison to 2002**

| Party                  | Percentage of votes 1999 | percentage of votes 2002 | Difference between 1999-2002 |
|------------------------|--------------------------|--------------------------|------------------------------|
| Social Democrats (SPÖ) | 33.15%                   | 36.51%                   | + 3.36%                      |
| Freedom Party (FPÖ)    | 26.91%                   | 10.01%                   | - 16.9%                      |
| People's Party (ÖVP)   | 26.91%                   | 42.30%                   | + 15.39%                     |
| Greens (Grüne)         | 7.4%                     | 9.47%                    | + 2.07%                      |
| Communist Party* (KPÖ) | 0.48%                    | 0.56%                    | + 0.08%                      |
| Liberal Party* (LIF)   | 3.65%                    | 0.98%                    | - 2.67%                      |

Source: Ministry of the Interior, Nationalratswahl November 24, 2002 Endergebnis, Abt.V/6; Nationalratswahl 1999 and own calculations. The parties designed with \* are not represented in parliament.

These results are certainly remarkable, as - according to analyses of voting transitions<sup>13</sup> - some 600,000 voters changed from the Freedom Party to the People's Party. In other words, every third voter of the Freedom Party in 1999 gave his or her vote to the People's Party in 2002<sup>14</sup>. This is the biggest transition of votes observed so far at parliamentary elections in Austria. An estimated 19 to 22 percent (variation according to different opinion-pollsters) of the voters changed party.

After more than three months of exploratory talks (*Sondierungsgespräche*) and despite of the implosion of the FPÖ and the demonstrated instability of the party, finally, the ÖVP decided to renew the coalition with the FPÖ February 28, 2003<sup>15</sup>.

It is certain, that also the coalition governments between the ÖVP and the SPÖ were marked by restrictive policies vis-à-vis foreigners. These tendencies were strengthened, however, by the small coalition government between ÖVP and FPÖ.

In fact, the Austrian political situation recently has been marked by its restrictive naturalisation legislation and its immigration policy which introduced quotas, laying down the maximum of numbers for residence permits per year. In this sense, as to the Regulation for Permanent Settlement<sup>16</sup> (*Niederlassungsverordnung* 2003), which entered into force in May 2003, a number of 8,280 permits of residence to be issued in Austria

<sup>12</sup> Ministry of the Interior, Nationalratswahl November 24, 2002 Gesamtergebnisse (Parliamentary Elections – Final Result), available at: <http://www.portugal.ue-2000.pt/uk/news/execute/news.asp?id=425>, (09.11.2003).

<sup>13</sup> See SORA (Institute for Social Research and Analysis) December 17, 2002: "Wählerstromanalyse Nationalratswahl 2002" (Analysis of voting transitions, parliamentary elections 2002), available at: <http://www.sora.at/wahlen/wsa/nrw02/>, (09.11.2003).

<sup>14</sup> The work of the government, budgetary reforms conducted, impeding a Socialist Party/Greens – coalition and Federal Chancellor Wolfgang Schüssel were the main motives for voters to change from the Freedom Party to the People's Party. Source: Wahl 2002 Schwarz frißt Blau; Wählerströme (Parliamentary Election 2002 Black eats Blue, voting transitions analysis), in: Profil No. 24, (25.11.2002), p.65.

<sup>15</sup> Zarzer, B. (2003) Schwarz-Blau statt Blau Schwarz? (Black-Blue instead of Blue Black?), in: Telepolis, (01.03.2003), available at <http://www.heise.de/tp/deutsch/inhalt/co/14295/1.html>.

<sup>16</sup> Österreich, BGBI II/136/2003.

was fixed for 2003. The quotas permit for temporarily employed aliens 8.000 and 7.000 for harvest assistance<sup>17</sup>. Furthermore, family reunification also stays restricted by certain quotas, which is unique in Europe.

As regards the new Asylum Act<sup>18</sup> – which was passed on October 23, 2003 and will enter into force May 1, 2004 –, it was heavily criticised by several human rights NGOs, the UNHCR Head Quarter in Geneva, the Greens etc. for violating basic human rights standards as well as the Geneva Convention on Refugees and the Protocol<sup>19</sup>. Critics complain especially, that asylum seekers coming from so-called “safe countries”, enumerated by the Act, will not be able to file an application for asylum in Austria. Furthermore, within 72 hours of filing the application, it will be decided whether asylum is granted, whether a more complex asylum procedure is necessary or if the applicant will be expelled immediately. Finally, reasons for seeking asylum can no longer be added, when the appeal proceedings are taken to the second instance. On November 3, 2003, the government of Upper Austria decided unanimously with the voices of ÖVP, SPÖ and the Greens to appeal to the Austrian Constitutional Court in order to make the Court examine the constitutionality of the new Asylum Act<sup>20</sup>.

Furthermore, improving the Austrian system of federal care for asylum seekers, which was found well below average with respect to other European countries has not deserved much attention, so far<sup>21</sup>. This despite the decision of the Austrian Supreme Court, stating, that indigent asylum seekers have to be included into the federal care on the basis of equal treatment<sup>22</sup>. In October 2003, the federal government was criticized for having tried to include elements of the mentioned Directive on Federal Care (*Bundesbetreuungsrichtlinie*) into the new Asylum Act<sup>23</sup>.

In addition, the Vienna FPÖ and ÖVP try to challenge the constitutionality of the law, giving the right to vote and to stand in district council elections as candidate for all

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<sup>17</sup> The Vienna Integration Fund criticised, that the majority of labour migration is being increasingly regulated by issuing temporary settlement permits which have reportedly a negative impact on the integration of labour migrants. Wiener Integrationsfonds (2002a) Stellungnahme zum Entwurf der Niederlassungsverordnung 2003 (Statement on the Regulation of Permanent Settlement 2003), p 2; available at: [http://www.wif.wien.at/wif\\_site/downloads/StNNIVo2003.pdf](http://www.wif.wien.at/wif_site/downloads/StNNIVo2003.pdf), (09.11.2003). [NFPAT0066]

<sup>18</sup> Parliamentary decision, in the 35<sup>th</sup> session on 23.10.2003. The law has not been made public in the federal law gazette yet.

<sup>19</sup> As to the collection of criticisms, see: [http://no-racism.net/migration/asylgesetz2003\\_220503.htm](http://no-racism.net/migration/asylgesetz2003_220503.htm) (2.11.2003).

<sup>20</sup> APA, Upper Austria appeals to the new asylum law at the Constitutional Court, 3.11.2003. Available at <http://volksgruppen.orf.at/austria/en/home/home.htm>, (09.11.2003).

<sup>21</sup> See UNHCR (2000), Reception Standards For Asylum Seekers in the European Union, Geneva, 2000, pp. 26-28, UNHCR (2000), Reception Standards For Asylum Seekers in the European Union, Geneva, 2000, available at: [http://www.ecre.org/eu\\_developments/reception/unhcrrec.pdf](http://www.ecre.org/eu_developments/reception/unhcrrec.pdf), (09.11.2003). [PUBAT0199]

<sup>22</sup> See decision of the Federal Supreme Court (24.02.2003) application number: 10b272/ 02k, available at: <http://www.ris.bka.gv.at/jus/>, (09.11.2003).

<sup>23</sup> For further reference, see Der Kurier, Neues Gesetz für Bundesbetreuung (13.10.2003), <http://www.kurier.at/oesterreich/410518.php>.

foreign residents, who have held permanent residence in Vienna over a period of five subsequent years<sup>24</sup>, in front of the Austrian Constitutional Court<sup>25</sup>.

Another issue, remaining unresolved until now, is the compliance with the decision of the Austrian Constitutional Court<sup>26</sup>, requiring a further position of bilingual place names on signposts in Southern Carinthia<sup>27</sup>. The consensus conference, which was initiated by Federal Chancellor Wolfgang Schüssel to work out an agreement on April 25, 2002, did not find an acceptable solution. On January 1, 2003 the date of the Federal Constitutional Court for repairing the Law expired.<sup>28</sup>

In May 2003, a public debate on the financial contribution of the Austrian Republic to the Jewish Faith Community (*Israelitische Kultusgemeinde*, IKG) arose. Presently, only 8 to 9 percent of the Community's activities are supported by state subsidies<sup>29</sup> whereas in Germany around 80 percent of the Jewish Faith Community is financed by the state<sup>30</sup>. Due to the Community's high level of debts, Ariel Muzicant, the President of the IKG, claimed additional subsidies of 2.7 mil € per year. An agreement was reached in the end of 2003. In December, the conference of the governors of the federal provinces confirmed to pay in total 18.2 million Euro to the Jewish Faith Community.

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<sup>24</sup> Gesetz, mit dem die Wiener Stadtverfassung und die Wiener Gemeindewahlordnung 1996 geändert werden. (Law amending the Viennese City Constitution and the Viennese Municipal Electoral Law 1996), LGBl 22/30 (21.05.2003). The law was adopted on December 13, 2002 by the Provincial Parliament of Vienna (Wiener Landtag).

<sup>25</sup> Der Standard, (6./7. 09.2003), Kampf gegen Wahlrecht für Ausländer (Fight against right to vote for foreigners), p.11.

<sup>26</sup> VfGH, G 213/01, (13.12.2001).

<sup>27</sup> In December 2001, the Federal Constitutional Court suspended specific regulations of the Ethnic Minority Act (*Volksgruppengesetz*) as unconstitutional because they restricted the right to bilingual names on signposts to communities, in which at least 25 percent of the population are members of an autochthonous minority. The ruling of the Constitutional Court suspended these regulations as unconstitutional with reference to the State Treaty of Vienna and demanded that the Federal Government passed a new Law containing a ten-percent-rule: bilingual names on signposts should be displayed in autochthonous settlement areas of the Croatian, Slovenian and Hungarian minorities, provided that persons belonging to the national minority concerned form more than ten percent of the total population in a given municipality over a long period. An emotional debate has followed this ruling, as Jörg Haider, Governor of Carinthia, made clear that he refused to act in accordance with this court decision, which as a matter of course outraged minority members. See e.g: Die Presse (2003) Ortstafelstreit, Heftige Kritik an FP-Position (Disagreement on bilingual place name signpost, severe criticism of the position of the FPÖ), available at: <http://www.diepresse.at/detail/default.asp?channel=p&ressort=i&id=264509> (09.11.2003). [PUBAT0174]

<sup>28</sup> Die Presse, (15.9.2003), Lösung für Ortstafel-Streit? (Solution on the question of bilingual place names on signposts?), p.6.

<sup>29</sup> Grissemann, S., Horowitz, N. (2003) Auf Messers Schneide (Balancing on a knife's edge), in: profil, (21.07.2003), p. 122.

<sup>30</sup> Ibid.

## 2.2. THE POLITICAL NATURE OF THE FPÖ

As to the report of the “three wise men” - who were given the official mandate to explore “the evolution of the political nature of the FPÖ”-, the Freedom Party is a “right-wing populist party with radical elements”<sup>31</sup>. The report states furthermore, that the FPÖ has exploited and enforced xenophobic sentiments in campaigns; which has created an atmosphere in which openly expressed remarks against foreigners became acceptable, causing feelings of anxiety<sup>32</sup>.

This assessment is somehow supported, by taking a closer look at the Austrian Migration and Integration Report<sup>33</sup>, which relates the xenophobic tendencies of the Austrian people in relationship to the attitudes of voters<sup>34</sup>. In fact, by far the highest amount of xenophobic tendencies, namely 46 percent, has been observed among people voting for the Freedom Party (FPÖ), whereas 27 percent respectively 28 percent of the voters of the People’s Party (ÖVP) and the Social Democrats (SPÖ) expressed xenophobic attitudes and among those affiliated to the Greens (*Die Grünen*) only 7 percent are described as having xenophobic tendencies. As demonstrated by the table of Lebhart and Münz<sup>35</sup>:

**Table 2: Link between xenophobic attitudes and party preferences**

| Party preference | Tendentiously xenophobic | Ambivalent, but tendentiously not xenophobic | Not xenophobic |
|------------------|--------------------------|--|----------------|
| SPÖ              | 27,9                     | 47,4   | 24,7           |
| OVP              | 27,3                     | 51,1   | 21,6           |
| FPÖ              | 45,9                     | 43,2   | 10,9           |
| Greens           | 7,3                      | 23,9   | 68,8           |
| Other parties    | 7,5                      | 41,6   | 50,9           |
| No parties       | 29,6                     | 46,0   | 24,4           |

The FPÖ is also being criticized because some of its party members appear to maintain contacts with right-wing organisations. For instance, this year, a member of the local FPÖ and member of the Municipal Council of Klagenfurt, was supposed to give a speech at the meeting of the “Freunde der Ulrichsbergfahrer” in Krumpendorf. This despite the fact, that also former members of the “Kameradschaft IV”, the former *Waffen SS*, belong to the “Freunde der Ulrichsbergfahrer”<sup>36,37</sup>.

<sup>31</sup> Ahtisaari M., Frowein, J., Oreja (2000) Report by Marri Ahtisaari, Jochen Frowein and Marcelino Oreja (Report of the Three Wise Men), adopted in Paris on September 8, 2000, available at: <http://www.gruene.at/weis.php> (09.11.2003). [PUBAT0177]

<sup>32</sup> Ibid.

<sup>33</sup> Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118]. For further reference see chapter 2.4..

<sup>34</sup> Lebhart, G.; Münz, R. (2003) op. cit., p. 354.

<sup>35</sup> Ibid.

<sup>36</sup> Der Standard (12.09.2003) Premiere am Ulrichsberg (Premiere at the Ulrichsberg), p. 8.

<sup>37</sup> Furthermore, Johann Gudenus, the federal chairman of the *Ring Freiheitlicher Jugend* (RFJ, Union of Freedom Youth), which is known for its vicinity to the FPÖ, issued a statement in which he suggested, that a possible accession of Turkey to the European Union would signify the break down of the occident (Untergang des Abendlandes). (ORF-ON Minorities (14.7.2003) RFJ: “Türkenbelagerung” (RFJ: “Siege of the Turks!”), available at: <http://volksgruppen.orf.at/bin/at/de/news/200307/20030714155324kle.html>, (09.11.2003).

Moreover, the election campaign of the FPÖ for the municipal elections held on January 26, 2003 in Graz, was bringing foreigners, especially blacks, in connection with drug dealers.<sup>38</sup> They were basing their electoral campaign on the slogan: “*Drogendealer ab in die Karlau und nicht in den Gemeindebau*”, which translates as “Drug dealers should end up at Karlau and not in council housing”<sup>39</sup>. The place known as Karlau is the second largest jail of Austria situated in Graz. In the campaign of the FPÖ, opening up council housing to foreigners equals to opening up council housing to criminals: foreign nationals are branded as drug dealers<sup>40</sup>.

### 2.3. THE RIGHT-WING EXTREMIST<sup>41</sup> AND REVISIONIST SCENE<sup>42</sup> AND THEIR RECENT ACTIVITIES

Austria’s right-wing and revisionist scene is a well equipped and in some parts a traditionally deeply rooted one. It consists of a relatively small number of activists, and is quite closely monitored by law enforcement as well as by institutions like the *Dokumentationsarchiv des Österreichischen Widerstandes* (Documentation Centre of Austrian Resistance, DÖW) or the Stephen Roth Institute at the University of Tel Aviv. For the specific legal framework to combat crimes in relation with National-Socialist Ideology, see chapter 3.1.

As to the Austrian *Verfassungsschutzbericht* (Report on the Protection of the Constitution) 2003<sup>43</sup>, the extreme rightists and neo-Nazi scene did not change significantly in 2002. Also in 2002, the main activists belong to skinhead-groups or to the revisionist scene.

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<sup>38</sup> Horacek, N. (2003) Hinter den Kulissen (Behind the scene), in: Der Falter, (15.01.2003), p. 13. [PUBAT0187]

<sup>39</sup> Internet news service of the Austrian Broadcasting Corporation –Minorities Desk (ORF ON-Minorities), (14.01.2003), Wohnen im Gemeindebau wichtig für Integration (Living in council housing important for integration), available at: <http://minderheiten.orf.at/de/news/20030113155644kor.html>, (09.11.2003) [PUBAT0099]; cf. also Horacek, N. (2003) op. cit., p.13.

<sup>40</sup> Furthermore, the governor of Carinthia, Jörg Haider, demands to complicate the requirements to obtain the Austrian citizenship. As to Haider, because of the social tensions due to the too large number of naturalisations, citizenship should not be granted automatically after a period of ten years. (Kleine Zeitung, (07.06.2003), Staatsbürgerschaft: Haider sieht sich bestätigt. (Citizenship: Haider claims to be confirmed), available at: [http://www.kleinezeitung.at/nachrichten/politik/artikel/\\_539049/index.jsp](http://www.kleinezeitung.at/nachrichten/politik/artikel/_539049/index.jsp), (09.11.2003).

<sup>41</sup> A valuable description of the main activists, groups and media can be found at: Dokumentationsarchiv des Österreichischen Widerstandes (DÖW), <http://www.doew.at/projekte/rechts/organisation/content.html>, (29.07.02).

<sup>42</sup> Also based on: Antisemitism Worldwide 2000/1 Austria, available at: <http://www.tau.ac.il/Anti-Semitism/asw2000-1/austria.htm>, (09.11.2003).

<sup>43</sup> Bundesministerium für Inneres (2003) Verfassungsschutzbericht 2002. Staats-, Personen- und Objektschutz. (Report on the Protection of the Constitution 2002. Security of the state, people, and objects). Wien, p. 23. available at: <http://www.bmi.gv.at/downloadarea/staatsschutz/VS-Bericht2002.pdf>, (09.11.2003). [PUBAT0181]

### 2.3.1. Right-wing revisionist scene

In the following, the major players of the right-wing revisionist scene are shortly presented, with a focus on those, who have engendered public debate recently. For a more systematic overview see also Raxen 3/II.

The **Arbeitsgemeinschaft für demokratische Politik (AFP, Association for Democratic Policy)** is – formally – a political party with an extreme right-wing programme in ideological and cultural aspects. In their publications and articles, neo-Nazi or revisionist contents frequently appear. Though the AFP only consists of few activists, it plays an important role in the right-wing extremist scene due to its excellent national and international contacts. The AFP equally organises political meetings; the last one, the *38. Politische Akademie* (38<sup>th</sup> Political Academy), took place October 17 -19, 2003 in Riegersburg; Styria<sup>44</sup>.

The organisation **Die Kameradschaft IV** (Comradeship IV) is still important; some of its members formally belonged to the *Waffen-SS*. They publish the periodical *Die Kameradschaft* (The comradeship).

The (**Schutzverein**) **Österreichische Landsmannschaft (ÖLM)** is a right-wing extremist organisation mainly operating in the field of publishing (*Der Eckart*, formerly *Der Eckartbote*). For instance, an article in a recent publication of *Der Eckart* sustains, that it was not the National-Fascists who were responsible for the break out of the Second World War. The article continues, complaining, that the Prohibition Statute would not permit a scientifically neutral discussion concerning this question of guilt<sup>45</sup>.

The **Kameradschaft Germania** (KSG, Teutonic Comradeship) came out of a merge of the Kameradschaft Germania Wien, the Kameradschaft Österreich and the Kameradschaft Germania Berlin (in the internet) at the beginning of 2002. The KSG is classified by the DÖW as neo-nazi<sup>46</sup>.

The **Nationaldemokratische Partei Österreichs** (NPÖ, National Democratic Party of Austria) is a small party which was founded in April 2002<sup>47</sup>. In many respects, its programme is identical with the one of the German NSDAP. A procedure under the Prohibition Statute was initiated against the founder of the NPÖ, because the homepage of the party displayed a citation of Rudolf Hess, the former deputy of Hitler. However, in December 2002, the public prosecutor in Graz as well as the public prosecutor in Eisenstadt decided to close the proceedings. Apparently, the use of the Hess citation „*Ich bereue nichts*“ (I do not regret anything) was not regarded as sufficient ground to further investigate a possible infringement of the Prohibition Statute. Because of the content of the NPÖ homepage the DÖW initiated two other procedures under the Prohibition Statute

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<sup>44</sup> DÖW, (09. 2003), „Politische Akademie“ der AFP (“Political Academie“ of the AFP), available at: [http://www.doew.at/projekte/rechts/chronik/2003\\_09/afp.html](http://www.doew.at/projekte/rechts/chronik/2003_09/afp.html), (09.11.2003).

<sup>45</sup> DÖW, (07. 2002), Landsmannschaft rudert zurück (Landsmannschaft rows back), available at: [http://www.doew.at/projekte/rechts/chronik/2002\\_07/oelm.html](http://www.doew.at/projekte/rechts/chronik/2002_07/oelm.html), (09.11.2003).

<sup>46</sup> DÖW, (07. 2002), Kameradschaft Germania ist neonazistisch (“Kameradschaft Germania is neo-nacist“), available at: [http://www.doew.at/projekte/rechts/chronik/2002\\_07/germania.html](http://www.doew.at/projekte/rechts/chronik/2002_07/germania.html), (09.11.2003).

<sup>47</sup> Bundesministerium für Inneres (2003), op. cit, p. 27.

in July 2003<sup>48</sup>. Whereas in August 2003 the homepage still existed<sup>49</sup>, it is currently not available and was taken out of the internet.

### 2.3.2. Skinheads and their activities

The right-wing Skinhead scene of Austria tends to connect itself increasingly with German and Swiss Neo-Nazis<sup>50</sup>. This is particularly true for some federal provinces such as Vorarlberg and Upper Austria<sup>51</sup>. There the Austrian right-wing scene had organised a number of concerts which were attended by up to 1000 participants (also from Germany and Switzerland<sup>52</sup>). The skin network Blood & Honour becomes more and more active in Vorarlberg<sup>53</sup>.

In April 2002 several right-wing extremist groups initiated demonstrations against an exhibition in Vienna with the title “Crimes of the German Wehrmacht – Dimensions of a War of Annihilation, 1941-1944” (“*Verbrechen der Wehrmacht. Dimensionen des Vernichtungskriegs 1941-1944*”). In the aftermath of this demonstration, which was accompanied by an impressive counter-demonstration of about 4.000 persons, about 100 skinheads marched through the city centre shouting anti-foreigner and Nazi slogans. Investigations were initiated against approximately 40 people participating in this march. 15 persons out of these 40 persons already were known for having committed similar right-wing extremist activities. However, only one person finally got convicted the rest of the proceedings were dismissed.

A demonstration of the Austrian fraction of the neo-nazi wing of the “Schwarze Division Germania” in the honour of Walter Nowotny, a war pilot under the NS-regime, was forbidden in September 2003<sup>54</sup>. The case received considerable media attention<sup>55</sup>.

## 2.4. MEASUREMENTS OF MAJORITY POPULATION'S ATTITUDES TOWARDS MIGRANTS AND MINORITIES

In the last 10 years, there appears to be a slight improvement of the majority population's attitude vis-à-vis foreigners<sup>56</sup>. For instance, in 2001, 44 percent of the Austrian population supported the assumption that migration and diversity lead to cultural enrichment of the

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<sup>48</sup> DÖW, (08. 2003), NPÖ leugnet den Holocaust und kopiert das NSDAP- Programm (“NPÖ denies the Holocaust and copies the NSDAP-programme”), available at: [http://www.doew.at/projekte/rechts/chronik/2003\\_08/npoe.html](http://www.doew.at/projekte/rechts/chronik/2003_08/npoe.html), (17.12.2003)

<sup>49</sup> Ibid.

<sup>50</sup> Bundesministerium für Inneres (2003), op. cit., p. 31.

<sup>51</sup> Ibid.

<sup>52</sup> See DÖW, (10. 2002), Neonazi Konzert in Vorarlberg (“Neonazi concert in Vorarlberg“), available at: [http://www.doew.at/projekte/rechts/chronik/2002\\_10/vlbg.html](http://www.doew.at/projekte/rechts/chronik/2002_10/vlbg.html), (09.11.2003).

<sup>53</sup> Bundesministerium für Inneres (2003), op. cit., p. 30.

<sup>54</sup> See DÖW, (08. 2002), Neonazi-Demo untersagt: erste Reaktionen (“Neo-nacist demo prohibited: first reactions“), available at: [http://www.doew.at/projekte/rechts/chronik/2003\\_08/demo2.html](http://www.doew.at/projekte/rechts/chronik/2003_08/demo2.html), (09.11.2003).

<sup>55</sup> See for instance, Der Standard, Polizei untersagt rechtsextreme Demo (Police interdicts right-wing demonstration) (22.8.2003), p.7.

<sup>56</sup> Lebhart, G.; Münz, R. (2003), op. Cit., pp.349.

Austrian society whereas in 1992, it was only 30 percent. Furthermore, in 2001, only 11 percent - in contrast to 32 percent in 1992 - strongly opposed the view that foreigners could be seen in a positive way, as cultural enrichment. Equally, in 2001, 39 percent of the interviewed Austrians consented to the idea, that foreigners should be able to vote in local elections after 5 years of residence in Austria. In 1992 only 22 percent agreed on the fact. Finally, statements like “immigrants deprive the Austrian native population of their jobs” were only supported by 25 percent in 2001 compared to 44 percent in 1992<sup>57</sup>.

Beside these positive tendencies it should not be overlooked that the number of people still consenting to **xenophobic statements** is considerably high<sup>58</sup>. Also the Eurobarometer survey on “Discrimination in Europe” which was conducted in 2002 gives Austria a relatively bad score in regard to ethnic discrimination. Compared to other EU-member states the opposition to ethnic discrimination was clearly below the European average<sup>59</sup>.

Another Eurobarometer survey, which was conducted in October 2003 showed that nearly 60 percent of Europeans replied yes when asked whether or not Israel presented a threat to world peace, which is more than for any other country about which this question was asked<sup>60</sup>. Although the interpretation of this result or other indicators of a rejection of Israeli policies in terms of anti-Semitism are problematic<sup>61</sup> it seems worth mentioning at this point that the percentage of Austrian respondents perceiving Israel as a threat to world peace (69 %) is far above the average among of all 15 Member States and in fact the second highest one after the Netherlands (74 %)<sup>62</sup>.

## 2.5. RESEARCH AND OTHER ANALYSIS OF THE POLITICAL SITUATION

In July 2003, the first **Austrian Migration and Integration Report** was published<sup>63</sup>. The content of the report is based on a research project which was implemented by the International Centre for Migration Policy Development (ICMPD) and financed by the Federal Ministry for Education, Science and Culture and the Federal Ministry of the Interior. The report counts 428 pages comprising 20 different chapters written by all

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<sup>57</sup> As to the subjective appreciation of the number of foreigners, in 2001, 44% of the adult Austrian population stated, that there would be many, but not too many foreigners in Austria (the same percentage as in 1998). 43% were of the opinion that there would be too many foreigners in Austria. (Lebhart, G.; Münz, R. (2003), op. cit., p. 346.

<sup>58</sup> Compare: science ORF.at (2001) “Fremdenfeindlichkeit in Österreich” (“Xenophobia in Austria”), available at: <http://science.orf.at/science/news/34264>, (09.11.2003).

