



ENAR Shadow Report 2005

Racism in Austria

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Content Table

I. Introduction	3
II. Political and Legislative Developments	5
II.0 Political Developments	5
II.i Anti discrimination.....	6
II.ii Migration, family reunion and asylum policies	7
II.iii Racism as a crime	8
II.iv Counter Terrorism.....	9
III. Communities vulnerable to racism	11
IV. Manifestations of racism and religious discrimination.....	15
IV.i Employment.....	15
IV.ii Housing.....	19
IV.iii Education.....	21
IV.iv Health.....	23
IV.v Policing and racial profiling	24
IV.vi Racist violence and crime.....	27
IV.vii Access to goods and services in the public and private sector	29
IV.viii Media, including the Internet	30
V. Assessing the response.....	34
V.i Anti discrimination	34
V.ii Racist violence and racist crime	35
V.iii Counter-terrorism and protection of human rights	36
V.iv Integration and social inclusion of ethnic and religious minorities	37
VI. Conclusion	41
VII. Bibliography	43
ANNEX: Overall Assessment of Directive 2000/43/EC	46

I. Introduction

The Aliens Law Codification 2005 (the new Asylum Act, the Settlement and Residence Act, and the Aliens Police Act), which entered into force on 1 January 2006 deals a vicious blow to the already marginalised third country nationals. Also adopted in the year was the Disability Equality Package 2005 (Disability Employment Act and the Disability Equal Treatment Act) prohibiting discrimination on the grounds of disability which were introduced to transpose the disability related scope of the Employment Framework Directive, three years too late. Whereas the Disability Equality Package is an important positive development in the fight against discrimination, the Aliens Law Package is a definite reversal, prescribing against migrants, measures of hitherto unprecedented severity.

The Roma still remain the most deprived ethnic group in Austria. Muslims, especially since the London and Madrid bombings of 2005, easily become victims of harassment and discrimination; and of scare speech by politicians. Undocumented migrants are denied access to healthcare and other services. Black Africans are the most vulnerable to racially motivated attacks and this tendency is on the increase; they encounter considerable racism and racial discrimination, including racially motivated assaults and ejection from housing. The consistent pattern of dubious court verdicts in cases involving the death of migrants, in particular of black Africans, strongly suggests unobjective differences in the treatment or equality of treatment that is arbitrarily discriminatory.

The employment situation is still bad for third country nationals. The segmentation of Austria's labour market creates a socio-economic stratification in which low-skilled, low-waged employment is more easily accessible to migrants who, therefore, are underemployed and unemployed much more than native Austrians. The failure of policy over the years to address this segmentation, together with the lack of a central competence for integration policy, exacerbates inequalities in access to the labour market and to goods and services. A diversity oriented integration policy, one that recognises the important contributions migrants have made and continue to make to the economy and society is urgently needed.

The report is organised in six sections. Section two outlines recent electoral developments and provides an overview of recent legislative reforms and their implications for xenophobia and discrimination. Section three provides information on the communities vulnerable to racism and discrimination. Section four discusses manifestations of racism and religious discrimination and indicates some of the responses by civil society (NGOs). Section five assesses the Government's response to racism and religious discrimination in the light of developments in 2005, and of European and international commitments thereby

suggesting scope and possibilities for improvement. Section six concludes by highlighting three most important legislative developments to anti-racism and anti-discrimination work, and the significance of civil society contribution.

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II. Political and Legislative Developments

II.0 Political Developments

The Republic of Austria is a federation composed of nine provinces on the basis of a parliamentary democracy. There are two chambers of parliament, the National Council (183 seats) and the Federal Council (64 seats). Following the November 2002 general elections a coalition of the Austrian People's Party (ÖVP) and the extreme-right Freedom Party of Austria (FPÖ) formed the national government with the senior coalition partner, the ÖVP (79 seats) from which the Chancellor (Wolfgang Schuessel) comes.

Later on, disagreements within the FPÖ (18 seats) precipitated a split as a result of which a new right-wing political party, the Alliance for Austria's Future (BZÖ) emerged on 4 April 2005. With almost all the former FPÖ parliamentarians joining the BZÖ, the BZÖ became the successor party to FPÖ in the coalition and thus became the first party in the Second Republic to participate in government without taking part in an election. The BZÖ holds the vice-chancellorship in the coalition. The Austrian Socialist Party (SPÖ) and the Greens are the federal opposition parties with 69 and 17 seats respectively in the National Council.

In the October 2005 regional elections in the federal provinces of Styria (2 October) and Burgenland (9 October), the ÖVP and BZÖ suffered losses. The SPÖ claimed victory in both elections clinching an outright majority in Burgenland with 52.2% of the votes. Five years ago, the conservative ÖVP attained a 15% lead over the socialist SPÖ but in 2005 the ÖVP won only 38.7% of the votes, falling 3 percentage points behind the SPÖ. This loss, together with the poor showing of the BZÖ which garnered a mere 1.7% of the poll and thus failed to participate in the Styrian government, and the poor performance of the more established FPÖ, which also fell by almost 8% compared to its performance in the state elections of 2000, translates into voters' clear rebuff of the federal government's right-wing policies.

This unmistakable rejection was echoed loud and clear by the performance of the Austrian Communist Party (KPÖ), which won a robust 6.3% of the votes in Styria (the KPÖ did not contest elections in Burgenland). Consequently upon the election defeat, the ÖVP's leading candidate in Styria, Waltraud Klasnic, resigned her political post. Her resignation was an additional blow to Chancellor Wolfgang Schüssel for whom Klasnic was a staunch ally and buffer against party adversaries. In 2004, the ÖVP had lost the state of Salzburg; by losing the majority vote in Styria in 2005 the party thus relinquished the conservatives' second traditional stronghold.

II.i Anti discrimination

Austria failed to “fully” transpose the Council Directive 2000/43/EC (the ‘Race’ Directive) and Council Directive 2000/78/EC (the Employment Directive) by their respective deadlines.¹ Thereafter, the country made legislative progress towards transposition and introduced new legislation prohibiting discrimination.² All other federal provinces apart from Salzburg³ have adopted the required anti-discrimination legislation falling under their competence.⁴ Two Acts (the Disability Employment Act and the Disability Equal Treatment Act) prohibiting discrimination on the grounds of disability were adopted and came into force on 1 January 2006 finally transposing the disability related scope of the Employment Directive.

Additional equality bodies responsible for discrimination on the grounds of race and ethnic origin, religion, age and sexual orientation were also established. In transposing Article 13 of Directive 2000/43/EC which requires Member States to designate “a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin”, Austria extended the powers of two *specialised* bodies⁵ already in existence, to include regulating discrimination that occurs on all other grounds, including gender, but excepting disability. Among the competences of the Ombudspersons are:

- Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- Conducting independent surveys concerning discrimination; and
- Publishing independent reports and making recommendations on any issue relating to such discrimination.

¹ The Austrian Constitution does not confer exclusive power to regulate ‘anti-discrimination’ on either the Federal or provincial legislators. The failure, according to the law of the European Community, meant that the two Directives became applicable in the country at the expiration of the deadlines.

² By July of 2002, three Equal Treatment Acts (ETA) had already entered into force at the Federal level: Equal Treatment Act – ETA (*Gleichbehandlungsgesetz*); Act on the Equal Treatment Commission and the Equal Treatment Office – ETC/O (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*); and Federal – Equal Treatment Act – F-ETA (*Bundes-Gleichbehandlungsgesetz*). The federal ETA obligates the nine federal provinces to enact legislation safeguarding equal treatment in their areas of competence (and jurisdiction), namely: Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna, and Vorarlberg.

³ Salzburg adopted the required anti-discrimination legislation at the beginning of 2006, which came into force in May 2006.

⁴ The Carinthian Act on Anti-discrimination (on 1.1.2005), the Tyrolian Equal Treatment Act (on 12.1.2005), the Tyrolian Act on Anti-discrimination (on 1.4.2005), the Lower Austrian Act on Anti-discrimination (on 30.4.2005). On 1 June 2005, the provinces of Vorarlberg and Upper Austria enacted the anti-discrimination legislation, and later, Burgenland.

⁵ The Ombudspersons and the Equal Treatment Commission.

In July 2005 the ÖVP, the FPÖ and the SPÖ approved the new Aliens Law Codification⁶ (*Fremdenrechtspaket*) which introduced, *inter alia*, the new Asylum Act, the Settlement and Residence Act and the Aliens Police Act, all of which entered into force on 1 January 2006. The Aliens Law Codification transposes several (five) EU Directives.⁷ The unfortunate approval of this most anti-migrant of laws by the social democrats (SPÖ) is not entirely surprising. Since migrant bashing easily sells among the electorate, the SPÖ probably figured that with the next general, legislative elections of November 2006 just by the corner, it was a politically wise thing to do. Did this calculation help them to their victories in the October 2005 regional elections?

II.ii Migration, family reunion and asylum policies

Although the extreme right parties, the FPÖ and the BZÖ, continue to insist that Austria is not an immigration country, current research indicates otherwise. Between 1945 and 1991, some 3.6 million migrants arrived in Austria effectively making the Republic an immigrant country (Fassmann and Muenz, 1992; IOM, 2005). These migrants included a large number of immigrants from Hungary, the Czech and the Slovak Republics and Poland. Between 1998 and 2005 about 200 000 asylum applications were received. How many of these migrants actually live in Austria is not quite clear but according to latest census figures of 2001 about 9% of the Austrian population are foreigners while almost 13% were born abroad.

The largest migrant groups are from the successor states of the former SFR Yugoslavia (351 256) and Turkey (125 025). Vienna, with its increasing diversity, has a foreign-born population of some 25%. Today, foreigners account for 30% of births in Vienna and 18% of births in Austria as a whole.

The main tool for regulating immigration in Austria is a migration quota. In the years preceding 2005 the general migration quota was set at about 8 000 persons per year, which included a sub-quota for family reunification for third country nationals. In 2005, this sub-quota was set at 5 460 permits. The quota system only regulates a small part of immigration; actual immigration is much higher.

In July 2005 the Minister of Justice, Karin Gastinger advocated more stringent naturalisation legislation. She proposed that naturalisation be granted only to persons who have demonstrated a desire to integrate and have adapted

⁶ The reform consists of four Acts and revises provisions in eight more Acts and contains among others, the Settlement and Residence Act (SRA) [Niederlassungs- und Aufenthaltsgesetz], the Aliens Police Act (APA) [Fremdenpolizeigesetz, BGBl. I 100/2005] and the revised Aliens Employment Act [Auslaenderbeschaeftigungsgesetz, BGBl. I 101/2005]. Both laws were issued on 16 August 2005 and entered into force on 1 January 2006.

⁷ Long-term residence, family reunion, free movement of EU citizens, students, measures against human trafficking, proposals for researchers etc.

“sufficiently”. She also proposed that the waiting period for naturalisation be extended to 12 years.

The pieces of legislation introduced by the Aliens Law Codification 2005 reflect a restrictive interpretation and limited implementation of the EU Directives. The Aliens Law package 2005 upholds the existing restrictive system of immigration and employment quotas and permits, which it further extends to cover long-term residents from other EU Member States. The employment and social inclusion policies of Austria are based on the principle that restrictive immigration is the basis of effective integration. This interpretation has adverse implications for integration.

