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Human Rights & Democracy Austria 2006 A work in progress*

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Introduction

Most human rights are observed most of the time in Austria. Many human rights standards seem to have been internalized or violations do not occur because of other reasons. There are, however, serious concerns, whenever and wherever violations or infringements, particularly of a lesser degree, come to the fore. Such cases regularly reveal structural inadequacies, which, in sum, usually amount to a violation of rights. A few human rights areas are particularly prone to such structural inadequacies: racism, women's rights, economic & social rights, and migrant rights.

2006 saw the implementation of a new asylum and immigration regime. Said to be one of Europe's most stringent, public discourse on the effects was limited to the government's showing off declining numbers in asylum seekers, naturalizations and other figures related to 'measuring' the 'effects' of migration policy and indicating the openness or lack thereof of society. Civil society, however, pointed to a number of individual cases, which highlighted the structural inadequacies of the new regime. Despite the obvious shortcomings, no moves aimed at overhauling the system seemed to be made.

The first publicly known case of torture in the Second Republic highlighted prejudice against black people. The victim was held in solitary confinement for days following the incident because it was believed that he had resisted state authority ('*Widerstand gegen die Staatsgewalt*'). Such cases are disproportionately frequent among people whose skin colour is non-Caucasian and whose first language is not German. Also, there were other important human rights concerns highlighted by the first torture case subject to a criminal trial.

Press coverage of racism, particularly against black people, remains limited as was highlighted by a ceremony honoring Nobel Laureate Toni Morrison in Vienna.¹ The main speaker's remarks on the situation of black people in Vienna were not covered in mainstream media. Press freedom, more precisely freedom of speech, continues to be in frequent assessment by the European Court of Human Rights (ECtHR). With more than 10 judgments, Austria is second after Turkey in press freedom violations found by the Court. Overall the European Court of Human Rights found 19 violations in 2006.² A frequent ground is violations of the right to a fair trial due to lengthy procedures.

¹ See Simon Inou, Ein unvergesslicher Tag für die Schwarzen in Österreich, in: Die bunte Zeitung, Nr. 6, Dezember – Jänner 06/07; 9.

² Decisions by the European Court of Human Rights involving Austria in 2006: *Albert Engelmann-Gesellschaft v Austria*, No. 46389/99, 19 April 2006 (Violation of Article 10 – Freedom of Expression); *Brugger v Austria*, No. 76293/01, 26 April 2006 (Violation of Article 6 – Right to a Fair Trial); *Brunnthal v Austria*, No. 45289/99, 29 September 2006 (Violation of Article 6 – Right to a Fair Trial); *Coorplan-Jenni GmbH and Hascic v Austria*, No. 10532/02, 11 December 2006 (Violation of Article 6 – Right to a Fair Trial); *Hauser-Spörn v Austria*, No. 37301/03, 7 December 2006 (Violation of Article 6 – Right to a Fair Trial); *I.H. and others v Austria*, No. 42780/98, 20 July 2006 (Violation of Article 6 – Right to a Fair Trial); *Jurisic and Collegium Mehrerau v Austria*, No. 62539/00, 11 December 2006 (Violation of Article 6 – Right to a Fair Trial); *Kaya v Austria*, No. 54698/00, 8 September 2006 (Violation of Article 6 – Right to a Fair Trial); *Kobenter and Standard Verlags GmbH*, No. 60899/00, 2 November 2006 (Violation of Article 10 – Freedom of Expression); *Krone Verlags GmbH & Co KG v Austria*, No. 72331/01, 9 November 2006 (No violation of Article 10 – Freedom of Expression); *Moser v Austria*, No. 12643/02, 21 November 2006 (Violation of Article 8 – Right to Privacy); *Müller v Austria*, No. 12555/03, 5 January 2007 (Violation of Article 6 – Right to a Fair Trial); *Öllinger v Austria*, No. 76900/01, 29 September 2006 (Violation of Article 11 – Freedom of Assembly); *Österreichischer Rundfunk v Austria*, No. 35841/02, 7 December 2006 (Violation of Article 10 – Freedom of Expression); *R.H. v Austria*, No. 7336/03, 19 April 2006 (Violation of Article 14 – Prohibition of Discrimination, Article 8 – Right to Privacy); *Standard Verlags GmbH and Krawagna-Pfeifer v Austria*, No. 19710/02, 2 November 2006 (Violation of Article 10 – Freedom of Expression); *Standard Verlags GmbH v Austria*, No. 13071/03, 2 November 2006 (Violation of Article 10 – Freedom of Expression); *Stojakovic v Austria*, No. 30003/02, 9 November 2006 (Violation of Article 6 – Right to a Fair Trial); *Verlagsgruppe News GmbH v Austria*, No. 76918/01, 14 December 2006 (Violation of Article 10 – Freedom of

Among the 29 chapters of this report, two are particularly noteworthy: minority rights and human rights and history. The former reflects the struggle to implement minority rights as guaranteed in the 1955 State Treaty, among others. The placing of bilingual topographical town signs has been the proxy for an entire regime designed to ensure protection of minority rights. Legislation specifying these rights, enshrined in the Ethnic Groups Act (*Volksgruppengesetz*), is now in place for more than three decades with significant implementation gaps.

The implications of Austria's history can be felt in various areas of human rights. Although history is not a category in human rights implementation, the approach to, and discussion of, history is reflected in human rights considerations. Because this paper takes a broad approach on the notion of human rights – including atmosphere and issues below the threshold of positive rules – a separate chapter gives an overview of incidents, which are reflective of the approach taken to Austria's recent history.

Contrary to the practice in other industrialized democracies, Austria does not have a tradition in gathering a substantive human rights report at government level. This paper draws on a number of excellent specialized reports, which are herewith gratefully acknowledged. Most issues covered are derived from news reports.

This paper seeks to give a thorough overview, however, it does not claim to be exhaustive. On the contrary: relying on stories, which were reported in various news outlets suggests that the following chapters summarize the tip rather than the basics of the situation of human rights in Austria.

1. Elections and Referenda

1.1. Referendum March

In March, as Austria was holding the presidency of the European Union and thus partaking in the discussion on the possible accession of Turkey to the Union, the Freedom Party (FPÖ) held a referendum 'Austria remain free!' (*Österreich bleib frei!*). With a quasi-burka made of an EU-flag slit open to reveal a woman's eyes the advertisements for the referendum asked 'is this to be OUR future? (*Soll das UNSERE Zukunft sein?*)' The FPÖ argued that the 'Turkey-madness' (*Türkei-Wahnsinn*), meaning a possible accession of Turkey, had to be stopped. Also, Turkey was labeled as not being European and thus not being fit to join the EU. Maintaining Austria's neutrality and ensuring a plebiscite on the EU Constitution were the two other main messages of the campaign.³ 258.281 people signed the referendum; the parliament did not act on the issues as they were deemed untimely and wrong.⁴

1.2. Referendum June

In June, the governor of Carinthia, Jörg Haider of the Alliance for Austria's Future (BZÖ) wanted to hold a referendum on the placement of bilingual topographical signposts in German and Slovene. The 1955 State Treaty (*Staatsvertrag*) obliges Austria to respect the rights of the Slovene minority, amongst others. The debate on the required amount of town-signs has been ongoing for decades and was intensified by a finding of the Constitutional

Expression); *Verlagsgruppe News GmbH v Austria* (No. 2), No. 10520/02, 14 December 2006 (Violation of Article 10 – Freedom of Expression); *Zeman v Austria*, No. 23960/02, 29 September 2006 (Violation of Article 14 – Prohibition of Discrimination).

³ <http://www.oesterreichbleibfrei.at> (last visited January 5, 2007).

⁴ See Parlamentskorrespondenz: Nationalrat befasst sich mit Volksbegehren 'Österreich bleib frei!', http://www.parlament.gv.at/portal/page?_pageid=893,79807&_dad=portal&_schema=PORTAL&P_SCHL=1065035.

Court a few years ago.⁵ The Provincial Election Authority (*Landeswahlbehörde*) in Carinthia, which is composed of representatives of all elected parties, turned down the governor's request.⁶ Haider labeled the decision of the Election Authority an 'abolishment of democracy' and announced that he would appeal the decision at the Constitutional Court.⁷

The BZÖ then went on to call for a ballot (*Urabstimmung*). The 'ballot' called on 40.000 persons living in towns, where such signs should be posted to cast their 'vote' with a postcard. Other political parties and Slovene Representatives, such as the Council of Carinthian Slovenes (*Rat der Kärntner Slowenen*), protested. The Council spoke of abuse of authority (*Amtsmissbrauch*) and defalcation (*Untreue*) as the 'ballot' was not legal and seemed to be financed with public monies.⁸ The advertising 'Do you want a final solution to the question of town-signs?' (*Wollen Sie eine endgültige Lösung der Ortstafelfrage?*);⁹ made disturbing use of a Nazi-connected-term. 10.422 persons responded.¹⁰

1.3. General Election October

In addition to questions on the financing of election campaigns¹¹ and the use of covertly and more overtly discriminatory – if not to say slanderous – slogans against immigrants and in particular Muslims,¹² the composition of the Federal Election Authority (*Bundeswahlbehörde*) and the order of party names on the ballot were hotly disputed in the run up to October's general election.

In the 2002 election, the Freedom Party (FPÖ) had won 10,01% and formed a coalition with the conservative People's Party (ÖVP). Following the 2005 split of the Freedom Party, the Alliance Austria's Future (BZÖ) was established and all FPÖ-Ministers became members of the Alliance. Setting up the Federal Election Authority, the Ministry of the Interior relied on the expertise of its in house counsel and thus justified the decision to nominate the Alliance rather than the Freedom Party into the 11-seat Authority.¹³ Experts warned that this decision undermined the rule of law principle and compared the decision to 'playing with fire'.¹⁴

The most important decision of the Federal Election Authority then was the order of party names on the ballot papers. Various experts were consulted and arrived at different conclusions. The Authority decided that the Freedom Party (FPÖ) was to take the third place – after the People's Party (ÖVP) and the Social Democrats (SPÖ) – followed by the Alliance for Austria's future (BZÖ).¹⁵ The Freedom Party then sought an interim injunction (*einstweilige Verfügung*) stopping the BZÖ's use of the labeling '*Die Freiheitlichen*'.¹⁶ In Carinthia, the province governed by former Freedom Party Chair and later Alliance for Austria's Future co-founder Jörg Haider, the BZÖ was listed as '*Die Freiheitlichen in Kärnten – Liste Jörg Haider – BZÖ*'; making it difficult to discern two parties who were in direct competition.

⁵ See Section 17. National, Ethnic & Linguistic Minorities.

⁶ APA, Volksbefragung des BZÖ in Kärnten abgelehnt, 29. Mai 2006.

⁷ APA, Haider will Nein zu Volksbefragung bei Verfassungsgerichtshof anfechten, 30. Mai 2006.

⁸ Die Presse, Ortstafeln: Strafanzeige gegen Haider, 20. Juni 2006.

⁹ Kurier, Ortstafel-Kampagne mit NS-Anleihen, 22. Juni 2006.

¹⁰ Barbara Tóth, 10.422, Commentary, Der Standard, 28. Juni 2006.

¹¹ See also Section 2. Transparency and Corruption.

¹² See, among others Section 23. Aggressive Nationalism, Revisionism, Hate Speech, and Incitement.

¹³ See APA, Sitz in Wahlbehörde geht an BZÖ, 21. August 2006; Barbara Tóth, BZÖ kapert Budneswahlbehörde, Der Standard, 22. August 2006 and Willkommen in der III. Republik, Commentary, 22. August 2006.

¹⁴ See APA, Politologen zu Causa Wahlbehörde: 'Spiel mit dem Feuer', 22. August 2006.

¹⁵ See Petra Stüber/Barbara Tóth, Entscheid gegen Gutachter, Der Standard, 1. September 2006.

¹⁶ See APA, Einstweilige Verfügung: BZÖ darf sich nicht "Freiheitlich" nennen, 1. September 2006.

The election campaign¹⁷ caused concern on various fronts, as both its style and contents played to fears related to a construed threat posed by foreigners, particularly immigrants. In addition to wide-scale xenophobia, there was a new height in Islamophobia, with both public statements and advertisements singling out Muslims.

A forged letter, designed by a group of artists, stated that the Deputy President of a mountain club, *Alpenverein*, had responded to a request of a well-known Viennese Social Democrat, Omar Al-Rawi, requesting that crosses on the summit of Austrian mountains be replaced with a crescent. Despite the outing of the forgery, the front-runner of the BZÖ, Peter Westenthaler, continued to implicate Mr. Al-Rawi and was stopped from doing so only by an interim injunction (*einstweilige Verfügung*).¹⁸

The President of the National Assembly, Andreas Khol (ÖVP), using the president's letterhead, wrote to members of the Jewish Community, listing various 'achievements' reached throughout the last years to the benefit of the Jewish Community. In closing he wrote '*The good progress of the Jewish community and the Jewish Community Council (IKG) is a strong personal concern and thus I ask you for your support to continue this constructive collaboration in the future.*'¹⁹ In his capacity as National Assembly President, Khol was also Chair of the National Fund for Victims of National-Socialism and the General Settlement Fund.

The turnout on Election Day was a record-low: 78,49%. The Communist Party (KPÖ) challenged the result, in particular the 4% threshold to achieve parliamentary representation, based on the principle of proportional participation but was rejected by the Constitutional Court.²⁰

2. Transparency and Corruption

Ranked 11th of the least-corrupt countries in the world, it seems that Austria's performance in terms of transparency of state agents' action is good. However, the Austrian section of Transparency International noted that the financing of political parties and donations made to individual politicians should be made more transparent, also by way of improved legislation.²¹ In the realm of general anti-corruption measures the Justice Minister confirmed that legislation on the prevention of corruption by representatives of constitutional agencies was being drafted.²²

¹⁷ See Section 23. Aggressive Nationalism.

¹⁸ See APA, Halbmonde statt Gipfelkreuze: Gericht weist Westenthaler in die Schranken, 15. November 2006.

¹⁹ Letter on file with author. The Jewish Community Council added a cover, which states "National Assembly President Prof. Dr. Andreas Khol has asked the Jewish Community Council to forward the enclosed letter to all community members. We may reassure you that – in accordance with data protection laws – neither your name or your address was made public." See also Barbara Tóth, VP-Khol wirbt um jüdische Stimmen, Der Standard, 19. September 2006.

Note, however, a statement of the President of the Jewish Community Council, Ariel Muzicant who referred to a decision of the Council recalling the Council's need to support democratic institutions, including elections. According to the Council's President, also letters from the Social Democrats (written by Elisabeth Pittermann) and Change 06 were sent to members, see Aus dem Büro des Präsidenten, in: Die Gemeinde – Offizielles Organ der Israelitischen Kultusgemeinde Wien, Nr. 591 Oktober 1006 – Tischri 5767, S. 3.

²⁰ See APA, KPÖ ficht Wahl wegen Vier-Prozent-Hürde an, 16. November 2006. ORF.at, and Verfassungs-Gerichtshof gibt Anfechtung der KPÖ nicht statt, 19. Dezember 2006.

²¹ See Mehr Transparenz; Korruption: Kritik auch an Österreich Die Österreich-Sektion der Anti-Korruptionsorganisation Transparency International fordert von der künftigen Bundesregierung verstärkte Maßnahmen zur Korruptionsbekämpfung, 6. November 2006, www.orf.at, <http://oesterreich.orf.at/stories/148629/>.

²² Parlamentarische Anfrage 4572/J XXII. GP, Anfragebeantwortung 4417/AB XXII. GP. For all parliamentary queries and responses see: <http://www.parlament.gv.at>.

Ahead of the general election in October 2006, there were numerous calls to regulate advertising of government branches, including ministries; furthermore, experts urged to increase the transparency of campaign budgets by way of legislation.²³ The necessity for such regulations was highlighted in various instances, where the line between government information and party advertisement appeared to be blurred: in the aftermath of the Olympic games, the government placed ads in the Sunday newspapers congratulating the medalists and inserting only a small line on the government's financial support for sports. A debate over compliance with a directive of the Austrian Court of Audit (*Rechnungshof*), which holds that informational content has to prevail over advertising, ensued.²⁴ In a parliamentary request for information (*Parlamentarische Anfrage*) the costs for a letter with the chancellor's letterhead addressed to first-time voters was questioned.²⁵ Furthermore, the implementation of the above mentioned directive of the Austrian Court of Audit was queried. The chancellor responded that the questions did not relate to matters concerning the chancellor's portfolio.²⁶ Also, the Education Ministry sent the chancellor's 'State of the Union' (*Lage der Nation*) address, which was generally criticized as appearing to be an event of the People's Party (ÖVP) rather than the government, to all public school teachers.²⁷ The minister stated that it was only the part pertaining to the importance of education; it was meant as a motivation as the chancellor had underlined the importance of the teachers' work.²⁸

The financing of government publications repeatedly caused Members of Parliament (MPs) to request information. In one such instance, the Minister in charge, Ursula Haubner appeared unwilling to respond and limited her answer to cross-references to other submissions she had made to various parliamentary queries and to queries the said MP had made previously.²⁹ This led MP Karl Öllinger to assert in another parliamentary request for information that she was trying to mock the checks-and-balances function of parliament; he added that such an attempt had hitherto been unknown to the House. Asked whether she would continue to refuse answers, the Minister responded that she had never declined an answer and would not do so in the future.³⁰ Also, the assignment of jobs in agencies, which are closely linked or indirectly tied to governmental influence repeatedly caused queries. The Viennese weekly, *Falter*, published a list with 101 names of persons alleged to have been appointed due to political intervention.³¹ Furthermore, the heightened need for private consulting of some ministries was probed by MPs.³²

3. Freedom of Expression³³

²³ Andreas Jölli, Pelinka: Gesetz statt Fairnessabkommen, Ö1 Morgenjournal, 10. Juli 2006, <http://oe1.orf.at/inforadio/65936.html> (last visited January 5, 2007).

²⁴ See Vorarlberg Online, Olympia-Inserate sorgen für Ärger, 27. Februar 2006, www.vol.at. See also Der Standard, Immer wieder Propaganda, 27. Februar 2006.

²⁵ Parlamentarische Anfrage 3920/J XXII. GP.

²⁶ Anfragebeantwortung 3924/AB XXII. GP.

²⁷ Parlamentarische Anfrage 4283/J XXII. GP. See also APA, 'Verfassungsexperten fordern Regulierung der Parteiwerbung,' 20 May 2006; constitutional experts rated the email as election advertisement and called for legislative regulation.

²⁸ Anfragebeantwortung 4212/AB XXII. GP.

²⁹ Parlamentarische Anfrage 3917/J XXII. GP & Anfragebeantwortung 3888/AB XXII. GP.

³⁰ Parlamentarische Anfrage 4498/J XXII. GP & Anfragebeantwortung 4318/AB XXII. GP.

³¹ Nina Horaczek, Die Postenschacherliste: Von Achammer bis Zimmermann, Falter 38/06, see also <http://www.falter.at/web/print/detail.php?id=347> (last visited January 5, 2007).

³² See, for example, Parlamentarische Anfrage 4217/J XXII. GP through 4230/J XXII. GP.

³³ Scope of protection: Freedom of expression, including press freedom, is protected under various national laws as well as international rights, which Austria has ratified. Based on Article 13 Basic State Act (*Staatsgrundgesetz*), Austria has also ratified Article 10 – freedom of expression – of the European Convention of Human Rights, laws are thus also in line with Article 19 of the International Covenant on Civil and Political Rights (ICCPR) – the UN's 1966 Treaty covering civil and political rights.

In addition to concerns over the scope of freedom of expression, particularly the level of criticism that public personae have to accept, major concerns remain over the level of media concentration. Only after conglomerates were set in place was the anti-trust law amended to ensure diversity of media ownership.

3.1. Media Concentration

The level of media concentration in Austria remains high. Various consortia continue to dominate the market place for media and thus limit the diversity of opinions. As a side effect, journalists are subject to self-sensor-ship, given limited employment possibilities. Following the merger of two media companies a few years ago, which publish the newsweeklies *Format* and *Profil* the debate over regulations to ensure diversity of opinions also through diversity of ownership³⁴ resulted in the amendment of the Anti Trust Act (*Kartellgesetz*).³⁵ Austria is thus now more in line with diversity requirements; however, the situation remains stagnant because the law does not have any retroactive force.

In 2006 a new daily was added to the publishing scene, the Vienna based *Österreich (Austria)*, which brought the number of dailies up to seventeen. The founders of the newspaper had previously succeeded in the publication of a series of magazines, including *Format* and *News*. The late Herbert Hufnagel, one of Austria's most renowned journalists, once described the strategy behind these successes as an 'unholy blend of journalism and marketing'.³⁶ While the style of reporting of *Österreich*³⁷ is still developing,³⁸ the competition for advertisement shares is expected to lead to changes in the newspaper market.

3.2. Journalistic Ethics

The European Commission Against Racism and Intolerance, in its 2005 Report on Austria noted that 'mainstream newspapers regularly reported on immigration and asylum issues in a manner that contributed to creating an atmosphere of hostility and rejection towards members of minority groups'.³⁹

The *Kronen Zeitung* remains the most widely read newspaper, reaching an average of 44% of the population; its style is in parts a blend of racism, xenophobia, and sexism. Particularly the perception of African men as drug dealers is largely attributed to an uninquisitive style of reporting.⁴⁰ The diversity of the African community in Austria and the trappings of asylum seekers who are not permitted to work are rarely covered appropriately in mainstream media.

³⁴ See General Comment No. 10 on Article 19 (Freedom of expression) by the Human Rights Coommittee, in particular para. 4, also included in the Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.7; for an interpretation of the General Comment see in particular Vojin Dimitrijevic, former member of the Committee, "The Roles of the Human Rights Committee, Vortrag vor dem Europe Institut der Universität des Saarlandes," in *Vorträge, Reden und Berichte aus dem Europainstitut*, Nr. 37, 10, also available at www.europainstitut.de/euin/schrift/download/nr37.pdf.

³⁵ See in particular Section 10 & 13 Para 2 of the Anti Trust Act.

³⁶ See Herbert Hufnagel cited in: Harald Fidler, Im Vorhof der Schlacht, 169 (Fellnerismus): "Die unselige Vermischung von Journalismus und Marketing! Man kann heute kein Zeitungsabo mehr kaufen, ohne dass man ein Kofferradio, einen Regenschirm oder sonst irgendein Klumpert dazu nachgeschmissen bekommt. Dazu kommt, dass das News jede, auch die größte Scheisse zu einem Ereignis hochquirlt."

³⁷ See Harald Fidler, "Österreich": Zwischen "News" und "täglich Alles", Der Standard, 8./9. Juli 2006.

³⁸ See, for example, reports about a fabricated article: Harald Fidler, "Österreich": Kolumne nie verfasst, Der Standard, 27. September 2006.

³⁹ See European Commission Against Racism and Intolerance, Third Report on Austria, CRI (2005) 1, para. 71; see also http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Austria/1Austria_CBC_3.asp#TopOfPage (last visited January 5, 2007).

⁴⁰ See also the statement of criminal psychologist Arno Pilgram in: Corinna Milborn, Gestürmte Festung Europa, 94.

It seems to be a largely unknown fact that many of the Africans allegedly implicated in ‘dealing’ are forced into being street-runners; let alone the fact that the African community is among the most highly educated in the country.

Also reflective of the Kronen Zeitung’s attitude towards human rights is an article explaining the need to include the phrase ‘non-final judgment’ (*nicht rechtskräftig*) in the coverage of accused and alleged perpetrators. The wording of the article implies that it is the force of the Media Act – and the possibilities of fines – that make the newspaper comply with these rules rather than ethical guidelines and the upholding of the principle of presumption of innocence.⁴¹

The Kronen Zeitung was fined € 130.000 compensation for its sensationalist coverage of a custody dispute involving a ten-year-old whose privacy was found to have been invaded by the reporters.⁴²

A regional newspaper in the province of Styria, *Obersteirische Nachrichten* ran a news story about the alleged attempt of a black person to rape an elderly woman with disabilities. The journalist who wrote *inter alia* that a ‘Negro tried to rape a retiree’ told a reader who criticized the choice of wording that he felt sorry for her as she most likely must have been very sick as a child and thus missed some education. The journalist blamed the reader’s lack of knowledge for mistaking ‘negro’ for ‘nigger’, the former, in the journalist’s opinion not being racist. Furthermore, the journalist accused the reader of having more sympathy with the alleged rapist than the victim.⁴³

The weekly *News* was criticized for over-stepping the line of ethical rules when citing confidential conversations between police and psychologists with a private person who had managed to liberate herself after years of being held in captivity.⁴⁴

Efforts to establish a self-governing body to deal with complaints about media are very slowly taking shape.⁴⁵

3.3. Scope of Freedom of Expression

The scope of Article 10 – Freedom of Expression – of the European Convention of Human Rights, which was incorporated with qualified majority into Austrian law, as in the past led to various judgments by the ECtHR against Austria. One problem continues to be that alleged violations of freedom of expression may be sued both through civil and criminal proceedings. Another appears to be that the scope of criticism, which so-called public personae – that is persons with an increased public profile – have to accept, is judged differently by Austrian judges than by the judges of the European Court of Human Rights.

Both aspects are highlighted in a dispute currently underway between the Initiative of Homosexuals (HOSI) and a representative of the People’s Party (ÖVP), Walter Tancsits. The spokesperson of the Initiative, Kurt Krickler, in May 2005 had voiced an opinion about the failure of the ruling party to include homosexuals among the victims of National Socialism in the Federal Victims Protection Act and was subsequently sued for libel both through criminal and civil proceedings. The civil proceedings have meanwhile been adjourned following a

⁴¹ See “Nicht rechtskräftig”: Wenn ein Mörder noch kein Mörder ist, Kronen Zeitung, 14 May 2006, 34.

⁴² See Harald Fidler, “Fall Christian”: “Krone” zu € 130.000 Entschädigung verurteilt, Der Standard, 20./21. Mai 2006.

⁴³ See Anita Zielina, Obersteirische Nachrichten schreiben über “Neger,” derstandard.at, 1. August 2006.

⁴⁴ See APA, “News” weist Kritik zurück, 31. August 2006.

⁴⁵ See APA, Medienvertreter diskutieren über mediale Selbstkontrolle, 5. Oktober 2006.

revocation by Mr. Krickler; the result of the criminal proceeding is assumed to be referred to the ECtHR.⁴⁶

A string of judgments, including the cases *Standard Verlags GmbH and Krawagna-Pfeifer v Austria*⁴⁷ and *Standard Verlags GmbH v Austria*⁴⁸ are the last remnants of the Freedom Party's (FPÖ) penchant for taking action against almost any form of criticism, including letters to the editor, toward the late 1990s. Criticized in 2000 as having a 'chilling effect' on freedom of expression, particularly freedom of the press, the number of cases now seems to have abated.⁴⁹ The ECtHR also found a violation of Freedom of Expression in the case of *Kobenter and Standard Verlags GmbH v Austria*.⁵⁰

The case of *Österreichischer Rundfunk v Austria*⁵¹ added to the fact that Austria is second after Turkey in terms of violations of freedom of expression found by the ECtHR. In assessing whether *Österreichische Rundfunk (ORF)*, the public broadcasting entity, was eligible to lodge proceedings with the Court in line with Article 34⁵², the ECtHR held that it was indeed a non-governmental organization. The Court stated that the ORF 'does not exercise governmental powers',⁵³ noted a couple of features designed to ensure the entity's independence,⁵⁴ and was 'not convinced that the applicant is placed under "government control"'.⁵⁵ The merits of the case concerned the use of footage of a person who had once been imprisoned for violations of the Prohibition Act (*Verbotsgesetz*) in the evening news covering the release on parole of another person convicted under the said Act. The person lodged proceedings for a violation of Section 78 of the Copyright Act (*Urheberrechtsgesetz*), which protects the publication of pictures against a person's will. The Austrian Courts held that the use of footage by a person who was at one time the deputy of the released person and who himself had only been released a few months earlier, was a violation of the right to protect one's picture. The ECtHR held that the notoriety of the crime as well as the political nature of the crime had not been adequately taken into account when assessing a possible interference with the person's privacy and thus found a violation of Article 10 – Freedom of Expression.⁵⁶

3.4. Independence of Public Media

The independence of news coverage of the public broadcasting entity, ORF, has been a hotly disputed issue for many years. The discussion reached a new level, when one of the late-night-news anchors, Armin Wolf, in May 2006 voiced criticism about the management structure in the information department.⁵⁷ In his acceptance speech for a journalism price named after the late news-anchor Robert Hochner, Wolf repeatedly referred to the

⁴⁶ See HOSI Wien, Tancsits gegen HOSI Wien: Zivilrechtliches Verfahren beendet, 6. Juni 2006 <http://www.hosiwien.at/?p=321>.

⁴⁷ Application No. 19710/02, 2 November 2006.

⁴⁸ Application No. 13071/03, 2 November 2006.

⁴⁹ See Martti Ahtisaari/Jochen Frohwein/Marcelino Oreja, Report on the Austrian Governments Commitment to Common European Values, in Particular Concerning the Rights of Minorities, Refugees and Immigrants, and the Evolution of the Political Nature of the FPÖ, 'Weisenbericht', paras 93, 97 – 103, reprinted in: 40 International Legal Materials 102 (2001); see, on the issue of quasi-inflationary use of court proceedings also: Marianne Schulze, "The chilling effect": Die Kritik des Weisenberichts an der (Un)kultur der seriellen Klagen, in: Rubina Möhring (Ed.), Österreich allein zuhause, 2001.

⁵⁰ Application No. 70899/00, 2 November 2006.

⁵¹ Application No. 35841/02, 7 December 2006.

