

Analytical Report on Legislation

RAXEN National Focal Point AUSTRIA

Ludwig Boltzmann Institut für Menschenrechte (BIM) /
Ludwig Boltzmann Institute of Human Rights, Vienna

in cooperation with the
Institut für Sprachwissenschaft der Universität Wien/
Department of Linguistics, University of Vienna

and the
Institut für Konfliktforschung (IKF)/
Institute of Conflict Research, Vienna

2004

DISCLAIMER: This study has been compiled by the National Focal Point of the European Monitoring Centre on Racism and Xenophobia (EUMC). The opinions expressed by the author/s do not necessarily reflect the opinion or position of the EUMC. No mention of any authority, organisation, company or individual shall imply any approval as to their standing and capability on the part of the EUMC. This study is provided by the National Focal Point as information guide only, and in particular

1. Executive Summary

The focus of this national report on legislation and discrimination in Austria lies upon the legislative amendments due to the transposition of the Racial Equality Directive and the Employment Equality Directive. The selection and analysis of data was guided by a working definition on discrimination including unequal treatment on grounds of “racial”, ethnic and national origin as well as religion in relation to various forms of discrimination – namely institutional, direct and indirect. Such a definition covers discriminatory treatment of third country nationals, asylum seekers, subject to non-refoulement, Geneva Convention refugees, citizens of other EU and EEA Member States, members of the six officially recognised autochthonous ethnic groups as well as religious minorities (e.g. Jews, Muslims).

Before the Directives’ transposition the Austrian legal framework was lacking any effective protection against racial and xenophobic discrimination in the field of civil law. The related amendments of the Equal Treatment Act – up to now regulating the principle of equal treatment of women and men at the workplace – can therefore be seen as a major step concerning the enhancement of the protection against discrimination. However, the protection against discrimination in the areas of housing and health is still rather weak and fragmentary.

So far Austria’s anti-discrimination legislation was limited to its constitutional equal treatment clauses and penal provisions in criminal and administrative law. Anti-discrimination provisions therefore rather aimed at sanctioning the perpetrator than compensating the victim for his or her material and/ or immaterial damages. The Directives’ transposition results in the restriction of the principle of autonomy of the contracting partners (*Privatautonomie*), an argument which has been used so far to delimit the protection against discrimination to the public sphere.

By comparing the related draft legislation with the Directives’ requirements, we come to the conclusion that the Austrian government rather oriented itself along the minimum requirements set out by the Directives instead of introducing a complex and effective anti-discrimination Act. The main weaknesses of the draft legislation outlined in this report include the regulation of the burden of proof, the composition of the Commission for Equal Treatment, the involvement of specialised NGOs and the insufficient sanction system. Furthermore, Austria unfortunately, like most other Member States, took on the hierarchy of grounds of discrimination due to the different scope of the Racial Equality Directive and the Employment Equality Directive.

Throughout the report the government’s co-operation with specialised interest groups supporting victims of discrimination is being given a poor score. The government seems to neglect this important expertise, which could play a decisive role in the drafting process of anti-discrimination legislation by increasing its efficiency and applicability. The final drafting process of the amended Equal Treatment Act will show whether the government is open towards and takes seriously expert opinions provided by special interest groups.

In order to better describe the Austrian situation regarding the legal framework against racial and xenophobic discrimination the report also covers policies on integration, asylum

and minorities. Related problems are mainly identified regarding the sanction system of the so called "Integration Agreement" and the support of asylum seekers during asylum proceedings. Positive initiatives described in this report cover among others the development of diversity policies and the extension of voting rights to third country nationals regarding district elections in Vienna.

Chapter 4 includes data on recorded complaints regarding racial, ethnic and religious discrimination. Given the fact that presently there is no ombudsman institution for complaints about racist and xenophobic offences and considering that most incidents of everyday discrimination are not reported to the police there is a great lack of consistent and nationwide data on related complaints. NGO reports are therefore a particularly valuable source of information as they are most of the time the first contact points for persons concerned. However, no general tendencies concerning the number of discriminatory acts can be deduced from these reports as they cannot provide a consistent picture of all forms of racist and xenophobic acts occurring in Austria. According to governmental reports the official crime statistics show a fluctuating decrease of complaints on crimes with an extreme right-wing background which were reported in the last three years. 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. One of the most significant developments in the context of racist and xenophobic crimes is the fast increase of internet criminality.

Empirical data collected through several surveys conducted during the last four years indicate a considerable decrease of prejudices and xenophobic attitudes towards resident foreigners living in Austria. Also the awareness that migration is important for Austria considering the declining population is steadily increasing while the resistance against voting rights of resident foreigners is constantly declining. Besides these positive tendencies it should not be overlooked that statistics show a considerably high number of people still consenting to xenophobic statements. Surveys conducted with resident foreigners from Turkey, former Yugoslavia, Poland and Germany clearly point out that the difference in the visibility of vulnerable groups is decisive for the experience of xenophobia. The Turkish respondent regularly report on greater problems in regard to discriminatory incidents. The main problems in regard to discrimination identified by the interviewees were related to the housing sector and to contacts with authorities.

According to the Eurobarometer survey on discrimination in Europe Austria holds the penultimate rank compared to other EU Member States regarding the knowledge of rights against discrimination. Only three out of ten Austrians would know their rights, were they to experience discrimination. In regard to the readiness to file a complaint against discrimination Austria even ranks last. Whereas the average related to all Member States ranges around 70 percent, in Austria only 60 percent of Austrian respondents would file a complaint against a discriminatory offence. These unsatisfactory results show that the awareness as well as the efficiency of Austria's anti-discrimination provision has to be improved. One of the reasons for the described lack of knowledge about these provisions on the one hand and their insufficient application on the other hand can be found in the scattered structure of Austria's anti-discrimination legislation. Coming back again to the Directive's transposition it seems regrettable that the Austrian government did not take up the chance to develop a consistent and effective anti-discrimination Act compiling all relevant anti-discrimination provisions in one single law.

2. Table of Contents

1.	Executive Summary.....	3
2.	Table of Contents	5
3.	Glossary of terms and concepts used	8
3.1.	Definitions of concepts of groups.....	8
3.2.	Definitions of concepts of discrimination.....	9
3.3.	Other important concepts	10
4.	Introduction.....	11
5.	Background	12
5.1.	Diversity in the resident population of Austria.....	12
5.2.	Current legislation and policy on immigration	13
5.3.	Integration and diversity policies.....	15
5.4.	Related Research.....	18
5.5.	Gap analysis.....	20
6.	Description and analysis of legislation against discrimination on racial, ethnic, religious and cultural grounds.....	21
6.1.	Transposition of the two EU Anti-discrimination Directives.....	21
6.1.1.	Structure	21
6.1.2.	Sanctions.....	22
6.1.3.	Shift of burden of proof.....	22
6.1.4.	Defence of Rights	23
6.2.	Projects and other initiatives related to the Action Programme to combat discrimination	24
6.3.	Specific anti-discrimination legislation	24
6.3.1.	Education	25
6.3.2.	Employment	26
6.3.3.	Housing	26
6.3.4.	Health	27
6.3.5.	Racial Violence:.....	27
6.4.	Related research	28
6.4.1.	Research report of the Historical Commission of the Republic of Austria.....	28
6.4.2.	Study on the use of language of the Austrian Police Force	30
7.	Impact of anti-discrimination legislation	31
7.1.	Instalment of institutions and specialised bodies.....	31
7.1.1.	Commission for Equal Treatment	31
7.1.2.	Office for Equal Treatment	32
7.1.3.	Analysis	33
7.2.	Descriptive data on recorded complaints regarding racial, ethnic and religious discrimination	35
7.2.1.	Qualitative data and recorded complaints from non-governmental sources.....	36
7.2.2.	Qualitative and quantitative data and recorded complaints from governmental sources.....	37
7.3.	Data on court cases, jurisprudence	38

7.3.1.	Jurisprudence in relation to police misconduct	38
7.3.2.	Jurisprudence in relation to the provision of federal care to asylum seekers.....	40
7.3.3.	Jurisdiction regarding the right of third country nationals to stand as candidate in Chamber of Labour elections	41
7.3.4.	Bilingual Place Names on Signposts in Southern Carinthia	41
7.4.	Major findings from reports on racism and discrimination.....	43
7.5.	Developments and trends over the last three years	47
8.	Strategies, initiatives and good practices against discrimination and for diversity	50
8.1.	Committees and investigation bodies	51
8.2.	Organised interest groups	52
8.3.	Umbrella Organisations and Migrant Federations	55
9.	Summary and Conclusions.....	56
10.	Annex 1:	58
11.	Annex 2: Tables.....	60
12.	References	67

Index of Tables

Table 1: Motivation background of recorded criminal incidents	37
Table 2: Number of complaints against individual persons	38
Table 3: number of complaints in relation to convictions	38
Table 4: Tendencies of xenophobic attitudes according to age, sex and region	45
Table 5: Tendencies of xenophobic attitudes according to education, employment, income and party affiliation	46
Table 6: Approval of following statements in percent	48
Table 7: Resident population 2001 by Citizenship and Federal Province.....	60
Table 8: Resident population in Austria by religion in 2001	60
Table 9: Immigration and emigration (1999-2001).....	61
Table 10: Labour market participation in general (1999-2002)	62
Table 11: Employees of third country origin by citizenship (1999-2002)	63
Table 12: Applications for asylum (1991-2002)	64
Table 13: Emigration of refugees (1991-2002)	64
Table 14: Naturalisations (of people living in Austria) (1991-2001).....	65
Table 15: Languages of the Austrian autochthonous minorities according to the census 2001.....	66
Table 16: Autochthonous ethnic groups (1910-1991).....	66

3. Glossary of terms and concepts used

3.1. 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 paragraph¹ 3 Asylum Act²). 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 frequently 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 Act³). Reasons prohibiting the deportation are listed in art 57 Aliens Act⁴. 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 Act⁵). 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 still used to denote workers and their families especially originating from Turkey and former Yugoslavia.

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

² Österreich, BGBl. I/76, (14.07.1997), available at: <http://www.unhcr.at/pdf/248.pdf>, (27.08.2003).

³ Ibid.

⁴ Österreich, BGBl. I/75, (14.07.1997), available at: <http://www.unhcr.at/pdf/200.pdf>, (27.08.2003).

⁵ Ibid.

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 naturalisation⁶. 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 communities⁷ 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 schools⁸.

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 Act⁹). 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.

3.2. DEFINITIONS OF CONCEPTS OF DISCRIMINATION

The concept of **discrimination** used in this report covers discrimination on ethnic, “racial”, religious and national grounds, therefore includes following vulnerable groups: migrants of third country origin, asylum seekers, Convention refugees, members of religious minorities (like Jews, Muslims) and of the autochthonous ethnic groups.

The **material scope** of this report was guided by the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) covering:

- Conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- Employment and working conditions, including dismissals and pay;

⁶ For Naturalisation Act, see: Österreich, BGBl 311/1985, available at: <http://www.ris.bka.gv.at/bgb1/>, (27.08.2003).

⁷ For a list of them see: http://www.help.gv.at/82/820100_f.html, (27.08.2003).

⁸ Österreich, RGBl. 142/1867, (23.12.1867).

⁹ Österreich, BGBl. 218/1975 last amended by BGBl. I 126/2002, (13.08.2003).

- Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- Social protection, including social security and healthcare;
- Social advantages;
- Education;
- Access to and supply of goods and services which are available to the public, including housing

Direct discrimination is defined as “where one person is treated less favourably than another is, has been, or would be treated in a comparable situation on grounds of racial or ethnic origin”.¹⁰ **Indirect discrimination** is perceived as “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons”¹¹.

3.3. 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, 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.

¹⁰ Art 2 para 2 lit a) of the 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).

¹¹ Ibid.

4. Introduction

This report aims at giving an overview on the situation and recent developments in regard to the legislative framework against racial discrimination, xenophobia and anti-Semitism. In order to provide a better insight into legislative measures and their impact the report also includes information on related policies and jurisprudence. Due to the limited scope of this work this report can not picture the entire situation in Austria but rather picks out the most exemplary incidents and developments and tries to describe observed tendencies as well as related strategies.

The glossary at the beginning of the report defines and puts concepts used throughout the report in the Austrian context to highlight differences between Austria and other EU Member States easier. Furthermore, it contains working definitions of discrimination and of the groups affected by unequal treatment. These definitions form the basis for the selection of the data presented and described in this national study.

The structure of this report is based on the guidelines provided by the EUMC, starting with an overview on current legislation and policies on immigration, integration as well as equal treatment and diversity. Due to the fact that at the time of writing this report we were not provided with a table of indicators on EU level, as mentioned in the guidelines, the gap analysis is mainly integrated in the relevant analysis of chapter 2 and chapter 3. The third chapter focuses on the implementation of the two anti-discrimination Directives. The related draft legislation was set in context with the requirements laid down by both Directives and analysed regarding its efficiency and applicability. In chapter 4 data and major findings from reports on recorded complaints and jurisprudence are described and analysed by explaining developments and trends. The report continues by describing relevant strategies fighting discrimination and promoting diversity in chapter 5. Considering the fact that the most important developments in this area, however, are related to the transposition of both EU Directives this chapter has to be read in context with relevant paragraphs in chapter 2 and 3. Furthermore, this chapter also covers investigation committees and organised interest groups. Due to the broad scope of the latter only those have been included in the report which had been established by law. Finally, the “Conclusion” offers the reader a summing up of the findings of this report.

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

5. Background

5.1. 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 census¹² 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 aliens¹³.

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 abroad¹⁴.

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 even 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 faith¹⁵.

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,

¹² 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>, (27.08.2003). [PUBAT0039]

¹³ Cf. Table 7.

¹⁴ Statistik Austria (2002a), p18. [PUBAT0039]

¹⁵ Cf. Table 8.

whereas 51,000 aliens left the country¹⁶. About 47 percent¹⁷ of the overall alien resident population participated in the workforce in 2001, almost four fifths¹⁸ of which originated from former Yugoslavia and Turkey. In 2002, 37,000 asylum seekers¹⁹ 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 rejected²⁰. About 12 percent of the regular proceedings led to the granting of asylum, besides that almost 6,000 asylum seekers²¹ 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.²² Since 1998 the numbers of naturalisations have been sharply increasing and peaked at 31,700 in 2001²³.

5.2. 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 reunification. 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

¹⁶ Cf. Table 9.

¹⁷ Calculations based on table 10.

¹⁸ Cf. Table 11.

¹⁹ Cf. Table 12.

²⁰ 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]

²¹ Cf. Table 13.

²² Der Standard, (19./20.07.2003), p.7.

²³ Cf. Table 14.

security” of persons who have legally been living in Austria for at least five years. Persons living in Austria from early childhood on are generally protected from the termination of their right to residence. Furthermore, family reunification regulations were tightened.

On July 9, 2002, the Federal Law amending the Aliens Act 1997, the Asylum Act 1997 and the Alien Employment Act²⁴ 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*)²⁵ 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 examinations²⁶. 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”²⁷.

In May 2003 the new Regulation for Permanent Settlement (*Niederlassungsverordnung 2003*)²⁸ 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 migrants²⁹. 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 asylum³⁰. The most important

²⁴ Österreich, BGBl. I/126/2002 (13.8.2002).

²⁵ Section 50 a-d Aliens Act 1997, last amendment by BGBl. I Nr. 126/2002 (13.08.2002).

²⁶ Section 95 para 5 Aliens Act 1997, last amendment by BGBl. I Nr. 126/2002 (13.08.2002).

²⁷ 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, (27.08.2003). [PUBAT0034], [NFPAT0006]

²⁸ Österreich, BGBl II/136/2003 (30.04.2003).

²⁹ 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, (27.08.2003). [NFPAT0066]

³⁰ 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

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 legislation³¹. It was also criticised that the Human Rights Advisory Board was not on the list of those invited to cast a statement³². 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*. The draft has not become a law though before the MPs' summer break as intended by the coalition government, but will be passed on to the parliamentary Committee of the Interior which will deal with the draft in two sessions and will invite experts for a hearing.