Not surprisingly, only 1 600 residence permits out of the earmarked 7 500 were granted in 2005 to qualified personnel (defined by income)⁸ and their family members.⁹ The provisions of the new Alien Law package severely limit possibilities for family union and reunion. The new, restrictive Aliens Police Act prescribes more severe punishment for asylum abuse, as well as forcible feeding of refugees who go on hunger strike before expulsion. It also grants the police new powers of arrest, search and seizure in the handling of refugees and asylum seekers.

II.iii Racism as a crime

The endorsement of the Aliens Law Codification 2005 by the minority extreme right ‘freedomites’, the FPÖ, was to be expected. But the approval of this most anti-migrant of laws since the history of the republic by two major political parties (the social democratic SPÖ, and the conservative ÖVP) is disappointing. Their endorsement sends the message that migrants or foreigners are not wanted and it encourages discrimination, racism and racially motivated crimes against migrants. By introducing very restrictive legislations that narrowly interpret and implement the EU Directives, the Aliens Law Codification 2005, particularly its Asylum Act and Aliens Police Act, will almost inevitably result in increased, arbitrary incarceration of migrants and subsequent impairment of their human rights with attendant racially motivated crimes against them.

We know from experience that people who have died in detention or as a result of police action are foreigners, especially black Africans. We also know that to date, accounts of such deaths or police action, especially by the courts, have at least been controversial or not entirely satisfactory. What therefore this Aliens Law Codification 2005 does is it legitimates an arbitrary culture of differences in treatment or equality of treatment of third country nationals, by the law enforcement machinery. When the treatment of foreigners is not based on

⁸ Qualified personnel are workers or employees earning more than 60% of a threshold income (€ 3 630.00 14 times a year for 2005).

⁹ See Koenig and Perchinig, 2005.

objective grounds or objective justifications, we then have a violation of the equal protection provisions of the law. Race, together with all other grounds for discrimination, becomes an easy motivation to commit a crime.

II.iv Counter Terrorism

Since the events of 11 September 2001, and especially following the 7 July 2005 London bomb attacks, concern for security has been high on the policy agenda of governments in Europe. The Austrian Government's concerns about terrorism are reflected in a number of provisions of the Aliens Law Package 2005. For example, it prohibits the issue of a resident permit to an alien if there is evidence that the alien is:

- Belonging to or has belonged to a criminal organisation or terrorist group;
- A threat to national security by publicly participating in violent acts, or publicly instigating violent acts or violence;
- Supporting or inciting crimes against peace, war crimes or a crime against humanity or terrorist acts in a public assembly or by spreading written materials (Par 21 section 4 and section 5 subsection 7, 8 and 9 Aliens Police Act (APA)).

Counterterrorism policies of EU governments have tended to negatively impact on fundamental human rights. Muslims easily become victims of harassment and discrimination. While the SPÖ advocated intensified surveillance of radical preachers, the FPÖ demanded shutting down mosques known to host radical preachers.¹⁰ The Green Party expressed concern about using the “fight on terror” as a pretext to undermine or restrict civil liberties.¹¹ President Heinz Fischer has cautioned against “respond[ing] to terrorism with blind hatred or excessive reactions”.¹² Already, amendments to the Asylum Act 1997¹³ provide for “curtail[ing] the asylum seeker’s rights to prepare a defence” and restrict the period during which a preliminary assessment of the refugee’s case is made.

NGOs, as well as the UNHCR and opposition parties, opposed a number of the provisions of the amended Act with the charge that they violated fundamental rights guaranteed under the Austrian Constitution.

In 2005, under the ambit of the newly amended Security Police Act (*Sicherheitspolizeigesetz*) which entered into force on January 2005, seven public spaces including in Vienna, Graz, and Innsbruck have been put under video surveillance by the police. The recorded data is automatically deleted if no

¹⁰ ORF ON (18.07.2005): see <http://burgenland.orf.at/stories/46161> (cited in EUMC, 2005a; p. 36).

¹¹ *Kleine Zeitung* (14.07.2005), p.4.

¹² *Kurier*, (10.07.2005).

¹³ Austria, BGBl 1 101/2003.

suspicious incidents are recorded. On 6 August 2005, the Vienna transport authority (*Wiener Linien*) installed cameras in four trains with the aim of preventing crime and vandalism.¹⁴

¹⁴ Nowak et al., 2005.

III. Communities vulnerable to racism

Roma¹⁵

The Roma number no less than 30 000, and still remain the most deprived ethnic group in Austria. They are traditionally settled in the federal province of Burgenland. Some of them are descendants of Roma who have lived for generations in Austria; others are migrants, or the children or grandchildren of migrants who came to work and live in Austria attracted by the favourable post-World War II economic climate. Still others are persons seeking or receiving asylum as a result of poverty and ethnic pogroms in contemporary Central and Eastern Europe.¹⁶ Thus, the Roma are a long established national minority of Austria and are one of the officially recognized autochthonous ethnic minorities of Austria.

Black Africans¹⁷

According to the figures of the 2001 census, there are about 7 210 black Africans in Austria, some 3 110 of whom live in Vienna. For Africa as a whole, the numbers are 14 223 and 7 159 respectively. The FPÖ and the BZÖ are openly and aggressively hostile to minorities, especially those from sub-Saharan Africa. At the last District and City Council elections in Vienna the FPÖ peddled such slogans as “Learn German, instead of *I not understand*” which significantly contributes to increased hostility towards these minorities and minorities in general.¹⁸ Black Africans are the principal minority group directly subjected to aggressive and blatant prejudice. Africans are often stigmatised, especially in connection with drugs and drugs related crimes. This continues to have extremely negative consequences for the everyday lives of migrants from Africa south of the Sahara and for children of parents one of whom might be native (white) Austrian and the other, black.

Muslims

According to the 2001 census the Islamic community accounts for 4.2% of the membership in the (major) religions. In a recent interview, Anas Shakfeh, president of the Islamic Faith Community in Austria, disclosed that there are some 400 000 Muslims in the country (WIK-VB, 2006). A rise in immigration in the past several years from countries such as Turkey and Bosnia-Herzegovina resulted in an increase in the number of Muslims in the country. In Vienna and the province of Vorarlberg, industry attracted a disproportionately higher number

¹⁵ “Sinti” is said to be an expression used by the Roma in Germany to differentiate themselves from other Roma, and therefore is not necessarily applicable in the Austrian context.

¹⁶ Cahn, 1996.

¹⁷ There is controversy in Austria over the appropriateness of the term “black Africans” (“Schwarzafrikaner”) which is said to already imply racism by separating the northern and southern parts of Africa. The fact of the matter, however, is that while Africans suffer from racism as Africans, the black among them suffer from racism to a greater extent for being black.

¹⁸ Zara. Stellungnahme zur Wiener Landtagswahl 05, http://www.zara.or.at/doc/wien_wahlen05_stellungnahme.pdf.

of guest workers from Turkey and the former Yugoslavia. This accounts for the higher number of Muslims in these places. The Islamic Community is one of 13 religious bodies recognised by Government as religious societies. Under the 1874 law, religious societies have "public corporation" status which permits them to engage in a number of public or quasi-public activities that are denied to *confessional communities* and *associations*. The Islamic Faith Community has a long tradition of good neighbourliness in the country. Notwithstanding this, following the events of 11 September 2001, and especially since the London and Madrid bombings of 2005, Muslims easily become victims of harassment and discrimination.

Asylum Seekers

Data from the Federal Ministry for Interior reveals a dramatic decline in the number of asylum applicants in 2005¹⁹ due in part to the EU enlargement of 1 May 2004. From January to October 2005, a total of 17 730 asylum applications were made, representing a 15% decrease from the number of applications made in the comparable period of the previous year.

The largest number of applications came from the Russian Federation (mostly from Chechnya) and these also received the most number of positive decisions. The second largest number of applications came from Serbia and Montenegro which accounted for the largest number of positive decisions, the second being Afghanistan. The least number of asylum applications came from Bangladesh. Nigerians made 754 applications out of which only 4 were granted asylum. As of November 2005, there was a backlog of more than 38 000 asylum applications. Exactly how many asylum seekers are actually living in the country is not known. Between 1998 and 2005 some 200 000 asylum applications were received; supposedly about 100 000 came from Bosnia and 35 000 from the former communist countries of Eastern Europe, especially Romania.²⁰

Migrant Women

Generally, women already suffer some disadvantages but as members of the migrant community these multiply. Black women are often accused of being prostitutes and of abusing the asylum status. They are often not allowed to take on jobs but are rather assigned "Green Cards" that enable them to work as so-called "self-employed"; in other words prostitutes in most cases. Moreover, anybody receiving this card automatically becomes ineligible to receive the benefits of the federal care system. Muslim women have reported difficulties in the job market when potential employers learn that they wear the headscarf. Women who wear the headscarf have also reported that they experienced harassment in public areas.²¹ Like the girls, young Turkish women are also participating less in education and in the labour market. Observers had hoped

¹⁹ Federal Ministry for the Interior, *Bundesministerium fuer Inneres/Sektion III – Asyl- und Fremdenstatistik Oktober 2005*.

²⁰ Gaechter, 2006.

²¹ www.state.gov/g/drl/rls/irf/2005/51539.htm (04.02.2006).

that victims would be able to use the Equal Treatment Bill, which implemented the EU Anti-Discrimination and Anti-Racism Guidelines and took effect on July 1, 2004, to take action in court. Migrant nurses account for about 66% of the nursing staff in the health system.²²

Undocumented foreign nationals

These are third country national who for some reason do not possess the necessary papers and are therefore not (cannot be) documented. The number of undocumented migrants in the country is not known with any certainty. Some studies estimate there are between 100 000 and 300 000 in Vienna while others indicate that there are more than 500 000 in the whole of Austria.²³ Austrian law requires foreigners must be legally residing in the country in order to be eligible for social assistance and social security. Social and medical care for undocumented migrants is in most cases limited to urgent medical aid.

Ethnic Minorities

The largest minority groups²⁴ are Croatian, Slovene, Hungarian, Czech, Slovak, and Roma. These are the six officially recognised ethnic minority groups of Austria. This designation, however, does not save ethnic minority members from discrimination. For the purposes of this report we include, under this heading, other (ethnic) minority groups who in the past have been migrating into the country such as people from Turkey, Bosnia-Herzegovina and Serbia. Members of these latter groups are not recognised as “ethnic minorities of Austria” but are part of third country nationals. During the debate over whether Turkey should join the EU, the political parties argued against the prospect characterising it as “foreign infiltration”. In addition, the governing parties and the SPÖ together adopted the Aliens Law package of 2005 that not only worsened the condition of ‘third country nationals’ but also regards their presence as inimical to the interest of natives. This leads precisely to restrictions on their security and worsens the already precarious state of the availability of residence permits and possibility for labour migration.²⁵

Jews

The Jewish community accounts for 0.1% of membership in major religions. Violation of Jews has not decreased according to reports from official and independent sources. In addition, there are increasing revisionist activities on the internet, which correspond to increases in young, neo-Nazi and extreme right-wing groupings.²⁶

²² ENAR, 2004.

²³ *Profil*, Nr. 47, 21 November 2005, p. 34.