⁵² Article 34 of the European Convention sets out that the Court may receive applications from any person, non-governmental organization or group of individuals complaining of a violation.

⁵³ See *Österreichischer Rundfunk v Austria*, Application No. 35841/02, Para. 49.

⁵⁴ Ibid, Para. 51.

⁵⁵ Ibid.

⁵⁶ Ibid, Paras 68. – 73.

⁵⁷ See Rede des Robert Hochner Preisträgers Armin Wolf, 17. Mai 2006; full text

<http://www.czernin-verlag.com/czerninverlag/newsshow.xml?id=193>.

observations and assessment of the ORF made by Hochner in his last interview before his untimely death. One major point was the possibility of political influence on news coverage. In response a group of high-profile persons started a web-based petition to ensure the ORF's independence. 74.488 persons signed.⁵⁸ By comparison, a campaign against dog litter in Vienna garnered the support of 157.631 persons.⁵⁹ Also, the Green Party started a campaign to support the entity's independence (*Rettet den ORF*).⁶⁰ Wolf was openly criticised for a lack of 'solidarity' with the entity by the ORF's then chief executive, Monika Lindner.⁶¹

Werner Mück, editor in chief for television (*Chefredakteur*), was the main target of criticism in the ensuing debate. Points of contention were allegations over his style of leadership and suspicions over loyalty to the ruling party, ÖVP. The Mayor of Vienna, Michael Häupl, described Mück's style as being comparable to that of the old leadership of *Izvestia*, the Russian newspaper, which used to be the State media agency in the former Soviet Union.⁶² After much debate about its composition,⁶³ an independent inquiry committee was set up to assess the criticism of Mück's leadership. The Board of Trustees (*Stiftungsrat*) received the internal report only after the editor in chief, who immediately informed the public that his leadership and decisions had been approved by the said committee.⁶⁴ The report does, however, note illegitimate interference with journalistic freedom as well as bullying of a person who considered herself under the threat of dismissal.⁶⁵

Initially, the Freedom Party (FPÖ) was not to be invited to panel discussions between and among party representatives held in the weeks before the National Assembly election; the decision was reversed following criticism.⁶⁶

4. Peaceful Assembly⁶⁷

The European Court of Human Rights (ECtHR), in the case *Öllinger v Austria*,⁶⁸ held that by denying the applicant a meeting at the Salzburg municipal cemetery on All Saints Day 1998, the authorities had violated his freedom to assembly and association (Article 11). The planned meeting was to coincide with a gathering of Comradeship IV (*Kammeradschaft IV*⁶⁹),

⁵⁸ See Harald Fidler, "ORF gehört nicht der Regierung": "SOS ORF" ist online, derstandard.at/etat, 22. Mai 2006; see also <http://www.sos-orf.at> (last visited January 5, 2007).

⁵⁹ See <http://www.hundekot.at> (last visited January 5, 2007).

⁶⁰ See APA, Grüne wollen ORF retten und starten Internet Plattform, 22. Mai 2006. The web site <http://www.rettet-den-orf.at> is no longer online.

⁶¹ See derstandard.at/etat, Lindner: "Mangelnde Solidarität und öffentliche Selbstinszenierung", derstandard.at/etat, 18. Mai 2006.

⁶² See APA, Häupl: Mück führt ORF wie "Iswestija", 20. Juni 2006.

⁶³ See, for example, Harald Fidler, Resolution gegen Lindners Besetzung, Der Standard, 21. Juni 2006.

⁶⁴ See Harald Fidler, Journalistische Freiheit im ORF-Fernsehen eingeschränkt, Der Standard, 29./30. Juli 2006.

⁶⁵ See Schlussbericht der "Gruppe zur Überprüfung und sorgfältigen Evaluierung geäußerter Vorwürfe"; document on file with author.

⁶⁶ See APA, TV-Konfrontation: FPÖ-Strache darf nun doch mitdiskutieren, 21. Juli 2006.

⁶⁷ Scope of protection: The right to peaceful assembly is protected under numerous laws, the oldest being Article 12 Staatsgrundgesetz (*Basic State Act*) of 1867, which was adopted by Kaiser Franz Josef I., as part of the reforms of the authoritarian rule monarchy but only protects citizens. Subsequently Austria acceded to the European Convention of Human Rights and incorporated its rights by way of majority quorum. Austria is furthermore party to the International Covenant on Civil and Political Rights (ICCPR), which protects peaceful assembly in Article 21, thus guaranteeing protection to all people, not just citizens.

⁶⁸ *Öllinger v Austria*, Application No. 76900/01, 29 September 2006 (final).

⁶⁹ According to the Austrian Documentation Archive for Resistance (DÖW), the Comradeship IV (K IV) is an organization with still strong membership, comprising of local groups, province groups right-wing veteran organization of former members of the Waffen-SS. The group is trying to distinguish itself from the Waffen-SS, which was judged as being part of the SS's criminal

a registered association, which traditionally held a commemoration ceremony at the cemetery's war memorial. Because the authorities considered it a traditional (sic!) gathering, the Comradeship IV did not have to notify the police; the assembly falling under 'popular (sic!) ceremonies' within the meaning of Section 5 of the Assembly Act (*Versammlungsgesetz*). The applicant had appealed the decision of the Salzburg Federal Police Authority (*Bundespolizeidirektion Salzburg*), however, the Salzburg Public Security Authority (*Sicherheitsdirektion*) upheld the decision, stating that the Comradeship IV had been gathering for more than forty years and noting that in the last years protest campaigns aimed at disturbing the commemorations had been increasingly organized. The Constitutional Court of Austria (*Verfassungsgerichtshof*) dismissed the appeal stating that the balance between the applicant's right to assembly freely had to be weighed against public interests and tipped the scales in favour of the latter. In support the Constitutional Court held *inter alia* that the religious rights (Article 9) of those visiting the cemetery on All Saints Day also had to be upheld.

The ECtHR recalled the requirement of a pressing social need and the proportionality principle in judging on the legitimacy of limiting the exercise of Convention rights. Recalling a number of other judgments regarding Austria⁷⁰ and its case-law on the issue, the Court found that the applicant's right to freedom of expression (Article 10) had to be given due regard because it is one of the objectives of freedom of assembly and association. The Court found that 'the applicant's assembly was clearly intended as a counter-demonstration to protest against the gathering of Comradeship IV, an association which undisputedly consists mainly of former members of the SS.'⁷¹ The Court also found it 'striking' that the authorities attached no weight to the fact that the applicant wanted to organize a counter-demonstration and 'essentially wished to protest against the gathering of Comradeship IV'.⁷² The Court held that the authorities had 'failed to strike a balance' between the various interests and found a violation of Article 11, Freedom of assembly and association.

The most notable demonstration in 2006 took place when, on June 21, 2006 the President of the United States, George W. Bush partook in the EU-USA-Summit. Some 3.000 police were on duty. A demonstration "Bush go Home" of 15.000-20.000 people, including many from neighboring countries, took place without noteworthy incidences, despite apprehensions in the run up.⁷³ Also in the course of the EU-presidency, the EU-Latin-American-Summit stirred a peaceful demonstration.⁷⁴ There were other, smaller, demonstrations. In December escalation during demonstrations against the wearing of fur led to a complete prohibition of demonstrations related to this issue.⁷⁵

5. Rule of Law

5.1. International Law

organization, as the fourth part of the Wehrmacht and thus conveying the impression of being harmless; <http://www.doew.at>.

⁷⁰ Plattform 'Ärzte für das Leben' v Austria, 21 June 1988, Series A no. 139; Scharsach and News Verlagsgesellschaft v Austria, No. 39394/98; and Otto-Preminger-Institut v Austria, 20 September 1994, Series A no. 295-A.

⁷¹ Öllinger v Austria, Application No. 76900/01, 29 September 2006, para. 43.

⁷² Ibid., para. 44.

⁷³ See APA, Bush-Demo: Organisationen rechnen mit tausenden TeilnehmerInnen, 16. Juni 2006; APA, Demonstrationen gegen Bush, 19. Juni 2006; APA. Polizeieinsatz kostet eine Million Euro, 19. Juni 2006; APA, Proteste lautstark begonnen, 21. Juni 2006; APA, An jeder Ecke ein Polizist, 21. Juni 2006; Der Standard, Jeder siebente Beamte im Gipfeleinsatz, Der Standard, 14. Juni 2006.

⁷⁴ See Klaus Stöger, Vorgeschmack auf Bush-Besuch, Die Presse, 13. Mai 2006; APA, Friedliche Demo für Solidarität, 13. Mai 2006.

⁷⁵ See Michael Simoner, Demoverbot für Pelzgegner, Der Standard, 15. Dezember 2006.

The Ombudsperson, outlining issues of fundamental rights,⁷⁶ pointed out that in accordance with Section 50 of the Constitutional Act, State Treaties, which change laws or the constitution respectively, had to be passed by the National Assembly. Describing the modus operandi that whichever Ministry is in charge according to the Federal Ministry Act (*Bundesministeriengesetz*) prepares the relevant drafts. Asserting that most multi-lateral treaties are in fact of a crosscutting nature and touch upon issues of fundamental rights, the Ombudsperson suggested that there was a lack of documentation of those treaties, which Austria has not ratified (yet). Therefore, it is proposed that either the Constitutional Office within the Chancellor's Office (*Verfassungsdienst*) or the Ministry for Foreign Affairs keep track of such documentation.⁷⁷

Austria has not ratified the Optional Protocol of the Convention Against Torture (OPT-CAT) yet, the previous National Assembly declared an intention to do so.⁷⁸

A communication from the Committee on the International Covenant on Civil and Political Rights (ICCPR) was still not implemented. Repeated queries⁷⁹ demanded that Dr. Paul Perterer, whose right to fair trial (Article 14 ICCPR) had been violated, be granted the legal remedies put forward by the ICCPR Committee; including a possibility for appeal and adequate compensation. Both the chancellor and the Minister for Foreign Affairs denied responsibility, claiming that the demands should be directed at the Salzburg municipality in charge.⁸⁰

5.2. Costs of Procedures

The Ombudsperson voiced concern that persons who are poor cannot afford the expenditure of an appeal to the Supreme Court for Administrative Matters (*Verwaltungsgerichtshof*).⁸¹ Stating that the severity of this problem had already been voiced in the 2003 Report, the Ombudsperson underlined that it contradicts the rule of law principle (*Rechtsstaatsprinzip*) if only such people who have the necessary income can afford to take advantage of legal protection.⁸²

5.3. Protection of the Rights of Asylum-seekers and Non-Citizens

Non-governmental organizations (NGOs) in the field⁸³ voiced concern over the severe restrictions, if not to say expanding impossibility – legal black hole – for asylum-seekers and other foreigners to utilize their procedural rights, especially the right to appeal. The Constitutional Court has held, albeit in a different context, that it would contradict the principle of the rule of law (*Rechtsstaatsprinzip*) to construe administrative acts, which have significant legal effects, in such a way that they become unchallengeable administrative acts.⁸⁴

⁷⁶ See Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, Section 14 (Fundamental Rights); English summary:

<http://www.volksanw.gv.at/bericht/nationalrat/pb-29eng/pb29eng.htm> (last visited January 5, 2007).

⁷⁷ Ibid, 14.2.

⁷⁸ Entschließungsantrag, 165/E, 7. Dezember 2005.

⁷⁹ Parlamentarische Anfragen 3757/J XXII. GP, 4067/J XXII. GP, and 4069/J XXII. GP.

⁸⁰ Anfragebeantwortungen 3694/AB XXII. GP, 4007/AB XXII. GP, and 4016/AB XXII. GP.

⁸¹ Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, Section 14.3.1.

⁸² Ibid.

⁸³ See Section 26. Migrants, Asylum Seekers, Refugees, IDPs.

⁸⁴ Constitutional Court, VfSIG 13.699/1994, as quoted by Ombudsperson in: Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, Section 14.3.3.

The Ombudsperson highlighted the case of an asylum seeker whose procedure had been ongoing for 23 years.⁸⁵

5.4. Publication of Decisions of the Constitutional Court

The Constitutional Court had repeatedly instigated the delays in publication of its decisions, which, in accordance with Section 140 Article 5 of the Constitutional Act vests with the Chancellor. The Court held that these delays were 'exceedingly disturbing' ('überaus bedenklich'), adding that difficult questions on liability could arise.⁸⁶ The Chancellor, in response, stated that the majority of decisions were published in three weeks, a couple of decisions taking longer than a month and two extreme cases taking 42 and 88 days, respectively.⁸⁷

5.5. Transparency of Legislative Drafting Processes

Particularly non-governmental organizations (NGOs) were critical of the limited transparency of the drafting processes at federal level. Submissions and comments on drafts have to be made within the comparatively short time of four weeks. Often times it appears that the impact of such comments is very limited.

5.6. Basic Principles of Rule of Law

Ahmed A., an Austrian of Egyptian origin, lost his job in an aviation business, *Tyrolean*, in 2005 and requested reasons for his dismissal. Only after he filed proceedings against public authorities (*Amtshaftungsklage*) very vague reasons were given, however through inadequately sourced media reports rather than authorities in charge. Subsequent court procedures held that Mr. A. had unjustly been accused by the Intelligence Authorities (*Verfassungsschutz*) of being connecting to terrorism and did not pose a threat of any sort; on the contrary: Mr. A. appears to be very well included in his community. The Court found that the assessment of Mr. A. as a security risk was not manifest in any way.⁸⁸

6. Right to Fair Trial & related issues⁸⁹

In addition to concerns over lengthy proceedings, there are infrequent disputes over availability of appellate bodies, which are a requirement under the European Convention's standards for fair trial.

As in previous years⁹⁰ the European Court of Human Rights (ECtHR) found a number of violations of the right to fair trial, particularly because of lengthy proceedings.⁹¹ The

⁸⁵ See Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, Section 14.5.1.

⁸⁶ Parlamentarische Anfrage 3956/J XXII. GP.

⁸⁷ Anfragebeantwortung 3927/AB XXII. GP.

⁸⁸ See Benedikt Sauer, Verfassungsschutz irrte gewaltig, Der Standard, 13. Februar 2007.

⁸⁹ Scope of protection: Fair trial guarantees are most importantly protected by Article 6 European Convention on Human Rights; backed up by Article 14 ICCPR.

⁹⁰ See the 2005 cases: *Osinger v. Austria*, No. 54645, 24 March 2005; *Hanakv Austria*, No. 70883/01, 22 December 2004; *Kern v. Austria*, No. 14206/02, 24 February 2005; *Zuckerstatter and Reschenhofer v. Austria*, No. 76718/02, 24 February 2005; *Blum v. Austria*, No. 31655/02, 3 February 2005; *Geyer v. Austria*, No. 69162/01, 7 July 2005; *Jancikova v. Austria*, No. 56483/00, 7 April 2005; *Novicky v. Austria*, No. 34983/02, 24 February 2005; *Riepl v. Austria*, No. 37040/02, 3 February 2005; *Osinger v. Austria*, No. 54640/00, 3 February 2005.

⁹¹ *Brugger v Austria*, No. 76293/01, 26 April 2006; *Brunnhaler v Austria*, No. 45289/99, 29 September 2006; *Coorplan-Jenni GmbH and Hasicc v Austria*, No. 10532/02, 11 December 2006; *Hauser-Spörn v Austria*, No. 37301/03, 7 December 2006; *I.H. and others v Austria*, No. 42780/98, 20 July 2006; *Jurisic and Collegium Mehrerau v Austria*, No. 62539/00, 11 December

Ombudspersons echoed this concern, also with a view to pending administrative procedures, stating that it was a major organizational concern of the State.⁹²

6.1. Resources of the Judiciary

The President of the Judges' Association (*Richtervereinigung*), Barbara Helige, stated that the 1.700 judges were just about able to deal with the case-load but that another 100 judges would be welcome.⁹³ However, the lack of non-legal personnel was a serious concern, particularly after another 118 posts were cut, adding to the 15% decrease over the last few years.⁹⁴ Also, there is a significant shortage in public prosecutors, who are recruited from among the judges in Austria.⁹⁵ The Supreme Court for Administrative Affairs (*Verwaltungsgerichtshof*) saw the right to a fair trial in danger as it took an average of 21 months to decide a case. Because there is no appellate body at the level of the provinces (*Länder*), the Court has had to turn around an unusually high number of cases.⁹⁶

The resources issue was propelled further as the Minister for Justice, Karin Gastinger, confirmed plans to build a second court building with an adjacent prison in Vienna. Such plans caused surprise and confusion as the Ministry had only recently closed the court and prison for juveniles and transferred them to the main – and so far only – criminal court (*Landesgericht für Strafsachen*) in Vienna; under much protest over medium-term effects and concern for the protection of the rights of the juveniles.⁹⁷

6.2. Fair Procedure

The Austrian Chamber of Attorneys (*Rechtsanwaltskammertag*) was particularly concerned about the 'leaking' of parts of court files, including bills of indictment 'in full wording' to news magazines. The Chamber stated that it was 'intolerable for a state under the rule of law that representatives of accused are informed of the indictment through media reports.'⁹⁸

6.3. Fair Hearing

In 2006 there were, again, repeated concerns over the fairness of hearings, particularly involving persons whose first language is not German and/or who are not Austrian citizens. There were no further reports available on the progress of a case in which a Cameroonian woman had been raped in an asylum center in Traiskirchen in the province of Lower Austria and, following the acquittal of the rapist, was sued for slander.⁹⁹

The dearth of trained interpreters is a growing concern.¹⁰⁰

2006; *Kaya v Austria*, No. 54698/00, 8 September 2006; *Müller v Austria*, No. 12555/03, 5 January 2007; *Stojakovic v Austria*, No. 30003/02, 9 November 2006.

⁹² See, Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005; cited by Anita Zielina, Dunkle Wolken über Justitia, derStandard.at, 1 December 2006.

⁹³ Manuela Honsig-Erlenburg, So starke Abhängigkeiten der Richter wie fast nirgends – Interview mit Barbara Helige, derStandard.at, 14. November 2006.

⁹⁴ See ORF.at, Richter informieren über Not in der Justiz, 26. September 2006, <http://wien.orf.at/stories/139018/>. APA, Justiz droht Kollaps: Gerichten gehen die Schreibkräfte aus, 14. Juli 2006.

⁹⁵ See APA/simo, Staatsanwaltschaft "unterbesetzt", Der Standard, 22./23. April 2006.

⁹⁶ See Die Presse, Justiz: Faires Verfahren in Gefahr, 7. Juli 2006.

⁹⁷ See, among others, ORF.at, Richter informieren über Not in der Justiz, 26. September 2006, <http://wien.orf.at/stories/139018/>.

⁹⁸ Österreichischer Rechtsanwaltskammer Tag, 33. Wahrnehmungsbericht für 2005/2006, p 16; http://www.rechtsanwaelt.e.at/downloads/wnb_2005_2006.pdf.

⁹⁹ See Report of the International Helsinki Federation on Austria 2005 http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=6835.

¹⁰⁰ See Michael Möseneder, Dolmetschprobleme vor Gericht, Der Standard, 5. Oktober 2006.

6.3.1. Resistance Against State Authority (*Widerstand gegen die Staatsgewalt*)

A continued concern is the fact that persons implicated in police action regularly end up being indicted for resistance against state authority (*Widerstand gegen die Staatsgewalt*), Section 269 Criminal Code. Even Austria's first known victim of torture, Mr. J. was reported to hospital as having sustained his injuries due to such resistance.¹⁰¹ In addition to the fact that police more often than not report a violation of this particular provision of the Criminal Code, the subsequent hearings do not seem to always be in compliance with fair trial standards, particularly the principle that justice undoubtedly has to be seen to be done.

One case among many is that of a lecturer and doctoral candidate at the University in Graz, the capital of the province of Styria. The 25-year-old Indian was convicted for both civil resistance and grievous bodily harm (*schwere Körperverletzung*) after being stopped riding a bike without the required light. The accused stated that he had asked for the police's ID and was both courteous and compliant. Witnesses confirmed the account of the accused, which was disputed by the police. The police officers stated that he had reeked of alcohol, and that his aggressive behavior forced them to use pepper-spray. A doctor treating the Indian in a local hospital also stated that the accused smelled of alcohol and was very aggressive. Because one of the police officers had fresh injuries – bruises – the Indian was indicted for grievous bodily harm. Observers stated that the questioning by the Judge, Karl Buchgraber, particularly of the accused and witnesses was biased and tendentious. The Indian was sentenced to € 2.880 damages, not yet enforceable.¹⁰²

In a different case, observers of Austria's first publicly known case of torture after 1945 stated that during his questioning, the victim – and main witness – Mr. J., at times seemed to be the accused of a particularly grave crime, judging by the way he was questioned. Details below.¹⁰³

Compare, however, the number of convictions in cases of allegations of ill-treatment raised against law enforcement officers and similar cases of suspicion¹⁰⁴:

	2003	2004	2005
Cases dealt with by the public prosecutor's offices	1.083	1.224	1.047
<i>Of which new cases within the reporting year</i>	988	1.167	978
Dismissal of proceedings (charges dropped)	983	1.094	960
<i>Of which without preliminary proceedings</i>	713	763	643
Motion for sentence or indictments	11	16	18
Found not guilty	6	3	8
Found guilty	1	2	2

6.3.2. Interpretation of European Human Rights Convention

Again, judges' interpretation of Article 10 – Freedom of Expression – of the European Convention of Human Rights, which was incorporated with qualified majority into Austrian law, led to the ECtHR finding violations of that right. The cases *Standard Verlags GmbH and*

¹⁰¹ See also Section 7. Police, Allegations of Misconduct. On general issues of police interaction with foreigners see ZARA – Zivilcourage und Anti-Rassismus Arbeit, Racism Report 2005, p 18 ff., listing ten cases reported to the NGO.

¹⁰² See APA, Urteil im Grazer Prozess gegen Inder: Geldstrafe für 25-Jährigen, 10. November 2006.

¹⁰³ See also below Section 7.

¹⁰⁴ As reported to the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women, response to the list of issues and questions with regard to the consideration of the sixth periodic report, Austria; CEDAW/C/AUT/Q/6/Add.1.

*Krawagna-Pfeifer v Austria*¹⁰⁵ and *Standard Verlags GmbH v Austria*¹⁰⁶ are the tail-end of the quasi-inflationary use of both civil and criminal proceedings by members of the Freedom Party in the late 1990s, which, in 2000, was criticized as having a ‘chilling effect’ on freedom of expression, particularly freedom of the press.¹⁰⁷ It is noteworthy that the presiding judge in the appellate court in both proceedings has repeatedly been criticized for a bias towards the Freedom Party and its ideology.¹⁰⁸

6.3. Degree of penalty

The discrepancy between sentences for property crimes, sexual offences and crimes involving bodily harm is still startling. The differences are debated publicly on a case-by-case basis, whenever an astounding verdict is made public, a brief discussion erupts;¹⁰⁹ such as following the trial against a doctor, paramedics and police officers for grave negligence in the death of Mauretanian asylum seeker Cheibani Wague in late 2005. While the Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) found that pressing a person to the ground, while shackled – with one accused allegedly “standing” on Wague’s torso – was unnecessary and unlawful treatment, only two of the accused were convicted in the criminal proceedings for manslaughter.¹¹⁰ The indictment – only for manslaughter, making for a low maximum sentence – the sentence to only seven-months probation and the acquittal of most of the accused caused disbelief.¹¹¹ Not to mention the probationary sentences in the trial against people accompanying Marcus Omofuma, who died during his deportation to Nigeria on May 1, 1998. Only if sentenced for more than one year do public servants, such as police officers, lose their job *ex lege*.

Another scale-end is the verdict against British national David Irving.¹¹² Convicted under the Prohibition Act (*Verbotsgesetz*), he received a three-year-sentence in February. Infamously infamous for denial of the Holocaust, Irving’s case caused more discussion on the issue of free expression versus limitations to lies about National Socialism; however, there was also debate on the degree of the penalty.¹¹³

6.4. Effective Remedies

The case of a person wrongly accused a murder raised questions over the liability of the persons involved in the investigation, particularly for the substantial remedies due to the person wrongly held in prison for eight years.¹¹⁴ Furthermore, there were questions over the responsibility for providing effective remedies for Dr. Paul Perterer, whose right to a fair trial

¹⁰⁵ Application No. 19710/02, 2 November 2006.

¹⁰⁶ Application No. 13071/03, 2 November 2006.

¹⁰⁷ See Martti Ahtisaari/Jochen Frohwein/Marcelino Oreja, Report on the Austrian Government’s Commitment to Common European Values, in Particular Concerning the Rights of Minorities, Refugees and Immigrants, and the Evolution of the Political Nature of the FPÖ, ‘Weisenbericht’, paras 93, 97 – 103, reprinted in: 40 International Legal Materials 102 (2001).

¹⁰⁸ In addition to various articles published in 2000 – during the most heated phase of the quasi-inflationary proceedings – , a language analysis by Ruth Wodak/Alexander Pollak of one of judge Maurer’s verdicts reveals underlying ideological patterns (Analysis on file with author); the analysis is published in: Pollack/Wodak, Der ausgebliebene Skandal, Czernin Verlag, 2001.

¹⁰⁹ See, e.g., APA, Prokop will Strafenkatalog “überarbeiten”, 1. September 2006; following the verdict in the trial against Austria’s first publicly known torture victim, Mr. J., see also Section 7. Police, Allegations of Misconduct.

¹¹⁰ See Otto Ranftl, Beklemmung am Prozessende, Commentary, Der Standard, 10. November 2006; see also Georg Bürstmayr, Urteil nach Vorschrift?, Op-Ed, Der Standard, 11. November 2006.

¹¹¹ Ibid, see also Chibo Onyeji, The Dangerous Odds Against Black Africans in Austria, <http://no-racism.net/article/1451/>, 11 November 2005.

¹¹² See Oliver Pink, Irving-Prozess: So schafft man Märtyrer, Die Presse, 22. February 2006.

¹¹³ See further Section 23. Aggressive Nationalism, Revisionism, Hate Speech and Incitement.

¹¹⁴ See APA/mro, Zahltag im Mordfall Deubler, Der Standard, 23. August 2006.

had been violated according to the Committee on the International Covenant on Civil and Political Rights.¹¹⁵

6.5. Appeals, Asylum Proceedings

Non-governmental organizations (NGOs) have repeatedly criticized the shortcomings of legal remedies, particularly the right to appeal, for asylum seekers. The situation is said to have become significantly worse since the new immigration regime – *Fremdenrechtspaket* 2005 – has come into force.¹¹⁶

The appellate body for asylum cases, the Independent Federal Asylum Council (*Bundesasylsenat*) faced a backlog of roughly 27.500 cases. Personnel were increased significantly: 54 administrators were added to the first instance, bringing the total up to 188. The second instance was stocked up with 82 persons and now has a total of 166 personnel. The then Minister for Interior, the late Liese Prokop remained critical of the speed of proceedings as with double the amount of personnel and a one-third increase in judges, she would have expected more than an increase of 500 decisions.¹¹⁷ She was hopeful that the first appeal level could be restructured to accommodate the various needs. It is noteworthy that the Independent Federal Asylum Council confirmed only 4.082 decisions of the first instance but repealed 4.922. In 3.841 cases the Council awarded refugee status.¹¹⁸

6.6. Erasure of Convictions, former Section 209 Criminal Code

Austria was repeatedly held to violate the European Convention on Human Rights because of Criminal Code Section 209, which prohibited sexual conduct between an adult and an under 19-year-old of the same sex. In addition to judgments of the ECtHR, which allegedly awarded some € 350.000 to applicants,¹¹⁹ the Constitutional Court found the incriminating provision to be in violation of the constitution's equal-treatment clause.¹²⁰ The provision was subsequently abolished and replaced with other provisions, which representatives of gays and lesbians see very critically. Despite the change of legislation, many of the formerly convicted are still registered in the criminal record book (*Strafregister*), facing serious problems in a country, where an entry in the criminal record book is still a major obstacle in accessing the job market, among others. Also, many of the formerly charged and convicted suffered severe personal and financial consequences, none of whom have been compensated.

7. Police, Allegations of Misconduct

On the whole, police seem to be working professionally, as may be judged from the Human Rights Advisory Board, which observes their work and makes recommendations for improvement from a human rights perspective.¹²¹ The leadership of the Vienna police was embroiled in a series of accusations and counter-accusations over alleged misconduct, both court and disciplinary procedures ensued and are still underway.

¹¹⁵ See above.

¹¹⁶ See also Section 26. Migrants and Asylum Seekers and Section 5. Rule of Law.

¹¹⁷ See Claudia Dannhauser, Legalisierte Illegale: Italien am Pranger, Die Presse, 27. Juli 2006.

¹¹⁸ See APA, Asyl: UBAS holt bei Bearbeitung der Fälle auf, 19. Oktober 2006; Salzburger Nachrichten, Mehr Hungerstreiks als im Vorjahr – Bilanz über ein Jahr Fremdenpaket fällt zwiespältig auf, Seite 3, 28. Dezember 2006.

¹¹⁹ See Plattform gegen § 209: Menschenrechtsgerichtshof verurteilt Österreich in aufsehenerregendem § 209 Fall, 19. Jänner 2006.

¹²⁰ Constitutional Court (Verfassungsgerichtshof), Erkenntnis G6/02, 21 Juni 2002.

¹²¹ See Annex zum Jahresbericht des Menschenrechtsbeirates: Gemeinsamer Jahresbericht der Kommissionen des Menschenrechtsbeirates 2005; <http://www.menschenrechtsbeirat.at>.

The first court proceeding following the ill-treatment – assessed as amounting to torture by human rights experts and the Human Rights Advisory Board – of a Gambian national is detailed below. While not all aspects of the following summary implicate only the police, the case is dealt with under this heading for clarity's sake.