Equally, as all other EU Member States Austria has still not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. There is no indication that Austria will soon sign the convention.

5.3. 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 years³³. The district councils decide all issues regarding the district such as the maintenance of schools

Registration Law), available at: http://www.bmi.gv.at/begutachtungdownload/Asylgesetz-Novelle_Entwurf.pdf

³¹ 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, (27.08.2003), [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, (27.08.2003), [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>, (27.08.2003), [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>, (27.08.2003).

[PUBAT0099]

³² Strassers Beirat gegen Asylgesetz (Strasser's Advisory Board opposes Asylum Act), in: Der Standard (11.06.2003), p.10. [PUBAT0046]

³³ 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).

or the establishment of green areas³⁴. 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 100,000 persons of foreign citizenship living in Vienna³⁵. 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 Vienna³⁶. 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 slogan³⁷. 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 campaign³⁸. 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 conceivable³⁹.

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 integration⁴⁰ neglecting the role of the so called native population which is vital for a sustainable integration process⁴¹. Furthermore sustainable integration is

³⁴ A district is the smallest administrative unit of Vienna.

³⁵ See: Der Standard, (13.12.2002), available at: <http://derstandard.at/standard.asp?id=1160185>, (27.08.2003). [PUBAT0046]

³⁶ The relevant information is available at: <http://www.wien.gv.at/ma62/demokratiepaket/>, (27.08.2003).

³⁷ 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>, (27.08.2003).

³⁸ 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>, (27.08.2003). [PUBAT0046]

³⁹ Wahlrecht für Ausländer vorstellbar (Electoral rights for aliens are conceivable), available at: <http://vorarlberg.orf.at/oesterreich.orf?read=detail&channel=7&id=258493>, (27.08.2003). [PUBAT0049]

⁴⁰ ZARA (2002) Rassismusreport 2001 (Racism Report 2001), p. 40, available at: http://www.zara.or.at/01_03.html, (27.08.2003).

⁴¹ 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>, (27.08.2003). [PUBAT0117]

characterised by voluntary decisions of both the migrant and local population⁴². In this light the introduction of sanctions such as penalty fees or even the expiry of the right to adobe in cases of non-fulfilment of the “integration agreement” seems questionable and was criticised by several NGOs⁴³. 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 integration⁴⁴. 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 courses⁴⁵.

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 expected⁴⁶. 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 September⁴⁷.

⁴² 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 Integraton. Was man gegen Diskriminierung und Fremdenfeindlichkeit tun kann.* (Ways to Integration. What to do against discrimination and xenophobia.), Klagenfurt: Drava, pp. 14-15. [PUBAT0088]

⁴³ Wiener Integrationsfonds (2002b) Begutachtung und Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Fremden-gesetz 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, (27.08.2003); [PUBAT0131] [NFPAT0066]. verbal – Verband für angewandte Linguistik (2002) Stellungnahme zur „Integrationsvereinbarung“, available at:

http://www.univie.ac.at/linguistics/verbal/verb_stel_arc.htm, (27.08.2003); [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>, (27.08.2003). [PUBAT0133] [NFPAT0155]

⁴⁴ 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/>, (27.08.2003). [PUBAT0129] [NFPAT0066]

⁴⁵ 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/>, (27.08.2003). [PUBAT0129] [NFPAT0066]

⁴⁶ Alexander Janda cited on the website of the Österreichischer Rundfunk – Mindheitenredaktion: Integration contract for foreingers: Hardly demand for German courses, available at <http://volksgruppen.orf.at/austria/en/home/home.htm>, (27.08.2003).

⁴⁷ Information stems from a telephone interview with Alexander Janda, head of the fund for the integration of refugees, (01.08.2003).

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 launched⁴⁸. The emphasis of the course is on imparting legal 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 EUMC⁴⁹, 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 far⁵⁰.

5.4. RELATED RESEARCH

The first edition of “migralex” a new - and for Austria unique - journal on migrant and minority law was launched in March 2003⁵¹. The prominent team of publishers which is composed by the President of the Federal Administrative Court, three University Professors and two other well known legal experts, aims to issue three editions each year elaborating on current questions concerning migration and minorities on scientific level.

In July 2003 the first Austrian Migration and Integration Report was published⁵². 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 of Education, Science and Culture and the Federal Ministry of the Interior. The report counts 428 pages comprising 20 different chapters written by all together 32 migration experts. The report is structured into 5 different sections dealing with democratic and socio-economic structures, living circumstances, normative and legal frameworks, xenophobia and organisational structures of migrants. The report is of a rather

⁴⁸ 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 or the website of the International Centre for Cultures and Languages in Vienna:

http://www.tandemcity.info/formacion/de34_itt7-interkultur.htm, (27.08.2003).

⁴⁹ 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, (27.08.2003). [PUBAT0120] [NFPAT0189]

⁵⁰ Referring to unpublished results of an internal evaluation conducted by ADL-Vienna.

⁵¹ "migralex": Neue Zeitschrift zum Fremden- und Minderheitenrecht (migralex – new journal on migrant and minority rights) (21.03.2003) available at:

<http://minorities.orf.at/austria/de/home/home.htm>, (27.08.2003).

⁵² Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118]

encyclopaedical character as it does not come up with a central message but offers many different statements and conclusions related to the various research areas. The main goal of the report was to give a comprehensive description of the migration and integration processes as well as the living situation of the foreign resident population in Austria⁵³. The process of composing this report which started already in 1998 was mainly driven by the idea that social prejudice, xenophobia or racism can only be overcome by enlightenment providing profound information about necessities, possibilities and social problems, which are connected with migration⁵⁴.

Another for Austria unique research documentation on migration of women and structural violence was presented in July 2003⁵⁵. The book focuses on structural violence such as women trafficking, violent attacks on female migrants and violence within the family and puts it into context with the rigid legal framework that migrants face in Austria. The study shows that migrant women who come to Austria by way of family reunification have hardly any options to escape domestic violence during the first five years of residence. This is mainly due to the limited access to social assistance such as social benefit (*Sozialhilfe*), housing allowance (*Wohnbeihilfe*). Furthermore, the study deals with the situation of trafficked women in Austria pointing out, that the legal definition of human trafficking in sec 217 of the Penal Code only includes sexual exploitation thereby neglecting other reasons for human trafficking such as domestic service or marriage⁵⁶. Trafficked women should be recognised as victims of international crimes. Their residence status shall therefore not depend on the fact whether they agree to testify as witness in a court proceeding as stated in sec 10 para 4 of the 1997 Aliens Act⁵⁷.

Unfortunately, no profound research concerning undocumented migrants in Austria had been conducted so far. Due to the fact that most “sans papiers” fear any form of registration as undocumented migrant it is extremely difficult to record reliable data on the number and living conditions of this group of people, who are highly vulnerable to exploitation and discrimination. Although legal provisions generally do not explicitly exclude undocumented migrants from access to social assistance, medical care, housing etc. this group faces regular de-facto exclusion due to the fact that they have no legal residence status, therefore no valid registration form (*Meldezettel*), or other documents which are seen as prerequisites to social services. Fearing detention pending deportation (*Schubhaft*) or prompt deportation, undocumented migrants are most times very hesitant to approach any form of institutionalised assistance which makes them even more vulnerable to violations of their basic human rights. It is therefore extremely important to take up this issue in terms of research projects and to elaborate policies that would guarantee fundamental human rights also to undocumented migrants.

⁵³ ORF-Minderheitenredaktion (2003) Erster Österreichischer Migrations- und Integrationsbericht erschienen (First Austrian Migration and Integration Report published) available at: <http://minorities.orf.at/austria/de/home/home.htm>, (27.08.2003). [PUBAT0099]

⁵⁴ Heinz Fassmann cited in: Erster Österreichischer Migrations- und Integrationsbericht erschienen (First Austrian Migration and Integration Report published) available at: <http://minorities.orf.at/austria/de/home/home.htm>, (27.08.2003).

⁵⁵ Arbeitsgruppe Migrantinnen und Gewalt (eds.) (2003) Migration von Frauen und strukturelle Gewalt (Migration of women and structural violence) Milena: Wien. [PUBAT0107]

⁵⁶ Ibidem, p. 65.

⁵⁷ Ibidem, p. 63.

5.5. GAP ANALYSIS

In Austria, no data is being collected on the ethnic background of foreigners who naturalised or persons who belong to the second or third generation of migrants. Such data, however, would be necessary in order to identify structural or indirect forms of discrimination especially in the area of employment and education. According to art 15 of the Race Equality Directive Member States can foresee that indirect discrimination may be established by any means including statistical evidence. Experience has shown that statistical data are in many cases the only way to prove forms of indirect discrimination. The Austrian draft law of the Equal Treatment Act (*Gleichbehandlungsgesetz*) which will be amended in order to transpose the Racial Equality Directive, however, foresees no such explicit provision that allows for the establishment of indirect discrimination through statistical data.

As long as there does not exist data on the criteria on the basis of which people are being discriminated – namely because of their ethnic background or their membership to a autochthonous or religious minority – there will be no true picture on the scale and scope of ethnic and racial discrimination.

6. Description and analysis of legislation against discrimination on racial, ethnic, religious and cultural grounds

6.1. TRANSPOSITION OF THE TWO EU ANTI-DISCRIMINATION DIRECTIVES

Four days before the deadline concerning the transposition of the Racial Equality Directive expired the Federal Ministry of Economics and Labour published the draft of the amended Equal Treatment Act⁵⁸ (*Gleichbehandlungsgesetz*). The amended version of this law, which so far only regulated equal treatment of women and men at the workplace, shall also incorporate the transposition of two other EU-Directives namely the Employment Equality Directive and the Directive 2002/73/EC amending the Directive on the implementation of the principle of equal treatment for men and women 76/207/EEC. The scope of the draft legislation, however, only regulates civil law matters; furthermore discrimination based on disability will be regulated in a separate law⁵⁹ and is therefore excluded. So far no legislative drafts concerning employment of civil servants on the federal⁶⁰ and on the provincial⁶¹ level have been made public yet. The following paragraphs shall give an overview on the present draft of the amended Equal Treatment Act focussing on the most important changes while at the same time comparing the Austrian draft to the requirements set down by both anti-discrimination Directives. The period for consultation and delivery of expert opinions was open until September 8, 2003. Following the parliamentary debate and the required resolution the draft was supposed to enter into force on January 1, 2004.

6.1.1. Structure

The first part of the draft legislation on the amended Equal Treatment Act deals with discrimination at the workplace and is structured into three subsections: equal treatment of men and women; equal treatment between persons irrespective of racial or ethnic origin, religion or belief, age or sexual orientation and common provisions for the first and second subsection. The second part transposes art 3 lit e-h of the Racial Equality Directive and deals with discrimination on the grounds of race and ethnic origin that are related to areas outside the workplace. The wording concerning the scope and the definition of direct and indirect discrimination of the newly introduced provisions is nearly identical to the text of both anti-discrimination directives. The third part of the draft version deals with institutions

⁵⁸ 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>, (27.08.2003).

⁵⁹ Also the Equal Treatment Act on Persons with Disabilities has not been made public yet.

⁶⁰ At the federal level employment issues of civil servants will be incorporated by amending the Federal Equal Treatment Act (Bundes-Gleichbehandlungsgesetz - BGBG 1993) BGBl. Nr. 100/1993 (12.02.1993), as last amended by BGBl. I 30/1998, (14.01.1998).

⁶¹ Each of the nine federal provinces has to transpose the Equal Employment Directive in regard to community employees.

and procedures and sets up an Equal Treatment Commission as well as Equal Treatment Commissioners who are both structured into three senates dealing separately with issues related to equal treatment of men and women, equal treatment at the workplace in relation to the other grounds of discrimination and equal treatment concerning the non-employment related scope of the Racial Equality Directive.

6.1.2. Sanctions

Sanctions provided by the draft legislation include compensation for material and immaterial damages and lays down minimum limits of one monthly salary if a person has not received a job or has not been promoted because of discriminatory grounds⁶². Furthermore sec 19 para 11 and sec 29 lay down a minimum of 400 € for compensation of immaterial damages in the context of discriminatory harassment. It is questionable whether these minimum limits are high enough in order to fulfil the requirements of art 15 of the Race Equality Directive and art 17 of the Employment Equality Directive which oblige Member States to lay down sanctions which must be “effective, proportionate and dissuasive”. Although both directives state that sanctions “may comprise the payment of compensation to the victim” the Austrian system of compensation of damages is based on the concept of redressing damages and does not include a sanctioning character⁶³. Whereas for a small enterprise one monthly salary could have a dissuasive character a bigger company might not even notice the monetary loss related to the compensation. It therefore seems necessary to introduce parallel to compensation additional administrative sanctions which should be proportionate to the size of the company in order to have a dissuasive effect on the convicted employees.

6.1.3. Shift of burden of proof

Sec 19 para 12 and sec 29 para 2 Equal Treatment Act require that the plaintiff has to establish the grounds of discrimination he or she refers to. The claim has to be rejected if it is - taking all circumstances into consideration - more likely that the discrimination has occurred due to other grounds as the ones brought forward by the defendant. In cases of harassment the claim has to be rejected if - taking all circumstances into consideration - it is more likely that the facts established by the claimant are true. The Austrian transposition of Art 10 Racial Equality Directive (respectively art 8 Equal Employment Directive) requires that both, the plaintiff and the respondent, establish relevant facts concerning the existence or non-existence of a discriminatory act and leaves it up to the judge to decide which plea is more convincing. The text of the directives, however, lays down that the complainant has to establish “facts from which it may be presumed that there has been direct or indirect discrimination” and it is up to the respondent “to prove that there has been

⁶² In both cases the compensation for damages is limited up to 500 €. If the employee can prove that the damage for the person discriminated only lays in the fact that the job application has not been considered. See sec 19 para 1 no 2 and sec 19 para 5 no 2 of the draft version of the amended Equal Treatment Act.

⁶³ Karner, E., Koziol, H. (2003) *Der Ersatz idellen Schadens im österreichischen Recht und seine Reform* (The compensation of immaterial damage in the Austrian legal system and its reform) Wien: Manz, p. 119. [PUBAT0122]

no breach of the principle of equal treatment.” Considering that the Equal Treatment Act only obliges the respondent to establish and not to prove that there has been no breach with the principle of equal treatment the draft has been criticised for not implementing a clear shift of burden of proof.

6.1.4. Defence of Rights

According to the explanatory commentaries to the draft legislation the demanded involvement of non-governmental institutions that deal with the representation of persons who are vulnerable to of discrimination shall be provided through sec 43 para 2⁶⁴. According to this provision a person who brings forward a complaint to the Commission for Equal Treatment can be represented by a trusted third party in particular by a representative of an interest group or a non-governmental institution. The related articles in the two directives lay down that “associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.”⁶⁵ The Austrian draft, however, is silent on the involvement of these institutions in regard to judicial and/or administrative procedures⁶⁶. The fundamental role of interest groups in enforcing rights against discrimination has been acknowledged on many occasions⁶⁷. Considering the fact that many victims of discrimination for many reasons are reluctant in bringing their case before the responsible authorities it seems decisive that these persons receive personal, legal and even financial support by an institution representing their interests. Besides the fact that this would lead to a better access to legal protection against discrimination these organisations would also have the opportunity to promote test litigation and thereby contribute to the concretisation and clarification of anti-discrimination provisions. This would be especially important in the case of Austria where relatively little jurisdiction on anti-discrimination law exists.

Generally it can be said that the present draft is very close to the minimum standards set out by both Directives. In some areas such as the shift of burden of prove, the inclusion of NGOs or the introduction of dissuasive sanctions it is even questionable whether these

⁶⁴ Erläuterungen zum Entwurf des Gleichbehandlungsgesetzes (Explanatory commentaries to the draft of the amended Equal Treatment Act) (2002), p 4, available at: <http://www.bmwa.gv.at/BMWA/Rechtsvorschriften/Entwuerfe/e2003170.htm>, (27.08.2003).