<sup>59</sup> European Commission, Directorate General Employment and Social Affairs (2003) Discrimination in Europe, Eurobarometer 57.0, available at: [http://europa.eu.int/comm/public\\_opinion/archives/eb/ebs\\_168\\_exec.sum\\_en.pdf](http://europa.eu.int/comm/public_opinion/archives/eb/ebs_168_exec.sum_en.pdf), (09.11.2003). [PUBAT0115]

<sup>60</sup> In the course of this poll 7,515 EU citizens were interviewed by telephone between October 8 and the 16, 2003. In Austria 500 respondents were interviewed. EOS Gallup Europe (2003) Flash Eurobarometer 151 “Iraq and peace in the world”, pp. 3, 113, available at: [http://europa.eu.int/comm/public\\_opinion/flash/fl151\\_iraq\\_full\\_report.pdf](http://europa.eu.int/comm/public_opinion/flash/fl151_iraq_full_report.pdf), (09.11.2003).

<sup>61</sup> For different reactions see: BBC News (03.11.2003) Israeli anger over EU ‘threat’ poll, available at: [http://news.bbc.co.uk/1/hi/world/middle\\_east/3237277.stm](http://news.bbc.co.uk/1/hi/world/middle_east/3237277.stm), (09.11.2003).

<sup>62</sup> EOS Gallup Europe (2003) op. cit., p. 81.

<sup>63</sup> Fassmann H., Stacher I. (eds.) (2003), op. cit..

together 32 migration experts. For the field of xenophobia, especially the chapters “Migration and xenophobia in Austria – perception and perspectives” by Lebhart and Münz and “Xenophobia out of the perspective of the others, experiences and strategies of affected foreigners” by Kohlbacher/ Reeger offer interesting insights and valuable statistical data material. Furthermore, the chapter written by Pilgram, “Migration and inner security” contains information concerning – inter alia - the victimisation of foreigners by the police in Austria, which is of special interest for the purpose of this report.

Of interest for this purpose is furthermore the **final report of the Austria Historical Commission** which was presented on February 23, 2003<sup>64</sup>. (The Commission was set up “[...] to investigate and report on the whole complex of expropriations in Austria during the Nazi regime and on restitution and/ or compensation (including other financial or social benefits) after 1945 by the Republic of Austria”<sup>65</sup>.) The final report comprising 445 pages is structured into 2 major parts. While the first part focuses on expropriations of vulnerable groups, especially Jews, and on certain categories of expropriated property the second part deals with historical and juridical aspects concerning restitution and compensation measures after 1945. The report led to a change of paradigm as at the time when the Historical Commission was set up, many political decision makers were of the opinion that Austria had compensated for all damages that resulted out of the Nazi-regime. During the research process it became evident that Austria has still a so-called “*Bringschuld*” - an obligation to be performed at the creditor’s place of residence<sup>66</sup>. At the other hand the report also rebuts the allegation that Austria has done nothing in terms of restitution and compensation for victims of the National-Socialist regime. However, Austria was criticised for its hesitant restitution and compensation policies after 1945 which led to frustration and resentment among the victims of the NS-regime. In his opening speech at the presentation of the report Clemens Jabloner, president of the Federal Administrative court and chairman of the Historical Commission, said “what we found is a picture of an incredibly dimensioned process of organised criminality”<sup>67</sup>.

The research „**Nicht-wir“ und „Die-da“. Studien zum rechten Populismus**“<sup>68</sup> (“Not-us” and “them-over there”. Studies on the right-wing populism) from Sebastian Reinfeldt provides a valuable and recent analysis of the phenomenon of the right-wing populism in Austria. The author analyses the interrelationship between populism and right-wing extremism, taking the Austrian FPÖ as example. Reinfeldt explains the success of populist parties and the formation of populist tendencies within parties. A special focus of

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<sup>64</sup> All reports are available in German under the link “progress reports” at the website of the Historical Commission: [http://www.historikerkommission.gv.at/english\\_home.html](http://www.historikerkommission.gv.at/english_home.html), (09.11.2003).

<sup>65</sup> See mandate of the Commission cited on *ibid*, (09.11.2003).

<sup>66</sup> Jabloner, C., et.al. (2003) Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich (Expropriation during the National-Socialist regime and restitution and compensation since 1945 in Austria), Final report of the Austrian Republic Historical Commission, Vienna, p. 401, available in German language at: [http://www.historikerkommission.gv.at/english\\_home.html](http://www.historikerkommission.gv.at/english_home.html), (09.11.2003). [PUBAT0121]

<sup>67</sup> Clemens Jabloner, cited in an article by Enigl, M. (2003b) Der große Raubzug (The big raid), in: *profil*, (03.03.2003), p. 43.

<sup>68</sup> Reinfeldt, S. (2000) *Nicht-wir“ und „Die-da“. Studien zum rechten Populismus* (“Not-us” and “them-over there”. Studies on the right-wing populism), Wien: Braumüller. [PUBAT0193]

his research concentrates on the use of language, which constitutes - beside contents, actions and self-presentation - the central object of investigation.

The speech, which was delivered by Jörg Haider, former leader of the FPÖ and actual governor of Carinthia, on Ash Wednesday 2001, constitutes the starting point for the book “**Dreck am Stecken**”. **Politik der Ausgrenzung**<sup>69</sup>. (“Dirt on the Stick“ [literal translation] A policy of exclusion). Haider’s statement in regard to Ariel Muzicant, the President of the IKG, that he could not understand how somebody, whose name is Ariel, could have “a skeleton in the cupboard”, had provoked a vague of indignation. Via an analysis of the statement, the different articles assembled in the book, try to demonstrate how the image of “the Jew” is constructed and becomes politically exploited. The different articles are of specific interest when it comes to taking a closer look at anti-Semitism in Austria.

### 3. LEGISLATION AND POLICIES CONCERNING RACIST VIOLENCE AND RACIST CRIMES

#### 3.1. SHORT OVERVIEW OF THE CURRENT LEGAL FRAMEWORK CONCERNING RACIST VIOLENCE AND RACIST CRIMES

The prevailing approach of the Austrian legal system is to see racist discrimination or racist violence as acts deriving from extreme right-wing or National-Socialist ideology. Legislation applicable to racist and xenophobic violence and crimes therefore focuses on crimes in the context of National-Socialist ideology. The Constitutional Act prohibiting the NSDAP (National-Socialist German Workers’ Party) (*Verbotsgesetz*; **Prohibition Statute**<sup>70</sup>), which was enacted in order to comply with the international obligation resulting from art 9 of the Treaty of Vienna<sup>71</sup> forms the legal basis for sanctions against racist actions and incitements within the context of (neo-) Nazi ideology. Other racist crimes, however, that are not linked to National-Socialist ideology cannot be subsumed under the Prohibition Statute.

Sec 3 lit a) and b) prohibit the **foundation and maintenance of National-Socialist organisations** as well as financial contributions, or any other form of support or co-operation with such organisations. Such activities lead to punishment up to twenty years of imprisonment, and can even amount to lifelong imprisonment if the person who committed the crime or the crime committed is especially dangerous.

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<sup>69</sup> Pelinka, A., Wodak, R. (2002) „Dreck am Stecken“. Politik der Ausgrenzung (“Dirt on the Stick“. A policy of exclusion), Vienna: Czernin. [PUBAT0194]

<sup>70</sup> NS-Verbotsgesetz prohibiting the re-vitalisation of National-Socialist ideology; Österreich, StGBI 13/1945, amended version BGBI 148/1992, (19.03.1992).

<sup>71</sup> Österreich, BGBI 152/1955, amended version BGBI III Nr. 179/2002, (06.06.2002).

According to sec 3 lit d) any person who **induces, encourages or leads actions prohibited under the Prohibition Statute** by conduct in public or through the dissemination of printed material or figurative illustrations shall be liable to a term of imprisonment from five up to ten years.

Whoever commits murder, robbery, arson, malicious injury or intentionally endangers public order or attempts a bombing plot in the National-Socialist sense is punished according to sec 3 lit f) Prohibition Statute with ten to twenty years of imprisonment, or - under especially dangerous circumstances – even with lifelong imprisonment.

The latest amendments to the Prohibition Statute in 1992 led to the inclusion of a new sec 3 lit h) prohibiting the dissemination of the so-called *Auschwitzlüge*<sup>72</sup>. Thus, anyone who denies, grossly trivialises, approves or seeks to justify the National-Socialist genocide or other National-Socialist crimes against humanity by making this opinion accessible to the public through printed material, broadcast or any other means can face imprisonment between one to ten years. This provision had been criticised by several experts for limiting the freedom of expression and suppressing the open process of coming to terms with the past („*Vergangenheitsbewältigung*”)<sup>73</sup>.

The regulation which is most often applied in the context of crimes committed out of National-Socialist motivation is sec 3 lit g) which applies to any person who is active in the National-Socialist sense in any other way than mentioned in sec 3 lit a) to f). This provision provides a so-called “*Auffangtatbestand*” applying to all other forms of National-Socialist Activities, which are not explicitly mentioned in the previous sections of the Prohibition Statute. Such activities are punished with a maximum of ten years of imprisonment. The Supreme Court applied this provision, for example, in connection with the distribution of stickers with the slogan “Don’t buy from Jews”, or leaflets saying “Give Nazis a chance”.

As already mentioned above the scope of the Prohibition Statute applies only to crimes in connection with National-Socialist ideology and therefore does not apply to “**mere**” **xenophobic expressions and behaviour**. However, if the utterance of “xenophobic” attitudes is connected with further offences that can be related to criminal actions typical of National-Socialist revitalisation (“*Wiederbetätigung*”) and to the perpetrator’s connection with related organisations, then the Supreme Court applies the Prohibition Statute<sup>74</sup>. Still, the following statistics show that only a relatively low number of complaints in fact resulted in convictions.

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<sup>72</sup> Österreich, BGBl.Nr. 13/1945 as last amended by BGBl.Nr. 148/1992 (19.03.1992).

<sup>73</sup> See: Platzgummer, W. (1994) Die strafrechtliche Bekämpfung des Neonazismus in Österreich (The criminal prosecution of Neonazism in Austria), in: Österreichische Juristen Zeitung 1994, p. 760. [PUBAT0196] Further references are cited in footnote 106 and 107.

<sup>74</sup> Ibid., p. 758.

**Table 3: Proceedings under the Prohibition Statute**

| Year | Complaints | Initiation of Criminal Proceeding | Convictions <sup>75</sup> | Acquittals |
|------|------------|-----------------------------------|---------------------------|------------|
| 1998 | 198        | 19                                | 11                        | 1          |
| 1999 | 274        | 43                                | 25                        | 3          |
| 2000 | 239        | 29                                | 32                        | 0          |
| 2001 | 269        | 40                                | 24                        | 2          |
| 2002 | 238        |                                   | 20                        |            |

Source: For the years 1999 – 2000: Bundesministerium für Inneres (2001) *Verfassungsschutzbericht 2000. Staats-, Personen- und Objektschutz. (Report on the Protection of the Constitution 2000. Security of the state, people, and objects)*. Wien, p. 33. For the years 2001 - 2002: Bundesministerium für Inneres, Bundesministerium für Justiz (2003) *Sicherheitsbericht 2002 (Security Report 2002)*, Wien, p. 203, 381 [PUBAT0109] Information regarding Initiation of Criminal Proceedings and acquittals: Austrian Federal Chancellery (2002), *Aktuelle Informationen über Maßnahmen gegen Rassismus, Fremdenfeindlichkeit und Antisemitismus in Österreich. Stand Mai 2002, submitted to the National Focal Point through the liaison officer, pp .16.*

According to this chart only 9 out of 100 complaints lead to a conviction according to the Prohibition Statute, whereas the great majority of complaints either were not taken up by the prosecutors or not seen as fulfilling the elements of a crime according to the *Verbotsgesetz*<sup>76</sup>. However, the high number of complaints also indicates that the scene is thoroughly watched and monitored. It therefore might be concluded that the sensitivity towards crimes in connection with National-Socialist ideology and the awareness that such crimes are prohibited by law is relatively high.

According to section 1 and 3 *Abzeichengesetz*<sup>77</sup> (Insignia Act) it is forbidden to publicly wear, display, depict or disseminate **insignia of an organisation that is prohibited in Austria** under Austrian law, particularly under the Prohibition Statute<sup>78</sup>. Wearing neo-Nazi symbols is therefore considered as an offence under the Insignia Act in connection with the Prohibition Statute and can be fined up to 720 Euro. Insignia include emblems, symbols and signs. This prohibition also applies to insignia that, because of their similarity or their evident purpose, are used as substitutes for one of the above mentioned insignia.

**Hate speech which is related to National-Socialist ideology** is being prohibited by sec 3 lit d) (incitement to become active in the sense of revitalisation of the National-Socialist ideology) or by sec 3 lit g) providing a so-called catch clause (*Auffangtatbestand*). These

<sup>75</sup> This numbers stem from Criminal Statistics provided by the Ministry of the Interior, which in some cases can exceed court statistics provided by the Ministry of Justice including only those offences which are relevant for the determination of the sentence. Thereby, in cases in which the perpetrator commits two crimes at the same time the offence with the lower sanction is not reflected in court statistics on convictions. See: Bundesministerium für Inneres, Bundesministerium für Justiz (2003) *Sicherheitsbericht 2002 (Security Report 2002)*, Wien, p. 12. [PUBAT0109]

<sup>76</sup> One should however take into account that most of these crimes have unknown perpetrators which hampers the due course of the process.

<sup>77</sup> Österreich, BGBl 84/1960, amended version BGBl 117/1980.

<sup>78</sup> Sec 12 para 1 Association Act (*Vereinsgesetz*) prohibits associations if their purpose, name or form of organisation is illicit; See: Österreich, BGBl I 66/2002, (26.04.2002).

provisions apply to any form of publication which is appropriate to reach the general public or at least several people. Hate speech which includes the denial of the Holocaust is punished by sec 3 lit h) which applies as *Lex Specialis*.

**Hate speech which is not in connection with National-Socialist ideology** might be prohibited by sec 283 Penal Code<sup>79</sup>. This provision penalises incitement to hostile action (*Verhetzung*) if someone publicly induces or incites - in a manner likely to endanger public order – the commission of a hostile act against a church or religious community existing in the state or against a group determined by membership to such a church or religious community, race, nation, ethnic group or state. Furthermore, sec 283 prohibits public agitating against such a group or insulting or disparaging it in a manner violating human dignity. Perpetrators can face up to two years’ imprisonment. This section, however, does not provide any remedy against incitement that is directed against asylum seekers or foreigners as such because they do not form a “group” protected under sec 283 Penal Code<sup>80</sup>. Also incitement against Turks or any other group of persons belonging to a state would only constitute an offence according to sec 283 if the act of instigation or incitement is likely to disturb the public order. Due to the fact that sec 283 is included in the 20<sup>th</sup> chapter of the Code, headed “Crimes against public peace” (*Zwanzigster Abschnitt, Strafbare Handlungen gegen den öffentlichen Frieden*) the focus of this provision lies upon the public commitment which is likely to endanger public order. The principal aim of this provision therefore can be seen in the maintenance of public peace rather than protecting the dignity of members of the mentioned groups. This explains the very restrictive application of this provision which is shown in the following charts.

**Table 4: Proceedings according to sec 283 Penal Code – incitement to hostile action**

|      | Complaints | Convictions <sup>81</sup> |
|------|------------|---------------------------|
| 1998 | 21         | 5                         |
| 1999 | 43         | 3                         |
| 2000 | 27         | 1                         |
| 2001 | 39         | 11                        |
| 2002 | 56         | 9                         |

Source: For 1998: Bundesministerium für Inneres (2000) *Staatsschutzbericht 1999*, Wien, p. 44. For the years 1999 – 2000: Bundesministerium für Inneres (2001) *Verfassungsschutzbericht 2000. Staats-, Personen- und Objektschutz. (Report on the Protection of the Constitution 2000. Security of the state, people, and objects)*. Wien, p. 33. For the years 2001 - 2002: Bundesministerium für Inneres, Bundesministerium für Justiz (2003) *Sicherheitsbericht 2002 (Security Report 2002)*, Wien, p. 203, 381 [PUBAT0109] *Information regarding Initiation of Criminal Proceedings and acquittals: Austrian Federal Chancellery (2002), Aktuelle Informationen über Maßnahmen gegen Rassismus, Fremdenfeindlichkeit und Antisemitismus in Österreich. Stand Mai 2002, submitted to the National Focal Point through the liaison officer, pp .16.*

<sup>79</sup> Sec 3 d) and 3 lit g) Prohibition Statute apply as *lex specialis* to those incitements which are committed on the basis of National-Socialist ideology.

<sup>80</sup> Steininger, H. (1992) *Kommentar zum Strafgesetzbuch (Commentary to the Penal Code)*, Eisenstadt: Prugg. p. 48. [PUBAT0126]

<sup>81</sup> These numbers stem from Criminal Statistics provided by the Ministry of the Interior, which in some cases can exceed court statistics provided by the Ministry of Justice including only those offences which are relevant for the determination of the sentence. Thereby, in cases in which the perpetrator commits two crimes at the same time the offence with the lower sanction is not reflected in court statistics on convictions. See: Bundesministerium für Inneres, Bundesministerium für Justiz (2003), *op. cit.*, p. 12. [PUBAT0109]

In order to improve the applicability of sec 283 Penal Code the scope of this provision should be broadened. This provision should not only apply to hate speech against one of the mentioned “groups” but should penalise any form of public incitement to hostile actions directed against individual persons belonging to any group vulnerable to racial discrimination such as “foreigners”, migrants or asylum-seekers. Only then sec 283 Penal Code would provide an efficient tool against racist manifestations<sup>82</sup>.

In cases of **racist verbal attacks on a single person** sec 115 in connection with 117 para 3 Penal Code apply. According to these provisions anyone who publicly or in the presence of several (at least two other) people insults, derides, maltreats or threatens to maltreat another person who belongs to one of the groups listed in sec 283 Penal Code is liable to imprisonment of up to three months. Compared to other defamations, which are only prosecuted upon private charge, racist verbal attacks are being prosecuted *ex officio*. Although sec 117 para 3 does not foresee more severe punishment for racist defamation it still indicates that the legislator aims to handle these insults with special care and perceives it as a state obligation to prosecute these offences. However, the sentence of a judge in Upper Austria regarding a policeman who called a black person “*scheiß Neger*” (the meaning of this expression might be translated as “fucking Nigger”) during a traffic check shows that this provision is interpreted very restrictively. According to the judge’s decision, which was confirmed also by the second instance, the expression „*scheiß Neger*” does not constitute a violation of human dignity. Thus, sec 117 would only apply if the insult grossly discriminated the victim and degrade him or her as subhuman being or denied the victim’s humanity as such. Following the reasoning, the accused officer directed the insult against an individual person coincidentally black and not against the blacks as such. Hence he has only fulfilled the *corpus delicti* of a “normal” insult according to sec 115 which can only be prosecuted on private initiative. The Public Prosecutor’s Office stated that it will file an application for declaration of nullity to the Federal Supreme Court in order to annul the decision of the appeal court. Besides that, the Federal Minister of Justice, Dieter Böhmdorfer, said that he would have the General Prosecutor file a review of the decision at the Supreme Court, which was done in October 2003<sup>83</sup>.

The Austrian legal system does not provide any definition of racist violence. However, sec 33 para 5 of the Penal Code<sup>84</sup> directly applies to **racially or xenophobically motivated crimes**. According to this provision in cases of offences committed for racist or xenophobic reasons, the motivation is to be investigated in court and considered as an **aggravating factor** in determining the particular sentence. In procedural respect, the factual effectiveness of this provision lies completely in the hands of the prosecutors and judges, as the individual victim of a racist motivated crime has no right to claim that the

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<sup>82</sup> See also: ZARA (2002) Racism Report 2001. Case Report on Racist Incidents and Structures in Austria, Focus: Awareness-raising activities, Wien, p. 60, available at: [http://www.zara.or.at/download/rass\\_rep\\_2001\\_e.pdf](http://www.zara.or.at/download/rass_rep_2001_e.pdf), (09.11.2003). [PUBAT0093]

<sup>83</sup> Nevertheless, in January 2004, the Austrian Supreme Court overruled the decision rendered by the Regional Court of Linz. Though the lower courts reasoned that the policeman’s expression “*Scheiss-Neger*” does not violate human dignity, and does thus not constitute a racist insult sanctioned under penal law. The Supreme Court clarified that expressions which qualify persons as inferior on account of their race, ethnic origin or religion do violate the dignity of the person concerned.

<sup>84</sup> Österreich, BGBI 60/1974 (01.01.1975), amended version BGBI I 134/2002, (13.08.2002).

provision has to be taken into account, when the court is deciding on the sentence for the perpetrator. This provision clearly indicates that the Austrian legislator acknowledges the necessity to treat racist violence with special care. Although NGO reports as well as governmental reports contain several cases of racial violence every year, it has been observed that this aggravating factor relating to racist motives is scarcely applied. Due to an internal order by the Federal Ministry of Justice in February 2001, public prosecutors are obliged to report cases of racist incidents and the application of sec 33 para 5 as well as section 117 Penal Code in the annual perception report for 2002 (*Wahrnehmungsbericht*). Unfortunately, not a single case of the application of sec 33 para 5 Penal Code (aggravating factor due to xenophobic and racist motivation) was reported in 2002<sup>85</sup>. The lack of application of this provision clearly demonstrates that further awareness raising and training measures seem to be necessary in order to draw attention to the fact that the legislator perceives racist and xenophobic crimes as particularly punishable.

The Introductory Provisions to the Code of Administrative Procedures (*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen; EGVG*)<sup>86</sup> provide a legal basis to punish less serious offences compared to those subject to the Prohibition Statute and the Penal Code. According to art IX para 1 no 3 EGVG, treating persons in a discriminatory manner on the sole ground of their race, colour, national or ethnic origin, religion, creed or disability or preventing them from entering places or making use of services, which are intended for general public use, without justification constitutes an administrative offence. In contrast to other penal provisions of administrative law, this article also applies to attempted offences. Art IX (1) no 3 EGVG foresees a maximum fine of 1,090 Euro. Whereas in 2001 68 complaints under art IX para 1 no 3 EGVG were filed, in 2002 it was only 47<sup>87</sup>.

Another administrative penal provision against racial discrimination was introduced in the Trade Licence Act (*Gewerbeordnung*) in 1997. Sec 87 para 1 no 3 provides for the withdrawal of a person's or enterprise's trade licence if the entrepreneur commits a serious offence contrary to the legal regulations and the protected interests of the trade concerned. In 1997, the concept of protected interests was extended in order to include the prevention of discrimination on racial and religious grounds in the sense of art IX para 1 no 3 EGVG. This provision certainly has the potential of providing effective means of deterring entrepreneurs from practising racial and religious discrimination as the threat of having one's licence withdrawn would undoubtedly mean a substantial loss for the entrepreneur concerned. Unfortunately, no data on the application of this provision was available so far<sup>88</sup>. According to the media, several complaints in relation to discriminatory access policies of bars and restaurants in Graz have only been taken up by the responsible authority after interventions by the mayor of Graz, who was eager to save Graz's reputation as Cultural Capital of Europe and Human Rights city<sup>89</sup>.

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<sup>85</sup> Information provided by the Federal Ministry of Justice.

<sup>86</sup> Österreich, BGBl 50/1991 (31.01.1991), amended version BGBl I 97/2002, (25.06.2002).

<sup>87</sup> Bundesministerium für Inneres (2003), op. cit, p.34.

<sup>88</sup> Due to the facts that persons who were denied access have no right to join the administrative proceeding as party they generally have no information whether the respective innkeeper got fined.

<sup>89</sup> Der Standard (7./8. 06.2003) Rassistische Wirte werden nun überprüft (Racist innkeepers are now being examined), p. 10.



## 3.2. DESCRIPTION OF MONITORING SYSTEMS

Presently, there is no comprehensive monitoring system for discrimination on the grounds of race and ethnic origin in place in Austria. However, in the context of racial violence it has to be acknowledged that the right-wing extremist scene is being monitored closely by the **Federal Agency for State Protection and Counter-Terrorism** (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung – BVT*), which is organised as Directorate General at the Federal Ministry of the Interior. The annually published “Report on the Protection of the Constitution” (*Verfassungsschutzbericht*) includes a chapter on right-wing extremism comprising several sections on right-wing organisations, and National-Socialist publications as well as relevant crime statistics. The information provided by this report will be dealt with in chapter 4.1. As already described above, the present legal framework which applies to racial violence focuses on the one hand on crimes in connection with National-Socialist ideology, on the other hand related provisions are applied very restrictively. Although the present crime statistics provide an essential source of information about the number of court cases and complaints in relation to the Prohibition Statute and sec 283, 117 Penal Code, they do not encompass those complaints which are not considered as crime by Austrian law but still clearly fall under the category of racial violence. To give one example, the expression “schieß Neger” which was addressed at a black person by a policeman was not considered by the Regional Court as violating the person’s human dignity and therefore not considered as racial defamation according to sec 117 Penal Code. Also sec 283 Penal Code only applies to those forms of racial incitement, which is likely to endanger public order. Furthermore, sec 283 does not apply to general xenophobic expressions which are not directed against a specific group determined by appurtenance to a religious community, race, nation, ethnic group or state. These statistics therefore, cannot picture the whole scale of racial violent acts and should be supplemented by data recorded by a general monitoring institution which should record nationwide all forms of racial discrimination and violence. The newly introduced Commission and Office for Equal Treatment could provide a sound framework for the collection on data and complaints as well as on information on victims and perpetrators.

In the course of the transposition of the two EU Anti-Discrimination Directives<sup>90</sup> the Austrian government has drafted an amended version of the Equal Treatment Act, which foresees the establishment of a **Commission for Equal Treatment** (*Gleichbehandlungskommission*) and an **Office for Equal Treatment** (*Anwaltschaft für Gleichbehandlungsfragen*). By transposing art 13 of the Race Equality Directive Austria extended the functions of the present Equal Treatment Commission and the Office of the Ombud for Equal Treatment Opportunities to deal besides discrimination on the ground of gender, with all other grounds mentioned in art 13 Treaty of the European Community (TEC), except disability<sup>91</sup>. In Austria, the transposition of the two Directives will enhance legal protection against racial discrimination particularly in regard to contractual

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<sup>90</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (in the following referred to as: Racial Equality Directive) and the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (in the following referred to as: Employment Equality Directive).

<sup>91</sup> Discrimination on the basis of disability will be regulated in a separate law (*Bundes-Behinderten-Gleichstellungsgesetz*) that is still in the process of being drafted. The draft version which was published on 10.06.2003 is available at: <http://www.gleichstellung.at/ag/index.php>, (09.11.2003).

relationships between private parties. Due to the fact that racial violence can also occur at the workplace, and more generally, regarding the access to goods and services the newly introduced institutions, which will be shortly described in the following, will play an important role in monitoring racial violence between private persons and in providing legal protection and access to justice.

The Commission for Equal Treatment, to be set up at the Federal Ministry for Health and Women's Issues, shall be structured into three senates. Whereas the first senate is supposed to deal with issues related to equal treatment of women and men, the second senate shall be responsible for discrimination in employment and occupation covering all other grounds mentioned in art 13 TEC except disability<sup>92</sup>. The third senate shall be responsible for the non-employment related scope of the Racial Equality Directive. Cases involving multiple discrimination would fall under the competence of the first senate. Upon request of one of the Equal Treatment Commissioners, of one of the interest groups represented in the single senates or upon its own initiative the responsible senate of the Commission has to render an expert opinion on questions related to the breach of the obligation to equal treatment laid down in the Equal Treatment Act. If a senate comes to the opinion that a violation of the obligation to equal treatment has occurred it has to issue a written proposal to the employer or to the person responsible for the non-employment related discrimination how the obligation on equal treatment can be fulfilled. Furthermore, the senate has to call upon the person responsible to end the discriminatory act. If the addressee does not follow the instructions of the commission the senate can file an action for a declaratory judgment concerning the violation of the obligation to equal treatment. Furthermore, the commission has the right to ask the person accused to file a written report concerning the assumed discrimination. Furthermore the Commission can compile expert opinions on the company concerned. The sessions of the senates are confidential and non-public. (For further information regarding the Commission's composition and procedures please see the Austrian RAXEN 4 Legislation Report, pp. 25-27, 28, 29.)

