

# ECRI REPORT ON AUSTRIA

(sixth monitoring cycle)



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**ECRI**  
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## FOREWORD

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The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, those of the fourth round in the beginning of 2014, and those of the fifth round at the end of 2019. Work on the sixth round reports started at the end of 2018.

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

ECRI’s reports are not the result of inquiries or testimonial evidence. They are analyses based on information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The sixth round country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

In the framework of the sixth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. Except where expressly indicated, it covers the situation up to 11 December 2019; as a rule, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**



## SUMMARY

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**Since the adoption of ECRI's fifth report on Austria on 16 June 2015, progress has been made and good practices have been developed in a number of fields.**

Several legislative developments promoting LGBTI equality have taken place. In 2018, a third gender category "diverse/open" and in 2019, same-sex marriage was introduced. A set of recommendations on intersex persons was also adopted.

Austria has taken several initiatives to thwart hate speech by developing a counter-narrative. The authorities have worked with civil society to improve the detection and recording of online hate and to provide support to victims of such incidents.

In 2016, the criminal offense of cyber-mobbing was introduced and in 2018, the authorities concluded an agreement with social network providers to remove hate speech within 24 hours.

During the migration influx in 2015, the authorities showed great resilience in meeting their responsibilities while dealing with large numbers of asylum seekers.

The Integration Act entered into force in June 2017. Many resources have been invested in early integration of newcomers to Austria, with a special focus on language acquisition and long-term integration into the labour market. Among others, the Federal Ministry of Education has set up 'Mobile intercultural teams' (MIT) as a response to the increasing numbers of migrant pupils and the Public Employment Service (AMS) have initiated so-called competency checks to assess the skills and qualifications of refugees.

In 2017, the Roma Strategy was updated, and the policy areas 'Women' and 'Young' people were included into the Strategy. Combating anti-Gypsyism is explicitly recognised as a strategic priority now.

**ECRI welcomes these positive developments in Austria. However, despite the progress achieved, some issues give rise to concern.**

The provisions governing the establishment of the Ombud for Equal Treatment's (OET) regarding competences, independence and effectiveness are still not in line with ECRI's General Policy Recommendation No. 2 on Equality Bodies. Both the OET and the Equal Treatment Commission lack sufficient human and financial resources.

The anti-discrimination legislation remains complex and fragmented due to the division of competence between the Austrian Federal government (Federation) and the *Länder* (provinces). The distinction between the Equal Treatment Act and anti-discrimination laws of each *Länder*, providing varying degrees of protection for different grounds of discrimination, often result in confusion and legal uncertainty.

The question of girls wearing headscarves at primary school is the focus of intense debate in Austrian society. A recent amendment to the School Education Act in 2019 raises concerns regarding the principles of lawfulness, neutrality and non-discrimination.

There are high levels of Islamophobia and the public discourse has become increasingly xenophobic. Political speech has taken on highly divisive and antagonistic overtones particularly targeting Muslims and refugees.

There is still no comprehensive and systematic collection of data on hate speech and hate-motivated violence. The level of underreporting, especially among vulnerable groups, is an issue. While specialised departments in the public prosecution offices were established in 2017 to deal with certain criminal offences such as incitement to hatred, these units have not yet become operational.

Accounts of alleged practices of ethnic profiling by the police, against persons belonging to Black and Muslim communities in particular, continue to be reported.

The positive trend in implementing comprehensive integration policies has been reversed recently by several legislative changes, which introduced significant restrictions to integration measures.

Furthermore, the adoption of the Law on the Federal Agency for Care and Support in June 2019 has raised serious questions about the provision of free legal aid to asylum seekers.

While some aspects of the Roma Strategy yielded promising results, progress has been made primarily through targeted funding under the special funds, the European Social Fund (ESF) in particular.

**In this report, ECRI requests that the authorities take action in a number of areas and makes a series of recommendations, including the following.**

Both the Equal Treatment Commission and the Ombud for the Equal Treatment should be fully independent at institutional and operational level, and be provided with sufficient human and financial resources.

The provision of the School Education Act concerning the wearing of headgear should be revised in order to ensure that it respects the principle of neutrality, pursues a legitimate aim and is free of any form of discrimination against any particular group of pupils.

Intersex children's right to physical integrity and bodily autonomy should be effectively protected and medically unnecessary "sex normalising" surgery and other treatments should be prohibited until such time as the child is able to participate in the decision about them, based on the right to self-determination and on the principle of free and informed consent.

Political leaders on all sides must take a firm and public stance against the expression of racist hate speech and react to any such expression with a strong counter-hate speech message. All political parties in the country should adopt codes of conduct which prohibit the use of hate speech and call on their members and followers to abstain from using it.

A comprehensive data collection system offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome should be set up.

The authorities should place an increased emphasis on the institutional and structural independence of the future Federal Agency for Care and Support and ensure that free legal aid and advice is provided to asylum seekers by a fully independent structure.\*

Legislative amendments, both at federal and Länder level as necessary, should be made with a view to ensuring accessible and effective general anti-discrimination legislation covering all grounds and all areas, in line with ECRI's General Policy Recommendation No. 7.

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\* This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of the report.

## FINDINGS AND RECOMMENDATIONS

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### I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

#### A. Equality bodies<sup>1</sup>

1. The Ombud for Equal Treatment (OET), which is the national equality body, was established through the Federal Act governing the Equal Treatment Commission and the Ombud for the Equal Treatment (LETCO) in 2004. Although the OET performs its tasks objectively and independently, as guaranteed under the Austrian Constitution (Article 20), it is not a separate legal entity placed outside the executive and legislature, as called for in § 2 of ECRI's General Policy Recommendation (GPR) No. 2 on equality bodies to combat racism and intolerance at national level but is administratively attached to the Federal Chancellery. The mandate of the OET is limited to the scope of the Equal Treatment Act (ETA, Gleichbehandlungsgesetz, see § 97 of this report) and does not explicitly cover hate speech, the discrimination grounds of colour, language, citizenship and gender identity and intersectional discrimination, as recommended in § 4 a and b of GPR No. 2. Moreover, not all areas in both the public and private sector fall under the OET's mandate (§ 4c of GPR No. 2).
2. While the OET has many of the functions and powers listed in GPR No. 2 §§ 13 (promotion and prevention competences) and 14 (support and litigation competences), it is not mandated to intervene in the legislative procedure; to provide legal representation to people exposed to discrimination or intolerance; to take decisions on complaints in relation to individual cases; to intervene as *amicus curiae*, third party or expert or to pursue strategic litigation. The OET, however, can bring cases before the Equal Treatment Commission (ETC) and participate in the proceedings, but its ability to bring cases before courts in its own name is very limited (12 § 5 of LETCO) and it can only do so with the consent of identified victims. In practice, this has happened only in one case so far.<sup>2</sup>
3. Concerning independence regarding its internal structure, budget, recruitment and deployment of staff, ECRI notes that all staff, including the three Ombuds who are nominated by the Federal Chancellor, are public servants and included in the salary scheme of the Federal Chancellery. Staffing is determined by the human resources of the Federal Chancellery, which is also the decision-making body for recruitment, in cooperation with the OET. These aspects are not in line with ECRI's GPR No. 2 §§ 23 and 27. Furthermore, in terms of its budget as per § 28 of GPR No. 2, the OET is entirely dependent on the Federal Chancellery and lacks adequate financial resources, especially as regards to awareness-raising and independent research function, which was limited to EUR 70 000 for 2019. The OET currently has 30 staff members and no increase has taken place since 2009. Furthermore, the OET does not report to the parliament (National Council). This is officially done by the Federal Chancellor and the Minister of Labour and Social Affairs who are obliged to issue a report to the National Council every two years about the implementation of the Equal Treatment Act. In contrast, § 35 of GPR No. 2 recommends that equality bodies publish annual reports that are discussed by parliament and government but are not subject to their approval.
4. The Equal Treatment Commission (ETC), which was established simultaneously with the OET under the same legislation (LETCO), has decision-making competence under the provisions of the Equal Treatment Act. While functionally independent, like the OET, the ETC is also set up under the Federal Chancellery. The ETC comprises three so-called senates which consist of seven members

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<sup>1</sup> See [ECRI Glossary](#).

<sup>2</sup> EELN (2018): 86.

holding honorary positions, meaning that they receive the salaries from their delegating institutions, which are ministries and social partners. At the same time, the chairpersons of each senate, who is a federal civil servant, is appointed by the Federal Chancellor, in consultation with social partners.

5. The ETC acts independently of judicial proceedings and issues an expert opinion in cases violating the ETA and a recommendation regarding compensation addressed to the employer/service provider. As stated above, the OET is entitled to take cases to the ETC. The findings ('examination result') of the ETC senates are not legally binding neither for the parties nor for civil courts. They also cannot be considered as evidence in civil proceedings. Furthermore, the ETC cannot award damages, as this exclusively lies within the competence of the courts. In this respect, the ETC performs a decision-making competence as per § 18 of ECRI's GPR no.2. ECRI was informed about the lack of resources allocated to the ETC, which results in significant backlogs with an average case processing time of between one and half years to two years.
6. ECRI recommends that the authorities bring the provisions of the Ombud for the Equal Treatment's (OET) competences, independence and effectiveness in line with ECRI's General Policy Recommendation No. 2 on Equality Bodies. In particular, they should i) extend its mandate to cover explicitly hate speech, the grounds of colour, language, citizenship and gender identity and intersectional discrimination; (ii) make sure that its mandate covers all areas of the public and private sector that are under the competence of the Austrian Federation; (iii) provide it with the competences to intervene in the legislative procedure; represent people exposed to racism and discrimination before the courts and institutions; bring cases in its own name and intervene in legal proceedings as *amicus curiae*, third party or expert; (vi) stipulate that it publishes annual reports for discussion by parliament and government. The authorities should also i) ensure that both the Equal Treatment Commission and the OET are fully independent at institutional and operational level, and ii) provide both institutions with sufficient human and financial resources.
7. ECRI notes that apart from above mentioned structures at the federal level, all nine federal provinces (*Länder*) are obliged to set up specialised bodies to promote equal treatment in their own field of legal competence.<sup>3</sup> The *Länder* bodies are therefore not linked to each other and have no shared responsibilities with the federal structures. As becomes apparent by the large list of different bodies, as was highlighted in ECRI's fifth report, it might not always be easy for victims of discrimination to find out where to turn to. ECRI notes with concern that there has been no initiative to merge the existing various anti-discrimination Acts and institutions of the Federation and the *Länder*, despite the priority recommendation in its last report and therefore, ECRI refers to the paragraphs §§ 97-99 of this report.
8. ECRI finally recalls that that the Austrian Ombudsman Board (AOB), which was set up in 1977, is a typical Ombudsperson with competence only in the public but not the private sector and has no specific mandate to combat racism, racial discrimination, xenophobia, antisemitism and intolerance. ECRI was informed that the Ombudsperson has handled around 16 000 complaints against public authorities in 2018. In its fifth report, ECRI recommended that the authorities consider removing the restriction that victims of discrimination can only lodge a complaint with the AOB if they have no other legal remedy. ECRI notes that this restriction was not yet removed.

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<sup>3</sup> Austria is a federal state, comprising of nine federal provinces. All provinces have their own administrations with different legislation and institutions.