⁶⁵ See art 7 Racial Equality Directive and art 9 Employment Equality Directive.

⁶⁶ The procedure in front of the Commission cannot be seen as administrative or as judicial as the Commission has no powers to give binding decisions and therefore has no so called “imperium”; an element that distinguishes administrative and judicial procedures from any other proceeding. Concerning administrative procedures sec 10 of the General Administrative Procedure Act allows for legal representation without any specific requirements. However, there exists no legal provision in the present draft legislation which provides for the enforcement of obligations under the directives.

⁶⁷ 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. 18, available at: http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm, (27.08.2003). [PUBAT0116]

standards have been met at all. The final version of the amended Equal Treatment Act will show how much the government has taken into account the consultation process and the expert opinions brought forward by specialised NGOs and other relevant institutions. Considering the fact that there has been no consultation process with civil society representatives during the drafting process of the law, it seems even more pressing that the government is open towards and takes seriously expert opinions at this late stage.

6.2. PROJECTS AND OTHER INITIATIVES RELATED TO THE ACTION PROGRAMME TO COMBAT DISCRIMINATION

According to the Federal Ministry of Social Affairs and Labour, which co-ordinates the Action Programme against discrimination, there is only one project dealing with discrimination on the basis of race, ethnic origin and religion. The one-year project focuses on awareness raising in around 100 schools in all federal provinces. In the course of the project a major conference on the transposition of the two anti-discrimination Directives will be organised in June 2004.

According to the Federal Ministry of Foreign Affairs the National Action Plan for the follow up of the UN World Conference against Racism, racial discrimination, xenophobia and related intolerance is in the process of being elaborated. In the past few months an assessment of the Austrian legal system has been conducted in order to identify legislative gaps in relation to the conclusions of the Durban conference. Due to the fact that several different Ministries are responsible for the implementation of the intended action plan an inter-ministerial consultation process has been initiated.

6.3. SPECIFIC ANTI-DISCRIMINATION LEGISLATION

The following paragraphs shall give a concise overview on the specific anti-discrimination provisions which, however, have to be seen in context with the whole legislative framework. Art 7 of the Federal Constitutional Statute⁶⁸ (*Bundesverfassungsgesetz, B-VG*) in connection with art 1 of the Federal Constitutional Law implementing the International Convention on the Elimination of all forms of Racial Discrimination⁶⁹ lay down a general equal treatment clause which prohibits any unjustified differentiations which are solely⁷⁰

⁶⁸ Österreich, BGBl. Nr. 1/1930 as last amended by BGBl. I Nr. 68/1998 (15.05.1998).

⁶⁹ Bundesverfassungsgesetz zur Beseitigung rassistischer Diskriminierung (RassDiskrBVG), Österreich, BGBl. Nr. 390/1973 (10.08.1973).

⁷⁰ Austria was criticised by the Committee on the Elimination of Racial Discrimination for its restrictive transposition of art 1 CERD, which requires that discrimination has to be based *solely* on the grounds of race, colour, descent, national or ethnic origin. Multiple discrimination which falls clearly under the scope of the Convention therefore does not fall under the definition of art 1 RassDiskrBVG. See: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Austria 21/05/2002, CERD/C/60/CO/1, para 9, available at:

based on race, colour, descent, national or ethnic origin⁷¹. Any law or decree that conflicts with this principle can be abolished by the Federal Constitutional Court (*Verfassungsgerichtshof, VfGH*).

Although Austria signed the Additional Protocol No. 12 to the European Convention on Human Rights already in November 2000, internal debates whether to ratify the Protocol are still proceeding. According to the official position of the Constitutional Service of the Federal Chancellery the general equal treatment clause enshrined in art 7 of the Constitutional Act, the Constitutional Act on the Implementation of the International Convention on the Elimination of all forms of Racial Discrimination and the jurisdiction of the Federal Constitutional Court provides the full range of guarantees as provided by Protocol No. 12.

6.3.1. Education

The Federal Constitutional Statute of Austria lays down in art 14 para 6 that public schools are accessible to everybody, irrespective of birth, sex, race, rank, class, language and creed. According to sec 4 para 3 School Organisation Act (*Schulorganisationsgesetz, SchOG*) the principal of equal access of all pupils also applies to private schools. Only in cases where schools are run by a religious community or another legal entity, which is not subject to public law, the selection of pupils may be based on religion or language. Art 7 of the State Treaty of Vienna lays down the constitutional right to elementary education in Croatian and Slovenian for the autochthonous minorities of the Croats in Burgenland⁷² and the Slovenes in Carinthia⁷³ and Styria. The draft of the amended Equal Treatment Act prohibits in sec 25 para 1 no 3 discrimination on the basis of race or ethnic origin in the area of education.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.60.CO.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.60.CO.1.En?Opendocument), (27.08.2003). [PUBAT0112]

⁷¹ Art 1 par 1 RassDiskrBVG is considered an extension of the equality clause in Art 7 B-VG. Out of these two constitutional provisions the Federal Constitutional Court derived an individual right to equal treatment between foreigners.

⁷² Implemented through the Minority School Act for Burgenland which applies to Croatian and also Hungarian. Minderheiten-Schulgesetz für das Burgenland, Österreich, BGBl 641/1994, as last amended by BGBl I 136/1998 (18.08.1998).

⁷³ Implemented through the Minority School Act for Carinthia (Minderheiten-Schulgesetzes für Kärnten), Österreich, BGBl 101/1959, as last amended by BGBl I 136/1998 (12.07.2001).

6.3.2. Employment

The employment of foreigners with lower payment or under worse working conditions is prohibited according to sec 4 para 3 no 4 Aliens Employment Act⁷⁴ (Ausländerbeschäftigungsgesetz, AuslBG). However, the same Act foresees in art 8 para 2 the employers' obligation to primarily release alien employees, when reducing the labour force. This discriminatory act is at odd with the principle of equal treatment laid down in the Racial Equality Directive. As soon as the amended Equal Treatment Act will enter into force a whole range of anti-discrimination provisions related to employment will be introduced to the Austrian legal system. Sec 11 para 1 concerns the relationship between employer and employee prohibiting direct and indirect discrimination on all grounds mentioned in Art TEC except gender in relation to the commencement and termination of employment, the fixing of payment, the granting of voluntary social benefits which do not consist in money, concerning vocational training and retraining and other working conditions. Sec 12 sets down the obligation on equal treatment concerning employment issues which are not connected to a working contract. This provision applies to the access to vocational guidance, vocational training and retraining outside an employment contract, to the membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided for by such organisations. Finally sec 11 no 3 prohibits discrimination concerning the access to self-employment.

6.3.3. Housing

In the Austrian legal system there exists no specific anti-discrimination provision concerning housing. Although the Law on the Promotion of Social Housing⁷⁵ (*Wohnbauförderungsgesetz*) does not exclude third country nationals from the circle of addressees, the competence for detailed regulation of access to social housing lays with the respective communities. Whereas EEA citizens and Convention refugees generally have the same access to social housing like Austrian citizens, in most communities third country nationals are widely excluded from social housing⁷⁶. Presently, only Salzburg and to a certain extent also Vienna, are the only out of nine provincial capitals, which open access to flats owned by the community to third country nationals. Sec 25 para 1 no 4 of the draft version of the amended Equal Treatment Act has the same wording like art 3 para 1 lit h of the Race Equality Directive and prohibits discrimination regarding access to housing on the grounds of race and ethnic origin.

⁷⁴ Österreich, BGBl. 218/1975 as last amended by BGBl. I 126/2002, changes available at: <http://www.ris.bka.gv.at/bgbl/>, (27.08.2003).

⁷⁵ Österreich, BGBl.Nr. 153/1954 as last amended by BGBl. Nr. 917/1993.

Social housing includes: flats owned by the community (Gemeindewohnung), co-operative flats (Genossenschaftswohnung) and promoted lodgings and promoted free-hold flats (geförderte Miet- und Eigentumswohnungen).

⁷⁶ Wiener Integrationsfonds (2001) MigrantInnen in Wien 2000, Daten & Fakten & Recht Report 2000, Teil II, (Migrants in Vienna 2000, data & facts & legislation report 2000, part II), p. 39, available at: http://www.wif.wien.at/wif_site/downloads/DatenFakten2000.pdf. [PUBAT0132] [NFPAT0066]

6.3.4. Health

There is no specific anti-discrimination provision concerning access to health facilities. Federal legislation on health insurances generally does not distinguish between Austrian citizens and third country nationals. However, the General Social Insurance Act⁷⁷ (*Allgemeines Sozialversicherungsgesetz, ASVG*) includes a special provision for self-insured persons that allows for a qualifying period of up to six months before the assurance benefits can be claimed. On the basis of this provision the Statutes of the Vienna Regional Health Insurance Fund (*Wienergebietskrankenkasse*) lays down, that self-insured persons only have a right to insurance benefits after 6 months⁷⁸. Due to this provision most NGOs who support asylum seekers in Vienna, who are not integrated in the system of federal care⁷⁹, do not effect an insurance as they cannot estimate the length and the progress of the asylum procedure. Many other social services are also subject to the legal competences of the federal provinces which partly exclude third country nationals⁸⁰. The draft of the amended Equal Treatment Act foresees in sec 25 no 1 the prohibition of discrimination on the grounds of race and ethnic origin in regard to social protection, including social security and healthcare.

6.3.5. Racial Violence:

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 Statute⁸¹), which was enacted in order to comply with the international obligation resulting from art 9 of the Treaty of Vienna⁸² 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. Insignia include emblems, symbols and signs. Sec 33 no. 5 of the Penal Code⁸³ lays down that 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

⁷⁷ See: Sec 124 ASVG, Österreich, BGBl.Nr. 189/1955 as last amended by BGBl. I Nr. 138/1998 (18.08.1998).

⁷⁸ See: Satzung der Wiener Gebietskrankenkasse Jänner 2003 (Statutes of the Vienna Regional Health Insurance Fund January 2003) Sec 21.

⁷⁹ Asylum seekers who are included in the so called Bundesbetreuung have free access to health facilities.

⁸⁰ Amesberger, H., Halbmayr, B., Liegl, B. (2003) Gesundheit und medizinische Versorgung von ImmigrantInnen (Health and medical care in regard to migrants), in: Fassmann, H., Stacher, I., Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, p. 184. [PUBAT0118]

⁸¹ Österreich, StGBI 13/1945, amended version BGBl 148/1992, (19.03.1992).

⁸² Österreich, BGBl 152/1955, amended version BGBl III Nr. 179/2002, (06.06.2002).

⁸³ Österreich, Strafgesetzbuch, BGBl 60/1974 (01.01.1975), amended version BGBl I 134/2002, (13.08.2002).

particular sentence⁸⁴. Section 283 Penal Code 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 appurtenance 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 dignity⁸⁵. 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 Code⁸⁶. Sec 3d Prohibition Statute applies as *lex specialis* to those incitements which are committed on the basis of National-Socialist ideology. Sec 111 and 115 in connection with sec 117 (3) Penal Code prohibit racist or xenophobic verbal attacks directed against an individual person⁸⁷. The Introductory Provisions to the Code of Administrative Procedures (*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG*)⁸⁸ 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 offence⁸⁹.

6.4. RELATED RESEARCH

6.4.1. Research report of the Historical Commission of the Republic of Austria

On October 1, 1998 the Republic of Austria Historical 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”⁹⁰. On February 23, 2003 the Commission presented its final report to the public. The outcome of this extensive research consists of all together 54 reports which were written in the course of 47 projects involving 160 researchers⁹¹.

⁸⁴ Although this provision directly applies to crimes of racist violence, it has been observed that this aggravating factor relating to racist motives is scarcely applied.

⁸⁵ Perpetrators can face up to two years’ imprisonment.

⁸⁶ Steininger, H. (1992) Kommentar zum Strafgesetzbuch (Commentary to the Penal Code), Eisenstadt: Prugg, p. 48. [PUBAT0126]

⁸⁷ Offences that are directed against a person belonging to one of the groups listed in sec 283 are prosecuted ex officio whereas other defamations are prosecuted only on private initiative.

⁸⁸ Österreich, BGBl 50/1991 (31.01.1991), amended version BGBl I 97/2002, (25.06.2002).

⁸⁹ 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 € 2,180.

⁹⁰ See mandate of the Commission cited on the website of Historical Commission: http://www.historikerkommission.gv.at/english_home.html, (27.08.2003).

⁹¹ 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, (27.08.2003).

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 residence⁹². At the other hand the report also rebuts the allegation that Austria has done nothing in terms of restitution and compensation of 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.

Furthermore, the report dealt with the discriminatory aspects of citizenship law which were only corrected in 1993⁹³. According to the 1925 Austrian citizenship law, which re-entered into force again after the fall of the NS-regime, Jews and others persecuted by the Nazis and who were stripped of their citizenship only regained their status as Austrian citizens if they had not adopted foreign citizenship in the period between 1938 and 1945. Although a formal restitution of citizenship was achieved the actual consequences of the expatriation was overlooked - since expatriated Austrians whose only chance was often to apply for a foreign citizenship were thereby unable to regain Austrian citizenship⁹⁴. This discriminatory treatment of refugees of the Nazi-regime had further negative consequences as only Austrian citizens were entitled to restitution measures based on the Victims Association Act⁹⁵ (*Opferfürsorgegesetz*)⁹⁶. Although the report does not include a concrete quantitative evaluation of the goods expropriated and on caused damages it is clear about the enormous dimension of the national socialist deprivation of property⁹⁷. In his opening speech at the presentation of the report the president of the Federal Administrative court and chairmen of the Historical Commission said “what we found is a picture of an incredibly dimensioned process of organised criminality”⁹⁸.

⁹² 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 resitution 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, (27.08.2003). [PUBAT0121]

⁹³ Since 1993 former Austrian citizens do not have to give up their foreign citizenship in order to regain the Austrian one. Ibid p. 336.

⁹⁴ Jabloner, C., et. al. (2003) p. 334.

⁹⁵ Österreich, BGBl.Nr. 183/1947 as last amended by BGBl. II Nr. 198/2003 (28.03.2003).

⁹⁶ Jabloner, C., et. at. (2003) p. 335.

⁹⁷ Ibid p. 402.

⁹⁸ cited in an article by Enigl, M. (2003) Der große Raubzug (The big raid), in: profil, (03.03.2003), p. 43.

6.4.2. Study on the use of language of the Austrian Police Force

In August 2002, the Human Rights Advisory Council (*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.⁹⁹ The study shall include quantitative data on complaints during one month in 8 provincial constabulary commands (*Landesgendarmeerikommandos*), 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 shall be summarised in a final report which will be presented to the Council in mid September 2003. Following this study the Human Rights Advisory Council intends to issue recommendations to the Federal Minister of the Interior. The study will presumably be presented to the public at the end of this year¹⁰⁰.

⁹⁹ 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) 2002, p. 41, available in German at: http://www.menschenrechtsbeirat.at/index_berichte.html. [PUBAT0123] [NFPAT0006]

¹⁰⁰ Information provided by the Office of the Human Rights Advisory Council on 12 August 2003.

7. Impact of anti-discrimination legislation

7.1. INSTALMENT OF INSTITUTIONS AND SPECIALISED BODIES

The draft version of the amended Equal Treatment Act foresees in its third part the establishment of an Equal Treatment Commission and three Equal Treatment Commissioners. By transposing art 13 of the Race Equality Directive Austria extended the functions of the present Equal Treatment Commission and the Office of the Ombudsman 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 disability¹⁰¹. In this regard Austria fulfilled more than the minimum requirements set out by the Employment Equality Directive which does not foresee so called “bodies for the promotion of equal treatment” as mentioned in art 13 of the Racial Equality Directive.