The Office for Equal Treatment, which shall also be set up at the Federal Ministry of Health and Women's Issues, will be structured similarly to the Commissions' senates<sup>93</sup>. The already existing institution of the so-called "*Gleichbehandlungsanwältin*" (Office of the Ombud for Equal Employment Opportunities) will remain responsible for equal treatment of women and men at the workplace. Furthermore, each of the two other so-called "*Gleichbehandlungsbeauftragten*" (ombudspersons for Equal Treatment) shall be responsible for discrimination on the basis of race, ethnic origin, religion, age and sexual orientation in relation to employment on the one hand and for discrimination based on race and ethnic origin outside the working environment on the other hand. The two ombudspersons for Equal Treatment are appointed by the Federal Minister for Health and Women's Issues and shall be autonomous and independent in performing their duties. The Office for Equal Treatment will be responsible for counselling and supporting victims of discrimination which falls under the scope of the amended Equal Treatment Act. To do so the Office can hold consultation-hours in the whole federal territory and can conduct independent inquiries and has the right to request information necessary for the execution of their mandate of any person involved. Furthermore, the Office can publish independent reports and recommendations concerning all questions related to discrimination. If the ombudspersons assume a breach of the obligations, laid down by

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<sup>92</sup> See above footnote 89.

<sup>93</sup> See sec 34 draft version of the amended Equal Treatment Act.

the amended Equal Treatment Act, and if they can establish the case before the Commission for Equal Treatment, the responsible senate has to open a proceeding *ex officio*. The senate can assign the responsible ombudsperson with the necessary inquiry.

The main critics regarding these two institutions focused on the lack of NGO involvement regarding their composition. According to the draft law, only representatives of relevant ministries, the social partnership and Federation of Austrian Industry are supposed to work in the responsible senates of the Commission. Furthermore, the fact that members of the commission work on an unsalaried basis does not seem to facilitate the efficiency of this institution. Moreover, it was criticised that according to the draft version of the amended Equal Treatment Act the Office as well as the Commission for Equal Treatment shall be based in Vienna at the Ministry of Health and Women's Issues and no regional sub-offices were established by law. Although sec 38 of the draft law allows for the establishment of regional offices it has been deplored that one has not learned from the experiences of the Office of the Ombud for Equal Employment Opportunities for men and women. The creation of regional offices in Innsbruck, Klagenfurt, Graz and Linz has proved to be extremely effective and necessary as supporting and counselling of victims could be done best through personal conversations<sup>94</sup>.

In regard to monitoring of police misconduct the **Human Rights Advisory Board** (*Menschenrechtsbeirat, MRB*) plays a vital role. The MRB, which is situated in the Austrian Federal Ministry of the Interior, was established in June 1999<sup>95</sup> in response to recommendations made by the European Committee on the Prevention of Torture (CPT)<sup>96</sup>

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<sup>94</sup> Baar, C. (2001) Die Anwältin für Gleichbehandlungsfragen – eine österreichische Einrichtung „sui generis“ auf dem Weg zur Chancengleichheit für Frauen im Berufsleben (Office of the ombud for equal employment opportunities – an Austrian institution „sui generis“ on its way to equal opportunities for women in working life), in: Kreuzer, C. (ed) Frauen im Recht – Entwicklung und Perspektiven, Baden-Baden: Nomos, p. 54. [PUBAT0108] For further argument regarding the importance of regional sub-offices see also: European Commission, Directorate-General for Employment and Social Affairs Unit D.4 (2002) Promoting diversity - 21 bodies promoting diversity and combating discrimination in the European Union (executive summary) p.8, available at: [http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/prog/studies\\_en.htm](http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm), (09.11.2003). [PUBAT0116]

<sup>95</sup> Paragraphs 15a-15c, Federal Law on the Organisation of Security Administration and Exercise of the Security Police (Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei), BGBl. 566/1991 as last amended by BGBl. I/104/2002, (16.7.2002).

<sup>96</sup> See third report of the CPT: Europäischer Ausschuss zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe (CPT) (2001) Dritter Bericht des CPT an die österreichische Regierung anlässlich seines Besuches in Österreich vom 19. bis 30. September 1999 (Report to the Austrian Government on the Visit to Austria Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Austria from 20-27 May 1990, CPT/inf. (91) 10, available at: <http://www.bmj.gv.at/broschueren/>, (09.11.2003). [PUBAT0113] See also 2nd report of the CPT: Europäischer Ausschuss zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe (CPT) (1996) Zweiter Bericht des CPT an die österreichische Regierung anlässlich seines Besuches in Österreich vom 26. September bis zum 7. Oktober 1994 (Second Report to the Austrian Government on the Visit to Austria Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Austria from 26 September to 7 October 1994), CPT/inf. (96) 28, available at: <http://www.cpt.coe.int/en/states/aut.htm>, (09.11.2003). [PUBAT0114]

as well as public pressure and NGO action following the death of Marcus Omofuma. The Advisory Board is primarily focusing on the monitoring of activities of the security authorities, the authorities under the Minister of the Interior and of other bodies vested with direct administrative powers of command and enforcement. It is composed of twelve honorary members and the same number of deputy members, which are fully independent in implementing their tasks. For the implementation of the monitoring and observation of police activity six Commissions, which work on a contractual basis for the Ministry of the Interior, have been established. The Commissions are expected to visit all police stations and other places of activity of organs of the public security service in a regular and comprehensive way. They have access to all information required, including the right to speak in private to persons detained. The reports of the Commissions consist of the facts established as well as measures and recommendations considered necessary.

The **Office of Internal Affairs**, which is established as a department of the Ministry of the Interior within the ministry's section of service and control (*Sektion IV Service und Kontrolle*)<sup>97</sup> started to operate in January, 2001. Its main task is to "conduct security police and criminal police investigations in the case of criminal offences committed by an official in the course of his/her duties"<sup>98</sup>.

In relation of the case of Cheibani Wague (which will be presented later in the report) a kind of conflict between the Human Rights Advisory Board and the Office of Internal Affairs arose. The Human Rights Advisory Board, which is generally free to become active on its own initiative, held a special meeting in September 2003 and issued two unpublished reports to the Minister of the Interior. In these reports the Board recommended that the guidelines for police operations should be checked especially, whether police officers are permitted to keep an already tied person to the ground using their feet<sup>99</sup>. All interrogations in regard to this case were not conducted by the responsible investigating judge but by the Office for Internal Affairs of the Ministry of the Interior, which then forwarded the files to the Vienna Regional Criminal Court. The Human Rights Advisory Board, however, was denied access to these files due to procedural law provisions<sup>100</sup>. In the course of the debate whether the Human Rights Advisory Board is allowed to have access to these files the Board issued a recommendation to the Minister of the Interior concerning access to the relevant files<sup>101</sup>.

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<sup>97</sup> An overview of the structure of the Ministry of the Interior is available at: [http://www.bmi.gv.at/geschaeftseinteilung/startseite\\_1.asp](http://www.bmi.gv.at/geschaeftseinteilung/startseite_1.asp), (31.10.2003).

<sup>98</sup> In the German original: „Dem Büro kommen somit insbesondere folgende Zuständigkeiten zu: Sicherheitspolizeiliche und kriminalpolizeiliche Ermittlungen bei Amtsdelikten, (...)“ See: Büro für Interne Angelegenheiten (2003) Einführungserlass - Adaptierung (Introductory Decree – Adaptation) Reference: Z1.85.603/100-BIA/03 (05.03.2003). [PUBAT0179].

<sup>99</sup> ORF-ON Minorities, (02.09.2003), Cheibani W: Menschenrechtsbeirat setzt Arbeitsgruppe ein (Human Rights Advisory Board installs working group), available at: <http://volksgruppen.orf.at/bin/at/de/news/200309/20030902231213kle.html>, (01.11.2003); Der Standard, (03.09.2003), Tod im Afrikadorf: Beirat kritisiert Polizei (Death at the African village: Advisory Board criticizes police), p.9.

<sup>100</sup> According to information provided by the Office for Internal Affairs, the Advisory Board was denied access to files as the Criminal Procedural Law was applicable to the case. This Act foresees no right to access records for the Board.

<sup>101</sup> The Board recommends that steps be taken that permit the Board access to the relevant files, by measures either organisational, or legislative, should a legal clarification be considered necessary. The recommendation is available at: [http://www.menschenrechtsbeirat.at/mrb-empfehlungen\\_03.html](http://www.menschenrechtsbeirat.at/mrb-empfehlungen_03.html), (01.11.2003). [PUBAT0123]

The **Office of the People's Advocate** (*Volksanwaltschaft*) examines alleged grievances concerning public authorities as well as administrative departments and offices, grievances not covered are legal questions and problems between private individuals or in relation to private enterprises. The Office is open to complaints about racism and intolerance, but in its last report there were no entries on these issues.

Last but not least the Austrian **NGO scene** in the field of anti-discrimination and human rights provide important reports and data in regard to incidents involving racial violence. These NGOs fulfil an important function as so-called watch-dog, however, due to the fact that most NGOs work predominantly in one region of the country and therefore can not provide information encompassing the whole federal territory no quantitative data on racial violence can be deduced from these sources. Therefore, they cannot replace a proper monitoring body, which records and analyses cases of racial discrimination and violence by publishing regular statistics as well as policy recommendations. The information on racial violence provided by NGOs will be dealt with in chapter 4.2.

## 4. DESCRIPTION AND ANALYSIS OF EXISTING DATA AND SOURCES ON RACIST VIOLENCE AND RACIST CRIMES

### 4.1. GOVERNMENTAL REPORTS ON RACIST VIOLENCE AND CRIMES

Data on racist or xenophobic crimes are recorded by the Federal Ministry of Justice as well as by the Federal Ministry of the Interior. While the latter records all possibly criminal offences committed during a certain incident, the Ministry of Justice counts data on the crime with the most severe punishment committed by each person involved in the incident. This discrepancy in collecting data at the one hand increases the information on racist crimes and perpetrators but on the other hand it bears the danger of confusing these completely different statistics. The data presented in the following will therefore indicate in which way complaints and convictions have been recorded.

In its annual Reports on National Security, the Ministry of the Interior collects data connected to racist violence under the heading "right-wing extremism". This fact is significant for the prevailing approach of the Austrian legal system and for the general perception, which see racism predominantly as an integral part of extreme right-wing or even National-Socialist ideology. Therefore, racial violence is more or less perceived as only occurring within the rightwing extremist scene, whereby neglecting the multifaceted nature of racial discrimination and violence which is reflected in reports of NGOs.

The following paragraphs include data out of the latest available crime statistics published in the Security Report 2002 and the Report on National Security 2002. In 2002, 261 racist or xenophobic acts<sup>102</sup>, which are prohibited according to the Penal Code and

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<sup>102</sup> One act can fulfil the corpus delicti of several offences; a criminal activity can therefore lead to several complaints which will be dealt with subsequently.

the Prohibition Statute, were recorded by police authorities. This number indicates a slight decline of 2.7 percent, compared to 335 cases recorded in the year 2001<sup>103</sup>. Also the number of complaints recorded by the police decreased by 11.9 percent in the reporting period of 2002 (2002: 465, 2001: 528). The following table gives information on the motivation background of these crimes and indicates a considerable increase of xenophobic and especially Anti-Semitic crimes in 2002:

**Table 5: Motivation background of recorded racist or xenophobic crimes<sup>104</sup>**

| motivation background: | 2000       | 2001       | 2002       |
|------------------------|------------|------------|------------|
| Right-wing extremist   | 291        | 301        | 261        |
| Xenophobic             | 36         | 31         | 45         |
| Anti Semitic           | 9          | 3          | 20         |
| <b>Total</b>           | <b>336</b> | <b>335</b> | <b>326</b> |

Compared to the years 2000 and 2001 a considerable increase of crimes committed out of xenophobic or anti-Semitic motivation backgrounds can be observed in 2002. Furthermore, the 2002 Report on National Security states that about 60 percent of racist crimes which fall under the Prohibition Statute were committed out of revisionist motivations<sup>105</sup>.

Racist and xenophobic tendencies within the skinhead scene are being described as increasing. According to the Ministry of the Interior one reason for this increase can be found in relation to the spread of right-wing extremist lyrics, propagating Racism, anti-Semitism, and extreme Nationalism and sometimes even glorifying National-Socialist ideology<sup>106</sup>. Other reasons mentioned by the Ministry refer to alcoholism and generally increased proneness to physical violence<sup>107</sup>.

According to the 2002 National Report on the Protection of the Constitution it has been observed that the interaction between Austrian and German right-wing extremists increased in the reporting period. This fact not only leads to the increase of transnational meetings between extreme right-wing groups in Austria and Germany but also resulted in the fact that more and more German extremists became active in Austria<sup>108</sup>. For example, eleven leading activists of the German right-wing scene appeared publicly, whereas, in Austria, two of them were prosecuted for crimes according to the Prohibition Statute<sup>109</sup>. According to the National Report on the Protection of the Constitution skinheads in Vorarlberg and Upper Austria are the ones with the most intensive contacts to related groups in Germany<sup>110</sup>. Furthermore, it has been found evident, that several Austrian right-wing extremists form part of the National Democratic Party of Germany (*Nationaldemokratische Partei Deutschlands*) and the German People's Union (*Deutsche Volkunion*)<sup>111</sup>.

<sup>103</sup> Bundesministerium für Inneres, Bundesministerium für Justiz (2003), op.cit., p. 203.

<sup>104</sup> Ibid. See also footnote 80.

<sup>105</sup> Bundesministerium für Inneres (2003), op. cit., p. 25.

<sup>106</sup> Ibid, p. 31.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid, p. 26.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid, p. 31.

<sup>111</sup> Ibid, pp. 26, 27.

Outstanding crimes with racist/xenophobic background which were reported to the police in 2001 include three attempts of arson, the defilement of one Muslim and two Jewish graveyards<sup>112</sup> and the violent attack on two Kuwaiti citizens which resulted in grievous bodily harm<sup>113</sup>. In 2002 two cases of intended arson of two Kebab-booths in Upper Austria, one case of defilement of a Jewish graveyard in Lower Austria were reported. Among several cases of reported damages to property one case of damage to a building with an Islamic prayer room was mentioned. Another incident in relation to neo-Nazi activities was disclosure of a hidden ordnance depot in Vienna, encompassing 134 arms - including 109 firearms - and ammunition for 59,000 shoots<sup>114</sup>.

Whereas in 2001 an increase of nearly 50 percent of monetary damage due to right-wing extremist smearings was recorded compared to the year 2000, the Security Report for 2002 indicated a decrease in both incidents and damages (2002: 43: ca €20,000; 2001: 66: ca €58,000)<sup>115</sup>.

In connection with fighting right-wing extremist activities in Austria in 2002, altogether 465 complaints were filed.

**Table 6: Number of complaints against individual persons<sup>116</sup>**

| Number of complaints under following provisions | 2002       | 2001       | 2000       | 1999       |
|---|------------|------------|------------|------------|
| Sec 3 Prohibition Statute                       | 238        | 269        | 239        | 274        |
| Sec 283 Penal Code (hostile incitement)         | 56         | 39         | 27         | 43         |
| Other related provisions of the Penal Code      | 99         | 133        | 117        | 212        |
| Insignia Act                                    | 25         | 16         | 22         | 12         |
| Art IX para 1 no 4 EGVG                         | 47         | 68         | 44         | 174        |
| Media Act                                       | -          | 3          | 1          | 2          |
| <b>Total</b>                                    | <b>465</b> | <b>528</b> | <b>450</b> | <b>717</b> |

Since 1999 the official crime statistics show a fluctuating decrease of complaints on crimes with an extreme right-wing background which were reported by the Police to the General Prosecutor's Office. Equally, the number of complaints under other related provisions of the Penal Code dropped from 212 in 1999 to only 99 in 2002. Although the chart indicates a general decrease of complaints of 11.9 percent in 2002 compared to 2001, complaints regarding hostile incitement and crimes under the Insignia Act have increased.

A positive development can be reported in regard to juveniles involved in racist and xenophobic crimes. Since 2000 their number continuously has decreased by 16.3 percent.

<sup>112</sup> Der Standard, (03.01.2003), p. 7.

<sup>113</sup> Bundesministerium für Inneres, Bundesministerium für Justiz (2002) Sicherheitsbericht 2001 (Security Report 2001), Wien, p. 242. [PUBAT0110].

<sup>114</sup> Criminal proceedings regarding persons involved are still pending. Two persons were placed in contemporary pre-trial confinement. See: Bundesministerium für Inneres (2003), op. cit., p. 27.

<sup>115</sup> Ibid., Bundesministerium für Inneres, Bundesministerium für Justiz (2003), op. cit., p. 204.

<sup>116</sup> Bundesministerium für Inneres, Bundesministerium für Justiz (2002), op. cit., p. 241.

The amount of convicted juvenile perpetrators compared to 2001 decreased by 12.2 percent (2002: 72; 2001: 82)<sup>117</sup>.

One of the most significant developments in the context of racist and xenophobic crimes is the fast increase of internet criminality. In the year 2001 every third crime with an extreme right-wing background was committed by making use of the internet<sup>118</sup>. File-sharing programmes facilitate the exchange of so-called white power music and lyrics via the Internet<sup>119</sup>. Furthermore, right-wing extremist groups increasingly use the internet to better co-ordinate their actions and to interlink with other groups abroad.

On the other hand, the internet is used to better combat right-wing extremism. The *Meldestelle für Wiederbetätigung* (Registration Office regarding revitalization of neo-Nazi ideology) which is established at the Ministry of the Interior recorded 151 hints which were forwarded to the responsible police authorities. Compared to 2001 this means a decrease of around 30 percent. However, these data should be handled cautiously as recorded data largely depend on the co-operation of internet users and of international providers. Such decrease can therefore have many reasons like the lack of awareness that such recording institutions actually exist or the lack of awareness regarding racist contents of web sites.

In order to disguise their activities it had been increasingly observed that neo-Nazi groups organise in loose informal structures as so-called “freie Kameradschaften”<sup>120</sup>. Furthermore, those groups who do not intend to act in public sometimes hide their activities behind associations with misleading names like “Initiative für Autofahrer Rechte” (initiative for driver’s rights) or fund-raising campaigns for victims of the flood waters<sup>121</sup>. Furthermore, recent investigations showed that the revisionist scene increasingly communicates by disguised or encrypted language or symbols.

In its outlook the Ministry of the Interior states that the development of international politics will be taken up by the right-wing extremist scene to increase anti-Americanism and anti-globalisation tendencies in connection with racist and xenophobic attitudes<sup>122</sup>. Furthermore, authorities expect an increase in racist and xenophobic tendencies within the right-wing extremist scene. Conditions facilitating this development will be the diffusion of right-wing song texts and modern media such as the internet<sup>123</sup>.

## 4.2. REPORTS BY NGOS AND SPECIALISED BODIES

Given the fact that presently there is no Ombuds institution for complaints about racist violence and considering that most incidents of everyday discrimination are not reported to the police there exists a great lack of consistent and nationwide data on recorded

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<sup>117</sup> Bundesministerium für Inneres, Bundesministerium für Justiz (2003), op. cit., p. 204.

<sup>118</sup> Österreich, Bundesministerium für Inneres (2002) Verfassungsschutzbericht 2001 (Report on the Protection of the Constitution 2000), p. 30. [PUBAT0111]

<sup>119</sup> Bundesministerium für Inneres (2003), op. cit., pp. 29.

<sup>120</sup> Lasek, W. cited in Der Standard (08.10.2003) Ihnen das Wasser absaugen (To deprive them from water).

<sup>121</sup> Bundesministerium für Inneres (2003), op. cit., pp. 24, 27, 28.

<sup>122</sup> Ibid, p. 36.

<sup>123</sup> Ibid.

complaints regarding racial, ethnic and religious discrimination. Therefore, NGO reports provide a particularly valuable source of information on incidents victims did not want to report to the police and on low-level racist offences which are not considered yet a criminal offence and therefore are not reflected in crime statistics. However, these reports cannot picture the whole range of racist crimes in Austria but rather provide information on the quality of racist and xenophobic offences.

In Austria the only comprehensive NGO-report on racism and xenophobia is published annually by **ZARA**, a Vienna-based NGO counselling witnesses and victims of racism<sup>124</sup>. ZARA so far has published three so-called **Racism Reports** on single cases of racist offences<sup>125</sup>. These reports are based on information gathered through ZARA's own counselling service, and on cases reported by other NGOs co-operating with ZARA<sup>126</sup>. Incidents included into the report were selected according to ZARA's definition of racist discrimination which applies to situations in which "a person is disadvantaged in any way on the basis of skin colour, language, appearance, religion, nationality or origin"<sup>127</sup>. Such forms of discrimination can include disadvantages, verbal abuse or physical attacks which take place when looking for work or housing, in locales and shops, in contact with the authorities and with members of the public, in public space and also in the media.

However, no general conclusions or tendencies concerning the number of discriminatory acts should be deduced from these annual reports as they do not provide a consistent picture of all forms of racist and xenophobic acts occurring in Austria. An increase of reported cases might, for example, stem from an increased number of incidents or might result due to greater awareness concerning racist incidents or simply due to fact that every year more and more people know about the possibility to report discriminatory cases to ZARA. The cases are reported to ZARA or an NGO co-operating with ZARA by people who witnessed or experienced racist incidents<sup>128</sup>.

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<sup>124</sup> So far ZARA issued three reports on single cases of racist offences which are available at: <http://www.zara.or.at>, (09.11.2003). [NFPAT0005]

<sup>125</sup> All three Racism Reports covering the period 2000 until 2002 can be downloaded at following web site: <http://www.zara.or.at/07.html>, (09.11.2003).

<sup>126</sup> For the report on 2002 these are: Fair Play; FIBEL (Fraueninitiative Bikulturelle Ehen und Lebensgemeinschaften – Women's initiative bicultural marriages and partnerships); Forum gegen Antisemitismus (Forum against Anti-Semitism), Integrationshaus (Integration house); IMÖ (Initiative muslimischer ÖsterreicherInnen – Initiative of Muslim Austrians); Peregrina; Romano Centro and WITAF (Arbeitsassistenz für Gehörlose in Wien und Niederösterreich – Work assistance for deaf people in Vienna and Lower Austria).

<sup>127</sup> See ZARA (2003), Racism Report 2002: Case Report on Racist Incidents and Structures in Austria, Focus: civil courage, Wien, available at: [http://www.zara.or.at/download/rass\\_rep\\_2002\\_e.pdf](http://www.zara.or.at/download/rass_rep_2002_e.pdf), (09.11.2003), p.5. [PUBAT0045]

<sup>128</sup> For the Racism Report 2002, the co-operating NGOs are: Fair Play; FIBEL (Fraueninitiative Bikulturelle Ehen und Lebensgemeinschaften – Women's initiative bicultural marriages and partnerships); Forum gegen Antisemitismus (Forum against Anti-Semitism), Integrationshaus (Integration house); IMÖ (Initiative muslimischer ÖsterreicherInnen – Initiative of Muslim Austrians); Peregrina; Romano Centro and WITAF (Arbeitsassistenz für Gehörlose in Wien und Niederösterreich – Work assistance for deaf people in Vienna and Lower Austria).

In 2002, more than 300 people made use of the service of the ZARA Counselling Centre for Witnesses and Victims of Racism<sup>129</sup>. The majority of 54 percent of reported cases occurred in the public space like e.g. on the street, in shops or in public transport. Six out of 16 reported cases on discrimination acts by the police involve severe brutality and maltreatment of mainly black persons<sup>130</sup>.

According to the NGO **Forum against Anti-Semitism** (*Forum gegen Antisemitismus - FGA*)<sup>131</sup>, 21 cases of anti-Semitic smearing, 17 defamations and three assaults on Jews were reported in the year 2002<sup>132</sup>. In a press release in September 2003 the FGA reports of an increase of 71.43 percent of anti-Semitic incidents compared to the same period of last year. Altogether 108 cases, including smearings, threats, verbal attacks and even physical violence, were reported to the FGA in 2003<sup>133</sup>. According to the Forum most of the attacks are committed by right and left-wing extremists as well as by members of the Islamic scene. Especially in the period between June and August 2003 the FGA observed a vast increase of physical violence.

**Helping Hands Graz** is a NGO which counsels migrants and foreigners regarding questions related to the Aliens Act, Asylum Act, Aliens Employment Act and the Nationality Act. Furthermore, the NGO runs a so-called anti-racism hotline offering victims and witnesses of discrimination or other racist incidents the opportunity to notify them round-the-clock. The Helping Hands annual report on 2002 provides a short overview on complaints related to racial violence including verbal attacks as well as assault<sup>134</sup>. The report also includes a case of an emergency doctor who refused to examine a pregnant black woman, who was in urgent need of medical care. Two complaints concerned discriminatory actions of the police against black Africans. Furthermore, the report also deals with stigmatising press coverage bringing migrants frequently in connection with crimes in Graz<sup>135</sup>.

In its annual report on Austria covering 2002 **amnesty international** mentions the lenient sentence of the three police officers charged with the 1999 death of the asylum –seeker Markus Omofuma<sup>136</sup>. Furthermore, the report lists two cases of police ill-treatment of a person of Turkish origin and a Congolese national in connection with identity and body checks. Also the case of an unarmed Austrian national of Kurdish origin who was shot dead by the police was taken up by the report. In terms of asylum ai mentions the internal guideline issued by the Minister of the Interior which excludes certain categories of

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<sup>129</sup> Whereas 32 percent of the reported complaints were made by persons the discrimination was targeted against, 59 percent of all cases were passed on to ZARA by witnesses. The rest of 9 percent consists of so-called info calls from people asking for information. See ZARA, Racism Report 2002, op. cit., p. 5.

<sup>130</sup> Ibid, p. 25-29.

<sup>131</sup> Further information available at: <http://www.fga-wien.at>, (09.11.2003).

<sup>132</sup> ZARA, Racism Report 2002, op. cit., p. 41.

<sup>133</sup> Press release of the Forum against Anti-Semitism on 24.09.2003.

<sup>134</sup> Helping Hands Graz (2003) Jahresbericht 2002, p. 14, available at: <http://www.helpinghands-graz.at/2002.pdf>, (09.11.2003). [PUBAT0074]

<sup>135</sup> Ibid, p. 27.

<sup>136</sup> amnesty international (2003), Amnesty International Report 2003 on Austria (covering the period January to December 2002), available at: <http://web.amnesty.org/report2003/Aut-summary-eng>, (09.11.2003) [PUBAT0106] [NFPAT0197]

asylum-seekers from state-run accommodation centres, consequently forcing national relief organisations to support evicted and excluded asylum-seekers.