7.1. Torture

Mr. J. – also known as Bakary J., is a Gambian national who has lived in Austria since 2000 and is married to an Austrian with whom he has two children. On the morning of his planned detention, 7 April 2006, Mr. J. was taken to the airport, where, once inside the aircraft, he informed the flight attendant and the pilot that he had not consented to the deportation and that his family were not informed of the procedure. The pilot refused transportation and Mr. J. was taken to the police office at the airport. As they were driving to the office, Mr. J. inquired about his luggage, to which one of the policemen responded: "Today is your end, you won't need your bag any more. We have orders to kill you."¹²² Mr. J. queried this 'order' and was told that the administration in charge of his case in lower Austria, Baden, as well as higher ups had given such a command.

The police proceeded with a number of phone calls and finally drove off. Mr. J., who had worked as a bicycle-deliveryman, a service popular in Vienna because of the comparatively small size of the city, was able to follow the route and describe it very well. Mr. J. was taken to a location where the special forces of the Vienna police, WEGA, are usually trained. There, one officer said "I told you, this is no joke, we are a special squad, and we have orders to kill you." This officer went on to ask "Do you know Hitler?" When Mr. J. stated that he had heard about him, the officer said "Hitler killed six million Jews, you are six million and one. You will see the fate of other people like you."¹²³

According to Mr. J. all police officers put on black gloves, shackled him and started to pull him out of the car, they all hit him with their fists and kicked him, even as he was lying on the ground. After being pushed into one corner of the facility, he was ordered "say your last prayers and never look back!" Mr. J. begged to be spared, also for the sake of his family. One officer showed him, what seemed to him to be a grenade, and asked "do you know this?" Two officers then proceeded to pull him at his shackles to another corner. The driver of the police car then drove backwards toward him and hit him on the upper part of his back and neck. As a consequence, he fell over and sustained a major injury to his head. The officers then started to talk amongst each other and Mr. J. discerned the term 'attempt to flee' (*Fluchtversuch*).¹²⁴

The policemen then proceeded to take him to the general hospital with – according to Mr. J. – changing assumptions whether he was already dead or had a chance of surviving. The police told the medical staff that Mr. J. had attempted to escape and had resisted state power (*Widerstand gegen die Staatsgewalt*).¹²⁵ Mr. J. received an injection and a neck support and was taken to the detention facility by the same police officers. On the way the pulled off the neck support and told him that he would die. "I told you, you'll die. If you say to anybody what happened you're going to die. You'll have no medical treatment." Back at the detention facility everyone was only speaking of an alleged attempt to escape (*Fluchtversuch*). He was

¹²² This and the following quotations are translations or copies of the testimonial given by Mr. J. to the Office for Special Inquiries of the Vienna on April 10. The testimonial was published by Amnesty International, Austria on <http://www.amnesty.at>. The testimonial was also published by APA (Austrian Press Agency). The accused denied the allegations, see APA, Bedingte Haftstrafen: Acht Monate für WEGA-Beamte, 31. August 2006.

¹²³ Ibid. The accused denied the allegations, see APA, Bedingte Haftstrafen: Acht Monate für WEGA-Beamte, 31. August 2006.

¹²⁴ Ibid. The accused denied the allegations, see APA, Bedingte Haftstrafen: Acht Monate für WEGA-Beamte, 31. August 2006.

¹²⁵ Amnesty International Österreich, Kurzdarstellung Fall Bakary J.

at first not permitted to call his wife. Mr. J. was brought to the medical doctor at the detention facility, however he noted that the three police officers had already spoken to the doctor. He asked to have his neck support back, which he was denied because he had attempted to escape.¹²⁶ He was placed in solitary confinement, which is usually a disciplinary measure.¹²⁷

Only a few days after the incident did Mrs. J. learn what had happened, she visited him immediately and – through the glass window of the visitor's room – took a picture of her husband. At this stage Mr. J.'s right eye had swollen considerably. According to a medic's assessment made in the course of the subsequent criminal proceedings against the police officers, Mr. J. had suffered "complex fractures in the upper right side of the face."¹²⁸

Mrs. J. informed the next police office and the Office for Internal Inquiries of the Ministry for Interior Affairs (*Büro für Interne Angelegenheiten*, BIA) started an investigation. The story began to make headlines but it took a while until the essence of the events became clear. The police officers told stories with varying facts. The Office for Internal Inquiries tracked the location of the various phone calls made between the airport and the final destination and thus rendered some of the versions, asserting, amongst others, an attempt to escape in a district, which was not on the actual route, as fabricated.

The officers were suspended from duty, still receiving a significant part of their usual salary, in accordance with the law. Allegedly a bank account was opened to collect money for them.¹²⁹ The police officers, altogether four – three had been involved in the deportation procedure and one joined them later at the training facility – were accused of 'tormenting a prisoner' (*Quälen eines Gefangenen*).¹³⁰ The German term 'quälen' also translates as 'torture', however, the term 'Folter' is the technically correct term for torture and that is not (yet) used in the Criminal Code; therefore, it is also not punishable as such.¹³¹

Despite the severe injuries he sustained, including significant traumatization,¹³² Mr. J. was held in detention. No assurances were given that he could remain in Austria until the trial against the police was held. The prohibition of residence (*Aufenthaltsverbot*), which served as the title for his deportation, was not repealed. Allegedly Mr. J. was not given any financial support to meet his substantial need for therapy.

¹²⁶ Questioned by way of a Parlamentarische Anfrage (4255/J XXII. GP) why the neck support, which the doctors at the university clinic had prescribed was not returned to Mr. J., the late Minister for Interior, Liese Prokop stated that the use of such neck support was 'controversial' and that Mr. J. had received the prescribed medication (Question 39), Anfragebeantwortung 4206/AB XXII. GP.

¹²⁷ Testimonial given by Mr. J. to the Office for Special Inquiries of the Vienna Police on April 10. The testimonial was published by Amnesty International, Austria on <http://www.amnesty.at>. The accused denied the allegations, see APA, Bedingte Haftstrafen: Acht Monate für WEGA-Beamte, 31. August 2006.

¹²⁸ Amnesty international Österreich, Kurzdarstellung Fall Bakary J.

¹²⁹ Heute, 31. August 2006.

¹³⁰ Section 312 Criminal Code "Quälen oder Vernachlässigen eines Gefangenen."

¹³¹ Torture is defined in Article 1 of the Convention Against Torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." Austria ratified CAT in July 1989, torture is, however, still not punishable.

¹³² A psychologist was to assert later that his traumatization qualified as severe bodily injury: Bei Bakary J. lässt sich psychiatrisch eine posttraumatische Belastungsstörung feststellen, die Krankheitswert aufweist und mit an Sicherheit grenzender Wahrscheinlichkeit als schwerer Eingriff in die leibseelische Integrität zu interpretieren und einer schweren Körperverletzung gleichzusetzen ist", see APA, Gutachten: Schuhäftling hat posttraumatische Belastungsstörung, 30. August 2006.

The trial against the four policemen took place in late August 2005. The accused ‘confessed,’ apparently a first for police officers on trial. It is noteworthy that the ‘confession’ was limited to those points that were indisputable because of hard evidence. One policeman claimed that they had lost their cool (*‘sind die Nerven durchgegangen’*).¹³³ Asked by the judge whether he had wanted to let off steam (*‘ein bißchen den Frust rauslassen’*) one officer responded ‘yes.’¹³⁴ The prosecutor stated that they had wanted to give him a rubdown (*‘Abreibung’*). At least from media reports the use of the term torture could not be discerned. According to human rights observers present at the hearing, Mr. J. was cross-examined worse than someone who has committed a grave crime. For example, as Mr. J. was recounting the scene where one police officer told him that he would be *‘number six million one (of Hitler’s victims). I hate you blacks and Jews,*’ one officer interrupted Mr. J. and said *‘Can he repeat that as he looks me in the eye?’* Allegedly neither the offence to court rules nor the obviously implied threat to Mr. J. was noticed.¹³⁵

The crime of ‘tormenting a prisoner’ carries a maximum sentence of two years. The evidence would have suggested that the police had the intent to inflict severe bodily harm to Mr. J., possibly even more. This would have necessitated a change of the indictment to crimes that carry a higher maximum sentence and require a jury trial.¹³⁶ Additionally, the policemen accused Mr. J. wrongly of having resisted their authority and claimed that he tried to escape. There also seems to have been no charge under the Constitutional Act for the Protection of Personal Freedom (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit, PersFrG*), which incorporates Article 3 of the European Convention of Human Rights, prohibiting torture, inhuman or degrading treatment.

Three of the policemen were sentenced to eight months on probation, the fourth to six months. Mr. J. was awarded € 300 in damages. The verdict stated that while it was ‘inexcusable behavior’ (*‘unentschuldbares Verhalten’*), the incident was a ‘slip’ (*‘Ausrutscher’*).¹³⁷ The injuries, which Mr. J. sustained, were caused by ‘beatings’ (*‘Prügel’*). They resulted in fractures of the zygomatic bone, frontal bone and the right eyehole.¹³⁸ Neither the prosecutor nor the defense notified the court of possible appeals, the verdict thus immediately became final. Amnesty International Austria said in a statement that the verdict made torture a peccadillo (*‘Kavaliersdelikt’*).¹³⁹

The Human Rights Advisory Board, which is charged with making recommendations to the Minister for Interior Affairs, made a series of suggestions, including a public apology, disciplinary measures for the convicted policemen as well as medical and psychological assistance and reparations for Mr. J., in accordance with international law.¹⁴⁰ The then Minister for Interior Affairs, the late Liese Prokop, was asked after the trial whether a public apology was due to Mr. J. She denied, stating ‘one has to also see very clearly that this man had been convicted of a grave drug crime’ (*‘Man muss schon auch klar sehen, dass dieser Mann wegen eines schweren Drogendelikts bestraft war.’*).¹⁴¹

¹³³ See APA, “Uns sind die Nerven durchgegangen,” 30. August 2006.

¹³⁴ Ibid.

¹³⁵ See No-Racism, Im ‘Auftrag dich zu töten’: Mildes Urteil für lachende Beamte, 31. August 2006, http://no-racism.net/article_1795/.

¹³⁶ See “Richter hätte sich für unzuständig erklären müssen” – Interview mit Wilfried Embacher, derStandard.at, 31. August 2006.

¹³⁷ See No-Racism, Im ‘Auftrag dich zu töten’: Mildes Urteil für lachende Beamte, 31. August 2006, http://no-racism.net/article_1795/.

¹³⁸ See APA, “Uns sind die Nerven durchgegangen,” 30. August 2006.

¹³⁹ See APA, Heftige Kritik nach WEGA-Urteilen, 1. September 2006.

¹⁴⁰ See <http://www.menschenrechtsbeirat.at>.

¹⁴¹ See APA, Prokop will Strafenkatalog “überarbeiten,” 1. September 2006.

The deputy-chair of the Human Rights Advisory Board, Bernd-Christian Funk emphasized the need for prevention and guidance for the aftermath of those cases that – unfortunately – do occur.¹⁴²

The assessment by Chibo Onyeji following the verdict in the case of Cheibani Wague¹⁴³ comes to mind: “In matters concerning black people in Austria, law enforcement agents of the state are above the law and the system will always be there to back or rescue them.” He adds: “What is this European way of life, which apparently is incapable of letting the truth prevail in the face of overwhelming evidence?”¹⁴⁴

The prohibition of residence (*Aufenthaltsverbot*) against Mr. J. has meanwhile been upheld by the second instance, an appeal to the Constitutional Court is underway.¹⁴⁵

The preliminary suspension of the police officers from duty was lifted after the police’s internal disciplinary commission in the first instance awarded fines only. According to official statements they were assigned ‘office duties’.¹⁴⁶ The victim’s attorney, Wilfried Embacher, spoke of ‘belittlement’ and ‘minimization’.¹⁴⁷

Austria ratified the Convention Against Torture (CAT) in 1989. It gave its assurance to the UN’s Committee Against Torture to bring legislation in line with the Convention, including a provision against torture in the Criminal Code, in 2005.¹⁴⁸ The parliament, in a motion for a resolution (*Entschließungsantrag*)¹⁴⁹ stated its intention to ratify the Optional Protocol of the Convention Against Torture, which would require substantial changes to the national monitoring system, among others.

7.2. Other Incidents

As stated above, police interaction more often than not results in accusations of resistance against state authority (*Widerstand gegen die Staatsgewalt*)¹⁵⁰ and injuries are a regular part of these incidents.¹⁵¹ It would be unprofessional to give estimates but judging from the reports by ZARA¹⁵² and the Commissions of the Human Rights Advisory Board¹⁵³ there is cause for concern.

A Ghanaian national, Mr. Owusu who runs a business in the city of Salzburg, was threatened by a policeman that ‘you are as black as an ape and if I shoot you, nobody is going to go after me’ (*Du bist schwarz wie ein Affe und wenn ich Dich erschieße, tut mir keiner was*).¹⁵⁴ That was in 2003. In March 2006, according to the account of his partner, four men walked

¹⁴² See Bernd-Christian Funk, Polizeiliche Übergriffe in Österreich, in: Österreichische Liga für Menschenrechte, Menschenrechtlicher Befund für Österreich 2006.

¹⁴³ See case of Cheibani Wague, above.

¹⁴⁴ See Chibo Onyeji, The Dangerous Odds Against Black People in Austria, 11. November 2005, <http://no-racism.net/article/1451/>.

¹⁴⁵ See APA, Aufenthaltsverbot für Bakary J. bleibt, 19. Dezember 2006.

¹⁴⁶ See APA, Bakary J.: Suspendierung der vier WEGA-Beamten aufgehoben, 16. Dezember 2006.

¹⁴⁷ See APA, Bakary J.: Anwalt des Opfers: Verharmlosung, 16. Dezember 2006.

¹⁴⁸ Committee Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention – Conclusions and Recommendations of the Committee Against Torture: Austria, CAT/C/AUT/CO/3/CPR.1, para. 4.

¹⁴⁹ Entschließungsantrag 165/E, 7 December 2005.

¹⁵⁰ See also Section 6. Fair Trial and 24. Racism.

¹⁵¹ See as one example the case of a man who sustained a rupture of his lung while being fixed to the ground, Ricardo Peyerl, Fatale Polizei-Schnupperpraxis, Kurier, 15. September 2006.

¹⁵² ZARA <http://www.zara.or.at>.

¹⁵³ See Annex zum Jahresbericht des Menschenrechtsbeirates: Gemeinsamer Jahresbericht der Kommissionen des Menschenrechtsbeirates 2005, sub-chapter on ‘Misshandlungen’; <http://www.menschenrechtsbeirat.at>.

¹⁵⁴ See coverage of case of Joseh Owusu: no-racism.net: <http://www.no-racism.net/article/1589> and Salzburger Nachrichten: <http://www.salzburg.com/sn/04/07/15/artikel/1007564.html>.

into his shop and rather aggressively asked for someone. When the question was repeated, again very loudly, Mr. Owusu moved from the back of his shop to the front to inquire what the problem was and also state very clearly that there was no need to scream around. One of the four men then moved toward Mr. Owusu and hit his thorax with his fist repeatedly. A shop assistant who wanted to assist Mr. Owusu was shown an ID and told to stop: 'Leave that, otherwise it'll be your turn. Police!' (Note that only then the 'identity' of the four men was 'revealed'.) Mr. Owusu asked what the matter was all about and why he acted the way he did. He was screamed at 'shut up, you are arrested!' In trying to free himself, Mr. Owusu shook off the hand of the man who was holding him. The situation escalated immediately as the four guys fell over him and threw him to the ground. The same guy who had attacked him with his fist now put him into a headlock and shut his nostrils. The four guys then sat on Mr. Owusu, who fainted and lost consciousness for five minutes. He woke up in the police car on the way to the police office. Mr. Owusu is being charged with resistance against state power (*Widerstand gegen die Staatsgewalt*). The trial is still underway, a final verdict therefore pending.¹⁵⁵

In another case, an appellate court found that police had infringed an African national's rights by acting with disproportionate force: the woman was visiting with her sister, when the police, without a warrant, demanded her ID. Without giving consideration to various easily available possibilities to verify her ID, the police officers alleged that the passport was forged; the woman was subsequently arrested, which she tried to resist. Thus she was reported as having resisted state authority (*Widerstand gegen die Staatsgewalt*). The appellate court held that the police had overstepped its powers, given that other documents were available and information could have been retrieved by using the police's database.¹⁵⁶

Two cases of discriminatory practice, which surfaced in 2006, may serve to illustrate the problems further: an alleged rape-victim wanted to file a police report and reported that she was severely disturbed by the conduct of the officer recording the incident, particularly the fact that the officer tried repeatedly to dissuade the alleged rape-victim from filing the report.¹⁵⁷ Another case revealed that the police's description of a wanted suspect read 'foreigner, gypsy-type, approx. 25-35 years-old' (*Ausländer, Zigeunertyp, ca 25-35 Jahre alt*).¹⁵⁸ The Minister confirmed that the description was not acceptable;¹⁵⁹ however, the description did not contradict the guidelines for conduct of the police¹⁶⁰ because it was a descriptive ('beschreibend') and 'in no way judgmental ('wertend') or discriminatory portrayal.'¹⁶¹

The Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat, UVS*) allegedly found violations of the police's authority in 135 cases – of which 60 pertained to one incident – in the course of the last three-and-a-half years.¹⁶² The responsibility of the police was further highlighted in the case of a person, Mr. A. who after forty days of hunger strike was

¹⁵⁵ Ibid.

¹⁵⁶ Case of the Oberlandesgericht Linz, on file with author.

¹⁵⁷ Parlamentarische Anfrage 4385/J XXII. GP; Anfragebeantwortung 4370/AB XXII. GP.

¹⁵⁸ Parlamentarische Anfrage 3799/J XXII. GP.

¹⁵⁹ Anfragebeantwortung 3713/AB XXII. GP, Answer 1.

¹⁶⁰ The guidelines for police conduct are regulated in a guideline decree: 'Richtlinienverordnung', Section 5 gives a clear statement on respecting human dignity: "Achtung der Menschenwürde § 5. (1) Die Organe des öffentlichen Sicherheitsdienstes haben bei der Erfüllung ihrer Aufgaben alles zu unterlassen, das geeignet ist, den Eindruck von Voreingenommenheit zu erwecken oder als Diskriminierung auf Grund des Geschlechtes, der Rasse oder Hautfarbe, der nationalen oder ethnischen Herkunft, des religiösen Bekenntnisses, der politischen Auffassung oder der sexuellen Orientierung empfunden zu werden. (2) Die Organe des öffentlichen Sicherheitsdienstes haben alle Menschen, bei denen dies dem üblichen Umgang entspricht oder die es verlangen, mit „Sie“ anzusprechen."

¹⁶¹ Anfragebeantwortung 3713/AB XXII. GP, Answer 2.

¹⁶² Parlamentarische Anfrage 4533/J XXII. GP; Anfragebeantwortung 4504/AB XXII. GP.

released out on the street, where he collapsed.¹⁶³ Mr. A. required threes of ICU (intensive-care) treatment.¹⁶⁴

On December 23, a Gambian, Essa T. allegedly jumped into the Danube Canal, following a police patrol for drug possession. After a NGO-representative, Ute Bock, discovered that he was missing from his home, an inquiry slowly started. The police claimed that they had searched for Mr. T. for about one hour as far as one kilometer but gave up subsequently. Mr. T.'s corpse was found downstream at the end of January, investigations were still underway. In mid-February another person subject to a drug raid allegedly jumped into the Danube Canal, the police allegedly gave up searching after 1 hour and 45 minutes.¹⁶⁵

Excursus: Complaints in the Armed Forces

The Annual Report of the Military's Complaint Commission revealed *inter alia* a high frequency of derogatory and insulting remarks and incidents of physical ill-treatment: 'idiot', 'when I say 'shit, get up', I mean you and then you get up', 'get lost, you arshole', were among the reported remarks.¹⁶⁶ One Corporal handed around a spoon with a swastika stating "Guys, this spoon was made 1941, that's something proper." ('*Burschen, der Löffel ist Baujahr 1941, das is' halt noch was G'scheits!*').¹⁶⁷ Because of a mistake during a military drill, inductees were kicked into their behind. In another case an inductee was pulled by the ears an hit with a ring-binder on his head.¹⁶⁸

8. Arbitrary Arrest and Detention

Non-governmental organizations working with migrants reported indicators, which could, in sum, make the detention of asylum seekers – and possibly other persons seeking legal stay in Austria – arbitrary. The regime, which is to ensure that those people, who have to leave the country, will actually do so is called deportation imprisonment (*Schubhaft*), if one were to translate it literally. The term is referred to as such in the relevant decree (*Anhalteordnung*).¹⁶⁹ As a violation of administrative rules, securing the deportation of a person should aim at preparing the person for departure and the subsequent arrival at home and thus have no resemblance with procedures and facilities for criminal charges. The European Committee for the Prevention of Torture has criticized Austria for the rigidity of the regime.¹⁷⁰ The Committee called the main detention prison in Vienna 'unacceptable'.¹⁷¹ The

¹⁶³ See chilli.cc, Hungern für die Freiheit – Der Afrikaner Geoffrey A wurde nach 40 Tagen Hungerstreik auf die Straße gesetzt, 17 October 2006,

<http://www.chilli.cc/index.php?noframes=1&id=64-1-82>.

¹⁶⁴ See also 26. Migrants, Asylum Seekers, Refugees and IDPs.

¹⁶⁵ See Michael Simoner, Flucht in Donaukanal, Der Standard, 10. Jänner 2007 (based on an earlier report in the weekly *Falter*); APA, Vermisster Gambier möglicher Weise tot aufgefunden, 26. Jänner 2007; APA, Wieder sprang Verdächtiger in den Donaukanal, 13. Februar 2007; mas/derstandard.at, Sprung in Donaukanal: Weiter keine Spur von Verdächtigem, derstandard.at, 26. Februar 2007.

¹⁶⁶ See APA, Auszüge aus dem Bericht der Beschwerdekommission 2005: 'Geh aus meiner Kanzlei, du Arschloch!', 10. April 2006; see also: APA, Steiler Anstieg der Beschwerden beim Heer, 10. April 2006.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ See in particular Section 4 of the Anhalteordnung (Detention Ordinance).

¹⁷⁰ See Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, CPT, 21 July 2005, CPT/Inf/ (2005); <http://www.cpt.coe.int/documents/aut/2005-13-inf.eng.pdf>.

¹⁷¹ See Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment,

Commissions of the Human Rights Advisory Board stated that the conditions in which persons who are about to be deported are not in conformity with international human rights standards, citing that persons being held had no useful occupation, little or no information about their status and were disproportionately limited in their freedom of movement.¹⁷² The 'excessive' use of this detention regime, particularly for traumatized asylum seekers was starkly criticized.¹⁷³ The *Forum Asyl*, an Austrian umbrella NGO noted that the number of persons held in this regime had risen by approximately 500% since the new regulations¹⁷⁴ came into force on January 1, 2006.¹⁷⁵ A less stringent regime, 'milder measure' (*gelinderes Mittel*), which would allow people to move around freely and report on a regular basis, was urgently demanded by *Forum Asyl*.¹⁷⁶

9. Prison conditions

About 9.000 persons are currently being held in Austrian prisons, apparently 1.000 more than there is capacity. The ratio between prison guards and prisoners has dropped to 2,5 : 1.¹⁷⁷ The Ombudsperson in charge of complaints about prison conditions, Ewald Stadler (Freedom Party, FPÖ) was replaced by Hilmar Kabas (FPÖ).

There was some discussion on the adequacy of life-sentences, particularly the situation of elderly prisoners for whom resources were described as inadequate.¹⁷⁸ A study of the situation of Africans in prison in Vienna's main prison, *Justizanstalt Josefstadt*, found that 90% were imprisoned because of drug offences. Many of them stated that the best remedy would be to give working permits to asylum seekers.¹⁷⁹ Black people in prison were described as more cooperative than other inmates and 90% stated that they were fairly treated by prison guard, an assessment in stark contrast to the relationship between black people and the police.¹⁸⁰

Following heated debates, the then Justice Minister signed a decree (*Erlass*) on family visits. Because it provides for complete privacy, it was 'reduced to permitting sexual intercourse in prison', much to the regret of the then Minister, Karin Gastinger. She repeatedly stressed the importance of family contact and the necessary privacy, which is mainly to ensure regular contact with children. However, the spokesperson for judicial issues of the people's party (ÖVP), Maria Fekter felt it necessary to charge the decree as inviting 'professional sex in prison' ('gewerbsmäßiger sexueller Kontakt in der Haft').¹⁸¹ The so-called visitors centers, which are to be built based on the decree are all to be available within three years.¹⁸² The

CPT, 21 July 2005, CPT/Inf/ (2005); para 133. It suggested also that an open regime should be introduced 'as a matter of priority'.

¹⁷² See Annex zum Jahresbericht des Menschenrechtsbeirates: Gemeinsamer Jahresbericht der Kommissionen des Menschenrechtsbeirates 2005, sub-chapter on 'Misshandlungen'; <http://www.menschenrechtsbeirat.at>.

¹⁷³ See Forum Asyl, Wahrnehmungsbericht 2006 – Auswirkungen des Fremdenrechtspakets auf den Asylbereich, December 2006, p 18. See <http://www.asyl.at>.

¹⁷⁴ See also Section 26. Migrants and Asylum Seekers.

¹⁷⁵ See Forum Asyl, Wahrnehmungsbericht 2006 – Auswirkungen des Fremdenrechtspakets auf den Asylbereich, December 2006, p 9.

¹⁷⁶ See Forum Asyl, Wahrnehmungsbericht 2006 – Auswirkungen des Fremdenrechtspakets auf den Asylbereich, December 2006, p 15.

¹⁷⁷ See Michael Simoner, Über 9.000 Häftlinge sitzen in Österreichs Gefängnissen ein, Der Standard, 14./15. Juni 2006.

¹⁷⁸ See Markus Rohrhofer, "Nicht ein Leben lang in der Zelle verstecken," Der Standard, 4. August 2006.

¹⁷⁹ Currently asylum seekers are not permitted to work.

¹⁸⁰ The study, Afrikanische Häftlinge in der Justizanstalt Josefstadt – Kriminelle und/oder Opfer? is to be published soon. See press release at <http://www.univie.ac.at/kriminologie>.

¹⁸¹ See APA, Gastinger bleibt bei Familienbesuchs-Erlass für Häftlinge, 24. April 2006.

¹⁸² See APA, Räume für Familientreffen im Gefängnis in drei Jahren realistisch, 29. September 2006.

rights of deaf people were adequately taken care of, according to the Minister, as sign-language interpreters were involved whenever necessary.¹⁸³ An inmate at the Stein prison in Lower Austria appealed the decision of the director of the facility, prohibiting the use of porno-DVDs; the Supreme Court for Administrative Affairs (*Verwaltungsgerichtshof*) overturned the decision.¹⁸⁴

10. Right to Life

With regard to diplomatic assurances, the Minister for Foreign Affairs stated that the reliance on such assurances depended on the degree of commitment to the rule of law and the experience with that country in the past.¹⁸⁵ The government also gave a similar assurance to the Committee Against Torture.¹⁸⁶

Amnesty International Austria so far has reported one person, Muhammad 'Abd al-Rahmin Bilasi-Ashri, as in danger of return to a country where he would be at serious risk of torture and other grave human rights violations.¹⁸⁷

11. Freedom of Religion and Religious Tolerance¹⁸⁸

Austria's third largest religious community, roughly 340.000 Muslims faced almost non-stop public heat as their religion was repeatedly (ab)used for political purposes.¹⁸⁹ Be it the way the Freedom Party framed its referendum,¹⁹⁰ the so-called integration debate,¹⁹¹ the insults of the election campaign¹⁹² or the attacks on Muslim cemeteries. With regard to the latter a fire attack on the cemetery, which has not yet opened, was reported in April;¹⁹³ in October the opening of the cemetery was announced for 2007,¹⁹⁴ when, in November, 23 black crosses again desecrated the walls of the cemetery.¹⁹⁵ Meanwhile Muslims in Upper-Austria are working on plans to create their first cemetery there.¹⁹⁶ In response to a variety of other attacks, particularly the assertion that a substantial percentage of Muslims were unwilling to include themselves, various Muslim organizations appealed that Islam not be portrayed as a 'problem' or a 'security issue'.¹⁹⁷ In May a head master allegedly advised a ten-year-old Muslim girl not to wear her headscarf after school colleagues insulted her.¹⁹⁸ Toward the end of

¹⁸³ Parlamentarische Anfrage 4431/J XXII. GP; Anfragebeantwortung 4401/AB. XXII. GP.

¹⁸⁴ See APA, Justizanstalt Stein erlaubt Pornos, 13. November 2006.

¹⁸⁵ Parlamentarische Anfrage 3600/J XXII. GP; Anfragebeantwortung 3551/AB XXII. GP.

¹⁸⁶ Committee Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention – Conclusions and Recommendations of the Committee Against Torture: Austria, CAT/C/AUT/CO/3/CPR.1, para. 3.

¹⁸⁷ Amnesty International, Urgent Action 266/05 Risk of forcible return/torture.

¹⁸⁸ Scope of protection is defined by Article 14 Staatsgrundgesetz of 1867 as well as Article 9 European Convention, furthermore Article 17 International Covenant on Civil and Political Rights, among others. Note the requirements for registration for religious groups, also described in the Report of the US State Department Religious Freedom: <http://www.state.gov/g/drl/rls/irf/2005/>.

¹⁸⁹ See, for a report on incidents and attacks against Muslims in 2005: ZARA Racism Report 2005, Section by Initiative muslimischer ÖsterreicherInnen, p. 39.

¹⁹⁰ See Section 1. Elections and Referenda.