7.1.1. Commission for Equal Treatment

The Commission for Equal Treatment (*Gleichbehandlungskommission*) shall be set up at the Federal Ministry for Health and Women’s Issues. The Commission 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 disability¹⁰². 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.

Sec 33 of the draft legislation lays down the composition for each senate. Senate II, responsible for discrimination related to employment on the grounds of race, ethnic origin, religion, age and sexual orientation, shall comprise 12 persons: each two members of the Austrian Chamber of Commerce (*Wirtschaftskammer Österreich*), the Federal Chamber of Labour (*Bundeskammer für Arbeiter und Angestellte*), the Federation of Austrian Industry (*Vereinigung der Österreichischen Industrie*), the Austrian Trade Union Congress (*Österreichischer Gewerkschaftsbund*) as well as by one member appointed by the Federal Chancellor and one member appointed by the Federal Minister of Economics and Labour. Senate III responsible for discrimination on the grounds of race and ethnic origin which are not related to the working environment shall be composed by 2 members of the Austrian Chamber of Commerce, the Federal Chamber of Labour and 6 members each appointed by the Federal Minister for Education, Science and Culture, the Federal Chancellor, by the Federal Minister of the Interior, the Federal Minister of Justice, the Federal Minister for Social Security, Generations and Consumerism and finally the last one appointed by the Federal Minister for Economics and Labour. The function of the chairperson, who forms part of all three senates, shall be held by a federal employee appointed by the Minister of

¹⁰¹ 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>.

¹⁰² See above footnote 99.

Health and Women's Issues. The concrete rules and procedures of the senates shall be subject to a decree by the Minister for Health and Women's Issues¹⁰³. The members of the commission shall perform their functions on an unsalaried basis¹⁰⁴.

The Commission's tasks and functions are laid down in the second subsection of the third part. 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. These expert opinions have to be disclosed according to the provisions of the Announcement Act¹⁰⁵ (*Verlautbarungsgesetz 1985*)¹⁰⁶. Sec 43 lays down the obligation of the relevant senate to examine single cases whether a violation of the obligation to equal treatment had occurred. The senate can become active on its own initiative. Furthermore, the responsible senate has to examine a single case upon request of an employer or an employee, a member of a works council, one of the interest groups represented in the relevant senate or the responsible Commissioner for Equal Treatment. Concerning cases which fall under the non-employment related scope of the Racial Equality Directive senate III also has to become active upon request of an alleged victim.

According to sec 43 para 2 victims of discrimination can decide to be represented before the court by a representative of one of the interest groups forming part of the responsible senate or by a non-governmental organisation (NGO). Upon request of an employer, an employee or a victim of non-employment related discrimination the responsible senate has to call in an informant (*Auskunftsperson*) of a NGO named by the applicant¹⁰⁷. If the 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. 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.

7.1.2. Office for Equal Treatment

The Office for Equal Treatment (*Anwaltschaft für Gleichbehandlungsfragen*), which shall also be set up at the Federal Ministry of Health and Women's Issues, will be structured similarly to the Commissions' senates¹⁰⁸. The already existing institution of the so called "*Gleichbehandlungsanwältin*" (Office of the Ombudsman for Equal Employment Opportunities) will remain responsible for equal treatment of women and men at the

¹⁰³ See sec 40 draft version of the amended Equal Treatment Act.

¹⁰⁴ See sec 41 para 1 draft version of the amended Equal Treatment Act.

¹⁰⁵ Österreich, BGBl.Nr. 201/1985 as last amended by BGBl. I Nr. 158/1998 (30.09.1998).

¹⁰⁶ See sec 42 draft version of the amended Equal Treatment Act.

¹⁰⁷ The responsible senate of the Commission is obliged to instruct the person concerned on this right to application. See sec 43 para 2 draft version of the amended Equal Treatment Act.

¹⁰⁸ See sec 34 draft version of the amended Equal Treatment Act.

workplace. 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 after hearing respective interest groups, which are entitled to delegate a member. The Minister has to entrust state employees with these positions. In the performance of their duties both ombudspersons are autonomous and independent.

The Office for Equal Treatment is 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 and consultation days in the whole federal territory. Furthermore it can conduct independent inquiries and publish independent reports and recommendations concerning all questions related to discrimination. In cases of alleged discrimination in relation to employment the responsible ombudsperson can call upon the employer or organisation concerned to give a written comment. Furthermore, the ombudsperson can request information from the concerned employer, the organisation, the works council, other employees. In cases of non-employment related discrimination the responsible ombudsperson has the right to request information necessary for the execution of their mandate of any person involved. In both cases these persons are obliged to cooperate with the ombudspersons. If the ombudspersons assume a breach of the obligations, laid down by 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 responsible senate is obliged to take up the case in its next session but at least within one month. The senate can assign the responsible ombudsperson with the necessary inquiry. In this case the ombudsperson, responsible for cases of discrimination in relation to employment, can enter company premises and inspect company documents. Doing so, the ombudsperson has to involve the works council. Before a planned inspection the employer has to be notified in due time. The Office for Equal Treatment will be based in Vienna. However, sec 37 allows for the creation of regional offices if the Minister for Health and Women’s Issues decides that they would be necessary in order to enhance the support and counselling of persons who have questions concerning equal treatment issues.

7.1.3. Analysis

Instead of adopting a new anti-discrimination law in order to transpose the Racial Equality and Employment Equality Directive the Austrian government opted for extending the scope of an already existing law on the equal treatment of men and women at the workplace (Equal Treatment Act) and also to extend the mandate of the institutions established by this law.

It has been highly criticised that no NGO involvement is foreseen in both institutions. Only representatives of relevant ministries, the social partnership and Federation of Austrian Industry are supposed to work in the responsible senates of the Commission. The fact that the legislative draft foresees the possibility for NGOs to represent victims of discrimination before the Commission and the possibility to be called in as *Auskunftsperson* (informant) can not adjust this deficit. Especially, concerning the third senate of the commission, which is responsible for cases of discrimination outside the working environment, it seems

questionable which of the members of the commission clearly represent the interests of the victim¹⁰⁹.

Furthermore, the fact that members of the commission work on an unsalaried basis does not seem to facilitate the efficiency of this institution. It also seems regrettable that a passage of previous draft versions, which laid down that in a judicial proceeding on an alleged violation of the Equal Treatment Act the responsible judge has to deal with the expert opinion of the Equal Treatment Commission and has to justify why his or her decision deviates from the Commissions' opinion, was not included in the final draft version.

In regard to the establishment of two ombudspersons for Equal Treatment the same criticism on the lacking involvement of NGOs applies. 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. Although sec 38 allows for the establishment of regional offices it has been criticised that one has not learned from the experiences of the office of the Ombudsman 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 conversations¹¹⁰. Also the European Study on bodies promoting diversity and combating discrimination in the European Union is clear on the major importance of easy access to ombudsman's institutions:

“For a victim of discrimination, who may often belong to a marginalised group in society, the mere step of seeking advice and reporting a discriminatory experience may be a rather daunting task. If the person has to overcome great obstacles to reach the anti-discrimination body, it is likely that the case will never be reported and registered. The accessibility issues include an institution's physical accessibility, its image, the language skills possessed by its staff, and people's confidence that it will handle discrimination cases both promptly and professionally.”¹¹¹

¹⁰⁹ As already mentioned above, this senate is composed by representatives of the Austrian Chamber of Commerce, the Federal Chamber of Labour, the Federal Minister for Education, Science and Culture, the Federal Chancellor, by the Federal Minister of the Interior, the Federal Minister of Justice, the Federal Minister for Social Security, Generations and Consumerism and one member appointed by the Federal Minister for Economics and Labour.

¹¹⁰ 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]

¹¹¹ 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, (27.08.2003). [PUBAT0116]

7.2. DESCRIPTIVE DATA ON RECORDED COMPLAINTS REGARDING RACIAL, ETHNIC AND RELIGIOUS DISCRIMINATION

Data on racist or xenophobic crimes are recorded by the Federal Ministry of Justice and the Federal Ministry of the Interior in two different ways. While the latter records the criminal offences committed during a certain incident the Ministry of Justice counts data on the crime with the highest punishment committed by each person involved in the incident¹¹². For example if a group of 20 persons is involved in a crime of incitement to hostile action according to sec 283 Penal Code, the Ministry of the Interior would count one case of incitement whereas the Ministry of Justice would record 20 cases related to sec 283. This discrepancy in collecting data at the one hand increases the information on racist crimes and perpetrators on the other hand it bears the danger of confusing this completely different statistics. It therefore seems extremely important to clearly indicate the differences in recording crimes with a racist and xenophobic background. According to the Report on the Protection of the Constitution (Verfassungsschutzbericht)¹¹³ covering 2001, 335 offences with a right wing background have occurred, only one offence more than in 2000¹¹⁴. However, this general statement should be brought into context with 17,3 per cent increase of the individual complaints which have been reported from the police to the public prosecutor's office in 2001¹¹⁵.

Given the fact that presently there is no ombudsman 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 complaints regarding racial, ethnic and religious discrimination. Therefore, NGO reports are particularly valuable as a source of information on incidents victims did not want to report to the police and on low-level racist offences which have not been considered yet a criminal offence and therefore are not reflected in crime statistics. However, these reports don't picture the whole range of racist crimes in Austria but rather provide information on the quality of racist and xenophobic offences.

¹¹² Österreich, Bundesministerium für Inneres, Bundesministerium für Justiz (2002) Sicherheitsbericht 2001 (Security Report 2001), pp. 12, 15. [PUBAT0110]

¹¹³ The translation of the "Verfassungsschutzbericht" was changed from "National Security Report" to "Report on the Protection of the Constitution" in order to avoid confusion with the so called "Sicherheitsbericht" translated as "Security Report" which is issued jointly by the Ministry of the Interior and the Ministry of Justice.

¹¹⁴ Österreich, Bundesministerium für Inneres (2002) Verfassungsschutzbericht 2001. Staats-, Personen- und Objektschutz. (Report on the Protection of the Constitution 2001. Security of the state, people, and objects), Vienna, pp.34, available at: <http://www.bmi.gv.at/downloadarea/staatsschutz/Verfassungsschutzbericht2001.pdf>, (27.08.2003).

¹¹⁵ Bundesministerium für Inneres, Bundesministerium für Justiz (2002), p. 241.

7.2.1. Qualitative data and recorded complaints from non-governmental sources

The NGO *Zivilcourage und Anti-Rassismus Arbeit* (ZARA) issues an annual report on racist incidents and racist structures in Austria¹¹⁶. The cases are reported to ZARA or an NGO cooperating with ZARA by people who witnessed or experienced racist incidents¹¹⁷. In the year 2002 more than 300 persons made a complaint¹¹⁸. 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 persons¹¹⁹.

According to the NGO Forum against Anti-Semitism¹²⁰, 21 cases of anti-Semitic smearing, 17 defamations and three assaults on Jews were reported in the year 2002¹²¹.

Helping Hands Graz is a NGO giving legal advice to migrants and foreigners concerning 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 only gives a short overview on complaints about discriminatory acts in the area of housing, employment and in the public area. Two complaints concerned discriminatory actions of the police against black Africans. The report also deals with stigmatising press coverage bringing migrants frequently in connection with crimes in Graz¹²².

In a joint operation carried out by *Radio Afrika International*, the Austrian Students' Union, SOS Mitmensch and ZARA eleven locales in Vienna were tested whether they select their guests according to skin colour and origin. From the eleven locales tested the 'Arabs' and the 'Africans' were only treated in the same way as the 'white' test person in three of them. ZARA filed several complaints against these bars and restaurants under art

¹¹⁶ So far ZARA issued three reports on single cases of racist offences which are available at: <http://www.zara.or.at>, (27.08.2003). [NFPAT0005]

¹¹⁷ 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 (Arbeitsassistenten für Gehörlose in Wien und Niederösterreich – Work assistance for deaf people in Vienna and Lower Austria).

¹¹⁸ 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 (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, (14.06.2003), p.5. [PUBAT0045]

¹¹⁹ ZARA, Racism Report 2002, p. 25-29.

¹²⁰ Forum gegen Antisemitismus, further information available at: <http://www.fga-wien.at> (22.03.2003).

¹²¹ ZARA, Racism Report 2002, p. 41.

¹²² Helping Hands Graz (2003) Jahresbericht 2002, p. 27, available at: <http://www.helpinghands-graz.at/2002.pdf>, (27.08.2003). [PUBAT0074]

IX para 1 no 3 EGVG¹²³ were filed. Also Helping Hand Graz tested 19 bars on their accessibility for black persons¹²⁴. 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.

7.2.2. Qualitative and quantitative data and recorded complaints from governmental sources

As already mentioned above, both the Ministry of Justice as well as the Ministry of the Interior collect data on racist and xenophobic crimes which are published annually in the Security Report and the Report on the Protection of the Constitution. The following paragraphs include data out of the latest available crime statistics published in the Security Report 2002. Compared to the year 2001 the number of criminal incidents with extreme right wing background slightly declined by 2.7 percent in 2002 (2002: 326, 2001: 335)¹²⁵. Also the number of complaints reported 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 and indicates a considerable increase of xenophobic and especially Anti-Semitic crimes in 2002:

Table 1: Motivation background of recorded criminal incidents¹²⁶

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

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 graveyards¹²⁷ and the violent attack on two Kuwaiti citizens which resulted in grievous bodily harm¹²⁸. 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. In 2002 no case of bodily harm in connection with

¹²³ 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).

¹²⁴ Helping Hands Graz (2003), p. 18-25.

¹²⁵ Bundesministerium für Inneres, Bundesministerium für Justiz (2003), Sicherheitsbericht 2002 (Security Report 2002), Wien, p. 203. [PUBAT0109]

¹²⁶ Ibid.

¹²⁷ Der Standard, (03.01.2003), p. 7.

¹²⁸ Bundesministerium für Inneres, Bundesministerium für Justiz (2002), p. 242.

racist or xenophobic crimes was reported. 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)¹²⁹. The amount of convicted juvenile perpetrators compared to 2001 decreased by 12.2 percent (2002: 72; 2001: 82).

Table 2: Number of complaints against individual persons¹³⁰

Number of complaints under following provisions	2002	2001	2000	1999
Sec 3 Prohibition Statute	238	269	239	274
Sec 283 Penal Code	56	39	27	43
Other provisions of 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
Total	465	528	450	717

Due to an internal order, public prosecutors are obliged to report cases of racist incidents and the application of paragraph 33 section 5 as well as paragraph 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. The lacking application of this provision clearly indicates 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 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 provision has to be taken into account, when the court is deciding on the sentence for the perpetrator.

7.3. DATA ON COURT CASES, JURISPRUDENCE

The Security Report 2002 indicates a slight decrease of convictions of crimes in connection with the Prohibition Statute and sec 283 Penal Code (hostile incitement).

Table 3: number of complaints in relation to convictions¹³¹

	complaints	convictions
Prohibition Statute	2002: 238 2001: 269 2000: 239	2002: 20 2001: 24 2000: 32
Sec 283 Penal Code	2002: 56 2001: 39 2000: 27	2002: 9 2001: 11 2000: 1

7.3.1. Jurisprudence in relation to police misconduct

¹²⁹ Ibid., Bundesministerium für Inneres, Bundesministerium für Justiz (2003), p. 204.

¹³⁰ Bundesministerium für Inneres, Bundesministerium für Justiz (2002), p. 241.

¹³¹ Ibid., p. 242.

On 15 April 2002, three years after the death of Marcus Omofuma during his deportation to Sofia, the Regional Court of Korneuburg found the three police officers accused of ill-treating the Nigerian asylum-seeker resulting in his death guilty of the crime “negligent manslaughter in particularly dangerous conditions”. The accused police officers were sentenced to eight-months suspended prison terms. According to the written judgement the crime of "intentional tormenting of a prisoner" entailing imprisonment of one to then years, was not verifiable. The sentence was criticised by several NGOs because of its alleged leniency permitting the officers to continue serving in the police force¹³².