## B. Inclusive education

9. This section deals with education policies<sup>4</sup> which aim to combat exclusion and marginalisation through an inclusive education devised for all, and to create a tolerant multicultural society in accordance with sections II and III of GPR No. 10.<sup>5</sup>
10. The governance of school education in Austria is characterised by a complex distribution of responsibilities between the federal and the provincial (*Länder*) levels based on a split between federal and provincial schools.<sup>6</sup> While the Federal Ministry of Education, Science and Research holds the overall executive authority for school education, each of the nine *Länder* is responsible for the implementation of all federal legislation. Following the 2017 Education Reform Act (*Bildungsreformgesetz*), a reorganisation<sup>7</sup> of school administration at the provincial level has taken place and since 1 January 2019, Boards of Education – which are joint bodies of the federation and nine *Länder*- have taken over the management. This reform has also given schools more autonomy (*Schulautonomie*)<sup>8</sup> in (among other things) the organisation of teaching, including curricula design.
11. In its GPR No. 10 ECRI recommends that human rights education is an integral part of the school curriculum at all levels and across all disciplines. In Austria, human rights education has been formally integrated into the school system through ‘citizenship education’, which is primarily a cross-curricular educational principle<sup>9</sup>, applicable to all subjects and to all types of schools at each level. ECRI takes positive note of the content parameters of this principle that expressly define ‘overcoming prejudice, stereotypes, racism, xenophobia and antisemitism as well as sexism and homophobia’ as its specific aim. Depending on the type of school, citizenship education is either taught as a separate subject, or as a combined or cluster subject, with history, law or economics, for example. It is therefore offered in a wide range of curricula.<sup>10</sup> For example, since 2016, citizenship education is enshrined as a compulsory subject from the 6th grade (11 years old) onwards for the curricula of ‘History, Social Studies and Citizenship Education’ (GSK/PB Sek I).<sup>11</sup> Furthermore, the Austrian Centre for Citizenship Education in Schools (*Polis*) provides a range of diverse teaching material for schools and offers workshops on human rights for pupils as well as teaching staff.<sup>12</sup>
12. While citizenship education is a well-established principle in the national legal and institutional framework, ECRI was informed by civil society organisations during its country visit that in practice there is not always sufficient focus on learning about human rights and equality and these topics often depend on the discretion and particularly the motivation of teachers. Furthermore, in the university programmes for teacher training, there is no separate focus on the topics of discrimination, homophobia and transphobia, which are covered under the umbrella term ‘diversity’. In this connection, ECRI considers the decision of the Board of Education for Vienna as a **good practice**: it adopted the topic of human rights as one of its long-term pedagogical aims, offering relevant training seminars for teachers. Given the increased autonomy of schools in relation to the design and conduct of classes, ECRI encourages the authorities to ensure that the teaching of

<sup>4</sup> This section relates to education for all children and young people. Specific measures for the education of migrants and Roma pupils are dealt with under the heading of integration and inclusion.

<sup>5</sup> ECRI General Policy Recommendation N°10 on combating racism and racial discrimination in and through school education.

<sup>6</sup> Nusche, D. et al. (2016): 20; Bruneforth, M. et al (2019): 16-18.

<sup>7</sup> Eurydice (2019), see [the link](#).

<sup>8</sup> See <https://www.schulautonomie.at/faq/schulautonomie-allgemein/>

<sup>9</sup> Unterrichtsprinzip Politische Bildung, Grundsatzlerlass, Rundschreiben Nr. 12/2015.

<sup>10</sup> Politische Bildung in den Schulen, <https://www.politik-lernen.at/site/grundlagen/politischebildung/lehrplaene>.

<sup>11</sup> [http://www.politik-lernen.at/dl/uqtMJKJKoOoOkJqx4MJK/NMS\\_2018.pdf](http://www.politik-lernen.at/dl/uqtMJKJKoOoOkJqx4MJK/NMS_2018.pdf).

<sup>12</sup> UNESCO, Observatory on the Right to Education, Country profile: Austria.

human rights and equal treatment is part of the mandatory curricula for teachers. They should furthermore mainstream good practices from different schools and reinforce initial and continuous teacher training on these topics.

13. ECRI strongly supports inclusive education which ensures that children are afforded equal opportunities in education by respecting diverse needs and abilities and eliminating all forms of discrimination. According to the Initiative for a Non-discriminatory Education System (IDB) in Austria, there has been a steady increase in the number of reported discrimination cases in educational institutions.<sup>13</sup> 260 cases were reported to IDP in 2018, whereas this number was 173 in 2017<sup>14</sup> and 47 in 2016<sup>15</sup>. The most common grounds for discrimination were religion and belief (48%) and ethnicity (45%), followed by disability (5%) and sexism (2%). Islamophobia or anti-Muslim racism was indicated as a motive in 122 cases, while two cases were reported as antisemitic.<sup>16</sup> Persons of Sub-Saharan African (53%) and Turkish (36%) origins constituted the groups most affected by discrimination on the ground of ethnicity. Civil society has documented that in some cases pupils, who experienced discrimination by their teachers, were reluctant to report incidents for fear of suffering further consequences, such as lower grades.<sup>17</sup> Furthermore, LGBTI youth were identified as a group at the highest risk of being the target of violence in schools.<sup>18</sup>
14. ECRI's GPR No. 10 also recommends setting up a system to monitor racist and intolerant incidents at school. The authorities informed ECRI that the National Strategy for the Prevention of Violence for Fairness and Against Violence at School<sup>19</sup> has a fundamental focus on bullying at schools. Although the Strategy has been in force since 2007, research suggests that victimisation and bullying are still relatively prevalent, indicating that 25 % of 13 year old boys are bullied.<sup>20</sup> The same dataset shows that 32% of 15 year old boys and 28% of 13 year old boys bully their peers. Against this background, ECRI welcomes the authorities' ongoing efforts to prevent bullying in schools, for example, by publishing comprehensive studies<sup>21</sup> and adopting guidelines (i.e. 'Bullying at schools' in 2018)<sup>22</sup>, which were later integrated into teacher training modules. It further takes positive note of the online self-evaluation tool for violence in schools (AVEO), designed by the Federal Ministry of Education, Science and Research and the University of Vienna, with a view to revealing incidents, including verbal insults and taking counter-measures.
15. Despite these efforts, civil society groups informed ECRI that it is often unclear to what extent school self-evaluation processes embed a focus on bullying prevention into their school review processes. More importantly, ECRI observes that the National Strategy is rather confined to a universal prevention approach, without necessarily focusing on the different needs of certain groups, such as migrants, Roma, LGBTI. In view of the great diversity in Austrian classrooms, as confirmed by the high proportion of pupils with a migrant background or foreign citizenship (15% of about 1.1 million pupils in 2016/17),<sup>23</sup> more tailored policies on tackling discriminatory bullying should be developed. Teachers should be better trained to

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<sup>13</sup> Initiative für ein diskriminierungsfreies Bildungswesen (2017): 8.

<sup>14</sup> Initiative für ein diskriminierungsfreies Bildungswesen (2018): 12.

<sup>15</sup> Initiative für ein diskriminierungsfreies Bildungswesen (2016): 9.

<sup>16</sup> Initiative für ein diskriminierungsfreies Bildungswesen (2018): 13-15.

<sup>17</sup> ZARA (2017): 43.

<sup>18</sup> Bundesministerium für Bildung, Wissenschaft und Forschung (2018): 42.

<sup>19</sup> <http://www.schulpsychologie.at/gewaltpraevention/nationale-strategie>

<sup>20</sup> Downes P.; Cefai, C. (2016): 25.

<sup>21</sup> See, for instance, Wallner, F (2018), Mobbingprävention im Lebensraum Schule.

<sup>22</sup> Bundesministerium für Bildung, Wissenschaft und Forschung (2018).

<sup>23</sup> The Expert Council for Integration (2018): 46.

provide quality and inclusive education in diverse classrooms and to intervene in cases of bullying and discrimination. ECRI considers that creating the conditions under which pupils from all backgrounds can thrive is crucial for them to reach their potential and achieve the best possible school results.

16. ECRI recommends that the authorities give instructions to schools to include human rights education in the mandatory parts of their curricula and reinforce initial and ongoing teacher training on inclusive teaching in diverse classrooms and on effective responses to cases of bullying and discrimination, in accordance with ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.
17. ECRI notes that the issue of wearing headscarves in primary schools is the focus of intense controversy in Austrian society, especially following a recent amendment to the School Education Act,<sup>24</sup> prohibiting pupils under the age of ten from wearing "ideologically or religiously influenced clothing which is associated with the covering of the head".<sup>25</sup> The Parliamentary Sub-committee on Education further issued an explanatory statement<sup>26</sup> indicating that only such headgear that covers the hair fully or in large parts shall be prohibited, explicitly exempting from the application of the rule the Jewish Kippa or the Sikh Patka. The legislation thus seems to apply to Muslim girls only, as the exemption of religious headgear potentially worn by other pupils makes clear. Whilst acknowledging the significant discretion of states on matters of religion in the sphere of teaching and state education as well as the special role of schools in the process of social integration as confirmed by the European Court of Human Rights<sup>27</sup>, ECRI recalls that such legislation, which introduces a blanket ban, must respect the principles of lawfulness and neutrality, pursue a legitimate aim and be free of any form of discrimination. Reiterating the importance of equality of treatment of all religious groups, ECRI considers that singling out a certain group - as effectively done with this amendment - could have an adverse effect on the inclusion of the particular community concerned and result in intersectional discrimination, with a considerable risk of impeding Muslim girls' access to education<sup>28</sup> and marginalizing them.
18. ECRI recommends that the authorities review the provision of the School Education Act concerning the wearing of headgear in order to ensure that it respects the principle of neutrality, pursues a legitimate aim and is free of any form of discrimination against any particular group of pupils.

### C. Irregularly present migrants

19. In its GPR No. 16,<sup>29</sup> ECRI calls for the creation of effective measures ("firewalls") to ensure fundamental human rights of irregularly present migrants in fields such as education, health care, housing, social security and assistance, labour protection and justice. The creation of these firewalls is particularly important considering the often temporary character of the illegal status of this group of migrants. Such firewalls should decouple the activities of state authorities which provide social services from immigration control and enforcement obligations to

<sup>24</sup> School Education Act (Schulunterrichtsgesetz) new § 43a, May 2019.

<sup>25</sup> A violation of this law is followed up by an obligatory discussion with the legal guardians of the child. In case of refusal to attend the discussion or a further violation (child wears religious headgear in school) is punishable with an administrative fine of up to €440.

<sup>26</sup> [https://www.parlament.gv.at/PAKT/VHG/XXVII/I\\_00612/fname\\_751626.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/I_00612/fname_751626.pdf)

<sup>27</sup> See- *inter alia*- Leyla Şahin v. Turkey [GC], no. 44774/98, 10 November 2005; Köse and Others v. Turkey (dec.) - no. 26625/02, 24.1.2006; Dogru v. France - no. 27058/05 and Kervanci v. France - no. 31645/04, 4.12.2008; Osmanoglu and Kocabaş v. Switzerland – no. 29086/12, 10.1.2017. See also Harris D.J., O'Boyle M. et al. 2018: 586-589.

<sup>28</sup> See similar UN CEDAW (2019): para.30(a).

<sup>29</sup> See §§ 3, 4, 11 and 12 of the GPR and §§ 3, 4, 11 and 12 of its Explanatory Memorandum.

make sure that irregularly present migrants are not deterred from accessing their rights due to fear of deportation.

20. Very little data is available about irregular immigration in Austria. The Federal Ministry of the Interior stated that there are no statistics on the numbers and living conditions of irregularly present migrants due to their illegal status. According to a report by the Federal Criminal Police, 18 170 persons illegally entered or were illegally staying in 2018.<sup>30</sup> During ECRI's contact visit, it became evident that the Austrian authorities have not envisaged the systematic creation of firewalls.
21. ECRI notes that firewalls are implicit in certain laws. For instance, the Law on Compulsory Education (Articles 1 and 17) guarantees access to education to all children. While schools have no duty to report the legal status of pupils to the authorities, procedural requirements for enrolment, such as the provision of identity documents, proof of address and birth certificate, can in practice restrict or deter access. Some discretion exists for school authorities of the different *Länder* in this context.<sup>31</sup> ECRI welcomes the legal interpretation given by the Ministry of Education and its explicit stance that production of residence papers is not necessary for the enrolment process.
22. According to Platform for International Cooperation on Undocumented Migrants (PICUM),<sup>32</sup> information about residence status is not systematically gathered through the health system in Austria, which suggests the existence of a firewall between the health system and the immigration authorities. While irregularly present migrants do not have access to free or subsidised primary and secondary health care, every hospital should admit and treat patients whose health is in serious danger, irrespective of nationality or residence status. Although emergency care costs should be paid by patients, hospitals are obliged to cover them if patients are unable to do so.<sup>33</sup>
23. NGOs providing healthcare to patients without health insurance also receive funding from local and federal authorities. Amber-med in Vienna, for example, is funded by the Vienna Health Insurance and Social Fund together with the Federal Ministry of Health and the Austria Health Fund, which ECRI welcomes.<sup>34</sup>
24. Irregular migrants working in Austria are covered by the Trade Union Federation (ÖGB) and can be assisted by the trade unions. They are entitled to bring claims before civil courts for the violations of their labour rights and to recover backpay. Civil courts have no legal obligation to inform the police about the status of a person bringing the claim, but the authorities admit that irregularly present migrants rarely appeal to courts, which is also due to a general lack of knowledge about their rights. UNDOK, the Drop-in Centre for Undocumented Workers, has been created on the initiative of several trade unions and with the support of NGOs, the Vienna Chamber of Labour (AK Wien) and the Federal Ministry for Labour, Social Affairs and Consumer Protection, with a view to providing irregular migrants with free counselling on their rights as workers.<sup>35</sup>

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<sup>30</sup> Bundesministerium für Inneres, Bundeskriminalamt (2019): 7, 10. According to this report, persons who illegally entered or were illegally staying in Austria are the following: persons having crossed the federal border without the assistance of a tugboat, without having possession of the necessary border papers, or who have been rejected at the border, or a ban against their entry or residence has been issued or persons who have been admitted but whose expulsion has become necessary because their stay has become illegal. It also includes persons who were employed in Austria without being in possession of a residence permit.