According to the annual report of the **International Helsinki Federation** (IHF) the main human rights concerns in Austria in 2002 were freedom of expression, racial discrimination and racially motivated violence, minority rights, and the rights of asylum seekers and immigrants<sup>137</sup>. Besides the already mentioned cases of police misconduct the report also took up severe allegations against a new special police combating drug dealing in Graz which had treated people of African origin in a humiliating and discriminatory manner. Accordingly its members had exclusively and arbitrarily subjected Africans to controls and arrests.

The research foundation **Documentation Centre of Austrian Resistance** observes associations, parties and periodicals with extreme right-wing tendencies and publishes its findings under the title “News from the far right” (“*Neues von ganz rechts*”)<sup>138</sup>. The centre reported in March 2002 that the Austrian right-wing extremists intensify their activities and that the web is increasingly being abused to spread right-wing extremist propaganda and to connect groups from various countries<sup>139</sup>.

The **Coordination Forum for Countering Antisemitism** of the Israeli Government published an annual report on anti-Semitic Trends in 2002<sup>140</sup>. Austria was not mentioned in the related press release. However, in the internet data base several incidents were recorded in 2002 including anti-Semitic graffiti, a conference of Holocaust deniers in Salzburg and two physical attacks on Jewish persons in Vienna<sup>141</sup>.

### 4.3. TYPE AND NUMBERS OF CASES GIVEN PUBLICITY IN THE MEDIA

Although the Austrian Focal Point uses the methodology of systematic media screening as a source of information on xenophobic and racist cases and related issues, it would have gone beyond the Focal Point’s resources to conduct a comprehensive media analysis<sup>142</sup>. As we were not in the position to count every single act of racial violence according to our definition, including verbal attacks or smearings, the following chapters

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<sup>137</sup> International Helsinki Federation for Human Rights, IHF Annual Report on Human Rights Violations 2003 –Austria (Events of 2002), p. 1, available at: [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=1322](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322). [PUBAT0189]

<sup>138</sup> DÖW (2003) [http://www.doew.at/projekte/rechts/chronik/2003\\_03/content03.shtml](http://www.doew.at/projekte/rechts/chronik/2003_03/content03.shtml) (09.11.2003).

<sup>139</sup> ORF Minderheitenredaktion (2002) DOEW: Right-wing extremists in Austria intensify activities, (07.03.2002), available at: <http://volksgruppen.orf.at/austria/en/home/home.htm>, (09.11.2003). [PUBAT0099]

<sup>140</sup> The Coordination Forum for Counteracting Antisemitism (2003) Report on Antisemitic Trends in 2002, online available at: <http://www.antisemitism.org.il/english/articles/2002.htm>, (09.11.2003). [PUBAT0182]

<sup>141</sup> The database is online available at: <http://www.antisemitism.org.il/search.htm>, (09.11.2003).

<sup>142</sup> This systematic screening includes dailies like Der Standard, Die Presse, Salzburger Nachrichten and Kurier, weeklies like Profil and Falter as well as the websites of the provincial broadcasting studios (Landesstudios) and the Minorities Desk (Minderheitenredaktion) of the Austrian Broadcasting Association (ORF).

will rather focus on more severe and reflected cases of racial violence. Finally, only those cases were taken up which occurred during the reporting period covering August 2002 until Mid-November 2003.

The incident which was reported on by the media most often and most extensively was the case of Cheibani Wague, a 33 year old man from Mauritania, who died in connection with a nightly police operation in the centre of Vienna. Regarding this case the media played a particularly vital role as a private person who recorded some parts of the incidents on a video tape did not pass it on to the police but gave it to a journalist of the Falter, a weekly magazine<sup>143</sup>. The discussion whether this incident happened because of

the Mr. Wague's black colour of skin or whether he died because of his weak health conditions was covered intensively by the media. (For further information on the case see chapter 5.2.1.)

Another issue which was taken up extensively was the case of discriminatory behaviour of innkeepers, who tried to keep people of foreign origin or black skin colour out of their bars or restaurants. The regular reports on this issue as well as the publication of the names of bars and restaurants with such practices lead to considerable pressure on their innkeepers and furthermore promoted the political debate to enhance the legal framework to combat such "access-policies". (For further information regarding of the amendments to the Trade Licence Act see 6.1.2.)

Other cases which were reflected by the media include the detection of arms in connection with right-wing extremist in August and October 2002<sup>144</sup>, two cases of racially motivated police brutality in December 2002<sup>145</sup> and May 2003<sup>146</sup>, the defilement of Muslim graves in Linz in January 2003<sup>147</sup>, racist threats via e-mail equally in January 2003<sup>148</sup> and the defilement of a memorial for victims of the National-Socialist regime in March 2003<sup>149</sup>. Furthermore, a case involving a Jew who was attacked by two persons when leaving a synagogue in Vienna, was reported by some media in May 2003<sup>150</sup>.

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<sup>143</sup> After receiving the material the Falter immediately forwarded it to the police. Klenk, F. (2003a) Tod, Lügen und ein Video (Death, lies, and a video tape), in: Falter 30/03 (23.07.2003), available at: [http://www.falter.at/print/F2003\\_30\\_1.php](http://www.falter.at/print/F2003_30_1.php), (30.10.2003), pp.12-14; [PUBAT0190] Falter 31/03 (30.07.03) Ein Zeuge und sein Video (A witness and his video tape), p.9.

<sup>144</sup> Der Standard (12.08.2002) Rechtsextreme lagerten Waffen und Sprengstoff (Right-wing extremists stored arms and explosives).

<sup>145</sup> 23.12.02.

<sup>146</sup> Der Standard (08.10.2002) Wenn ich will dann schnalzt es – Waffenarsenal und rechtsextremes Material bei 52-jährigen gefunden (When I want to I let it flick – Disclosure of arsenal and right-wing extremist material in a 52 year old man's place).

<sup>147</sup> Der Standard (3.1.2003) Muslimische Gräber verwüstet (Muslim graves devastated), p.7.

<sup>148</sup> Der Standard (30.01.2003) Rechtsextreme drohen per E-Mail (Right-wing extremist issuing threats via e-mails).

<sup>149</sup> Der Standard (19.03.2003) Kärnten – Mahnmal geschändet (Carinthia – defilement of memorial).

<sup>150</sup> Wien ORF.at (16.05.2003) Antisemitisch motivierter Übergriff (Assault out of anti-Semitic motivation).

The media also reflects rather sensitively on right-wing extremist expressions or slogans of politicians<sup>151</sup>. The media coverage of the highly critical election campaign of the FPÖ in Graz was given extensive attention<sup>152</sup>.

#### 4.4. DATA FROM RESEARCH ON RACIST VIOLENCE AND RACIST CRIMES

Unfortunately, relatively little research on racist violence or racist crimes in Austria has been conducted so far. Most of the documents dealing with racial violence and racist crimes are of documentary character and have already been described in chapter 4.1 and 4.2. The following publications rather deal with the phenomena of racism and xenophobia, which are however, closely linked to racial violence and therefore taken up in this chapter.

The **Austrian Migration and Integration Report** which already has been described in chapter 2.5 contains a whole section on xenophobia in the context of migration (for further information on the report see chapter 2.4 of this report)<sup>153</sup>. The chapter deals with attitudes of both, Austrian natives and resident foreigners or Austrian citizens with a migration background. On the basis of interviews conducted in 2001 xenophobic tendencies within the Austrian population were investigated and analysed<sup>154</sup>. However, as there is still no generally acknowledged method concerning the assessment of xenophobic attitudes the outcomes of the described empirical study cannot be compared directly to other surveys and therefore have to be seen as relative results.

The recently published book **Anti-Semitism in Austria after 1945** (*Antisemitismus in Österreich nach 1945*)<sup>155</sup> (published by Heinz P. Wasserman) comprises a number of essays dealing with the phenomenon of Anti-Semitism in the Austrian society. Different authors try to explore Anti-Semitism from an analytical approach intending to close some gaps of the research conducted up till then. For instance, an essay describes most interestingly, how Anti-Semitism changed in the nineteen sixties from the more political (public) scene to the rather private and less public one, to “sport stadiums, taverns and public transportation”. Another essay tends to provide an explanation for the phenomenon of Anti-Semitism, which it describes as outcome of repression. As to the latter essay, there exists a general avoidance of the Austrian society to debate Anti-Semitism.

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<sup>151</sup> See e.g.: Der Standard (14.06.2003) Antisemitische Entgleisung eines Blauen (Anti-Semitic derailment/ laps of a Blue (MP of the FPÖ).

<sup>152</sup> ORF ON-Minorities, (14.01.2003), Wohnen im Gemeindebau wichtig für Integration (Living in council housing important for integrations), available at: <http://minderheiten.orf.at/de/news/20030113155644kor.html>, (09.11.2003) [PUBAT0099]; see also Horaczek, N. (2003), op. cit., p.13.

<sup>153</sup> Kohlbacher, J. et. al. (2003) Fremdenfeindlichkeit (Xenophobia), in: Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, pp. 341-366. [PUBAT0118]

<sup>154</sup> The study is based on interviews of 2000 persons in the year 2001 which were conducted in the framework of the project “Population and Welfare: A Comparative Survey on the Acceptance of Population Related Policies in Europe”. The respondents were aged between 16 and 64. See: Lebhart, G.; Münz, R. (2003) op. cit.

<sup>155</sup> Wassermann H. P. (ed.) (2003), Antisemitismus in Österreich nach 1945 (Anti-Semitism in Austria after 1945), Innsbruck, Wien, München, Bozen: Studienverlag. [PUBAT0198]

Another publication dealing with the variety of aspects of the phenomenon of racism was published in the collection of essays provided in the **Vienna Journal on contemporary history under the heading Racism**<sup>156</sup>. Different articles treat the multi-faceted term of racism under different perspectives. The thematic concentrates on the continuous existence of racism in various structures, from the sixteenth century until today. Another major theme is the relationship between science and racism which definitely calls for a larger degree of self criticism in science.

#### 4.5. DATA ON COURT CASES<sup>157</sup>

In regard to racial violence the Ministry of Justice only records those court cases which are in connection with crimes according to the Prohibition Statute and hostile incitement. The Security Report 2002 indicates a slight decrease of convictions in regard to these crimes.

**Table 7: Number of complaints in relation to convictions**<sup>158</sup>

|                     | Complaints                          | Convictions                      |
|---------------------|-------------------------------------|----------------------------------|
| Prohibition Statute | 2002: 238<br>2001: 269<br>2000: 239 | 2002: 20<br>2001: 24<br>2000: 32 |
| Sec 283 Penal Code  | 2002: 56<br>2001: 39<br>2000: 27    | 2002: 9<br>2001: 11<br>2000: 1   |

Unfortunately, data in regard to proceedings according to Art IX para 1 no 3 EGVG are not accessible as they are not published in the annual Security Report of the Federal Ministry of the Interior. Due to the fact that art IX EGVG is being dealt with in an administrative proceeding even victims themselves have no access to information whether the person who discriminated them was convicted. (Regarding the application of sec 33 para 5 of the Penal Code please see chapter 3.1.)

In order to obtain sufficient information on the application of provisions prohibiting racial violence it would be of great importance to provide more data on those court cases which are not connected to the National-Socialist ideology but include other forms of racist or xenophobic motivation.

Austria has recently been criticised for its reluctant persecution of perpetrators of the Nazi-regime. According to the head of the Jerusalem Wiesenthal Centre, Austria is the country, which persecuted NS-perpetrators least actively. He further states that the last sentence in this regard was passed in 1975. In September 2003 the “operation last

<sup>156</sup> Hering Torres, M..S., Schmale, W. (eds) (2003). Rassismus (Racism) in: Wiener Zeitschrift zur Geschichte der Neuzeit 1/03. Innsbruck: Studienverlag. Further abstracts are available under <http://www.studienverlag.at/titel.php3?TITNR=1709>. [PUBAT0185]

<sup>157</sup> This section only contains statistical data on court cases. (For further information regarding qualitative data on court cases please see section 6.3.)

<sup>158</sup> Ibid., p. 242.

chance” was launched and a list including the names of 47 potential NS-perpetrators was handed over to the Minister of Justice, Dieter Böhmdorfer<sup>159</sup>.

#### 4.6. DATA ON VICTIMS AND PERPETRATORS OF RACIST VIOLENCE AND RACIST CRIMES

In order to avoid repetitions the following chapter will only provide a global overview of the available data. For further data and related analysis please see section 4.1 and 5.

Unfortunately, no statistical data on victims of racial violence are available. In 2000 victims statistics have been extended focussing especially on the relationship between the victims and perpetrators. However, these data are only collected regarding crimes against life, freedom and morality and only include the category of age and sex<sup>160</sup>. Although the Security Report 2001 states that in future criminal statistics will also include data on the nationality of victims no such data was accessible up until now<sup>161</sup>.

Generally, however, it has to be said that victims statistics most times cannot picture the whole scale of people who became target of racial violence, as those who are particularly vulnerable to racial violence such as undocumented migrants, will not report such incidents because of their highly insecure residence status. The number of cases of racial violence which are not reported to the police therefore might be considerably high. NGO reports therefore should be used as additional source of information in order to obtain a more comprehensive picture on victims of racial violence in Austria.

In regard to perpetrators of racist violence the only additional information provided by relevant crime statistics is the category of juvenile perpetrators. According sec 1 of the Juvenile Court Act (*Jugendgerichtsgesetz*) the category of juvenile perpetrators encompasses all those between the age of 14 and 18. In 2002, the number of juvenile perpetrators against which investigations were initiated decreased by 12.2 percent (2002:72; 2001: 82)<sup>162</sup>. However, the proneness to aggressive violence of juvenile right-wing extremist groups did not change compared to previous years and remains on a high level. Recorded cases of racial violence involving juvenile perpetrators include three violent rows with juveniles of Turkish origin in Vorarlberg, which resulted in several bodily injuries. Also in Lower Austria a group of young skin-heads was involved in six cases of assault in connection with public events such as concerts or clubbings<sup>163</sup>. (For further qualitative data on perpetrators see chapter 5.3.)

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<sup>159</sup> Der Standard (17.09.2003) Letzte Jagd auf NS-Verbrecher hat begonnen (The final chase of NS-perpetrators has just started). Nevertheless, in 2004 the Simon Wiesenthal Centre in Jerusalem conveyed a list with 121 suspects.

<sup>160</sup> Pilgram, A. (2003) Migration und Innere Sicherheit („Migration and inner security“) in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, p. 329. [PUBAT0118]

<sup>161</sup> Bundesministerium für Inneres, Bundesministerium für Justiz (2002), op. cit., p. 14.

<sup>162</sup> Bundesministerium für Inneres (2003), op. cit., p. 29. Bundesministerium für Inneres, Bundesministerium für Justiz (2003) op. cit, p. 204.

<sup>163</sup> Bundesministerium für Inneres (2003), op. cit. p. 29.

## 5. ANALYSIS OF RACIST VIOLENCE AND RACIST CRIMES

### 5.1. ANALYSIS OF VICTIMS OF RACIST VIOLENCE AND RACIST CRIMES

So far, only few empiric studies have been conducted in Austria, which would provide for a qualitative analysis of victims of racist violence or racist crimes. Presently, the Migration and Integration Report<sup>164</sup> (see above, chapter 2.5) provides for the latest available data and investigative studies in regard to xenophobic tendencies and attitudes within the native population. Furthermore, the above mentioned Racism Report 2002<sup>165</sup> of the NGO ZARA entails qualitative data on cases of racial violence, which will be referred to respectively.

The following chapters shall give an overview about the various variables (country of origin, class etc.) of victims of racist violence. However, it should be always kept in mind that these variables are interdependently linked with each other.

#### 5.1.1. Country of origin and ethnicity

The relationship between the extent of racist violence experienced and the country of origin is being demonstrated by a comparative study of Kohlbacher and Reeger<sup>166</sup>, which was effected in regard to migrants from Germany, Poland, Turkey and the Former Republic of Yugoslavia. The data are taken from a standardized opinion poll conducted by the Austrian Gallup Institute in winter 1999/2000 and included 450 persons (96 Germans, 125 Poles, 112 Turks, and 117 persons coming from the former Republic of Yugoslavia)<sup>167</sup>.

Therein, the authors demonstrate “origin related” differences regarding the subjective perception of foreigners in respect to experiences of racist violence and xenophobic attitudes.

The following table indicates that, in general, Germans or Poles experience less harassment due to discrimination and racist violence than Turks. This proves to be true for all the different contexts of social interaction.

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<sup>164</sup> Fassmann H., Stacher I. (eds.) (2003) op.cit..

<sup>165</sup> ZARA (2003), op.cit..

<sup>166</sup> Kohlbacher, J.; Reeger, U. (2003) Xenophobie aus der Perspektive der „Anderen“ – Erfahrungen und Bewältigungsstrategien betroffener AusländerInnen (Xenophobia from the perspective of the „others“ – experience and strategies of coping of concerned foreigners) in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118], pp. 356-366.

<sup>167</sup> Ibid., pp. 356-357.

**Table 8: Frequency<sup>168</sup> of experienced discrimination in different social contexts of interaction<sup>169</sup>**

| Area of interaction<br>( <i>Interaktionsbereich</i> ) | Germans | Poles | Turks | Former-Yugoslav citizens | Total |
|---|---------|-------|-------|--------------------------|-------|
| Place of employment, professional life                | 4,2     | 4,5   | 35,3  | 13,8                     | 14,4  |
| Housing   | 7,5     | 12,6  | 47,6  | 34,8                     | 25,9  |
| Neighbourhood   | 4,3     | 3,3   | 14,3  | 9,7                      | 7,8   |
| Contact with Authorities                              | 14,1    | 20,0  | 45,5  | 28,3                     | 27,4  |
| Health Care System                                    | 2,2     | 2,5   | 8,7   | 3,6                      | 4,2   |
| School, Educational System                            | 1,5     | -     | 15,8  | 10,8                     | 6,3   |
| Shops   | 1,1     | 0,9   | 14,4  | 6,3                      | 5,6   |

Thereby, in the different areas of social interaction, it is mostly Turks, who claim to experience most discrimination, followed by migrants from the former Republic of Yugoslavia. For instance, 45.5 percent of Turks and 34.7 percent of former Yugoslav citizens indicate to experience discrimination in contact with public authorities; whereas only 20 percent of the Poles and 14.1 percent of the Germans claim to be discriminated against by state officials. The same applies when looking for an apartment (in the area of housing), in the professional life and – to a minor extent - to the other areas of social interaction.

The study shows that a clear link seems to exist between the “visibility” as “foreigner” such as colour of skin and the extent of discrimination experienced<sup>170</sup>: Poles and Germans stated less often to feel discriminated against compared to Turks and citizens from former Yugoslavia.

Also some cases described by ZARA in the Racism Report 2002<sup>171</sup> support this conclusion. When conducting a test of bars, it was evidently the persons clearly being recognizable as foreigners who were prevented entry in some locations<sup>172</sup>. Unfortunately, no data regarding the victim’s “age” are presently available.

### 5.1.2. Gender

As to the differentiation between women and men in regard to experiences of xenophobia and racist violence, Kohlbacher and Reeger demonstrate gender related differences when examining xenophobic attitudes experienced by women and men from Turkey, the former Republic of Yugoslavia, Poland and Germany<sup>173</sup>.

<sup>168</sup> The numbers represent the percentage of the answers “often” or “very often”.

<sup>169</sup> Kohlbacher, J.; Reeger, U. (2003) op.cit., p.361.

<sup>170</sup> Ibid., pp. 361.

<sup>171</sup> ZARA (2003), op.cit..

<sup>172</sup> Der Standard (29. 11. 2002) Kein Discofever für ‘Ausländer’ (No disco fever for ‘foreigners’), p.12.

<sup>173</sup> The study was conducted on the basis of a Gallup opinion poll of 2000 by Kohlbacher and Reeger. Kohlbacher, J.; Reeger, U. (2003) *ibid*, pp. 362.

For instance, in regard to professional life, men and women of both Turkish and former-Yugoslav origin experienced xenophobic attitudes in different ways<sup>174</sup>. Turkish women perceived discrimination more strongly than their men, whereas the opposite is true for former Yugoslav citizens<sup>175</sup>. In regard to renting an apartment, male migrants from Turkey and Former Yugoslavia indicated to be discriminated most frequently. This might be explained by the fact, that it is mostly men, who look for the home and have to interact with the owners and the property managements.

Also in the context of immediate neighbourhood, problems – even physical assaults - have been reported. For instance, as to the Racism Report 2002, a Muslim woman was racially abused by her neighbour directly in front of her apartment house because of her headscarf. When the woman went to see the man later, accompanied by a ZARA counsellor, the man still insulted Ms. M.<sup>176</sup>.

Thus, one could conclude, that gender related differences of xenophobic experiences are dependent on the various contexts of social interaction<sup>177</sup>.

### 5.1.3. Class

In this context, the term “class” will be defined in socioeconomic terms, focusing mainly on profession, education and income level. According to this definition, the “**class**”<sup>178</sup> of a person can influence the amount of experienced racist violence in different respects. The attitude of the Austrian majority population tends to be influenced by the profession and the education of migrants. The following chart provides information regarding preferred groups of migrants<sup>179</sup>:

**Table 9: Preferred group of immigrants**

| Group of persons                      | 2001 1 <sup>st</sup> preference | 2001 2 <sup>nd</sup> preference | 1998 1 <sup>st</sup> preference | 1998 2 <sup>nd</sup> preference |
|---------------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Skilled workers ( <i>Fachkräfte</i> ) | 39                              | 20                              | 32                              | 16                              |
| Family members from foreigners        | 30                              | 36                              | 27                              | 34                              |
| Refugees                              | 18                              | 22                              | 27                              | 34                              |
| No one                                | 5                               | 8                               | 7                               | 15                              |
| Do not know                           | 8                               | 15                              | 14                              | 7                               |

The table shows that the acceptance of skilled workers is higher than the one of refugees according to the Geneva Convention. This preference of skilled workers, being perceived

<sup>174</sup> Germans and Poles, in contrast, report the same (low) level of experienced discrimination.

<sup>175</sup> Kohlbacher, J.; Reeger, U. (2003) op. cit., p. 362.

<sup>176</sup> ZARA (2003), op.cit., p. 35.

<sup>177</sup> In the context of living, Kohlbacher and Reeger come to a similar conclusion. Kohlbacher, J., Reeger, U. (2003) op.cit., p. 362.

<sup>178</sup> The term “class” is being understood in regard to the income of a person as well as in regard to his/ her profession.

<sup>179</sup> The study was conducted on the basis of two representative opinion polls of 1998 and 2001 among 2000 respondents. Lebhart, G.; Münz, R. (2003) op.cit., pp 348-349.

as necessity to the labour market, is also being stipulated in Austrian immigration legislation<sup>180</sup>.

Although there are no empirical data available to sustain this assumption, one could conclude that, due to their higher degree of societal acceptance, skilled workers are exposed to fewer acts of racist violence than other migrants.

It is also most likely that persons with higher income are in a better position to take up the risks of costs when claiming their rights against discrimination in court. Equally, appropriate language skills clearly facilitate access to justice<sup>181</sup>.

#### 5.1.4. Education

The level of experience of discriminatory acts also tends to decrease the higher the level of education. For instance, according to a related study, a higher educational level seems to reduce experiences of discrimination on the part of state officials<sup>182</sup>. In this sense, one third of the interviewed migrants with compulsory education but only 20 percent of the persons with university education feel discriminated against in the contact with public authorities. Every fifth migrant with compulsory education feels discriminated against at the work place, but only every tenth person with university education does so. 41 percent of the persons with compulsory education state to feel discriminated against in the area of housing, whereas only 18 percent of persons with university education complain about discrimination in this regard.

Some explanation, which could be given for this phenomenon, is the increased self-confidence of persons with higher education. Their better knowledge of German and the considerable respect which is given to persons with higher education in meritocratic societies tends to reduce their risk to be exposed to discriminatory acts<sup>183</sup>.

However, as demonstrated by single cases (not in an empirical study), in some contexts, the phenomenon of visibility prevails. The level of education seemed to make no difference in relation to discriminatory “access policies” in certain bars and restaurants. As shown by a series of tests concluded by NGOs in Vienna and Graz, also people with higher education were refused from entering.

No general conclusion on the role of education in the context of racist discrimination can therefore be drawn. Education rather seems to have a very differentiated influence depending on the situational context.

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<sup>180</sup> Due to the Niederlassungsvereinbarung, from January 1, 2003, onwards labour migration is limited to “Schlüsselarbeitskräfte” (key personnel). The definition of key personnel is not only characterised by professional qualifications, but by a minimum salary of € 2,000.

<sup>181</sup> This applies – of course – also for the variable “education”, which will be examined in the next subsection.

<sup>182</sup> Kohlbacher, J.; Reeger, U. (2003), op. cit., p. 362.

<sup>183</sup> Ibid.

### 5.1.5. Religious and cultural identity/ affiliation

Again, a link between the adherence to a certain religion and experienced racist violence can be established via the phenomenon of visibility. The adherence to a certain religious or cultural group is often indicated by a visible symbol, for instance the headscarf of Muslim women or the Kippa of the Jewish men. Thereby, the members of a specific group are clearly recognizable and open “targets” of racist violence or crimes.

This argument is supported by some incidents described in the Racism Report 2002<sup>184</sup>, where several Muslim women were insulted because of their headscarves.

Ms. Baghajati, the spokeswoman of the Muslim Austrians Initiative (*Initiative Muslimischer ÖsterreicherInnen*), reported to receive aggressive e-mails, expressing intolerance and the fear, that Muslims would exploit economy. The e-mails also contained verbal attacks on women Muslims that they should integrate themselves and dress as the majority population<sup>185</sup>.

A positive development in this regard will be the amended Equal Treatment Act<sup>186</sup> (*Gleichbehandlungsgesetz*) prohibiting at least the introduction of the prohibition of discrimination on the grounds of religion at the workplace. (See also chapter 6.1.1.)

Equally, particularly in the context of religion the extent of “socio-cultural and confessional distance” to the native (majority) population (*inländische Wohnbevölkerung*) appears as decisive factor for the amount of experienced discrimination. For example, women with headscarves, the Islam religion, can provoke xenophobic attitudes because they are not understood by the majority population<sup>187</sup>.

### 5.1.6. Length of stay

Even if no specific studies exist in this regard, some indices indicate, that the situation of foreigners improves gradually with the length of their stay. As demonstrated by Pilgram in his study<sup>188</sup>, a considerable social vulnerability of migrants results out of a denied equality and diminished institutionalized protection.

Before the background of these findings, the Austrian policy, which is raising the quota for seasonal workers and diminishes those for long term migrants<sup>189</sup> appears particularly problematic, as these measures increase the group of vulnerable persons. In this sense, the Vienna Integration Fund criticised that the majority of labour migration is being

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<sup>184</sup> ZARA (2003), op.cit., p. 35.

<sup>185</sup> Ibid.

<sup>186</sup> Entwurf des Bundesgesetzes über die Gleichbehandlung (Draft on the Federal Law on Equal Treatment), available at: <http://www.bmwa.gv.at/BMWA/Rechtsvorschriften/Entwuerfe/e2003170.htm>, (09.11.2003).

<sup>187</sup> Also Kohlbacher and Reeger refer to the different degree of socio-cultural and confessional distance as one of the reasons, that Turks have more discriminatory experiences than Poles, for instance. Kohlbacher, J.; Reeger, U. (2003), op.cit., pp. 363-364.