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 2001¹³³. The tribunal decided that the arrest was justified but executed in a degrading way and therefore in violation of art 3 ECHR.¹³⁴

In September 2002, during a regular traffic control in Linz a police officer called a black driver „*scheiß Neger*” (“fucking nigger”) in front of several persons. As a consequence a criminal proceeding on racist insult (*Ehrenbeleidigung*) according to sec 117 Penal Code was initiated by the Public Prosecutor’s Office. Sec 117 para 3 in connection with sec 115 Penal Code¹³⁵ forbids insults against a person belonging to a group determined by affiliation to a church or religious community, race, nation, ethnic group or state which involve (physical) ill-treatment or the threat of ill-treatment or the violation of “human dignity” of the victim. The court of appeal confirmed the decision of the district court which closed the proceeding reasoning that sec 117 would not apply. Following the argumentation of both courts 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 on the other hand argued that the

¹³² See: Zebra (2002) Um die Opferrolle wird hart gekämpft (fighting hard about victimhood), in zebra.at no 3, available at: <http://www.zebra.or.at/zebratl/2k2/3/omofuma.htm>, (27.08.2003), [PUBAT0134] [NFPAT0165]. SOS – Mitmensch (2002) Omofuma – Rücknahme der Berufung unverständlich, (02.08.2002), available at: <http://mailman.no-racism.net/pipermail/analle/2002-August/000754.html>, (27.08.2003). Statements to the related verdict published at the website of no-racism.net: <http://www.illegalisiert.at/racismkills/index.htm>, (27.08.2003).

¹³³ Menschenrechtsbeirat (2003) Menschenrechtsverstoß bei der Verhaftung Öztoplus - Minister soll Verantwortungslage 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, (27.08.2003).

¹³⁴ Menschenrechtsbeirat (2003) Bülent Öztoplu vollkommen rehabilitiert (Bülent Öztoplu entirely rehabilitated), (04.03.2003), available at: http://www.menschenrechtsbeirat.at/index_aktuelles.html, (27.08.2003).

¹³⁵ According to sec 117 Penal Code offences that are directed against a person belonging to one of the listed vulnerable groups are prosecuted ex officio whereas other defamations are prosecuted only on private initiative. Generally, this is a very important combination of provisions, because it proves that the state acknowledges the difference between a “regular” insult and a racist insult. However, the court decision described above gives an excellent example on the extremely restrictive interpretation of sec 117 Penal Code.

expression „Neger” would include the notion of inferiority and therefore fulfil the prerequisites of sec 117 Penal Code. The reasoning of the appeal court seems especially weak as it does not mention in a single sentence the discriminatory and humiliating aspects of the word „Neger”. In fact, the deciding judge only took up the word „scheiß” and described its colloquial usage beginning in the medieval times. As a consequence of this textual valuation, the reader inevitably gets the impression that nothing would be wrong with the word „Neger”. According to the driver’s lawyer the Public Prosecutor’s Office 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. In case the judgment would be confirmed a second time, the Minister might reconsider the legislation concerning insult¹³⁶.

7.3.2. Jurisprudence in relation to the provision of federal care to asylum seekers

In February 2002, the Federal Supreme Court (*Oberster Gerichtshof, OGH*) decided on a claim of the Evangelist relief organisation, Deaconry (*Diakonie*), to refund costs for supporting an Afghan refugee family from 1996 until asylum was granted in 1999. The relief organisation filed the claim, because it was of the opinion that the Afghan family had the right to government run-shelter. In its decision the court elaborated on the obligation of the state to base its decision who should be included in federal care on the principle of equal treatment. Benefits which are granted to indigent asylum seekers have to be provided under equal conditions. Furthermore, the Court deduced an individual right to be included in the system of federal care provision when fulfilling all requirements set out in the Federal Care Provision Act¹³⁷ (*Bundesbetreuungsgesetz*)¹³⁸. The court leaves no doubt on the obligation of the state to take care of indigent asylum seekers and to refund costs related to accommodation, food and medical support spent by relief organisations¹³⁹. The decision also questions the highly controversial internal guideline, issued by the Minister of the Interior, Ernst Strasser, in October 2002, which primarily bases the conditions for asylum seekers to be entitled to federal care on citizenship. According to the NGO asylum co-ordination-Austria¹⁴⁰ the consequences of this decision are not yet assessable as during the last 11 years around 70 percent of asylum seekers were excluded of federal care provision¹⁴¹. At the moment Austrian relief organisations provide around 2000 asylum

¹³⁶ ORF Minderheitenredaktion (2003) “Scheiß Neger”: Böhmdorfer lässt Freispruch des Polizisten prüfen (“Shit nigger”: Böhmdorfer has acquittal of officer reviewed), 16.08.2003, available at: <http://volksgruppen.orf.at/austria/de/home/home.htm>, (27.08.2003). [PUBAT0099]

¹³⁷ Österreich, BGBl. I/405/1991, amended by BGBl. I/314/1994, BGBl. I/134/2000 and BGBl. I/98/2001, (7.8.2001).

¹³⁸ See decision of the Federal Supreme Court (24.02.2003) application number: 10b272/ 02k, available at: <http://www.ris.bka.gv.at/jus/>, (27.08.2003).

¹³⁹ The Supreme Court clarified in its decision that the period of prescription of such claims only expires after 30 years.

¹⁴⁰ Asylkoordination-Österreich (2003) Association of organisations helping foreigners and refugees and their counsellors: <http://www.asyl.at>, (27.08.2003). [NFPAT0104]

¹⁴¹ Asylkoordination-Österreich (2003) press release on the decision of the Federal Supreme Court on governmental run shelter (25.04.2003), available at http://www.asyl.at/fakten_2/betr_2003_03.htm, (27.08.2003).

seekers with shelter¹⁴². The repercussions of this decision will heavily depend on the number of claims filed by relief organisations against the republic, which might force the state to change their policy of reluctant support to indigent asylum seekers.

7.3.3. Jurisdiction regarding the right of third country nationals to stand as candidate in Chamber of Labour elections

In May 2003, the European Court of Justice issued a decision concerning the Chamber of Labour election in Vorarlberg in 1999 stating that art 10 of the Decision No 1/80 of the Association Council of September 19, 1980 on the development of the Association between the EEC and Turkey “prohibits Member States, in clear, precise and unconditional terms, from discriminating, on the basis of nationality, against Turkish migrant workers duly registered as belonging to their labour force as regards remuneration and other conditions of work”. This provision has “direct effect in the Member States” and precludes “the application of national legislation¹⁴³ which excludes Turkish workers duly registered as belonging to the labour force of the host Member State from eligibility for election to the general assembly of a body representing and defending the interests of workers, such as the chambers of workers in Austria”¹⁴⁴. It can be taken for granted that the Austrian Constitutional Court will follow the European Court’s decision and adopt the view that the Chamber of Labour elections in the federal province of Vorarlberg have to be repeated. The elections, however, will presumably not be repeated but new elections could take place in 2004 including eligibility at least for Turkish citizens¹⁴⁵. Many Austrian activists hope that this decision will end the different treatment of nationals and non-nationals in the whole field of political participation concerning employment. They assume that the Constitutional Court might rule that different treatment of Turkish nationals as well as people with other nationalities is discriminatory according to the CERD obligations.

7.3.4. Bilingual Place Names on Signposts in Southern Carinthia

¹⁴² ORF-Minderheitenredaktion (2003) OGH:Asylwerber haben Recht auf Bundesbetreuung (High Court of Justice: asylum seekers have the right to government-run shelters) (24.04.2003), available at: <http://volksgruppen.orf.at/austria/de/home/home.htm>, (27.08.2003). [PUBAT0099]

¹⁴³ Sec 21 Chamber of Labour Act (Arbeiterkammergesetz – AKG, BGBl. II Nr. 340/1998 [24.09.1998]) in connection with art 26 Federal Constitutional Statute (Bundesverfassungsgesetz – B-VG, BGBl.Nr. 1/1930 last amended by BGBl.Nr. 504/1994) excludes third country nationals from the eligibility to the Chamber of Labour.

¹⁴⁴ European Union, European Court of Justice, 62001JO171, May 8, 2003, available at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62001J0171, (27.08.2003). [PUBAT101]

¹⁴⁵ ORF Vorarlberg (2002) Türken zu unrecht von der Wahlliste gestrichen? (Turkish citizens unjustly taken from the list of eligible candidates?), (16.12.2002), available at: <http://vorarlberg.orf.at/oesterreich.orf?read=detail&channel=7&id=235514>, (27.08.2003). [PUBAT0049]

The situation regarding the ruling of the Federal Constitutional Court¹⁴⁶ on the right of the Slovene and Croat minorities to bilingual place name signs in parts of Southern Carinthia has not been solved yet. In December 2001 the Federal Constitutional Court has suspended specific regulations of the Ethnic Minority Act (*Volksgruppengesetz*), as unconstitutional because they restricted the right to bilingual place name signs to communities, in which at least 25 percent of the population are members of an autochthonous minority. The ruling of the Constitutional Court has suspended these regulations as unconstitutional with reference to the State Treaty of Vienna and demanded that the Federal Government passes a new Law containing a ten-percent-rule: bilingual topographical indications should be displayed in autochthonous settlement areas of the Croatian, Slovenian and Hungarian minorities, provided persons belonging to the national minority concerned, form more than 10 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 refuses to act in accordance with this court decision, which as a matter of course outraged minority members¹⁴⁷. Federal Chancellor, Wolfgang Schüssel, initiated a consensus-conference to work out an agreement on April 25, 2002 but unfortunately no acceptable solution was found. On January 1, 2003 the date of the Federal Constitutional Court for repairing the Law expired. Up until now, the Austrian government has not taken any measures in order to change this unlawful situation. Also the Advisory Committee on the Framework Convention for the Protection of National Minorities states that this unsolved issue might negatively affect the harmonious coexistence between persons belonging to the Slovene minority and persons belonging to the majority, unless all competent authorities commit themselves to promptly identify practical solutions in consultation with the Slovene minority¹⁴⁸.

¹⁴⁶ VfGH, G 213/01, (13.12.2001).

¹⁴⁷ 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> (27.08.2003).

¹⁴⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities (2002) Opinion on Austria (16.05.2002), ACFC/INF/OP/I(2002)009, para 106, available at: http://www.bka.gv.at/bka/service/publikationen/volksgruppen/rahmenkonvention_pruefbericht_en.pdf [PUBAT0014]

7.4. MAJOR FINDINGS FROM REPORTS ON RACISM AND DISCRIMINATION

In Austria the only comprehensive NGO-report on racism and xenophobia is published annually by **ZARA**. The qualitative data on racist and xenophobic incidents covered by the racism report 2002 have already been presented in chapter 4.2.1. 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.

Also the data provided by the Ministry of Justice and the Ministry of the Interior compiled in the Security Report 2002 and the Report on the Protection of the Constitution 2002 have already been described under chapter 4.2.2.

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*”)¹⁴⁹. 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 countries¹⁵⁰.

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 Omufuma¹⁵¹. (For more details concerning the sentence please see chapter 4.3.1) 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 amnesty international mentions the internal guideline issued by the Minister of the Interior which excludes certain categories of 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

¹⁴⁹ Dokumentationsarchiv des österreichischen Widerstands, DÖW:
http://www.doew.at/projekte/rechts/chronik/2003_03/content03.shtml (27.08.2003).

¹⁵⁰ 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>, (27.08.2003). [PUBAT0099]

¹⁵¹ 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>, (27.08.2003) [PUBAT0106] [NFPAT0197]

immigrants¹⁵². 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. Furthermore, during body searches suspects reportedly have been forced to undress in the middle of the street, in restaurants, shops and refugee hostels¹⁵³. In regard to minority rights the IHF reports on a complaint submitted by representatives from all 6 officially recognised Austrian ethnic groups at the Federal Communication Senate (*Bundeskommunikationssenat, BKS*). According to the representatives the Austrian Broadcasting Corporation (ORF) violates the ORF act¹⁵⁴ by neglecting programmes for the ethnic groups of the Czechs, Slovaks, Roma and Styrian Slovenes. Programmes for Croats, Hungarians and Carinthian Slovenes are described as insufficient. In April 2003, however, the Federal Communication Senate rejected the complaint these complaints for formal reasons, arguing that the time period to which the complaints refer were not sufficient for an evaluation¹⁵⁵. As a reaction to this complaints a special working group for programs in national minorities languages was established to elaborate an adequate concept for the the “definition of the respective programme planning”¹⁵⁶. According to the Advisory Committee on the Framework Convention for the Protection of National Minorities Austria had made particularly commendable efforts in the media sector regarding the Slovenes and Croats living Carinthia and Burgenland, whereas there would be scope for improvement regarding the Czech, Slovak and Hungarian minorities¹⁵⁷.

The **Austrian Migration and Integration Report**, published in July 2003, includes one chapter on xenophobia in the context of migration (for further information on the report see chapter 2.4. of this report).¹⁵⁸ 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 analysed¹⁵⁹. However, as there is still no generally acknowledged method

¹⁵² 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

¹⁵³ Ibidem, 7.

¹⁵⁴ Austria, BGBl.Nr. 379/1984 last amended by BGBl. I Nr. 83/2001.

¹⁵⁵ ORF Minderheitenredaktion (2003) “Complaints of the groups of peoples against the ORF rejected“, 12.04.2003, available at: <http://volksgruppen.orf.at/bin/at/en/news/200304/20030412152219kle.html> (23.10.2003).

[PUBAT0099]

¹⁵⁶ ORF Minderheitenredaktion (2003) “ORF installs working groups fro programs in languages of the ethnic groups” 28.04.2003, available at: <http://volksgruppen.orf.at/bin/at/en/news/200304/20030428154428kor.html> (23.10.2003).

[PUBAT0099]

¹⁵⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities (2002) para 103-105. [PUBAT0014]

¹⁵⁸ Kohlbacher, J. et. al. (2003) Fremdenfeindlichkeit, in: Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, pp. 341-366. [PUBAT0118]

¹⁵⁹ 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:

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. In order to accommodate the various attitudes and opinions towards foreigners three categories have been introduced: xenophobic, ambivalent and foreigner-friendly tendencies¹⁶⁰.

Table 4: Tendencies of xenophobic attitudes according to age, sex and region

	Tendentiously xenophobic	Ambivalent but tendentiously not xenophobic	Not xenophobic
Sex:			
male	25.2	47.2	27.5
female	31.7	42.8	25.5
Age			
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
Size of City (without Vienna)			
> 5,000 citizens	33.8	44.8	21.4
5,000 to 50,000	20.7	46.7	32.6
< 50,000 citizens	16.1	43.0	40.9

According to this survey 28 percent of the adult Austrian population can be ranked as xenophobic, 45 percent as ambivalent or neutral and 27 percent as foreigner-friendly. The results of the study show that more women (32 %) than men (25 %) expressed xenophobic views, whereas the share of men (47 %) having ambivalent attitudes towards aliens is higher than the one of women (43 %). Furthermore, the survey showed that people aged between 45 to 64 more often show xenophobic tendencies compared to younger generations (aged 20 to 29: 24 %, aged 30-44: 26 %). This 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.

The following chart indicates that the increase of xenophobic tendencies is related to the respondents' socioeconomic conditions.

Lebhart, G.; Münz, R. (2003) Migration und Fremdenfeindlichkeit in Österreich – Perzeption und Perspektiven (Migration and xenophobia in Austria - perception and perspective) in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118]

¹⁶⁰ The assessment of xenophobic tendencies has been realised by using seven items: 1. Foreigners take away jobs from Austrians. 2. Those foreigners living in Austria should be sent home in case of job scarcity. 3. Those foreigners living in Austria should better adapt their way of living to the Austrian lifestyle. 4. Any political participation should be forbidden for foreigners living in Austria. 5. Foreigners living in Austria should search their spouse within their own communities. 6 Also if foreigners adapt to the Austrian lifestyle they will always stay aliens. 7 Foreigners living in Austria are burdening the welfare state. See: Lebhart, G.; Münz, R. (2003), p. 352.