<sup>31</sup> Spencer, S. and Hughes, V. (2015): 41. The same report reports that the Ministry of Education is supportive of school campaigns that try to regularise pupils' status.

<sup>32</sup> On the basis of the submission provided to ECRI by PICUM- Platform for International Cooperation on Undocumented Migrants.

<sup>33</sup> Potkanski, M (2015): 71.

<sup>34</sup> <http://www.amber-med.at/en/amber/who-we-are>

<sup>35</sup> UNDOK (2016).

25. ECRI recommends that the authorities collect data on the number and living conditions of migrants irregularly present in Austria; set up clear and explicit firewalls preventing housing, social security and assistance providers from sharing data on the legal status of migrants with the immigration authorities; and work to eliminate the practical obstacles limiting migrants' access to services in the fields of education, health care and employment.

#### D. LGBTI equality<sup>36</sup>

26. There is no official data on the size of the lesbian, gay, bisexual, transgender and intersex (LGBTI) population in Austria. According to a survey conducted in 2016 across EU countries, 6.2% of Austrians identified themselves as LGBT.<sup>37</sup> On the Rainbow Europe Map 2018 reflecting European countries' legislation and policies guaranteeing LGBTI rights, Austria ranks 14<sup>th</sup> among 49 countries, with an overall score of 49%.<sup>38</sup> While there is a relatively high level of social acceptance of LGBTI persons, the situation seems to be deteriorating somewhat. For example, the study "Queer in Vienna", conducted on behalf of the Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles, showed that 28% of participants had experienced discrimination or violence in the previous twelve months.<sup>39</sup> According to a Eurobarometer survey, 55% of participants said they would be comfortable or moderately comfortable with an LGBT work colleague, whereas the EU average was 72%.<sup>40</sup> Based on the information received from the Ombud for Equal Treatment, 23 cases of discrimination were recorded in 2015 on grounds of sexual orientation in employment, whereas this number was 31 in 2016 and 27 in 2017.
27. ECRI welcomes a number of developments promoting LGBTI equality. In December 2017, the Austrian Constitutional Court (VfGH)<sup>41</sup> found the legislation denying same-sex couples' the right to marry, as well as the restriction of the Registered Partnership Act to same-sex couples, was unconstitutional. The changes became effective on 1 January 2019, resulting in both marriage and registered partnerships becoming accessible for same-sex as well as opposite-sex couples. Since the legalisation of same-sex marriage, 335 such marriages have been concluded.<sup>42</sup> In January 2016, the lifting of the ban on joint adoption<sup>43</sup> by same-sex couples entered into force. Furthermore, in October 2018, the Austrian VfGH reinterpreted the existing legislation on adoption and held that there is no justification for differential treatment of same and opposite-sex couples, including in cases of separation.<sup>44</sup>
28. In its fifth report, ECRI recommended that the authorities adopt legislation on the issues of changing a transgender person's first name, gender recognition and changing the gender marker in documents. While no specific legislation relating to these aspects has been enacted, in June 2018, the Austrian VfGH decided that gender markers in civil registers and identity documents should reflect an individual's own self-determined gender identity.<sup>45</sup> Despite this, ECRI notes that legal gender recognition of transgender persons still takes place by registration of

<sup>36</sup> See [ECRI Glossary](#).

<sup>37</sup> Dalia Research (2016), LGBT Population in Europe.

<sup>38</sup> <https://rainbow-europe.org/#8621/0/0>

<sup>39</sup> Schönplugg, K., et. al. (2015):90.

<sup>40</sup> ILGA- Europe (2016): 39.

<sup>41</sup> VfGH, Entscheidung G 258-259/2017-9, 4.12.2017.

<sup>42</sup> On the basis of the information received from the state authorities covering the period 1 January-18 May 2019.

<sup>43</sup> Following the Constitutional Court decision. See VfGH, Entscheidung G 119-120/2014, 11.12.2014.

<sup>44</sup> In this case, the Constitutional Court recognised the non-biological mother as a parent, thereby allowing her to be treated with the same rights and obligations of a heterosexual father would. VfGH, Entscheidung G 69/2018-9, 3.10.2018.

<sup>45</sup> VfGH, Entscheidung G 77/2018-9, 15.6.2018; ILGA-Europe (2019).

change of gender in the Central Civil Register, which requires production of an expert statement confirming the applicant's gender. Furthermore, a first name matching the corresponding gender identity may only be adopted after legal gender recognition, whereas gender neutral names may be taken without such a change. The authorities informed ECRI that this requirement aims to prevent any abuse of the procedure for gender recognition. While reiterating its recommendation to enact legislation on transgender issues, ECRI also encourages the authorities to take inspiration from other countries that give more room to the right to self-determination of transgender persons.<sup>46</sup>

29. In this monitoring cycle, ECRI also covers the situation of intersex persons<sup>47</sup>, who are born with chromosomal, hormonal or anatomical characteristics which do not match strict medical definitions of male or female.<sup>48</sup> With the decision of the Austrian VfGH in June 2018 (see above), the registration of intersex persons as of one or other gender was found unconstitutional. ECRI is pleased to note that, in view of the execution of this judgement, Austria introduced a third gender category "diverse" or "open" (in cases of registration at birth) in December 2018<sup>49</sup> and ECRI considers this a **good practice**. At the same time, it regrets the general requirement to present a medical opinion confirming that a variant of gender development exists. ECRI encourages the authorities to put a minimum of restrictions on the right to self-determination of intersex persons.<sup>50</sup>
30. ECRI is aware that many intersex persons suffer as a result of irreversible medical interventions. Civil society organisations brought to the attention of ECRI that such interventions, which are in most cases medically unnecessary, are still widely performed on intersex children in Austria.<sup>51</sup> In ECRI's view, it is very important to take legislative and procedural measures to protect intersex babies and children against such premature surgery. Therefore, ECRI is pleased to note that the authorities have recently adopted a set of recommendations<sup>52</sup> on intersex persons, which were drafted by a working group led by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection with the active participation of physicians, psychologists, intersex persons and associations. Albeit too early to assess the practical impact of these recommendations, ECRI considers that they would be instrumental to raising awareness of the existence of intersex persons and their specific situation as well as their needs. It supports the position of a growing number of international bodies that children's right to physical integrity and bodily autonomy should be effectively protected and that medically unnecessary sex-"normalising" surgery and other treatments should be prohibited until the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent.<sup>53</sup>
31. ECRI recommends that intersex children's right to physical integrity and bodily autonomy be effectively protected and that medically unnecessary "sex normalising" surgery and other treatments be prohibited until such time as the child is able to participate in the decision about them, based on the right to self-determination and on the principle of free and informed consent.

<sup>46</sup> See in this context CoE PACE 2015: § 6.2.1 and [www.Yogyakartaprinciples.org](http://www.Yogyakartaprinciples.org) 2017: Principle 31.C.i.

<sup>47</sup> According to intersex associations, it is estimated that around 1.7 % of births could be considered as intersex. See Blackless, M. and others 2000; Intersex Campaign for Equality (2015).

<sup>48</sup> EU FRA (2015): 2.

<sup>49</sup> Based on the decree adopted by the Federal Minister of the Interior. (BMI-VA1300/0528-III/4/b/2018, 20.12.2018)

<sup>50</sup> EU European Parliament 2019: § 9 ; [www.Yogyakartaprinciples.org](http://www.Yogyakartaprinciples.org) 2017: Principle 31.C.i.

<sup>51</sup> See also Verein Intersexueller Menschen Österreich VIMÖ (2015).

<sup>52</sup> Empfehlungen zu Varianten der Geschlechtsentwicklung (2019).

<sup>53</sup> European Parliament 2019; CoE Parliamentary Assembly 2017; CoE Commissioner for Human Rights 2015; EU FRA 2015. At present, Malta and Portugal are the only European countries to have introduced legislation prohibiting such surgery.

## II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

### A. Hate speech<sup>54</sup>

#### - Data

32. According to the OSCE-ODIHR, data on hate crimes<sup>55</sup> is collected by nine Regional Offices for the Protection of the Constitution and Counterterrorism (LVT), the Federal Office for the Protection of the Constitution and Counterterrorism (BVT) and the Ministry of Justice.<sup>56</sup> Pursuant to this data, which does not record cases of hate speech separately, the police recorded 302 hate crime incidents in 2017; 425 in 2016 and 395 in 2015. Although the figures available did not include a breakdown of the criminal offences involved, 227 of them were motivated by racism and xenophobia; 39 by antisemitism and 36 by bias against Muslims. The authorities informed ECRI that charges were brought under Article 283 (incitement to hatred and violence) of the Criminal Code in 516 cases in 2015, 679 in 2016, 982 in 2017, 1003 in 2018 and 465 in 2019. Of these cases, 49 resulted in a conviction in 2015, 52 in 2016, 108 in 2017, 72 in 2018 and 43 in 2019.<sup>57</sup> The National Socialism Prohibition Act (NSPA) of 1947 is also used for the prosecution of hate speech cases. However, ECRI is not aware of the exact number of cases where this Act was applied.
33. Unofficial data on racist incidents is gathered by civil society organisations including via reporting mechanisms on their websites or dedicated telephone hotlines. Among others, the annual racism reports published by the NGO Civil Courage and Anti-Racism Work (ZARA) constitute an important source of data on hate speech. According to ZARA's report for the year 2017, out of 1 162 reported racist incidents, 44% concerned online hate speech, with a significant increase from 31% in 2016.<sup>58</sup> This trend continued in 2018 and three out of five incidents<sup>59</sup> recorded in that year took place on the internet; on Facebook in particular.<sup>60</sup> Of these incidents, reports<sup>61</sup> claim that a majority targeted Muslim people and asylum seekers and migrants. There were also antisemitic incidents, some of which were particularly violent and involved praise of the Holocaust. Other frequent targets of hate speech were Black people, Roma and LGBTI persons.

#### - Public discourse

34. ECRI notes with concern that Austrian public discourse has become increasingly xenophobic in recent years, and political speech has taken on highly divisive and antagonistic overtones particularly targeting Muslims and refugees. The arrival of asylum seekers in large numbers<sup>62</sup> during the European migration crisis<sup>63</sup> in 2015 also saw an escalation of anti-immigrant and anti-Muslim sentiments, portraying

<sup>54</sup> See [ECRI Glossary](#).

<sup>55</sup> In the present report, hate crime should be understood as any criminal offence motivated by hate or prejudice on grounds such as "race", colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity, whether real or presumed. For further information about the notion of hate crime, see <http://hatecrime.osce.org/what-hate-crime>.

<sup>56</sup> OSCE-ODIHR, Hate Crime Reporting: Austria, <http://hatecrime.osce.org/austria>.

<sup>57</sup> ECRI notes that the criminal legislation of Austria provides for the use of diversionary and suspension measures in addition to acquittal and conviction in criminal prosecutions. According to the information provided by the authorities, diversion was applied in 19 cases in 2015, 25 in 2016, 76 in 2017, 115 in 2018 and 74 in 2019, while suspension measures were applicable in 254 cases in 2015, 233 in 2016, 197 in 2017, 245 in 2018 and 229 in 2019.

<sup>58</sup> ZARA (2017): 12.

<sup>59</sup> 1 164 out of 1 920 racist incidents.

<sup>60</sup> ZARA (2018): 13.

<sup>61</sup> ZARA (2017); ZARA (2018); INACH (2017).