<sup>188</sup> Pilgram, A. (2003), op. cit., pp 330-331.

<sup>189</sup> Regulation for Permanent Settlement (*Niederlassungsverordnung 2003*), Österreich, BGBl II/136/2003 (30.04.2003).

increasingly regulated by issuing temporary settlement permits which have reportedly a negative impact on the integration of labour migrants<sup>190</sup>.

**Illegal residents** are quasi denied institutionalised protection. They have no real possibility to go to court, as every judicial proceeding would endanger their residence in Austria. Others - such as perpetrators committing racial acts - can take advantage of this situation<sup>191</sup>. As to Pilgram, an irregular stay generates a high level of vulnerability<sup>192</sup>. An illustration of this statement could be the incident reported by a foreign worker to Helping Hands Graz<sup>193</sup>. When a foreigner, who had not received his salary for several months, was asking for it, he was locked up and beaten up by his chef with the words: „Als Ausländer hast Du eh keine Rechte.“ (As foreigner you don't have any rights anyway). Firstly, the worker even did not dare to report the case to the police: it was only after a long talk with ZARA, that he agreed to do so.

As to **second generation migrants**<sup>194, 195</sup>, it is only in the last population census of 2001, that the different data in regard to citizenship, place of birth, length of stay, sex in combination with education and labour market are combined<sup>196</sup>. Also in this regard further research and data on second generation migrants is necessary in order to assess the extent of racist discrimination of this group.

Even without statistical data, a few statements can be made. The phenomenon of visibility seems to be applicable also to second generation migrants. As demonstrated in various cases (i.e. testing re discotheque entries), if persons are clearly recognizable as foreigners, they happen to be discriminated against, even if they have lived in Austria for a long time. Furthermore, the restrictive naturalisation policy of the Austrian Government appears to be an aggravating factor regarding protection against racist violence and acts in housing and employment.

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<sup>190</sup> Wiener Integrationsfonds (2002a) Stellungnahme zum Entwurf der Niederlassungsverordnung 2003 (Statement on the Regulation of Permanent Settlement 2003), p 2; available at: [http://www.wif.wien.at/wif\\_site/downloads/StNNIVo2003.pdf](http://www.wif.wien.at/wif_site/downloads/StNNIVo2003.pdf), (09.11.2003). [NFPAT0066]

<sup>191</sup> On the other hand, the length of stay increases the institutionalized protection. For instance, in Austrian labour law, there exists a hierarchical order of work permits. An owner of an Initial work permit (*Beschäftigungsbewilligung*) (the first stage in the hierarchy of work permits) only gets a job, if neither an unemployed Austrian citizen nor a recognized refugee or an owner of a permanent license (*Befreiungsschein*) is available for the job. (article 4b paragraph 1 Aliens Employment Act (Österreich, BGBl. 218/1975 last changed by BGBl. I 126/2002, changes available at: <http://www.ris.bka.gv.at/bgbl/>, (09.11.2003).)

<sup>192</sup> Pilgram, A. (2003), op. cit., p. 328.

<sup>193</sup> Helping Hands Graz (2003), op. cit., p 15.

<sup>194</sup> Being defined as persons, of whom at least one parent is born outside Austria.

<sup>195</sup> See in this respect Herzog-Punzenberger, B. (2003), Die "2.Generation" an zweiter Stelle? Soziale Mobilität und ethnische Segmentation in Österreich – eine Bestandsaufnahme („The '2nd generation' on the second place? Social Mobility and ethnic segmentation in Austria – a survey“), available at: [http://www.wif.wien.at/wif\\_site/downloads/Stud2Gen.pdf](http://www.wif.wien.at/wif_site/downloads/Stud2Gen.pdf), (09.11.2003), p. 9. [PUBAT0186]

<sup>196</sup> Ibid.

## 5.2. GROUPS VULNERABLE TO RACIST VIOLENCE AND RACIST CRIMES

### 5.2.1. Blacks

Approximately 2.300 Africans from 38 different countries live in Austria<sup>197</sup>. They appear to be specifically vulnerable to racist acts and racist crimes. No quantitative analysis of the phenomenon exists; however, numerous NGO reports (ZARA, Helping hands)<sup>198</sup>, give evidence of cases of racism with regard to black people<sup>199</sup>.

For instance, the initiative of testing restaurants and bars launched by several NGOs in Vienna and Graz, clearly demonstrates that black people are regularly confronted with racist and xenophobic discrimination. Arguments used by those doorkeepers and owners frequently refer to the specific aggressiveness of black people or the fact that their guests would dislike their company<sup>200</sup>.

This racist prejudice is further strengthened by **statements of politicians** stigmatising black persons as drogue dealers<sup>201</sup> as happened in the election campaign of the FPÖ in Graz<sup>202</sup>. (For further details, see chapter 2.2.) Also some newspapers such as “Die Krone” foster easy stereotypes. Headings such as “3000 Afrikaner als Drogendealer” (3000 Africans as drug dealers)<sup>203</sup> strengthen the above mentioned processes of stigmatisation.

Finally, several reports pointed out that third countries nationals seem to be especially exposed to a certain amount of **police brutality**. Among these, even if quantitative statistical data are lacking, the considerable number of reported incidents clearly points at black persons as being especially vulnerable to police brutality<sup>204</sup>. In fact, the problem of police brutality motivated by racist behaviour was raised in AI report 2003<sup>205</sup> as well as in

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<sup>197</sup> ORF-ON Minorities, (1.6.2003), Situation afrikanischer Frauen in Österreich (Situation of African Women in Austria), available at:  
<http://volksgruppen.orf.at/bin/at/de/news/200306/2003061102457kor.html>, (09.11.2003).

<sup>198</sup> ZARA (2003), op. cit., p. 35 [PUBAT0045]; Helping Hands Graz (2003) op.cit..

<sup>199</sup> One must not forget, that only a small part of the actual insults is reported to NGOs. Therefore, the “unofficial number” is much higher.

<sup>200</sup> ZARA (2003), op.cit., p. 35.

<sup>201</sup> As to an opinion poll in Austria, African men are primarily stigmatized as drogue dealers, African women are stigmatized as prostitutes; 80 percent of Africans living in Austria feel discriminated against. (ORF-ON Minorities (2003), Situation afrikanischer Frauen in Österreich (Situation of African Women in Austria), available at:  
<http://volksgruppen.orf.at/bin/at/de/news/200306/2003061102457kor.html>, (09.11.2003).)

<sup>202</sup> Horaczek, N. (2003), op. cit., p. 13.

<sup>203</sup> Kronenzeitung, „3000 Afrikaner als Drogendealer“ (3000 Africans as drug dealers), 20.12.2002, p.1 [PUBAT0200]

<sup>204</sup> Also Lohmeyer M. from ZARA sustains, that blacks are particularly affected by police brutality. (Lohmeyer M., (2003) Rassismus: „Schwarze besonders betroffen“ (Racism: “Blacks particularly concerned”), in Die Presse (28.07.2003), available at:  
<http://www.diepresse.com/detail/print.asp?channel=c&ressort=w&ids=368406>, (09.11.2003).

<sup>205</sup> Amnesty International (2003) op.cit..

earlier AI<sup>206</sup> and ECRI<sup>207</sup> reports. It is therefore to be considered one problem that deserves special attention. (For further reference, see also chapter 5.3.)

One outstanding case describes a policeman, who called black persons “Bimbos” and stated that they would have a lower sensation of pain. That is why, as to the policeman, the “Scheißbimbos” (fucking bimbos) sometimes would get a “special treatment”<sup>208</sup>.

Another case is the one of Niki Komla (a member of the alien advisory committee of the city of Graz) from Ghana, who is living in Graz. Komla was detained by the police on December 9, 2002, photographed against his will, mistreated and left alone with an injured thumb. These measures were qualified by the Independent Administrative Tribunal as “unlawful”<sup>209</sup>. In fact, especially the “Drogen-Sonderkommission”<sup>210</sup> in Graz, was accused of treating black persons in a harsher way, than circumstances would justify<sup>211</sup>.

One case which was most intensively covered by the media is the one of **Cheibani Wague**, a 33 year old man from Mauretania, who died on July 15, 2003 in connection with a nightly operation involving the police and an ambulance team in the centre of Vienna. As this case triggered off wide debates whether an Austrian citizen would have been treated the same way as a black person and therefore would have survived the operation, this case was given special attention in this report. At the time of reporting, the Regional Court for Vienna (*Landesgericht Wien*) was investigating the circumstances of the man’s death in the framework of preliminary enquiries (*Vorerhebungen*).

The incident occurred at the so-called “African village”, a cultural project set up in a park near the city centre for summer period. On that night, Mr Wague, who worked in the village, got into a confrontation with his boss, who then called the police and the ambulance because he assumed Mr Wague to suffer from psychological problems<sup>212</sup>.

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<sup>206</sup> Amnesty International (2002) Amnesty International Report 2002 on Austria (covering the period January to December 2001), available at <http://web.amnesty.org/web/ar2002.nsf/eur/austria?Open> (9.12.2003).

<sup>207</sup> ECRI, Second Report on Austria (2001) available at: [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/2-Country-by-country\\_approach/Austria/Austria\\_CBC\\_2.asp#P202\\_33847](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Austria/Austria_CBC_2.asp#P202_33847), (09.12.2003). [PUBAT0183]

<sup>208</sup> Klenk, F. (2003b) Ernst, mach Ernst! (Ernst, take the gloves!), in: Falter (03.09.2003), p. 6. [PUBAT0191]

<sup>209</sup> Alien advisory committee of the city of Graz (12.5.2003), „Polizei hat rechtswidrig gehandelt!“ (“Police acted unlawfully!”), available at: <http://www.graz.at/politik/ab-neu-layout-neu/aktuelles/stellungnahme-liste.htm#rechtswird>, (09.11.2003), pp.3]. See also UVS Steiermark (Independent Administrative Tribunal Styria) Geschäftszahl (Number): 20.3-4/2003, Datum: 23.04.2003 (<http://www.ris.bka.gv.at/uvs/>) Drogen-Soko, special commission for drogues.

<sup>210</sup> Kamdem, E. (2003) „Ich würde Graz nicht als Menschenrechtsstadt bezeichnen“ (“I would not call Graz a human rights capital“ (07.2003), in: Korso Graz/aktuell [available at: [http://www.korso.at/korso/stadtentwick/stthemen\\_0703.htm](http://www.korso.at/korso/stadtentwick/stthemen_0703.htm), (09.11.2003)]. However, end of April 2003, the “Drogen-Soko” stopped working. (Steiermark.orf.at (12.5.2003), Richter befürchten mehr Suchtgiftdelikte (Judges fear more drug - offences), available at: <http://steiermark.orf.at/oesterreich.orf?read=detail&channel=8&id=258687>.

<sup>211</sup> For an overview of the news coverage regarding the „African village“, see: ORF ON-Minorities (02.09.2003) Zum Abschluß im Wiener Afrikadorf: Diebstahl der Tonanlage (Closedown at the Vienna African village: Sound system stolen), available at: <http://volksgruppen.orf.at/bin/at/de/news/200309/20030903010805kle.html>, (30.10.2003).

Accounts of what exactly happened after police and ambulance arrived on the scene differ<sup>213</sup>. When Mr Wague, who was already handcuffed, tried to escape out of the ambulance car the police got hold of him and brought him to the ground. Witnesses disagree on how much force was used to do so; two people speak of the police hitting Mr Wague on the head and back. After Mr Wague had been fixed to the ground, the emergency doctor injected a sedative<sup>214</sup>. At about that time, the incident had attracted the attention of a local resident who started to videotape the scene from the window of his flat<sup>215</sup>. The video recording shows Mr Wague lying motionless on the ground with his face down. Ambulance attendants and a female police officer have their feet or knees on the man. One ambulance attendant and the female police officer are even standing on him with both feet. The emergency doctor is passively watching the scene with his hands in the pocket. After several minutes the motionless body finally is lifted on a ledger under some difficulties, almost slipping off, his head sliding aside with no sign of consciousness or life. Attempts of reanimation in the ambulance and at the hospital failed.

Whereas the ambulance team was suspended from service after three days of the incident, the police officers who took part in the operation remained in office<sup>216</sup>. Ernst Strasser, Minister of the Interior, saw no reason to take disciplinary measures<sup>217</sup>. Investigations into the death of Mr Wague started within the Vienna City Administration who involved the Public Prosecutor's Office (*Staatsanwaltschaft*). Already on the previous day, the Vienna police had handed over their files to the Office of Internal Affairs (*Büro für interne Angelegenheiten, BIA*) of the Ministry of the Interior in order to counter allegations that investigations would be led by the same authority who is actually being accused of being involved in Mr. Wague's death<sup>218</sup>. The Office of Internal Affairs filed a complaint against the emergency doctor with the Public Prosecutor which states that the doctor had caused the death of Cheibani Wague by negligence<sup>219</sup>. The doctor is so far the

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<sup>213</sup> Intensive media coverage of the case continues for several weeks, for an overview of different renditions of the facts see for example: Klenk, F. (2003c) "Den Tobenden verpackt" ("Packed the raging guy"), in: Falter 35/03 (17.08.2003), available at: [http://www.falter.at/print/F2003\\_35\\_1.php](http://www.falter.at/print/F2003_35_1.php), (30.10.2003), pp.13- 14. [PUBAT0192]

<sup>214</sup> Der Standard, (23.07.2003), Notarzt wehrt sich gegen Beschuldigung (Emergency doctor fights back accusation)

<sup>215</sup> Barth, J./E. Bobi/E. Meinhart (2003) Herzattacke (Heart-attack), in: profil 30 (21.07.2003), pp.34-35; Klenk, F. (2003a) op.cit.; Ein Zeuge und sein Video (A witness and his video tape), p. 9.

<sup>216</sup> Rathauskorrespondenz, (18.07.2003), Tod eines Afrikaners: Magistratsinterne Konsequenzen (Death of an African: Consequences within the Vienna City Administration), available at: <http://www.wien.gv.at/vtx/vtx-rk-xlink?SEITE=020030718012&DATUM=20030718&S0=afrikaners&S1=tod#P0>, (01.11.2003).

<sup>217</sup> Based on an analysis of the witness' video by the Vienna police, Mr Strasser concluded the police officers behaved correctly in this "tragic case". See: Die Presse, (23.07.2003), Polizisten: Keine Suspendierung (Police officers: No suspension), available at: [http://www.diepresse.com/textversion\\_article.aspx?id=367517](http://www.diepresse.com/textversion_article.aspx?id=367517), (01.11.2003).

<sup>218</sup> Rudolf Gollia, spokesman of the Ministry of the Interior, in the German original: „(...) um möglichen Vorwürfen, die Ermittlungen würden im eigenen Saft schmoren, entgegenzutreten.“ Der Standard, (21.07.2003), Tod vor Afrika-Dorf: Vorwürfe gegen Polizei (Death outside African village: Allegations against the police), p. 7.

<sup>219</sup> More accurately the doctor was being accused for having caused Mr. Wague's death by refraining from sufficiently monitoring the vital functions following the intramuscular injection of the drug Haldol, for which reason he did not realise the critical state of Wague, and Wague subsequently died. See: Klenk, F. (2003b) op.cit., p. 13.

only person besides “unknown perpetrators” against whom the Court is conducting preliminary enquiries<sup>220</sup>.

Cheibani Wague’s death caused grief and outrage, and raised a number of questions, many of which are still unanswered. Ongoing forensic medical examinations are supposed to give answers to whether Mr. Wague’s death was caused by two ambulance attendants and police officers fixing Mr Wague to the ground with their knees and feet in face-down position<sup>221</sup>.

A systematic collection of disaggregated data regarding police misconduct, which would provide information on ethnic background and colour of skin of victims would provide an important tool to draw attention to this problem and to develop efficient counter measures.

## 5.2.2. Asylum Seekers and Refugees

The group of asylum seekers and refugees appears to be vulnerable to racist acts for various reasons.

Especially the debate which was dealing with the reform of the Austrian Asylum Act stigmatized asylum seekers as social burden taking advantage from the Austrian welfare system<sup>222</sup>. The fact that compared to other EU-member states, Austria so far has received the largest number of asylum seekers per inhabitant is being used as an additional argument for restricting Asylum regulations<sup>223</sup>.

The concentration of asylum seekers in so-called **refugee camps** such as Traiskirchen most times leads to a segregation of asylum seekers, which tends to increase the xenophobic tendencies of the surrounding population. In the aftermath of a row between asylum seekers of Moldavia and Chechenya, which was ending in the death of one

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<sup>220</sup> Der Standard, (27./28.09.2003), Tod im Afrika-Dorf: Verdacht nur gegen Notarzt konkret (Death at the African village: Concrete suspicion against emergency doctor only), p. 12.

<sup>221</sup> The Minister of the Interior assigned the Human Rights Advisory Board (*Menschenrechtsbeirat*) the task to deal with the fixation of a person in face-down position as a police method. See: ORF-ON Minorities, (09.11.2003), Sondersitzung des Menschenrechtsbeirats zum Fall Cheibani W. (Special session of the Human Rights Advisory Board regarding the case of Cheibani W.), available at: <http://volksgruppen.orf.at/bin/at/de/news/200308/20030827122236kor.html>, (01.11.2003).

<sup>222</sup> Schönbauer, R. (2003) Kommando an alle: “Asylwerber abwehren” (Commando: refute all asylum seekers), in: Der Standard, 9.5.2003, p.31. Helene Partik-Pable, Parliamentarian and security speaker of the FPÖ, sustained, that nine out of ten asylum seekers would only try to bypass the regulations applying to migration without fulfilling the requirements of being refugees. (ORF-ON Minorities (2.5.2003), Partik-Pable: FPÖ will “Asylmissbrauch” verhindern (Partik-Pable: FPÖ tries to inhibit “abuse of asylum procedures”), available at: <http://volksgruppen.orf.at/bin/at/de/news/200305/20030502162318kle.html>, (09.11.2003).

<sup>223</sup> Bundesministerium für Inneres (2003), Grossbritannien (Great Britain), in: Öffentliche Sicherheit 07/ 08 2003, available at: [http://www.bmi.gv.at/oeffentlicherheit/2003/07\\_08/artikel\\_6.asp](http://www.bmi.gv.at/oeffentlicherheit/2003/07_08/artikel_6.asp).

Chechen, the mayor of Traiskirchen openly asked the federal government to close down Traiskirchen<sup>224</sup>.

Another problem is the **stigmatisation** of asylum seekers as **lazy** sitting around all day while neglecting the fact that they are not allowed to work. A positive initiative to counter this deadlock situation can be seen in the Equal Project “Don’t wait”, trying to promote the integration of asylum seekers into the Austrian labour market<sup>225</sup>. (For further reference, see 6.2.4.)

Another factor, which is increasing the vulnerability of asylum seekers, is their highly insecure resident status, as their application can be dismissed at any moment.

### 5.2.3. Migrants

In general, migrants are certainly a vulnerable group. However, they are also too diverse to be analysed as a “group” at this point of the report. Information regarding this group therefore was already analysed according to various variables (length of stay, origin, etc.) in chapter 5.1.

### 5.2.4. Minorities

In Austria, national minorities are fairly well protected in legal terms, a fact which is also recognized in the report of the three wise men<sup>226</sup>. National provisions ensure the protection of their identity and state<sup>227</sup>, that the activity of organizations, whose aim is to deprive the Croat or Slovene population of their minority status shall be prohibited<sup>228</sup>. Equally, both Council of Europe Conventions on Minorities, the 1995 Framework Convention for the Protection of National Minorities and the 1992 European Charter for

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<sup>224</sup> Brickner, I., Möseneder, M. (2003), Kontroversen um Traiskirchen (Controversies round Traiskirchen), in: Der Standard (16./17.08.2003), p. 7. [PUBAT0180]

<sup>225</sup> ORF-ON Minorities (07.08.2003), “Don’t wait” – Kampagne zur Integration von AsylwerberInnen in den Arbeitsmarkt (“Don’t wait” – Campaign for the integration of Asylum seekers into the labour market), available at: [volksgruppen.orf.at/bin/at/de/news/200308/20030806134451kor.html](http://volksgruppen.orf.at/bin/at/de/news/200308/20030806134451kor.html), (09.11.2003). For further reference see also <http://www.dontwait.at> (09.11.2003).

<sup>226</sup> Ahtisaari M., Frowein, J., Oreja (2000) op.cit..

<sup>227</sup> The most important provisions are Art 7 of the 1955 State Treaty for the Reestablishment of an Independent and Democratic Austria (BGBl 152/1955) as well as Art 66-68 of the 1919 Treaty of Saint Germain en Laye from the Aftermath of World War I (BGBl 1920/303). These provisions ensure inter alia elementary instruction in the Slovene and Croat language and state that Slovene and Croat shall be the official language (Amtssprache) in the administrative and judicial districts of the three Federal Provinces with Croat, Slovene and mixed populations. Equally, in those districts the topographical place identification signs shall be in Slovene and the Croat language in addition to German. Furthermore, in a recent amendment to the Austrian Constitution (BGBl I 99/2002) the Republic declares its belief in linguistic, cultural diversity which is represented by its autochthonous minorities. The 1976 Act on National Minorities (BGBl 396/1976 as amended by BGBl I 35/2002) further details the above mentioned provisions.

<sup>228</sup> Art 7 Para 4 Staatsvertrag von Wien (Österreich, BGBl 152/1955).

Regional or Minority Languages have been ratified by the Austrian State (the latter by the Coalition Government) in 2001.

However, in everyday political life, especially the Slovenes in Carinthia had to face verbal attacks on the part of politicians. For instance, statements of the FPÖ politicians stimulate anti-minority feelings and xenophobia within the majority population, creating a bad climate vis-à-vis national minorities. The chairman of the FPÖ from Carinthia, commented efforts of the members of the Slovene minority in Carinthia to further the position of bi-lingual place names on signposts<sup>229</sup> with the words “*Die Zünder geben keine Ruhe*” (The fire raisers don’t stop)<sup>230</sup>. In other words, the FPÖ politician reproaches arson to the Slovene minority. In addition, he accuses the Slovene minority to act contrary to the interests of Carinthia (“*kärntenfeindlich*”)<sup>231</sup>.

### 5.2.5. Roma and Sinti

Nearly ten years ago, the vulnerability of Roman and Sinti was sadly proved with the murder of four Roma men on February 5, 1995 in a bomb attack in Oberwart, Burgenland. The lethal bomb was carrying a sign saying „*Roma zurück nach Indien*” (Roma go back to India)<sup>232</sup>.

Today, xenophobic attitudes towards Roma still persist within some segments of the Austrian population, even if no severe case of violence or discrimination against Roma or Gypsies has been reported since 2001<sup>233</sup>. The lacking recognition of Roma by the majority population can however be discerned in a recent decision of the Municipal Council of Kemetten (Burgenland) in October 2003<sup>234</sup>. In a secret vote 14:5 the Municipal Council members refused the placement of a monument in memory of the members of the Roma community who died or were deported during the National-Socialist regime<sup>235</sup>. The Municipal Council thereby disregarded the decision of the Provincial Parliament of Burgenland ordering to place memorial places and commemorative plaques to remember the victims of National Socialism.

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<sup>229</sup> For further reference see chapter 2.1.

<sup>230</sup> Kurier/ APA, „Die Zünder geben keine Ruhe” (“The fire raisers don’t Stop“, 11. 9. 2003), [available at <http://www.kurier.at/oesterreich/378141.php>](11.09.2003).

<sup>231</sup> Ibid.

<sup>232</sup> For further reference, see RAXEN I Final Report Austria, p. 586.

<sup>233</sup> In this sense, the situation has not significantly changed since the publication of the ECRI report 2001. (ECRI, Second Report on Austria (2001) available at: [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/2-Country-by-country\\_approach/Austria/Austria\\_CBC\\_2.asp#P202\\_33847](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Austria/Austria_CBC_2.asp#P202_33847), (09.11.2003)). [PUBAT0183]op. cit. Said report mentions some cases of racist attacks and as well as incidents of maltreatment of Roma and Sinti by police officers; however, no particular severe cases were reported.

<sup>234</sup> <http://volksgruppen.orf.at/kroaten/de/news/news.htm>, 27.10.2003.

<sup>235</sup> As to the report of the Austria Historical Commission, during National Socialism, far more Roma and Sinti were annihilated than was supposed so far. In fact, only 1500-2000 Austrian Roma appear to have survived the era of National-Socialism, whereas a minimum of 9000 Roma and Sinti were murdered at that time. (See also Enigl, M. (2003) Radikale Lösung (Radical solution), in: profil 14 (31.03.2003), pp. 58 - 60. [PUBAT0184]

Furthermore, Roma and Gypsies, who are coming to Austria from Eastern European countries<sup>236</sup>, appear to be targeted by some right-wing organisations and are even stigmatised as criminals. For instance, the magazine *Zur Zeit*, fears an influx of “*Zigeunersippen*” (gipsy clans) as result of the abolition of the visa requirements for Bulgarian and Rumanian citizens, who before – as to the magazine – would have trained their children in pick-pocketing<sup>237</sup>.

Due to their status as ethnic minority and their low social standing the Roman population appears to be **especially vulnerable** to racist acts<sup>238, 239</sup>.

## 5.2.6. Jews

Despite the small size of the Austrian Jewish community today (around 7,000), Anti-Semitism is still present in Austria and manifests itself in a variety of ways. A sharp raise of **anti-Semitic incidents** is reported by the “Forum against Anti-Semitism”<sup>240</sup>. From January 1, 2003 till August 31, 2003 altogether 108 anti-Semitic incidents have been reported to the FGA: 71.4 percent more than in the year before.

Nonetheless, one could globally state that the Austrian society is aware of the vulnerability of Jews. For instance, a valuable legal framework to combat crimes deriving from National-Socialist ideology is in place (see chapter 3.1) and data on anti-Semitic incidents are recorded in the Report on the Protection of the Constitution.

Furthermore, the media attention which is given to anti-Semitic incidents is comparably high as well as the public sensibility and awareness. (For further details please see Report on Anti-Semitism in Austria, July 2002-November 2003.)

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<sup>236</sup> In fact, one has to distinguish between descendants of Roma and Sinti who have lived for generations in the country, immigrants or descendants of immigrants who came to Austria in the last decades and refugees and asylum-seekers from Central and Eastern Europe who came to Austria more recently. Only the first category of persons, holding Austrian citizenship, is considered to constitute the Roma and Sinti *Volksgruppe*, which was recognized in 1993. (BGBl 396/1976 idF 895/1993). The formal recognition of a group as a *Volksgruppe* entails special rights, including State financial support for cultural projects, the right to form an advisory board to the Government, the possibility of bilingual schooling and other language rights. The recognition of the Roma and Sinti as *Volksgruppe* in 1993 improved the situation for those Roma and Sinti who are considered to form part of this group.

<sup>237</sup> DÖW, 07. 2003, Von „Zigeunern“ und anderen „Kriminellen“ der AFP (“Political Academie“ of the AFP), available at: [http://www.doew.at/projekte/rechts/chronik/2003\\_07/zurzeit.html](http://www.doew.at/projekte/rechts/chronik/2003_07/zurzeit.html), (09.11.2003).

<sup>238</sup> ECRI (2001) op. cit.

<sup>239</sup> As to the analysis of vulnerability due to low social standing, see chapter 5.1.3.

<sup>240</sup> Press release of the Forum against Anti-Semitism on 24.09.2003.