Table 5: Tendencies of xenophobic attitudes according to education, employment, income and party affiliation

	Tendentiously xenophobic	Ambivalent but tendentiously not xenophobic	Not xenophobic
Highest level of education achieved			
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
Occupational groups			
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
Household income			
> € 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
Party affiliation			
Social Democrats	27.9	47.4	24.7
People's Party	27.3	51.1	21.6
Freedom Party	45.9	43.2	10.9
Greens	7.3	23.9	68.8
Other Party	7.5	41.6	50.9
No Party	29.6	46.0	24.4

A decrease of xenophobic attitudes was observed in relation to people with a higher education and a higher income per household. Reasons for this outcome were found in the fact that these people would be better informed and 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. Finally the survey puts xenophobic tendencies in relation to attitudes of voters. Among those affiliated to the Greens (*Die Grünen*) only 7 percent are described as having xenophobic tendencies. Concerning the People's Party (*Österreichische Volkspartei, ÖVP*) and the Social Democrats (*Sozialdemokratische Partei Österreichs, SPÖ*) 27 percent respectively 28 percent of the voters expressed xenophobic attitudes. By far the highest amount of xenophobic tendencies namely 46 percent has been observed among people voting for the Freedom Party (*Freiheitliche Partei Österreichs, FPÖ*).

The second study included in the chapter on xenophobia deals with attitudes of resident foreigners living in Vienna and is based on a survey conducted in 2000. Around one quarter of respondents stated that xenophobia among the Austrian native population would constitute a personal problem for them. However, assessing the overall situation in Austria nearly half of the interviewees were of the opinion that xenophobia in general is a problem for resident foreigners. The fact that many migrants feel less concerned by xenophobic incidents in regard to their own situation compared to the general situation of migrants in Austria is described as an indication for individual repression strategies. The study

including interviews with resident foreigners from Turkey, former Yugoslavia, Poland and Germany clearly points out that the difference in the visibility of vulnerable groups is decisive for the experience of xenophobia. The Turkish respondents regularly report on greater problems in regard to discriminatory incidents. The main problems in regard to discrimination identified by the interviewees were related to the housing sector and to contacts with authorities¹⁶¹. The study also shows that experience of discriminatory incidents generally decreases with higher levels of education. Generally the survey supports the assumption that xenophobia in the Austrian society is rather expressed in indirect and in subtle ways for example through denial of contact or subliminal harassment and less through violent assaults¹⁶².

In the course of the **Eurobarometer survey on Discrimination in Europe** EU citizens of all Member States were asked about any discrimination on grounds of racial or ethnic origin, religion or beliefs, age, disability and sexual orientation they may have experienced or seen¹⁶³. One of the most significant outcomes in relation to the situation in Austria was that only three out of ten Austrians would know their rights, were they to experience discrimination. Compared to other Member States Austria holds the penultimate rank¹⁶⁴. In regard to the readiness to file a complaint against discrimination Austria even ranks last. Whereas only 60 percent of Austrian respondents would file a complaint the average related to all Member States ranges around 70 percent¹⁶⁵. These results indicate a clear need for information and awareness raising campaigns. (Concerning further results see the following chapter 4.5.)

7.5. DEVELOPMENTS AND TRENDS OVER THE LAST THREE YEARS

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 General Prosecutor's Office. 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 (see table 1, p. 30). 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 (see also chapter 4.2.2). One of the most significant developments in the context of

¹⁶¹ According to the survey 14 percent of the Germans, 20 percent of Poles, 28 percent of former Yugoslavians and 45.5 percent of Turks have experienced frequent discriminations by authorities. Only 8 percent of interviewees made no discriminatory experiences at all. See: 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. 360-361.

¹⁶² See: Lebhart, G.; Münz, R. (2003), pp. 354-355.

¹⁶³ 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, (27.08.2003) [PUBAT0115]

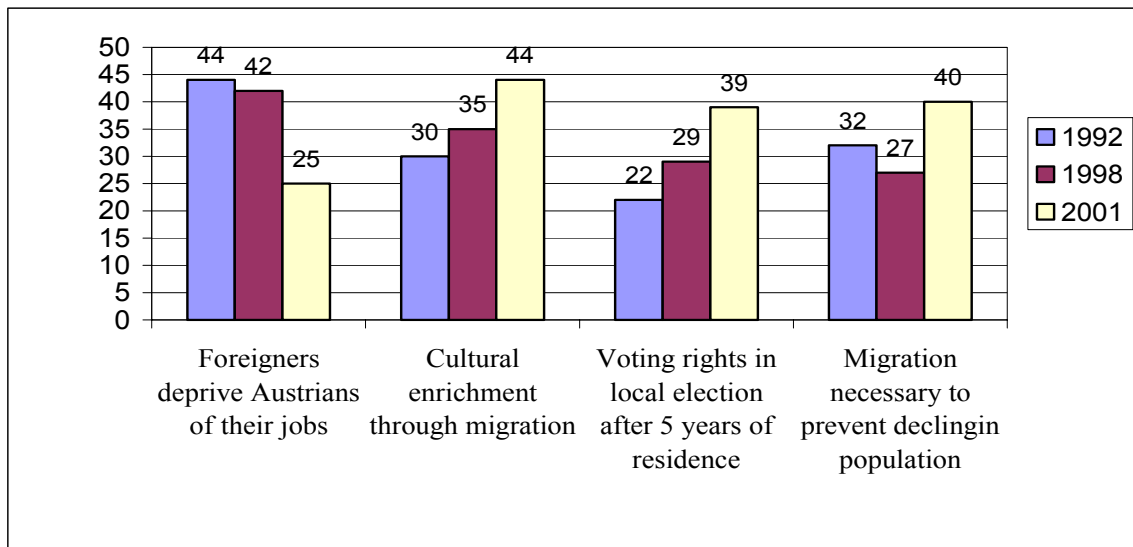
¹⁶⁴ Ibid, p. 14.

¹⁶⁵ Ibid.

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 internet¹⁶⁶. The internet also facilitated the spread of racist lyrics and so called white power music which reportedly has a strong impact on the readiness of juveniles to use violence¹⁶⁷. Furthermore the various groups used the internet to better co-ordinate their actions and to interlink with other groups abroad.

In regard to empirical data the Austrian Integration and Migration Report gives information on tendencies concerning the perceptions of the Austrian society towards migrants. The outcomes of related surveys conducted in 1998 and 2001 clearly indicate a decrease of around 11 percent regarding the opinion that regular immigration should be stopped entirely. Statements like immigrants deprive the Austrian native population of jobs were only supported by 25 percent in 2001 compared to 42 percent in 1998. Also the awareness that migration is important for the declining population in Austria as well as the increasing perception that foreigners should have the right to vote in local elections after five years of residence show a positive tendency¹⁶⁸. The assumption that migration and diversity lead to cultural enrichment of the Austrian society was supported by 44 percent of the respondents, 9 percent more than in 1998. The following chart shows a continuous decrease of prejudice and reservations towards foreigners and migrants over the last decade.

Table 6: Approval of following statements in percent



Besides these positive tendencies it should not be overlooked that the number of people still consenting to xenophobic statements is considerably high¹⁶⁹. Also the Eurobarometer survey on “Discrimination in Europe” which was conducted in 2002 gives Austria a

¹⁶⁶ Österreich, Bundesministerium für Inneres (2001) Verfassungsschutzbericht 2000 (Report on the Protection of the Constitution 2000), p. 30. [PUBAT0111]

¹⁶⁷ Ibid, pp. 25-26.

¹⁶⁸ Lebhart, G.; Münz, R. (2003), pp. 350-351.

¹⁶⁹ Compare: science ORF.at (2001) “Fremdenfeindlichkeit in Österreich” (“Xenophobia in Austria”), available at: <http://science.orf.at/science/news/34264>, (27.08.2003)

relatively bad score in regard to ethnic discrimination. Compared to other EU-member states the opposition to ethnic discrimination was clearly below the European average¹⁷⁰.

¹⁷⁰ 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, (27.08.2003)

8. Strategies, initiatives and good practices against discrimination and for diversity

The most important legislative initiatives to combat discrimination were set in the framework of the transposition of the two EU Anti-discrimination Directives by amending the Equal Treatment Act as already outlined above. Considering that up to now the Austrian civil law system has provided no protection against discrimination between private parties the newly introduced anti-discrimination provisions can be perceived as a decisive step forward. Especially the introduced restrictions concerning the principle of autonomy of the contracting partners (*Privatautonomie*) but also the changes regarding the burden of proof will require some rethinking on behalf of the judicial personnel. In this context legal training and awareness raising measures for judges, public prosecutors and attorneys seem extremely important for the efficient implementation of the newly introduced anti-discrimination provisions. In 2004 two one-day conferences for around 70 judges and two one-day training seminars for junior judges and attorneys shall be conducted in Vienna and Tyrol.

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 systems¹⁷¹.

In June 2003 a one day conference on the transposition of the two EU Anti-discrimination Directives was held in Vienna aiming to draw attention to the important legislative changes, and to the problem of discrimination in general¹⁷². The event attracted an audience of around 150 participants composed by judges, prosecutors, attorneys as well as representatives from various Ministries, social partnership organisations and NGOs and promoted the dialogue between representatives of groups vulnerable to discrimination and judicial personnel.

In October 2002 the working process for the development of a **programme on diversity policy for Vienna** was initiated. The concept of diversity policy aims “to adapt the self-image of the city to its demographic, ethnic and cultural diversity” and thereby

¹⁷¹ See: <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>, (27.08.2003).

Regulations concerning provider liability as set out in art 12, 13 and 14 of the E-commerce Directive 2000/31/EC are included in the so called “E-commerce Gesetz” (E-commerce Act). Art 13 to 16 of this Act limit the liability of providers, hosts, cachers, providers of search engines in regard to circulating and storing of racist and xenophobic data as well as to incitement to hatred and to violence. As a general principle _Internet Service providers are not obliged to monitor nor to seek for illegal activities on the net. However, as soon as providers obtain about knowledge illegal material, such as racist and xenophobic speeches, it must take immediate action to block or to remove this material in order to keep the benefit of the immunity.

¹⁷² The conference “Diskriminierung ein Kavaliersdelikt? Umsetzung der beiden EU-Antidiskriminierungsrichtlinien in Österreich“ (Discrimination a trivial offence? Implementation of the two EU Anti-discrimination Directives in Austria) was organised by the Ludwig Boltzmann Institute of Human Rights [NFPAT0107] in cooperation with the IOM Vienna [NFPAT0194] in the framework of the EU Project „Awareness Raising and Legal Training on Discrimination Practices“, see: <http://www.iom.fi/anti-discrimination/>, (27.08.2003)

strengthening social coherence and promote the perception of an open-minded city¹⁷³. One of the major aims is to increase the number of city employees with a migration background and to overcome their under-representation in higher positions in the city-administration. Furthermore integration policies should focus more on second and third generation migrants. In seven working groups concrete proposals are being elaborated while analysing the pro and cons of existent policies. The Vienna Integration Fund provides regular follow ups on the development process of this initiative on its website¹⁷⁴.

8.1. COMMITTEES AND INVESTIGATION BODIES

The **Human Rights Advisory Board** (*Menschenrechtsbeirat, MRB*), situated in the Austrian Federal Ministry of the Interior, was established in June 1999¹⁷⁵ in response to recommendations made by the European Committee on the Prevention of Torture (CPT) in its 2nd¹⁷⁶ and 3rd¹⁷⁷ report on its regular visits to Austria as well as public pressure as a result of the publication of the CPT report and NGO action following the death of Markus 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 to persons detained in private. The reports of the Commissions consist of the facts established and measures and recommendations considered necessary. At the end

¹⁷³ Translated by the author of this report: Stadt Wien (2002) Migration - Integration - Diversitätspolitik (Migration – Integration - Diversity policy), p. 7, available at: <http://www.europaforum.or.at/Download/MingBroschuere/Kurzfassung.pdf>, (27.08.2003) [PUBAT0124]

¹⁷⁴ See: http://www.wif.wien.at/gleichstellungs_site/gleichstellung_pages/gleichstellung4-12-030429.htm, (27.08.2003)

¹⁷⁵ 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).

¹⁷⁶ 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/>, (27.08.2003). [PUBAT0113]

¹⁷⁷ 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>, (27.08.2003). [PUBAT0114]

of 2002 a controversy between the Commissions' member and the Minister of the Interior on the contracts for 2003 and on the independency of the MRB started. In March an agreement was finally reached after a contractual clause allowing the Minister of the Interior to unilaterally quit the contracts was removed.

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. In 2002 the Office dealt with several complaints related to the application of the Aliens Employment Act. The Office criticised the long proceedings related to the issuance of resident permits which leave the applicant under uncertain circumstances and without a working permission meanwhile¹⁷⁸.

8.2. ORGANISED INTEREST GROUPS

In order to delimit the scope of mentioned interest groups the following paragraphs deal with those organisations and institutions which are established by law or which have a certain function mentioned in the particular laws. This selection, however, shall not devalue the decisive role of many NGOs who operate as important stakeholders for the interests of their respective communities and in some cases even achieve more than those institutions set up by the law.

Between the 1970s and 90s six **Minority Advisory Boards** for the Hungarian, Slovenian, Slovakian, Croatian, Czech and the Roma minority had been established at the Federal Chancellery¹⁷⁹. Their main function is to advise the federal government as well as the provincial governments in matters related to minority issues. According to sec 3 National Minorities Act (*Volksgruppengesetz*) their task is to observe and represent the integral cultural, social and economic interests of the all six national minorities. They must be heard prior to the adoption of legal rules and general assistance policies affecting the interests of their national minority. The National Minority Advisory Councils may also submit proposals for the improvement of the situation of the national minorities and their members¹⁸⁰. Although these institutions can be seen as an innovative model granting political participation to minority groups, reality has shown that these Advisory Councils are often not heard and even if they are heard, their opinion is often neglected and sometimes ignored¹⁸¹. However, it has been observed that the Councils provided for

¹⁷⁸ Österreich, Volksanwaltschaft (2002), 25. Bericht über die Tätigkeit der Volksanwaltschaft im Jahr 2001 an den Nationalrat und den Bundesrat – Grundrechtsteil (25th report on the activities of the Office of the People's Advocate in 2001 for the National Council and the Federal Council – section on fundamental rights), Wien, p. 35. Available at: http://www.volksanw.gv.at/i_berichte.htm, (27.08.2003). [PUBAT0128] [NFPAT0050]

¹⁷⁹ The establishment of an Advisory Council is linked to the formal recognition of a minority group.

¹⁸⁰ Österreich, BGBl. Nr. 396/1976 last amended by BGBl. I Nr. 35/2002 (31.01.2002).

¹⁸¹ See: Hipold, P (2001) *Modernes Minderheitenrecht* (Modern Minority law), Wien: Manz, pp. 373-374. [PUBAT0119]

communication fora with the majority population and thereby promoting better understanding and awareness for minority issues¹⁸². In everyday practice the most important function of the National Minority Advisory Councils is their participation in national minority assistance activities. Every year, each National Minority Advisory Council has to submit a plan on requested affirmative actions to the Federal Government. On the basis of this plan the Councils must submit proposals regarding the use of earmarked funds which are provided for the staging of cultural events designed to strengthen the identity of the ethnic groups. In order to strengthen Council's political role it has been proposed to reform the National Minority Act and to oblige political bodies to justify their position on minority issues if it differs from the written statements and recommendations issued by the Minority Advisory Councils.