<sup>62</sup> Only in the period January-October 2015, 68 589 asylum applications were made in Austria. AIDA (2015): 6.

<sup>63</sup> As defined in ECRI's Annual Report 2015.

newcomers as a threat to security, national identity or culture. This adversarial discourse has been especially intense during election periods.<sup>64</sup> In the 2017 national election, the Freedom Party of Austria (FPÖ) a far-right party<sup>65</sup>, which has openly advocated ideas of “natural” dominance by “true-born” Austrians<sup>66</sup> and expressed hostility towards refugees as well as other minority groups, gained 26 % of the votes and became a coalition partner in the federal government.<sup>67</sup>

35. Reports include numerous accounts of racist statements by members of the FPÖ, especially on social media.<sup>68</sup> For instance, the Minister of Interior from this party apparently suggested “concentrating” refugees in central locations, after taking office in 2018.<sup>69</sup> In 2019, according to media sources, a deputy mayor from the FPÖ in Upper Austria published a poem that compared migrants with rats.<sup>70</sup> Reportedly<sup>71</sup>, the FPÖ’s discourse also had an impact on the mainstream political parties, such as the People’s Party (ÖVP) and increased the visibility of extremist organisations, such as the IBÖ (Austrian Identitarian Movement), in the public sphere.
36. While the primary target of hate speech in recent years has been immigrants, those of Muslim background in particular, a rise in antisemitism has also been documented.<sup>72</sup> According to a FRA-EU survey published in 2018, 24% of the Jewish persons who participated in the survey consider that antisemitism is a very big problem in Austria, while 49% of them perceive it as a fairly big one.<sup>73</sup> The same survey showed that 78% of negative comments against Jews are found on the internet.<sup>74</sup>
37. ECRI notes that the problem of cyber hate, which can at times be related to the spread of so-called fake news<sup>75</sup>, remains pervasive also for other groups. Anonymous inflammatory comments against LGBTI and Black persons are commonplace on social networking sites and user-generated content, as is abusive language when referring to Roma.<sup>76</sup> A recent FRA-EU survey published in 2018 revealed that 37 % of persons of African descent in Austria have experienced racist harassment in the last five years.<sup>77</sup> The media portals “Wochenblick.at”; “alles roger.at?” and “unzensuriert.at” have also been referred to as examples of such media portals, which have published materials of a xenophobic and antisemitic nature on numerous occasions that resulted in infringement decisions by the Austrian Press Council (Presserat).<sup>78</sup> ECRI is pleased to note that there have been no such reports about the Austrian national public broadcaster, ORF.

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<sup>64</sup> OSCE (2018): 10.

<sup>65</sup> For more information on FPÖ, see DW (2019a); DW (2019b).

<sup>66</sup> EELN (2018): 5.

<sup>67</sup> This coalition government was dissolved in June 2019 which led to a snap election in September 2019. Social Europe (2019).

<sup>68</sup> See in particular ZARA (2016): 30; ZARA (2017): 27-28; ZARA (2018):47-48 and INACH (2017).

<sup>69</sup> BBC News (2018); Politico (2018).

<sup>70</sup> Reuters (2019); ORF.at (2019a).

<sup>71</sup> Hafez, F, Heinisch and Miklin, E (2019); European Islamophobia Report (2017): 52; DW (2018).

<sup>72</sup> Das Forum gegen Antisemitismus (FgA) (2018): 10.

<sup>73</sup> EU FRA (2018b): 17.

<sup>74</sup> Ibid: 28.

<sup>75</sup> Fake news is defined as the spreading of disinformation or propaganda by state or non-state actors, designed to mislead the recipients of the information. See ETC Graz (2017): 65-67 ; OSCE (2019) : 9.

<sup>76</sup> Romano Centro (2017): 9.

<sup>77</sup> EU-FRA (2018c): 15. See similar US Department of State (2018): 13.

<sup>78</sup> [https://www.presserat.at/show\\_content.php?hid=12](https://www.presserat.at/show_content.php?hid=12)

38. ECRI is concerned about the sharp rise in intolerant discourse against Muslims. Two different studies conducted in 2017 suggest that 28% of the Austrian population would not want Muslim neighbours<sup>79</sup> and 65% of them were strongly opposed to further migration from Muslim states.<sup>80</sup> Such high levels of Islamophobia are confirmed by a FRA-EU survey, in which 32% of Muslim respondents reported having experienced harassment due to their ethnic or immigrant background in the last year.<sup>81</sup> Certain politicians and media persist in portraying Muslims in a negative light. Claims about a presumed lack of integration of Muslims in Austria and about their alleged opposition to “fundamental Austrian values” leading to violent extremism remain common in public discourse and contribute to a climate of mistrust and fear of Muslims. Research<sup>82</sup> indicates that this trend has further been exacerbated by legislative initiatives, often in connection with security concerns, that affect Muslims, such as the Islam Act of 2015<sup>83</sup> and the Anti-Face Veiling Act of 2017.<sup>84</sup> Civil society groups indicated to ECRI that all this has created a feeling of anxiety within Muslim communities although the authorities claim to be opposed to “political Islam” but not to these communities. In ECRI’s view, generating polarised discussions and reinforcing extreme positions on minority groups may also increase the marginalisation of such groups and deepen social divides and even make these communities more receptive to extremist views.

- **Initiatives to discourage hate speech through counter speech**

39. ECRI considers that states should raise awareness of the dangers posed by hate speech and its unacceptability by combating misinformation, negative stereotyping and stigmatisation; developing educational programmes for children and youth, public officials and the general public; supporting NGOs and equality bodies working to combat hate speech; and encouraging speedy reactions by public figures to hate speech.
40. There are several measures in place in Austria which aim to combat hate speech by developing a counter-narrative. For instance, in 2016, the National Committee for the “No Hate Speech” campaign<sup>85</sup> of the Council of Europe was set up. After launching another campaign *#make love great again* in 2017, it still runs various awareness-raising activities with the involvement of several actors, including state authorities and NGOs. Since July 2018, in cooperation with the public prosecutor's office, *Neustart*, which is the Austrian probation service, has initiated the programme ‘Dialog statt Hass’ (Dialog instead of Hatred), which aims at developing a constructive response to hate speech by creating a sense of wrongdoing and reflection among offenders, subsequently leading to behavioural change.<sup>86</sup>
41. ECRI welcomes the fact that the National Strategy for the Prevention and Countering of Violent Extremism and De-radicalisation of 2018 underlines the importance of creating counter and alternative narratives as a means of reducing the underlying causes of these phenomena. The authorities informed ECRI that recent political developments have slowed down the implementation of this Strategy and halted the preparations of its first Action Plan, which is intended to cover specific measures concerning hate speech. ECRI encourages the authorities

<sup>79</sup> Bertelsmann Foundation (2017): 9.

<sup>80</sup> Chatham House (2017) : Der Standard (2017).

<sup>81</sup> EU FRA (2017b): 43.

<sup>82</sup> Hafez, F (2017); Dokustelle (2018) :39 ; European Islamophobia Report (2019): 105 .

<sup>83</sup> On the scope of this Act, see ECRI (2015): § 69-70.

<sup>84</sup> The violation of this ban in public space is subject to an administrative fine of up to €150.

<sup>85</sup> Campaign [Link](#). In 2018, the National Committee issued [a set of recommendations](#) to the federal and *Länder* governments.

<sup>86</sup> [https://www.neustart.at/at/de/unsere\\_angebote/nach\\_verurteilung/dialog\\_statt\\_hass.php](https://www.neustart.at/at/de/unsere_angebote/nach_verurteilung/dialog_statt_hass.php)

to adopt the Action Plan, which would contain concrete objectives, measures, timelines, budgets, indicators, and the authority responsible for implementing each measure, as soon as possible. In this connection, reference should be made to the work of the Vienna De-radicalisation and Prevention Network<sup>87</sup>, established by the City of Vienna in 2016, as a **promising practice**. This network has been conducting different awareness-raising projects on the basis of its 27 concrete recommendations that reach out to different groups, such as pupils, police officers and social and youth workers.

42. In its fifth report, ECRI recommended that the authorities, including the members of the government, the Austrian Ombudsman Board (AOB) and the equality bodies systematically counter and condemn hate speech and develop instruments to prevent and combat its use in particular during election campaigns. ECRI notes that immediate and public condemnation of hate speech is not common. Rare examples of good practice include the call for a tolerant and diverse nation, free of ideological and racial hatred by the President of Austria in January 2017<sup>88</sup> and the Federal Chancellor's condemnation of the publication of an offensive poem about migrants (§ 35), which he described as "deeply racist".<sup>89</sup> The situation during election campaigns seems to have worsened and regrettably, no special action has been taken to counter it. Moreover, as confirmed to ECRI during the meetings with the respective institutions, neither the AOB nor the Ombud for Equal Treatment is equipped with adequate resources to actively monitor 'hate speech' or to design specific responses.<sup>90</sup> ECRI recalls that the level of hate speech takes on a frighteningly different dimension when people feel encouraged by political leaders who are echoing and promoting prejudices and resentments. Such statements feed popular hate speech exactly at a time when due to heightened social tensions the building of bridges between communities becomes even more necessary.

43. ECRI reiterates its recommendation that political leaders on all sides take a firm and public stance against the expression of racist hate speech and react to any such expression with a strong counter-hate speech message. All political parties in the country should adopt codes of conduct which prohibit the use of hate speech and call on their members and followers to abstain from using it.

- **Support to victims of hate speech**

44. In September 2017, the counselling centre *#GegenHassimNetz* (Against online hate), which is financed by the Federal Chancellery, became operational within the NGO ZARA for victims and witnesses of online hate. Counselling includes strategies for effective responses to hate messages and information on available legal remedies against perpetrators or website operators. Other measures such as the counselling on the removal of hate messages from social media or other websites are also being supported.<sup>91</sup> This initiative has already yielded positive results, as shown by the increasing number of reported incidents concerning online hate speech. (§ 33) The ICT-security portal ([www.onlinesicherheit.gv.at](http://www.onlinesicherheit.gv.at)), which is an inter-ministerial initiative, also provides an overview of effective prevention measures, reporting mechanisms as well as counselling centres on hate speech.

<sup>87</sup> This network is replaced with Vienna Network Democracy Culture and Prevention in 2017.

<sup>88</sup> The Guardian (2017).

<sup>89</sup> BBC News (2019).

<sup>90</sup> See similar Article 19 (2018): 33.

<sup>91</sup> ZARA (2017): 70. ZARA also provides a broad range of information, tool and guidelines on its CounterACT online platform.

45. Another innovative step taken by the authorities is the development of the first mobile application, *BanHate*<sup>92</sup>, by the Antidiscrimination Office of Styria. People can report online hate speech and offensive postings from social and other online media through this tool, which ECRI notes as a **promising practice**.

- **Self-regulation**

46. ECRI considers that the use of self-regulation can be an appropriate and effective approach to tackling hate speech. Those using hate speech often have affiliations with different bodies, both public and private, such as parliaments, political parties, business organisations, cultural and sport associations. As a matter of responsibility, these bodies should make it clear that the use of hate speech by persons affiliated with them is unacceptable and take action to prevent and sanction such use. ECRI specifically stresses the importance of codes of conduct in self-regulatory schemes.<sup>93</sup>

47. There is no code of ethics for members of parliament in Austria, or formal rules of conduct, merely certain principles.<sup>94</sup> As actors in a democratic political process,<sup>95</sup> political leaders and members of parliament should be encouraged to look into this matter with a view to tackling the use of hate speech, taking inspiration from the Charter of European Political Parties for a Non-racist Society and the work of the Parliamentary Assembly of the Council of Europe and adopt relevant codes of conduct.<sup>96</sup>

48. Regarding the media and Internet, where the vast majority of hate speech is generated, and can be countered effectively, ECRI recommends both regulation and self-regulation, reflecting the recognition of their particular significance for combatting hate speech, while ensuring that such action does not violate the right to freedom of expression. As regards the press, ECRI notes that the self-regulatory body, the Press Council (Presserat), is broadly representative.<sup>97</sup> Its Code of Ethics stipulates “everyone has the right to dignity” and “denigration and ridicule violate journalistic ethics” (Article 5) and that “discrimination on grounds of *-inter alia-* ethnicity, nationality, religion and sexual orientation is inadmissible” (Article 7). For violations of the Code of Ethics, there are two possible procedures: an ex officio procedure<sup>98</sup> and a complaints procedure. While the number of complaints has been on the increase,<sup>99</sup> the Press Council cannot enforce its decisions<sup>100</sup> and media organisations have no obligation to publish them. Reportedly, the lack of sanctions renders this body largely ineffective in addressing the concerns of potential victims of hate speech and stigmatised groups in the media.<sup>101</sup>

49. In 2016, Federal Council of the Austrian Parliament issued a Green Book called ‘Digital Courage’ that discussed various legal, ethical and societal aspects of online

<sup>92</sup> ECRI was informed that between April 2017 to March 2018, 296 different users reported a total of 1716 posts via BanHate. 80 % of those reports concerned contents from Facebook. 910 postings were forwarded to the competent authorities due to criminal content. 366 posts concerned Nazi-ideology and 126 included threats, incitement to hatred or violence.