²⁴ Volksgruppe. See Volksgruppengesetz, Austria/BGBl 396/1976 as last modified by BGBl 35/2002.

²⁵ Stellungnahmen zum Begutachtungsverfahren,
http://www.parlament.gv.at/portal/page?_pageid=908,847519&_dad=portal&_schema=PORTAL

²⁶ Bundesministerium für Inneres. Verfassungsschutzbericht 2005. Seite 25 ff.

In May 2005, the Jewish Community (Israelitische Kultusgemeinde, or IKG) and the Government announced that questions pending regarding the IKG's restitution claims had been resolved. The solution included addressing IKG concerns regarding ongoing financing of the community's security costs and social programmes. The Government strictly enforces its legislation prohibiting neo-Nazi acts, the revival of Nazi ideology or denial of the Holocaust.

IV. Manifestations of racism and religious discrimination

As statistics broken down by citizenship for the year under survey are not available, it is difficult to evaluate the situation and performance of migrants in the eight sectors below in terms of such important data. For better planning, it will be necessary to institute a comprehensive monitoring system that routinely collects actual data on discrimination under the various grounds based on survey instruments. The quantitative data on discrimination assembled by ZARA and other NGOs such as Helping Hands are certainly quite useful and instructive. However, they could be improved if the NGOs had the resources to administer surveys at all applicable levels (nationally, regionally, provincially, etc.) in the country.

In 2005, some 1 105 incidents of racism were reported to ZARA. Women were victims of 45% of the cases, and men 36% while 18% of the incidents was reported anonymously. Only 1% was reported by organisations (ZARA, 2005). These incidents occurred mostly in Vienna; representing only reported cases they do not in any way suggest the number or magnitude of actual cases of graffiti/defacement that occurred during 2005.

If we take the number of reported cases of public graffiti/defacement in racist hate as a casual indicator of vulnerability to racism, then black Africans are probably the most vulnerable. Of the 425 cases of graffiti smearing reported in 2005 to ZARA, some 75% was against black Africans, 10% against Jews, 3% against Turks and 1% against Muslims. 10% was unspecified racist smears.²⁷ When we consider that in 2004, 66% of the reported 266 graffiti defacements of that year was against blacks it is clear both that black Africans are the most vulnerable to racially motivated attacks and that anti-black racism appears to be on the increase.

IV.i Employment

The new national legislation generally covers the entire material scope of the employment Directive 2000/78/EC. In regard to personal scope, there are no residence or citizenship requirements for protection under the relevant national laws transposing the directives. Further more, the national law does not distinguish between natural and legal persons, either for purposes of protection against discrimination or of liability for discrimination. As for the scope of liability for discrimination, in cases of an employment relationship the employer is always liable for discriminatory decisions of superiors affecting their subordinates.²⁸

²⁷ ZARA, 2005.

²⁸ Schindlauer, 2005.

Discrimination, whether racially motivated or motivated by the religious affiliation of the victim, is encountered both before and after employment. In the former case discrimination simply results in the migrant not getting the job. In the latter, though the migrant might eventually become employed he/she is generally recruited in the low-wage labour market segment that requires only low skills. Gaechter (2005) argues that it is the pronounced segmentation of Austria's labour market that accounts for this and gives rise to the social and economic stratification which exacerbates inequalities in access to the labour market. He further suggests that the general recruitment of the migrant under worse/tougher working conditions (than his/her Austrian counterpart) is not necessarily a function of lower levels of education prevalent among people with foreign or migrant backgrounds.²⁹

Third country nationals generally do not realise anything near their full professional potential. The Centre for Social Innovation (ZSI) in Vienna found, in a recent study, that third country nationals accounted for the largest proportion of underemployed, much higher than the national average of 19%; non-naturalised migrant workers born abroad accounted for 45% (more than double the national average) of the underemployed while non-naturalised residents born in Austria accounted for more than 30%.³⁰ Not only do migrants generally get the worse jobs but they also often find it very difficult to be upwardly mobile professionally.

The migrant is also frequently subjected to harassment, verbal abuse and physical assault at work. Notwithstanding the provisions of § 21 (2) of the Equal Treatment Act,³¹ criminal offences of harassment at work falling within the scope of the Directives are, however, not covered by the national laws transposing the Directives. This is because in the implementation of the Directives the prohibition of harassment is restricted to the (successful) violation of dignity, and does not cover (unsuccessful) conduct *with (only) the purpose* of violating dignity and creating the specific environment as required by the Directives.

As a result of these legislative limitations, victims of harassment at work are often not assured the protection of the law³² as the following cases including instances of intervention by NGOs illustrate. The Information Centre for Victims and Witnesses of Racism (ZARA) records in its Racism Report 2005³³ several cases of discrimination at work involving not only people of African origin but also migrants from the Middle East (e.g. Jordan), Asia (e.g. the Philippines, Iran) and Eastern Europe (e.g. Chechnya).

²⁹ See Adam, 2005; Gaechter, 2006.

³⁰ See *Der Standard*, 31 January 2006.

³¹ The ETA defines "harassment" as unwanted conduct that (1) infringes a person's dignity, (2) is unacceptable, undesirable and offensive (indecent) to the person affected and, (3) that creates an intimidating, hostile or humiliating environment for the person affected,

³² See Schindlauer, 2005.

³³ ZARA, 2005.

Case 1

After continuous, systematic verbal and mental harassment by his boss and colleagues, Mr. O, a Nigerian kitchen hand in one of the subsidiaries of the food services company, E., in Vienna found, on 11 February 2005, the picture of a black fellow with a large and more than knee-length genital pinned to his locker. His boss and other male colleagues seized him and had some female (Yugoslav) colleagues undress him for them to see the size of his own penis. In the struggle that ensued, the Nigerian sustained a serious cut in the ankle. The boss promised him a pay raise and job security if he would say the injury was the result of an accident. Out of fear of losing his job, and given the verbal promises, he agreed and told the hospital where he spent three months that he sustained the injury by accident. As the pay raise was not forthcoming he eventually told the hospital the truth about the cause of his injury. He also reported the matter to his trade union (the Österreichischer Gewerkschaftsbund: ÖGB). His boss' response was to reassign Mr. O. to Wienerberg under worse working conditions and with less pay. In December of 2005, as still nothing had happened, Mr. O. reported the case to the police. Subsequently, he brought it to the attention of a Vienna based, prominent criminal lawyer who is the source of this information. As of this writing, no initiative has yet been taken by the police; nor has the public prosecutor seen fit to take up the case.

Case 2

Mr. A. from the Gambia was hired on a part-time basis as a room attendant by a hotel at the Vienna airport in Schwechat in April of 2005. After receiving the miserable amount of 54.75 Euro as payment for the 42.5 hours of work he put in for a week he immediately quit the job and reported the situation to ZARA. ZARA then accompanied him to the chamber of commerce which then ordered the company, in writing, to pay Mr. A. the outstanding amount of 275 euro in lieu of work he had already done for the company. Some weeks later, Mr. A. and his wife informed ZARA that the company had complied with the order.

Case 3

Around midnight one day in March of 2005, an Iranian taxi driver, Mr. K., was waiting at a taxi stand in the 14th municipal district of Vienna when a couple came over towards him. Before he could completely roll down the glass of his window, the lady had opened the door and asked him to ring up another taxi because there were six of them. Mr. K. said he would gladly do that for them but as long as they would wait for it and not take another taxi before it arrived. "Will you call us a taxi or not?" shouted the man at him. Mr. K. got out of his taxi and tried calmly to explain to them. In the meantime the other four people arrived. One of them cursed Mr. K. in obscene language including racist slurs. Mr. K. responded to the insult in kind and said he was not going to drive people who abused him. One of the men grabbed him by the arm; another rushed on him, hitting and kicking him. Overpowered, Mr. K. rang up the police who arrived eventually and took the aggressive ones away. The ambulance took Mr. K. to the hospital.

Subsequently, ZARA accompanied Mr. K. and an attorney of the taxi company he worked for to the court and through the proceedings. Only one of the three aggressors was sentenced and obliged to pay compensation for damages while the others were found “not guilty”. Mr. K. stopped working as a taxi driver and went on to enrol in courses offered through the labour market services (AMS).

Other manifestations

Roma people are particularly disadvantaged in the area of education and as such are often excluded from most areas of socio-economic life in particular employment. A recent survey carried out in the framework of the EU-Equal project *Mri Buri*³⁴ indicated that among the younger members of the Roma community in Burgenland education levels, though improved, are still far lower than the levels in the general population (EUMC, 2004). Through consultations and advice the *Mri Buri* project is assisting them in finding employment (EK, 2005).

The THARA initiative for juvenile Roma with a contact point in Vienna began its operative work (Action 2) in July 2005. THARA aims to lessen the strong fears and resentment of the Roma that is prevalent in Austrian society. To achieve this, it focuses on the more ‘malleable’ juvenile as opposed to adult Roma who already are a product of a society from whose mainstream they have been segregated. THARA recognises the imperative of addressing the culture-specific problems of the labour market and through education, improving the access of the youth to the labour market. In nearly all cases, it is the lack of a school leaving certificate or the possession of a very poor one that inhibits the access of Roma juvenile to the labour market. THARA’s strategies include also job counselling and job placing. One of its strengths is the transnational co-operation among partners in Austria, Hungary and Slovakia — countries with Roma presence — each of which will enrich the co-operation with contributions from its specific cultural setting.

The dire employment conditions of migrants are made much clearer by developments at the national level. At the end of 2005, the number of registered unemployed was 5.8% higher compared to the same period in 2004. The number of women unemployed increased by 6.9% whereas the number of unemployed men increased by 4.7%. The percentage of people between 16 and 24 seeking employment increased by an alarming 10.4%, compared to October 2004. With regard to education, the unemployment rate of unskilled workers with no school leaving certificate rose by 19.2%. The latter group accounts for about 80% of all unemployment.³⁵

In this context, migrant people are increasingly organising themselves in groups to better their conditions. With its Work In Process (WIP) and Equality Mentoring

³⁴ Project homepage: www.ida-equal.at/projekte/157.ht. (cited in EUMC, 2004; p. 26).

³⁵ Press release of the Federal Ministry for Economics and Labour, 03.11. 2005 (cited in Nowak et al, 2005; p. 64).

projects, the *Schwarze Frauen Community* (SFC) seeks to give black women possibilities for access to the labour market. As the Director of the *Schwarzenfrauen*, Beatrice Achaleke, noted during an interview (on 07 April 2006) for this report, Work In Process was necessitated by the lack of black women role models and by the lack of easy access to the labour market in the women's own professional fields. Funded by the Federal Ministry of Labour and the EU, the project is designed to prepare them for the job market by providing them with necessary strategic contacts and information.

The initiatives involve mentoring whereby practising white women professionals (e.g. medical doctors, dentists, journalists, designers, receptionists, teachers etc.) are paired with black women trained in a corresponding profession. The 'trainee' black woman is mentored over a period of time by her practising, white peer who, during the mentoring, acquaints her 'trainee' with practical experience as well as information and contacts that will enable the 'trainee' to ease herself into the job market of the particular profession. So far, the initiatives have helped five black women find employment and one medical doctor from the Sudan is currently doing an internship (practical work) at a hospital in Vienna. A total of six NGOs are engaged at WIP which has about 40 employees most of who would otherwise be unemployed. The Equality Mentoring project is funded by the Federal Ministry of Labour and the EU.