¹⁹¹ See Section 26. Migrants and Asylum Seekers.

¹⁹² See Section 1. Elections and Referenda as well as Section 23. Aggressive Nationalism et al.

¹⁹³ See APA, Brandanschlag auf islamischen Friedhof in Wien, 4. April 2006.

¹⁹⁴ See APA, Projekt Islamische Friedhof "in der Warteschleife," 27. Oktober 2006.

¹⁹⁵ See APA, Islamischer Friedhof geschändet, 1. Dezember 2006.

¹⁹⁶ See Markus Rohrhofer, Linz: Muslime wollen eigenen Friedhof, Der Standard, 14. Juli 2006.

¹⁹⁷ See APA, Muslime besorgt über Klima in Österreich, 25. Mai 2006.

¹⁹⁸ See Benedikt Sauer, Kopftuchstreit in Innsbruck entzündet sich politisch, Der Standard, 13./14. Mai 2006.

the year a Viennese Imam was accused of inciting hatred, he denied the allegations, the facts were not fully established by the end of the year.¹⁹⁹

There were no reports on discrimination of Christians. The mandatory school system in Austria entails religious instruction, if no opt-out is submitted. The Minister for Education reduced the time frame for submission at the beginning of the school year from ten days to five.²⁰⁰

Rabbi Paul Eisenberg stated that the community was doing better than in past years and voiced concern about political developments, particularly in connection with the so-called integration debate.²⁰¹ The Forum Against Anti-Semitism documented 143 Anti-Semitic incidents in 2005.²⁰² The Forum's September 2006 Newsletter lists a restaurant which in its menu offers dishes for 'Weget-Arier' ('Veget-Aryans').²⁰³ In late October a man who smashed some 100 windows and many of the school's bathrooms vandalized the Lauder-Chabad campus in Vienna.²⁰⁴

12. Respect for Private and Family Life²⁰⁵

At least two hundred²⁰⁶ couples have already faced or fear immediate danger for their family life after the coming into force of new, stringent, immigration rules ('Fremdenrechtspaket').²⁰⁷ Husbands or wives from so-called Non-EU-citizens have to file for their residence permit ('Niederlassungsbewilligung') from their home country. Furthermore, € 1065 minimum income has to be proven while the non-Austrian partner is not permitted to work.²⁰⁸ In addition to lengthy procedures and disproportionate intrusions into their privacy by way of rigorous seizures and searches, couples have to deal with severe psychological pressure. A number of individual cases garnered media attention, highlighting the dramatic consequences of weddings cancelled because of fear of arrest and subsequent deportation, deportations days before planned weddings and other blatant invasions into the lives of couples and families. While the Ministry for Interior exercised – or pretended to exercise – clemency in a few cases, there was no change to the overall regime. The only exception being that in summer a stop was put on pending deportations for those couples who married in or before 2005.²⁰⁹ An interest group, Marriage without borders ('Ehe ohne Grenzen') has advocated for the needs of bi-national couples and were awarded the Ute-Bock-Prize for moral courage 2006.²¹⁰

¹⁹⁹ See Irene Brickner, Wiener Imam verteidigt sich, Der Standard, 30./31. Dezember 2006.

²⁰⁰ Reported by www.kraehwinkel.at

http://www.kraehwinkel.at/heiliger_bimmbamm_nationalkonservativer_staat_und_kirche_verstehten_sich_offenbar_gut.php.

²⁰¹ See Rainer Nowak/Anne-Catherine Simon, Integration: Oberrabbiner warnt vor Eskalation, Die Presse, 7. Juni 2006.

²⁰² See subsection in ZARA Racism Report 2005, Forum gegen Antisemitismus, p. 37.

²⁰³ See Forum gegen Antisemitismus, September 2006, <http://www.fqa-wien.at>.

²⁰⁴ See Michael Simoner, Anschlag auf jüdische Schule: Akt der Barbarei, Der Standard, 28. November 2006.

²⁰⁵ Scope of protection is derived from Article 8 European Convention on Human Rights.

²⁰⁶ There are estimates that as many as 8.000 marriages involving at least one non-EU-citizen as a partner took place in 2005, see Angela Magenheimer, Das seit 1.1.2006 geltende Fremdenrecht und die Auswirkungen auf binationale Paare, in: Österreichische Liga für Menschenrechte, Menschenrechtlicher Befund für Österreich 2006; <http://www.liga.or.at>.

²⁰⁷ See, for an analysis of the Fremdenrechtspaket: Doris Einwallner, Das Fremdenrechtspaket 2005 – eine kritische Analyse, Juridikum – Zeitschrift im Rechtsstaat, 2006/3, 119; text available at <http://www.verlagoessterreich.at/pdf/voe/magazine/juridikum/200603/01.pdf>.

²⁰⁸ See in particular Angela Magenheimer, Das seit 1.1.2006 geltende Fremdenrecht und die Auswirkungen auf binationale Paare, in: Österreichische Liga für Menschenrechte, Menschenrechtlicher Befund für Österreich 2006. Irene Brickner, Paare als Opfer des Einwanderungsstoppes, Der Standard, 8. Mai 2006.

²⁰⁹ See Prokop: Abschiebeschutz für binationale Paare, Der Standard, 23. Juni 2006.

²¹⁰ See Ehe ohne Grenzen: <http://www.ehe-ohne-grenzen.at>.

The Ombudsperson found that in a number of cases, including an illegal house search, the right to privacy – Article 8 of the European Convention of Human Rights – had been violated by public officials.²¹¹

13. Surveillance and Data Protection

Temporary so-called protection zones (*Schutzzonen*) adjacent to a school on Karlsplatz, in downtown Vienna, close to one of the areas said to be a gathering place of persons allegedly involved in drug dealing, were made permanent. Persons, judged mainly – or solely, by their appearance can be demanded to leave this protection zone or risk a fine of € 70. Based on a provision contained in the Public Traffic Ordinance (*Straßenverkehrsordnung*), persons who ‘stand around without reason’ (*unbegründetes Stehenbleiben*) can be ‘removed’.²¹² Parallel to this, more camera surveillance in public places, again adjacent to areas allegedly ‘notorious’ for drug dealing, was planned. These measures were criticized for their questionable implications and experts warned of a surveillance state.²¹³ Equally, the monitoring inside of public transportation and in stations was assessed as a massive infringement of data protection.²¹⁴ Meanwhile the police was so satisfied with the results of camera surveillance in some areas that new places, including a major shopping center at the Southern border of Vienna was also equipped with video cameras.²¹⁵ The then Minister for Interior, the late Liese Prokop announced an increase of surveillance in trains as part of measures aimed at targeting terrorism.²¹⁶ Roughly four weeks later one of Vienna’s main train-stations, Westbahnhof, was already monitoring passengers through three cameras.²¹⁷

The Ombudsperson found that for years the information retrieved from the criminal registry had been excessively broad and thus not covered by data-protection laws. In one case a pedestrian had disregarded a traffic light, nevertheless the entire spectrum of violations recorded in the criminal registry were retrieved.²¹⁸

In the province of Styria the public funding of women’s shelters allegedly required that some basic information about the individuals seeking refuge be disclosed; activists saw significant implications for the safety, security and privacy of their clients as partners could potentially track them down and continue to threaten and harass them.²¹⁹

Changes to the Narcotics Decree (*Suchtgiftverordnung*), which are to come into force in March 2007 will require that the name, birth date, place of residence and social security number of a person who seeks substitution therapy have to be disclosed fully.²²⁰ In Germany, due to data-protection concerns, only the initials and year of birth are disclosed.

²¹¹ See Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, Section 14.11.1. (Fundamental Rights); English summary

<http://www.volksanw.gv.at/bericht/nationalrat/pb-29eng/pb29eng.htm>.

²¹² See Priska Koiner, Karlsplatz: Raus aus der Zone!, wienweb, 1 January 2006;

<http://www.wienweb.at/content.aspx?id=80464&channel=2&cat=32>; Der Standard, 70 Euro für “unbegründetes Stehenbleiben,” 25. März 2006.

²¹³ See APA, Mehr Video-Überwachung geplant, 15. Dezember 2005.

²¹⁴ See Michael Simoner, Kritik an Überwachung von Fahrgästen, Der Standard, 28. Juni 2006; Andreas Wetz, Wien: Totale Überwachung für die U-Bahn, 27. Juni 2006.

²¹⁵ See Karin Kirchmayr, Kameraauge wirkt wie Streifendienst, Der Standard, 24. August 2006.

²¹⁶ See APA, Prokop: Videoüberwachung in Zügen und Bahnhöfen wird verstärkt, 24. August 2006.

²¹⁷ See APA, Westbahnhof: Überwachung mit drei Kameras, 22. September 2006.

²¹⁸ See Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, 14.10.1.

²¹⁹ See Irene Brickner, Frauenhäuser bangen um Vertraulichkeit, Der Standard, 31. Mai 2006.

²²⁰ See Section 19 Para 1 & Section 23 lit. d of the Narcotics Decree (Suchtgiftverordnung), BGBl. II Nr. 451/2006.

14. Rights of the Child²²¹

The Children's & Youth Ombudspersons (*Kinder- & Jugendanwaltschaft*) have an independent office in each of Austria's nine provinces (*Länder*). They advocate for a single-standard of youth protection laws, which at the moment prescribe different rules in different provinces, as well as the rights of children in custody disputes. Among others, the Ombudspersons demand that children's rights be incorporated in the Constitution Act (*Bundesverfassungsgesetz*). The spectacular escape of Natascha Kampusch, a now 18-year-old woman who was captured and held in a private house for some nine years, raised the profile of the Ombudspersons' work, which also includes the protection from various forms of abuse.²²²

Migrant children repeatedly suffer violations of their rights, various measures together result in their being unable to reach secure residence (*Aufenthaltsverfestigung*). One tip of the iceberg is highlighted in reports on the detention of unaccompanied minors in deportation imprisonment (*Schubhaft*).²²³ The Office of the UN's High Commissioner for Refugees protested such practices, which the Ministry denied. The rights of children were mainly discussed in the context of individual cases of migrant children who, as non-citizens, were forced to leave the country to apply for a residence permit (*Niederlassungsbewilligung*).²²⁴ Furthermore, a Decree on Child Allowance (*Kindergelderlass*) barred some 9.000 children and their parents from receiving family-allowance and children-allowance.²²⁵ Also, the right to education came up repeatedly in the discussion on co-education or separate education of children whose first language is not German.²²⁶ The benefits of learning foreign languages were not necessarily at the forefront of these debates.

15. Rights of Older Persons

The discussion of illegal care workers, mainly from Eastern Europe, dominated much of the political debate in summer 2006. From a human-rights perspective it was most surprising that this issue was discussed as an economic 'problem' rather than the fulfillment of the right to live independently (*selbstbestimmtes Leben*). In addition to concerns over the quality of care for each individual, the rights of the care workers were reduced to removing existing 'illegality', leaving aside almost entirely their rights as employees. Furthermore, the issue was primarily discussed as a women's issue, both in the way the debate was framed and the fact that it involved an unusually high number of female politicians.²²⁷

The Vienna Ombudsperson for Care, Werner Vogt,²²⁸ warned of the implications of a lack of resources and care, particularly systemic violence,²²⁹ which may amount to inhuman and

²²¹ Scope of protection derived from various sources and substantially influenced by the Child Rights Convention.

²²² See Sibylle Hamann, In der Krise, Die Zeit, 37/2006.

²²³ See on Schubhaft also Section 26. Migrants and Asylum Seekers.

²²⁴ See, as one example among many: Irene Brickner: Kinder auf Fremdenrechtsfahrt, Der Standard, 20. September 2006.

²²⁵ See APA, Kein Geld für Ausländerkinder, 28. November 2006; see further Section 26. Migrants and Asylum Seekers.

²²⁶ See also integration debate in Section 26. Migrants and Asylum Seekers.

²²⁷ See Lisa Nimmervoll, Vier Frauen und ein Pflegefall, Der Standard, 25. August 2006; Der Standard, Ein Pflegenotstand, Fünf Lösungsmodelle, Der Standard, 29. August 2006.

²²⁸ The responsibilities of the Ombudsperson were to be restructured, causing questions as to whether the current Ombudsperson, Werner Vogt had been too critical and thus sidelined; APA, Patienten- und Pflegeanwaltschaft, Vogt: Man will mich beseitigen, 31. Mai 2006.

²²⁹ See Werner Vogt, Gewalt gegen die Alten, Falter 33/06.

degrading treatment. In its 2006 Report²³⁰ the *Heimkommission* gave detailed instructions for the use of so-called PEG-tubes, which are designed to feed people who are no longer able to swallow. Such tubes raise difficult questions of consent and dignity; their use in geriatric care has in the past caused concern because it substitutes for feeding by hand, which is seen as a huge financial factor. The use of such tubes, if not necessary and against a person's will, may also amount to inhuman and degrading treatment.

A major concern in the care of elderly persons is their legal capacity, including the right to exercise this capacity. The Austrian Guardianship Act (*Sachwalterschaftsgesetz*) was amended and it is hoped that new safeguards will ensure that principles of necessity, proportionality and reasonableness will be met.²³¹

16. Rights of Persons With Disabilities

The debate over illegal care workers²³² only touched on the needs of persons with long-term care needs, including persons with disabilities, in passing.²³³ A rights based approach to the debate, particularly highlighting the right to independent living, was largely missing.

Theresia Haidlmayr (Green Party), her party's spokesperson for disability issues, demanded that the nursing allowance (*Pflegegeld*) be uncapped, to ensure enjoyment of the right to live independently. The current system is based on levels; any expenses exceeding the highest level have to be covered by the individuals in need of assistance themselves.²³⁴

The Equal Treatment for Persons with Disabilities Act (*Behindertengleichstellungsgesetz*) came into force on January 1, 2006. It prohibits all forms of discrimination, including indirect and direct forms; also, it foresees that relatives fall under the protection of the Act.²³⁵ While hailed as a milestone, the first year of implementation also revealed room for improvement: the Green Party submitted a motion for resolution (*Initiativantrag*) in Parliament to amend the Act. In addition to damages, a restraint order (*Unterlassung*) should also be made available *ex lege*. Improvements should also include equal access to education and transition periods, particularly for accessible buildings, should be kept to a minimum.²³⁶ A series of parliamentary requests for information (*Parlamentarische Anfragen*) were directed at the implementation of the Act within government and public institutions.²³⁷ A separate law, the Federal Equal Treatment for Persons with Disabilities Act (*Bundes Behindertengleichstellungsgesetz*)²³⁸ is to ensure equal access to specific job sectors.

The appointment of the former deputy prime minister, the veterinarian Herbert Haupt, as advocacy person for persons with disabilities continued to raise questions on the transparency of the appointment process and his qualifications.²³⁹ Taking account of his first year in office, the advocacy person stated that 119 mediation cases had been filed, of which 85 had been resolved before year's end. The advocacy person said that he would submit his first report by July 1, 2007. Also, he was hopeful that two court cases, one on employment

²³⁰ See Bericht der bei der Wiener Patientenanwaltschaft eingerichteten Heimkommission 2006.

²³¹ See Wener Vogt, Gewalt gegen die Alten, Falter 33/06.

²³² See Section 15. Rights of Older Persons.

²³³ See Irene Brickner, Wie Georg mit 16 dem Pflegeheim entging, Der Standard, 14. August 2006.

²³⁴ See Conrad Seidl/Samo Kobenter, Menschenwürde als Menschenrecht, Der Standard, 14. August 2006.

²³⁵ See further <http://www.gleichstellung.at/rechte/bgstg.php>.

²³⁶ See Die Grünen, Haidlmayr: Behindertengleichstellungsgesetz muss verbessert werden, Dezember 2006.

²³⁷ Parlamentarische Anfrage 4261/J XXII. GP through 4278/J XXII. GP.

²³⁸ See BGBl I Nr. 90/2006.

²³⁹ Parlamentarische Anfragen 3815/J XXII. GP, 3855/J XXII. GP, 3646/J XXII. GP, and 3926/J XXII. GP. The last one concerning the alleged involvement of the advocacy person in the election campaign.

access and one on access to leisure activities would be helpful in raising the profile of the challenges for persons with disabilities. Mr. Haupt was disappointed with ongoing public building projects, which were not accessible and highlighted the fact that federal legislation is not binding on the provinces (*Länder*).²⁴⁰

The amendment of the Austrian Guardianship Act (*Sachwaltergesetz*) will come into force on July 1, 2007. It increases the individual leverage substantially, including representation by relatives, and puts limits on the number of individuals one attorney may represent to 25. In the past some attorneys had ‘specialized’ in serial representation of persons under guardianship, some taking care the interests of 200 or more individuals.²⁴¹

The newly passed UN International Convention on the Rights of Persons with Disabilities,²⁴² in the negotiation of which Austria participated actively as part of the EU Presidency in 2006, will be open for signature and subsequent ratification as of March 30, 2007. The Convention, which will ensure effective equal access for persons with disabilities, it is hoped that Austria will be among the first signatory states.

A priest in the Lower Austrian town of Raxendorf refused a group of persons with disabilities the holy communion, claiming that it was against orders from the Vatican. He stated that they were on the developmental stage of three-year-olds and thus lacked the necessary dignity.²⁴³

The decision of the Supreme Court (*Oberster Gerichtshof, OGH*) holding a doctor liable for alimony (*Unterhalt*) for a child born with Down-Syndrome sparked considerable debate. The Court focused on the necessity of adequate information for informed decision making.²⁴⁴

Disabled people’s organizations, remain critical of the Criminal Code provision allowing abortions up until the imminent birth ‘if there is danger of the child being severely mentally or physically disabled’; Section 97 Para 1 Sub 1 of the Criminal Code.

The then Justice Minister found that the conditions for deaf persons in prison were adequately taken care of.²⁴⁵ In its Second Discrimination Report (2006), the Austrian Sign Language Association (*Österreichische Gebärdensprachengemeinschaft*) again lists cases of discrimination, which mainly relate to the work place, where deaf people received very little to no support as well as infringements of the right to learning sign language, which is often limited.²⁴⁶

The then Minister for Education, Elisabeth Gehrer, following a heated political debate, announced that Austria was to create a university center of excellence. The place of choice, Gugging, has for many years been a psychiatric hospital, Landesnervenklinik Maria Gugging/Landesklinikum Donauregion. Its House of Artists (*Haus der Künstler*),²⁴⁷ under the auspices of the Center for Art and Psychotherapy, is world-renown. Plans to close the

²⁴⁰ See Martin Ladstätter (BIZEPS), Bilanz ein Jahr Anwaltschaft für Gleichbehandlungsfragen, 29. Dezember 2006; <http://www.bizeps.or.at/news.php?nr=7432>.

²⁴¹ See Wener Vogt, Gewalt gegen die Alten, Falter 33/06.

²⁴² The text of the Convention may be found at

<http://www.un.org/esa/socdev/enable/rights/convtexte.htm>.

²⁴³ See BIZEPS: Pfarrer verweigerte Kommunion: Der Pfarrer von Raxendorf in Niederösterreich hat einigen behinderten Menschen, <http://www.bizeps.or.at/news.php?nr=6827>; BIZEPS, Bischof nimmt Stellung zur Kommunionsverweigerung, <http://www.bizeps.or.at/news.php?nr=6828>; BIZEPS, Pfarrer verteidigt Kommunionsverweigerung: Der Pfarrer berief sich auf Konzilsdekrete, die angeblich Sonderliturgien vorsehen - vor allem für Personen, die "geistig einen beträchtlichen Schaden genommen haben", <http://www.bizeps.or.at/news.php?nr=6829>.

²⁴⁴ See Salzburger Nachrichten, Geburt eines behinderten Kindes vor Justiz, 13. Juli 2006.

²⁴⁵ See also Section 9. Prison Conditions.

²⁴⁶ See Discrimination Report (Diskriminierungsbericht) Österreichische Gebärdensprachengemeinschaft; <http://www.oeglb.at/>.

²⁴⁷ See Haus der Künstler, <http://www.gugging.org>.

psychiatric unit had already been developed. Following the decision to create the new campus, the speed of events necessitated that some of the patients were placed in containers on a provisional basis, as overall some 240 individuals had to be gradually transferred to various hospitals and other care facilities in the region.²⁴⁸

A parliamentary request for information (*Parlamentarische Anfrage*) sought to clarify the effects of decrees issued under a 1940 Nazi-law on forceful sterilization of human beings who were considered ‘mentally defective’ (*Schwachsinnig*), schizophrenic, manic-depressive, epileptic, blind or deaf.²⁴⁹ Then Justice Minister Karin Gastinger asserted that none of these decrees were considered lawful and while she held that ‘some discussion’ about these decrees had taken place, it would not be necessary to clarify through legislation that they had no effect.²⁵⁰

17. National, Ethnic & Linguistic Minorities

For the last years the dispute over topographical town-signs for communities, where minorities live, has dominated much of the national political debate. While the debate is limited to Carinthia politically, Austria’s obligations to minorities extend beyond that province and certainly well beyond putting up town-signs; however, minority rights more generally rarely make headlines.

The 1955 State Treaty, also ratified by Parliament that year, obliges Austria to wide-ranging protection of its national minorities. Now more than 50 years in the running, the nitty-gritty disputes over legislation (such as town-signs), which is to implement the guarantees set out in the State Treaty, casts a shadow over actual enforcement as well as the scope of protection. It is held, also by the Constitutional Court, that the scale of rights provided in the State Treaty should be interpreted broadly and thus may lead to a preferential treatment of minority groups, if necessary.²⁵¹

Austria recognizes national minorities as ‘groups, which live in parts of the federal territory, who are Austrian nationals with non-German first language and their own tradition and customs’ in accordance with the Ethnic Groups Act (*Volksgruppengesetz*). Originally adopted to implement the provisions set out in the 1955 State Treaty,²⁵² particularly Article 7, the Ethnic Groups Act has now been in force for 30 years – since 7 July 1976 – but still has not been adequately implemented.²⁵³

It is noteworthy that the scope of protection for members of minorities was widened by the 1995 European Convention for the Protection of National Minorities and the 1992 European Charter for Regional or Minority Languages; furthermore, Article 27 of the International Covenant of Political and Civil Rights (ICCPR) contains a clause on individual – rather than group – protection for members of minorities.

Since 2000 a programmatic clause (*Staatszielbestimmung*) in the Constitutional Act (*Bundesverfassungsgesetz*) prescribes, ‘The Republic recognizes its traditional linguistic and cultural plurality, which is reflected in its autochthonous ethnic groups. Language and culture, existence, and preservation of these ethnic groups must be respected, secured and

²⁴⁸ See Der Standard, Containerpläne für Gugging-Patienten, 21. Februar 2006.

²⁴⁹ Parlamentarische Anfrage 4576/J XXII. GP.

²⁵⁰ Anfragebeantwortung 4404/AB XXII. GP.

²⁵¹ See Franjo Schruiff, Artikel 7 – Die verkannte “Magna Charta” der Minderheiten, Stimme von und für Minderheiten # 56, <http://minderheiten.at/stimme/stimme56c.htm>.

²⁵² See, for the full German text of the State Treaty:

http://de.wikisource.org/wiki/Österreichischer_Staatsvertrag.

²⁵³ See Tatjana Koren, Volksgruppengesetz war gut gemeint, orf.at; <http://volksgruppen.orf.at/volksgruppen/stories/57053>.

promoted.²⁵⁴ In a 2002 Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Croats, Slovenes, Hungarians, Czechs, Slovaks and Roma & Sinti were stated as falling under the scope and thus protection of the Ethnic Groups Act.

The national census discerns affiliation to a national minority through the languages spoken. As the Advisory Committee notes, in the course of the last census in 2001, in the province of Burgenland, a distinction was drawn between 'Croats' and 'Burgenland-Croats', which is not clearly justified by any of the representatives.²⁵⁵ Furthermore, according to reports, households in the Southern parts of Carinthia, where most Carinthian Slovenes live, were alerted to state no other than German as their spoken language. Allegedly Slovenes were to receive census forms in Slovene, however, they only received instructions in their first language.

The Advisory Committee states that 'the Government should try to identify further ways and means of obtaining reliable statistical data on national minorities'.²⁵⁶

Based on the stated caveats, the census reveals that 40.583 persons speak Hungarian, 24.855 Slovene, 19.412 Burgenland-Croat, 17.742 Czech, 10.234 Slovakian, 6.273 Romanes and 568 Windisch.²⁵⁷

The Jenische are the only autochthonous group whose language is not officially recognized.

Sign language is officially recognized through Article 8 of the Constitutional Act (*Bundesverfassungsgesetz*) since September 2005 and it is estimated that 9.000 persons use sign language.

Other first languages spoken include: Turkish (183.445), Serbian (177.320), Croat (131.307), English (58.582), Bosnian (34.857), Polish (30.598), Albanian (28.212), Arabic (17.592), Romanian (16.885), Italian (10.472), Persian (10.665) and French (10.472). Just fewer than 10.000 people, namely 9.960, speak Chinese.²⁵⁸

The Advisory Committee notes, among others, that Poles may wish to be recognized as a minority. It also states that Czechs and Slovaks are facing difficulties in preserving their cultural and linguistic identity.²⁵⁹

In its assessment, the Advisory Committee noted that Austria has a 'significant' amount of non-Austrians, including migrants.²⁶⁰ Austria has, like other European countries, not ratified one of the UN's core human rights conventions, the 1990 International Convention on the Protection of All Migrant Workers and Members of their Families. Compare, however, the protection afforded in Article 19 International Covenant on Economic, Social and Cultural Rights.

²⁵⁴ Article 8 Para 2 Constitutional Act, translation: Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Austria, 2002, ACFC/INF/OP/I(2002)009, p 9.

²⁵⁵ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Austria, 2002, ACFC/INF/OP/I(2002)009, p 7.

²⁵⁶ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Austria, 2002, ACFC/INF/OP/I(2002)009, p 8.

²⁵⁷ See Statistik Austria, Bevölkerung nach Umgangssprache, Staatsangehörigkeit und Geburtsland, Volkszählung 2001.

²⁵⁸ Ibid.

²⁵⁹ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Austria, 2002, ACFC/INF/OP/I(2002)009.

²⁶⁰ See Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Austria, 2002, ACFC/INF/OP/I(2002)009, 11.

17.2. Ongoing dispute over bilingual topographic signs in Carinthia

Austria obliged itself to provide to Slovene and Croat minorities in its provinces in Carinthia, Burgenland and Styria the right to their own organizations, meetings and press in their own language, elementary instruction in either language and to a proportionate number of secondary schools; in the relevant districts either language is to be accepted as official language in administrative and judicial proceedings, also topographical terminology and inscriptions shall be posted in either language, and equal participation in cultural, administrative and judicial systems. So says Article 7 of the 1955 State Treaty.

The dispute over how many topographical town-signs shall be posted in which of the towns in Carinthia-Koroška has been ongoing for years. After the first major dispute broke out in 1972 (*Kärntner Ortstafelsturm*), a minimum of 25% minority population was set out in the Ethnic Groups Act for topographical town-signs. A topographical ordinance (*Topographieverordnung*) was subsequently published. In 2001 the Constitutional Court found this to be too high and set 10% as the margin. Since then the Constitutional Court has published a number of further findings (*Erkenntnisse*), none of which have been implemented.

The governor of Carinthia, Jörg Haider (BZÖ) has repeatedly refused to comply with the Court's findings. In 2006 this refusal manifested itself as follows: in May the Chancellor Wolfgang Schüssel proposed a new topographical ordinance, which would add 81 topographical signs and bring the total up to 158.²⁶¹ The Council of Carinthian Slovenes, however, states that based on the Constitutional Court's findings there should be 394 signs.²⁶² According to statistics there are 2.824 towns in Carinthia, of which, in early 2006 77 or 2,7% had bilingual town-signs.²⁶³ Meanwhile Governor Haider proposed a referendum concerning the amount of town-signs, which was rejected by the Electoral Council.²⁶⁴ Instead a 'ballot' (*Urabstimmung*) was held, which the Council of Carinthian Slovenes deemed illegal and thus reported Haider for alleged abuse of authority (*Amtsmissbrauch*).²⁶⁵

In June the Constitutional Court issued its finding concerning three towns, in which Governor Haider had forcefully re-located the town-signs. The Ombudspersons (*Volksanwaltschaft*) had initiated the proceedings for the Court's findings, which held that in two of the towns, namely Bleiburg-*Pliberk* and Ebersdorf-*Drvesa vas*, town-signs had to be put up. In a third town, Sankt Kanzian-*Škocjan v Podjuni*, the number of Carinthian Slovenes has – like in many other towns – meanwhile dropped below the 10% margin.²⁶⁶ In July the Government proposed to pass an Ordinance to place 141 town-signs by 2009, however, to no avail.²⁶⁷ The President of the Constitutional Court, Karl Korinek, stated two weeks later that sixteen town-signs were currently not correct, i.e. not bilingual and that the new Ordinance was legally binding.²⁶⁸ Governor Haider in return told the Court's President that he was 'political' ('politisierender VfGH-Präsident').²⁶⁹ Next, the Member of the Provincial Government, Gerhard Dörfler (BZÖ), refused to implement the Ordinance, which experts found to be in

²⁶¹ See APA, Schüssel will 158 Ortstafeln per Verordnung, 11. Mai 2006. For a chronology of the dispute in Carinthia see <http://kaernten.orf.at/stories/164708/>.

²⁶² See Council of Carinthian Slovenes, On the Situation of the Carinthian Slovenes, 2006 – in the year of Austria's presidency of the European Union, http://www.nsks.at/docs/brosura_eng.pdf.

²⁶³ See APA, Ortstafeln: In Kärnten 77 von 2.824 Orten mit zweisprachigen Tafeln, 22. Februar 2006.