<sup>93</sup> GPR No. 15 § 6, and Explanatory Memorandum §§ 114-129.

<sup>94</sup> GRECO (2017): 12-13.

<sup>95</sup> See <https://rm.coe.int/16806fe48b>.

<sup>96</sup> See, for instance, Resolution 2275 (2019) of the CoE Parliamentary Assembly on role and responsibilities of political leaders in combating hate speech and intolerance.

<sup>97</sup> See the list of [members](#)

<sup>98</sup> This procedure can be started by the Press Council ex officio for any potential violation of the Code of Ethics in any print outlet or on a related website.

<sup>99</sup> [https://presserat.at/show\\_content.php?sid=89](https://presserat.at/show_content.php?sid=89)

<sup>100</sup> The Press Council publishes its decisions on its website and/or makes a mere declaration on the case.

<sup>101</sup> Article 19, op.cit: 43.

hate speech, acknowledging the growing prevalence of the issue.<sup>102</sup> In 2018, the Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice concluded an agreement pursuant to which Facebook will check notifications of illegal content regarding hate speech within 24 hours and will remove or lock down such content.<sup>103</sup> The “trusted flagger” status of the NGO ZARA, which operates in the field of online hate speech on behalf of the Federal Chancellery<sup>104</sup>, also had a positive impact on increasing the removal rate of illegal content.<sup>105</sup> In addition, Internet users and civil society can report racist content via the Internet- Reporting Office on the website of the Federal Office for the Protection of the Constitution and Counterterrorism (BVT).<sup>106</sup>

- **Application of civil, administrative and criminal law against hate speech**

50. ECRI recommends that member states clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech. It also recommends that they take appropriate and effective action against the public use of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination through the use of the criminal law provided that no other less restrictive measures would be effective, while respecting the right to freedom of expression.<sup>107</sup>
51. Article 1330 of the Civil Code provides for civil action and protects against violation of human dignity by verbal abuse, hurt or mockery. ECRI has not been in a position to obtain any data on its application to hate speech cases. Similarly, while some provisions such as the prohibition of harassment under the Equal Treatment Act (Article § 35) can theoretically be invoked, there is no available jurisprudence on ‘hate speech’ under this Act.<sup>108</sup> ECRI has been informed that the lack of awareness among victims about available remedies, the highly complex and fragmented nature of equality legislation (see also §§ 97-99) as well as the litigation costs in civil cases are the main reasons for the apparent ineffective use of these provisions.<sup>109</sup>
52. Regarding the media, specifically both the Public Service Broadcasting Act (the ORF Act) and the Audiovisual Media Services Act (AMSA), which regulates private broadcasting, contain provisions on protecting human dignity and prohibiting incitement to hatred based on several grounds, including “race, sex, religion and nationality”.<sup>110</sup> The Austrian Federal Communications Authority (the KommAustria) receives complaints about infringements under both Acts and can act *ex officio* in certain circumstances. Sanctions for violations vary from temporary suspension of the broadcasting to administrative fines to permanent revocation of the licence. The authorities have not informed ECRI about the number of decisions on hate speech nor their outcome before the KommAustria.<sup>111</sup>
53. As for the Internet, the obligations and scope of liability of online service providers are regulated under the E-Commerce Act,<sup>112</sup> which provides “notice and take

<sup>102</sup> [www.parlament.gv.at/ZUSD/PDF/Gruenbuch\\_Digitale\\_Courage\\_Republik\\_Oesterreich\\_Bundesrat.pdf](http://www.parlament.gv.at/ZUSD/PDF/Gruenbuch_Digitale_Courage_Republik_Oesterreich_Bundesrat.pdf)

<sup>103</sup> [Anfragebeantwortung](#) 348/AB, 26.4.2018; EU FRA (2019a): 96.

<sup>104</sup> ZARA (2017): 9.

<sup>105</sup> EU EC (2019), Code of Conduct on countering illegal hate speech online - Results of the 4<sup>th</sup> monitoring exercise.

<sup>106</sup> The authorities informed ECRI that 3 523 incidents were reported in 2017 and 3 124 in 2016.

<sup>107</sup> ECRI GPR No. 15, §§ 8 and 10.

<sup>108</sup> Article 19 (2018), op.cit: 29.

<sup>109</sup> See similar *ibid.* 30.

<sup>110</sup> Article 10 (1) and (2) of the ÖRF Act and Article 30(1) and (2) of AMSA.

<sup>111</sup> The [database](#) at the website of the KommAustria did not offer a coherent view of these cases.

<sup>112</sup> This Act transposed the EU Directive 2000/31/EC on Electronic Commerce into national law which is the main legal instrument regulating intermediary liability for user-generated content in the EU and its member states.

down” procedures for hosting providers.<sup>113</sup> It obliges hosting providers to remove “unlawful” content, which includes hate speech, upon notice; they are not obliged to monitor third-party content otherwise.<sup>114</sup> This Act is only applicable to hosting providers, and not to content providers that are covered by the Media Act.<sup>115</sup> In this context, it should be mentioned that in January 2018, the Austrian Supreme Court referred a set of questions to the Court of Justice of the European Union (CJEU) for clarification of the scope of the EU Directive on E-Commerce, particularly on the absence from the Directive of a general obligation to monitor and on the host provider’s liability privilege.<sup>116</sup> In a judgement of 3 October 2019, the CJEU<sup>117</sup> concluded that the EU law does not preclude a host provider such as Facebook from being ordered to remove identical and, in certain circumstances, equivalent comments previously declared to be illegal. In addition, the CJEU held that the EU law does not preclude such an injunction from producing effects worldwide.

54. The authorities informed ECRI that a working group of Federal and *Länder* experts is currently being set up to develop the legal basis for effective action against hatred on the Internet. ECRI welcomes this initiative. On a related note, the authorities further informed ECRI that new legislation, namely the “Federal Act on Diligence and Responsibility in the Network”<sup>118</sup> was proposed in April 2019, aiming at combating online hate speech by requiring social media users and online commenters to provide their real identities to the online platforms,<sup>119</sup> which would then be responsible for verifying the information. ECRI is aware of the wide public debate<sup>120</sup> that surrounds the proposed enactment of this law and the potential risks it entails in relation to freedom of expression and the right to respect for private life. It therefore recalls that any restriction on such freedoms must be proportionate to the legitimate aim pursued and be necessary in a democratic society, as required by the European Convention on Human Rights.<sup>121</sup>
55. Article 283 of the Criminal Code appears to be the main remedy against the use of hate speech in a public context and ECRI takes positive note of several amendments which were made with a view to expanding its application: Article 283(1) is now applicable to cases on incitement to hatred and violence not only against a group of persons but also a specific person.<sup>122</sup> Furthermore, in 2016, the criminal offense of cyber-mobbing under Article 107 (c) was introduced to address, inter alia, online hate speech. Data on convictions under Article 283 in recent years has been provided above (§ 32) and their level remains relatively low. For instance, the case of racist poem by a deputy mayor from the FPÖ (§ 35) did not result in

<sup>113</sup> In this connection, the Federal Ministries drew up a factsheet in May 2018 which serves as a basis for discussions and further exchange on the topic of accountability of providers.

<sup>114</sup> Article 18 reads as “hosting services providers are under no general obligation to monitor the information which they store, transmit or make available, or actively to seek facts or circumstances indicating illegal activity”. (Article 15 of the EU Directive).

<sup>115</sup> Under the Media Act, victims of defamation, insult or slander have a right to financial compensation if the crime was committed in media. Victims can also demand the deletion of statement(s) after a criminal conviction is issued or if the author is not reachable or the prosecution/conviction is not possible, can demand the publication of the judgement by the media outlet. (Articles 6, 33, 36).

<sup>116</sup> Article 14 of the EU Directive on E-Commerce exempts a host provider from liability for information stored by a user if the host does not have actual knowledge of illegal content.

<sup>117</sup> *Eva Glawischnig-Piesczek v Facebook Ireland Ltd* (case C-18/18 ECLI:EU:C:2019:821). In this case, the applicant, who is an Austrian member of parliament, sued Facebook Ireland in the Austrian courts. She sought an order that Facebook Ireland remove a comment published by a user on that social network harmful to her reputation, and allegations which were identical and/or of an equivalent content. See [Press Release](#) and [the judgment](#) of the CJEU .

<sup>118</sup> This [draft law](#) is referred to as “Digital Mask Ban” in public discussions.

<sup>119</sup> The draft legislation covers platforms with more than 100 000 registered users and an annual revenue above €500 000.

<sup>120</sup> Politico (2019). NGOs published critical opinions on this draft law. See Amnesty International Österreich (2019); ZARA (2019).

<sup>121</sup> On the liability of Internet news portals for the offensive online comments, see ECHR case law -inter alia, *Delfi AS v. Estonia*, (GC, no. 64569/09, 16.6.2015); *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (no. 22947/13, 2.2.2016).

<sup>122</sup> In 2017, the Austrian Supreme Court found that asylum seekers also fall under the protection of the first sentence of Article 283(1) of the Criminal Code. See Oberster Gerichtshof, (OGH), 5.4.2017, [15 Os 25/17s](#).

criminal prosecution. In this respect, ECRI recalls that the authorities should ensure that anyone who engages in hate speech as covered by Article 283 of the Criminal Code is duly prosecuted and punished. ECRI also notes that while other criminal offences such as slander (Article 111) and insult (Article 115) can also be invoked for hate speech cases in practice, these offences are private charges and can therefore not be investigated/prosecuted ex officio by the police and the public prosecutor's office.

56. ECRI also recommended in its last report that Austria should ratify the Additional Protocol to the Cybercrime Convention concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Regrettably the ratification procedure has not yet been completed. ECRI therefore strongly reiterates its recommendation.

## **B. Hate-motivated violence**

57. In general, Austria's Federal Police does not use the term hate crime in its recording methodology. However, the category of "politically motivated crime" is divided into four subcategories: right-wing/extremist, xenophobic/racist, antisemitic and islamophobic. The annual report of the BVT includes selected data and breaks down the figures on incidences of right-wing extremism as well as the figures concerning some particularly relevant crimes, such as bodily harm, threat and damage to property.<sup>123</sup> 1 075 politically motivated crimes were reported in 2018 with a slight increase compared to 2017 (which was 1 063).<sup>124</sup> Out of these 1 075 offences, 732 (68.1 %) were rightwing/extremist, 236 (22 %) were xenophobic/racist, 49 (4.6 %) antisemitic and 22 (2 %) islamophobic. Between 1 January and 31 March 2019, the Antidiscrimination Office of Styria documented 28 islamophobic insults (in particular against Muslim women); 11 insults based on ethnicity, and seven on skin colour; as well as five bodily attacks (one based on ethnicity, four on religion) in the region of Styria.
58. The data provided by the NGOs indicate higher numbers of cases of hate crimes. According to the Dokustelle, 540 cases of violence and threats against Muslims, particularly targeting women which often involves pulling off face veils and headscarves or being spat at, were recorded in 2018 (compared with 309 cases in 2017).<sup>125</sup> ECRI always calls for strong actions to prevent or punish such attacks, since public humiliation of this kind undermines human dignity, creates fear and isolation as well as hinders integration. The Forum Against Anti-Semitism also reported 503 antisemitic cases in 2017 and 477 cases in 2016.<sup>126</sup> Recently, an exhibition in a Viennese park featuring the portraits of Holocaust survivors was vandalised three times which caused a public outcry.<sup>127</sup>
59. Expert bodies and civil society groups consider that hate crime is generally under-reported<sup>128</sup> by victims particularly due to a lack of trust in law enforcement bodies. A recent EU FRA survey among persons of African descent pointed out this very problem finding that the respondents in Austria have the lowest level of trust in the police.<sup>129</sup> The authorities informed ECRI about the "Gemeinsam Sicher" (Safe together)<sup>130</sup> initiative that aims to bring police closer to citizens which ECRI

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<sup>123</sup> EU FRA (2018a): 29.