IV.ii Housing

The housing environment is an important factor of integration. It is the *first* environment of the immigrant or third country citizen, for whom it provides the basic security of a living space without which all else may not follow. To be a meaningful basis for integration, however, the housing environment must meet certain basic requirements. However, third country nationals and asylum seekers generally live in housing units that are old, of poor quality, overcrowded and over-priced. In addition, they encounter considerable racism and racial discrimination that sometimes results in ejection from housing.

The instances of discrimination in the housing market reported by ZARA for 2005 indicate that victims of housing discrimination in Austria are diverse. They include Egyptians, Serbs, Turks, Italians, Poles and Nigerians, in fact, all persons who are not "native Austrians" and irrespective of whether or not they are EU citizens. As a result of discriminatory practices in the housing sector, migrant and minority ethnic households tend to live in more unattractive neighbourhoods, with little access to basic facilities including water, toilet and bathrooms, and insecure housing conditions like sub-tenancies or fixed-term rent contracts.³⁶ Because they have limited access to specific housing types or subsidies migrants and minority ethnic groups tend to concentrate in privately owned housing flats. This tendency is itself a reflection of their limited access to public housing facilities.

³⁶ Harrison et al, 2005.

Although citizenship status is a crucial determinant of who benefits from allocation of public housing, discrimination in the housing sector does not necessarily cease after the acquisition of citizenship by third country persons.

It is not as if third country nationals do not contribute to housing support fund. In fact, they are required to pay into a public housing fund and yet are excluded from benefiting from their own contributions,³⁷ at least as long as they are aliens. When one takes into account that educational and medical resources spent on migrants are below average, the conclusion is that migrants tend to contribute more to social budgets (including educational, health and care infrastructure) than they receive.³⁸

Case 1

In Villach (Carinthia) a Nigerian family suffered the fate described below following a successful petition by his Austrian neighbours to the district court (*Bezirksgericht*). The petitioners had demanded that the Nigerian and his family be expelled from their residence presumably because his children were loud and noisy. The court heard the case and ruled in favour of the petitioners and the Nigerian family was expelled (ZARA, 2005). This raises question about the effectiveness of the National Action Plan for Social Inclusion 2003-2005 in preventing eviction as it claims. Sometimes third country nationals are denied the opportunity to seek accommodation or to be considered for one with explicit deterrents on the accommodation advertisement such as: “Natives Only!” [*“nur InlaenderInnen”*]. When the deterrent is not so blatant, it is subtle in the form of outrageously high rents that are obviously outside the reach of the targeted visible minorities.

Case 2

Shortly before midnight on a Friday in June 2005 two gun shots rang out in a court yard in Wien-Fuenfhaus in Vienna rousing the neighbours from sleep. In the yard lay a 33-year old Serb with a fatal wound in his stomach. An eye witness summoned the ambulance which brought the man to the hospital. The police, shortly thereafter, apprehended a 65-year old pensioner in connection with the crime. He and the Serb lived one floor from another. In the elderly man’s apartment the police found the weapon of the crime. The neighbours recalled that the pensioner and the Serb had been quarrelling for a week over the older man’s complaint that the Serb’s children were making plenty of noise. On this Friday the noises of the Serb’s kids so bothered the pensioner that he finally stormed down into the yard. There was a loud exchange of words and then two shots from which the Serb died. He was survived by his wife and two children. The pensioner was later arraigned in court. During December 2005 ZARA monitored the court proceedings. The defence pleaded that because of his heavy drinking the pensioner could not remember anything about the event of that

³⁷ Adam, 2005, IOM, 2005

³⁸ Ibid.

night; and that the shots had gone off accidentally. The jury found him not guilty of murder but merely guilty of causing body injuries that had deadly consequences. Racism as a motivating cause was not taken into consideration in the sentencing.

IV.iii Education

Like housing, education is an important factor in integration. It affords migrants the ability to relate to and communicate with society and the system behind it. Education also equips migrants with the necessary skills for gainful employment; as such, good education can mean good employment opportunities and better integration possibilities.

The experience of third country nationals, as already mentioned, indicates that lower levels of education is not necessarily the reason that people with foreign or immigrant backgrounds are more often under-employed or remunerated at lower wage rates than their 'native' Austrian counterparts. Thus, the suggestion by the National Action Plan for Social Inclusion 2003-2005 that a definite link exists between poor education and a considerably lower employment rate is nothing more than a mere theoretical possibility. Realising such a linkage, in practice, would require effective policies on education, housing, and employment as integral parts of an overall integration initiative. But there is no central competence for integration policy at the federal level.

The Equal Treatment Act covers education in regard to the wide federal competences. It proscribes direct or indirect discrimination in education on the grounds of ethnic affiliation thus binding the State and private sectors equally. The term education is defined as embracing all forms of education including higher and further education. Austrian law provides that from the age of six onwards, a child living in the country for a period of at least one school term is obliged to attend school for nine years³⁹ without regard to the legal basis of the child's residence. While the default language of instruction in Austrian schools is German, the law guarantees education of members of the six recognised autochthonous ethnic minorities (Croats, Slovenes, Hungarians, Czechs, Slovaks, and Roma) in their own languages. Migrants have no right to education in their own languages. It is not required that children of migrants be proficient in German at the primary school entry age of six. Those of them exhibiting problems with the German language are not segregated from their German speaking counterparts.

To accommodate the linguistic needs of children with a first language other than German provisions are in place that enable the pupils to attend school for a limited amount of time and receive extra instruction in German language or native language instruction.

³⁹ Sec. 1-3 Schulpflichtgesetz, Austria / BGBl 76/1985, (12.02.85).

The School Education Act allows for such students to be accepted initially for up to twelve months as irregular pupils who participate in class but do not get grades in the same way as regular pupils. It is also possible for irregular pupils to be promoted to the next grade. Once formally irregular students become regular student, they are to receive equal treatment in any respect, including grading. It is questionable whether the formally equal treatment of migrant and native pupils is justified or actually implies a form of indirect discrimination.

Migrant pupils are not directly discriminated against by law; however, at higher general secondary schools, medium-level technical and vocational colleges and higher-level technical and vocational colleges, the specific situation of migrants is hardly taken into account.⁴⁰ It has been suggested that the relative linguistic disadvantages of migrant pupils explain why they tend to predominate in school types with low social prestige and school types that are designated for children with special educational needs. Thus, whereas about 9% of the Austrian population are foreigners, more than 20% of foreigners attend schools with special educational needs and less than 9% attend the upper level academic secondary school (table 1). Linguistic disadvantages are similarly used to explain why migrant pupils are under-represented in school types with high social prestige. Autochthonous ethnic groups do not become visible in education statistics. Education at the university level is subject to tuition fees which are twice as high for third country nationals. Austrian statistics do not document migrant status.

Table 1: Ratio of Pupils with First Language Other than German, in %

	2000/01	2001/02	2002/03
Primary School	14.4	15.3	16.4
General secondary School	13.0	13.0	13.1
Special Schools	23.3	23.5	22.0
Pre-vocational year	12.5	14.6	15.3
Academic secondary school, lower level	7.9	8.3	9.1
Academic secondary school, upper level	7.3	8.1	8.6
Secondary technical vocational college	6.6	7.4	7.7

Ratio of pupils with a first language other than German (excluding Austrian ethnic groups) to all pupils in the respective forms of school.

Source: information sheet of the Department for Intercultural Learning No. 2/2004, Austrian Federal Ministry for Education, Science and Culture.

It has been suggested that at the usual discussion of the results of the aptitude tests that are normally administered to students at the end of the lower level of the academic secondary school (to ascertain students' probable career predisposition), migrant students are usually discouraged from continuing to the upper level of the academic secondary school thus arbitrarily shutting them out of

⁴⁰ NFPA, 2004.

the academic career. There is usually a real potential for personnel to misuse these test results (in much the same way statistics are easily misused) and offer the wrong advice and recommendations to migrant students and their parents especially when the parents do not understand the statistical concept of probability distribution in which the aptitude test results are presented. This sort of misleading counselling also explains in part the under representation of migrant students in the upper level academic secondary school and, therefore, in the under representation of migrants in the academic career.

IV.iv Health

The 1996 agreement by the federal and provincial governments on a health care system reform was preceded by many other reforms. The agreement provided an important directional change in the development of Austria's health system. In accordance with Art 15a of the Federal Constitution Act, the federation and the provinces reached an initial agreement covering the years 1997-2000. A subsequent accord was reached covering the period 2001 to 2004. The Health Care Reform Act of 2005 seeks to facilitate health care financing over the long term through cost control and improvements in efficiency. It stipulates the organisation and financing of the health care system for the period 2005-2008. Further goals include the intensification of preventive measures and thorough assurance and improvement of quality in the Austrian Health Care system.

The objective of the 2005 health care system reform is to develop/institute closer networking of the inpatient (hospital) and outpatient sectors (hospital clinics, doctors in private practice) of the health sector.⁴¹ According to a recent OECD study, Austria has the fifth lowest budget allocated to preventive medicine and ranks way below the average of 2.9%. The report further shows that with regard to preventive medicine, Austria is falling behind and that the total share of health costs has remained at around 7.7% of GDP since 2003.⁴² One of the thrusts of the Health Care Reform Act of 2005 is regular preventive examination of risk-groups, the guidelines for which have already been established by the Federal Ministry of Health and Women (FMHW). It will be difficult, however, for the Reform Act to easily deliver on its objectives and redress Austria's decline in preventive medicine without the services of nurses who start their careers with considerably low wages.

In July 2005, an amendment to the General Social Insurance Act provided the legal basis for introducing the "e-card" system that replaces health insurance vouchers. The e-card is equipped with an electronic chip capable of storing all kinds of medical information but currently only contains information on the holder's eligibility for insured health care, social security number, name, and date of birth. Many NGOs are strongly opposed to the fact that the e-card which

⁴¹ GoA, 2005.

⁴² "OECD: Mehr Mittel fuer Praevention" in die Presse, 14.11.2005 (cited in Nowak et al., 2005).

facilitates paper-free access to all health care services in Austria is not available to people receiving social assistance (*Sozialhilfe*).

The *Schwarze Frauen Community* (BWC) is an initiative of black women of different nationalities, culture, socialisation, religion, skin colour, languages, ideologies and ways of living etc. united by their experience of racism and sexism as well their commitment to the fight against prejudices, discrimination, exclusion and oppression and with the objective of promoting and supporting the autonomy, self-consciousness, self-determination and self-organisation of black women through their diverse competences. Their common goal is the empowerment of black women in Austria. They engage in raising awareness on the specific difficulties black women face in gaining access to medical services. In 2005 (July to November) the project, funded by the City of Vienna (MA 17, MA 57) and the Federal Ministry of Health, entailed bringing black women and the medical personnel together through the umbrella organisation of all medical institutions and hospitals in Vienna (WKAV).

IV.v Policing and racial profiling

Often, the profiling of migrants on the basis of racial origin manifests itself in subtle ways that are not easily seen or taken as racial profiling. When at criminal prosecutions involving the death of migrants in police custody, in particular black Africans, the courts consistently deliver reasonably dubious verdicts the serious question of whether the courts are acting in good faith cannot fail to arise.