²⁶⁴ See Section also Section 1. Elections and Referenda.

²⁶⁵ See APA, Ortstafelbefragung: Rat der Kärntner Slowenen zeigt Haider an, 16. Juni 2006.

²⁶⁶ See APA, VfGH: Haiders Ortstafelverrückungen waren rechtswidrig, 26. June 2006.

²⁶⁷ See APA, Ortstafeln: Bis 2009 kommen 141 Schilder 5. Juli 2006.

²⁶⁸ See Lisa Nimmervoll, VfGH-Chef Korinek warnt Regierung vor missbräuchlicher Wahlwerbung, 16. Juli 2006.

²⁶⁹ See Elisabeth Steiner, Lisa Nimmervoll, Verordnete und verwechselte Tafeln, Der Standard, 21. Juli 2006.

violation of the Ordinance. Experts also contended that Dörfler's inaction amounted to abuse of authority (*Amtsmisbrauch*) according to the Criminal Code.²⁷⁰

Governor Haider tried another inroad by suggesting that all bilingual signs would be removed and replaced with German town-signs with a – smaller – addition in Slovene where 'necessary'. The proposal was rejected by experts.²⁷¹ This proposal, together with election advertisements that Carinthia would become monolingual,²⁷² lead the Green Party to lodge a criminal report against Haider for incitement.²⁷³ Civil society protest and an open letter by Austria's Ambassador to Slovenia, Valentin Inzko, followed.²⁷⁴ A few weeks later the Green Party stated that reports against Haider were made on the counts of incitement and disturbance of public peace (*Landzwang*) in accordance with the Criminal Code and for violations of the Prohibition Act (*Verbotsgesetz*).²⁷⁵

Next Governor Haider claimed that some town mayors wanted the bilingual signs removed, which they denied.²⁷⁶ Next the Ombudspersons (*Volksanwaltschaft*) again initiated proceedings against Governor Haider – this time for his suggestion to replace the signs with German signs plus smaller Slovene signs.²⁷⁷ Inbetween one town, Schwabegg-Žvabek, was made 'German' again, by removing the Slovene sign.²⁷⁸ Haider's 'add-on' town-signs were held to be against the law, particularly not to be in conformity with the Public Traffic Ordinance (*Straßenverkehrsordnung*).²⁷⁹ Constitutional Court President Korinek commented that it was 'a little bit of a 'so what' decision'.²⁸⁰ The Governor's spokesperson, Petzner, was quick to state that President Korinek's name stood for 'legal garbage' ('Der Name Korinek steht für rechtlichen Dreck').²⁸¹ Next was Gerhard Dörfler (BZÖ), Member of the Provincial Government (*Landesrat*) to state that 'the rule of law is one thing and 'public sentiment' was quite another' ('Der Rechtsstaat ist das eine, das gesunde Volksempfinden das andere').²⁸² Dörfler claimed that he was unaware of the Nazi-connotation of the term 'public sentiment'.

At years end, the Bishop of the Diocese of Carinthia, made a surprise move and called for the end of 'undignified spectacle' ('unwürdiges Schauspiel'). Bishop Schwarz furthermore urged the respect for democratically legitimized institutions.²⁸³ Governor Haider accused the Bisshop of being one-sided, among others.²⁸⁴

Meanwhile another expert, Dieter Kolonovits, rightly highlighted the fact that the bilingual requirement is not just limited to town-signs.²⁸⁵ That said, town-signs are only the beginning and not the end of the debate; the Council of Carinthian Slovenes points out, for example,

²⁷⁰ See Lisa Nimmervoll, Elisabeth Steiner, Dringender Verdacht auf Amtsmisbrauch, *Der Standard*, 22./23. Juli 2006.

²⁷¹ See APA, Verfassungsexperten lehnen Haiders Ortstafelrevolte ab, 25. August 2006.

²⁷² See Section 1. Elections and Referenda.

²⁷³ See Haider: Grüne erstatten Anzeige wegen Verhetzung, 3. September 2006.

²⁷⁴ See APA, Unterschriftenaktion: Österreicher bleiben mehrsprachig, 16. September 2006. The letter of the Austrian Ambassador in Slovenia, Valentin Inzko on the mono-linguist campaign: <http://www.kleine.at/nachrichten/politik/211773/index.do>.

²⁷⁵ See Elisabeth Steiner, Haiders Ortstafel-Wahlkampf: Fall für die Justiz, *Der Standard*, 8. November 2006.

²⁷⁶ See APA, Bürgermeister protestieren gegen Haider, 5. September 2006.

²⁷⁷ See Kleine Zeitung, Ortstafeln - Haider kritisiert neuerliche VfGH Prüfung, 27. Oktober 2006; <http://www.kleinezeitung.at/nachrichten/politik/153608/print.do>.

²⁷⁸ See Elisabeth Steiner, Schwabegg ist wieder deutsch, *Der Standard*, 23. November 2006.

²⁷⁹ See APA, Haiders Zusatzschilder gesetzeswidrig, 28. Dezember 2006.

²⁸⁰ Ibid.

²⁸¹ See APA, BZÖ attackiert VfGH Präsidenten, 28. Dezember 2006.

²⁸² See Karin Moser, Elisabeth Steiner, Das Recht und seine Rechthaber, *Der Standard*, 2. Jänner 2006.

²⁸³ See APA, Ortstafeln führen zu Streit zwischen Haider und Bischof, 3. Jänner 2006.

²⁸⁴ Ibid.

²⁸⁵ See Dieter Kolonovits, Zur zweisprachigen Topographie für autochtonen Minderheiten, in: Österreichische Liga für Menschenrechte, Menschenrechtlicher Befund für Österreich 2006.

that cultural activities for German-speaking Carinthians are subsidized with € 62, whereas Carinthian Slovenes receive € 15.²⁸⁶

A documentary on the Carinthian town-sign-dispute, “Artikel 7 – Unser Recht” has to date not been broadcast by the Public National Television (ORF) despite its partial sponsorship of the film. A general discussion on the situation of other minorities, both recognized and unrecognized, is largely absent.

18. Citizenship

Part and parcel of the overall regime for immigration (‘*Fremdenrechtspaket*’), the Citizenship Act (‘*Staatsbürgerschaftsgesetz*’)²⁸⁷ was amended despite rejection by the Upper House (‘*Bundesrat*’).²⁸⁸ The residence requirements were extended significantly – to 15 years – and a history and language test was introduced. The test requires ‘basic knowledge of the democratic order’, including the political system and institutions of Austria, ‘basic knowledge of Austria’s history’ as well as ‘history of the province (*Bundesland*)’. Among others ‘basic rights and freedoms’ are to be included in the test.²⁸⁹ The test for each province includes questions such as ‘how many members does the Vienna Municipal Council (*Gemeinderat*) have?’²⁹⁰

The amendment and particularly the test were criticized as creating an obstacle for integration because people would be dissuaded from applying for Austrian citizenship as the law gave the impression that they were not welcome.²⁹¹ The human-rights spokesperson of the Green Party, Terezija Stojsits, called for an immediate overhaul of the regime stating that for too many people citizenship was now an almost unreachable status, leaving thousands of individuals in legal limbo.²⁹²

Numbers for naturalization went up dramatically before the amendment came into force: until March 23, there was a 19,8 % (or 10.695 individuals) increase.²⁹³ Thereafter numbers plummeted dramatically. Between April and June a minus of 40% in naturalizations; overall the first half of the year brought a minus of 11,7%. Percentages in the various provinces ranged from a minus of 35,5 % (or 417 individuals) in Vorarlberg to 5,2% or 2.331 in Lower Austria.²⁹⁴ Most naturalizations were based on family relations and were awarded to children and partners. The number of persons who received citizenship after ten years of residence decreased by 20%.²⁹⁵ Only naturalizations due to special considerations (*besonders berücksichtigungs-würdiger Grund*) increased by 26,5% and awarded 925 citizenship certificates.²⁹⁶

In one case, concerning Mr. Al-Amin Amir, a Sudanese national, the authorities in Carinthia rejected the naturalization application because he had not ‘integrated’ himself well enough. The governor of Carinthia, Jörg Haider (BZÖ), claimed that Mr. Al-Amin Amir was a

²⁸⁶ See Council of Carinthian Slovenes, On the Situation of the Carinthian Slovenes, 2006 – in the year of Austria’s presidency of the European Union, http://www.nsks.at/docs/brosura_eng.pdf.

²⁸⁷ See, for an analysis of the Act, Joachim Stern, Grenzen der Demokratie. Die Staatsbürgerschaftsrechts-Novelle 2005, Juridikum – Zeitschrift im Rechtsstaat, 2006/1, abstract http://www.verlagoesterreich.at/zeitschrift_juridikum_ausgabe_90.html.

²⁸⁸ See APA, Novelle des Staatsbürgerschaftsrecht neuerlich beschlossen, 3. März 2006.

²⁸⁹ See APA, Landeskundetest: Was ein Österreicher wissen soll, Der Standard, 13. Februar 2006.

²⁹⁰ See APA, Der Wiener Fragenkatalog: einige Beispiele, 20. September 2006; For sample questions, see also <http://www.wien.gv.at/ma61/pdf/fragenkatalog.pdf>.

²⁹¹ See Kerstin Scheller, Sinnloses Auswendiglernen, Der Standard, 31. Juli 2006.

²⁹² See APA, Grüne Kritik an Auswirkungen des neuen Staatsbürgerschaftsrects, 17. Juli 2006.

²⁹³ See APA, Einbürgerungen vor schärferem Gesetz stark angestiegen, 30. Mai 2006.

²⁹⁴ See APA, Einbürgerungen nach schärferem Gesetz stark gesunken, 22. August 2006.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

'fundamentalist Muslim' who had also beaten children. The Constitutional Court (*Verfassungsgerichtshof*) held that the decision was arbitrary (*Willkür*).²⁹⁷ As in the case of topographical town signs, the governor stated publicly that he would refuse to comply with the findings of the Constitutional Court.²⁹⁸

Note that the amendment to the Citizenship Act did also not incorporate criticism of the Commission, which assessed Austria's history (*Historikerkommission*), thus Austria still refuses easy access to Citizenship for survivors of National Socialism and their descendants; compare though the approach of the Federal Republic of Germany.²⁹⁹

19. Equal Rights of Men and Women

Austria ratified the Convention on the Elimination of Discrimination Against Women (CEDAW) in 1982.³⁰⁰ The CEDAW Committee has repeatedly reminded the government of its obligations; most recently the Committee called on Austria to close gaps in implementation, which were assessed as hampering effective equality.³⁰¹ It is noteworthy that the implementation of the Convention at national level would allow for affirmative action: the temporary advantageous treatment of women.³⁰²

The manifestation of gender roles and perceptions is reflected, among others, in the choice of motives for special stamps in 2005: nineteen men of varying importance and historic significance are depicted. It is noteworthy that they are all fully dressed because this cannot be said of the four women chosen for the special series of the publicly owned postal service company.³⁰³ Equally telling is the celebration of historically significant persons, ranging from Mozart to Freud, accomplished women apparently hardly seem to be at hand despite contrary records.³⁰⁴

The Global Gender Gap Report 2006³⁰⁵ ranked Austria 26th among 115 countries; it came in 81st for economic participation. The UN's Committee on Economic and Social Rights has criticized Austria for the lack of a provision on gender equality in the Constitutional Act (*Bundesverfassungsgesetz*).³⁰⁶

19.1. Policy

²⁹⁷ See APA, Haider ignoriert VfGH-Entscheid: Keine Staatsbürgerschaft für Moslem, 26. November 2006.

²⁹⁸ See Section 17. National, Ethnic and Linguistic Minorities.

²⁹⁹ See Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Staatsbürgerschaftsgesetz et al geändert werden der Anlaufstelle der Israelitischen Kultusgemeinde; http://www.restitution.or.at/downloads/staatsburgerschaft/StbG_Stellungnahme_Anlaufstelle_2005-11-25.pdf

³⁰⁰ BGBI 1982/443.

³⁰¹ Compare the advanced unedited version of the CEDAW Committee's recent report: Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Austria, CEDAW/C/AUT/CO/6, 2 February 2007.

³⁰² Compare Walter/Mayer, Bundesverfassungsrecht, 9th Edition, 1343/1.

³⁰³ See dieStandard.at/bto, Markenzeichen XX, dieStandard.at, 29. November 2005.

³⁰⁴ See ceiberweiber.at, Her Story, Frauennamen:

<http://www.ceiberweiber.at/ownpages/history/herindex.htm>.

³⁰⁵ See, for the Global Gender Gap Report 2006

<http://www.weforum.org/en/initiatives/gcp/Gender%20Gap/GenderGap> (last visited January 5, 2006).

³⁰⁶ See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria; E/C.12/AU/CO/3, November 2005, paras 10., 23.

Austria's 2005 Social Report (*Bericht zur sozialen Lage*) is reflective of the government's gender policy: the chapter on family- and generation policy has sub-chapters on 'family policy' as well as 'men's policy' but none on women.³⁰⁷ Women are the childbearing and child-rearing parts of families and men are the new 'weak' gender.

In recent years women in Austria have been made to believe that they have the 'freedom' and can make their own 'choice' whether to look after their children or whether to go back to work. This is mainly based on a children-allowance (*Kindergeld*), which is portrayed as support but turns out to be a trap. Not only is child-rearing still largely – a few exceptions noted – seen as a women's issue, structures are such that due to lack of child-care facilities and the employment situation, women more often than not believe to be better off staying at home.

The prolonged benefit period – up to 30 months for one parent, 36 months if both parents take turns in caring for the child – and the increase of benefactors – prior employment is no longer a prerequisite – makes the allowance comparatively popular. However, women face significant problems in re-entering the job market following this leave.³⁰⁸ Also, while on surface more women are employed, their employment situation has deteriorated significantly as precarious working regimes, with part-time and low-income jobs are on the rise, predominantly affecting women.³⁰⁹

The alleged 'choice' of part-time work is a chimera as most women are de facto forced to take on a job with reduced hours if they have children who require care. The amount of women who have children and work part time in Austria is above the European average.³¹⁰ The amount of women employed below subsistence level (*geringfügig beschäftigt*) has risen significantly.³¹¹ Also, women's unemployment has risen over the last years.³¹²

Reconciling work and childcare should be easier following the introduction of a law on parental leave in 2004. However, the Trade Union Federation (ÖGB) found that many practical obstacles remain. Most notably, the employing business has to have a certain amount of employees in order that a parent may work part time for a certain period. This requirement is hard to fulfill given the high amount of small-scale businesses in Austria.³¹³ The fact that only women with children but not men with children are counted in statistics is just one case in point.³¹⁴

The more than 300 page men's report (*Männerbericht*) discusses reconciliation of child care from men's perspective in roughly four pages, and states improved child care facilities as the first priority, improvements for women as the second priority and then, thirdly, the involvement of fathers.³¹⁵ Furthermore, the book contains an article by a Catholic Bishop, who, in another context, warned of women's libbers who refuse reproduction (*gebürtungsverweigernde Emanzen*). Such sentiments were also shared – to some degree – by then Chancellor Schüssel who spoke of incomplete single-mothers (*unvollkommene*

³⁰⁷ See Bericht zur sozialen Lage, 2003-2004, 98 ff.

³⁰⁸ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 36.

³⁰⁹ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 17 ff.

³¹⁰ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 18.

³¹¹ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 19.

³¹² Ibid.

³¹³ See ÖGB Press release: Massiver Widerstand der ArbeitgeberInnen erschwert Durchsetzung zusätzlich - ÖGB-Frauen kritisieren Mängel bei der Elternteilzeit;
http://www.oegb.at/servlet/ContentServer?pagename=OEGBZ/Page/OEGBZ_Index&n=OEGBZ_0.a&cid=1151935825665# (last visited January 5, 2007).

³¹⁴ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 11 & 81 ff.

³¹⁵ See Walter Hollstein, Die Vereinbarkeit ist auch ein Männerproblem, in: 1. Österreichischer Männerbericht, 209 – 212.

Alleinerzieherinnen).³¹⁶ Equally reflective of current policies is a wedding book (*Hochzeitsbuch*), which is available at wedding registries; it mainly depicts the 1950s-ideal of a family, both through pictures and accompanying text. Equality issues are mentioned in one chapter but the overarching message is clearly that women are to retreat to domestic chores.³¹⁷

The UN's Committee on Economic, Social and Cultural Rights urged Austria to adopt effective measures to reconcile professional and family life for women and men through various measures.³¹⁸

Recently, the UN's Committee on the Elimination of Discrimination Against Women (CEDAW) stated that it remained concerned about stereotyping roles for women and men in families and in society. 'The Committee expresses its particular concern about the persistent stereotyping of women primarily as mothers and caregivers and of men as breadwinners. Such stereotypes, which undermine women's social status and are reflected in women's disadvantaged position in a number of areas, including in the labour market and in access to decision-making positions, in their study and professional choices and in the marked division of family and domestic tasks, constitute a significant impediment to the practical realization of the principle of equality of women and men (...)'.³¹⁹

19.2. Access to leadership positions & certain jobs

Significant obstacles in cracking the glass ceiling remain. Percentages of female participation in state agencies remain reflective of the overall situation. The newly elected Parliament now has 57 women: that is 31,1% of the 183 Member Assembly. Previously 35,3% of the House's members were female. The Green Party's members of parliament are predominantly female (57%), however, the party struggles with a lack of female leadership; criticism, which is also not favoured internally.³²⁰ The Social Democrats (SPÖ) now have 35,3% female representatives, the People's Party (ÖVP) 27,3%, the Alliance for Austria's Future (BZÖ) has 14,3% and the Freedom Party (FPÖ) 9,5%.³²¹ Only one quarter of executive positions in ministries are said to be held by women.³²² The Assemblies of the Provinces (*Länder*) also have very low rates of female representation: on average 27,67%, Burgenland (19,4%) being the worst and Vienna (41%) being the closest to the 50% margin.³²³ Of the country's 2.359

³¹⁶ See dieStandard.at, Schwächliches Geschlecht (Commentary), Der Standard, 8. Juni 2006.

³¹⁷ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 17; see also Marianne Schulze/Karin Tertinegg, Eine glückliche Familiengesellschaft – oder: Schöne Erwartungen. Das Hochzeitsbuch – eine Sammlung schooner Erwartungen der Sozialministerin an heiratswillige ÖsterreicherInnen, juridikum 02/2006, 65. For an abstract see

http://www.verlagoesterreich.at/zeitschrift_juridikum_ausgabe_86.html (last visited January 5, 2007).

³¹⁸ See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria; E/C.12/AU/CO3, November 2005, para. 28.

³¹⁹ See the advanced unedited version of the CEDAW Committee's recent report: Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Austria, CEDAW/C/AUT/CO/6, 2 February 2007, para 17.

³²⁰ On the occasion of the 20th anniversary of the founding of the Green Party, a book was released; an article covering the fact that there was a lack in female leadership, however, was not published therein, Wolfgang Koch, Spaltenquote, see:

<http://www.planet.gruene.at/index.php?seite=themen&tid=42847&suche=zwanzig> (last visited January 5, 2007).

³²¹ See orf.at, Neues Parlament: Frauenanteil sinkt auf 31,1%.

³²² See APA, Frauenanteil bei Ministerium-Topjobs bei 25 Prozent, 14. Mai 2006.

³²³ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 27.

town mayors (*BürgermeisterInnen*), only 3,1% are female, local governments only have 14% female representatives.³²⁴

Assignments were only given to men in a recent overhaul of regional management positions within the publicly owned Employment Agency (*Arbeitsmarktservice*), parliamentarians protested.³²⁵ There were also reports on the significant underrepresentation of women in the police force.³²⁶

As Ruth Wodak, now professor for linguistics in Great Britain, formerly professor at the Austrian Academy of Science, states, there is a deep-seated patriarchal tradition and atmosphere prevailing, also in the closed circles of academia.³²⁷ The student union (*Österreichische HochschülerInnenschaft*) was highly critical of the recent appointment of only men for vacant deanships.³²⁸

19.3. Equal pay, risk of poverty & unremunerated work

An independent study at Vienna's Economic University, conducted by Michael Meyer, found that unequal pay is in fact based on sex. The study relied on twins – one male, one female – with the same educational background and compared their income as they rose through the ranks. The result was that while entry-level income was the same, after some four to five years, men earned significantly more. This despite the fact that none of the persons in the study had taken leave for any prolonged period, including for childcare. The only difference: the person's sex.³²⁹

The Chamber of Labour (*Arbeiterkammer*) also holds that women earn less than men, despite the principle of 'equal pay for equally valuable work'.³³⁰ Both white and blue collar workers, if women, earn less than their male counterparts.³³¹ While the structures of public service reduce the gap, there are again gaps as women hit the glass ceiling.³³² On average women earn 32,9% or € 661 less than men. In Vienna the gap is the smallest but still extremely high with 22,4%. In other provinces the gap is larger: Upper Austria (38,2%) and Vorarlberg (36,9% or € 804), Styria (36,6%), Lower Austria (34%), and 33,5% in Salzburg, Tyrol and Carinthia followed by Burgenland (32,7% or € 569).³³³

The UN's Committee on Economic, Social and Cultural Rights suggests that Austria 'adopt measures to enforce the principle of equal pay for equal work'.³³⁴

Financially singlemothers, women working in agriculture and retired women with minimum pensions are the worst off. Single-mothers have an 18% risk of living in poverty – every third person living in a single-parent household is at such risk.³³⁵ Generally, a woman's risk to live

³²⁴ See Irene Brickner, Fast keine Bürgermeisterinnen, *Der Standard*, 24. Juli 2006.

³²⁵ See diestandard.at, Geschlechtergerechtigkeit beim AMS, *diestandard.at*, 30. Juni 2006.

³²⁶ See Irene Brickner, Frauen bei der Polizei: Kein Leben wie im Krimi, *Der Standard*, 16. August 2006.

³²⁷ See *Der Standard*, "Patriarchalische Tradition", *Der Standard*, 24. Mai 2006.

³²⁸ See *diestandard.at*, Neue Dekane nur Männer, *diestandard.at*, 23. Mai 2006.

³²⁹ See *Standard*, "Von Gleichberechtigung keine Rede" *Der Standard*, 8. März 2006.

³³⁰ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 28.

³³¹ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 28.

³³² See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 30.

³³³ See APA, Oberösterreich Spitzenreiter bei Einkommensschere, 9. Oktober 2006.

³³⁴ See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria; E/C.12/AU/CO3, November 2005, para. 24.

³³⁵ See Bericht zur sozialen Lage 2003-2004, 220.

in poverty is 2% higher than that of her male counterpart.³³⁶ 104.000 retired women who receive minimum pension live on the margins of poverty.³³⁷

Both care for children and for family members in need of care (short or long term) still remains largely female. And largely unremunerated.³³⁸

19.4. Education

Following the introduction of university fees, significantly more women dropped out of their higher education than men.³³⁹ The UN's Committee on Economic, Social and Cultural Rights was concerned about the overall effects of the introduction and recommends that Austria undertake more to encourage academic careers among women.³⁴⁰ NGOs demanded that the use of the 'Guide to the representation of Women and Men in Teaching Materials' be made compulsory.³⁴¹

20. Women's Rights

The then Minister for Women's Affairs, Maria Rauch-Kallat (ÖVP), focused the issues of Austria's EU Presidency on violence against women based on tradition (*traditionsbedingte Gewalt*).³⁴² As Sieglinde Rosenberger and Birgit Sauer pointed out, that choice is problematic in that it may contribute to believing that certain forms of violence may be excused or explained by way of tradition or culture.³⁴³ In addition to a lack of emphasis on violence against women generally, the focus resulted in very limited attention to general problems in implementing women's human rights, such as equal pay and other equally pressing concerns. Also against the backdrop of ongoing defamation of 'foreigners' based on looks, also heightened because of the election campaign, the focus by the Austrian presidency seemed a poor choice.

20.1. Domestic Violence

According to police statistics 94% of victims of violence in Austria are female.³⁴⁴ Estimates state that every fifth woman is subject to violence. The police statistics for 2005 reveal 5.618 cases of entry bans (*Betretungsverbote*) and 6.171 police interventions in family quarrels.³⁴⁵ Most of the 3.256 women and children who sought refuge in one of the women's shelters were Austrians.³⁴⁶

The costs for 6.500 cases of violence in 2005 were estimated to be at least € 78,000.000.³⁴⁷ This is a minimum estimate including police, justice, work, social work, health and counselling services. The author of the study, Birgitt Haller stated that imprisonment was the

³³⁶ See Bericht zur sozialen Lage 2003-2004, 221.

³³⁷ Ibid. See also, Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 45 ff.

³³⁸ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 67 - 80.

³³⁹ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 29.

³⁴⁰ See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria; E/C.12/AU/CO3, November 2005, para. 34.

³⁴¹ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 28.

³⁴² See also Corinna Milborn, Gestürmte Festung Europa, 141.

³⁴³ See Sieglinder Rosenberger/Birgit Sauer, Fremde statt Frauen (commentary), Falter 21/06.

³⁴⁴ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 9.

³⁴⁵ See APA, Jede fünfte Frau erlebt Gewalt durch Mann in der Familie, 24. November 2006.

³⁴⁶ Ibid.

³⁴⁷ See Michael Simoner, Millionenteure Gewalt, Der Standard, 11. Juli 2006.

biggest financial factor followed by hospital care needs (€ 9,700.000) and care in women's shelters (€ 14,300.000).

One case³⁴⁸ may be illustrative: a husband is twice over banned from access to his family's home (*Wegweisung*) because he regularly battered his wife for one-and-a-half years. Legal counsel (€ 877), medical and psychological treatment (€ 1.024), inability to work (€ 1.292), social assistance (€ 8.628), police intervention (€ 396) and one week pre-trial confinement (€ 578) plus court fees (€191) result in costs of € 12.935 before the civil procedure is started.

While new laws combatting violence in the family, such as the Violence Protection Act (*Gewaltschutzgesetz*), have proven comparatively successful, the agencies charged with assisting victims have faced significant constraints. The Viennese shelters (*Interventionsstelle*) now have 16-times more persons to take care of but the budget has only been doubled.³⁴⁹

Violence against women based on tradition ('*traditionsbedingte Gewalt*'), including female genital mutilation (FGM), forced marriages and honor killings, are widely discussed in public – see also the focus during the EU Presidency – however, they appear to be less frequent than media coverage may make believe.³⁵⁰

Two cases, lodged with the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) are still pending. Both women were killed by their husbands after having been subjected to multiple forms of abuse and violence by their husbands; the government was accused of 'not having taken all necessary steps to protect women against violence'.³⁵¹

20.2. Stalking

While not just aimed at protecting women, new anti-stalking legislation was largely reported as being hugely successful and particularly helpful to female victims. In force since July 1, 2006 the new legislation, Section 107 b Criminal Code, criminalizes stalking with imprisonment up to one year. 90% of reports are made by women, who are being threatened by their former partners. Following the coming into force of the law, there was a 'flood' in reports, however, a number of cases could not be taken care of as the date of perpetration was before the entry into force of the law.³⁵² During the first five months 1.007 cases of stalking were reported.³⁵³

20.3. Sex workers

Women's NGOs complain that Austria's sixth regular report to the Committee on the Elimination of Discrimination Against Women (CEDAW), submitted in 2006, does not state more than data on registered sex workers.³⁵⁴ Recent changes in legislation have significantly increased the pressure on sex workers. Particularly the emphasis on health tests is seen as yet another way of solidifying the prejudices that sex workers are a danger and a cause of sexually transmittable diseases. Paradoxically, access to health care is at the same time being limited as sex workers have to have a residence permit and fulfill other requirements in

³⁴⁸ Ibid.

³⁴⁹ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee.

³⁵⁰ See APA, Jede fünfte Frau erlebt Gewalt durch Mann in der Familie, 24. November 2006.

³⁵¹ See Falter, "Wenn der Staat versagt", Falter – Stadtzeitung Wien, 26/05.

³⁵² See Salzburger Nachrichten, Anti-Stalking Gesetz führt zu Anzeigenflut, Salzburger Nachrichten, 16. Juli 2006.

³⁵³ See Marijana Miljkovic, Stalking schlimmer als befürchtet, Der Standard, 27. November 2006.

³⁵⁴ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 25.

order to be ‘registered’ and thus entitled to such free of charge medical checks. The pressure, particularly from customers but also club owners is not adequately taken into consideration, nor is the already charged public opinion. Also, women’s NGOs hold that penalties for violations are disproportionate to the average income of sex workers.³⁵⁵

A study revealed that a significant number of under-age women is forced to undertake sex work, some are as young as fourteen. Reportedly some receive € 20 for their work. Section 207 b Criminal Code, which prohibits paid sex with under-age persons, appears to be ineffective.³⁵⁶

In addition to significant concerns with trafficking in human beings³⁵⁷ there are further worries in relation to foreign sex workers. A special provision grants sex workers and ‘dancers’ a limited residence permit if they are self-employed without an office. One of the conditions though is the consent of a club owner, which frequently leads to dependency on club owners and thus increases the vulnerability of sex workers.³⁵⁸ Due to a discrepancy between the Romanian and the Austrian government, Romanian sex workers have not been granted any residence permits for sex work since 2005.³⁵⁹

21. Rights of Sexual Minorities

21.1. Gays & Lesbians

The gay and lesbian community is fairly accepted in Austria, particularly in Vienna, which is reflected in the fact that one of the community’s main organizations, *Rechtskomitee Lambda*, celebrated its fifteenth anniversary at Parliament House.³⁶⁰ However, problems, including discrimination and legal obstacles remain. In its shadow report to the Human Rights Committee – under the International Covenant on Political and Civil Rights – the gay rights group HOSI highlighted the lack of equality in partnerships and protection from homophobic incitement.³⁶¹

Austria’s Criminal Code was only changed a few years ago to conform with the ECtHR’s standards on the protection of the right to privacy, among others. The now abolished Section 209 prohibited sexual conduct between an adult and an under 19-year-old of the same sex.³⁶² Despite the amendment of the Code, many of the formerly convicted are still listed in the criminal record book (*Strafregister*) and are discriminated against based on these entries. The ECtHR has found again³⁶³ that Austria is violating both the right to privacy and the prohibition of discrimination, as held in *R.H. v Austria*.³⁶⁴ An initiative by the outgoing Justice Minister, Karin Gastinger, reduced the number of registered convictions significantly; a draft law on compensation will have to be considered by the new government in the course of

³⁵⁵ Ibid.