Several cities in Austria have established **alien advisory committees** (*Ausländerbeiräte*), which are elected by all resident third country nationals – *Graz* has had one since 1995, *Leoben* and *Knittelfeld*, two other towns in Styria, set theirs up in 2000 and *Linz*, Upper Austria, introduced an *Ausländer-Integrationsbeirat* (alien integration advisory committee) in 1996. These committees were mainly set up to accommodate the fact that resident non-EU citizens – except in Vienna - are not entitled to vote in local elections. Voter participation, however, turned out to be very low. Their main function is to represent the interests of foreign residents living in the particular city or area and to facilitate integration. However, these committees are only consultative bodies and do not have any legislative competences. The influence of these bodies is therefore very restricted and their establishment can not be seen as an alternative to the introduction of electoral rights for third country nationals.

The **Jewish Faith Community** (*Israelitische Kultusgemeinde, IKG*) was founded in 1852 on the basis of a provisional municipality law. As a corporate body the IKG represents the Jewish community in religious and cultural matters before the Republic of Austria. In the 19th century IKG was instrumental in organising the construction of numerous synagogues, schools, hospitals and other social facilities, which were open to Jews and non-Jews alike. Through the influx of Jewish immigrants from the eastern part of the monarchy the community rapidly grew to become the second largest in Europe at the turn of the century. Before 1938 180,000 Jews were living in Vienna. During the Nazi-regime the IKG became the point of contact for victims and helped many of them to escape. After the Second World War, the Jewish community, consisting of only a handful of members, had to be resurrected and new infrastructure established. Today the Jewish community consists of a mere 7,000 people¹⁸³. The IKG's integrative force, unifying the various religious, cultural and geographical backgrounds of its members, is being seen as one of its major strengths. The various initiatives launched by the Community in the last few years include the establishment of schools as well as social and cultural facilities¹⁸⁴. In May 2003, a public debate on the financial contribution of the Austrian Republic to the Jewish Faith Community arose. Presently only 8 to 9 percent of the Community's activities are supported by state subsidies¹⁸⁵. In Germany around 80 percent of the Jewish Faith

¹⁸² Ibid.

¹⁸³ Stadt Wien – Presse- und Informationsdienst (2001) Jewish Vienna – Heritage and Mission, p. 1. [PUBAT0125]

¹⁸⁴ Ibid, p. 14.

¹⁸⁵ Grisseemann, S., Horowitz, N. (2003) Auf Messers Schneide (Balancing on a knife's edge), in: profil, (21.07.2003), p. 122.

Community are financed by the state¹⁸⁶. Due to the Community's high level of depths Ariel Muzicant claims additional subsidies of 2.7 mil € per year. Many artists and intellectuals in Austria heavily criticised the passive and negligent position of the Austrian government. Proposals by the Federal Ministry of Education, Science and Culture to support the IKG through projects were rejected as the Jewish community can not be seen as a temporally limited project but would need a predictable and continuous funding¹⁸⁷. Another governmental proposal linked the payment of subventions with the restitutions claims of the IKG against the Federal Provinces which would have resulted in the payment of 9 million € out of the 18.2 million € restitution fund. Due to the fact that the question of legal certainty in connection with two class-actions still pending at US courts has not been solved yet several provinces did not agree on an advanced payment. According to information provided by the IKG the amount of subsidies has still not been settled with the federal government¹⁸⁸.

The **Islamic Faith Community** (*Islamische Glaubensgemeinschaft*) in Austria was founded in 1979¹⁸⁹. It has the status of a corporation under public law and has the main function to represent the religious interests of Muslims living in Austria before the Austrian state. The Muslim faith community in Austria has around 200,000 to 300,000 members and is the third largest recognised religious community in Austria¹⁹⁰. Due to the formal recognition of the Islam the members of the Islamic Faith Community are entitled to certain rights like tax considerations of church rates and religious education at public schools. The extensive entitlement of the Islamic Faith Community to represent all Muslims living in Austria, however, is sometimes put under question due to the pluralistic composition of Islamic community¹⁹¹. Above all the relationship to the representation of the Turkish Directorate of Religious Affairs (Diyanet) is rather tense as some Turkish Muslims do not feel represented by the Islamic Faith Community¹⁹². According to Anna Strobl, theologian and author of the book "Islam in Austria" the recognition of the Islamic Faith Community as corporation under public law and the related rights and obligations had contributed to the peaceful and relaxed situations of Muslims living in Austria¹⁹³.

¹⁸⁶ Ibid.

¹⁸⁷ See: Weissensteiner, N. (2003) Glas statt Kohle (Glas instead of money), in: Falter, (04.06.2003), p. 17.

¹⁸⁸ Information stem from a telephone interview with a representative of the Office of the President of the IKG Vienna at August 25, 2003).

¹⁸⁹ The legal basis for the foundation of the Islamic Faith Community is seen in the so called Islam Act from 1912, which formally recognises the Islam as faith community in Austria. RGBl.Nr. 159/1912 (08.10.1912).

¹⁹⁰ Kroissenbrunner, S. (2003) Islam, Migration und Integration: sozialpolitische Netzwerke und „Muslim leadership“ (Islam, migration and integration: sociopolitical networks and “Muslim leadership”) in: Fassmann, H., Stacher, I., Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, p. 377. [PUBAT0118]

¹⁹¹ Ibid, p. 378.

¹⁹² Ibid.

¹⁹³ Strobl, A. (2001) Bunttes Bild von Völkern, Bräuchen, Sitten (Colourful picture of peoples, costumes and conventions) in: Die Furche, nr. 6 (06.09.2001), available at: <http://www.sbg.ac.at/tkr/texte/furche/09.html>, (27.08.2003).

8.3. UMBRELLA ORGANISATIONS AND MIGRANT FEDERATIONS

Asylkoordination Österreich (asylum co-ordination Austria) is as an association composed by various Austrian organisations and private persons who engage in counselling of migrants, asylum seekers and refugees. The association founded in 1991, not only coordinates between its various member organisations but also becomes active in regard to public awareness raising, anti-racism workshops as well as documentation and provision of related information. Furthermore, *Asylkoordination Österreich* organises regular meetings with refugee advisors in order to share experiences with the praxis of the Austrian refugee law, to discuss problems of their everyday work and to develop strategies for lobbying and political campaigns. Four times a year the organisation publishes a journal called “*asylkoordination aktuell*”, which focuses on current topics related to asylum policy, migration, xenophobia etc.

Due to the fact that resident migrants are mostly excluded from political participation (see chapter 2.3) **self-organised migrant federation** provide practically the only form of representation for many foreigners living in Austria. These organisations are often structured according to ethnic and national criteria as it was observed regarding migrants coming from the former Yugoslavian Republic who separated according to ethnic backgrounds in the beginning of the 1990s¹⁹⁴. In the case of Turkish migrant organisations it had been observed that they are structured in line with political party affiliation¹⁹⁵. According to estimations about 40 Kosovo-Albanian organisations and 40 associations of Bosnian migrants are spread all over Austria¹⁹⁶. Concerning Croatian, Turkish or other migrant federations no concrete numbers are presently available. Unfortunately, there is relatively little research on the scenery of self-organised migrant federation in Austria¹⁹⁷ which will hopefully change in the near future.

¹⁹⁴ Bratić, L (2003) Soziopolitische Netzwerke der MigrantInnen aus der ehemaligen Sozialistischen Föderativen Republik Jugoslawien in Österreich, in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report), p. 409, Klagenfurt: Drava. [PUBAT0118]

¹⁹⁵ Bratić, L. (2000) Soziopolitische Organisationen der MigrantInnen in Österreich, in: Kurswechsel, Antirassismus: Positionen und Widersprüche, 1/2000, p. 11, available at: <http://www.kurswechsel.at/bratic.pdf> (23.10.2003).

¹⁹⁶ These organisations include all kind of associations such as sport clubs, regular social get-togethers, literature associations as well as political groupings. See: Bratić, L (2003), pp. 397, 406, 408.

¹⁹⁷ See: Perchinig, B. (2003) Integrationspolitische Dimension von MigrantInnenorganisationen – Anmerkungen zu Forschungsparadigmen und Forschungsfragen, in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report), pp. 373, 374, Klagenfurt: Drava. [PUBAT0118]

9. Summary and Conclusions

Presently Austria's anti-discrimination legislation is mainly based on its constitutional equal treatment clauses and penal provisions in criminal and administrative law, most of which were introduced to transform the International Convention on the Elimination of all Forms of Racial Discrimination into the Austrian legal system. Due to the requirements set out by the Racial Equality Directive and the Employment Equality Directive, Austria had to introduce a whole range of new anti-discrimination provisions into its civil law system, which so far was lacking any legal remedies against racial discrimination.

One of the major problems regarding the Austrian legal framework against discrimination is its scattered structure. This fact might be one of the reasons for Austria's penultimate rank in the Eurobarometer survey on Discrimination in Europe regarding its citizens' knowledge about their rights, were they to experience discrimination. Furthermore, the survey shows that the rate of persons ready to file a complaint against discrimination is the lowest in Austria compared to all other Member States. Both results indicate that there is a considerable deficit in the awareness but also in the efficiency of Austria's anti-discrimination provisions. Major awareness raising and information campaigns will be necessary to change this unsatisfactory results. Considering the fact that many Austrians do not even know about those anti-discrimination provisions already in force it will be important to target information campaigns not only at potential victims but also especially on potential perpetrators.

The effectiveness of anti-discrimination legislation, however, does not only depend on the addressees but also on those who apply these norms in the course of criminal or civil law proceedings. The newly introduced provisions which were due to the Directives' transposition constitute a considerable challenge to the Austrian judicial personnel as they lead to major changes in regard to restrictions of the principle of autonomy of the contracting partners (*Privatautonomie*) but also in regard to the burden of proof. However, also already existing provisions seem to involve some difficulties in their application. Although an obligation for Public Prosecutors to report on the application of sec 33 para 1 no 5 Penal Code, providing for an aggravating factor for racist or xenophobic motivations, not a single case was reported in 2002. This fact shows that also in regard to the judicial personnel further training and awareness measures are necessary to draw attention not only to the new provisions but also to those already existing.

Due to the fact that in Austria there is no ombuds institution which consistently records complaints on racial, ethnic, religious, and xenophobic discrimination there is still a considerable lack of descriptive data. NGOs as well as other interest groups like social partnership institutions play a decisive role in counselling and supporting victims of discrimination and thereby collecting relevant data and information. Unfortunately the expertise of these institutions is regularly neglected by political decision makers. In the course of the legal drafting process concerning the Directives' transposition no consultation process with specialised interest groups and research institutes was conducted. The final drafting process in the following months will show to what extent expert opinions provided by special interest groups are taken into account by the government. In order to enhance the protection against discrimination it would be important to record more statistical data on direct and specifically on indirect discrimination. This data should include information on victims as well as perpetrators and should not restrict itself to the criteria of nationality but

should include “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 and ethnic discrimination 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.

Finally it can be said that in regard to the legal fight against discrimination Austria is presently going through an important development which is, however, less based on its own initiative but rather on 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. Instead of introducing an effective and coherent system of legal remedies against discrimination the present legislative draft rather seems to orientate itself along the minimum requirements set out by both Directives.

10. Annex 1:

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 provinces¹⁹⁸. Between 1945 and 1955, the minority policy was determined by the negotiations concerning the Austrian State Treaty¹⁹⁹ 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 were the ones 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 namely the ideological involvement in the east-west conflict due to the communist orientation of Yugoslavia²⁰⁰.

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”²⁰¹. 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 institutions²⁰².

¹⁹⁸ Baumgartner, G. and Perchinig, 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]

¹⁹⁹ Österreich, BGBl 152/1955, available at: <http://www.bka.gv.at/bka/dokumente/art7SV.pdf>, (27.08.2003).

²⁰⁰ Baumgartner, G./Perchinig, B. (1997), p.630. [PUBAT0004]

²⁰¹ Österreich, BGBl 396/1976, available at: <http://www.bka.gv.at/bka/dokumente/volksgruppengesetz.pdf>, (27.08.2003).

²⁰² Baumgartner, G./Perchinig, B. (1997), p.637. [PUBAT0004]

After the fall of the “Iron Curtain” the Hungarians in Vienna were recognised as part of the Hungarian minority and the Slovaks were established as a separate minority group. The last minority group to be officially recognised were the Roma, they have long been fighting for their recognition, which was denied on the basis of not defining them as a proper indigenous minority. In 1993, the decision in favour of the Roma was promoted by the debate on the role of the former Federal President, Kurt Waldheim, during the NS-period, which gave Austria little leeway for not recognising a minority that was almost extinguished by the Holocaust²⁰³.

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 groups²⁰⁴. 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 ranges²⁰⁵.

²⁰³ Ibid., p.239.

²⁰⁴ Cf. Table 15.

²⁰⁵ Cf. Table 16.

11. Annex 2: Tables

Table 7: 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
Austria	7,322,000	91.1%	710,926	8.9%	8,032,926

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 8: 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
Total resident population	8,032,926	100.0	7,322,000	100.0	710,926	100.0

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 9: 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 10: 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, (30.08.2002).

²⁰⁶ These numbers are not available yet 2003.

Table 11: 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
Total	239,139	100.0	242,158	100.00	240,059	100.00	228,880	100.00

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 Österreich (Annual average 2001: Foreign employees obliged to have a work permit by countries of origin in Austria), p.75, Arbeitsmarktservice Österreich (2003), Statistiken: Arbeitsmarktdaten 2002: Table: BA 801: Jahresdurchschnitt 2002: Bewilligungspflichtig beschäftigte Ausländer/innen nach*

Staatszugehörigkeit in Österreich (Annual average 2002: Foreign employees obliged to have a work permit by countries of origin in Austria), p.75 and own calculations.

Table 12: 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 13: Emigration of refugees (1991-2002)²⁰⁷

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, (02.09.2002), for 2002: Information provided by IOM Vienna, June 4, 2003.

²⁰⁷ 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 14: 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 15: 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” ²⁰⁸	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
Total minority languages	119,667	1.5	82,504	1.1	37,163	5.2
German	7,115,780	88.6	6,991,388	95.5	124,392	17.5
Total all languages	8,032,926	100.0	7,322,000	100.0	710,962	100.0

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 16: 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 ²⁰⁹				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.

²⁰⁸ “Windisch” is a label for Slovenians in Carinthia. It is problematic due to its history in the context of assimilation pressure from the 1920s onward.

²⁰⁹ The Roma have only officially been recognised as an autochthonous ethnic group in 1993.