## 5.2.7. Muslims

As to the population census of 2001, 338.988 persons in Austria adhere to the Muslim faith. More than 75 percent of them are not Austrian citizens<sup>241</sup>.

The phenomenon of Islamophobia – which was given especial attention in the aftermath of September 11 – points at the Austrian Muslim community as potential target for racial violence<sup>242</sup>. Even if no quantitative data exists in this regard, the qualitative cases reported by NGOs such as ZARA provide at least valuable information on single incidents. Especially the “visibility” of Muslim women wearing headscarves makes them an easily recognisable target for racist violent acts. For instance, in campaigning brochures distributed in several districts, the Viennese FPÖ portrayed women with headscarves as so-called *Feindbild* and promoted a polemical picture of an “external” threat.

The above mentioned examples show the multiple vulnerability of the Muslim community. However, as to the data analysis undertaken for this report<sup>243</sup> no specific raise of “Islamophobia” was notified in the aftermath of September 11, 2001. However, in order to assess the whole scale of Islamophobic tendencies additional data on complaints recorded by an easily accessible and independent monitoring institution would be necessary.

## 5.3. THEORY-LED ANALYSIS OF PERPETRATORS OF RACIST VIOLENCE AND RACIST CRIMES

The data gap, which has already been criticised in the course of this report, also becomes evident when analyzing the background of persons responsible for racist crimes. As criminal statistics do not disaggregate data in regard to sex, age, education or employment of perpetrators - only juvenile perpetrators are recorded separately– the first part of this analysis will work with data in regard to **xenophobic attitudes**.

According to a study conducted among 2000 respondents in Austria 28 percent of the adult Austrian population can be ranked as xenophobic, 45 percent as ambivalent or neutral and 27 percent as foreigner-friendly<sup>244</sup>.

Furthermore, the study shows, that **more women than men** (32 % compared to 25 %) have xenophobic views, whereas the share of men (47 %) having ambivalent attitudes towards aliens is higher than the one of women (43 %).

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<sup>241</sup> Source: Statistik Austria, Volkszählung (census) 2001, [http://www.statistik.at/gz/vz\\_religion.shtml](http://www.statistik.at/gz/vz_religion.shtml), (09.11.2003). For back-ground information see also Kroissenbrunner, S. (2003) Islam, Migration und Integration: soziopolitische Netzwerke und “Muslim leadership” (Islam, migration and integration: socio-political networks and “Muslim leadership”, in: Fassmann H., Stacher I. (eds.) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, p. 377. [PUBAT0118].

<sup>242</sup> The Islam faith community is recognized by Austrian law.

<sup>243</sup> See in this respect also Raxen 3 I, p. 47.

<sup>244</sup> Lebhart, G.; Münz, R. (2003), op. cit., p. 353.

**Table 10: Tendencies of xenophobic attitudes according to sex<sup>245</sup>**

|        | Tendentiously xenophobic | Ambivalent but tendentiously not xenophobic | Not xenophobic |
|--------|--------------------------|---|----------------|
| Sex:   |                          |   |                |
| Male   | 25.2                     | 47.2  | 27.5           |
| Female | 31.7                     | 42.8  | 25.5           |

**Table 11: Tendencies of xenophobic attitudes according to age<sup>246</sup>**

| Age      | Tendentiously xenophobic | Ambivalent but tendentiously not xenophobic | Not xenophobic |
|----------|--------------------------|---|----------------|
| 20 to 29 | 24.2                     | 43.6  | 32.2           |
| 30 to 44 | 25.5                     | 46.0  | 28.4           |
| 45 to 64 | 33.7                     | 44.7  | 21.6           |

According to the table above, people aged between 45 and 64 more often have xenophobic tendencies (33.7 percent) than younger generations do. The gradual decrease was explained by the different conditions for socialisation on the one hand and the generally higher education of the younger population.

Also in rural communities as well as in small and middle sized cities xenophobic tendencies have been observed more often than in larger cities.

Regarding **demographic** differences it had been observed that xenophobic tendencies are more frequent in rural communities as well as in small and middle sized cities, than in larger cities<sup>247</sup>. The relatively high percentage of persons described as “tendentiously xenophobic” in villages with less than 5.000 inhabitants could *inter alia* be explained by the fact that villagers tend to have rather little contact to or knowledge of foreigners. That is why it is easier to present a stereotyped image of foreigners, stigmatising them in whatever respect<sup>248</sup>.

As to the Austrian federal provinces, Vorarlberg is the one with the highest rate of xenophobia (38 percent of the respondents appear to be tendentially xenophobic.) In contrast, Salzburg is the “Land” with the highest rate of non xenophobic respondents (36.9 %)<sup>249</sup>.

The following charts indicate that an increase of xenophobic tendencies stands in relationship with the respondents’ **socioeconomic conditions**.

In general, groups with a lower **educational level** seem to be more inclined towards xenophobic attitudes, than those with a higher educational standard. The following table

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<sup>245</sup> Ibid, p. 353.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> For instance, headings such as „3000 Afrikaner als Drogendealer“ (3000 Africans as drug dealers) of the Kronenzeitung fosters process of easy stereotypes, stigmatizing black persons as drug dealers. (Kronenzeitung, 20.12.2002, p.1.)

<sup>249</sup> See Lebhart, G.; Münz, R. (2003) op. cit., p. 353.

will show more in detail the direct relationship between the two components – xenophobic attitudes and education.

**Table 12: Tendencies of xenophobic attitudes according to education**<sup>250</sup>

|  | Tendentiously xenophobic | Ambivalent but tendentiously not xenophobic | Not xenophobic |
|--|--------------------------|---|----------------|
| <b>Highest level of education achieved</b>   |                          |   |                |
| Compulsory school                            | 44.8                     | 38.9  | 16.3           |
| Vocational school                            | 31.3                     | 47.6  | 21.0           |
| School leaving examination ( <i>Matura</i> ) | 11.1                     | 46.8  | 42.1           |
| University                                   | 5.2                      | 31.6  | 63.2           |

Whereas 44.8 percent of the respondents with the lowest educational level appear to be tendentiously xenophobic, only 5.2 percent of the people with university degree show this attitude.

The following chart puts the socio-economic situation (employment and income) in relation to xenophobic attitudes<sup>251</sup>.

**Table 13: Tendencies of xenophobic attitudes according to employment and income**

|                                | Tendentiously xenophobic | Ambivalent but tendentiously not xenophobic | Not xenophobic |
|--------------------------------|--------------------------|---|----------------|
| <b>Occupational groups</b>     |                          |   |                |
| Agriculturist                  | 44.3                     | 41.9  | 13.8           |
| Semi-skilled/unskilled workers | 39.1                     | 41.9  | 18.9           |
| Skilled workers                | 38.8                     | 46.8  | 14.4           |
| Employees                      | 22.1                     | 45.8  | 32.1           |
| Civil Servants                 | 18.8                     | 41.9  | 39.3           |
| Entrepreneur                   | 23.7                     | 49.3  | 27.1           |
| Liberal Professions            | 11.3                     | 45.2  | 43.6           |
| <b>Household income</b>        |                          |   |                |
| > € 1.300                      | 33.3                     | 46.6  | 20.0           |
| € 1.300 to € 2.200             | 32.6                     | 44.1  | 23.3           |
| € 2.200 and more               | 20.5                     | 46.7  | 32.8           |
| No income/no data              | 31.5                     | 41.5  | 27.0           |

As to xenophobic attitudes analysed under the perspective of employment and income, one can observe a decrease of xenophobic attitudes in regard to people with a higher qualification and a higher income per household. Reasons for this outcome were found in the fact that these people would enjoy a more secure social standing. This reasoning was supported by another outcome of the study that showed that the higher the job position and the income, the lower the xenophobic tendencies.

In fact, persons in a higher position and better income tend to experience foreigners less as a threat to themselves. The conflict of interests concerning scarce resources such as

<sup>250</sup> Ibid, p. 354.

<sup>251</sup> Ibid.

work, living and state resources, which seems to be one major reason for xenophobic attitudes, appears to be stronger in low income jobs<sup>252</sup>.

It goes without saying that the **right-wing extremist scene** is one of the major groups of perpetrators in regard to racial violation in Austria. For information regarding the right-wing extremist and revisionist scene, please see chapter 2.3 as well as 4.1.

A profound analysis of the **phenomenon of misconduct by the police** is, once again, hindered by the lack of the availability of quantitative data and statistics.

A number of reported cases however involving police brutality particularly in relation to black persons and other visible minorities seems to indicate a severe problem in this area. The Amnesty International report 2003 states: “There was a number of allegations, that police officers ill-treated and used excessive force against detainees”<sup>253</sup>. However, beside these reported cases, it is difficult to get hold of disaggregated statistics in regard to police misconduct.

Therefore, only the general amount of incidents that occurred within the police can be taken from a survey of the BIA. As to the amount of complaints – in 2002 - a total of 1012 incidents were reported<sup>254</sup>. Out of these, 50 percent were alleged cases of mistreatment and misconduct, 25 percent real *Amtsdelikte*, and the other 25 percent dealt with cases of molesting, mobbing etc.<sup>255</sup>.

No disaggregated collection of data according to particularly vulnerable groups of victims, which would provide detailed information on cases involving police brutality, has happened yet.

The reported cases however, are not widespread and systematic enough to constitute a pattern of “institutionalized” misconduct or ill-treatment. Nevertheless, they give raise for serious concerns in relation to police misconduct and indicate a clear need for police training initiatives.

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<sup>252</sup> Ibid, p. 351-352.

<sup>253</sup> Amnesty International (2003), op. cit..

<sup>254</sup> Information was provided by the BIA, see email of 27. 8. 2003.

<sup>255</sup> As of August 27, 2003, the total number of convictions could not be given for 2002, because the cases were still pending at that moment; the total of convictions in 2001 was 17. (Information provided by the BIA, see *ibid.*)

## 6. STRATEGIES, INITIATIVES AND GOOD PRACTICES FOR REDUCING RACIST VIOLENCE AND CRIMES

### 6.1. AMENDMENTS TO ANTI-RACIST AND ANTI-DISCRIMINATION LEGISLATION

#### 6.1.1. Transposition of the two EU Anti-Discrimination Directives

The transposition of the two EU Anti-Discrimination Directives will substantially increase the protection against discrimination as so far the Austrian legal framework provides hardly any remedy against discrimination between private contract partners. The draft version of the amended Equal Treatment Act (*Gleichbehandlungsgesetz*), which will include most of the changes due to the Directives' transposition, will extend the protection against racial discrimination at the workplace as well as in regard to the housing sector and more generally in regard to the access to and supply of goods and services. Another important issue against which the Directives and consequently the amended Equal Treatment are directed against is the phenomenon of mobbing and discriminatory harassment which can amount to racial violence according to our definition<sup>256</sup>. Also the shift of burden of proof, which however is only partly transposed in the present version of the draft law, facilitates the access to justice for victims of racial discrimination as most times they are not in the position to bring forward any clear evidence. Finally, the transposition of the Directives introduced a basis for compensation claims into the Austrian anti-discrimination legislation, which so far mainly focused on penal code provisions which predominantly aimed at sanctioning the perpetrator and not on compensating the victim's material, and immaterial damages.

As we included the transposition of the Directives into the chapter of strategies, initiatives and good practices it has to be stated at this point that these amendments to the Equal Treatment Act were not based on Austria's own initiative but were rather introduced due to the deadline set out by the Racial Equality Directive. Unfortunately, this lack of ambition is to a certain extent reflected in the drafted anti-discrimination legislation, which is very close to the minimum standards set out by both Directives. In some areas such as the shift of burden of proof, the inclusion of NGOs or the introduction of dissuasive sanctions it is even questionable whether these standards have been met at all. (For a more detailed analysis of the Directives' transposition please see pp. 18-20 and 25-29.)

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<sup>256</sup> The definition of discriminatory harassment which also applies to mobbing was implemented by art 15 of the draft version of the amended Equal Treatment Act.

## 6.1.2. Amendments in relation to the Trade Licence Act

The Styrian section of the Greens put forward a proposal to increase the application of sec 87 para 1 no 3 by introducing a paragraph which would explicitly lay down that an entrepreneur would lose his or her licence when committing twice an offence according to Art IX (1) no 3 EGVG<sup>257</sup>. Furthermore, the Greens called on the Regional Government of Styria to approach the Austrian Chamber of Commerce to negotiate appropriate awareness raising measures for Austrians restaurant and bar keepers<sup>258</sup>. All regional parties accepted the proposal, which will consequently be presented before the National Council (*Nationalrat*) in order to initiate an amendment to the present version of sec 87 Trade Licence Act<sup>259</sup>. The Federal Party of the Greens, however, anticipated the Regional Government of Styria and introduced an amendment to the Trade Licence Act, according to which the withdrawal of the trade licence shall be mandatory in cases an innkeeper was found guilty according to Art IX para 1 no 3 EGVG a second time<sup>260</sup>.

## 6.1.3. Other positive legislative measures

On January 1, 2003, Austria signed the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems<sup>261</sup>.

## 6.2. OTHER CURRENT STRATEGIES, INITIATIVES AND EXAMPLES OF GOOD PRACTICES

### 6.2.1. Schooling project "Letters to the Stars"

In 2003, a large scale project "Letter to the Stars"<sup>262</sup> tried to involve a great number of pupils with the personal history of victims of the Holocaust by distributing the data of thousands of individual victims to pupils across Austria and inviting them to dedicate their time and thoughts to the fates of these individuals. 15.000 pupils in 500 schools participated. The project received a lot of public attention, but was criticised for its

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<sup>257</sup> For the exact text of the proposal see: Die Grünen Steiermark (2003) Erfolg im Kampf gegen rassistische Lokale – Grüner Antrag auf Verschärfung der Gewerbeordnung angenommen (02.10.2003), available at: <http://www.stmk.gruene.at/themen.php?tid=18792&wo=16&kat=alle+themen&kid=>, (09.11.2003).

<sup>258</sup> Ibid.

<sup>259</sup> Der Standard, (18.09.2003), Schlag gegen rassistische Wirte (Strike against racist innkeepers), available at: <http://derstandard.at/standard.asp?page=archshow&artfn=\Archiv\20030918>, (09.11.2003).

<sup>260</sup> ORF Minderheitenredaktion (25.09.2003) Grüne: Novelle zur Gewerbeordnung gegen rassistische Wirte (Greens: Amendment to the Trade Licence Act against racist innkeepers), available at: <http://volksgruppen.orf.at/bin/at/de/news/200309/20030925131745kle.html>, (2.11.2003).

<sup>261</sup> See: <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>, (09.11.2003)

<sup>262</sup> See <http://www.lettertothestars.at>, (09.11.2003). [ACTAT0002]

superficiality and accused of sensationalism<sup>263</sup>. However, it definitely fits under the category of positive initiatives as it can be seen as one of the biggest school projects in relation to the Holocaust of the Nazi regime.

The discussion illustrates a basic difficulty that is associated with many projects - the tension between the aim of quality and the aim of reaching a broad audience. The lack of a large-scale anti-discrimination policy in education that might unite quality and quantity on the basis of continuity is painfully evident.

### 6.2.2. Exhibition against xenophobia and racism

The mobile exhibition “*Am Anfang war der Kolaric – Plakate gegen Ausländerfeindlichkeit und Rassismus aus drei Jahrzehnten*” (At the beginning was Kolaric – posters against Xenophobia and Racism of three decades), which is organised by the *Initiative Minderheiten* intends to sensibilise the Austrian population in regard to xenophobia and racism<sup>264</sup>. The exhibition, which started already in 1994 and which is continuously actualised, shows posters against xenophobia and racism of three decades. The title “am Anfang war der Kolaric” – at the beginning there was Kolaric – refers to the first famous poster campaign against xenophobia in Austria<sup>265</sup>. Making reference to this famous campaign, which focused on the de-individualisation of foreigners, who are not called by their name any more, but are only seen members of a group, also the actual exhibition should raise the awareness of the Austrian population in regard to foreigners.

### 6.2.3. “Fair play” Initiative against Racism in sports

**FARE** (Football against Racism in Europe), which was lanced in 1997, tries to combat racism and xenophobia in the field of sports<sup>266</sup>. For instance, in 2002, the European Football-Association UEFA was pushed to work out a code of conduct to combat racist harassments in football stadiums. In October 2003, the fourth European-wide Action Week against Racism and Discrimination in Football was held and involved more than 300 fan groups, clubs, national associations as well as ethnic minority and migrant organisations in 23 European countries<sup>267</sup>. (During this week, various activities took place

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<sup>263</sup> See the discussion conducted at <http://www.diejuedische.at>, (09.11.2003). [PUBAT0047]

<sup>264</sup> Initiative Minderheiten (Platform for Minorities) (2003), Projekt und Tätigkeitsbericht 2002 (Report on projects and activities), available at: [http://www.initiative.minderheiten.at/Dokumente/jahresbericht\\_2002.doc](http://www.initiative.minderheiten.at/Dokumente/jahresbericht_2002.doc), (09.11.2003) p. 9. [PUBAT0188]

<sup>265</sup> In this campaign, a poster showed a little boy and a huge man. The little boy asked the man: “my name is Kolaric, your name is Kolaric, why do they call you “Tschusch” [a pejorative Austrian slang word for persons coming from former Yugoslavia]?”

<sup>266</sup> Ministerium für öffentliche Leistungen und Sport (Ministry for Public Service and Sport) (2003) „Fair-Play“: Viele Farben - ein Spiel/ Football against Racism in Europe (“Fair-Play“: Many colours – one game/ Football against Racism in Europe), available at: [http://sport.austria.gv.at/gesellsc/sg\\_03\\_07.htm](http://sport.austria.gv.at/gesellsc/sg_03_07.htm), (09.11.2003). ASKÖ (1.11.2003) Fussball-Initiative FARE erhält EU-Anti- Rassismus-Preis (Football-Initiative is awarded European Anti Racism Prize), available at <http://www.askoe.or.at/print.php?sid=2091>. [ACTAT0019]

<sup>267</sup> For further reference see FARE (2003) 4<sup>th</sup> Football against racism in Europe (FARE) week of action., available at: <http://www.farenet.org/actionweek2003.asp> (9.12.2003).

in Austria, too.) Thereby the project tries to tackle racism and xenophobia at places where they occur most frequently, but have – so far – not really been dealt with.

#### 6.2.4. “Don’t wait” project for integration of asylum seekers in the labour market

The “Don’t wait” project, which is being conducted in the framework of the EU initiative “Equal”<sup>268</sup>, aims at integrating asylum seekers into the Austrian labour market and thereby, reducing the vulnerability in regard to racist acts (see chapter 5.2.2). Currently, asylum seekers are not allowed to work while their application is pending. In extreme cases such proceedings can last up to five years. The project tries to facilitate the access to the labour market by proposing preparatory courses (EDV (Elektronische Datenverarbeitung, electronic data processing) and language courses) as well as to provide support for the acquisition of working permissions (*Beschäftigungsbewilligung*). The success is remarkable: in total, 2.278 permissions were issued in 2002, which means that two thirds of the applications were accepted.

#### 6.2.5. Activities against racist access policies in bars and restaurants

Although the Austrian legal framework provides for the prohibition of racial discrimination regarding the access to public places such as restaurants and bars, there are frequent complaints by persons who were denied entrance due to their different ethnic origin or colour of skin. As a consequence, several NGOs launched a joint operation testing eleven locales in Vienna on whether they select their guests according to skin colour and origin. Out of eleven locales tested only three treated persons of Arab and African origin in the same way as ‘white’ test persons. ZARA filed several complaints against these bars and restaurants under art IX para 1 no 3 EGVG<sup>269</sup>. Also Helping Hand Graz tested 19 bars on their accessibility for black persons<sup>270</sup>. In Graz only 10 bars made no difference between black and white visitors. Reasons for the denial of entry ranged from the allegedly aggressive potential of black people to regular visitors who would dislike the company of black persons and membership cards which obviously non of the guests inside the bar had to show before entering the bar. The outcome of the tests was published in a local newspaper. Those barkeepers who did not react to a written complaint by the NGO were notified according to art IX para 1 no 3 EGVG to the responsible administrative authorities. In co-operation with Helping Hands Graz, the Styrian section of the Green Party provides on their website a list of bars and restaurants denying access to people because of their ethnic origin or colour of skin and asks person who witness or experience such access policies to report them to the Greens<sup>271</sup>.

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<sup>268</sup> Davidovits, D. (2003), Akademiker als Fensterputzer (Academics as window cleaners), in: Der Kurier (1.2.2003), p.50.

<sup>269</sup> Introductory Provisions to the Code of Administrative Procedure, (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen), Österreich, BGBl 50/1991 (31.01.1991), amended version BGBl I 97/2002, (25.06.2002).

<sup>270</sup> Helping Hands Graz (2003), op. cit., p. 18-25.

<sup>271</sup> For the list of these restaurants see: [http://www.stmk.gruene.at/lokal\\_rass1.php](http://www.stmk.gruene.at/lokal_rass1.php), (09.11.2003). (01.11.2003)

## 6.2.6. Seminars on history for juvenile right-wing extremists

Two University Departments in the Tyrol<sup>272</sup> and Upper Austria<sup>273</sup> have taken the initiative (in cooperation with public prosecutors) to organise **seminars on history and democracy** for young people who committed racist offences. Juvenile offenders who took part in these seminars either were convicted by the criminal court to participate instead of facing imprisonment or, in less severe cases, they had the possibility to avoid a criminal proceeding by attending the course. The effectiveness of these mediation measures is indeed convincing as only one participant out of around 80 became recidivistic and committed further racist crimes since these programs were started. (They started in Innsbruck in 1996 and in Linz in 2000<sup>274</sup>.)

## 6.2.7. Activities in relation to policing

In August 2002, the Human Rights Advisory Board (*Menschenrechtsbeirat*) assigned the International Centre for Cultures and Languages with the preparation of a discourse-analytical **study on the use of language of the Austrian Police Force**<sup>275</sup>. The study shall include quantitative data on complaints during one month in eight provincial constabulary commands (*Landesgendarmariekommandos*), 15 federal police directories (*Bundespolizeidirektionen*) and in all commissariats of the 23 Viennese districts. Furthermore, a qualitative analysis shall be conducted on some representative cases. The results were summarised in a final report which was presented to the Board in mid September 2003. Following this study the Human Rights Advisory Board is presently in the course of elaborating related recommendations and intends to present them together with the report to the Federal Minister of the Interior in January 2004<sup>276</sup>.

The Vienna International Center for Cultures and Languages<sup>277</sup> offers a **two-semester course “Police work in multicultural societies”** for executive officers, covering *inter alia* the topics intercultural communication, conflict management, diversity, minorities, migration, human rights, and discrimination. A crucial component of the programme consists in the application of the Tandem<sup>®</sup> method, providing intensive one-to-one contact between course participants and people having migrated to Austria. Since 2001, the Anti-Defamation League has been holding around 40 **“A World Of Difference”**

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<sup>272</sup> Institut für Politikwissenschaft der Universität Innsbruck (Department of Political Science at the University of Innsbruck), <http://www.uibk.ac.at/c/c4/c402/>, (09.11.2003); personal communication with Prof. Dr. Reinhold Gärtner, (20.03.2003). [ACTAT0022]

<sup>273</sup> Institut für Gesellschafts- und Sozialpolitik der Johannes Kepler Universität Linz (Institut for Social and Sociological Politics), <http://www.gespol.jku.at/>, (09.11.2003); personal communication with Prof. Dr. Irene Dyk, (20.03.2003). [ACTAT 0022]

<sup>274</sup> Personal Communication with Prof. Dr. Reinhold Gärtner, (17.12.2003).

<sup>275</sup> Menschenrechtsbeirat (2003) Bericht des Menschenrechtsbeirates beim Bundesministerium für Inneres über seine Tätigkeit im Jahr 2002, (Report of the Human Rights Advisory Council at the Federal Ministry of the Interior on its activities in 2002), p. 41, available in German at: [http://www.menschenrechtsbeirat.at/index\\_berichte.html](http://www.menschenrechtsbeirat.at/index_berichte.html), (09.11.2003). [PUBAT0123] [NFPAT0006]

<sup>276</sup> Information provided by the Office of the Human Rights Advisory Council on 6 November 2003.

<sup>277</sup> Internationales Zentrum für Kulturen und Sprachen, see: [http://www.izks.at/text/lehrgang\\_1.html](http://www.izks.at/text/lehrgang_1.html) [NFPAT0216]

**training workshops** per year for police officers. In addition to independent experts, the Human Advisory Board, has also been involved in the design of the training curriculum and its continuous evaluation.

## 6.2.8. Intercultural Housing

In the early 1990s, the first ideas for intercultural housing projects were developed. Some of them have already been realised during the last years. The most important elements of such projects are commonly used rooms and open spaces as well as events aiming at encounters<sup>278</sup>. The drawbacks of such projects are that they primarily aim at already integrated foreigners with a higher income. Even if their purpose has thereby only partly been achieved, the projects are of symbolic value and could provide a starting point to be developed further. In fact, a survey<sup>279</sup>, which had been undertaken four years after the accomplishment of a project of intercultural housing located on the Satzingerweg, three quarters of the respondents were (very) content with their housing situation whereas only one respondent labelled the inter-ethnic housing situation as conflict laden due to different habits of life.

## 6.3. DATA ON SUCCESSFUL COURT CASES

On September 3, 2003 Wolfgang Fröhlich, a former FPÖ- politician who then was excluded from the party, was convicted in a jury trial (*Geschworenengericht*) to three years partially conditional (*teilbedingt*) imprisonment for persistently denying the existence of gas chambers and spreading this idea through leaflets.

The Independent Administrative Tribunal (UVS) of St. Pölten found, that an extensive police drug-razzia, which had been conducted in the refugee camp Traiskirchen in January 2000, had been to a large extent unlawful and had violated basic human rights standards<sup>280</sup>. In the aftermath of the razzia, the Independent Administrative Tribunal examined a total of 282 breaches of law filed by 32 asylum seekers. During the period of reporting only a part of the procedures was finalized. Until November 2003, 7 were pending with the VwGH (*Verwaltungsgerichtshof*).

The UVS found *inter alia*, that the general arrest of the people detained in connection with the razzia has been unlawful. Furthermore, the preventive captivation (*präventive Fesselung*) of the asylum seekers as well as the interdiction to go to toilet or to drink water during several hours amounted to violations of the European Convention on Human Rights.

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<sup>278</sup> Kohlbacher/Reeger (2003a) op. cit., p.104. [PUBAT0118]

<sup>279</sup> About 50 percent of the 51 household returned the questionnaires. GEWOG (2000) *Interkulturelles Wohnen (Inter-cultural housing)*, 1210 Wien, Satzingerweg 81, Vienna. We thank Ms Susanne Reppé, project developer at the co-operative building society GEWOG, for providing us with this material.

<sup>280</sup> Simoner, M. (2003) *Drogenrazzia im Flüchtlingsheim war rechtswidrig (Drug-razzia in refugee camp was unlawful)*, in: *Der Standard* (9. 9. 2003, p. 12). [PUBAT0197]

The lawyer of the victims also planned to lodge complaints of public liability (*Amtshaftung*) against the Republic of Austria and to file compensation for immaterial damages such as pain and suffering.