<sup>124</sup> Verfassungsschutzbericht (2018):33.

<sup>125</sup> Dokustelle (2019):30.

<sup>126</sup> Das Forum gegen Antisemitismus (FgA) (2018): 28-29.

<sup>127</sup> DW (2019c).

<sup>128</sup>The level of underreporting was confirmed by a recent survey in which Austria has the lowest reporting rate (8%) among respondents who felt racially or ethnically discriminated while the average was 16%. See EU FRA (2018c): 43.

<sup>129</sup> EU FRA (2018c): 30; EU FRA (2019a) : 97.

<sup>130</sup> <https://www.gemeinsamsicher.at/index.html>

considers as a **promising practice**. Nonetheless, ECRI notes that under-reporting undermines any evaluation of the effectiveness of the response to hate crime and therefore encourages the authorities to implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular Black and Muslim communities.

60. ECRI recommends that the authorities facilitate closer cooperation and institutionalise a continuous dialogue between the police and groups at risk of hate-motivated crime, in particular Black and Muslim communities.
61. In its fifth report, ECRI recommended that the authorities set up a system for recording and monitoring of racist, homophobic and transphobic incidents and the extent to which these incidents are brought before the prosecutors and pursued through the courts. ECRI notes that there is currently no obligation for police<sup>131</sup> to record the possible bias motivation for an offence in their crime reports.<sup>132</sup> Besides, racist motivation as an aggravating circumstance under Article 33 of the Criminal Code, is only taken into consideration at the end of a trial when a guilty verdict has been reached and the sentence is to be determined. ECRI is concerned that this does not permit a complete picture to be drawn of hate-motivated crime, including violence, in order to provide an adequate response and recalls that that an efficient, uniform and obligatory data gathering mechanism for police crime statistics is crucial to obtaining a clear picture of the extent of hate crime.
62. ECRI recommends that the authorities set up a comprehensive data collection system offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome and that this data is made available to the public.
63. Regarding the investigation of hate crime, ECRI welcomes the establishment of specialised departments in the public prosecution offices in 2017 to deal with certain criminal offences such as incitement to hatred (Article 283 of the Criminal Code) and the NSPA. However, it regrets that these units have not yet become operational. While ECRI takes positive note of the adoption of the updated guidelines on Article 283 of the Criminal Code<sup>133</sup> in November 2019, it nonetheless urges the authorities to provide further training for police officers, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence, including improved procedures for recognising bias-motivations.

### III. INTEGRATION AND INCLUSION

#### A. Migrants

64. By the end of 2018, there were about two million people with a migrant background living in Austria (23.3 % of the population)<sup>134</sup>. Among the foreign nationals in the country, the largest groups originate from Germany (192 426), Serbia (121 348), Turkey (117 231), Romania (112 684) and Bosnia-Herzegovina (95 839).<sup>135</sup>
65. Austria was one of the three main destination countries (with Germany and Sweden) of asylum seekers during the migration influx in 2015. ECRI commends the great resilience shown by the authorities in meeting their responsibilities at that time while dealing with as many as 88 340 persons seeking asylum. During its

<sup>131</sup> In this respect, note should be taken that there is ongoing work, which is part of an EU project, run by the Ministry of Interior and the Ministry of Justice, with a view to developing a common solution to recording discriminatory motives in the police database.

<sup>132</sup> In an answer to a [parliamentary question](#) in 2019, the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice reported that Austria does not systematically collect statistical data on hate crime including bias motivation and such data could only be obtained by means of a nationwide manual evaluation of relevant records of public prosecutors and judiciary.

<sup>133</sup> Erlass vom 8. November 2019 zum Leitfaden zum Tatbestand der Verhetzung (§ 283 StGB), [2. Auflage](#)

<sup>134</sup> 1 492 million of them are first generation immigrants (born abroad) while 0,52 million of them are Austria born (second generation)

<sup>135</sup> Bundesministerium für Europa, Integration und Äußeres, [Zahlen Daten Indikatoren 2019](#) : 29.

contact visit, the ECRI delegation visited the reception centre in Traiskirchen where asylum seekers are first received when they come to Austria and were impressed by the efforts made to cater for their needs, both physical and psychological.

66. The number of asylum applications dropped in the following years: 42 285 in 2016, 24 735 in 2017 and 13 746 in 2018. The main countries of origin of asylum seekers in 2018 were Syria (24.2%), Afghanistan (15.4%) and Iran (8.1%).<sup>136</sup> According to the UNHCR<sup>137</sup>, as of the end of 2018, there were 167 195 persons of concern in Austria living as refugees (128 769), asylum-seekers (37 364) and stateless persons (1 062). In this section, ECRI examines the situation of migrants, including refugees, and asylum seekers, under the principle that the earlier integration begins the better the outcome.
67. Austria's integration policy is based on the Federal Law on the integration of persons legally resident in Austria without Austrian citizenship (Integration Act), which entered into force in June 2017.<sup>138</sup> The Integration Act regulates the central framework conditions for the integration of third country nationals living and settling in Austria for a long-term period.
68. The Integration Act follows a 'rights and responsibility' approach: it defines the integration process with distinct responsibilities on the part of the state and concrete integration steps on the part of migrants. It focuses on language acquisition, values education and orientation for persons entitled to asylum or subsidiary protection upon reaching the age of 15.<sup>139</sup> The Integration Act also foresees a mandatory integration declaration. By signing this, persons covered under this Act agree to subscribe to Austrian core values and commit to complete language training at A1 and A2 level and an orientation course of eight hours organised by the Austrian Integration Fund (ÖIF). From June 2017 to January 2019, 24 687 persons nationwide successfully completed such courses.
69. The Integration Act was complemented by the Integration Year Act (IJG), which was adopted simultaneously. IJG targets persons entitled to asylum or subsidiary protection and asylum seekers with a high probability of recognition and primarily aims to further develop the language component of the Integration Act with respect to long-term integration into the labour market. It offers a bundle of measures including a 'competence check'<sup>140</sup>, German courses starting from A2 level (A1 level is a pre-requisite for entering the programme), support for the recognition of foreign qualifications, civic and vocational orientation and job training. The Austrian Public Employment Service (AMS) oversees this one-year mandatory programme under the IJC. ECRI notes that although no overall evaluation of the Integration Act or the IJG has been carried out, the Expert Council for Integration publishes annual thematic reports with recommendations and selected cases.
70. While ECRI welcomes the above legislation and the genuine efforts that have been made by various state authorities across sectors, it regrets to observe that this positive trend has been reversed recently by several legislative changes, which introduced significant restrictions to integration measures (see below, as relevant).

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<sup>136</sup> Expertenrat für Integration, Integrationbericht (2019): 17, 24.

<sup>137</sup> UNHCR [Statistics](#).

<sup>138</sup> This Act has taken inspiration largely from the document entitled 50 Action Points adopted in 2015. ECRI notes that the forerunner of the integration framework was the National Action Plan for Integration (NAP.I) which dates back to 2010.

<sup>139</sup> The Expert Council for Integration: Integration Report (2017): 40. This age limit follows compulsory schooling, in which school education provides younger refugees with the necessary knowledge of the German language and of the basic values and principles.

<sup>140</sup> The Competence Check is a tool used to assess the skills, qualifications and language knowledge of refugees. It is used to help the Austrian Public Employment Service (AMS) decide on an individual's employability and/or needs for further training and support measures. Before the IJC was adopted, the AMS Vienna piloted the Competence Check system in 2015 and tested it with a first cohort of 898 refugees. European Parliament (2017); EU Commission (2018a); EU Commission (2018b); UNHCR (2019b).

- **Legal status**

71. The Federal Agency for Immigration and Asylum (BFA) under the Federal Ministry of Interior (BMI) has authority to decide cases at first instance in the asylum procedure. Out of 57 200 final decisions taken in 2018 (2017: 66 300), 48 % of them were positive and granted the applicants refugee status (14 696), subsidiary protection (4 191) or humanitarian protection<sup>141</sup> (1 922).<sup>142</sup> When their status is recognised, refugees are issued a residence permit for three years, while persons granted subsidiary protection obtain it for one year (renewable for two years). Humanitarian protection is limited to one year. In case of negative decisions, asylum seekers can make an appeal before the Federal Administrative Court.
72. Pursuant to the Asylum Act, asylum seekers may contact organisations offering free legal advice during the appeal process. Two not-for-profit organisations, ARGE Rechtsberatung (Diakonie and Volkshilfe) and Verein Menschenrechte Österreich, were contracted by the Ministry of Justice and have been providing such legal advice. This arrangement will come to an end following the adoption of the Law on the Federal Agency for Care and Support<sup>143</sup> (Agency) in June 2019. The Agency will become operational in January 2021 and will be subordinate to the Federal Ministry of Interior (BMI). It will provide legal advice to asylum applicants and any assistance for return to their countries of origin. Several organisations,<sup>144</sup> including UNHCR and OHCHR, expressed serious concerns about the independence of this agency and view this as placing the rule of law at risk, as the BMI is the authority that also decides upon asylum applications. In ECRI's view, this change raises serious questions about independence and transparency, which could lead to potential or real conflict of interest in the determination of asylum seekers' status.
73. ECRI recommends that the authorities place an increased emphasis on the institutional and structural independence of the future Federal Agency for Care and Support and ensure that free legal aid and advice is provided to asylum seekers by a fully independent structure.
74. ECRI believes that people are most likely to become integrated if they obtain the citizenship of the country in which they live and have the same rights as nationals. Naturalisation is also an important factor in improving migrants' well-being<sup>145</sup> and states should facilitate the process rather than set up obstacles to it. After amending the Naturalisation Act in September 2018, the duration of residency required for refugees to qualify for citizenship was extended from 6 to 10 years, provided that other eligibility criteria<sup>146</sup> are also fulfilled. ECRI regrets this regression.<sup>147</sup> For beneficiaries of subsidiary protection, the waiting period is 15 years, which ECRI considers excessively lengthy. In contrast, ECRI takes positive note of the provision for facilitated naturalisation on the basis of integration efforts.

<sup>141</sup> This status, which gives an exceptional residence permit, is granted under Article 56 of the Asylum Act 2005 ("Residence Title for Particularly Exceptional Circumstances"). For more information, see Bassermann, M. (2019); Lukits, R. (2017).

<sup>142</sup> Integrationbericht (2019): 26. Asylum application statistics are available on the [website](#) of the Federal Ministry of Interior (BMI).

<sup>143</sup> Der Bundesagentur für Betreuungs- und Unterstützungsleistungen (BBU-Errichtungsgesetz – BBU-G).

<sup>144</sup> UNHCR (2019a); OHCHR (2019). See also Agenda Asyl (2019) and EU FRA (2019b).

<sup>145</sup> Council of Europe Commissioner for Human Rights 2016.

<sup>146</sup> Sufficient income in the last 3 years; proof of knowledge (B1) of the German language; successful completion of integration course; absence of a criminal record.

<sup>147</sup> UNHCR considers, as a matter of best practice, that the required period of residency for naturalisation should not exceed five years for refugees.

- **Family reunification**

75. ECRI regrets that family reunification for persons granted refugee status under the Asylum Act, which covers only spouses and minor children,<sup>148</sup> was further restricted in 2016 with the introduction of a three-month time-limit for applications after the status recognition. Outside this time-limit, additional requirements, such as sufficient income, health insurance and stable accommodation, must be fulfilled.<sup>149</sup> Subsidiary protection beneficiaries can only apply for family reunification after a three year waiting period and provided that additional requirements are met. Costs for visa applications, which are necessary for the procedure, were also increased.<sup>150</sup> ECRI considers that the result of restricting or delaying family reunion is unnecessary human suffering and poorer integration outcomes.<sup>151</sup> Family reunification procedures should be accessible, affordable, proportionate, timely.
76. ECRI recommends that the Asylum Act be amended to provide for more categories of persons eligible for family reunification and to allow persons under subsidiary protection to have access to family reunification earlier, bearing in mind the right to respect for family life, and in order to enhance integration.

