



European network against racism

ENAR Shadow Report 2010-2011

ENAR SHADOW REPORT

Racism and Related Discriminatory Practices in Austria

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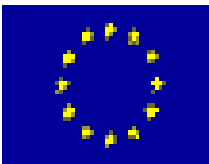
Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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I. Executive summary

This report documents racism and related discriminatory practices in Austria in the year 2010/11. The key findings of the report show that there has been a further tightening of asylum and immigration laws, and an increase in the success of the right wing political parties in Austrian political discourse.

Key Findings:

In the **employment** field, the findings indicate that immigrants continue to earn less. In addition, independent of educational levels non-Austrian citizens have a higher unemployment rate (11 %) than Austrian citizens (7 %).

- The Austrian authorities should promote labour market mobility and allow foreigners to have equal access to the labour market.
- The Austrian authorities should produce an anti-discrimination booklet in order to provide all citizens with the necessary information and enable them to negotiate with knowledge of their rights. This should be part of a nationwide multilingual campaign, by the Austrian authorities, to inform immigrants about their labour rights and training opportunities.

In the **housing** field, the increasing costs of living and rent have had negative effects on immigrants and no major initiatives have been taken to alleviate these problems.

- The Austrian authorities should fund a multilingual information campaign about the existing law of tenancy.
- The Austrian authorities should provide affordable high-quality housing for all.

In the field of **education**, the high concentration of pupils with migrant background in so-called special needs schools and the emphasis put on learning the German language continues to create problems for people with migrant backgrounds.

- The Austrian authorities should integrate diversity in the education curricula in order to incorporate the social, ethnic and cultural diversity of the country.
- The Austrian authorities should abolish the practice of sending pupils with migrant background to special needs schools.

In the **health** field, data indicates that migrants suffer significantly more from chronic diseases than people without a migrant background. In addition, there is a low level of diversity-consciousness in the health care system.

- The Austrian authorities should develop an integrative health care system for all people who reside in Austria.
- The Austrian authorities should promote diversity initiative in the health system.

In the field of **criminal justice**, the report found that there are strong concerns around the attitudes of the police and law enforcement bodies in persecuting offences and providing protection for victims of crimes in Austria. Furthermore, negative stereotypes about foreigners are fuelling racist violence and crimes.

- The Austrian authorities should do away with structural racism and discrimination in the criminal justice system.

In the field of access to **goods and services**, people with migrant backgrounds are often discriminated against with regard to having access to goods and services, both in the public and private sector because of their religion, background or the colour of their skin.

- The Austrian authorities should promote policies for creating more equality in society in order to eliminate the structural economic reasons for many migrants not having access to goods and services.

In the **media** field, although 'migrant media' are under financed, there are some positive developments towards better representation of journalists with immigrant origin or people who belong to ethnic minorities in the mainstream media.

- The Austrian authorities should invest in the media of migrant communities in order to allow them to have public visibility and political power against the triumph of right wing political parties.

In the field of **anti-racism and anti-discrimination**, only minor changes have been institutionalised and those minor changes do not do much to tackle individual incidents of racism and structural discrimination.

- The Austrian authorities should devise laws that are in accordance with human rights standards in integrating migrants.

In the field of **migration and integration**, the report shows that the adoption of a series of amendments to the foreigners law, which were enacted in 2010/11, have negative effects on the protection of the fundamental rights of foreigners.

- The Austrian authorities should reduce the complexity of the asylum laws, and the control and restrictions on asylum seekers.

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III. Introduction

During the year March 2010 to March 2011, there were not many positive initiatives for fighting racism and discrimination in Austria. On the contrary, there was a further tightening of asylum laws. According to the new asylum law § 15a, which came into effect on 1 January 2010, asylum seekers must report to the police at least every two days. Although the official argument for this is to prevent undocumented asylum seekers from hiding, in practice this could result in their detention and deportation.