Case 1

On 9 November 2005, a court in Vienna delivered judgment in the criminal proceedings against ten people accused of “negligent manslaughter under particularly dangerous circumstance” in the death of the Mauritanian Mr. Cheibani Wague in 2003. The defendants included: six police officers, three ambulance paramedics, and one emergency physician. The judge determined that only the physician and one police officer were guilty of negligent manslaughter but that the criteria of “being particularly dangerous” as required by law had not been fulfilled; and furthermore that even though two other police officers who had (brutally) restrained Mr. Wague around the upper body had contributed to his death, they were found “not guilty” because of deficiencies in their in-service training! And yet the Anti-Defamation League organises around forty police training workshops a year entitled ‘A World of Difference’. Since 2004, this training has been incorporated as part of the police force’s compulsory basic training (EUMC, 2005c citing NFP, 2004).

Eight of the ten accused were acquitted. But the Wague case made some revelations. It showed that the claim by the then Minister of Interior, Ernst Strasser, that his police had not done anything wrong was false. It showed that the report of the investigations by the Bureau of Internal Affairs (*Buero fuer*

Interne Angelegenheiten) — subordinate to the Ministry of Interior — that the police officers involved had not committed any wrong doing was false.

Case 2

The criminal investigations into the death of a Nigerian inmate, Mr. Edwin Ndupu, after he had been brutalised by prison guards did not even make it to court because the Justice Minister simply discontinued the case. Also the case against the police officer who had shot the Romanian, Mr. Nicolae J., during a car chase was dropped. Similarly, a potential criminal case against a police officer who had shot the 28 year old Kurd Binali Ilter in dubious circumstances was dropped.

Case 3

Another, perhaps more revealing case was the “sudden” death on 4 October of the Gambian teenager Mr. Yankuba Ceesay in his cell in the detention centre in Linz. On 12 September when he arrived at the centre he weighed 76 kilograms but just two weeks later he was weighing 67 kilograms! The 18-year old Ceesay had been taken to the Linz General hospital for medical examination and about two hours after he was brought back from the hospital was found dead in his cell. Why did the physician at the detention centre not notice the remarkable change in body weight? As the reason for Ceesay’s sudden death was not of interest to the police or public prosecutor it naturally did not suggest to them the need for investigations and possibly criminal proceedings. It turned out, however, as the weekly magazine *Profil* later reported, that Mr. Ceesay had been on hunger strike (neither eating nor drinking) since 23 September 2005 (and the police knew it) and not since 28 September as the police had earlier claimed (*Profil* Nr. 6 of 6 February 2006).

It is highly unlikely that above cases (and similar more) involving migrants could have been handled exactly the same way (both by the police, the public prosecutor and the court) if the victims were (white) native Austrians.

Case 4

In present times when racist and xenophobic discourse is no longer confined to the fairly limited sphere of extreme-right political parties, political leadership is crucial for countering prejudice against migrants. But when notable politicians’ discourse incites prejudice rather than preventing or minimising it, it is either with a view to provoking racist violence or racial profiling. For inflammatory language especially from political leaders can only be counterproductive.

A case in point was the public warning by no less a personality than Mr. Reinhold Lopatka, the General Secretary of the governing senior coalition partner, the Austrian People’s Party (ÖVP), of a possible spread of danger in Austria from intolerant Islam. Of course, this raised serious concerns in the Muslim community. In a written condemnation of Mr. Lopatka’s remarks, Mr. Baghajati described the very idea of an intolerant Islam in Austria as a sign of intolerance on Mr. Lopatka’s part, and wondered whether Mr. Lopatka was espousing a new

party agenda of the ÖVP or had merely made a careless gaffe. Mr. Baghajati further recalled that Mr. Lopatka's islamophobic sentiments were at odds with the more objective and realistic assessments of Mr. Andrea Khol, the President of the National Council of the Parliament and Ms. Elisabeth Gehrler, the Federal Minister of Education, both of whom on the occasion of the silver jubilee of the Islamic Faith Community in December 2005 noted that peace, mutual respect and tolerance were the basis on which this Islamic celebration was able to take place annually, and warned against discussing problems that existed elsewhere in Europe as if they existed also in Austria.

Mr. Baghajati did not see any grounds for Mr. Lopatka's malicious and dangerous insinuation; nor could he understand how the pluralistic and democratic outlook of the Muslim community in Austria remotely suggested any extremism or intolerance.

Case 5

During the Ramadan fasting month in 2005, two Muslim employees of the firm ISS were laid off for taking some 10-15 minutes fast break time from work at sunset. This same company prohibited Muslim women employees from wearing head scarves during work. In a protest letter to the company, the leadership of the Muslim community in Vienna condemned these drastic measures and appealed to the company to rescind them because they contradicted the anti-discrimination law as well as the principles of the United Nations Organisation (UNO). The appeal also asked the company to respect the personal decision of their Muslim women employees who have freely chosen to observe the dress code of their religion.⁴³ The letter, happily, was enough to persuade the company whose personnel chief subsequently conveyed the company's compliance with the request in writing.

According to the 2001 census, membership of the Islamic Community accounts for 4.2% of overall membership in religious societies in Austria. Along with 12 other religious bodies, the Islamic community has for years been enjoying the status of a religious society in accordance with the 1874 Law on Recognition of Churches. During these years the Islamic community, in accordance with its responsibilities under the law as a religious body, has provided good quality education to Muslims; the religious and social peace of Austrian Muslims need not be disparaged.

Case 6

In a speech on 19 April 2005, the Austrian politician, Mr. Siegfried Kampl, Mayor of the town of Gurk, and member of the lower chamber of parliament (*Bundesrat*), condemned the rehabilitation of members of the Austrian Armed Forces who had deserted the army during World War II. He called the deserters "assassins of battle comrades", and criticised the treatment of Austrian Nazis after 1945 as "brutal persecution" since "more than 99% of Austrians" had been

⁴³ Personal communication from Tarafa Baghajati, March 2005.

members of the Nazi party". By this, he of course brought down a storm on his head and came under heavy pressure to resign. He first agreed to resign but then changed his mind saying the Federal Council President, George Pehm (SPÖ), had asked for his resignation in a "provocative manner". But he did resign his membership in the BZÖ because he did not want to burden the party with controversy. The fact that Mr. Kampl was scheduled to assume the six-month rotating presidency of the Federal Council on 1 July, left-wing law makers demanded the Chancellor, Mr. Wolfgang Schuessel (ÖVP) prevent Mr. Kampl from assuming the presidency of the upper chamber of parliament. The lawmakers threatened to walk out if he did not intervene. But the Federal Council itself resolved the matter with a constitutional amendment empowering it to replace, by a two-thirds majority vote, any person scheduled to take over the rotating presidency with another member of the same party. The amendment entered into force on 25 June in time to prevent Mr. Kampl from presiding over the Federal Council.

Case 7

Another politician, John (Graf von) Gudenus (FPÖ), on 26 April 2005, doubted the existence of gas chambers under the Nazi regime. He was speaking during a television programme, and said that people need not make up "taboos but should research physically and scientifically" and that the question whether gas chambers actually existed should not be answered with "yes or no". The next day, he left the FPÖ. The federal president, Heinz Fischer (SPÖ) and federal Chancellor, Wolfgang Schuessel (ÖVP) asked him to resign his mandate in the federal council. The public attorney's office in Vienna started investigations to bring a legal suit against him. In response, Mr. Gudenus said there were no gas chambers in the Third Reich but in Poland. The investigations soon stopped. But when the Green Party sued Gudenus for his statements, the public attorney office reopened its investigations. Mr. Gudenus was later tried for denying aspects of the Holocaust and received a one-year suspended sentence which can be activated if he repeats his offence over a period of three years.

IV.vi Racist violence and crime

Since many crime cases are not reported to the police, available statistics on crime indicate only a small percentage of the discriminatory incidents that occur in the country.

The month of April 2005 was remarkable in many ways. It revealed the extent of the risk of racially motivated assault to which visible minorities, especially black people, are exposed in society. It also showed how indifferent constituted authority (including some of the mainstream media outlets) can be to this risk, thus calling into serious question the effectiveness of the laws themselves.

Case 1

On 2 April 2005, a 17 year old black secondary school student was attacked by skinheads in Feldbach, Styria. The skinheads spewed racist slurs at their victim before and even as they brutally assaulted him. Five days later, on 7 April, two young blacks aged 22 and 23 respectively, were similarly attacked by skinheads in Klagenfurt while shopping. According to the Vienna-based daily, *Kleine Zeitung*⁴⁴ the skinheads were said to have assaulted the black youths because they (the skinheads) did not fancy the skin colour of the blacks. The situation might have gotten worse had the young fellows not put up resistance in self-defence. Also one of the sales clerks in the shop summoned the police to the scene just in time.

Case 2

On 14 April, Mr. Di-Tutu Bukasa, a prominent activist and member of European Network Against Racism Austria (ENARA), was the victim of a violent racially motivated attack by skinheads in downtown Vienna. This group of young right wing extremists assaulted Mr. Bukasa at a parking lot where they began by taunting him with racist slurs and making provocative, obscene references to his skin colour along with chanting Nazi slogans. Then they grabbed him, threw him to the ground, kicked and punched him until Mr. Bukasa bled and was rushed to the hospital where he received medical attention until his condition stabilised.

To date, Mr. Bukasa's assailants have not been brought to trial although they appear to have been apprehended. However, according to Mr. Bukasa's lawyer, Mr. Juergen Stephen Mertens, cases of actual conviction for such crimes are so rare that the chances of a judicious outcome are small.⁴⁵ No one seems to know when the proceedings will begin.

Case 3

The Forum Against Anti-Semitism (*Forum gegen Antisemitismus*) reported 116 anti-Semitic incidents during 2005 including 4 physical attacks. The incidents included name-calling, graffiti/defacement, threatening letters, anti-Semitic Internet postings, property damage, vilifying letters and telephone calls, and physical attacks. The European Union Monitoring Centre on Racism and Xenophobia (EUMC) has declared in the past that anti-Semitism in the country was characterised by diffuse and traditional anti-Semitic stereotypes rather than by acts of physical aggression.⁴⁶

Case 4

In 2005 the Austrian artist and stand-up comedian, Alf Piore, sought to represent Austria at the Eurovision Song Contest with his song *Good Old Europe is Dying*, the text of which Austrian Muslims found quite offensive to their religion and culture. In his January 2005 press statement on the song, Tarafa Baghajati, Vice

⁴⁴ *Kleine Zeitung*, 8 April 2005.

⁴⁵ Personal communication on 10 April 2006.

⁴⁶ www.state.gov/g/drl/rls/irf/2005/51539.htm (04.02.2006).