- **Language courses**

77. Since language is a key factor in integration and inclusion, ECRI is pleased to note that one focus of the Integration Act is acquisition of the local language, as stated above. As soon as they are granted protection, refugees and subsidiary protection beneficiaries have access to free of charge German classes offered by the AMS and/or the ÖIF. The authorities informed ECRI that there are around 20 000 slots available per year for these classes.
78. ECRI regrets that due to a recent amendment to the Asylum Act, which entered into force on 1 September 2018, the possibility for asylum seekers with a high probability of recognition (§ 69) to benefit from language courses is now subject to available financial means, making the integration support for these persons very difficult to obtain at the Federal level. Some *Länder*, such as the City of Vienna, try to compensate for this gap by providing free German courses for asylum seekers under the StartWien project, which ECRI considers a **good practice**. ECRI strongly encourages the authorities to meet the language learning needs of all migrants under the principle of integration from the beginning.<sup>152</sup> On the other hand, ECRI welcomes the plentiful offerings across different *Länder* of German language courses for those whose status is recognised. For instance, such courses have been organised by Municipal Department 17 (MA 17) of Vienna in co-operation with qualified course providers that offer more tailored programmes including courses for women and young adults between 15 and 25 years.

- **Social benefits**

79. ECRI notes that the needs-based minimum benefit system (BMS) in Austria has been an important factor for the integration of persons granted asylum or subsidiary protection.<sup>153</sup> Based on an agreement between the Federation and *Länder*, BMS provided a social security allowance in the form of cash benefits for subsistence, housing and health care. The distribution of BMS recipients across the federal

<sup>148</sup> According to the decision of Administrative High Court, siblings are not considered a family member eligible for reunification.

<sup>149</sup> Asylum Information Database- AIDA (2018): 114.

<sup>150</sup> A fee of EUR 200 was introduced per person over 6 years old and EUR 100 for persons under 6 years to apply for family reunification under the Asylum Act, making family reunification the most expensive procedure at Austrian embassies.

<sup>151</sup> See Council of Europe Commissioner for Human Rights 2016.

<sup>152</sup> See [Report](#) on the 2018 Council of Europe and Association of Language Testers in Europe (ALTE) survey on language and knowledge of society policies for migrants.

<sup>153</sup> Anyone who is able to work and entitled to permanent residence in Austria has the right to claim BMS. This includes refugees or persons under subsidiary protection. BMS is requested as an income supplement, if a certain minimum income level is not achieved.

provinces was extremely uneven as each *Länder* adopted its own BMS system with different parameters. Almost half (161 900, 49%) of BMS recipients in 2017 were foreign nationals. Amongst these, slightly over half (approximately 88 000 or 55%) were persons entitled to asylum or subsidiary protection.<sup>154</sup>

80. ECRI notes that in some *Länder*, like Lower Austria and Salzburg, persons entitled to subsidiary protection were not eligible for needs-based minimum benefits and were only supported by federal funding for basic care<sup>155</sup>, which is significantly lower. Civil society organisations expressed their concern about the dire conditions in which these persons live. Furthermore, there have been cases brought before the Austrian Constitutional Court in recent years concerning restrictions to social benefits introduced by several *Länder*. For example, the rule under which Lower Austria provided more limited benefits to persons who had stayed in Austria for less than five years was found unconstitutional.<sup>156</sup> In an application for a preliminary ruling initiated by the Regional Administrative Court of Upper Austria, the CJEU ruled that EU law precludes national legislation from granting fewer social benefits to refugees with a temporary right of residence than to nationals or refugees with a permanent right of residence.<sup>157</sup> ECRI considers that significant disparities between *Länder* in allocating social benefits could result in considerable internal migration, putting holistic integration across the country at risk.
81. The BMS system is being replaced with the new Social Welfare Act adopted in May 2019.<sup>158</sup> The new Act initially made the receipt of social benefits dependent on the applicant's language level: the full amount could only be obtained if a beneficiary has a good knowledge of German (B1 level) or English (C1 level). However, in December 2019, the Austrian Constitutional Court declared this provision as unconstitutional and it has been repealed.<sup>159</sup>

#### - **Education**

82. ECRI is pleased to note the continuous efforts of the authorities to facilitate better education outcomes among migrant children. All children are welcome into the education system from the earliest moment and assisted by the State to learn sufficient German to enable them to fully fit into the school track on an equal footing. ECRI commends this and welcomes the special German classes, the allocation of extra-funding to the *Länder* governments for language support<sup>160</sup> as well as the so-called 'bridge courses' for migrant children with low German competency.<sup>161</sup> Since the migration influx in 2015, the Federal Ministry of Education has set up 'Mobile intercultural teams' (MIT) as a response to the increasing numbers of migrant pupils, which ECRI notes as a **promising practice**. The MITs support schools, teachers, parents and pupils and complement school psychologists in implementing preventive measures and counselling.<sup>162</sup> Specific remedial programmes have also been designed for young people from migrant backgrounds who are considered to be potential early school leavers.

<sup>154</sup> The Expert Council for Integration (2018): 69.

<sup>155</sup> Basic Care can be provided in three different forms. Article 9(1)-(3) GVV-Art 15a and the respective Basic Care Acts of the federal provinces. See Asylum Information Database- AIDA (2018): 72.

<sup>156</sup> VfGH, Entscheidung G 136/2017-19 ua.\* 7.3.2018.

<sup>157</sup> Ayubi v Bezirkshauptmannschaft Linz-Land (case C-713/17 ECLI:EU:C:2018:929).

<sup>158</sup> Sozialhilfe-Grundsatzgesetz und Sozialhilfe-Statistikgesetz sowie Änderung des Integrationsgesetzes-IntG.

<sup>159</sup> VfGH, Entscheidung G 164/2019-25, G 171/2019-24, 12.12.2019.

<sup>160</sup> From 2018/2019 school year, students with an inadequate command of German enrol for support classes for a maximum of four terms (15 lessons of German as a second language at primary level and 20 lessons in lower secondary education).

<sup>161</sup> A bridge course was created by the Ministry of Education for children with good schooling level that want to continue their studies. The authorities informed ECRI that 269 bridge courses catering for 4 500 adolescents were organised.

<sup>162</sup> EU Commission (2018c): 112.

83. Despite these efforts, academic underperformance among pupils with an immigrant background is still pronounced. Immigrant pupils (whether born in Austria or foreign-born, with two foreign-born parents) are more than twice as likely as those without an immigrant background to fail to achieve baseline academic proficiency.<sup>163</sup>
84. Various interlocutors indicated to ECRI that the situation of asylum-seeking children aged 15 to 18 years is particularly challenging since they are no longer covered by compulsory education ('Schulpflicht') but also are not subject to compulsory training ('Ausbildungspflicht'). Some *Länder* try to address this loophole by providing different options, such as the City of Vienna's Youth College offering free courses for young people aged 15 to 25 to prepare for secondary schools, vocational training or a permanent job.

- **Employment**

85. In 2018, 23% of the workforce in Austria had a migrant background (2008: 17%) in Austria and the employment rate of 15- to 64-year-old persons with such background was 66% (compared to 75% of those without a migration background).<sup>164</sup> The authorities informed ECRI that around 30 000 recognised refugees or beneficiaries of subsidiary protection are registered as unemployed. At the same time, the number of vacant apprenticeship programmes<sup>165</sup> that cannot be filled is increasing, particularly in the *Länder* located in western Austria. In this regard, ECRI regrets that asylum-seekers are no longer eligible to participate in apprenticeship programmes after a change in the legislation in 2017.<sup>166</sup>
86. ECRI takes positive note of the measures that employment agencies have recently taken for the early integration of asylum seekers, in particular those with a high probability of recognition, and refugees into the labour market. For instance, the Public Employment Service (AMS) conducts so-called competency checks (§ 69). However, in light of funding cuts to the AMS, such checks cannot be maintained at the same level as in previous years. The AMS in cooperation with other bodies also regularly organises a get together with migrants to bring them in direct contact with companies and potential employers.
87. ECRI was informed that there is a workforce shortage of around 162 000<sup>167</sup> across the country in a number of sectors and considers that refugees and asylum seekers could help to remedy this shortage, in particular in the hospitality and catering sector, where there is high demand. In this context, ECRI highlights the cross-regional apprenticeship services project 'b.mobile' for young refugees<sup>168</sup>, which was initiated by the Federal Chamber of Commerce (WKO), the AMS, and the Federal Ministries of Economy and Labour, as **promising practice**. During its contact visit, ECRI was also particularly interested in learning about the 'Mentoring for Migrants' programme run by the Austrian Integration Fund (ÖIF), the AMS and the WKO with a view to supporting skilled individuals of migrant background in entering the job market through the networks of their mentors.
88. ECRI also welcomes the activities of the Diversity Charter<sup>169</sup>, which was voluntarily signed by 240 companies and institutions in the private and public sectors. ECRI

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<sup>163</sup> OECD (2018): 20.

<sup>164</sup> Bundesministerium für Europa, Integration und Äußeres, Migration und Integration, [Zahlen Daten Indikatoren 2019](#) : 56, 58.

<sup>165</sup> The apprenticeship system in Austria holds a great importance and offers a dual vocational education and training (VET), combining company based training and education in vocational school. See Federal Ministry of Digital and Economic Affairs (2018).

<sup>166</sup> ECRI notes that despite this change, those asylum-seekers who had already started an apprenticeship programme can finish their programmes.

<sup>167</sup> Information received from the Austrian Federal Chamber of Commerce.

<sup>168</sup> EU Commission (2019c): 60.

<sup>169</sup> <https://www.wko.at/site/Charta-der-Vielfalt/index.html>

considers that the impact of this excellent initiative, which builds on the intrinsic motivation of organisations to promote diversity, could be further increased.

89. ECRI recommends that the authorities, in cooperation with employer and employee organisations, conduct a needs analysis in sectors with a high workforce shortage and develop tailored apprenticeship programmes in these areas for all migrants, including asylum seekers.

## B. Roma

90. There are no official statistics on the Roma population in Austria but it is estimated (Council of Europe estimate)<sup>170</sup> to be around 35 000 persons.<sup>171</sup> The Roma Strategy, which was adopted in 2012, is coordinated by the National Roma Contact Point (NRCP) established within the Federal Chancellery. The Dialogue Platform<sup>172</sup>, set up by the NRCP, is intended to ensure the effective monitoring of the Strategy's implementation and promotes exchange of good practices. Civil society groups indicate that both horizontal (across ministries) and vertical (with federal and local levels) coordination structures and mainstreaming Roma inclusion across institutions are rather weak and the capacity of the NRCP remains limited (only one person).
91. In 2017, the Roma Strategy was updated after initiating a survey and consultation on the website of the NRCP. While this process was found to be innovative for enhancing the participation of relevant stakeholders, some NGOs claimed that the level of participation was still low.<sup>173</sup> Nonetheless, this consultative process led to the inclusion of the policy areas 'Women' and 'Young people' into the Strategy at the request of Roma associations<sup>174</sup> and the priorities of the Roma Strategy have been defined as follows: i. education, ii. employment, iii. combating anti-Gypsyism, iv. empowerment of Roma women and girls, v. strengthening of the Roma civil society, vi. empowerment of Roma youth and vii. participation.<sup>175</sup> ECRI is particularly pleased to note that combating anti-Gypsyism is explicitly recognised as a strategic priority and that the Strategy regards social recognition and appreciation as a basic prerequisite for successful inclusion of Roma. Equally, ECRI welcomes the focus on women and girls as this holds a higher potential to address the specific problems and vulnerability experienced by these persons due to the intersectionality of gender and ethnicity. It therefore encourages the authorities to effectively mainstream gender in all their policy actions.
92. As regards education, ECRI takes positive note of the progress made in the educational inclusion of Roma children through different measures in recent years. These include reducing the number of early school leavers; providing job coaching supports to students; free after school support services and offering Romani language classes. The Roma school mediation and extra-curricular tuition provided by Roma NGOs in public schools, which ECRI was informed was most appreciated by beneficiaries and school principals, is considered by ECRI as a **good practice**. Regrettably, this programme could not be expanded due to lack of funds.<sup>176</sup> Currently, there are four mediators in Viennese schools financed partly by the

<sup>170</sup> See CAHROM [website](#).