³⁵⁶ See Michael Möseneder, Sex mit Minderjährigen ab € 20, Der Standard, 30.09/01.10. 2006.

³⁵⁷ See Section 27. Trafficking in Human Beings.

³⁵⁸ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 25.

³⁵⁹ Ibid.

³⁶⁰ Ibid, 26.

³⁶⁰ See Festakt für Homosexuellen-Organisation im Parlament, http://www.parlinkom.gv.at/portal/page?_pageid=908,1614640&_dad=portal&_schema=PORTAL.

³⁶¹ See for the HOSI Shadow Report <http://www.hosiwien.at/download/unoMRA07.pdf>.

³⁶² See also Section 6. Judicial System.

³⁶³ See previous judgment in the case of L. and V. v Austria, application No. 39392/98 and 39829/98.

³⁶⁴ R.H. v Austria, Application No 7336/06, 19 April 2006 (final).

2007.³⁶⁵ Earlier, following a finding by the Constitutional Court,³⁶⁶ *Lambda* stated that it would seek a further decision by the ECtHR on the matter of criminal record entries.³⁶⁷

In another case, which was submitted to the ECtHR, a lesbian has not been able to adopt her partner's child as various courts turned down her application.³⁶⁸ However, the municipal department in Vienna in charge of foster care for children stated that it would consider gay and lesbian couples for such care, the people's party (ÖVP) was critical.³⁶⁹

The Austrian Red Cross, citing a World Health Organization Recommendation, refused the blood donations of gay people, stating 'heightened risk behavior' ('erhöhtes Risikoverhalten').³⁷⁰

Two members of the Green Party, Ulrike Lunacek and Marco Schreuder suspected that public television is censoring homosexual life-style from its programme. One case in point was that the broadcasting rights for the 'L-Word', a TV-series featuring lesbian life-style, had allegedly been bought but was not going to air on national public television (ORF).³⁷¹

A panel discussed the use of the term 'schwuler Pass' – a Viennese expression for a failed pass in European rule soccer – and the fact that soccer is one of the areas in which gays are still widely discriminated and thus excluded.³⁷²

In response to a parliamentary request for information (*Parlamentarische Anfrage*)³⁷³ the then Justice Minister, Karin Gastinger (BZÖ), stated that convictions by the National-Socialist regime on grounds of 'homosexual contacts' were not 'typical' National-Socialist injustice.³⁷⁴ A similar response from the Minister for Social Affairs, Ursula Haubner (BZÖ), means that victims of National-Socialism based on sexual orientation may not receive benefits under the Victims Protection Act (Opferfürsorgegesetz) and similar regulations.

21.2. Transsexuality & Hermaphrodites

The Constitutional Court repealed a decree of the Interior Ministry regulating trans-sexuality. The decree, which, according to the Constitutional Court was also not published adequately and therefore had to be repealed formally, stated among others that the change of sex may only be changed in the birth registry if the person is not married. (Note that under Austrian civil law, a marriage is only permissible between a man and a woman.) The Constitutional Court held that the requirement of the decree was not covered by any other provision as a marriage could not stand in the way of a change of sex.³⁷⁵

The film *Tintenfischalarm* ('Octopusalarm')³⁷⁶ documenting the life of a hermaphrodite was released and raised the profile of persons born with both sexes – allegedly 20 annually.³⁷⁷

³⁶⁵ See Irene Brickner, Wie Gastinger Homosexuelle von Vorstrafen befreite, *Der Standard*, 9. Jänner 2007.

³⁶⁶ See Constitutional Court VfGH 04.10.2006, B 742/06.

³⁶⁷ See APA, Homosexuellen-Verurteilungen bleiben im Strafregister, 19. Oktober 2006.

³⁶⁸ See APA, Stiefkind-Aoptionsverbot für gleichgeschlechtliche Paare vor EGMR, 21. November 2006.

³⁶⁹ See ORF.at, ÖVP gegen homosexuelle Pflegeeltern, <http://wien.orf.at/stories/152861/>.

³⁷⁰ See Barbara Stix, Kein Blut schwuler Spender, *Der Standard*, 5. August 2006.

³⁷¹ See APA, Grüne erten ORF-Zensur beim Thema Homosexualität, 21. Juli 2006.

³⁷² See ORF Wien, Grüne analysieren 'schwulen Pass', 24. Mai 2006; <http://wien.orf.at/stories/111434/>.

³⁷³ Parlamentarische Anfrage 3536/J XXII. GP.

³⁷⁴ Anfragebeantwortung 3490/AB XXII. GP.

³⁷⁵ See APA, Erste vorübergehend gleichgeschlechtliche Ehe in Österreich, 5. Juli 2006; Irene Brickner, Richter lassen erste Frauenehe zu, *Der Standard*, 6. Juli 2006.

³⁷⁶ See <http://www.tintenfischalarm.at>.

³⁷⁷ See also Eva Matt, Das Recht auf eine offene Zukunft, Juridikum, 2006/3, 144; abstract at

22. Anti-Discrimination

In line with EU Directives, Austria has comparatively comprehensive equal-treatment legislation. Based on the already established Advocate for Equal Treatment of Women and Men (*Gleichbehandlungsanwältin*), Austria extended the scope of this regime to cover equal treatment on grounds such as race, religion, sexual orientation and age. There are now two Senates, one responsible for discrimination against women and men in the workplace and the other for the before mentioned grounds of discrimination, also in the workplace. A third Senate is in charge of discrimination on various grounds in access to services. Another advocate deals with discrimination against persons with disabilities.³⁷⁸

The office of the Advocate for Equal Treatment has been operating in this form since summer 2005. One representative stated that the office receives more and more complaints but that its work was severely restricted due to a lack of resources. One advocate said it would be necessary to offer counsel to most potential complainants prior to having them make a decision on whether they actually want to file a complaint. The lack of resources means, among others, that often complaints cannot be made in a victim's first language, as interpretation cannot be offered. While the geographical scope of the Advocates would be all of Austria, in practice most cases pertain to Vienna as so far there are no regional offices.³⁷⁹

At year's end all three Senates for equal treatment reported an increasing caseload and the first decisions were made public. They included a woman who had been hired as a waitress but was subsequently limited to working in the kitchen due to her skin color. A gay lorry driver was successful in fighting against discrimination in the workplace, particularly harassment by his colleagues. The chair of the first Senate, in charge of equality between men and women reported that of some 4.500 cases most – 98% – could be resolved through talking to management. It is also noteworthy that since the establishment of the equal treatment body for women and men in the workplace, the 'problem' as such has shifted from being a purely female issue to also being a problem of men who discriminate.³⁸⁰ In another case a medical doctor was initially hired but told to leave after – based on the fact that her birth place is Turkey – it was revealed that she is a Muslim.³⁸¹

An Association of NGOs representing the interests of victims of discrimination, *Klagsverband zur Durchsetzung der Interessen von Diskriminierungsopfern*, made a string of suggestions to improve both legislation and implementation in the field of anti-discrimination. The law itself should be simplified and efforts to make it known should be stepped up significantly, all decisions of the Senates should be published, the scope of anti-discrimination protection should be expanded and fines resulting from discriminatory practice should be dedicated to a certain purpose, among others.³⁸² Also, the involvement of non-governmental representatives should be further improved.

The Ombudsperson, Peter Kostelka, criticized that Austria has signed on to the 12th Additional Protocol (*Zusatzprotokoll*) of the European Convention of Human Rights but has

http://www.verlagoesterreich.at/zeitschrift_juridikum_ausgabe_116.html.

³⁷⁸ See Section 16. Rights of Persons with Disabilities.

³⁷⁹ See Irene Brickner, Gleichbehandlungsanwältinnen: viele Fälle wenig Mittel, *Der Standard*, 6. März 2006.

³⁸⁰ See Irene Brickner, Mutige Pioniere gegen Vorurteile – Erste abgeschlossene Fälle, *Der Standard*, 14. Dezember 2006.

³⁸¹ See *Der Standard*, Kein Job, Weil Muslima, *Der Standard*, 5./6./7. Jänner 2007.

³⁸² See Klagsverband, Vorschläge zur Weiterentwicklung des Gleichbehandlungsgesetzes, <http://www.klagsverband.at>.

not ratified it. The implementation of the Protocol would guarantee encompassing protection from discrimination, including courts, administrative procedures and other public services.³⁸³

23. Aggressive Nationalism, Revisionism, Hate Speech, and Incitement

In addition to the referendum '*Österreich bleib frei!*'³⁸⁴, the election campaign for the National Assembly in October³⁸⁵ sparked a seemingly endless competition in slander, which – at least on surface – did not leave out any 'ism' that the right-wing parties usually use. Following the split-off of the Alliance for Austria's Future (BZÖ) from the Freedom Party, two distinctly nationalistic parties rallied for electoral support. The campaign leader of the Alliance for Austria's Future (BZÖ), Peter Westenthaler, stated that 'we have too many people from other countries in this country';³⁸⁶ 'it is a wrong signal to bring more people into the country';³⁸⁷ he furthermore spoke of 'criminal asylum seekers and people unwilling to integrate'.³⁸⁸ The chairperson of the Freedom Party (FPÖ), Heinz-Christian Strache, stated that same week that 'we are being made the minority in our own country. This is a struggle for survival for our country and our culture';³⁸⁹ 'each of these so-called asylum-seekers who is arrested is a drug dealer';³⁹⁰ 'in Bulgaria and Romania hundreds of thousands of Gypsies (sic!) are waiting to get here';³⁹¹ 'I tell the hate-preachers: if you want to misinterpret the Koran:³⁹² read it at home!'³⁹³ 'if we are slandered as populists we deem this to be a title of nobility because we make politics for the Austrian populace'.³⁹⁴

Westenthaler (BZÖ) went on to claim that 1,000,000 immigrants³⁹⁵ resided in Austria, of which at least 30% were illegal residents and should be 'returned' – that is deported – within three years. Furthermore he stated that half of Austria's prisoners were non-citizens and that criminal conduct was particularly high among asylum seekers.³⁹⁶ Asked by a journalist how approximately 280 persons a day were to be returned, Westenthaler replied rather uncouth: "By car, train or plane or bus – that's an easy question".³⁹⁷

Similar remarks by Westenthaler (BZÖ) in an interview in a Styrian newspaper led a group of seven NGOs to file a report on incitement (*Verhetzung*).³⁹⁸ Also, Strache (FPÖ) was reported

³⁸³ See Report of the Austrian Ombudsman Board (Volksanwaltschaft) to the National Council (Nationalrat) and to the Federal Council (Bundesrat), No. 29., 2005, Section 14.1. (Fundamental Rights); English summary

<http://www.volksanw.gv.at/bericht/nationalrat/pb-29eng/pb29eng.htm>.

³⁸⁴ See Section 1. Elections and referenda.

³⁸⁵ See Section 1. Elections and referenda.

³⁸⁶ 'Wir haben zuviele Menschen aus anderen Ländern im Land'.

³⁸⁷ 'Es ist ein falsches Signal noch mehr Menschen ins Land zu holen'.

³⁸⁸ 'Kriminelle Asylanten und Integrationsunwillige', see list of citations compiled by Der Standard during the BZÖ's congress and Westenthaler's interview in 'Meet the Press' (Pressestunde) on June 23 and 25 respectively; Der Standard, 26 June 2006, page 8.

³⁸⁹ 'Wir werden zur Minderheit im eigenen Land gemacht. Das ist ein Überlebenskampf für unser Land und unsere Kultur.'

³⁹⁰ 'Jeder dieser sogenannten Asylanten, der festgenommen wird, ist ein Drogendealer.'

³⁹¹ 'In Bulgarien und Rumänien warten hunderttausende Zigeuner darauf, dass sie zu uns kommen'.

³⁹² Note that the Viennese noun for 'home', 'daham', rhymes with the German pronunciation for Islam.

³⁹³ 'Den Hasspredigern rufe ich zu: Willst einen falsch interpretierten Koran, lies in daham!'

³⁹⁴ 'Wenn wir als Populisten beschimpft werden, ist das für uns ein Adelsprädikat, denn wir machen Politik für die österreichische Bevölkerung'; see list of citations compiled by Der Standard during the FPÖ congress on June 24, Der Standard, 26 June 2006, page 8.

³⁹⁵ Estimates state that there might be 500,000.

³⁹⁶ See APA, Westenthaler startet orangen Anti-Ausländer Wahlkampf, 30. Mai 2006.

³⁹⁷ 'Mit dem Auto, mit der Bahn, mit dem Flugzeug oder mit dem Autobus – das ist eine leichte Antwort'; see Andreas Jölli, ORF-Sommergespräch: Koalitionszwist um Pflegekräfte, Ö1 Mprgenjournal, 23. August 2006; <http://oe1.orf.at/inforadio/67389.html>.

³⁹⁸ See APA, "Verhetzung": Anzeigen gegen Strache und Westenthaler, 13. September 2006.

on this charge and for discrediting a religion as one slogan of the Freedom Party read ‘daham statt Islam’ - implying that Islam had no place in Austria.³⁹⁹

In Carinthia, where BZÖ-founder Jörg Haider is governor and a dispute on the rights of the Slovene minority is ongoing⁴⁰⁰ the BZÖ campaigned that Carinthia will become monolingual (*‘Kärnten wird einsprachig’*); a report on incitement (*Verhetzung*) was filed.⁴⁰¹

John Gudenus, a then Member of the Federal Chamber (*Bundesrat*), in April 2005 stated in a TV-interview that the existence of gas chambers should be assessed scientifically (*‘physikalisch und wissenschaftlich prüfen’*). In a newspaper interview he stated ‘There were gas chambers but not in the Third Reich. But in Poland’.⁴⁰² Vienna’s legislative body, *Landtag*, lifted Gudenus’ immunity on June 29, 2005.⁴⁰³ In April a jury trial found that he had violated the Prohibition Act (*Verbotsgesetz*) and sentenced him to one year on probation. In early August all appeals were withdrawn and the verdict became binding.⁴⁰⁴

Ex officio investigations into a breach of the Prohibition Act (*Verbotsgesetz*) were started by the state prosecution after a member of the Freedom Party (FPÖ), Walter Sucher ended his speech at the party’s congress with: ‘I want to end my short statement with a salutation, which is really our old salutation, not the contemporary ‘best of luck’, no, I greet you all with a forceful ‘Heil’ for the future’.⁴⁰⁵

A newly elected MP, Wolfgang Zanger (FPÖ) stated in a TV-interview that ‘of course there were positive sides to National Socialism, but those are all unheard of today. Everyone was eager for employment, for a bit of hope and when the Führer came, he started with various building ideas or road works – the autobahns were built then – that gave people hope. And I do believe that in such a situation, when one has really hit the bottom end, people are grateful for all this’.⁴⁰⁶ A report for belittlement of National-Socialism was filed.⁴⁰⁷

Five members of the ‘Braunauer Bulldogs’, a soccer club, posed with the Nazi salute (*Hitlergruß*) in front of the former concentration camp Mauthausen, three received probation sentences – not yet final – and two were acquitted of alleged violations of the Prohibition Act (*Verbotsgesetz*).⁴⁰⁸

One of the lead candidates of the Alliance for Austria’s Future (BZÖ), Veit Schalle, a former high profile CEO, stated in an interview with news magazine Profil that he found the Nazi’s economic programs ‘pretty impressive’ (*‘Beeindruckend fand ich schon, was die damals für ein Wirtschaftsprogramm aufgestellt haben’*).⁴⁰⁹

³⁹⁹ Ibid.

⁴⁰⁰ See Section 15. National, Ethnic and Linguistic Minorities.

⁴⁰¹ See APA, Kärnten: Grüne erstatten Anzeige wegen Verhetzung, 3. September 2006.

⁴⁰² ‘Es gab Gaskammern, aber nicht im Dritten Reich. Sondern in Polen. So steht es auch in Schulbüchern’; see APA, Gudenus bekommt Widerbetätigungsprozess, 19. December 2005.

⁴⁰³ Ibid.

⁴⁰⁴ See ORF.at, Gudenus-Urteil rechtskräftig, <http://oesterreich.orf.at/wien/stories/126904/>.

⁴⁰⁵ (‘Ich möchte meine kurzen Worte mit einem Gruß beenden, der wirklich unser alter Gruß ist, nicht das ‘Glück auf’ von heute, nein, ich grüße euch alle mit einem kräftigen ‘Heil’ für die Zukunft’), See APA, “Heil-Sager”: Nun ermittelt die Staatsanwaltschaft, 8. Mai 2006.

⁴⁰⁶ (‘Natürlich hat es gute Seiten am Nationalsozialismus gegeben, nur die hören wir heute alle nicht mehr. Alle leczten nach Beschäftigung, nach ein bisschen Hoffnung, und als dann der Führer gekommen ist, der dann angefangen hat mit verschiedenen Bauideen oder Straßenbau - die Autobahnen sind damals entstanden -, das hat den Leuten Hoffnung gegeben. Und ich glaube schon, dass in so einer Situation, wo man wirklich ganz unten ist, die Leute dieses alles dankbar aufnehmen’), See ORF.at; <http://www.orf.at/061108-5741/index.html>.

⁴⁰⁷ See APA, SJ erstattet gegen Zanger Anzeige, 8. November 2006.

⁴⁰⁸ See APA, Milde Strafen für Hitlergruß in Mauthausen, 15. November 2006.

⁴⁰⁹ See Profil, 17. September 2006.

Gerhard Pendl, member of the Board of the Vienna Medical University, spoke at a 'commemorative' gathering at the grave of NS-officer Walter Nowotny. Pendl referred to political rivals as 'RAF-sympathizers' and 'generation of conscientious objectors and intruders of the peace of the dead'.⁴¹⁰ The then Minister in charge, Elisabeth Gehrer, dismissed Pendl from the Board; he announced that he would appeal that decision.⁴¹¹

David Irving, a British national who is known to deny the Holocaust was arrested in 2005 on charges dating back to a 1989 lecture held in the province of Styria. He was tried for denial of National Socialism under the Prohibition Act (*Verbotsgesetz*) and sentenced to three years imprisonment.⁴¹² Irving appealed and after thirteen months of imprisonment was released on probation and subsequently deported. The presiding judge of the appeal's chamber, Ernst Maurer⁴¹³ stated that the incriminating action had occurred an 'exceptionally long' time ago and credited the accused for his hitherto irreproachable behavior.⁴¹⁴

24. Racism

Austria, as ZARA – the Vienna based Anti-Racism NGO – rightly asserts, is a very safe country, where most laws are respected most of the time and where people can freely move around untroubled. However, there is a 'parallel world'⁴¹⁵ for those who 'obviously' look different. Embedded in a public perception, which asserts that most foreigners are criminals and only come to Austria to engage in criminal behavior or to abuse the social benefits system, there is a significant amount of human beings who cannot enjoy the majority's placidity.

Language is a major force in creating and maintaining racism in Austria, be it that tabloids continuously portray 'foreigners' as abusive and ill-intended persons or politicians, particularly but not only on the right-wing end, using codes and connoted terms to perpetuate misconceptions. Between the 1.105 racist incidents, which ZARA recorded in 2005 and the experience of some Africans, Indians and also Roma, lie two different structures: those, where, in public, some people stand up and show moral courage in the face of overt racism and those incidents, such as police ill-conduct, where the public eye is largely absent.

The difference between the perception and the actual facts is particularly startling when it comes to Africans in Austria. Based on a pretty strong going community, there are sufficient facts available to rebuke these misconceptions: Africans are among the most well-educated group of society, 37% of African women hold a university degree – whereas 16% of Austrians have an academic degree. While it is true that some Africans are involved in the drug scene, almost all are street runners and – most importantly – a significant number are forced into this illegality as asylum seekers are not permitted to work and each person only has € 290 per month at her or his disposal. The belief in alleged aggression of Africans is perpetuated by one-sided reports in tabloids, particularly in connection with arrests. However, it is noteworthy that in a study at Vienna's main prison for custody prior to trial, African prisoners are described as very cooperative and definitely not aggressive. The frequency of reports on charges of resistance against state power (*Widerstand gegen die Staatsgewalt*) following interaction between police and foreigners is alarming. Equally disturbing is the inadequacy that is revealed of those trials that become known publicly. Be it that judges in some cases have appeared to be biased, be it that fair-trial requirements such

⁴¹⁰ See APA, Unirat spricht an Nowotnys Ex-Ehrengrab, 13. November 2006.

⁴¹¹ See APA, Gerhard Pendls Abberufung ist unterwegs, 29. Dezember 2006; APA, Pendl will Abberufung anfechten, 22. November 2006.

⁴¹² See Oliver Pink, Irving Prozess: So schafft man Märtyrer, Die Presse, 22. Februar 2006.

⁴¹³ See section 6. Fair Trial .

⁴¹⁴ See APA, Holocaust-Leugner Irving wieder frei, 20 December 2006.

⁴¹⁵ See ZARA Racism Report 2005, 6; <http://www.zara.or.at>.

as adequate language interpretation and effective defense counsel, were not provided or provided too late.

ZARA has documented racist slurs in public spaces, which add to a climate of hostility and prejudice, which is fed steadily by biased coverage, primarily fostered by tabloid media. The coverage in newspapers frequently reveals deep-seated ‘ignorance’.⁴¹⁶ As the European Commission Against Racism and Intolerance has observed, the style of coverage contributes to resentment towards minorities. The Commission, in its 2005 Report, was concerned that ‘the press has contributed to a certain “ethnicisation” of crimes, particularly as regards Black Africans and drug dealing or Eastern Europeans and certain types of organised crime.’⁴¹⁷

Also, ZARA reported on the regular discrimination of mainly black persons in shops as well as bars and restaurants.⁴¹⁸ In addition to discrimination in the job market, housing is another area where persons with a so-called ‘migrant background’ are frequently treated differently on no other grounds than their name or looks. One case in point featured an Austrian woman with Turkish background who was told by the real estate agent that the owner would not wish to let the apartment to foreigners (*Ausländer*) but that he, the real estate agent, had already tried to convince the owner that she was ‘not a normal foreigner’ (*keine normale Ausländerin*).⁴¹⁹

The Documentation Archive for Resistance, DÖW, warned of an increase in right-wing-extremist violence, particularly as Muslim institutions, such as a mosque, the newly built cemetery and a Youth Club, were attacked.⁴²⁰

In September a number of bars and restaurants with Turkish ‘background’ in the Viennese district Meidling were subject to attacks. Buckets full of urine were allegedly repeatedly emptied in front of the business premises.⁴²¹

As one signpost in the province of Tyrol showed, discrimination against Roma is ongoing. The sign read ‘no space for gypsies’ (*kein Platz für Zigeuner*).⁴²² The Equal Treatment Commission subsequently took up the case.

The Vienna branch of the Freedom Party’s Youth Association, *Ring Freiheitlicher Jugendlicher*, rejected the membership application of a woman with Turkish background, stating that this was a decision of principle (*Richtungsentscheidung*).⁴²³

ZARA, the NGO documenting racism in Austria and working to assist victims and support efforts to raise awareness in manifold ways has been attacked repeatedly. In addition to a separate chapter in the Racism Report, documenting such incidents, the organization has also been reported to receive threat-calls from Neo-Nazis.⁴²⁴

It is noteworthy that the situation of migrant women and their discrimination, including that based on racism, is largely absent from public discourse. The only exception being the

⁴¹⁶ See also Section 3. Freedom of Expression.

⁴¹⁷ See European Commission Against Racism and Intolerance, Third Report on Austria, CRI (2005) 1, para. 71; see also http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Austria/1Austria_CBC_3.asp#TopOfPage (last visited January 5, 2007).

⁴¹⁸ See ZARA, Racism Report 2005, 14.

⁴¹⁹ See Daniel Glattauer, Dilek statt Doris, Der Standard, 21. August 2006.

⁴²⁰ See Markus Müller, Warnung für Rechtsextremen in Österreich, Ö1 Mittagsjournal, 14. September 2006; <http://oe1.orf.at/inforadio/68137.html>.

⁴²¹ See Karin Kirchmayr, “Schüttaktionen” gegen Migranten, Der Standard, 30.09./01.10. 2006.

⁴²² See Strafe für Verbotsschild, <http://www.gleichstellung.at/news.php?nr=7342>.

⁴²³ See ORF Wien, Türkin die Mitgliedschaft verweigert, 31. August 2006; <http://wien.orf.at/stories/133421/>.

⁴²⁴ See derstandard.at, Neonazis bedrohen ZARA Beratungsstelle in Wien, derstandard.at 2. August 2006.

questionable debate on violence against women based on tradition ('*traditionsbedingte Gewalt*').

25. History & Human Rights

25.1. Public discourse

Austrian public opinion and discourse remain ambivalent of its role in and responsibility after National Socialism. Twenty years after the so-called Waldheim Affair, in which the then candidate for the federal presidency, Kurt Waldheim, described his involvement in a unit of the SA as having been limited to 'only having done my duty' ('ich habe nur meine Pflicht getan'), elected officials still praise aspects of the Nazi-Regime without consequences.

In a 2005 study,⁴²⁵ which covered seven countries,⁴²⁶ 27% of the people questioned in Austria agreed that '60 years after the war it was time to put the memory of the Nazi extermination of the Jews 'behind us'.⁴²⁷ Asked about the likelihood of an attempt to exterminate Jews somewhere in the world, 10% of Austrian respondents stated that this was 'very likely', while 44% thought it was 'likely'.⁴²⁸

An interview with the Federal President,⁴²⁹ Heinz Fischer about Austria's role and responsibility following the end of National Socialism sparked some debate.⁴³⁰ The Federal President stated, *inter alia* 'Our obligation towards human beings who were expelled from Austria and who died abroad has in many cases, unfortunately not been fulfilled. Today, some things are easier but in many cases it is too late. If one were to search for answers one would most probably have to start with Austria's independence treaty⁴³¹ of April 1945. This document reestablished Austria as a democratic and independent State. The rationale for the independence treaty, however, contains a view of history, which I deem problematic. It formulated clichés, which, for many years, stood in the way of an honest assessment of what happened and why in Austria.'⁴³²

The shortcomings of an honest assessment were highlighted, *inter alia*, by the following: in Hadersdorf, Lower Austria, efforts to commemorate the 61 victims, formerly political

⁴²⁵ See American Jewish Committee, Thinking about the Holocaust 60 years later, <http://www.ajc.org> - Publications – Surveys – Thinking about the Holocaust 60 years later.

⁴²⁶ Austria, France, Germany, Great Britain, Poland, Sweden, United States.

⁴²⁷ See American Jewish Committee, Thinking about the Holocaust 60 years later, Question 4.

⁴²⁸ American Jewish Committee, Thinking about the Holocaust 60 years later, Question 6, only in the USA (16%) did more people think that such an attempt was 'very likely'. In Poland (34%), Sweden (32%) and the USA(28%) found this to be 'somewhat likely#.

⁴²⁹ See Eva Linsinger/Michael Völker, "Falsche Opferrolle Österreichs in Unabhängigkeitserklärung 1945", Der Standard, 10. April 2006.

⁴³⁰ See, among others, Felix Butschek, Das Elend des nationalen Masochismus (commentary), Der Standard, 23./24. April 2006.

⁴³¹ For the full text of the independence treaty see:

<http://www.verfassungen.de/at/unabhaengigkeit45.htm> - it is noteworthy that in Austrian discourse the phrase as 'the first victim of Hitlerite Germany' is much more engrained than the phrase 'however, Austria is reminded of the fact that it also bears responsibility ... '.