12. References

Advisory Committee on the Framework Convention for the Protection of National Minorities (2002) Opinion on Austria (16.05.2002), ACFC/INF/OP/I(2002)009, available at:

http://www.bka.gv.at/bka/service/publikationen/volksgruppen/rahmenkonvention_pruefbericht_en.pdf (23.10.2003). [PUBAT0014]

Amesberger, H.; Halbmayr, B.; Liegl, B. (2003) Gesundheit und medizinische Versorgung von ImmigrantInnen (Health and medical care in regard to migrants), in: Fassmann, H., Stacher, I., Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, pp. 171-194. [PUBAT0118]

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>, (27.08.2003). [PUBAT0106]

Arbeitsgruppe Migrantinnen und Gewalt (eds.) (2003) Migration von Frauen und strukturelle Gewalt (Migration of women and structural violence), Milena: Wien. [PUBAT0107]

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, pp. 45-59. [PUBAT0108]

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. [PUBAT0088]

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

Bratić, L. (2003) Soziopolitische Netzwerke der MigrantInnen aus der ehemaligen Sozialistischen Föderativen Republik Jugoslawien in Österreich, in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report), Klagenfurt: Drava, [PUBAT0118]

Bratić, L. (2000) Soziopolitische Organisationen der MigrantInnen in Österreich, in: Kurswechsel, Antirassismus: Positionen und Widersprüche, 1/2000, available at: <http://www.kurswechsel.at/bratic.pdf>

Bundesministerium für Inneres, Bundesministerium für Justiz (2003) Sicherheitsbericht 2002 (Security Report 2002), Wien. [PUBAT0109]

Bundesministerium für Inneres, Bundesministerium für Justiz (2002) Sicherheitsbericht 2001 (Security Report 2001), Wien. [PUBAT0110]

Bundesministerium für Inneres (2002) Verfassungsschutzbericht 2001. Staats-, Personen- und Objektschutz. (Report on the Protection of the Constitution 2001. Security of the state, people, and objects). Wien, available at:

<http://www.bmi.gv.at/downloadarea/staatsschutz/Verfassungsschutzbericht2001.pdf>, (27.08.2003). [PUBAT0111]

Committee on the Elimination of Racial Discrimination - CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Austria 21/05/2002, CERD/C/60/CO/1, available at:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.60.CO.1.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.60.CO.1.En?Opendocument), (27.08.2003). [PUBAT0112]

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, (27.08.2003). [PUBAT0066]

Europäischen Ausschusses 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 (Third 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/>, (27.08.2003). [PUBAT0113]

Europäischen Ausschusses 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>, (27.08.2003). [PUBAT0114]

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, (27.08.2003) [PUBAT0115]

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), available at:

http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm, (27.08.2003). [PUBAT0116]

European Council on Refugees and Exiles - ECRE (1999), Position on the Integration of Refugees in Europe, p. i, available at: <http://www.ecre.org/positions/integ.pdf>, (27.08.2003). [PUBAT0117]

Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118]

Helping Hands Graz (2003) Jahresbericht 2002 (Annual Report 2002), available at: <http://www.helpinghands-graz.at/2002.pdf>, (27.08.2003). [PUBAT0074]

Hipold, P (2001) Modernes Minderheitenrecht (Modern Minority law), Wien: Manz. [PUBAT0119]

Hirtenlehner, M., Gratzl-Ploteny, S. (2002) Policing in a multicultural Society, in: Equal Voices, issue 10, pp.4-6, available at: http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3e3e6e32a2316&contentid=3e3e87316eed4, (27.08.2003). [PUBAT0120]

International Helsinki Federation for Human Rights (2003) IHF Annual Report on Human Rights Violations 2003 –Austria (Events of 2002), available at: http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1322

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 resitution 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, (27.08.2003). [PUBAT0121]

Karner, E., Koziol, H. (2003) Der Ersatz ideellen Schadens im österreichischen Recht und seine Reform (The compensation of immaterial damage in the Austrian legal system and its reform) Wien: Manz. [PUBAT0122]

Knapp, A. (2003) Statistisches: Asylstatistik 2002: Wieder mehr Anträge (Statistics: Asylum statistic 2002: More Applications), in: asylkoordination aktuell [PUBAT0078] 1-2003, pp.28-31. [PUBAT0077]

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

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 stragegies of coping of conserved foreigners) in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118], pp. 356-366.

Kroissenbrunner, S. (2003) Islam, Migration und Integration: sozialpolitische Netzwerke und „Muslim leadership“ (Islam, migration and integration: sociopolitical networks and “Muslim leadership”) in: Fassmann, H., Stacher, I., Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava, p. 377. [PUBAT0118]

Lebhart, G.; Münz, R. (2003) Migration und Fremdenfeindlichkeit in Österreich – Perzeption und Perspektiven (Migration and xenophobia in Austria- perception and perspective) in: Fassmann H., Stacher I. (eds.) (2003) Österreichischer Migrations- und Integrationsbericht (Austrian Migration and Integration Report) Klagenfurt: Drava. [PUBAT0118]

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), Wien, available in German at: http://www.menschenrechtsbeirat.at/index_berichte.html, (27.08.2003). [PUBAT0123]

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, (27.08.2003). [PUBAT0034], [NFPAT0006]

Stadt Wien (2002) Migration - Integration - Diversitätspolitik (Migration – Integration - Diversity policy), available at: <http://www.europaforum.or.at/Download/MingBroschuere/Kurzfassung.pdf>, (27.08.2003). [PUBAT0124]

Stadt Wien – Presse- und Informationsdienst (2001) Jewish Vienna – Heritage and Mission, Wien. [PUBAT0125]

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>, [PUBAT0039]

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). [PUBAT0085]

Steininger, H. (1992) Kommentar zum Strafgesetzbuch (Commentary to the Penal Code), Eisenstadt: Prugg. [PUBAT0126]

verbal – Verband für angewandte Linguistik (2002) Stellungnahme zur „Integrationsvereinbarung“ (Expert opinion on the „Integration Agreement“), available at: http://www.univie.ac.at/linguistics/verbal/verb_stel_arc.htm, (27.08.2003). [PUBAT0127]

Volksanwaltschaft (2002) 25. Bericht über die Tätigkeit der Volksanwaltschaft im Jahr 2001 an den Nationalrat und den Bundesrat – Grundrechtsteil (25th report on the activities of the Office of the People's Advocate in 2001 for the National Council and the Federal Council – section on fundamental rights), Wien, p. 35, available at: http://www.volksanw.gv.at/i_berichte.htm, (27.08.2003). [PUBAT0128]

Wiener Integrationsfonds (2003) Report 2002 – Tätigkeitsbericht (Activity Report 2002), available at: <http://www.wif.wien.at/>, (27.08.2003). [PUBAT0129]

Wiener Integrationsfonds (WIF) (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. [PUBAT00130]

Wiener Integrationsfonds (2002b) Begutachtung und Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Fremdenrecht 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, (27.08.2003). [PUBAT0131]

Wiener Integrationsfonds (2001) MigantInnen in Wien 2000, Daten & Fakten & Recht Report 2000, Teil II, (Migrants in Vienna 2000, data & facts & legislation report 2000, part II), p. 39, available at: http://www.wif.wien.at/wif_site/downloads/DatenFakten2000.pdf, (27.08.2003). [PUBAT0132]

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>, (27.08.2003). [PUBAT0133]

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, (27.08.2003). [PUBAT0045]

ZARA (2002), Racism Report 2001 Case Report on Racist Incidents and Structures in Austria, Focus: Awareness-raising activities, Wien, available at: http://www.zara.or.at/download/rass_rep_2001_e.pdf, (14.06.2003). [PUBAT0093]

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, (21.06.2003), [PUBAT0095],

ZEBRA (2002) Um die Opferrolle wird hart gekämpft (fighting hard about victimhood), in zebratl no 3, available at: <http://www.zebra.or.at/zebratl/2k2/3/omofuma.htm>, (27.08.2003). [PUBAT0134]

HOME PAGES OF MEDIA AND PERIODICALS

AK Aktuell, <http://www.akwien.at>, (27.08.2003). [PUBAT0100]

Arbeit und Wirtschaft, <http://www.arbeit-wirtschaft.at>, (27.08.2003). [PUBAT0082]

Der Standard, <http://derstandard.at>, (27.08.2003). [PUBAT0046]

Kleine Zeitung, <http://www.kleinezeitung.at>, (27.08.2003). [PUBAT0096]

Rechtsinformationssystem (RIS), <http://www.ris.bka.gv.at>, (27.08.2003). [PUBAT0052]

Salzburger Nachrichten, <http://www.salzburg.com>, (27.08.2003). [PUBAT0097]

UNHCR Aktuell, <http://www.unhcr.at>, (27.08.2003). [PUBAT0098]

HOME PAGES OF ORGANISATIONS AND PROJECTS

amnesty international, <http://www.amnesty.org>, (27.08.2003). [NFPAT0197]

asylkoordination österreich, <http://www.asyl.at>, (27.08.2003). [NFPAT0104]

Bundesministerium für Bildung, Wissenschaft und Kultur, <http://www.bmbwk.gv.at>, (27.08.2003). [NFPAT0167]

Bundesministerium für Gesundheit und Frauen, <http://www.bmgf.gv.at>, (27.08.2003). [NFPAT0198]

Bundesministerium für Inneres, Abteilung II/7-Staatspolizei, <http://www.bmi.gv.at>, (27.08.2003). [NFPAT0063-B]

Bundesministerium für Justiz, <http://www.bmj.gv.at/>, (27.08.2003). [NFPAT0106]

Bundesministerium für Wirtschaft und Arbeit, <http://www.bmwa.gv.at>, (27.08.2003). [NFPAT0184]

Deserteurs- und Flüchtlingsberatung, <http://www.deserteursberatung.at>, (27.08.2003). [NFPAT0029]

European Monitoring Centre on Racism and Xenophobia (EUMC), <http://www.eumc.eu.int>, (27.08.2003). [NFPAT0189]

International Centre for Migration Policy Development (ICMPD), <http://www.icmpd.org>, (27.08.2003). [NFPAT0010]

International Organization for Migration (IOM) Vienna, <http://www.iomvienna.at>, (27.08.2003). [NFPAT0194]

Integrationshaus, <http://www.integrationshaus.org/default.htm>, (27.08.2003) [NFPAT0155]

Ludwig Boltzmann Institut für Menschenrechte, <http://www.univie.ac.at/bim/>, (27.08.2003). [NFPAT0107]

Menschenrechtsbeirat, <http://www.menschenrechtsbeirat.at>, (27.08.2003). [NFPAT0006]

MIDAS – Wirksame Strategien und Maßnahmen gegen Rassismus und Diskriminierung am Arbeitsmarkt, <http://www.migrant.at/folder-midas.pdf>, (27.08.2003). [ACTAT0009]

Statistik Austria, <http://www.statistik.at>, (27.08.2003). [NFPAT0123]

Österreichischer Gewerkschaftsbund, <http://www.oegb.or.at/>, (27.08.2003). [NFPAT0129]

Österreichischer Rundfunk (ORF), <http://www.orf.at>, (27.08.2003). [PUBAT0049]

Österreichischer Rundfunk – Minderheitenredaktion, <http://volksgruppen.orf.at>, (27.08.2003). [PUBAT0099]

Österreichisches Institut für Wirtschaftsforschung (WIFO), <http://www.wifo.ac.at>, (27.08.2003). [NFPAT0183]

Österreichisches Volksgruppenzentrum,
<http://www.gfbv.it/3dossier/oevz/oevzindex.html>, (27.08.2003). [NFPAT0102]

UNHCR, <http://www.unhcr.at>, (27.08.2003). [NFPAT0164]

Wiener Integrationsfonds, <http://www.wif.wien.at>, (27.08.2003). [NFPAT0066]

Wirtschaftskammern Österreichs, <http://portal.wko.at>, (27.08.2003). [NFPAT0196]

ZARA, <http://www.zara.or.at>, (27.08.2003). [NFPAT0005]

ZEBRA, <http://www.zebra.or.at>, (27.08.2003). [NFPAT0165]

FEDERAL LAWS

Allgemeines Sozialversicherungsgesetz, ASVG (General Social Insurance Act), BGBl.Nr. 189/1955 zuletzt geändert durch BGBl. I Nr. 138/1998 (18.08.1998).

Arbeiterkammergesetz – AKG (Chamber of Labour Act), BGBl. II Nr. 340/1998 (24.09.1998).

Asylgesetz (Asylum Act) BGBl. I/76/1997 as last amended by BGBl. I/126/2002, (13.8.2002).

Bundesbetreuungsgesetz (Federal Care Provision Act) BGBl. I/405/1991 as last amended by BGBl. I/98/2001, (7.8.2001).

Bundesbetreuungsverordnung (Federal Care Provision Decree) BGBl. I/31/1992 as last amended by BGBl. II/441/2001, (14.12.2001).

Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei (Federal Law on the Organisation of Security Administration and Exercise of the Security Police), BGBl. 566/1991 as last amended by BGBl. I/104/2002, (16.7.2002).

Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei (Federal Law on the Organisation of Security Administration and Exercise of the Security Police) BGBl. 566/1991 as last amended by BGBl. I/104/2002, (16.7.2002).

Bundesgesetz über die Rechtsstellung von Volksgruppen in Österreich (Federal Law on the Legal Status of Ethnic Groups in Austria) BGBl 396/1976 as last amended by BGBl 35/2002, (31.1.2002).

Bundesgesetz: Entschädigungsfondsgesetz sowie Änderung des Allgemeinen Sozialversicherungsgesetzes und des Opferfürsorgegesetzes (General Social Security Law and the Victims Assistance Act) BGBl. I/12/2001, (28.2.2001).

Bundes-Gleichbehandlungsgesetz (Act on Equal Treatment of Women and Men by the Federal State) BGBl. 100/1993, (12.02.1993), as last amended by BGBl. I/30/1998, (14.01.1998)

Bundesverfassungsgesetz vom 6. Februar 1947 über die Behandlung der Nationalsozialisten (Federal Constitutional Law of February 6, 1947 on dealing with National Socialists) BGBl. 25/1947 as last amended by BGBl. 82/1957.

Bundesverfassungsgesetz 1920 idF 1929 (Federal Constitution Act 1920 as amended by the Federal Constitution Act 1929) BGBl. 1/1930.

Bundesverfassungsgesetz zur Umsetzung des Internationalen Übereinkommen über die Beseitigung aller Formen rassistischer Diskriminierung (Federal Constitutional Law implementing the International Convention on the Elimination of All Forms of Racial Discrimination) BGBl. 390/1973.

Einführungsgesetz zu den Verwaltungsverfahrensgesetzen (Introductory Provisions to the Code of Administrative Procedure) BGBl. 50/1991 (31.01.1991) as last amended by BGBl. I/63/1997, (30.06.1997).

Federal Law on the Legal Status of Ethnic Groups in Austria (Bundesgesetz über die Rechtsstellung von Volksgruppen in Österreich), BGBl. 396/1976 as last amended by BGBl. 35/2002, (31.1.2002).

Fremdengesetz (Alien Act) BGBl. I/75/1997 as last amended by BGBl. I/134/2002, (13.8.2002).

Gleichbehandlungsgesetz (Federal Equal Treatment Act of Women and Men at the Workplace) BGBl. 108/1979 as last amended d by BGBl. I 44/1998, (01.05.1998).

Minderheiten-Schulgesetz für das Burgenland (Minority School Act for Burgenland), BGBl 641/1994, as last amended by BGBl I 136/1998 (18.08.1998).

Minderheiten-Schulgesetzes für Kärnten (Minority School Act for Carinthia), Österreich, BGBl 101/1959, as last amended by BGBl I 136/1998 (12.07.2001).

Niederlassungsverordnung 2003 Regulation for Permanent Settlement (Österreich, BGBl II/136/2003 (30.04.2003).

Opferfürsorgegesetz (Victims Association Act) BGBl.Nr. 183/1947 as last amended by BGBl. II Nr. 198/2003 (28.03.2003).

Presseförderungsgesetz (Act on Supporting the Press) BGBl. 228/1985 as last amended by BGBl. 35/1998, (30.1.1998).

Staatsvertrag betreffend die Wiederherstellung eines unabhängigen und demokratischen Österreichs (State Treaty for the Re-establishment of an Independent and Democratic Austria) BGBl. 152/1955.

Staatsvertrag von Wien vom 15. Mai 1955 (Vienna Treaty of May 15) 1955, BGBl. 152/1955.

Strafgesetzbuch (Penal Code) BGBl. 60/1974 as last amended by BGBl. I/134/2002, (13.8.2002).

Verbotsgesetz (Prohibition Statute) StGBI. 13/1945 as last amended by BGBl. 148/1992, (19.3.1992).

Verlautbarungsgesetz 1985(Announcement Act), Österreich, BGBl.Nr. 201/1985 as last amended by BGBl. I Nr. 158/1998 (30.09.1998).

Wohnbauförderungsgesetz (Law on the promotion of social housing) (Österreich, BGBl.Nr. 153/1954 as last amended by BGBl. Nr. 917/1993.

LAW OF THE FEDERAL PROVINCES

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).

DRAFT LEGISLATION:

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 Registration Law), available at:

http://www.bmi.gv.at/begutachtungdownload/Asylgesetz-Novelle_Entwurf.pdf, (27.08.2003).

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>,
(27.08.2003).

Erläuterungen zum Entwurf des Gleichbehandlungsgesetzes (Explanatory commentaries to the draft of the amended Equal Treatment Act) (2002), p 4, available at: <http://www.bmwa.gv.at/BMWA/Rechtsvorschriften/Entwuerfe/e2003170.htm>,
(27.08.2003).