In another case, the Independent Administrative Tribunal of Vienna found that police had insulted, degraded and excessively treated a member of the Human Rights Advisory Board, who is of Turkish origin, during a police operation in Vienna in September 2001<sup>281</sup>. The tribunal decided that the arrest was justified but executed in a degrading way and therefore in violation of art 3 ECHR<sup>282</sup>.

A most interesting decision was handed down by the Austrian **Constitutional Court** at the beginning of November 2003<sup>283</sup>. The Constitutional Court found, that the UVS of Vienna had **violated the principle of equal treatment** by declaring unfounded a complaint of a black African woman asserting, that the repeated drug controls she was subjected to, were racially motivated. The woman from Ghana, who is Austrian citizen and has been living in Austria for 20 years, had been subjected to repeated drug controls when she was travelling by train from the Netherlands to Vienna in June 2001. During one train journey, which in fact led to the claim, the woman had been searched several times for drugs in the train, as well as later on in the police station and at the train station. Finally, she was also x-rayed in the hospital: always with a negative result.

However, the Independent Administrative Tribunal had not found this practice discriminatory and dismissed her complaint. As to the UVS, the increased controls were due to the woman's repeated journeys between Austria and the Netherlands, for which – in the opinion of the UVS – the woman had not been able to give a plausible explanation, as she only had maintained to visit “friends”.

By this decision, as to the Constitutional Court, the UVS had violated the right to equality of all Austrian citizens before the law. The Constitutional Court stated furthermore, that the Independent Administrative Tribunal had acted arbitrarily because it had not considered nor examined the reproach of discrimination made by the woman.

The decision of the Austrian Constitutional Court could set an important precedent for further cases, as excessive police controls which are targeting especially black people, could be found discriminatory also in future decisions. Even if the principle of equality of Art 7 B-VG, which applies only to Austrian citizens, will often not be applicable for lack of citizenship of the affected, at least the principle of equal treatment of foreigners among

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<sup>281</sup> Menschenrechtsbeirat (2003) Menschenrechtsverstoß bei der Verhaftung Öztoplus - Minister soll Verantwortung klären (Violation of human rights during the arrest of Öztoplus – the Minister shall clarify the state of responsibilities) (28.01.2003), available at: [http://www.menschenrechtsbeirat.at/index\\_aktuelles.html](http://www.menschenrechtsbeirat.at/index_aktuelles.html), (09.11.2003).

<sup>282</sup> Menschenrechtsbeirat (2003) Bülent Öztoplu vollkommen rehabilitiert (Bülent Öztoplu entirely rehabilitated), (04.03.2003), available at: [http://www.menschenrechtsbeirat.at/index\\_aktuelles.html](http://www.menschenrechtsbeirat.at/index_aktuelles.html), (09.11.2003).

<sup>283</sup> Salzburger Nachrichten (5.11.2003), Afrikanerin diskriminiert (African woman discriminated against), p.6. Der Standard (4.November 2003): VfGH: Unabhängiger Verwaltungssenat hat „Willkür geübt“ (Constitutional Court: Independent Administrative Tribunal decided “arbitrarily“), available at: <http://derstandard.at/standard.asp?id=1471924>, (09.11.2003).

each other should be applicable<sup>284</sup>. Therefore, a particular focus and excessive concentration of police operations on black persons could – without good justifications - become subject to complaints before the UVS.

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<sup>284</sup> See: Öhlinger, T. (1997) Verfassungsrecht (Constitutional Law), p. 303. [PUBAT0195]

## 7. SUMMARY AND CONCLUSIONS

The main conclusion which can be drawn from this report is that in Austria the general approach to racial violence is to see related phenomena predominantly in the context of National-Socialist ideology.

On the one hand this fact is being reflected by the Prohibition Statute, which entails the majority of provisions related to racial violence, but only penalises crimes in relation to the revitalisation of National-Socialist ideology (*Wiederbetätigung*) and does not apply to “mere” xenophobic crimes. Although, other related provisions of the Penal Code entail a broader scope applying to crimes directed against groups determined by ethnic origin, race, nation or church affiliation they rather aim at maintaining public peace than protecting the dignity of members of the mentioned groups. These provisions are therefore only applied very restrictively. On the other hand also the collection of data in governmental reports focuses on crimes in relation to the Prohibition Statute and on activities by right-wing extremist groups.

One can therefore conclude that the general perception in Austria is lacking the recognition that racial violence and crimes are not only committed by openly “confessing” right-wing extremists but also by so-called “normal people”. NGO reports are presently the only source of information about this broader concept of racial violence containing information on single incidents of racially or xenophobically motivated verbal and physical attacks. Compared to governmental sources, these reports not only include those cases of racial violence which are not considered a crime under the Austrian legal framework but also entail information on cases victims did not want to report to the police.

Considering the fact that these reports however cannot picture the whole range of racist crimes in Austria but rather provide qualitative data, the lack of a comprehensive monitoring system on racial discrimination and violence becomes evident. An institution which would provide for a sound system of data collection on complaints as well as on information on victims and perpetrators would be essential to fill the present data gaps regarding racial violence in Austria.

The transposition of the two EU Anti-Discrimination Directives will bring a twofold improvement in regard to the problems described above. Firstly they will enhance the protection against racial discrimination in regard to contractual relationships between private parties and would provide a legal basis for compensation claims. In addition Austria will have to set up a body for the promotion of equal treatment which would provide an adequate framework for a comprehensive system of data collection.

Generally it can be said that in Austria the right-wing extremist scene is being closely monitored by the Federal Ministry of the Interior which publishes valuable information about the structure and activities of related groups. However, additional data on the perpetrator’s age, sex and socio-economic background would be necessary in order to identify certain counter measures and preventive actions. Related research studies have shown that xenophobic attitudes gradually decrease with the increasing level of education. Another problem identified in this report refers to the considerable number of

cases of police misconduct, which appears to be directed in particular against black persons and other visible minorities.

Due to scarcity of related data the analysis of victims was primarily based on studies conducted in connection with xenophobic attitudes. In fact, various variables appear to influence the extent of racial discrimination and violence experienced. For instance, a higher level of education seems to shield against xenophobic acts in some areas of public life such as in contact with officials. Furthermore, the vulnerability of migrants living in Austria decreases gradually with their length of stay, i.e., progressive residence security. The clearest conclusion which could be drawn by identifying specifically vulnerable groups was the criterion of visibility. Black persons or women with headscarves tend to be subjected to a higher degree of racism than other – less recognizable – minority groups.

This fact clearly points out that recorded data on victims of racial violence should not only refer to nationality but should also include information on “visible” criteria such as colour of skin, ethnic background or membership to a religious community. Although the collection of this data is a highly sensitive issue which has to be handled with utmost care it should be acknowledged that without them there will be no true picture on the whole scale and scope of racial discrimination and violence in Austria. The function of the newly introduced Commission and Office for Equal Treatment should therefore also include the establishment of a sound system of data collection on complaints as well as on information on victims and perpetrators. This data can provide an important basis for research studies and consequently for policy decisions fighting discrimination.

## 8. ANNEX 1: BACKGROUND INFORMATION

### 8.1. DIVERSITY IN THE RESIDENT POPULATION OF AUSTRIA

The following paragraphs give an overview about some key data relevant for the assessment of the size of the various groups vulnerable to discrimination. The most complete survey of the population resident in Austria is being provided by the census carried out every ten years. The census collects from the entire resident population, among other data, information on citizenship, country of birth, and the language(s) spoken in everyday life (*Umgangssprache*). The latest census<sup>285</sup> which was carried out in May 2001 showed that 8.9 percent or 710,926 out of 8,032,926 persons resident in Austria are not Austrian citizens. The largest groups of foreign nationals are citizens of the Federal Republic of Serbia and Montenegro who numbered 132,975 persons in 2001. Citizens from the former Yugoslavian Republic including all republics (Serbia and Montenegro, Bosnia and Herzegovina, Croatia, Macedonia and Slovenia) make up for 322,261 people; or 4 percent of the resident population vic. 45.3 percent of aliens.

The number of aliens living in Austria, however, only gives an approximation to the number of migrants in the sense of this report, as it includes people from a variety of backgrounds, with different reasons for and durations of residence in Austria. On the other hand, persons with a migration background who hold the Austrian citizenship do not figure in the count as such. The census, however, provides information whether a person resident in Austria was born inside or outside the country. Among the 710,926 aliens living in Austria, 116,015 or 16.3 percent are born in Austria and may be assumed to be second generation migrants. The percentage of Austrian citizens born outside of Austria is 5.6 percent (408,488 out of a total of 7,322,000 Austrian citizens) and presumably includes a substantial number of residents who came to Austria as aliens, but also people born as Austrian citizens abroad<sup>286</sup>.

Another aspect captured by the census is the diversity of religious communities in Austria. Almost four fifths of the Austrians said that they were Roman Catholics, the second largest group is the one without any denomination, the Protestants and Muslims are almost on par with each other at about four percent. Among the aliens the Islamic Faith Community is the largest group amounting to one third of the respondents, followed by the Roman Catholic Church (23%) and the Orthodox Church (19%). Only one percent of the resident population is of Jewish faith<sup>287</sup>.

This paragraph relates to data giving insight in the changes in the numbers of the alien population due to emigration and naturalisation. In 2002, about 75,000 aliens immigrated, whereas 51,000 aliens left the country<sup>288</sup>. About 47 percent<sup>289</sup> of the overall alien resident

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<sup>285</sup> Statistik Austria (2002a) Volkszählung 2001. Hauptergebnisse I – Österreich (Census 2001. Main results I – Austria), Vienna, p17. A read-only version is available at: <http://www.statistik.at/pub/neuerscheinungen/vzaustriaweb.pdf>, (09.11.2003). [PUBAT0039]

<sup>286</sup> Statistik Austria (2002a), p18. [PUBAT0039]

<sup>287</sup> Cf. Table 15.

<sup>288</sup> Cf. Table 16.

population participated in the workforce in 2001, almost four fifths<sup>290</sup> of which originated from former Yugoslavia and Turkey. In 2002, 37,000 asylum seekers<sup>291</sup> applied for asylum in Austria. About 29,800 proceedings were concluded, 83 percent were discontinued, not considered or withdrawn. 3,568 applications were decided on – 389 applicants and 629 family members of applicants were granted asylum, 857 asylum seekers were subject to non-refoulement and 1,137 applications were rejected<sup>292</sup>. About 12 percent of the regular proceedings led to the granting of asylum, besides that almost 6,000 asylum seekers<sup>293</sup> left Austria. Comparing the first six months of 2003 with the same period in 2002 for the first time since many years a decrease of asylum applications by 11.1 percent has been reported.<sup>294</sup> Since 1998 the numbers of naturalisations have been sharply increasing and peaked at 31,700 in 2001<sup>295</sup>.

## 8.2. CURRENT LEGISLATION AND POLICY ON IMMIGRATION

The Second Republic of Austria started to actively recruit workers from abroad in the late 1960s. “Guest workers” mainly from Turkey and Yugoslavia were hired on a short term basis, their numbers peaking in 1973 with a total of about 230.000. An economic recession followed the oil crisis in 1973 and the trade unions demanded to reduce the number of migrant workers. In 1976, the Aliens Employment Act (*Ausländerbeschäftigungsgesetz*) came into force with the intention to stimulate rotation and remigration, nevertheless migrant workers perceived as temporary guests started to turn into immigrants. This process was first of all stimulated by employers who preferred already experienced labour to a constantly changing workforce, as well as by family reunion. The Aliens Employment Act includes a number of different types of work permits to regulate the influx of migrant workers in accordance with the economic situation. Due to the fall of the “Iron Curtain” and the war in Bosnia and Herzegovina the amount of migrants and asylum seekers again increased significantly in the late 1980s/1990s. The Residence Act (*Aufenthaltsgesetz*) was passed in 1992. The primary aim of this law was to restrict immigration by introducing an annual quota of residence permits, becoming even more restrictive in the late 1990s. Among other restrictions this act introduced separate permits for residence and access to the labour market, which meant that not all individuals admitted to Austria were also allowed to work. Especially family members of migrant workers, among them primarily women, were affected by this regulation. In 1997, the Aliens Act (*Fremdengesetz, Integrationspaket*) was amended. New types of residence permits were introduced; most importantly the law comprised regulations for “progressive residence security” of persons who have legally been living in Austria for at least five years. Persons living in Austria from early childhood on are

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<sup>289</sup> Calculations based on table 17.

<sup>290</sup> Cf. Table 18.

<sup>291</sup> Cf. Table 19.

<sup>292</sup> Knapp, A. (2003) Statistisches: Asylstatistik 2002: Wieder mehr Anträge (Statistics: Asylum statistic 2002: More applications), in: asylkoordination aktuell 1-2003, [PUBAT0078] pp.28-29. [PUBAT0077]

<sup>293</sup> Cf. Table 20.

<sup>294</sup> Der Standard, (19./20.07.2003), p.7.

<sup>295</sup> Cf. Table 21.

generally protected from the termination of their right to residence. Furthermore, family reunion regulations were tightened.

On July 9, 2002, the Federal Law amending the Aliens Act 1997, the Asylum Act 1997 and the Alien Employment Act<sup>296</sup> passed the National Council after nearly one year of controversial political discussion. The new law, which entered into force on January 1, 2003, was heavily criticised by the opposition parties as well as by human rights organisations and NGOs in Austria. The focus of the criticism especially laid on the introduction of an “integration agreement” (*Integrationsvereinbarung*)<sup>297</sup> to the Austrian Aliens Act, introducing an obligation to German language courses in combination with basic Austrian civic studies the fulfilment of which is compulsory for migrants coming to Austria later than January 1, 1998. Furthermore the law was criticised for establishing another precondition for future migrants who wish to settle in Austria as they have to hand in a health certificate in order to receive a permission for permanent settlement (*Niederlassungsbewilligung*). According to the changes concerning the Asylum Act effective from January 1, 2003, the age of asylum seekers may now be ascertained by x-ray examinations<sup>298</sup>. The Austrian Human Rights Advisory Board pointed out conclusively that such examinations “cannot be considered a commonly accepted scientific method to allow an exact assessment of age”<sup>299</sup>.

In May 2003 the new Regulation for Permanent Settlement (*Niederlassungsverordnung 2003*)<sup>300</sup> entered into force. According to this regulation, which lays down the maximum numbers for permits of residence for the year 2003, no more than 8,280 permits of residence shall be issued in Austria in 2003. The quotas for permits for temporarily employed Aliens are 8,000 and 7,000 for harvest assistants. The Vienna Integration Fund criticised that the majority of labour migration is being increasingly regulated by issuing temporary settlement permits which have reportedly a negative impact on the integration of labour migrants<sup>301</sup>. Family reunification also stays restricted by certain quotas which is unique in Europe.

At the end of April 2003 a new draft law (*Asylgesetz-Novelle 2003 – Amendment to the Asylum Act 2003*) which is supposed to amend the Asylum Act 1997 was presented to the public including further restrictions concerning the right to asylum<sup>302</sup>. The most

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<sup>296</sup> Österreich, BGBl. I/126/2002 (13.8.2002).

<sup>297</sup> Section 50 a-d Aliens Act 1997, last amendment by BGBl. I Nr. 126/2002 (13.08.2002).

<sup>298</sup> Section 95 para 5 Aliens Act 1997, last amendment by BGBl. I Nr. 126/2002 (13.08.2002).

<sup>299</sup> Österreich, Menschenrechtsbeirat (2000), Bericht des Menschenrechtsbeirates zum Problem „Minderjährige in der Schubhaft“ (Report of the Human Rights Advisory Board concerning the problem of “Minors in detention pending deportation”), available at: [http://www.menschenrechtsbeirat.at/index\\_berichte.html](http://www.menschenrechtsbeirat.at/index_berichte.html), (09.11.2003). [PUBAT0034], [NFPAT0006]

<sup>300</sup> Österreich, BGBl II/136/2003 (30.04.2003).

<sup>301</sup> Wiener Integrationsfonds (2002a) Stellungnahme zum Entwurf der Niederlassungsverordnung 2003 (Statement on the Regulation of Permanent Settlement 2003), p 2; available at: [http://www.wif.wien.at/wif\\_site/downloads/StNNIVo2003.pdf](http://www.wif.wien.at/wif_site/downloads/StNNIVo2003.pdf), (09.11.2003). [NFPAT0066]

<sup>302</sup> Entwurf des Bundesgesetzes, mit dem das Asylgesetz 1997 (AsylG-Novelle 2003), das Bundesbetreuungsgesetz, das Bundesgesetz über den unabhängigen Bundesasylsenat und das Meldegesetz geändert werden (Draft of the Federal Law amending the Asylum Act 1997, the Federal Care Provision Act, the Federal Act on independent Federal Asylum Senates and the

important amendments to the Asylum Act 1997 include that asylum seekers coming from so-called safe countries, enumerated by the Act, will not be able to file an application for asylum in Austria. Within 72 hours of filing the application it will be decided whether asylum is granted, a more complex asylum procedure is necessary or the applicant will be expelled immediately. Furthermore, reasons for seeking asylum can no longer be added, when the appeal proceedings are taken to the second instance. The UNHCR, NGOs, the Greens, the Social Democrats and even the Constitutional Service of the Federal Chancellery (*Verfassungsdienst*) heavily criticised these amendments envisaged by the draft legislation<sup>303</sup>. It also was also criticised that the Human Rights Advisory Board was not on the list of those invited to cast a statement<sup>304</sup>. The draft legislation has been decided on by the Austrian Council of Ministers and only minor changes have been made, especially in those articles criticised by the *Verfassungsdienst*.

### 8.3. INTEGRATION AND DIVERSITY POLICIES

In Austria, third country nationals have until recently been excluded from voting rights at all political levels. This situation was partly changed for Vienna on December 13, 2002, when the Provincial Parliament of Vienna (*Wiener Landtag*) voted for the introduction of a right to vote and to stand in district council elections as candidate for all foreign residents, who have held permanent residence in Vienna over a period of five subsequent years<sup>305</sup>. The district councils decide all issues regarding the district such as the maintenance of schools or the establishment of green areas<sup>306</sup>. The Greens and the Social Democrats agreed with the new regulations, whereas the People's Party (ÖVP) and the Freedom Party (FPÖ) objected the amendment. The Provincial government had to confirm a second time its decision on the Act introducing voting rights for third country nationals at the Viennese district level as the Council of Ministers decided on February 7, 2003, on raising an objection against it. With respect to the next Viennese Municipal Elections in 2006, the new regulation will allow the participation of approximately

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Registration Law), available at: [http://www.bmi.gv.at/begutachtungdownload/Asylgesetz-Novelle\\_Entwurf.pdf](http://www.bmi.gv.at/begutachtungdownload/Asylgesetz-Novelle_Entwurf.pdf), (09.11.2003).

<sup>303</sup> ZEBRA (2003), Neues Asylgesetz bedeutet „schnelle, reibungslose“ Abschiebung von Asylwerbern (New Asylum Act means faster and smooth expulsion of asylum seekers), available at: [http://www.zebra.or.at/aktuell/stellungnahme\\_asyl.htm](http://www.zebra.or.at/aktuell/stellungnahme_asyl.htm), (09.11.2003), [PUBAT0095], Deserteurs- und Flüchtlingsberatung (2003) Stellungnahme zur Asylnovelle 2003 (Statement concerning amendments to the Asylum Act 2003), available at: [http://www.deserteursberatung.at/schwerpunkte/oeffentlichkeit/stellungnahme\\_asylg03\\_0503.htm](http://www.deserteursberatung.at/schwerpunkte/oeffentlichkeit/stellungnahme_asylg03_0503.htm), (09.11.2003), [PUBAT0066], Asyl-Gesetzesentwurf widerspricht Genfer- und Menschenrechtskonvention (Draft legislation concerning the Asylum Act violates Geneva and Human Rights Convention), available at: <http://www.volksgruppen.orf.at/bin/at/de/news/200305/20030516121501kor.html>, (09.11.2003), [PUBAT0099] Erhebliche Bedenken des Verfassungsdienstes gegen Asylgesetz-Entwurf (Severe objections to the Asylum Act by the *Verfassungsdienst*), available at: <http://www.volksgruppen.at/bin/at/news/200306/20030604103026kor.html>, (09.11.2003). [PUBAT0099]

<sup>304</sup> Strassers Beirat gegen Asylgesetz (Strasser's Advisory Board opposes Asylum Act), in: Der Standard (11.06.2003), p.10. [PUBAT0046]

<sup>305</sup> Gesetz, mit dem die Wiener Stadtverfassung und die Wiener Gemeindevahlordnung 1996 geändert werden. (Law amending the Viennese City Constitution and the Viennese Municipal Electoral Law 1996), LGBl 22/30 (21.05.2003).

<sup>306</sup> A district is the smallest administrative unit of Vienna.

100,000 persons of foreign citizenship living in Vienna<sup>307</sup>. A public relations campaign including advertisements in various newspapers as well as posters all over Vienna was set up in order to make all the relevant changes known to the residents of Vienna. Furthermore, information in English, Serbian/Bosnian/Croatian, Turkish and Polish is available at the website of the city of Vienna<sup>308</sup>. During the months April and May, many billboards in Vienna showed posters of a campaign by the FPÖ against the right to vote for non-citizens. The campaign features models of apparent foreign descent who are described as Austrian citizens as supporting the FPÖ slogan<sup>309</sup>. A Turkish born man whose photograph is used in the campaign assures that he is actually a supporter of the new regulations and affirms he had been told that he was posing for a pro-foreigner campaign<sup>310</sup>. But not only in the capital the extension of voting rights had made a progressive step also in Vorarlberg electoral rights for foreigners have become conceivable<sup>311</sup>.

The so-called Integration Agreement (*Integrationsvereinbarung*) which was introduced by the latest amendment of the Austrian Aliens Act came into force on January 1, 2003. According to the legislator the new provisions aim at the “integration of aliens with permanent residence” by means of introducing an obligation to German language courses in combination with basic Austrian civic studies. The obligation applies to non EU and EEA citizens who have been living less than five years in Austria and cannot speak German sufficiently. The state pays 50 percent if the obliged person attends the courses within 18 months, afterwards the height of the subsidy decreases and changes into a punishment. Failure to fulfil the requirements of the “Integration Agreement” entails penalty fees up to €200 and might even lead to the expiry of the right to abode in Austria.

The introduction of the obligation of German language courses reflects a one-sided approach towards integration<sup>312</sup> neglecting the role of the so-called native population which is vital for a sustainable integration process<sup>313</sup>. Furthermore sustainable integration is characterised by voluntary decisions of both the migrant and local population<sup>314</sup>. In this light the introduction of sanctions such as penalty fees or even the expiry of the right to

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<sup>307</sup> See: Der Standard, (13.12.2002), available at: <http://derstandard.at/standard.asp?id=1160185>, (09.11.2003). [PUBAT0046]

<sup>308</sup> The relevant information is available at: <http://www.wien.gv.at/ma62/demokratiepaket/>, (09.11.2003).

<sup>309</sup> Wien beharrt auf Ausländerwahlrecht (Vienna insists on the right to vote of foreigners), in: Kurier (24.04.2003) available at: <http://kurier.at/oesterreich/133298.php>, (09.11.2003).

<sup>310</sup> Herr Babayigit hat das nicht gesagt (Mr Babayigit did not say anything like that), in: Der Standard (27.05.2003) available at, <http://derstandard.at/archiv>, (09.11.2003). [PUBAT0046]

<sup>311</sup> Wahlrecht für Ausländer vorstellbar (Electoral rights for aliens are conceivable), available at: <http://vorarlberg.orf.at/oesterreich.orf?read=detail&channel=7&id=258493>, (09.11.2003). [PUBAT0049]

<sup>312</sup> ZARA (2002) Rassismusreport 2001 (Racism Report 2001), p. 40, available at: [http://www.zara.or.at/01\\_03.html](http://www.zara.or.at/01_03.html), (09.11.2003).

<sup>313</sup> See definition of integration in: ECRE (1999), Position on the Integration of Refugees in Europe, p. i, available at: <http://www.ecre.org/positions/integ.pdf>, (09.11.2003). [PUBAT0117]

<sup>314</sup> Bauböck, R. (2001) Gleichheit, Vielfalt und Zusammenhalt – Grundsätze für die Integration von Einwanderern (Equality, Diversity and Cohesion – Principles for Integration of Immigrants) in R. Bauböck/P. Volk (eds.), Wege zur Integration. Was man gegen Diskriminierung und Fremdenfeindlichkeit tun kann. (Ways to Integration. What to do against discrimination and xenophobia.), Klagenfurt: Drava, pp. 14-15. [PUBAT0088]

adobe in cases of non-fulfilment of the “integration agreement” seems questionable and was criticised by several NGOs<sup>315</sup>. Promoting voluntary participation through a stronger system of incentives like it was done in the Netherlands might seem as more coherent with the concept of integration<sup>316</sup>. Also the high demand for voluntary German courses provided by the Vienna Integration Fund has shown that coercive measures are not necessary to promote the attendance of German courses<sup>317</sup>.

According to media reports very little demand is counted for the obligatory German courses. Although estimations for 2003 considered 20,000 to 30,000 necessary course places only 200 persons in fact are attending the courses at present. According to Alexander Janda head of the fund for the integration of refugees of the Austrian Ministry of the Interior (*Fonds zur Integration von Flüchtlingen*) the foreigners’ knowledge of German is obviously far better than expected<sup>318</sup>. The Ministry is presently conducting an internal evaluation on the implementation of the integration agreement. The evaluation shall cover information on the number of courses and participants as well as the results of random evaluations of some courses and on the opinion of participants on the usefulness of such courses. The results will presumably be presented in a press conference at the end of September<sup>319</sup>.

In regard to training programmes it seems relevant to mention two important initiatives which intend to foster integration and non-discrimination. In September 1999 a two semester training course for executive officers covering inter alia intercultural communication, conflict management, diversity, minorities, migration, human rights and discrimination was launched<sup>320</sup>. The emphasis of the course is on imparting legal

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<sup>315</sup> Wiener Integrationsfonds (2002b) Begutachtung und Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Fremdenengesetz 1997, das Asylgesetz 1997 und das Ausländerbeschäftigungsgesetz geändert werden (Expert opinion and statement of the Vienna Fund for Integration on the draft for the Amendment to the Alien Act 1997, the Asylum Act 1997 and the Alien Employment Act), available at: [http://www.wif.wien.at/wif\\_site/downloads/WIF\\_StellungIV.pdf](http://www.wif.wien.at/wif_site/downloads/WIF_StellungIV.pdf), (09.11.2003); [PUBAT0131] [NFPAT0066]. verbal – Verband für angewandte Linguistik (2002) Stellungnahme zur „Integrationsvereinbarung“, available at: [http://www.univie.ac.at/linguistics/verbal/verb\\_stel\\_arc.htm](http://www.univie.ac.at/linguistics/verbal/verb_stel_arc.htm), (09.11.2003); [PUBAT0127]. Wiener Integrationshaus (2002) Stellungnahme zur Novellierung des Fremdenrechts (statement on the amendment of the Aliens Act) available at: <http://www.integrationshaus.at/pressestelle/fremdenrecht.htm>, (09.11.2003). [PUBAT0133] [NFPAT0155]

<sup>316</sup> Michael Chalupka, director of the Diakonie Austria, cited in: Der Standard, (02.01.2003) p. 6. See also: Wiener Integrationsfonds (2003) Report 2002 - Tätigkeitsbericht, p. 33, available at: <http://www.wif.wien.at/>, (09.11.2003). [PUBAT0129] [NFPAT0066]

<sup>317</sup> In the last five years more than 25,000 persons attended German courses in the framework of the so-called “Sprachoffensive” (Language Offensive), see: Wiener Integrationsfonds (2003) Report – Tätigkeitsbericht 2002, p. 33, available at: <http://www.wif.wien.at/>, (09.11.2003). [PUBAT0129] [NFPAT0066]

<sup>318</sup> Alexander Janda cited on the website of the Österreichischer Rundfunk – Minderheitenredaktion: Integration contract for foreigners: Hardly demand for German courses, available at <http://volksgruppen.orf.at/austria/en/home/home.htm>, (09.11.2003).