⁴³² See Eva Linsinger/Michael Völker, "Falsche Opferrolle Österreichs in Unabhängigkeitserklärung 1945", Der Standard, 10. April 2006; the original quote from the Interview with President Fischer reads: "Unsere Schuld gegenüber Menschen, die aus Österreich vertrieben wurden und in der Fremde verstorben sind, ist in vielen Fällen leider unbeglichen geblieben. Heute fällt uns manches leichter, aber es ist in vielen Fällen zu spät. Bei der Suche nach Antworten muss man wahrscheinlich schon bei der österreichischen Unabhängigkeitserklärung vom April 1945 beginnen. Mit diesem Dokument wurde die Republik Österreich als demokratischer und selbständiger Staat wiedererrichtet. In der Begründung der Unabhängigkeitserklärung wird aber eine Geschichtsbetrachtung geliefert, die ich für sehr problematisch halte. Da wurden Klischees formuliert, die einer ehrlichen Aufarbeitung dessen, was in Österreich geschehen ist und warum es geschehen ist, jahrzehntelang im Weg gestanden sind."

prisoners, of a SS-massacre had been stalled by public officials. Both the request for a commemorative plaque on the cemetery wall as well as an official memorial were both turned down. The ‘Verein – Gedenkstätte Hadersdorf am Kamp’ unveiled a provisional memorial and wrote the names of the 61 victims on the adjacent street with chalk. The next day, the memorial had been removed and the names had been washed away; apparently due to a fire brigade training.⁴³³

The University of Vienna placed a memorial for Sigmund Freud in its entrance hall, 70 years after the psychoanalyst was forced to escape. Before unveiling the monument, authorities had to remove a famously infamous Siegfriedskopf, a statute, which should have been removed since 1990. While representatives of student fraternities (*Burschenschaft*) claim that it commemorates the fallen soldiers of WW I, historians state that it symbolizes the German Volk, which was betrayed; the traitors being democrats, socialists, and communists and ‘behind all of them were of course Jews,’ said the historian of the Austrian Documentation Archive for Resistance, DÖW, Heribert Schiedel.⁴³⁴

The Minister for Economic Issues, Martin Bartenstein (ÖVP) had to be told that the headquarters of his family’s company and his private residence in Lannach, Styria, were once a sub camp (*Aussenlager*) of the Mauthausen concentration camp. He reacted surprised and promised a scientific inquiry, which is to be published.⁴³⁵ The Green Party, after learning that its head quarters were aryanized during the National Socialist period mounted a plaque in commemoration of the former owners.⁴³⁶

In the ballot (*Urabstimmung*) in Carinthia, the governor, Jörg Haider, advertised a ‘final solution’ (*endgültige Lösung*) for the issue of topographical town-signs.⁴³⁷

25.2. Resources

The then Minister for Innovation, Hubert Gorbach (BZÖ) delegated any responsibility for funding for research of Nazi-looted art to other agencies.⁴³⁸

The inventory of the late Simon Wiesenthal was transferred to the Simon Wiesenthal Center in Los Angeles in November 2005. The Austrian government limited its offer to support the planned Simon Wiesenthal Institute in Vienna to preserving the archive but was not willing to guarantee funds for a research center, allowing for the use and evaluation of the vast material.⁴³⁹

Meanwhile the extensive archive of the *Orpheustrust*, which is dedicated to preserving information about artists who were persecuted during the Nazi-Era, had to be moved to Berlin due to lack of funding.⁴⁴⁰

In a debate of the Vienna City Council, discussing possible funding for the project *Steine der Erinnerung*⁴⁴¹, which places commemorative plaques into the ground on streets or in front of

⁴³³ See APA, Denkmal für Hadersdorfer SS-Opfer stand nur ganz kurz, 9. April 2006; see also, Hans Rauscher, Die Auslöschung von Hadersdorf (Commentary), Der Standard, 11. April 2006.

⁴³⁴ See derStandard.at, “In Stein gestoßen Dolchstoßlegende,” derstandard.at, 24. Mai 2006.

⁴³⁵ See Collette M. Schmid, Bartenstein-Schloss war KZ-Außenlager: Sicher nichts gewußt, Der Standard, 25. August. 2006.

⁴³⁶ See Der Standard (kri), Grüne Parteizentrale war “arisierter” Haus, Der Standard, 5./6. August 2006.

⁴³⁷ See Section 1. Eletions & Referenda.

⁴³⁸ Parlamentarische Anfrage 3736/J XXII. GP & Anfragebeantwortung 3705/AB XXII. GP.

⁴³⁹ See Barbara Tóth, Kleinliches Gefeilsche, Wie vie list die Geschichte des Landes den Regierenden Wert?, Der Standard, 7. Juni 2006.

⁴⁴⁰ See Wilhelm Sinkovicz, Zwischentöne: Subventionen retten nicht alles, Die Presse, 23. Mai 2006; see also <http://www.orpheustrust.at>.

⁴⁴¹ See Steine der Erinnerung, <http://www.steinedererinnerung.net>.

houses, where persons were forced to leave or property was aryanized, the representative of the Freedom Party (FPÖ), Stefan, denied his party's support because of the 'inflationary' support of the City of Vienna for such 'one-sided' projects.⁴⁴²

Sixty years after its forced shutting down, sufficient funds were available to start the rebuilding of the former home of the once famous sports club (SC) Hakoah in Vienna.⁴⁴³

25.3. Right to Restitution

Property rights' disputes in Austria currently mainly pertain to the right to restitution as envisioned by human rights expert René Cassin in the aftermath of National Socialism. In 2001 Austria passed legislation on resolving 'all open issues of restitution' as the Act of the General Settlement Fund for victims of National Socialism states. The Fund deals with monetary compensation through a Claims Committee and in rem restitution through an Arbitration Panel.⁴⁴⁴ Now five years in the running, both boards have been criticized.

The procedure on the restitution of property, which in 2001 was still in the ownership of the Republic of Austria and certain provinces, is criticized for fair-trial shortcomings as parties do not have a right to be heard and also cannot appeal the recommendations made by the Arbitration Panel.⁴⁴⁵ Note that the Members of the Panel have to be experts on the European Convention of Human Rights.⁴⁴⁶

Decisions for monetary compensation by the Claims Committee are confidential. In one case, which became known publicly, the Committee decided that a Harley Davidson – a rather exclusive asset in 1938 – had already been compensated through USD 7.000, a lump-sum which had been paid in 2001 for the loss of apartment lease, household goods and personal belongings. Critics held that the decision-making of the Committee was intransparent as, in the decisions so far known, it did not come clear how value assessments were made and decisions on inclusion or rejection of assets were reached.⁴⁴⁷ The Parliament officially reported that 20.664 applications were received of which the Claims Committee had decided 7.835; 3.444 applicants have been offered pre-payment of which 2.881 have in fact been paid out. The Arbitration Panel received 1.660 applications and has made 27 recommendations, 103 applications have been rejected.⁴⁴⁸ According to latest reports 3.000 applicants have received 10-15% of the estimated value of their losses, just over half of the applications have allegedly been assessed on their merits.⁴⁴⁹

In a lengthy 2004 interview, then State Secretary Eduard Mainon, formerly Freedom Party (FPÖ) and later Alliance for Austria's Future (BZÖ), stated that with the 2001 agreement and subsequent legislation, the government had bought its freedom, also from Jewish organizations. The main question, according to Mainoni was 'how many billions does it cost?' (to resolve the restitution issue). Questioned about the interview in 2006 he stated that it was a 'win-win-situation' as the demands of Jewish organizations could be satisfied while the reputation of the right wing party could be corrected.⁴⁵⁰

⁴⁴² See Minutes of the Vienna City Council, 13. Session, 25. October 2006, pages 37-38; <http://www.wien.gv.at/mdb/gr/2006/gr-013-w-2006-10-25-038.htm>.

⁴⁴³ See Karin Kirchmayr, Der S.C. Hakoah kehrt heim, Der Standard, 23. Juni 2006.

⁴⁴⁴ See <http://www.nationalfonds.org>.

⁴⁴⁵ See APA, NS-Entschädigung: Bisher erst 199 Anträge entschieden, 9. April 2006.

⁴⁴⁶ See Section 23 Para 3 General Settlement Fund Act.

⁴⁴⁷ See Marianne Enigl, Die 'Harley-Davidson-Entscheidung,' Profil, 2, 9. Jänner 2006, page 26.

⁴⁴⁸ See Parlament Transparent: Bilanz der XXII. Gesetzgebungsperiode, Republik Österreich, Parlament, November 2006.

⁴⁴⁹ See Eva Blimlinger, Beschämendes Jubiläum (Commentary), Falter – Stadtzeitung, 1-2/07.

⁴⁵⁰ See Florian Klenk, Wenn Blau-orange offen sprechen, derstandard.at, 20. September 2006; Florian Klenk, "Da haben wir uns eingekauft" – Das Kalkül der NS Restitution, Die Zeit 39/06, 21. September 2006; APA, BZÖ-Staatssekretär: "Da haben wir uns freigekauft," 20 September 2006; Der Standard, Mainoni: "Win-Win Situation", Der Standard, 21. September 2006; the entire

Another arbitration panel decided in January that five Klimt paintings on display at the public gallery, Belvedere in Vienna had to be returned to heirs of the original owner, the widower of Adele Bloch-Bauer. The case had stretched over seven years, during which the Minister in charge, Elisabeth Gehrer, originally refused out of court arbitration. Due to staggering court fees, the attorney of the family, E. Randol Schoenberg, took a detour through US-courts, including a hearing in and subsequent decision by the US Supreme Court. Finally, an arbitration panel was set up in Vienna, which decided on the painting's return to the former owners. The case had been started by the late Hubertus Czernin, an investigative journalist who at the time worked for a Vienna-based news weekly.⁴⁵¹ The subsequent purchase of one of the paintings – the portrait of Adele Bloch-Bauer – boosted Austria's export balance significantly.⁴⁵²

It is noteworthy that the 1955 State Treaty⁴⁵³ also contains a clause on restitution – Article 26 – which prescribes *inter alia* that national minorities are to receive seized property back; however; this clause has to date basically not been implemented.⁴⁵⁴

26. Migrants, Asylum Seekers, Refugees and IDPs

Effective January 1, 2006, Austria put in place a new regime for migrants (*Fremdenrechtspaket*), which included an overhaul of the Alien Rights Act (*Fremdengesetz*), among others. Said to be among the most stringent regulations in Europe – and thus, the world – the amendments of the Alien Rights Act proved their effect within a short time.⁴⁵⁵ The Interior Ministry regularly published facts and figures, which were hailed as a success and showed the ‘effectiveness’ of the reform. At the same time, numerous individual stories also made their way to media coverage, while almost each one of them pointed to the shortcomings of the underlying general regime, there was no hint that the overall system would be changed any time soon. On the contrary, it seemed that the ‘better’ – i.e. lower – the numbers got, the better it was for the ‘common good’. The ‘common good’, however, appears to be a rather blurred perception. Tests required for the newly revised Citizenship Act⁴⁵⁶ – which was also part and parcel of the *Fremdenrechtspaket* – are to assess the ‘fitness’ of Austrians-to-be. However, no one could really state what ‘the’ Austrian is and what he or she should know in order to be one. Both ends of the spectrum of inclusion: ‘Austrianness’ and ‘Un-Austrianness’ remain relatively opaque concepts.

The effects of the new regime have been described as ‘excessive’.⁴⁵⁷ The tendency of the previous amendment, to focus on clarifying the identity of a person entering the country rather than the reasons for their coming, has been deadlocked.⁴⁵⁸ In particular asylum seekers and more so traumatized persons have been affected dramatically by the implementation of the 2005 *Fremdenrechtspaket*. The fact that persons who recently fled

interview may be viewed at:

http://www.florianklenk.com/2006/09/mainoni_das_ungekürzte_intervi.php.

⁴⁵¹ See Richard Willing, An Artful Investigation, 12 November 2006;

<http://www.globaljournalist.org>.

⁴⁵² See Michael Bachner, Adele lässt die Exportstatistik glänzen, Der Standard, 26. Juni 2006.

⁴⁵³ See, for the full German text: http://de.wikisource.org/wiki/Österreichischer_Staatsvertrag.

⁴⁵⁴ See Franjo Schruiff, Artikel 7 – Die verkannte “Magna Charta” der Minderheiten, Stimme von und für Minderheiten # 56, <http://minderheiten.at/stimme7stimme56c.htm>.

⁴⁵⁵ See, for an analysis of the Fremdenrechtspaket: Doris Einwallner, Das Fremdenrechtspaket 2005 – eine kritische Analyse, Juridikum – Zeitschrift im Rechtsstaat, 2006/3, 119; text available at <http://www.verlagoesterreich.at/pdf/voe/magazine/juridikum/200603/01.pdf>.

⁴⁵⁶ Compare Section 18. Citizenship.

⁴⁵⁷ See Asyl Forum, Wahrnehmungsbericht 2006.

⁴⁵⁸ See Asyl Forum, Wahrnehmungsbericht 2006, 24.

from uniformed perpetrators now have to respond to questions about their grounds for seeking asylum to uniformed police, just being one of the many faults of the regime.⁴⁵⁹

26.1. Facts & Figures

In the first three months the number of persons held in detention prison (*Schubhaft*) jumped from 1.874 (January – March 2005) to 2.344 persons or an increase of 24,9%.⁴⁶⁰ The Governor of Upper Austria, Josef Pühringer, was concerned about the fulfillment of the quota of asylum seekers, which each of the provinces (*Länder*) was to give shelter. Allegedly Carinthia, governed by Jörg Haider (BZÖ), performed very poorly.⁴⁶¹

In response to growing agitation against foreigners – including the suggestion of deporting 30% - in the course of the election campaign, the Employment Agency (*Arbeitsmarktservice*) clarified that the assumption that most unemployed were foreigners was wrong because they only made up 2% - roughly 4.600 persons – of the overall unemployed.⁴⁶²

Asylum applications subsequently went down by 31% in the first half of the year.⁴⁶³ In July, the Interior Ministry reported that the number of residence titles (*Aufenthaltstitel*) had decreased by 73,3%.⁴⁶⁴ An unlimited residence permit (*unbefristeter Aufenthalt*) is now only issued for five years and the issuance of the ID-card bearing that title is no longer free of charge but costs € 160.⁴⁶⁵ After the first ten months the Minister in charge, the late Liese Prokop presented the latest figures: less than half a million foreigners in the country and 40% decrease in asylum applications.⁴⁶⁶

Furthermore, an increase of one fifth in persons held in detention prison – 8103. Note that the decrease of overall numbers means that a lot more asylum seekers were held in detention prison, according to *Forum Asyl* possibly as many as 500% more. In comparison to 2005 there was an increase of 400 in the numbers of persons deported. Allegedly the number of voluntary returns increased by 25% to 2000. Alarmingly the number of persons who started a hunger strike in detention prison rose from 1670 (2005) to 2300 by mid-December.⁴⁶⁷

Meanwhile the central body in charge of appeals concerning asylum, the Independent Federal Asylum Council (UBAS) increased its turnover significantly.⁴⁶⁸

26.2. Basic challenges

Reports on the inadequacies of the current system not only highlight the focus on the escape route rather than the reasons for escaping and thus seeking asylum. Also, the intensity and method of questioning during the first interview show that asylum seekers are being quasi-interrogated with constantly changing questions and focus on seemingly unnecessary details. Given that the interview usually takes place immediately after reaching Austrian territory, many individuals are exhausted following weeks, if not months, of an unsafe and usually also dangerous journey. Many also paid substantial amounts to smugglers, some – particularly women – stay indebted for an unlimited time. Following the initial application

⁴⁵⁹ See Asyl Forum, Wahrnehmungsbericht 2006, 25.

⁴⁶⁰ See APA, Deutlich mehr Schuhäftlinge, 6. April 2006.

⁴⁶¹ See APA/Barbara Tóth, Pühringer: Mehr Solidarität bei Asylwerbern, Der Standard, 14. Juni 2006.

⁴⁶² See APA, Ausländerarbeitslosigkeit geringer als von manchen propagiert, 11. Juni 2006.

⁴⁶³ See APA, Rückgang bei Asylanträgen um 31%, 6. Juli 2006.

⁴⁶⁴ See Irene Brickner, Prokops Zuzugsstopp, Der Standard, 21. Juli 2006.

⁴⁶⁵ See Michael Möseneder, Unbefristet dauert fünf Jahre, Der Standard, 20. September 2006.

⁴⁶⁶ See Irene Brickner, Weniger Fremde – Ein Erfolg, Der Standard, 14. November 2006.

⁴⁶⁷ See Salzburger Nachrichten, Mehr Hungerstreiker als im Vorjahr, Seite 3, Salzburger Nachrichten, 28. Dezember 2006.

⁴⁶⁸ See Section 6.5. Asylum Proceedings, Appeals.

interview, most asylum seekers are placed in shelters where they have to wait for the final decision of their case for years. During this time they are not permitted to work and the lack of occupation, the pressure of not knowing and the traumatization that many have, frequently lead to emotional and psychological drama. Most asylum seekers initially receive so called Federal Assistance (*Bundesbetreuung*), however, support is limited to € 40 pocket money per month, there is no psychological assistance or language courses offered. Obviously the prohibition of employment also means that there is very limited access to Austrian society. When asylum is granted, most people have been out of work for years and usually have not been able to learn German sufficiently to enter the job market with the qualifications they obtained in their country of origin. The system has been described as a 'blind vicious circle of inhumanity'.⁴⁶⁹

26.3. Individuals behind the numbers

One of the first institutions to sound an alarm about the effects of the new regime, where the universities, many potential students as well as guest lecturers and professors faced – sometimes insurmountable – hurdles.⁴⁷⁰

A Serbian national, Muharem Refiku, who had lived in Austria for 20 years, his two children having been born and raised in Austria, was to be deported. Due to a conviction under the Criminal Code on probation, his residence permit (*Aufenthaltstitel*) was revoked, he was placed in detention prison awaiting deportation. His family, unable to make a living without him, would have to follow.⁴⁷¹

A family of four from Former Yugoslavia, who had started their escape in 1989 and had filed for asylum in Austria in 1998, were suddenly left out on the street, with no-one in charge of their shelter.⁴⁷²

An Austrian family adopted Asghar Hashemi, an Afghan refugee, nevertheless, the new regime threatened his future in the country by way of deportation despite his being employed in an apprenticeship.⁴⁷³

Because applications for visa can now only be filed from the country of origin, a one-and-a-half-year-old Turkish boy, Attakan, who was born in Austria, was forced to leave the country to file for the visa from Turkey, where his parents, who are both Austrians, no longer have any close relatives.⁴⁷⁴

A number of scientific experts were forced to leave the country after some of them had lived in Austria since 1999. The President of the Academy of Science, Herbert Mang, was concerned for the future of Austria's research.⁴⁷⁵

The intervention of friends saved a ten-year-old orphan, originally from Georgia, from deportation.⁴⁷⁶

Baby Slobodan's mother did not receive family allowance because the baby did not have a residence title but without the family allowance the mother could not pay for the residence title.⁴⁷⁷ The Ministry of the Interior pretended to be astounded.⁴⁷⁸

⁴⁶⁹ See Konrad Hofer, *Gestrandet – Aus dem Alltag von AsylwerberInnen*, Löcker 2006, 198.

⁴⁷⁰ See Der Standard, Es war eine Einladung zum Mißbrauch, 11. April 2006.

⁴⁷¹ See Irene Brickner, Mann wird abgeschoben – Familie bedroht, Der Standard, 30. April/1. Mai 2006.

⁴⁷² See Michael Simoner, *Asylwerber-Familie auf der Straße*, Der Standard, 17./18. Juni 2006.

⁴⁷³ See Irene Brickner, Asghars furcht um die neue Heimat, Der Standard, 20. Juni 2006.

⁴⁷⁴ See Irene Brickner, *Zwangsurlaub für Baby Attakan*, Der Standard, 14. Juli 2006.

⁴⁷⁵ See Irene Brickner, *Akademiker verlassen das Land*, Der Standard, 26. Juli 2006.

⁴⁷⁶ See Michael Möseneder, *Mutter starb, Flüchtlingskind bleibt*, Der Standard, 6. Oktober 2006.

Iranian asylum seeker Rasul Sharifi and his daughter, Shagojag, were to be deported after six years of residence in Austria and – according to neighbors – full inclusion in the community. Because the two were found on a train coming from Italy, Italy is in charge of their application – in accordance with the Dublin Agreement.⁴⁷⁹ The local community in Leoben was enraged and protested. Later, the Constitutional Court suspended (*aufschiebende Wirkung*) the order of the Independent Federal Asylum Council (UBAS).⁴⁸⁰

Just days before her planned wedding, a Nigerian woman was deported rather hastily. Her fiancé was not given an opportunity to wish her farewell. This was one of the many individuals whose fate was highlighted by *Ehe ohne Grenzen*⁴⁸¹ – an interest group representing couples with non-Austrian partners.⁴⁸²

Another community rallied protest against another pending deportation: the Ganiji family from Macedonia was to be forcefully returned despite their full inclusion in the community of Grein, Upper Austria.⁴⁸³

A Decree on Child Allowance (*Kindergelderlass*) barred some 9.000 children and their parents from receiving family allowance and children-allowance.⁴⁸⁴ In an earlier case, Baby Samian,⁴⁸⁵ was held to be not eligible because only his Iranian father could prove persecution and thus the child, born in Austria, was only entitled to 'subsidiary protection' ('*subsidärer Schutz*'). After much criticism⁴⁸⁶ and a heated debate, the Decree was withdrawn.

26.4. Refugee shelters, deportation prison & deportations

In Styria refugees were moved to a new house, neighbours did not greet them and staged protests with signs reading 'Asylumseekers: no thank you!'⁴⁸⁷ Meanwhile one of Austria's largest refugee camps, Traiskirchen, was renovated after many years of fights over sponsorship.⁴⁸⁸ Some residents in Traiskirchen – as in other refugee shelters – are severely traumatized, not surprisingly some thought that they were being attacked – and thus retraumatized – when unexpectedly tear gas streamed into the corridors, allegedly a police training had taken place next door.⁴⁸⁹ Due to neighbor protests, the refugee place in Taxenbach-Högmoos, province of Salzburg was originally only chosen on a provisional basis, also because there were no complaints, the designation of the shelter was extended.⁴⁹⁰

The Commissions of the Human Rights Advisory Board, in their Annual Report 2005 stated that the detention regime was 'in parts not in conformity with human rights standards'.⁴⁹¹ The European Committee on the Prevention of Torture found the conditions to be

⁴⁷⁷ See Irene Brickner, Baby Slobodan und das Amt, *Der Standard*, 31. Oktober 2006.

⁴⁷⁸ See Irene Brickner, Achtung der Familie – eine Ausnahme, *Der Standard*, 2. November 2006.

⁴⁷⁹ See Irene Brickner, Leoben entsetzt: Abschiebung "eine Sauerei", *Der Standard*, 16. November 2006.

⁴⁸⁰ See Irene Brickner, vfGH stoppt Polizei, *Der Standard*, 23. November 2006.

⁴⁸¹ See also Section 12. Respect for Private and Family Life.

⁴⁸² See APA, Kritik an eiliger Abschiebung von Nigerianerin vor der Hochzeit, 17. November 2006.

⁴⁸³ See Kerstin Scheller, Gemeinden kämpfen für Ausländer, *Der Standard*, 23. November 2006.

⁴⁸⁴ See APA, Kein Geld für Ausländerkinder, 28. November 2006.

⁴⁸⁵ See Irene Brickner, Kein Kindergeld für Baby Samian, *Der Standard*, 13. September 2006.

⁴⁸⁶ See, for example: UNHCR: Nicht-Diskriminierung subsidiär Schutzberechtigter eingemahnt.

⁴⁸⁷ See Colette M. Schmid, Flüchtlingsheim Graz: "Die suchen nach einem Anlass", *Der Standard*, 13. Juli 2006.

⁴⁸⁸ See Barbara Stix, Flüchtlingsheim Traiskirchen wird saniert, *Der Standard*, 14. Juli 2006.

⁴⁸⁹ See APA, Asylwerber in Traiskirchen atmeten Tränengas ein, 29. September 2006.

⁴⁹⁰ See <http://salzburg.orf.at/stories/146651/>.

⁴⁹¹ See APA, "Eine tickende Zeitbombe", 11. Mai 2006.

'unacceptable.'⁴⁹² Journalist Corinna Milborn describes one of the detention prisons in detail and highlights that the cells with one table and a television and nothing to do are designed to occupy eight persons. Showers are only permitted three times a week. The press officer of the police told Milborn that the detention was a mixture between hotel and hospital ward.⁴⁹³

Austrian NGOs, such as *SOS-Mitmensch*, criticized the conditions of detention again this year, stating that they did not believe that current conditions were acceptable.⁴⁹⁴ Both UNHCR and the Protestant Church's Diakonie demanded more legal consultation for persons held in detention prison. Pointing to the success of appeals, various NGOs demanded comprehensive legal services.⁴⁹⁵ Furthermore NGOs stated that detention prison should be the exception rather than the rule, highlighting the inflationary use of detention instead of milder measures ('*gelinderes Mittel*'), such as regular reporting obligations.⁴⁹⁶

The death of Yankuba Ceesay, a Gambian national who died in detention prison while on hunger strike, revealed significant shortcomings in the medical treatment. Mr. Ceesay had been taken to hospital but was returned to the detention facility where he died only hours later. Officially his death was attributed to a series of unfortunate facts as well as a sickle cell anemia, however, experts were not convinced of that assessment.⁴⁹⁷ A series of parliamentary requests for information (*Parlamentarische Anfragen*) revealed further horrifying facts, including inaccuracies in the documentation of weight loss and prejudiced treatment.⁴⁹⁸ Shortcomings in the medical treatment, particularly its objectivity and the concern for the detained were also revealed in the treatment of Mr. J., Austria's first publicly known torture victim.⁴⁹⁹

The case of Mr. J., as other cases, brings further questions about the level of information of consent of persons who are to be deported to the fore – Mr. J.'s deportation was halted because he stated that he had not had an opportunity to inform his family. Concerning the informed consent of detained person's return, a parliamentary request for information revealed that the authorities relied on the 'signature' of the concerned person and the experience of the one (!) person involved in the process of obtaining the signature.⁵⁰⁰

Shortly after the torture of Mr. J. was reported, yet another individual returned to the detention facility with injuries after the deportation procedure had to be discontinued. Paul O., a Nigerian national, claimed that both during his detention and on the way to his scheduled deportation flight he was ill-treated.⁵⁰¹

A parliamentary request for information (*Parlamentarische Anfrage*) revealed that since the death of Marcus Omofuma⁵⁰² during his deportation on May 1, 1998 at least 47 deportations

⁴⁹² Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, CPT, 21 July 2005, CPT/Inf/ (2005); <http://www.cpt.coe.int/documents/aut/2005-13-inf.eng.pdf>.

⁴⁹³ See Corinna Milborn, *Gestürmte Festung Europa*, 104.

⁴⁹⁴ See APA, Flüchtlingshelfer kritisieren Schubhaftbedingungen: "nicht akzeptabel", 12. Juli 2006.

⁴⁹⁵ See Rechtsbeistand im Gefängnis gefordert, Der Standard, 27. Juni 2006; see also Asyl Forum, Wahrnehmungsbericht 2006; see further Section 8. Arbitrary Arrest and Detention.

⁴⁹⁶ See Irene Brickner, Schubhaft hat die Ausnahme zu sein, Der Standard, 8. Juli 2006.

⁴⁹⁷ See Markus Rohrhofer, Warum ist Yankuba Ceesay gestorben?, Der Standard, 8. Februar 2006.

⁴⁹⁸ Parlamentarische Anfrage 3488/J XXI. GP, Anfragebeantwortung 3488/AB XXII. GP, Parlamentarische Anfrage 3914/J XXII. GP, Anfragebeantwortung 3864/AB XXII. GP., Parlamentarische Anfrage 3915/J XXII. GP, Anfragebeantwortung 3806/J XXII. GP.

⁴⁹⁹ See Section 7. Police, Allegations of Misconduct.

⁵⁰⁰ Parlamentarische Anfrage 3451/J XXII. GP, Anfragebeantwortung 3407/AB XXII. GP.

⁵⁰¹ See Michael Möseneder/Michael Simoner, Wider Vorwürfe gegen Polizei nach gestoppter Abschiebung, Der Standard, 9. August 2006.

⁵⁰² Compare on Omofuma, above.

ended with injuries of the deported.⁵⁰³ In eight of these cases medical treatment in a hospital was necessary.⁵⁰⁴ Since January 1, 2005 (roughly 19 months at the time of reply) 28 deportations had to be stopped prematurely;⁵⁰⁵ of those, four persons required medical treatment in a hospital.⁵⁰⁶ Fourteen persons returned to the detention center with injuries.⁵⁰⁷

According to information of the daily *Der Standard*, five deportations per day are carried out by air travel.⁵⁰⁸

The amendment of the Alien Rights Act also provides for the possibility to apply 'curative treatment' (*Heilbehandlung*) to persons who are on hunger strike and whose deportation is imminent to ensure that they are fit for the deportation procedure. NGOs criticize that this is just a euphemism for force-feeding (*Zwangsernährung*). The government holds that so far no person had to undergo this procedure, as all persons who could have been subjected to this 'procedure' started to eat, once transferred to the Viennese prison, where the 'curative treatment' is to take place.⁵⁰⁹ Compare though, the case of Geoffrey A., who was collapsed on the street and required three days of IC treatment following his release after 40 days of hunger strike.⁵¹⁰

Also, the deportation of a Chinese national, Mrs. Z.Y. made headlines. Married to an Austrian, her alleged lack of financial resources ('Mittellosigkeit') and change of name endangered public security ('öffentliche Sicherheit').⁵¹¹ Her husband had to pay for the deportation flight, which was carried out against her will.

Overall it is noteworthy that almost all cases of ill-treatment or other incidents revealed are reported by friends or relatives of the concerned. In other words: the fate of people who are not included in society remains largely unknown. As Forum Asyl reports, there is a growing tendency to place applicants in detention prison sooner rather than later and thus render possibilities for inclusion impossible. Also, Forum Asyl states that the number of asylum seekers placed in detention prison may have risen by a shocking 500% in 2006. Particularly the detention of severely traumatized persons – no longer sufficiently protected in Austria – is described as 'excessive'.⁵¹²

Amnesty International Austria's Secretary General, Heinz Patzelt, implored authorities to uphold human-rights standards during deportations. He added that deportations were legitimate and necessary.⁵¹³

26.5. Inclusion

In an interview with the daily, Tiroler Tageszeitung, the then Minister for the Interior, the late Liese Prokop stated *inter alia* that 'I find integration extremely important. But there are groups in this country, who do not want to (integrate). We have conducted a study about Muslims in Austria. The result is that 45% are not interested in integration. We have to watch out that we

⁵⁰³ The response (Anfragebeantwortung, 4206/AB XXII. GP) states that records are incomplete, also because some of the files have already been discharged. See answer number 47.

⁵⁰⁴ Anfragebeantwortung 4302/AB XXII. GP, Answer 48.

⁵⁰⁵ Anfragebeantwortung 4302/AB XXII. GP, Answer 49.

⁵⁰⁶ Anfragebeantwortung 4302/AB XXII. GP, Answer 50.