This restriction undoubtedly strengthens the discourse that portrays asylum seekers and immigrants as criminals, a threat to public security, and a burden on the social welfare system. This tightening of the law was followed by political dynamics that gave rise to the success of the right wing political parties and the failure of the parties of the centre, the Conservative People's Party (ÖVP) and the Social Democrats (SPÖ). In the October 2010 Vienna Municipal Elections, the Freedom Party of Austria (Freiheitliche Partei Österreichs, FPÖ), led by Heinz-Christian Strache, received 26.18 % of the votes. The European Network Against Racism Austria (ENARA) used this election to stage a widely recognised campaign called Repair Democracy (Wahlwechsel),¹ which was launched on 18 September 2010 at the civil society event known as "Let Us Make Ourselves Strong" (Machen Wir Uns Stark).² ENARA called for repairing democracy and for guaranteeing voting rights to the 20.7 % of Austria's inhabitants who are excluded from voting in the municipal elections. As a result, ENARA was quoted, for the first time in its 11 years of existence, in almost all mainstream media.

This report covers the time period from March 2010 to March 2011. It provides an overview of the recent legal and legislative developments in Austria, in the areas of racism and discrimination, and their effects, based on anecdotal information gathered from civil society organisations and NGOs. The first section describes communities vulnerable to racism and ethnic discrimination, with a special focus on people of African descent. This is followed by an overview of the situation and analyses of the political and legal context in the fields of employment, housing, education, health, criminal justice, access to goods and services, media, political and legal developments in anti racism and anti discrimination and migration and integration.

Finally, this report concludes by putting forward a number of national recommendations for each field and general recommendations in the fields of anti-racism and anti-discrimination, and migration and integration.

¹ For more information see <http://wahlwechsel.at/> accessed on 23 August 2011.

² <http://machen-wir-uns-stark.at/content/site/archiv/index.html>, accessed on 23 August 2011.

IV. Communities vulnerable to racism and discrimination

The European Commission Against Racism and Intolerance (ECRI) reported that in 2010 Muslims, black people, Jews, Roma and other national minorities—such as the Slovenian minority in Carinthia—and non citizens: migrants and asylum seekers—were often exposed to racism and discrimination in Austria.³ Therefore, it is important to provide some relevant statistics concerning these communities. According to a 2009 report by Amnesty International, it is estimated that there are around 840,000 foreign nationals legally residing in Austria, which is one tenth of the total population. Foreign nationals and naturalised Austrian citizens make up almost 15 % of Austria's total population, with the largest groups originating from the former Yugoslavia and Turkey, making up around 450,000 and 250,000 persons respectively.⁴

There is no reliable data on how many members of the Roma community reside in Austria. Estimates put the figure between 10,000 and 40,000 people.⁵ The Roma continue to suffer from unequal treatment in the socio-economic sphere largely because of the negative prejudices towards them from the mainstream media and some public figures. For instance, in June 2010 a tightened law on beggars was put into effect in Vienna, affecting the Roma and Sinti communities negatively.⁶

All of the aforementioned ethnic minorities are frequently exposed to systematic discrimination. This is often manifested in Austria's harsh anti-immigration political discourse and in some sections of the mainstream media. For instance, in the political discourse of the predominantly far right political party, the FPÖ, immigrants are associated with begging, asylum abuse, and crimes.⁷ As a result, asylum seekers and immigrants are seen as a liability and threat to the very existence of the Austrian state. Besides this generalised xenophobia, each of the above mentioned communities faces specific prejudices and forms of discrimination depending on the colour of their skin, background, religious beliefs et cetera. This is especially true for Muslims and black people or people of African descent. Amnesty International, citing a 2001 government census,⁸ states

³ European Commission Against Racism and Intolerance (ECRI) on Austria: Fourth Monitoring Cycle, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-IV-2010-002-ENG.pdf>, accessed 28 July 2011, p.30-8.

⁴ Amnesty International, victim or suspect – a question of color: racial discrimination in the Austrian justice system, <http://www.amnesty.org/en/library/asset/EUR13/002/2009/en/2489f108-4004-4330-8bb5-181d93a3c69a/eur130022009en.pdf>, accessed 26 July 2011, p. 12.

⁵ Beatrice Achaleke and Simon Inou, ENAR Shadow Report 2006: Racism in Austria, http://cms.horus.be/files/99935/MediaArchive/national/austria_2006.pdf, accessed 30 July 2011, p. 7.