President of the European Network Against Racism (ENAR) and co-founder of the Initiative of Austrian Muslims (IMO), condemned it as propagating stereotypes of Muslims and perpetuating fear of Islam especially in its identification of Islam with violence. In the end, Piore deleted the offending lines. Muslims have complained about incidents of societal discrimination and verbal harassment. In response to past incidents where Muslim school girls encounter difficulties with school authorities for wearing the headscarf at school, the Ministry of Education, Science, and Culture circulated a policy document in June 2004 to all schools under its jurisdiction emphasizing that the wearing of the headscarf is protected by the right to freedom of religion under the Constitution and the European Convention on Human Rights. It further stated that any efforts designed to prohibit Muslim schoolgirls from wearing it are unlawful.⁴⁷

IV.vii Access to goods and services in the public and private sector

The ease with which migrants can access goods and services, reflects the extent to which they are integrated in society; the easier their access to goods and services, the better integrated they are. With no central competence for integration policy at the federal level and with no formal structures for coordinating integration policy, responsibility and competence for integration initiatives in the variety of sectors (housing, education, employment, health etc.) differ. However, the National Action Plan for Social Inclusion 2003-2005 (NAPincl) identifies the target groups as:

- pupils and young people with inadequate success at school;
- young people with inadequate reading and writing capabilities;
- pupils from migrant families;
- physically and mentally impaired young people.

Sources of impediments to accessing goods and services include the grounds prohibited by law as grounds for discrimination (gender, ethnic affiliation, religion, belief, age and sexual orientation). It is hoped that the Equal Treatment Act which provides for protection against discrimination on the basis of ethnic affiliation, will be some deterrent.

Case 1

Ms. E, a Muslim, went to a clothes shop in Vienna in the company of her friend. She was wearing a headscarf. In the shop she tried on a long coat and just then her child whom she had brought along in a pram began to cry. As she bent over to attend to her baby a salesman screamed at her to immediately take off the coat and leave the shop before the coat touched the floor and got soiled; that, in any case, he did not want any money from foreigners. Ms. E. took off the coat immediately. As she was leaving the shop she said to her friend: "Is he normal?"

⁴⁷www.state.gov/g/drl/rls/irf/2005/51539.htm (04.02.2006)

The salesman overheard it and pushed Ms. E. against the exit door, kicked her behind and hit her in the face. Ms. E. and her friend brought a complaint to the nearby police station. The police called an ambulance. Shaken by the event, the ladies reported the case to ZARA which then sought to bring legal charges against the salesman. The office of the public prosecutor suggested settling the matter out of court, however. ZARA accompanied Ms. E. to a hearing at which it was obvious she was still very afraid and traumatised; so much so that she could not properly articulate her case. The salesman was eventually acquitted. ZARA took Ms. E. to, *Peregrina*, the therapy centre for migrants and there she received therapy. Later, Ms. E. and ZARA together with the Litigation Association (*Klagsverband*) brought a civil rights suit for direct discrimination and harassment against the salesman in accordance with the Equal Treatment legislation. The court of First Instance determined that there had been discrimination and harassment and required the salesman to pay a penalty in the amount of 70 Euro in lieu of damages to Ms. E. Before ZARA went to press in March 2006, the verdict had not yet been put into force.⁴⁸

Case 2

As it is not possible to obtain health security insurance with an illegal status, undocumented migrants have no legal right to benefit from healthcares services. With access to the social security system (including health, accident and pension insurance) denied to undocumented foreign nationals by law, some private organisations (e.g., Caritas, Diakonie/AMBER, Asyl in Not, Verein Ute Bock) undertake to support persons irrespective of their legal residence status in obtaining access to help by negotiating reduced fees or by establishing networks of volunteer doctors and nurses to provide assistance when required.⁴⁹ To further help undocumented migrants towards integration *Die Buten* develops and implements empowerment programmes, which include the offering of German language courses, political education, print and radio journalism courses, and courses in computer literacy and photography (ENAR, 2004). But help and assistance from NGOs alone cannot be enough. For Government to be concerned only with legal migrants means a disregard for the fundamental rights of large numbers of undocumented people and of their contribution to the economy. Dealing only with legal migrants is inappropriate for a successful integration unless the integration Austria means is one whose framework is not all-inclusive. At the European level the framework for integration is based on a holistic approach.

IV.viii Media, including the Internet

Some large-circulation newspapers report regularly on immigration and asylum issues in ways that instigate an atmosphere of hostility toward minorities. Sometimes they achieve the same end with silence as happened in the case of

⁴⁸ See ZARA, 2005.

⁴⁹ Nowak et al., 2005.

Mr. Bukasa whose assault by skinheads was, surprisingly, not reported by a mainstream daily newspaper, *Kurier*. This failure was so very obvious it prompted widespread agitation. Enquiries into why *Kurier* chose to remain remarkably silent were not long in coming probably because *Kurier* is the one daily that routinely reports on black Africans invariably associating them with drugs and related crimes. So individuals and NGOs alike wanted to know why the newspaper failed to report this criminal assault on a black man by some “white” extremists. At the beginning, the editor, Mr. Peter Rabl, explained that his paper failed to carry the news of Bukasa’s assault by skinheads because accounts of the event were so contradictory it was difficult to establish the truth. But Mr. Rabl’s explanation raised even more questions. This explanation was not well received in the black and NGO communities. Protest letters were emailed to Mr. Rabl from diverse quarters demanding further explanation and condemning what some called his papers’ unconscionable silence and others, his very unprofessional judgment.⁵⁰

Meanwhile, the Action Committee of Black People in Austria (AKSMÖ) forwarded a letter to the Minister of Interior, Ms. Lisa Prokop, protesting this sequence of racially motivated assaults on people of African descent living in Austria, and requesting the minister to, among other things, (a) initiate a thorough investigation of the events and the assailants to be brought to justice; (b) publicly announce measures for protecting black people in Austria; (c) declare an official position against and proscription of the skinhead movement in Austria; and (d) put a stop to the systematic mobilisation against black people by some of the media. In Austria, the mass media have contributed to the “ethnicising” of crimes so that Africans are often associated with drugs related crimes and Eastern Europeans with particular forms of organised crime. The disappointment over the failure of *Kurier* to report the Bukasa assault and the wave of email messages to the editor-in-chief was because *Kurier* regularly reports on Africans in connection with drugs crimes and in a way that casts them in the role of scrupulous drugs criminals.

2005 was a remarkable year in the media sector for minority communities in Austria. On 28 November 2005, the first African TV transmitter was launched in Vienna. With its limited transmission, OKTO (Channel 8), provides the African community an opportunity for a more authentic self-representation, albeit once a week. As usual www.afrikanet.info, an extensive German language source for themes and issues about Africa and Africans with occasional reports in English, carried events related to the African community. The website itself, www.afrikanet.info, received the Austrian Intercultural Prize for 2005, while the

⁵⁰ The letters may be accessed at: http://www.afrikanet.info/index.php?option=com_content&task=view&id=61&Itemid=77. About five months later on 30 September 2005, Mr. Rabl was relieved of his post as editor-in-chief of *Kurier*. The explanation was that he and the management had different views about the future direction and development of the newspaper. http://www.extradienst.at/jaos/page/main_heute.tpl?article_id=16032&offset=1120 (03.04.2006)

Ute Bock Prize for Civil Courage was conferred on the Platform for Justice for Seibane Wague, the Mauritanian who was brutally murdered on 15 July 2003 by police as the ambulance team watched.

An important media event in 2005 was the cinema release on 23 September of the documentary thriller *Operation Spring*, a film by Angelika Schuster and Tristan Sindelgruber. On 1st May 1999, a 25-year old Nigerian asylum applicant, Mr. Marcus Omofuma died in police custody aboard a plane in mysterious circumstances. It soon turned out that the mystery was nothing other than that the police had carefully bound up Mr. Omofuma's mouth and nostrils. As public outrage about this inhuman practice grew, Austria woke up one morning to the news that on Monday 27 May 1999 some 850 police officers had stormed apartments and refugee camps throughout the country in search of elements of organised crime. Altogether, some 100 Africans were apprehended during this exercise code-named "Operation Spring". Almost every person apprehended was accused, tried and eventually convicted. The total number of sentences amounted to several hundred years.

The documentary, *Operation Spring*, systematically explores the processes of the trials and carefully studies the core incriminating evidence on which the accused were sentenced, including the methods by which the evidence were obtained. This includes the testimony of witnesses whose identities were kept secret, who were masked when they appeared in court and who testified in the absence of those against whom they testified. Thus, *Operation Spring*, the film, is a systematic critique of the new laws and investigative methods which were tried out in the "Operation Spring" campaign and in the subsequent criminal trials it spawned. The film raises such serious, sober questions as whether a defendant can be sentenced for selling "an amount of heroin and cocaine which can no longer be determined" to "unknown buyers" at an "unknown location", even though the amount is no less than "a certain number of grams or kilograms"?

The film featured people directly involved in the processes such as lawyers, a judge, journalists, an official of the Austrian Federal Ministry of Justice, a former principal witness, as well as a convicted and imprisoned Nigerian. Noting that an extremely important issue was the value currently attached to basic human and democratic rights when members of a minority are suspected of belonging to a criminal organisation, Schuster and Sindelgruber said that their intention in making the film was to contribute, on the basis of a concrete example, to the timeless discussion of basic human rights which demonstrates the universal character of this theme.

Shortly after the appearance of *Operation Spring*, the human rights and anti-racism NGO, SOS Mitmensch, called for a re-trial of all the convicted defendants in the "Operation Spring" trials and solicited signatures from those in favour of a retrial. It gathered thousands of signatures and with that forwarded a request/demand to the Minister in Justice for a re-trial of all the "Operation

Spring” defendants on the grounds that the evidence on which they were convicted was often seriously questionable. To date, response has not been forthcoming from the Honourable Minister. Terezija Stoisits, Member of Parliament (the Greens), and Chairperson of the Committee on Human Rights for her party, forwarded a written query to the Federal Minister of Justice asking, among other things, whether in the Minister’s considered opinion, the film, *Operation Spring*, raised doubts about the fairness of the judgements passed on the defendants.

On 11 December 2005, the Justice Minister, Karin Gastinger, responded to the inquiry. The Minister said that all the experts of the ministry who saw the film were ambivalent about it. She also said that the documentary itself was biased for not including the opinions of security officers and prosecutors. Following the court decision of 9 November on the Chiehani case the European Network Against Racism Austria (ENARA) organised a podium discussion on the verdict. The discussion took place on 12 November 2005 and the panellists included the public prosecutor in the case, a journalist, a lawyer and representatives of the African Community and ENARA. Approximately some 900 demonstrators defied the cold and marched down the streets of Vienna to protest against the verdict.

V. Assessing the response

V.i Anti discrimination

Nowak et al. (2005) have raised a couple of concerns regarding the efficacy of the Ombudspersons responsible for discrimination on race and ethnic origin, religion and belief, age and sexual orientation and who already assumed their responsibilities in the spring of 2005. These concerns are also about the effectiveness of the Disability Employment Act and the Disability Equal Treatment Act.

The first concern is whether the extensive mandates can be efficiently fulfilled by only two Ombudspersons responsible for the entire country. The second concern they raise is whether the equality bodies are sufficiently accessible to potential victims of discrimination. The third concern is whether indeed the public is easily aware of antidiscrimination legislation. The additional equality bodies responsible for discrimination on the grounds of race and ethnic origin, religion, age and sexual orientation were also established in the year.

Government does not directly engage or dialogue with civil society on anti-discrimination. Many NGOs active in the field of anti-discrimination depend on state subsidies and on—often project-based—cooperation with state institutions. Examples of good practices initiated by civil society actors therefore often involve state support in some form or another. By this policy, the state transmits the main responsibility for anti-discrimination to civil society in Austria. However, regarding remedies available to victims of discrimination, the Equal Treatment Act confers third party intervention rights on The Litigation Association for the Defence of the Rights of Victims of Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*).