⁵⁰⁷ Anfragebeantwortung 4302/AB XXII. GP, Answer 51.

⁵⁰⁸ See Michael Simoner, Justiz drückt aufs Tempo, *Der Standard*, 22./23. April 2006.

⁵⁰⁹ See Asyl Koordination, Wahrnehmungsbericht 2006, 22.

⁵¹⁰ See chilli.cc, Hungern für die Freiheit – Der Afrikaner Geoffrey A wurde nach 40 Tagen Hungerstreik auf die Straße gesetzt, 17 October 2006,

<http://www.chilli.cc/index.php?noframes=1&id=64-1-82>.

⁵¹¹ Parlamentarische Anfrage, 4142/J XXII. GP, Anfragebeantwortung 4083/AB XXII. GP.

⁵¹² See Asyl Forum, Wahrnehmungsbericht 2006.

⁵¹³ See Michael Simoner, Abschiebungen "husch, husch", *Der Standard*, 10. August 2006.

do not end up with circumstances like in France or Berlin.⁵¹⁴ Asked what she plans to do in response thereto Prokop stated that she wanted to seek dialogue: ,We want to try to include those religious communities, that are willing to talk with us. Furthermore we will massively stock up the Integration Fund (*Integrationsfonds*). But one thing has to also be clear: Those who do not want to integrate have no reason to be here. We do not force anyone to come here.⁵¹⁵

The interview was carried under the heading ‘Prokop warns of Muslim-Fundis’ (Fundamentalists) on the web site of the Tiroler Tageszeitung. A debate followed. The accurateness of the study was disputed – before its publication – and the Minister stated that she had been cited incorrectly.⁵¹⁶

When the study was finally presented,⁵¹⁷ the study’s author, Mathias Rohe stated that 45% of Muslims kept their distance to mainstream society. The Interior Minister said that this equated to people not being interested in integration.⁵¹⁸ The study was criticized on various grounds, also by NGOs who, among others, objected to the choice of wording and its effects in the mid-term – the upcoming election campaign – and the long-term.

As for possible militancy in Austria, the official intelligence report, the Constitutional Protection Report (*Verfassungsschutzbericht*), does not reveal any noteworthy facts that would fall under known criteria⁵¹⁹ for such developments.⁵²⁰ Interestingly, the Report notes ‘as preventive measure, the inter-cultural dialogue should be supported. An intensive inter-cultural/inter-religious dialogue can contribute to stopping radical tendencies in their beginning. Furthermore, in this context, society politics such as school and language assistance as well as employment policy measures, particularly for juveniles, are important.⁵²¹

According to parliamentary requests for information (*Parlamentarische Anfragen*) funding for integration – the term inclusion does not seem to be used – have developed as follows: The Interior Ministry spent € 4.346.599,97 on integration policy in 2000, the amount rose to 12.714.315,60 in 2004 and fell again in 2005: 11.279.728,97.⁵²² The Education Minister responded to a similar request that up until 2006 € 170.000 were spent – on average – on

⁵¹⁴ ‘Mir ist die Integration sehr wichtig. Aber es gibt Gruppen im Land, die wollen das nicht. Wir haben eine Studie über die Muslime in Österreich machen lassen. Herausgekommen ist, dass 45 Prozent nicht an einer Integration interessiert sind. Da müssen wir aufpassen, dass wir nicht Verhältnisse wie in Frankreich oder in Berlin bekommen’; see Alois Vahrner/Mario Zenhäusern, Prokop: Kein Bawag-Wahlkampf, Tirol bei Asylplätzen hinten, Tiroler Tageszeitung, 13. Mai 2006.

⁵¹⁵ ,Bewusst den Dialog suchen - etwa bei diesem Dialog der Kulturen und Religionen. Wir wollen versuchen, die Religionsgemeinschaft einzubinden, die bereit sind, mit uns zu reden. Außerdem werden wir den Integrationsfonds massiv aufstocken. Klar muss aber auch sein: Wer sich nicht integrieren will, hat bei uns nichts zu suchen. Wir zwingen niemanden, dass er herkommt’; see Alois Vahrner/Mario Zenhäusern, Prokop: Kein Bawag-Wahlkampf, Tirol bei Asylplätzen hinten, Tiroler Tageszeitung, 13. Mai 2006.

⁵¹⁶ See Die Presse, Nicht zu einer Ausländerhatz hochstilisieren, 15. Mai 2006.

⁵¹⁷ See BM.I, Integrationsstudie: Perspektive und Herausforderungen,

http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen/Perspektiven_Herausforderungen.pdf.

⁵¹⁸ See APA, Studie sieht “Distanz” nicht aber “Integrationsunwilligkeit”, 19. Mai 2006.

⁵¹⁹ See Gabriel A. Almond/ R. Scott Appleby/Emmanuel Sivan, Strong Religion, chapter three: structure chance choice; see further Martin E. Marty/R. Scott Appleby, An Interim Report on a Hypothetical Family, in: Fundamentalisms Observed, Volume 1 of the Fundamentalism Project.

⁵²⁰ See Bundesministerium für Inneres, Verfassungsschutzbericht 06.

⁵²¹ ‘Als Präventivmaßnahme gilt es vor allem den interkulturellen Dialog zu fördern. Ein intensiver interkultureller/interreligiöser Dialog kann dazu beitragen, radikale Tendenzen im Ansatz zu verhindern. Des Weiteren sind in diesem Zusammenhang auch gesellschaftspolitische Maßnahmen wie schulische und sprachliche Hilfestellung sowie arbeitspolitische Maßnahmen vor allem für Jugendliche wichtig’; see Verfassungsschutzbericht, 2.2.7. (page 73).

⁵²² Parlamentarische Anfrage 4332/J XXII. GP, Anfragebeantwortung 4315/AB XXII. GP.

integration policy; for 2006/2007; however, a massive stock up for language assistance worth € 9.000.000 was planned.⁵²³

26.6. Necessary Changes

The first finding of the Constitutional Court regarding the Fremdenrechtspaket was negative. The finding concerned a distinction between ‘favoured’ (*begünstigt*) and not-favoured EWR citizens; it was dismissed by the Court on formal grounds.⁵²⁴

The delicate nature of most immigration proceedings requires special expertise, which should be provided and fostered through specialized agencies. The increasing involvement of police – also in uniform – is contrary to standards of a humanitarian approach to immigration.⁵²⁵

A number of prominent organizations, including *Asylkoordination, SOS Mitmensch, Ute Bock, Ehe ohne Grenzen, Asyl in Not, Integrationshaus* and *Volkshilfe Österreich* demanded a massive overhaul of the law, *inter alia* the first instance decision for asylum had to be improved dramatically. The police-nature of the procedure needs to be replaced with a humanitarian approach, which includes appropriate medical and psychological assistance as well as the interview by persons who are skilled and not wearing uniform; legal assistance throughout the proceedings; suspending effect of appeals – no deportations while appeals are not decided; right to family life: particularly an end to deportation of spouses as well as free access to the employment market; and finally deportation prison as the last resort and not as the rule, particularly for survivors of torture and other trauma, juveniles, pregnant women and children separated from their parents.⁵²⁶

27. Trafficking in Human Beings

Trafficking in human beings is prohibited; introduced in 2004 Section 104 of the Criminal Code makes it illegal. However, the rule is hardly implemented, according to Non-Governmental Organizations.⁵²⁷ The UN’s Office on Drugs and Crime (UNODC) states that Austria has a two out of five when it comes to rating the level of human trafficking. The Dominican Republic, the Czech Republic and Hungary are the main sources for human beings who are brought to Austria illegally either on false pretenses or against their will.⁵²⁸ Alarming is the risk for women to become double victims. When caught they are usually penalized for illegal sex work, illegal residence or forged documents.⁵²⁹ There is no set standard ensuring that women caught in these networks are treated fairly and adequately. It is a roulette game whether they are recognized as victims of trafficking networks or whether they are victimized twice over. In addition to vast improvements of safeguards for victims, NGOs in particular demand that rules for residence permits⁵³⁰ are amended to increase clarity. Among the urgently needed safeguards the illegality of residence has to be lifted once court proceedings against the trafficker are underway, also, as victims, most women require a time out, where, under the safeguard of protection, they

⁵²³ Parlamentarische Anfrage 4336/J XXII. GP, Anfragebeantwortung 4301/AB XXII. GP.

⁵²⁴ See Irene Brickner, Höchstgericht weist Fremdenrechtsklage ab, Der Standard, 3. November 2006.

⁵²⁵ See also Asyl Koordination, Wahrnehmungsbericht 2006, 6.

⁵²⁶ See Asyl in Österreich, Glocalist (<http://www.glocalist.at>), 30. December 2006.

⁵²⁷ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, p 22.

⁵²⁸ See APA, Österreich bedeutendes Ziel von Menschenhandel, 26. April 2006.

⁵²⁹ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 22.

⁵³⁰ In particular Section 72 of the Residence Permit Act (Niederlassungs- und AufenthaltsG, NAG).

can recover and start to come to terms with their trauma. Additionally, victims need protection in court proceedings, such as the choice of video-link testimony, among others.⁵³¹

The response to a parliamentary request for information (*Parlamentarische Anfrage*) confirms the impression of NGOs: following the break up of two trafficking networks, the victims had to leave Austria.⁵³²

A 2005 scandal implicating high-profile clients in sex with illegal under-age sex workers was put on trial in 2006. Pending confirmation, two of the allegedly involved were sentenced to four years imprisonment and 18 months probation, respectively.⁵³³ A written affidavit of one of the victims stated that she – and her colleagues – had been forced into unprotected intercourse and had been raped repeatedly.⁵³⁴ Despite regulations against sex with juveniles – see Section 207 b Criminal Code⁵³⁵ – none of the clients, high profile or not, have allegedly been put on trial to date.

28. Economic Rights

Austria is the EU's fourth richest country;⁵³⁶ it is steadily listed as the 14th richest country according to the UNDP's Human Development Index. Despite obvious challenges – increasing gap between rich and poor and escalation of so called working poor – a discussion on the form of capitalism or means to accommodate the negative effects of the current form of capitalism remains largely absent.

Austria has ratified the International Covenant on Economic, Social & Cultural Rights, however, it has not incorporated the Covenant's rights to make them effective.⁵³⁷ The Covenant obliges States, among others, to ensure the right to social security (Article 9), the right to an adequate standard of living (Article 11), the highest attainable standard of health (Article 12), the right to education (Article 13), and the participation in cultural life (Article 15). The Committee on Economic, Social and Cultural Rights criticized the absence of possibilities to invoke the Covenant's rights and thus its lack of references thereto in court decisions.⁵³⁸

28.1. Right to education: Literacy and percentage of graduates

Following the dispute over the number of persons who are illiterate – UNESCO stated that at least 300.000 persons, possibly a lot more, in Austria are functionally illiterate – the government has now agreed to partake in an OECD study assessing 'adult competencies'.⁵³⁹ The OECD study 'Education at a Glance' found that Austria has improved its percentile of academics from 16,0% (2000) to 19,6%, however, other countries had increased their right significantly more, thus Austria is just second after Turkey.⁵⁴⁰ The OECD was particularly critical of the number of persons starting university education, the increase in Austria from

⁵³¹ See NGO Shadow Report to the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) Committee, 22.

⁵³² Parlamentarische Anfrage 4068/J XXII. GP, Anfragebeantwortung 4005/AB XXII. GP.

⁵³³ See APA, Prozess um Callgirl-Ring: Zwei Schultestsprüche, 7. Dezember 2006.

⁵³⁴ See APA, Callgirl-Ring: Ohne Rücksicht auf Verluste, Der Standard, 2./3. Dezember 2006.

⁵³⁵ Section 207 b Criminal Code prohibits sex with juveniles generally but is rarely applied, also, experts hold, because it is seen as replacing Section 209.

⁵³⁶ See Kurier: Österreich viertreichstes Land der EU – Die Kaufkraft hierzulande liegt weit über dem EU-Schnitt, 3. Juli 2006.

⁵³⁷ See Committee on Economic, Social and Cultural Rights, Consideration of Report on Austria, E/C.12/AUT/CO/3 (unedited version) para. 7.

⁵³⁸ Ibid, para. 8.

⁵³⁹ See APA, Erste Erhebung von Analphabetismus in Österreich geplant, 8. September 2006.

⁵⁴⁰ See APA/Kurier, Österreich ist "beinahe Schlusslicht", Kurier, 15. September 2006.

33% to 37% did not compare well to the OECD-average increase from 44 to 53%.⁵⁴¹ The UN's Committee on Economic, Social and Cultural Rights added its concern, stating that the 2001 introduction of university tuition fees had decreased the number of first year students.⁵⁴² The effects of the fees are said to be particularly detrimental for women.⁵⁴³

28.2. Manifest poverty and risk of poverty

The UN's Committee for Economic, Social and Cultural Rights was deeply concerned that 13% of the population and 18% of families with many children are exposed to poverty.⁵⁴⁴ Indeed, 13,2% or 1,044.000 persons in Austria have one fifth less than the poverty risk income at their disposal and are thus considered to live below the poverty line.⁵⁴⁵ Almost every third person living in a single household, that is approximately 89.000 persons, live on the margins of poverty.⁵⁴⁶ Persons with migrant background who are Austrian citizens have a double risk of being impoverished.⁵⁴⁷ Retired women who live by themselves have an increased risk of living in poverty as they have to manage with a minimum pension (*Mindestpension*), this affects 104.000 women.⁵⁴⁸ These women have € 695 pension, the margin of poverty is set at € 795.⁵⁴⁹ Furthermore, 900.000 pensioners receive less than € 760.⁵⁵⁰

Income poverty is also a problem for 18% of families with three or more children.⁵⁵¹ The number of evictions (*Delogierungen*) has steadily increased since 1999 and in 2005 led to more than 95.000 cases – not persons; the development is seen in direct correlation with the increase of poverty and unemployment.⁵⁵² Homeless persons have not been documented in the latest governmental report on social conditions.⁵⁵³ In response to an increasing amount of persons who – caught in the cycle of poverty and unemployment – are no longer eligible for a ‘usual’ bank account, various banks provided new regimes. Eight banks in the province of Salzburg now accept customers who do not meet the ‘usual’ criteria.⁵⁵⁴ In Vienna the Zweite Wiener-Vereinssparcasse also provides a bank for people who no longer have access to ‘usual’ bank accounts.⁵⁵⁵

28.3. Right to work

So-called atypical employment contracts, which do not provide the full range of benefits and in addition are usually poorly paid, are one the rise. This increases the number of so-called working poor – people who cannot make an adequate living despite employment – dramatically. The problem is particularly prevalent among women, who rarely have a choice

⁵⁴¹ Ibid.

⁵⁴² See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria; E/C.12/AU/CO3, November 2005, para. 18.

⁵⁴³ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 – 2005.

⁵⁴⁴ See Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria; E/C.12/AU/CO3, November 2005, para. 15.

⁵⁴⁵ See Bericht über die soziale Lage, 213.

⁵⁴⁶ Ibid, 220.

⁵⁴⁷ Ibid.

⁵⁴⁸ Ibid, 221.

⁵⁴⁹ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 40 and Bericht zur sozialen Lage, 212.

⁵⁵⁰ See APA, Über 900.000 Pensionen niedriger als 800 Euro, 27. Oktober 2006.

⁵⁵¹ See Bericht zur sozialen Lage, 221.

⁵⁵² See APA, “Alarmierender Anstieg der Delogierungsverfahren” 6. Juli 2006.

⁵⁵³ The Bericht zur sozialen Lage states that “only persons in private homes” were included, Ibid, 231.

⁵⁵⁴ See Salzburger Nachrichten, Endlich: Bankkonto jetzt auch für Arme, Salzburger Fenster 35/06.

⁵⁵⁵ See APA, Zweite Bank für Notleidende, 22. November 2006.

in their employment, specially when it has to be part time.⁵⁵⁶ Not surprisingly, the number of working poor is particularly high among single mothers.⁵⁵⁷ 253.000 persons are considered working poor, 91.000 of them live in manifest poverty.⁵⁵⁸ The number of working poor is allegedly particularly high in Carinthia, where the labor force participation rate is comparatively low, with a high amount of minimum pensioners.⁵⁵⁹

Meanwhile the debate over the accurateness of unemployment statistics – the government reported a positive trend in the second half of the year – continued unabated.⁵⁶⁰

28.4. Right to health

In addition to concerns over the level and quality of health care there was particular concern about access to health services. People receiving social assistance (*Sozialhilfe*) were not eligible to receive the so-called ‘e-card’, a credit-card-sized chip-card. Some 20.000 persons – possibly a lot more – were not eligible to such an e-card and thus excluded from state-funded health services.⁵⁶¹

28.5. Right to Social Security

Every second eligible person does not apply for social assistance (*Sozialhilfe*), the consortium of NGOs involved in socio-economic issues, *Armutskonferenz*, attributes this to persons being ashamed, barriers in access and fear of manifest poverty.⁵⁶² The amount of people receiving social assistance has increased steadily, attributed to an increase in working poor and insufficient unemployment and emergency benefits (*Notstandshilfe*).⁵⁶³ Following an increase of 11% there are at least 114.216 recipients of social assistance, 31.176 are children and juveniles.⁵⁶⁴ At the same time the emergency assistance (*Notstandshilfe*) has decreased in value.⁵⁶⁵ The average emergency assistance decreased by 4,3%, whereas unemployment benefits sank by 2,9%.⁵⁶⁶

28.6. Right to an adequate standard of living

The results of the 2001 census reveal among others that 29.000 elderly women who live by themselves have to use a bathroom outside their apartment. A category D – apartment with bathroom and possibly running water in the hallway outside the apartment – is still a reality for 2,5% of the population. A disproportionately high percentage of persons with Turkish background (18,4%) and Serbian background (27%) live in such apartments. Also, 27.000 Austrian children live in such apartments, as do some 127.000 migrant children. 16,5% of Serbian and 14% of Turkish families’ children live in the lowest rent category in Austria. By comparison 88% of those households ‘headed’ by an Austrian citizen live in the best

⁵⁵⁶ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 18.

⁵⁵⁷ See Kammer für Arbeiter und Angestellte Wien, AK Frauenbericht 1995 - 2005, 46.

⁵⁵⁸ See Armutskonferenz, Armut in Österreich – working poor;

http://www.armut.at/armut_in_oesterreich_workingpoor.htm.

⁵⁵⁹ See Elisabeth Steiner, “Working poor”: Die Armut in Kärnten, Der Standard, 27. Dezember 2006.

⁵⁶⁰ See APA, SPÖ, Grüne, AK und ÖGB kritisieren “geschönte Zahlen”, 3. Juli 2006.

⁵⁶¹ See Armutskonferenz, Sozialhilfeempfänger mit “Krankenhilfe” von e-card nicht ausschließen!, http://www.armut.at/armutskonferenz_news_ecard_050624.htm.

⁵⁶² Ibid.

⁵⁶³ See Armutskonferenz, Über 100.000 Sozialhilfebezieher/innen in Privathaushalten, http://www.armut.at/armutskonferenz_armut_in_oesterreich_sozialhilfeaktuell.htm.

⁵⁶⁴ Ibid.

⁵⁶⁵ See Armutskonferenz, Notstandshilfe sinkt!;

[http://www.glocalist.at/index.php?id=20&tx_ttnews\[tt_news\]=497&tx_ttnews\[cat\]=3&cHash=829eb34c6d](http://www.glocalist.at/index.php?id=20&tx_ttnews[tt_news]=497&tx_ttnews[cat]=3&cHash=829eb34c6d).

⁵⁶⁶ Ibid.

category: A. However, only 55% of Serbian, 62% of Turkish and 75% of Slowenes live in this category.⁵⁶⁷

Excusus: Begging

Systemic and organized begging is an increasing ‘problem’ in Austria.⁵⁶⁸ However, the response seems inadequate as prohibition zones are marked down and persons, some of whom are smuggled into the country, forced to beg are stigmatized and victimized. Reports on individuals and entire groups of persons forced to beg and pressurized to ‘achieve’ certain minimum amounts with their begging, are increasing.

The Viennese public transport entity, *Wiener Linien*, found it necessary to regularly air an alert: ‘Many customers feel harassed by organized begging in the underground. We ask you not to further this development by active support but implore you to make donations to recognized organizations. Thereby you assist the implementation of the begging prohibition of the *Wiener Linien*'.⁵⁶⁹

Begging prohibitions were discussed throughout the country and subsequently declared in the cities of Fürstenfeld, Baden and Graz, among others.⁵⁷⁰

29. International Cooperation

37 years ago, in a UN General Assembly resolution, states parties pledged to commit 0,7% of their countries’ GDP to development assistance.⁵⁷¹ According to a OECD Study, Austria came as close as 0,52% in 2005. However, NGOs criticized that € 900 Million of the stated € 1,5 Billion were committed to debt cancellation.⁵⁷² The Minister for Foreign Affairs, Ursula Plassnik, stated – in response to a parliamentary request for information (Parlamentarische Anfrage) – that Austria committed 0,33% in 2006 and plans to commit 0,51% of its GDP by 2010.⁵⁷³ WIDE, Network for Women in Development, criticized that in effect only 0,026% of the GDP were committed to development cooperation in the South.⁵⁷⁴

⁵⁶⁷ See APA, Wohnen in Österreich: MigrantInnen und ältere ÖsterreicherInnen leben schlechter, 7. Juli 2006.

⁵⁶⁸ See Hans Rauscher, Betteln, Der Standard, 12. Juli 2006; on the systemacy see: APA, Clan schickte Kinder in Wien stehlen: Vier Personen verhaftet, 13. Juli 2006;

⁵⁶⁹ ‘Viele Fahrgäste fühlen sich durch organisiertes Betteln in der U-Bahn belästigt. Wir bitten Sie, dieser Entwicklung nicht durch aktive Unterstützung Vorschub zu leisten, sondern besser durch Spenden an anerkannte Hilfsorganisationen zu helfen. Sie tragen dadurch zur Durchsetzung des Verbots von Betteln und Hausieren bei’; see Karin Kirchmayr, Kein Geld für Öffi-Bettler, Der Standard, 7. Juli 2006.

⁵⁷⁰ See APA, Bettelverbot in Baden beschlossen, 20. September 2006; APA, Graz stimmt am Donnerstag über Bettelverbot ab, 20. September 2006; APA, Bettelverbot in Fürstenfeld verletzt kein Grundrecht, 20. September 2006.

⁵⁷¹ See UN Millennium Project, <http://www.unmillenniumproject.org/involved/action07.htm>.

⁵⁷² See AGEZ, Wo bleibt EZA Geld?, Glocalist, 9. April 2006;

[http://www.glocalist.at/index.php?id=20&tx_ttnews\[tt_news\]=436&tx_ttnews\[cat\]=3&cHash=ec47631bc2](http://www.glocalist.at/index.php?id=20&tx_ttnews[tt_news]=436&tx_ttnews[cat]=3&cHash=ec47631bc2) (last visited January 5, 2007).

⁵⁷³ Parlamentarische Anfrgae 3446/J XXII. GP; Anfragebeantwortung 3396/AB XXII. GP.

⁵⁷⁴ Figures for 2003, Brita Neuhold (WIDE), in: NGO Shadow Report Austria on CEDAW 2006, p. 12.

Annex – selection of documents pertaining to human rights issues in Austria

I. United Nations

i. Reports on Austria

CEDAW Committee on the Convention on the Elimination of All Forms of Discrimination Against Women, response to the list of issues and questions with regard to the consideration of the sixth periodic report, Austria (2007); CEDAW/C/AUT/Q/6/Add.1

<http://www.un.org/womenwatch/daw/cedaw37/concludingcommentsAU/Austria.pdf>

ICESCR Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 & 17 of the Covenant, Austria (2005); E/C.12/AU/CO3

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4a217b5c9439b901c125711500571f80?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4a217b5c9439b901c125711500571f80?OpenDocument)

ICCPR Committee on the Covenant on Civil and Political Rights, Concluding Comments, Austria (1998); CCPR/C/79/Add.103

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/873443bcd091d2da802566c8005e7609?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/873443bcd091d2da802566c8005e7609?OpenDocument)

CRC Committee on the Child Rights Convention, Concluding Comments, Austria (2005); CRC/C/15/Add.251

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ae2760331a273f7bc125702f0032bdf5?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae2760331a273f7bc125702f0032bdf5?OpenDocument)

CAT Convention Against Torture, Concluding Comments, Austria (2005); CAT/C/AUT/CO/3

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/dd4fc0a26bf82f98c12570fc003abe88?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/dd4fc0a26bf82f98c12570fc003abe88?OpenDocument)

ii. Reports submitted by Austria (most recent)

CEDAW: Sixth periodic report to the Committee on the Elimination of Discrimination Against Women, 2006:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/AUT/6&Lang=E>

CCPR: Fourth State Party Report to the Human Rights Committee – CCPR (2006); CCPR/C/AUT/4:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1892db47fd34a99fc1257261002e0ea1?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1892db47fd34a99fc1257261002e0ea1?OpenDocument)

iii. Shadow Reports to the United Nations (selection)

ICCPR: HOSI Wien

<http://www.hosiwien.at/download/unoMRA07.pdf>.

ICESCR: FIAN Österreich und Evangelische Entwicklungszusammenarbeit (Hsg.), Umsetzung der Internationalen Konvention über wirtschaftliche, soziale und kulturelle Rechte in Österreich, Kommentar zum 3. und 4. Staatenbericht der österreichischen Bundesregierung anhand von ausgewählten Themen, September 2005;

<http://www.fian.at>

CEDAW: Verein autonomer österreichischer Frauenhäuser, Informationsstelle gegen Gewalt;
<http://www.aoef.at/aktuell/CEDAWShadowReportAustriaE31.pdf>

II. Council of Europe

i. Judgments of the European Court of Human Rights

Albert Engelmann-Gesellschaft v Austria, AN 46389/99, 19 April 2006
Brugger v Austria, AN 76293/01, 26 April
Brunnthal v Austria, AN 45289/99, 29 September 2006
Coorplan-Jenni GmbH and Hascic v Austria, AN 10532/02, 11 December
Hauser-Sporn v Austria, AN 37301/03, 7 December 2006
I.H. and others v Austria, 42780/98, 20 July
Jurisic and Collegium Mehrerau v Austria, AN 62539/00, 11 December 2006
Kaya v Austria, AN 54698/00, 8 September 2006
Kobenter and Standard Verlags GmbH, AN 60899/00, 2 November 2006
Krone Verlags GmbH & Co KG v Austria, AN 72331/01, 9 November 2006
Moser v Austria, AN 12643/02, 21 November 2006
Müller v Austria, AN 12555/03, 5 January 2007
Öllinger v Austria, AN 76900/01, 29 September 2006
Österreichischer Rundfunk v Austria, AN 35841/02, 7 December 2006
R.H. v Austria, AN 7336/03, 19 April 2006
Standard Verlags GmbH and Krawagna-Pfeifer v Austria, AN 19710/02, 2 November 2006
Standard Verlags GmbH v Austria, AN 13071/03, 2 November 2006
Stojakovic v Austria, AN 30003/02, 9 November 2006
Verlagsgruppe News GmbH v Austria, AN 76918/01, 14 December 2006
Verlagsgruppe News GmbH v Austria (No. 2), AN 10520/02, 14 December 2006
Zeman v Austria, AN 23960/02, 29 September 2006

ii. Reports

European Commission Against Racism and Intolerance, Third Report on Austria,
CRI (2005) 1,
http://www.coe.int/T/E/human_rights/ecri/1-ECRI/2-Country-by-Country_approach/

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report on Austria (2005), CPT/Inf (2005) 13
<http://www.cpt.coe.int/documents/aut/2005-13-inf-eng.pdf>

III. National Reports

i. Relevant Government Reports & Documents

BM.I, Integrationsstudie: Perspektive und Herausforderungen,
http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen/Perspektiven_Herausforderungen.pdf

BM.SG: Bericht zur sozialen Lage, 2003- 2004;
http://www.bmsk.gv.at/cms/site/attachments/9/2/3/CH0338/CMS1064227005975/bericht_ueber_die_soziale_lage_2003 - 2004.pdf

ii. Reports by other Public Institutions

Menschenrechtsbeirat, Jahresbericht 2005:
<http://www.menschenrechtsbeirat.at>

Volksanwaltschaft: Report of the Austrian Ombudsman Board to the National Council and to the Federal Council, No. 29., 2005, English summary
<http://www.volksanw.gv.at/bericht/nationalrat/pb-29eng/pb29eng.htm>

iii. Non-governmental Reports (selection)

Arbeiterkammer, Frauenbericht 1995-2005
http://wien.arbeiterkammer.at/pictures/d37/Frauen_Bericht.pdf

Council of Carinthian Slovenes, On the Situation of the Carinthian Slovenes, 2006 – in the year of Austria's presidency of the European Union,
http://www.nsks.at/docs/brosura_eng.pdf.

Forum Asyl, Wahrnehmungsbericht 2006, <http://www.asyl.at>

Liga für Menschenrechte – Menschenrechtlicher Befund 2006
<http://www.liga.or.at/common/download.php?id=165&dir=downloads&prefix=-1ger&ext=doc>

Österreichische Gebärdensprachengemeinschaft, Discrimination Report (Diskriminierungsbericht) <http://www.oeglb.at/>

Rechtsanwaltskammer, Wahrnehmungsbericht 2005/2006;
http://www.rechtsanwaelte.at/www/getdownload.php?page=..../downloads/wnb_2005_2006.pdf

ZARA, Racism Report 2005: <http://www.zara.or.at>

iv. Books (selection)

Corinna Milborn, Gestürmte Festung Europa, Styria Konrad Hofer, Gestrandet, Löcker Verlag

v. Other Links

Parlamentarische Anfragen
<http://www.parlament.gv.at>