<sup>171</sup> Some NGOs estimate that the number is as high as to 105 000 - see Romano Centro (2018):7. In Austria, Roma are recognised as a national minority since 1993. This status is limited to the so-called autochthonous Roma, who have been living in the country from the 15th century onwards and are 5 000 persons. Other Roma communities, who migrated to Austria in 1960s, do not enjoy this status. The Roma Strategy in the country covers both groups.

<sup>172</sup> This platform regularly brings together representatives of the Federal, Länder and municipal authorities with civil society associations and science and research experts. It has met 18 times so far. See EU Commission (2019b): 52.

<sup>173</sup> Romano Centro (2018) : 15.

<sup>174</sup> EU Commission (2019b) : 49.

<sup>175</sup> Federal Chancellery (2017).

<sup>176</sup> Romano Centro (2018): 17. In 2018, funding for [this programme](#) given to NGO Romano Centro was also cut by 15%.

Ministry of Education, the Ministry for Foreign Affairs and under the time-bound European Social Fund (ESF) from November 2015. Given the important role that Roma mediators have been playing in following up cases of drop out and acting as an intermediary between schools and Roma families, ECRI urges the authorities to institutionalise their functions and increase their number at schools across the country.

93. ECRI notes that a negative factor for Roma integration is limited and unequal access to employment. ECRI therefore commends the steps taken in increasing the job opportunities for Roma through two consecutive targeted project calls<sup>177</sup> on - Roma-Empowerment in the Labour Market- issued by the Federal Ministry of Labour, Social Affairs and Consumer Protection and financed by the ESF. This specific programme invited organisations to develop projects which offer vocational and educational guidance, vocational training and counselling.<sup>178</sup> Reports<sup>179</sup> indicate positive results such as the increasing percentage of Roma with vocational training and recognised qualifications.
94. ECRI notes that while some aspects of the Roma Strategy yielded promising results, progress has been made primarily through targeted funding under the special funds, the European Social Fund (ESF) in particular. The remaining objectives under the Strategy are mostly financed through mainstream funding programmes which do not refer to the Strategy nor do they explicitly target Roma.<sup>180</sup> ECRI understands that there is no mechanism in place to ensure that Roma are reached by those mainstream programmes and the resulting projects.
95. ECRI recommends that the Roma Strategy be accompanied by an evaluation of all projects implemented over recent years, on the basis of comprehensive and gender disaggregated equality data. The Strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with local authorities and members of the Roma community, and adequate funding should be allocated for the strategy to be effective.

#### IV. TOPICS SPECIFIC TO AUSTRIA

##### - **Aligning the anti-discrimination legislation**

96. ECRI notes that the anti-discrimination legislation in Austria remains complex and fragmented due to the division of competence between the Federation and the *Länder*, scattered over numerous federal and provincial laws under a multi-tiered institutional framework.<sup>181</sup> The Equal Treatment Act (ETA) covers discrimination on the grounds of sex, ethnic origin, religion or belief, sexual orientation and age in the area of employment. The Act also covers discrimination on grounds of sex and ethnic origin in the area of access to goods and services including housing. In addition, discrimination on grounds of ethnic origin is covered in the areas of social protection (including social security and public health care), social advantages, and education.’ The ETA applies to certain public-sector fields only, such as social protection and education; and also to some extent to the private sector. Anti-discrimination laws of each *Länder* cover different areas and sectors as well.

<sup>177</sup> In 2015, the total budget of the funding programme was 3.5 million EUR for 42 months. In August 2018, a second call was published for the period of May 2019 to December 2022 with a total budget of 4 million EUR.

<sup>178</sup> Among others, the project – Romano Zuralipe- run by Romano Centro led to positive results. See the [project link](#)

<sup>179</sup> CoE, European Social Charter (2019):76-81; EU Commission (2016): 37.

<sup>180</sup> The National Funds for Integration have apparently funded only one Roma-specific project. Romano Centro (2018): 18. See also EU Commission (2019a).

<sup>181</sup> Under the Constitution, neither the Federation nor the provinces have the exclusive power to regulate anti-discrimination, leading to a having more than 30 laws at the *Länder* level and five laws at the Federal level as well as several equality institutions.

97. During ECRI's contact visit, civil society organisations and equality bodies expressed their concern about the distinction between the ETA and anti-discrimination laws of each *Länder*, providing varying degrees of protection for different grounds of discrimination which often result in confusion and legal uncertainty. In ECRI's view, this constitutes an obstacle to access to justice because victims of discrimination may find it difficult to navigate the legal landscape without the help of specialist lawyers. In its fifth report, ECRI recommended that the federal authorities merge the various anti-discrimination acts and that the ETA include a general prohibition of discrimination in the private and public sectors on all grounds listed in ECRI's GPR No.7. Regrettably, the situation remains the same.<sup>182</sup>

98. ECRI recommends that the authorities make legislative amendments, both at federal and *Länder* level as necessary, with a view to ensuring accessible and effective general anti-discrimination legislation covering all grounds and all areas, in line with its General Policy Recommendation No. 7.

- **Racial profiling**

99. Several reports<sup>183</sup> draw attention to the allegations of police misconduct, including racial profiling. Representatives of the Black and Muslim communities have raised concerns about a possible profiling of persons with repeated identity checks. The EU-FRA survey shows that 66 % of respondents with Sub-Saharan African background were stopped by the police in the five years before the survey and 37% of them perceived it as racial profiling, which was the highest among participant countries (EU-28 average was 8%).<sup>184</sup>

100. In 2018, the footage of a police check regarding a Viennese rap artist of African descent in Josef-Strauß-Park was widely covered in the media.<sup>185</sup> In 2019, the police launched an investigation into a gang alleged to have been involved in drugs and called it "Operation Roma", on the basis of the ethnic origin of the suspects, thereby labelling the Roma as criminals.<sup>186</sup> ECRI is particularly concerned that although the Austrian legislation prohibits racial profiling and provides a legal framework to deal with such complaints, there have been only two judgments on racial profiling so far.<sup>187</sup> Moreover, despite the fact that the Austrian Ombudsman Board has a competence to deal with cases of racial profiling (as ECRI recommended in its last report), no statistics have yet been made available in relation to complaints about this issue. ECRI recalls that racial profiling has substantial negative effects and undermines trust in the police by the communities concerned (§ 59),<sup>188</sup> leading to underreporting of racist acts. Specific police training is essential on this matter and the Austrian Ombudsman Board should use its powers to investigate allegations of police racial profiling and misconduct.

101. ECRI recommends further training for the police on the issue of racial profiling and on the use of the reasonable suspicion standard.

<sup>182</sup> See similar observations UN HCR (2015): para. 11-12 ; CoE FCNM (2016): para. 13; UN CEDAW (2019): para. 12.

<sup>183</sup> ZARA (2018); ALES and Universität Wien (2018); Die Antidiskriminierungsstelle Steiermark (2018).

<sup>184</sup> EU FRA (2017a): 69-70; EU FRA (2018c) : 31-32.

<sup>185</sup> Ze.tt(2018) ; Der Standard (2018) ; Die Presse (2018) ; ORF.at (2018).

<sup>186</sup> ORF.at (2019b).

<sup>187</sup> Die Antidiskriminierungsstelle Steiermark (2018). According to ALES study cited in above footnote, out of 1 518 cases examined on alleged mistreatment by police, the public prosecutor's office submitted criminal complaints before courts only in seven cases.

<sup>188</sup> See the Explanatory Memorandum to ECRI GPR No. 11, §§ 27-39.



## INTERIM FOLLOW-UP RECOMMENDATION

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The specific recommendation for which ECRI requests priority implementation from the authorities of Austria is the following:

- (§ 73) ECRI recommends that the authorities place an increased emphasis on the institutional and structural independence of the future Federal Agency for Care and Support and ensure that free legal aid and advice is provided to asylum seekers by a fully independent structure.

A process of interim follow-up for this recommendation will be conducted by ECRI no later than two years following the publication of this report.

ECRI had made a second specific recommendation recommending that the authorities revise the relevant provisions of the new Social Welfare Act, which would have required greater language proficiency in German or in English, as a condition for receiving the higher level of social benefit. ECRI's recommendation was made with a view to preventing discrimination and social inequality in the provision of social benefits. However, in the time between the drafting of this report and its adoption, the Austrian Constitutional Court repealed these provisions as unconstitutional. (See § 81 of the report) ECRI considers, therefore, that this recommendation has already been implemented.



## LIST OF RECOMMENDATIONS

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The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 6) ECRI recommends that the authorities bring the provisions of the Ombud for the Equal Treatment's (OET) competences, independence and effectiveness in line with ECRI's General Policy Recommendation No. 2 on Equality Bodies. In particular, they should i) extend its mandate to cover hate speech, the grounds of colour, language, citizenship and gender identity and intersectional discrimination; (ii) make sure that its mandate covers all areas of the public and private sector that are under the competence of the Austrian Federation; (iii) provide it with the competences to intervene in the legislative procedure; represent people exposed to racism and discrimination before the courts and institutions; bring cases in its own name and intervene in legal proceedings as *amicus curiae*, third party or expert; (vi) stipulate that it drafts annual reports for discussion by parliament and government. The authorities should also i) ensure that both the Equal Treatment Commission and the OET are fully independent at institutional and operational level, and ii) provide both institutions with sufficient human and financial resources.
2. (§ 16) ECRI recommends that the authorities give instructions to schools to include human rights education in the mandatory parts of their curricula and reinforce initial and ongoing teacher training on inclusive teaching in diverse classrooms and on effective responses to cases of bullying and discrimination, in accordance with ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.
3. (§ 18) ECRI recommends that the authorities review the provision of the School Education Act concerning the wearing of headgear in order to ensure that it respects the principle of neutrality, pursues a legitimate aim and is free of any form of discrimination against any particular group of pupils.
4. (§ 25) ECRI recommends that the authorities collect data on the number and living conditions of migrants irregularly present in Austria; set up clear and explicit firewalls preventing housing, social security and assistance providers from sharing data on the legal status of migrants with the immigration authorities; and work to eliminate the practical obstacles limiting migrants' access to services in the fields of education, health care and employment.
5. (§ 31) ECRI recommends that intersex children's right to physical integrity and bodily autonomy be effectively protected and that medically unnecessary "sex normalising" surgery and other treatments be prohibited until such time as the child is able to participate in the decision about them, based on the right to self-determination and on the principle of free and informed consent.
6. (§ 43) ECRI reiterates its recommendation that political leaders on all sides take a firm and public stance against the expression of racist hate speech and react to any such expression with a strong counter-hate speech message. All political parties in the country should adopt codes of conduct which prohibit the use of hate speech and call on their members and followers to abstain from using it.
7. (§ 60) ECRI recommends that the authorities facilitate closer cooperation and institutionalise a continuous dialogue between the police and groups at risk of hate-motivated crime, in particular Black and Muslim communities.
8. (§ 62) ECRI recommends that the authorities set up a comprehensive data collection system offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome and that this data is made available to the public.

9. (§ 73) ECRI recommends that the authorities place an increased emphasis on the institutional and structural independence of the future Federal Agency for Care and Support and ensure that free legal aid and advice is provided to asylum seekers by a fully independent structure.
10. (§ 76) ECRI recommends that the Asylum Act be amended to provide for more categories of persons eligible for family reunification and to allow persons under subsidiary protection to have access to family reunification earlier, bearing in mind the right to respect for family life, and in order to enhance integration.
11. (§ 89) ECRI recommends that the authorities, in cooperation with employer and employee organisations, conduct a needs analysis in sectors with a high workforce shortage and develop tailored apprenticeship programmes in these areas for all migrants, including asylum seekers.
12. (§ 95) ECRI recommends that the Roma Strategy be accompanied by an evaluation of all projects implemented over recent years, on the basis of comprehensive and gender disaggregated equality data. The Strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with local authorities and members of the Roma community, and adequate funding should be allocated for the strategy to be effective.
13. (§ 98) ECRI recommends that the authorities make legislative amendments, both at federal and *Länder* level as necessary, with a view to ensuring accessible and effective general anti-discrimination legislation covering all grounds and all areas, in line with its General Policy Recommendation No. 7.
14. (§ 101) ECRI recommends further training for the police on the issue of racial profiling and on the use of the reasonable suspicion standard.

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