The Litigation Association assists victims of discrimination in bringing law suits before a civil court under the Equal Treatment Act. Membership in this umbrella association is open to all NGOs active in the field of anti-discrimination; only NGO members have a legal standing before a civil court while non-member NGOs are excluded from any special procedural rights. Compensation for the services of the Litigation Association is limited to honorariums. Several requests have been made to Government for funding but with little success. As lack of funds impedes the services of the Litigation Association to victims of discrimination, Government might to that extent, and even if inadvertently, be undermining the effectiveness of the Directives.

V.ii Racist violence and racist crime

In a court in Vienna on 9 November 2005 the presiding Judge in the trial of the ten persons (6 police officers, 3 paramedics and 1 physician) accused of the death, on 15 July 2003, of a black African, Mr. Cheibani Wague from Mauritania, delivered his long-awaited verdict. After eight hearings that belatedly began on 19 July 2005 Judge Gerhard Pohnert, on the ninth and final court session, ruled that eight of the ten defendants were 'not guilty' as charged; that only two were 'guilty'. i.e. one police officer and the ambulance physician. Each was handed a 7-month suspended prison sentence.⁵¹

In a criminal court in Vienna on 29 December 2005, Judge Wilhelm Mende, after a total 41 court hearings, found Mr. Emmanuel Chukwujekwu, a Nigerian asylum seeker, guilty of 'packaging' an unspecified amount of illicit drugs (cocaine/heroin) in an unspecified number of small parcels and sentenced him to a prison term of 4 years and 9 months. Mr. Chukwujekwu's legal counsel, Dr. Lennart Binder, a prominent criminal lawyer and his client appealed the verdict. Dr. Binder, in an interview, said that he had never heard of a criminal case in which the prosecutor changed the indictment immediately before the end of the trial, and the defendant convicted of the charge introduced shortly before the judge read out his verdict; nor would a white defendant have been convicted on the basis of speculations about an unspecified number of parcels of drugs such as the defendant was supposed to have packaged.

Originally, the following two charges were brought against Mr. Chukwujekwu in the spring of 2000: (1) that he was the boss of a criminal organisation, and (2) that he sold some 2.5 kilograms of illegal drugs. Mr. Chukwujekwu pleaded 'not guilty'. The trial, however, did not start out too well for him. The crown witness against him was masked and anonymous. The interpreter engaged by the court to decipher recordings of bugged conversations in Igbo between the accused and unknown Igbo-speaking persons turned out to be incompetent and biased.

Despite Mr. Chukwujekwu's objections (on these grounds) to the use of the interpreter's evidence, Judge W. Kirschner, after five court hearings found him guilty of both counts and sentenced him to 9 years in prison on 08 May 2001. Mr. Chukwujekwu and his legal counsel appealed the sentence. (Meanwhile, on 27 November 2000, 18 months after he was arrested, he was diagnosed with diabetes.) On 15 January 2002 the Supreme Court ordered a new trial. On 11 July 2002, Mr. Chukwujekwu was acquitted of charge No. 1 (that he was the boss of a criminal organisation) by Judge Rotmayer. The public prosecutor petitioned against this verdict to the Supreme Court, which on 11 February 2003, again, ordered that a new trial be conducted. Mr. Chukwujekwu was still serving his prison term of 9 years for having been found 'guilty' of the initial two charges.

⁵¹ See <http://no-racism.net/article/1451/>

On 13 February 2004 after serving a total of 4 years, 8 months and 2 weeks Mr. Chukwujekwu was granted bail and released from prison apparently on health grounds, and as a result of his petition to the President of the Republic, Dr. Thomas Klestil (with a copy each to *Profil* news magazine, Amnesty International and the Ministry of Justice). The public prosecutor did not object to the bail. Mid-way through the hearings, however, the public prosecutor in mid-2005 introduced another charge, namely, that Mr. Chukwujekwu physically assaulted a prisons official while in prison. In his verdict of 29 December 2005 Judge Mende acquitted Mr. Chukwujekwu of this third charge.

It took several years, a total of 48 hearings presided over by three different Judges for the court to finally figure out that Mr. Chukwujekwu was 'guilty' of a crime he was not charged of all along but which was introduced by the public prosecutor *only* on the judgment day and shortly before the judge read out his verdict! Furthermore, what precise amount of drugs and in how many parcels he had supposedly packaged them were not unambiguously ascertained. But the wonder is not so much that he was found guilty of a charge that was never brought against him, as that he was found guilty of *this* charge only after the formal, original charges that were actively if enthusiastically brought against him were systematically dropped.

These developments raise serious doubts about whether a third country national can really expect justice from the system. If different standards other than the standards implied by the law are used to prosecute third country nationals then something is seriously wrong with the system and its laws. Thus, the real issue is not whether the EU Directives have been transposed or appropriately transposed but whether the machinery of the local system is robust and objective enough to apply the laws without discrimination or without hindrance.

V.iii Counter-terrorism and protection of human rights

The extension of the powers of the police in the Aliens Police Act (*Fremdenpolizeigesetz – FPG*) is based on the assumption that, in principle, aliens constitute a danger to public security. This is a very unhealthy premise. It is not surprising therefore that following the London terrorist attacks of July 7 2005 a number of Islamophobic insults were posted on the internet forums of several daily newspapers. The prevailing expression of Islamophobic tendencies in Austria can be found in racist e-mails and posts in internet forums of the daily news papers or letters received by the Islamic Faith Community. In immediate reaction to the terrorist attacks, the Islamic Faith Community condemned all terrorist and extremist acts of violence. Furthermore, all Muslims have been called upon to actively support peace and the security of the country and its inhabitants.⁵²

⁵² Nowak et al., 2005.

As already mentioned, the Green Party continues to be vocal about using the “fight on terror” as an excuse to undermine human rights. The President of the Republic, Heinz Fischer, is also vocally opposed to responding to terrorism with blind hatred or excessive reactions. Such unnecessary responses come not only as utterances or actions but, more importantly, as laws as is the case with some unnecessarily restrictive provisions of the Aliens Law Codification 2005, which curtails the asylum seeker’s rights to prepare a defence and restricts the period during which a preliminary assessment of a refugee’s case is made.

In the circumstance, and given the climate of racial profiling, a migrant is more likely to be denied a residence permit on the merest suspicion that he/she is a member of a criminal or terrorist organisation than on the basis of established “evidence” — as is required by the law — of the migrant’s membership in such an organisation. After all, Mr. Chukwujekwu, a black African (Nigerian), was first accused of being the boss of a criminal organisation when actually he was not, as the court later determined beyond reasonable doubts. If the issue was simply to decide whether he would be issued a residence permit certainly the decision would have been to deny him a residence permit. And by the way, as of this writing, Mr. Chukwujekwu who is still in the country does not yet have a residence permit. The Aliens Police Act 2005, it must be recalled, empowers the Aliens Police to detain asylum applicants even on the mere assumption that their asylum application will be rejected.

V.iv Integration and social inclusion of ethnic and religious minorities

There is no central competence for integration policy at the federal level, among the provinces, and between the federal and provincial governments. There are also no formal structures for coordinating the different competences within specific sector rules.

Until a 2002 study of the *Europaforum Wien* showed that the city of Vienna was one of the larger immigrant cities in Europe and that it had to be considered as such in the development of integration policies,⁵³

Integration policy in Austria still reflected the ‘age of guest-worker’ policies [in which] migrants were excluded from the mainstream, and ...were depicted as uneducated, a burden to society”.⁵⁴

The *Europaforum Wien* study based its deductions on the facts that the city of Vienna has a foreign-born population of some 25% and was increasing in diversity. The study, which also showed that future demographic trends and developments in key sectors of the economy would depend heavily on immigration, provided the impetus for a cultural shift in Vienna that prompted the

⁵³ Koenig and Perchinig, 2005 citing Antalovsky et al., 2002.

⁵⁴ Koenig and Bernhard, 2005; p. 9.

city government in 2004 to replace the Vienna Fund for Integration with a Department for Integration and Diversity Policies. This new scheme envisages migrants themselves to lobby for their interests through migrants' organisations. To facilitate this, the City of Vienna funded a networking office for migrants organisations represented within the Vienna Integration Conference (VIC), first convened in 2000. According to the Director of the networking office, Alexis Neuberg, VIC currently boasts a membership of 145 registered migrant organisations.

The new Settlement and Residence Act 2005 (Par. 14 – 16 SRA) provides, under the so-called 'integration agreement', for learning German up to the A2 level (instead of the A1 level of knowledge) in order to be allowed to remain in the country and have access to the long-term residence — EC status. This amounts to 300 hours of German and integration courses (instead of 100 hours). Half of the costs to family members will continue to be borne by the federal government provided that the participant completes the course in two years. Minors of up to nine years are exempted from the integration agreement.

New groups such as family members of Austrian citizens who do not enjoy free movement rights are obliged to enter the agreement. Legal sanctions for failing to fulfil the immigration agreement include reduction of reimbursement of expenses, fines and in the worst case, expulsion from the country. These are really very extreme measures and requirements. It is no wonder then that doubts concerning whether, indeed, they are in (full) compliance with the Directives have been raised (see Nowak, et al., 2005). It is as though everything must be done to ensure that migrants are, for the most part, excluded by all means. Onyeji (2006) has drawn implications for this phenomenon:

One of the sad and unfortunate results of the fear and resentment of blacks in Austria is that the black intellectual cadre is effectively being driven out of the country — in droves. Not because they want to leave but because society does not want them to stay. To achieve this objective society has contrived the necessity to routinely deny them employment, which is a civilized way of saying they are not wanted here. At any given year qualified medical doctors, dentists, engineers, holders of doctorate and masters degrees, technicians, etc. of black African descent pack up their belongings and give Austria up as a bad job. These are often products of Austrian schools; and they speak good German. They mostly head for Britain (if they are Anglophone), France (if they are Francophone), and the United States of America (if they are otherwise lucky). Those countries gain, Austria loses.

At the same time, new, younger blacks often not nearly as well educated as the ones society is actively if enthusiastically shedding are flocking into the country — in droves too. These new immigrants, mind you, are the ones principally, if not exclusively, involved in trade in illicit drugs. And they, like everybody else, have a dream. The scenario one foresees in due course is not too difficult to imagine. With much of the intellectual and technical class gone and going, very few black role models will be available to inspire the younger generation of blacks to dignified civil pursuits. The future fallout from such a situation is quite predictable like the fallout from the deferred dream in Langston Hughes' *Harlem*. When a dream is continuously frustrated it tends to explode — eventually; and when a dream explodes — when

hope dies, that is— we can expect *anything*. The sad thing is that it is the children and grandchildren of leaders (and the electorate) of today who will suffer the social upheavals that will *inevitably* erupt in the future as a result of today's short sightedness. This is why the short-sightedness is criminal. For society cannot have it both ways. No society could have it both ways. No society ever had it both ways. Society cannot thwart the illegal dreams of these new black African immigrants and at the same time frustrate the possibilities for them to dream legitimate dreams, and still expect peace and orderliness. This is an immutable law.⁵⁵

Since most of these black intellectuals who have left have Austrian nationality it would appear that the integration initiatives are not working. The easier migrants have access to employment, goods and services, the more integrated they are.