<sup>319</sup> Information stem from a telephone interview with Alexander Janda, head of the fund for the integration of refugees, (01.08.2003).

<sup>320</sup> Further information on this project can be obtained at the website of the Federal Ministry of Internal Affairs: [http://www.bmi.gv.at/oeffentlicherheit/2001/09\\_10/artikel\\_13.asp](http://www.bmi.gv.at/oeffentlicherheit/2001/09_10/artikel_13.asp) or the

knowledge as well as consciousness building by working in small groups, role-playing exercises, discussions, case studies, excursions, research activity. This project, which has been mentioned as good practice model by organisations such as the UNHCR or the EUMC<sup>321</sup>, is now running for the fourth consecutive year.

Another successful training initiative is a three days training course for around 18 judges and public prosecutors focussing on awareness raising and sensitising on the issues of racism and discrimination. The training curriculum was developed by the Austrian section of the Anti-Defamation League (ADL) and the Ludwig Boltzmann Institute of Human Rights. The seminars are financed by the Federal Ministry of Justice and took place for the third time in March 2003. The reactions of the participating judges have been very positive so far<sup>322</sup>.

## 8.4. AUTOCHTHONOUS MINORITIES

The Austrian minority policy regarding the autochthonous ethnic groups (*Volksgruppen*) is characterised by the different treatment of minorities by the national state and the federal provinces<sup>323</sup>. Between 1945 and 1955, the minority policy was determined by the negotiations concerning the Austrian State Treaty<sup>324</sup> involving Austria and the allied forces of WW II. Article 7 of this Treaty provides special protective rights for the Slovenes in Carinthia and Styria as well as the Croats in the Burgenland, including the right to education in their own language, the right to use their language as an official language and the right to bilingual place name signposts in specified areas. The implementation of minority rights for the Croats in the Burgenland has always been less controversial than for the Slovenes in Carinthia. This development first of all dates back to the different treatment of minorities in the Austrian and Hungarian part of the Habsburg monarchy and to the different experiences of these two federal provinces during the period of National Socialism. The experiences of the Carinthian population deepened the gap between the Slovene and German speaking population along the lines of three cleavages: the Slovenes were the victims of the NS regime as well as the ones mainly responsible for the anti-fascist resistance whereas the German speaking population was the one tolerating or even supporting National Socialism; after WW II the Carinthian resistance movements supported the territorial demands of Yugoslavia which meant conflict with the German speaking Carinthians; this brought about a third cleavage

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website of the International Centre for Cultures and Languages in Vienna:

[http://www.tandemcity.info/formacion/de34\\_jtt7-interkultur.htm](http://www.tandemcity.info/formacion/de34_jtt7-interkultur.htm), (09.11.2003).

<sup>321</sup> Hirtenlehner, M., Gratzl-Ploteny, S. (2002) Policing in a multicultural Society, in: Equal Voices, issue 10, pp.4-6. Also available at:

[http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3e3e6e32a2316&contentid=3e3e87316eed4](http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3e3e6e32a2316&contentid=3e3e87316eed4), (09.11.2003). [PUBAT0120] [NFPAT0189]

<sup>322</sup> Referring to unpublished results of an internal evaluation conducted by ADL-Vienna.

<sup>323</sup> Baumgartner, G. and Perching, B. (1997) Minderheitenpolitik (Minority policy), in: H. Dachs/P. Gerlich/H. Gottweis/F. Horner/H. Kramer/V. Lauber/W.C. Müller/E. Tálos (eds.), Handbuch des politischen Systems Österreichs: Die Zweite Republik (Handbook of the Austrian political system: The Second Republic), Vienna: Manz, p.628. [PUBAT0004]

<sup>324</sup> Österreich, BGBl 152/1955, available at: <http://www.bka.gv.at/bka/dokumente/art7SV.pdf>, (09.11.2003).

namely the ideological involvement in the east-west conflict due to the communist orientation of Yugoslavia<sup>325</sup>.

In the 1970s the SPÖ government initiated the National Minorities Act (*Volksgruppengesetz*), which tried to form a unified legal framework for all minorities and at the same led to the official recognition of the Czechs and Slovaks in Vienna as well as the Hungarians in the Burgenland as minority groups. The Act established Minority Advisory Councils (*Volksgruppenbeiräte*) within the Federal Chancellery for all officially recognised minority groups, their competences are, however, restricted to non-binding advisory activities. Furthermore, the Act defines minority groups as “groups that settle and are resident in parts of the federal republic that are Austrian citizens with a non-German mother tongue and their own ethnicity”<sup>326</sup>. These provisions stimulated a tendency towards segregation, each minority perceiving themselves as an ethnic group started to claim their interests against other ethnic groups including the majority population. This claim of interests should be reached via positive action programmes, special provisions for certain settlement areas and policies, via special subsidies and via establishing own institutions<sup>327</sup>.

The last census of 2001 carried also enquires about the language spoken in everyday life and broke down the language results according to citizenship. The number of Austrian citizens speaking one of the languages of the six recognised autochthonous minorities is an index to the size of these groups<sup>328</sup>. This count gives the impression that the Austrian national minorities constitute little more than 1 percent of the citizens of Austria. In comparison, 95.5 percent (6,991,388) of all Austrian citizens indicated they used German as their usual language. The remaining 248,108 or 3.4 percent of all Austrian citizens usually speak some other language. Representatives of the autochthonous minorities doubt the informative value of these figures and give estimates in much higher ranges<sup>329</sup>.

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<sup>325</sup> Baumgartner, G./Perchinig, B. (1997), p.630. [PUBAT0004]

<sup>326</sup> Österreich, BGBl 396/1976, available at:  
<http://www.bka.gv.at/bka/dokumente/volksgruppengesetz.pdf>, (09.11.2003).

<sup>327</sup> Baumgartner, G./Perchinig, B. (1997), p.637. [PUBAT0004]

<sup>328</sup> Cf. Table 22.

<sup>329</sup> Cf. Table 23.

## 9. ANNEX 2: TABLES

**Table 14: Resident population 2001 by Citizenship and Federal Province**

| Resident population | Austrians        | in %         | Aliens         | in %        | Total            |
|---------------------|------------------|--------------|----------------|-------------|------------------|
| Burgenland          | 265,005          | 95.5%        | 12,564         | 4.5%        | 277,569          |
| Carinthia           | 527,333          | 94.3%        | 32,071         | 5.7%        | 559,404          |
| Lower Austria       | 1,451,770        | 93.9%        | 94,034         | 6.1%        | 1,545,804        |
| Upper Austria       | 1,277,180        | 92.8%        | 99,617         | 7.2%        | 1,376,797        |
| Salzburg            | 454,807          | 88.3%        | 60,520         | 11.7%       | 515,327          |
| Styria              | 1,129,791        | 95.5%        | 53,512         | 4.5%        | 1,183,303        |
| Tyrol               | 609,860          | 90.6%        | 63,644         | 9.4%        | 673,504          |
| Vorarlberg          | 304,395          | 86.7%        | 46,700         | 13.3%       | 351,095          |
| Vienna              | 1,301,859        | 84.0%        | 248,264        | 16.0%       | 1,550,123        |
| <b>Austria</b>      | <b>7,322,000</b> | <b>91.1%</b> | <b>710,926</b> | <b>8.9%</b> | <b>8,032,926</b> |

Source: Statistik Austria (2002b), *Statistisches Jahrbuch 2003 (Statistical yearbook 2003)*, Table 2.14 *Bevölkerung 2001 nach ausgewählten Merkmalen und Bundesländern (Population in 2001 by selected topics and Länder)*, available at: <http://www.statistik.at/jahrbuch/pdf/k02.pdf>, (04.06.03), p.56.

**Table 15: Resident population in Austria by religion in 2001**

| Religion                         | Resident population |              | Austrian citizens |              | Aliens         |              |
|----------------------------------|---------------------|--------------|-------------------|--------------|----------------|--------------|
|                                  |                     | %            |                   | %            |                | %            |
| Roman Catholic Church            | 5,915,421           | 73.6         | 5,753,617         | 78.6         | 161,804        | 22.8         |
| Greek Catholic Church            | 1,853               | 0.0          | 1,055             | 0.0          | 798            | 0.1          |
| Orthodox Church                  | 179,472             | 2.2          | 43,450            | 0.6          | 136,022        | 19.1         |
| Protestant Church                | 376,150             | 4.7          | 343,656           | 4.7          | 32,494         | 4.6          |
| Other Christ. communities        | 69,227              | 0.9          | 57,939            | 0.8          | 11,288         | 1.6          |
| Jewish Faith Community           | 8,140               | 0.1          | 6,112             | 0.1          | 2,028          | 0.3          |
| Islamic Faith Community          | 338,988             | 4.2          | 96,052            | 1.3          | 242,936        | 34.2         |
| Other non-Christ. communities    | 19,750              | 0.2          | 11,082            | 0.2          | 8,668          | 1.2          |
| No Religion                      | 963,263             | 12.0         | 883,979           | 12.1         | 79,284         | 11.2         |
| Unknown                          | 160,662             | 2.0          | 125,058           | 1.7          | 35,604         | 5.0          |
| <b>Total resident population</b> | <b>8,032,926</b>    | <b>100.0</b> | <b>7,322,000</b>  | <b>100.0</b> | <b>710,926</b> | <b>100.0</b> |

Source: Statistik Austria (2002a), *Volkszählung 2001. Hauptergebnisse I – Österreich, Table 15: Bevölkerung nach Religion, Alter und Staatsangehörigkeit (Population according to religion, age and nationality)*, p.77 and own calculations.

**Table 16: Immigration and emigration (1999-2001)**

| year | immigration |        | emigration |        | difference |        |
|------|-------------|--------|------------|--------|------------|--------|
|      | Austrians   | Aliens | Austrians  | Aliens | Austrians  | Aliens |
| 1999 | 14,331      | 72,379 | 19,644     | 47,279 | -5,313     | 25,100 |
| 2000 | 13,324      | 65,954 | 17,639     | 44,367 | -4,315     | 21,587 |
| 2001 | 15,142      | 74,786 | 21,644     | 51,010 | -6,502     | 23,776 |

Source: 1999-2000: Statistik Austria (2001), Statistisches Jahrbuch 2002, Table: 2.48 Außenwanderung 1999 und 2000 nach Herkunfts- bzw. Zielländern und In- und Ausländern (International migration in 1999 and 2000 by countries of origin and destination and by citizenship), p.97, Statistik Austria (2002b), Statistisches Jahrbuch 2003, Table: 2.45 Außenwanderungen 2000 und 2001 nach Herkunfts- bzw. Zielländern und In- und Ausländern (International migration in 2000 and 2001 by countries of origin and destination and by citizenship), available at: <http://www.statistik.at/jahrbuch/pdf/k02.pdf>, (04.06.2003).

**Table 17: Labour market participation in general (1999-2002)**

| Year | Overall    |                             |                                   | Austrians  |                             |                                   | Aliens     |                             |                                   |
|------|------------|-----------------------------|-----------------------------------|------------|-----------------------------|-----------------------------------|------------|-----------------------------|-----------------------------------|
|      | population | working people + unemployed | % working people among population | population | working people + unemployed | % working people among population | population | working people + unemployed | % working people among population |
| 1999 | 8,092,254  | 3,329,641                   | 41.1                              | 7,344,082  | 2,996,033                   | 40.8                              | 748,172    | 333,608                     | 44.6                              |
| 2000 | 8,110,244  | 3,328,052                   | 41.0                              | 7,352,367  | 2,982,444                   | 40.6                              | 757,877    | 345,608                     | 45.6                              |
| 2001 | 8,131,953  | 3,352,038                   | 41.2                              | 7,367,639  | 2,992,117                   | 40.6                              | 764,314    | 359,921                     | 47.1                              |
| 2002 | ???        | 3,387,579                   | ???                               | ???        | 3,017,016                   | ???                               | ???        | 370,563                     | ???                               |

| Year | Former Yugoslavia |                             |                                   | Turkey     |                             |                                   |
|------|-------------------|-----------------------------|-----------------------------------|------------|-----------------------------|-----------------------------------|
|      | population        | working people + unemployed | % working people among population | population | working people + unemployed | % working people among population |
| 1999 | 340,862           | 157,772                     | 46.3                              | 136,334    | 53,727                      | 39.4                              |
| 2000 | 341,634           | 156,439                     | 45.8                              | 134,547    | 52,250                      | 38.8                              |
| 2001 | 341,730           | 159,002                     | 46.5                              | 133,435    | 50,370                      | 37.7                              |
| 2002 | ???               | 155,792                     | ???                               | ???        | 46,850                      | ???                               |

Source: *Arbeitsmarktservice Österreich, Table: Arbeitsmarktlage seit 1946 (Labour market situation since 1946) and Arbeitsmarktlage der Männer und Frauen (Labour market situation of men and women)*, *Arbeitsmarktservice Österreich, Table: Arbeitsmarktlage der In- und Ausländer seit 1977 (Labour market situation of Austrians and aliens since 1977) and Arbeitsmarktlage der Männer und Frauen (Labour market situation of men and women)*, both available at: <http://www.ams.or.at/>, (04.06.2003) and *Statistik Austria, Ergebnisse: Bevölkerung (Results: Population): Table: Bevölkerungsstand (Population)*, available at: [http://www.statistik.at/fachbereich\\_03/bevoelkerung\\_tab1.shtml](http://www.statistik.at/fachbereich_03/bevoelkerung_tab1.shtml), (30.08.2002).

<sup>330</sup> These numbers are not available yet 2003.

**Table 18: Employees of third country origin by citizenship (1999-2002)**

| countries of origin                 | 1999           |              | 2000           |               | 2001           |               | 2002           |               |
|-------------------------------------|----------------|--------------|----------------|---------------|----------------|---------------|----------------|---------------|
|                                     |                | %            |                | %             |                | %             |                | %             |
| Yugoslavia (partly incl. former YU) | 77,116         | 32.2         | 75,639         | 31.3          | 70,821         | 29.5          | 63,751         | 27.9          |
| Croatia                             | 23,207         | 9.7          | 24,631         | 10.2          | 25,886         | 10.8          | 25,862         | 11.3          |
| Slovenia                            | 6,026          | 2.5          | 6,051          | 2.5           | 6,004          | 2.5           | 5,984          | 2.6           |
| Bosnia-Herzegovina                  | 34,185         | 14.3         | 37,382         | 15.4          | 40,981         | 17.1          | 42,355         | 18.5          |
| Macedonia                           | 3,963          | 1.7          | 4,185          | 1.7           | 4,339          | 1.8           | 4,448          | 1.9           |
| Turkey                              | 47,712         | 20.0         | 46,603         | 19.2          | 43,658         | 18.2          | 39,121         | 17.1          |
| Poland                              | 8,700          | 3.6          | 8,744          | 3.6           | 8,766          | 3.7           | 8,662          | 3.8           |
| Hungary                             | 8,968          | 3.8          | 9,549          | 3.9           | 10,431         | 4.4           | 10,881         | 4.8           |
| Rumania                             | 7,548          | 3.2          | 7,233          | 3.0           | 6,406          | 2.7           | 5,658          | 2.5           |
| Czechoslovakia                      | 654            | 0.3          | 527            | 0.2           | 336            | 0.1           |                | 0.0           |
| Slovakia                            | 4,010          | 1.7          | 4,314          | 1.8           | 4,811          | 2.00          | 5,121          | 2.3           |
| Czech Republic                      | 3,932          | 1.6          | 4,065          | 1.7           | 4,182          | 1.7           | 4,193          | 1.8           |
| Bulgaria                            | 1,149          | 0.5          | 1,128          | 0.5           | 1,106          | 0.5           | 998            | 0.4           |
| Switzerland                         | 856            | 0.4          | 882            | 0.4           | 865            | 0.4           | 841            | 0.4           |
| Albania                             | 426            | 0.2          | 431            | 0.2           | 418            | 0.2           | 378            | 0.2           |
| Asia                                | 6,741          | 2.8          | 6,832          | 2.8           | 6,991          | 2.9           | 6,497          | 2.8           |
| Africa                              | 1,934          | 0.8          | 1,891          | 0.8           | 1,851          | 0.8           | 1,659          | 0.7           |
| America                             | 260            | 0.1          | 258            | 0.1           | 277            | 0.1           | 292            | 0.1           |
| USA/CAN                             | 731            | 0.3          | 722            | 0.3           | 725            | 0.3           | 675            | 0.3           |
| Australia/Oceania                   | 141            | 0.1          | 134            | 0.1           | 133            | 0.1           | 138            | 0.1           |
| Without/Unknown Citizenship         | 147            | 0.1          | 148            | 0.1           | 162            | 0.1           | 146            | 0.1           |
| Other countries                     | 733            | 0.3          | 809            | 0.3           | 910            | 0.4           | 1,220          | 0.5           |
| <b>Total</b>                        | <b>239,139</b> | <b>100.0</b> | <b>242,158</b> | <b>100.00</b> | <b>240,059</b> | <b>100.00</b> | <b>228,880</b> | <b>100.00</b> |

Source: *Arbeitsmarktservice Österreich (2001), Statistiken: Arbeitsmarktdaten 2000: Table: BA 801: Jahresdurchschnitt 2000: Bewilligungspflichtig beschäftigte Ausländer/innen nach Staatszugehörigkeit in Österreich (Annual average 2000: Foreign employees obliged to have a work permit by countries of origin in Austria), p.75 and Arbeitsmarktservice Österreich (2002), Statistiken: Arbeitsmarktdaten 2001: Table: BA 801: Jahresdurchschnitt 2001: Bewilligungspflichtig beschäftigte Ausländer/innen nach Staatszugehörigkeit in*

**Table 19: Applications for asylum (1991-2002)**

| 1991   | 1992   | 1993  | 1994  | 1995  | 1996  | 1997  | 1998   | 1999   | 2000   | 2001   | 2002   |
|--------|--------|-------|-------|-------|-------|-------|--------|--------|--------|--------|--------|
| 27,306 | 16,238 | 4,744 | 5,082 | 5,920 | 6,991 | 6,719 | 13,805 | 20,129 | 18,284 | 30,127 | 37,070 |

Source: For 1991-2000: Statistik Austria (2001), *Statistisches Jahrbuch 2002*, Table: 2.50 Zuzug von Flüchtlingen (Asylwerbern) 1991 bis 2000 (Immigration of refugees (applicants for asylum) 1991 to 2000, p.99, for 2001: Statistik Austria (2002b), *Statistisches Jahrbuch 2003*, Table: 2.47 Zuzug von Flüchtlingen (Asylwerbern) 1992 bis 2001 (Immigration of refugees (applicants for asylum) 1992 to 2001, available at: <http://www.statistik.at/jahrbuch/pdf/k02.pdf>, (04.06.2003), p.95, for 2002: UNHCR Aktuell, March 18, 2003, available at: <http://www.unhcr.at/pdf/242.pdf>, (04.06.2003).

**Table 20: Emigration of refugees (1991-2002)<sup>331</sup>**

| 1991  | 1992  | 1993  | 1994  | 1995  | 1996  | 1997  | 1998  | 1999  | 2000  | 2001  | 2002  |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 3,098 | 1,754 | 1,375 | 1,803 | 1,158 | 1,318 | 1,333 | 1,655 | 5,003 | 5,926 | 4,122 | 5,967 |

Source: For 1991-2000: Statistik Austria (2001), *Statistisches Jahrbuch 2002*, Table: 2.51 Auswanderung von Flüchtlingen via Österreich 1991 bis 2000 (Emigration of refugees from Austria 1991 to 2000, p.100, for 2001: Statistik Austria, Table: Natürliche Bevölkerungsbewegung (Natural population movement), available at: [http://www.statistik.at/fachbereich\\_03/bevoelkerung\\_tab4.shtml](http://www.statistik.at/fachbereich_03/bevoelkerung_tab4.shtml), (02.09.2002), for 2002: Information provided by IOM Vienna, June 4, 2003.

<sup>331</sup> The term “refugees” encompasses Convention refugees, asylum seekers and transitees. The table only includes those refugees that left Austria with the help of the International Organization for Migration; the remaining emigrants are missing and therefore these numbers are not accurate.

**Table 21: Naturalisations (of people living in Austria) (1991-2001)**

|                       | 1992  | 1993  | 1994  | 1995  | 1996  | 1997  | 1998  | 1999   | 2000  | 2001   |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|--------|-------|--------|
| Bulgaria              | 63    | 59    | 181   | 131   | 159   | 185   | 318   | 302    | 385   | 386    |
| Germany               | 398   | 398   | 322   | 195   | 135   | 156   | 151   | 89     | 102   | 106    |
| France                | 15    | 10    | 15    | 4     | 9     | 3     | 3     | 1      | 5     | 6      |
| Greece                | 33    | 27    | 12    | 18    | 14    | 19    | 9     | 11     | 3     | 3      |
| Italy                 | 52    | 80    | 58    | 46    | 41    | 31    | 30    | 13     | 16    | 13     |
| Former Yugoslavia     | 4,329 | 5,780 | 5,621 | 4,529 | 3,118 | 3,659 | 4,142 | 6,728  | 7,557 | 10,737 |
| Netherlands           | 12    | 23    | 8     | 7     | 3     | 8     | 7     | 2      | 6     | 6      |
| Poland                | 541   | 581   | 757   | 680   | 496   | 660   | 749   | 531    | 545   | 606    |
| Rumania               | 542   | 672   | 904   | 872   | 691   | 1,096 | 1,500 | 1,635  | 2,682 | 2,813  |
| Switzerland           | 15    | 28    | 21    | 41    | 14    | 22    | 31    | 30     | 16    | 19     |
| Former USSR           | 43    | 78    | 136   | 152   | 165   | 225   | 317   | 242    | 274   | 321    |
| Former Czech Republic | 368   | 251   | 329   | 430   | 261   | 383   | 539   | 379    | 540   | 527    |
| Turkey                | 1,987 | 2,686 | 3,377 | 3,201 | 7,492 | 5,064 | 5,664 | 10,324 | 6,720 | 10,046 |
| Hungary               | 272   | 296   | 355   | 310   | 297   | 332   | 412   | 407    | 351   | 315    |
| Egypt                 | 329   | 416   | 384   | 407   | 318   | 439   | 633   | 572    | 657   | 807    |
| Argentina             | 8     | 7     | 18    | 18    | 5     | 20    | 12    | 13     | 12    | 13     |
| Chile                 | 30    | 13    | 22    | 37    | 33    | 16    | 21    | 13     | 17    | 8      |
| China                 | 319   | 331   | 302   | 324   | 270   | 405   | 416   | 395    | 553   | 727    |
| India                 | 273   | 293   | 358   | 495   | 394   | 529   | 415   | 297    | 486   | 638    |
| Iraq                  | 133   | 65    | 73    | 47    | 53    | 106   | 124   | 364    | 449   | 229    |
| Iran                  | 371   | 320   | 359   | 531   | 301   | 352   | 424   | 498    | 481   | 451    |
| Israel                | 95    | 81    | 57    | 52    | 28    | 44    | 67    | 38     | 65    | 33     |
| Cambodia              | 15    | 18    | 5     | 17    | 13    | 18    | 9     | 58     | 50    | 20     |
| Lebanon               | 74    | 35    | 60    | 34    | 16    | 25    | 41    | 57     | 65    | 56     |
| Philippines           | 403   | 518   | 509   | 473   | 312   | 436   | 249   | 201    | 359   | 431    |

**Table 22: Languages of the Austrian autochthonous minorities according to the census 2001**

| Language (incl. combinations with German) | Resident population |              | Austrian citizens |              | Aliens         |              |
|---|---------------------|--------------|-------------------|--------------|----------------|--------------|
|   |                     | %            |                   | %            |                | %            |
| Hungarian                                 | 40,583              | 0.5          | 25,884            | 0.4          | 14,699         | 2.1          |
| Burgenland-Croatian                       | 19,412              | 0.2          | 19,374            | 0.3          | 38             | 0.0          |
| Slovenian                                 | 24,855              | 0.3          | 17,953            | 0.2          | 6,902          | 1.0          |
| "Windisch" <sup>332</sup>                 | 568                 | 0.0          | 567               | 0.0          | 1              | 0.0          |
| Czech                                     | 17,742              | 0.2          | 11,035            | 0.2          | 6,707          | 0.9          |
| Slovak                                    | 10,234              | 0.1          | 3,343             | 0.0          | 6,891          | 1.0          |
| Romani                                    | 6,273               | 0.1          | 4,348             | 0.1          | 1,925          | 0.3          |
| <b>Total minority languages</b>           | <b>119,667</b>      | <b>1.5</b>   | <b>82,504</b>     | <b>1.1</b>   | <b>37,163</b>  | <b>5.2</b>   |
| German                                    | 7,115,780           | 88.6         | 6,991,388         | 95.5         | 124,392        | 17.5         |
| <b>Total all languages</b>                | <b>8,032,926</b>    | <b>100.0</b> | <b>7,322,000</b>  | <b>100.0</b> | <b>710,962</b> | <b>100.0</b> |

Source: Statistik Austria (2002a), *Volkszählung 2001. Hauptergebnisse I – Österreich, Table 14: Bevölkerung nach Umgangssprache, Staatsangehörigkeit und Geburtsland (Population according to vernacular, nationality and country of birth)*, p.76 and own calculations.

**Table 23: Autochthonous ethnic groups (1910-1991)**

|                     | 1910                            | 1951   | 1991   | Estimates for late 1990s |
|---------------------|---------------------------------|--------|--------|--------------------------|
| Croatians           | 44,243                          | 35,181 | 29,596 | 40-50,000                |
| Slovaks             | Included in the category Czechs | 301    | 1,015  | 5-10,000                 |
| Slovenes            | 74,210                          | 42,413 | 20,191 | 50,000                   |
| Czechs              | 119,447                         | 3,817  | 9,822  | 15-20,000                |
| Hungarians          | 26,570                          | 8,408  | 19,638 | 30-50,000                |
| Roma <sup>333</sup> |                                 |        |        | 10-20,000                |

Source: Österreichisches Volksgruppenzentrum (2000), *Volksgruppenreport 2001: Zur Lage der ethnischen Minderheiten in der Republik Österreich, NGO-Report; Minderheiten in Österreich (Report on the autochthonous ethnic groups 2001: On the situation of minorities in the Republic of Austria, NGO-Report; Minorities in Austria)*, Wien, available at: <http://www.gfbv.it/3dossier/oevz/rep2000.html>, (27.06.2003), p.12.

<sup>332</sup> "Windisch" is a label for Slovenians in Carinthia. However, nowadays, declared speakers of "Windisch" do not consider themselves as speakers of Slovenian

<sup>333</sup> The Roma have only officially been recognised as an autochthonous ethnic group in 1993.

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