In 2003 women had a 14% greater risk of falling below the poverty line while men had 12.3% risk; the disproportionate rates of older female pensioners (19%) and of single-parent women (31%) are the significant causes (Austria, 2005). There are no reasons to believe that these statistics were not valid for the period under review (2005). Noting that, generally, women are more disadvantaged than men and that migrant women are even more disadvantaged than 'native' women we can safely say that migrant women were at greater risk of falling below the poverty line than the average woman in Austria, a condition which clearly indicates the extent to which migrant women are not integrated.

In its third report on Austria ECRI indicated it was,

...particularly concerned at the climate of hostility reportedly promoted against the Slovenian ethnic minority in Carinthia. The Governor of Carinthia is reported to have played a particularly active role in this respect, especially in connection with his open refusal to implement the rulings of the constitutional Court that accord certain rights to members of this group.⁵⁶

ECRI is further concerned that the reported negative climate might precipitate discriminatory practices against the Slovenian community. In Vienna, 70% of the 'foreign' population live in pre-1918 properties compared to 27% of indigenous Austrians; asylum seekers face more severe problems in obtaining accommodation, experiencing homelessness, rough sleeping and destitute living conditions in federal refugee camps, which have long been criticised by aid organisations.⁵⁷

The Austrian religious community of Jehovah's Witnesses challenged the Religious Communities Act before the European Court of Human Rights for its restrictive criteria for attaining the status of an officially recognised religious society, which they claim violates their right to freedom of religion. On 5 July

⁵⁵ Onyeji, 2006. A Note on Civilized Brutality Against Blacks in Austria. *Die Bunte Zeitung*, Nr. 1, Februar-Marz 2006; p. 12. Also at: www.no-racism.net and www.afrikanet.info.

⁵⁶ Nowak et al., 2005; p.82.

⁵⁷ EUMC, 2005.

2005 the Court declared the case admissible. On the occasion of the OSCE conference on Anti-Semitism and other forms of intolerance, which took place on June 8th and 9th 2005, NGO representatives deplored the fact that members, in particular children, of religious minorities in Austria reported numerous cases of religious discrimination in schools, communities and at the workplace. It was further criticised, that Austrian legislation establishes three different hierarchies in regard to the recognition of religious organisations (Nowak et al., 2005). The Jehovah's Witnesses are among the 10 religious groups that constitute confessional communities according to the law. The others are: the Baha'i Faith, the Baptists, the Evangelical Alliance, the Movement for Religious Renewal, the Free Christian Community (Pentecostalists), the Pentecostal Community of God, the Seventh-day Adventists, the Hindu Religious Community, and the Mennonites.

There are three legal categories of religious organisations in Austria: officially recognised religious societies, religious confessional communities, and associations. Recognition as a religious society under the 1874 law authorises a religious organisation to participate in the mandatory church contributions programmes, to provide religious instruction in public schools and to bring religious workers into the country to act as ministers, missionaries, or teachers. Religious societies have "public corporation" status, which permits them to engage in a number of public activities that are denied to confessional communities and associations. The Government provides financial support for religious teachers at both public and private schools to religious societies but not to other religious organisations. The Government provides financial support to private schools run by any of the 13 officially recognised religious societies.

According to the 2001 census, the religious community is comprises the following: Roman Catholic Church (74.0%); Lutheran and Presbyterian churches including Evangelical Church--Augsburger and Helvetic confessions (4.7%); Islamic community (4.2%); Jewish community (0.1%); Eastern Orthodox including Russian, Greek, Serbian, Romanian, and Bulgarian (2.2%); other Christian churches (0.9%); other non-Christian religious groups (0.2%). Atheists accounted for 12%; 2% did not indicate a religious affiliation.

VI. Conclusion

Several developments occurred in 2005 in the realm of anti-racism and anti-discrimination, but a few are perhaps most momentous. The Federal Parliament adopted the Disability Equality Package (Disability Employment Act and the Disability Equal Treatment Act), which was the culmination of ten years of lobbying by civil society and inter-party negotiations. Within this framework, a new Act on the general equal treatment of persons with disabilities (Disability Equality Act) was passed and three other Acts dealing with disability were amended. The two Equality Acts prohibiting discrimination on the grounds of disability were introduced, transposing the disability related scope of the Employment Framework Directive.

To facilitate protection against discrimination and promote equality, additional equality bodies responsible for discrimination on the grounds of race and ethnic origin, religion, age and sexual orientation were also established. Although the general principle of equality is enshrined in the law, experience has consistently shown that decisions and initiatives of the law enforcement community (the police, public prosecutors, and the judges) often violate this legally binding provision of the Constitution especially in cases involving people of migrant backgrounds. The civil society has been vocal in condemning such differences in treatment or equality of treatment of third country nationals that appear not to be based on objective grounds or objective justifications.

A second important development was the introduction of anti-discrimination legislation in the federal provinces. As already noted the province of Salzburg, which was an exception up to the end of the period under review, finally complied in early 2006. The Acts introduced by the provinces of Carinthia, Lower Austria, Tyrol and Vienna extended the non-employment scope of the Race Equality Directive to all grounds of discrimination thus exceeding the minimum requirements of the Directives. The adoption of the anti-discrimination legislation in the provinces will encourage, no matter how slowly, pro-integration developments nationwide. Third country nationals who have limited access to goods and services, and are discriminated against in employment, housing and education — sectors that are very important for realising an integrated society — now have the legal basis to seek redress. This will also facilitate the response of civil society in initiating or facilitating legal proceedings against discrimination in these sectors.

A third important development was the introduction of the Aliens Law Codification 2005 (the new Asylum Act, the Settlement and Residence Act, and the Aliens Police Act), which constitutes the most restrictive package of laws regulating aliens ever enacted in Austria. Through these Acts, which entered into force in January 2006, the Codification expands police powers and introduces several criminal offences for unlawful immigration and marriages among others.

Whereas the Disability Equality Package, the establishment of additional equality body of laws and the anti-discrimination legislation are important, positive developments in the fight against racism and discrimination, the Aliens Law Package 2005 is a definite reversal, prescribing, against migrants, measures of hitherto unprecedented severity. There is serious concern among members of civil society that the Austrian law on the detention of asylum-seekers does not appear to comply with international standards established by the UNHCR.

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ANNEX: Overall Assessment of Directive 2000/43/EC

Article	Provision	Implementation Status	Comment
2	<u>Concepts</u>		
	Direct discrimination	fully	See comments
	Indirect discrimination	fully	See comments
	Harassment	partial	See comments
	Instruction to discrimination	fully	
3	<u>Scope</u>		
	Employment	fully	See comments
	Vocational training	fully	See comments
	Working conditions	fully	See comments
	Membership of organisations	fully	
	Social protection	fully	
	Social advantages	fully	See comments
	Education	fully	See comments
	Goods and Services	fully	See comments
4	Exceptions for genuine and determining occupation requirements	Yes	
5	Government led positive action measures	No	
6	Anti-discrimination goes beyond the provision of the Directive	Yes	See comments
7	Remedies available	Yes	
	NGO participation in complaints procedures	Yes	See comments
8	Application of the shift in the burden of proof	partially	
9	Victimisation	partially	
10	Government dissemination of information	Yes	
11	Social dialogue on anti-discrimination	partially	
12	Government dialogue with NGOs	partially	

13	Functions of the Equality body		
	Provide assistance to victims	Yes	
	Conduct surveys concerning discrimination	Yes	See comments
	Publish reports	Yes	
14	Review of existing law to ensure that they are compliant with the Directive	Partially	
15	Effective and dissuasive sanctions	No	See comments

Article 2: Concepts⁵⁸

Direct discrimination: **fully**

Comments: Is only legitimate in very restricted cases; the Austrian legislator created own regulations in regard to all grounds covered by the two directives and applying to the whole scope of the law, it only referred to sex as a genuine and determining requirement in regard to job postings.

Indirect discrimination: **fully**

Comments: Indirect discrimination shall be taken to have occurred if provisions, criteria and practices, which put a person of a certain ethnic affiliation at a certain disadvantage, cannot be justified by a legitimate aim (and the means of achieving this aim are appropriate and necessary).

Harassment: **partial**

Comments: Restricts the prohibition of harassment to the (successful) violation of dignity and the creation of a certain environment and does not cover (unsuccessful) conduct with (only) the purpose of violating dignity and creating the specific environment, as required by the Directives.

Instruction to discrimination: **fully**

Article 3: Scope

Employment: **fully**

Comments: Though the law applies to all persons irrespective of their nationality, nationality itself is not a prohibitive grounds for discrimination.

Vocational training: **fully**

Comments: Though the law applies to all persons irrespective of their nationality, nationality itself is not a prohibited ground for discrimination.

Working conditions: **fully**

⁵⁸ Due to the complex structure of the Equal Treatment Act, the regulations on sanctions for discriminatory behaviour cannot be found in one paragraph, but are scattered within the five parts of the Act.

Comments: Though the law applies to all persons irrespective of their nationality, nationality itself is not a prohibited ground for discrimination.

Membership of organisations: **fully**

Social protection: **fully**

Social advantages: (Article 3(1)(f) Directive 2000/43: **fully**

Comments: The Equal Treatment Act binds the state and private actors from discriminating on the grounds of ethnic affiliation in regard to social advantages.

Education: **fully**

Comments: The term education comprises all forms of education including further education. The norms of the law are general enough to seem to be sufficiently broad to cover the protection as required by the Directive.

Goods and services: **fully**

Comments: The protection clause was literally taken from the Directive and so only applies to goods and services available to the public and in regard to ethnic affiliation. Some provisions extend the scope of protection to all grounds (e.g. the Viennese anti-discrimination Act).

Article 4

Exceptions for genuine and determining occupation requirements: **Yes**

Article 5

Government-led positive action measures: **No**

Article 6

Anti-discrimination goes beyond the provision of the Directive: **YES**

Comments: The protection clause was literally taken from the Directive and so only applies to goods and services available to the public and in regard to ethnic affiliation. Some provisions extend the scope of protection to all grounds (e.g. the Viennese anti-discrimination Act).

Article 7: Remedies available

NGO participation in complaints procedures: **YES**

Comments: participation is only for NGOs that are member of the umbrella organisation, *Litigation Association*. This is true for court cases. Any NGO can participate in appearances before the Equal Treatment Commission.

Article 8

Application of the shift in the burden of proof: **Partially**

Article 9

Victimisation: **Partially**

Article 10

Government dissemination of information: **YES**

Article 11

Social dialogue on anti-discrimination: **Partially**

Article 12

Government dialogue with NGOs: **Partially**

Article 13: Functions of the Equality body:

Provide assistance to victims: **YES**

Conduct surveys concerning discrimination: **YES**

Comments: Surveys are very limited and produce largely general statistics enabling only inferences into specific manifestations of discrimination. Surveys are usually not designed to capture data on stratified dimensions of discrimination by socioeconomic sectors, migrant types, and grounds of discrimination.

Publish reports: **YES**

Article 14

Review of existing law to ensure that they are compliant with the Directive: **Partially**

Article 15

Effective and dissuasive sanctions: **NO**

Comments: Depends on the jurisdiction of the court