⁶ Dr. Di-Tutu Bukasa, ENAR Shadow Report 2009/2010: Racism and Discrimination in Austria, <http://cms.horus.be/files/99935/MediaArchive/publications/Austria.pdf>, accessed 20 June 2011.

⁷ Kopanja, Jelena, 2010. Racist Violence Study.

⁸ Above n 4, p. 13.

there are 339,000⁹ Muslims living in Austria; the majority of whom are of Turkish or Bosnian origin.¹⁰ Although the Islamic Faith Community has been recognised in Austria since 1912,¹¹ Islam as a religion is not treated in an equal manner in comparison to other congregations such as the Catholic Church, says Barbara Liegl, head of the Austrian anti-racism organisation 'ZARA.' She believes that this shows the notion of separation of the state and church is at risk in Austria.¹² This was made apparent in the run up to the October 2010 Vienna municipal elections: one of the many racist and discriminatory election campaign slogans used by the FPÖ was "we protect liberal/free women" (wir schützen freie Frauen) which was clearly directed against Muslim women and the burka.¹³ Moreover, an issue of concern is the tactic to use religion as a base for racist propaganda, which is not condemned in the strongest possible terms by the mainstream media or by the political parties of the centre.

In the last decade of the 20th century, a new influx of asylum seeking immigrants from Africa and Asia arrived in Austria. In 2008, the number of people born in Asia and Africa and legally residing in Austria was estimated to be about 100,000 and 40,000 persons respectively. Of these almost 40,000 people of African origin, around 60 %, or 24,000, were estimated to be of Sub-Saharan origin.¹⁴ Asylum seekers and immigrants from Africa are constantly discriminated against in Austria. They live in constant fear of being deported due to the colour of the skin and background. Black men are portrayed as violent while black women are seen as promiscuous. For instance, in the Austrian Parliament, an FPÖ member and former judge, stated "blacks not only look different but are different; in particular, they are especially violent. This is obviously in the nature of these people. They are mostly here illegally, mostly drug dealers, and they are unbelievably aggressive."¹⁵ Such negative public opinions against black people have resulted in their stigmatisation and deportation. For instance, on 4 May 2010 two FC Sans Papiers football players were forcefully deported.¹⁶ Moreover, black women face double discrimination because of their skin colour and gender. Prostitution is the only possibility of income for many black women who enter Austria illegally, which is another form of racism in the job market. At the moment there is neither an organised political movement of black people nor strong cooperation between NGOs and civil society organisations to fight against the discrimination of black people in Austria. For the situation of people of African descent to improve, Africans should mobilise against the violation of their human rights and for their dignity through a common platform and strategy.

⁹ Estimates on the exact number of Muslims residing in Austria varies. For instance, ECRI puts it at 400,000. For detailed information see the ECRI Report at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-IV-2010-002-ENG.pdf>.

¹⁰ Above n 4, p. 13.

¹¹ ECRI Report on Austria: Fourth Monitoring Cycle, p.63.

¹² Author's Interview with Mag.^a Barbara Liegl, Chief Executive Officer, ZARA, 29 March 2011.

¹³ Above n 6, p. 9.

¹⁴ Above n 4, p. 12.

¹⁵ Above n 4, p. 13.

¹⁶ Above n 6, p.11.

V. Racism and related discrimination in employment

V.i. Manifestations of racism and related discrimination in employment

Some of the major problems that need to be addressed in the area of employment are: the high level of unemployment amongst migrants, and discrimination both during recruitment and within employment. The fact that migrants are heavily concentrated at the bottom of the division of labour and earn less did not change in 2010/2011. The Austrian migration regime principally categorises between high-skilled workers and low-skilled workers. With the former highly in demand in the labour market, the regime is set to exclude the latter although they are needed in many economic sectors as a cheap labour force. In addition, a significant change can be noticed in the decreasing number of young migrants that have access to apprenticeships. According to data gained from the official Austrian Annual Statistical Yearbook of 2011, employees of Turkish (66 %) or ex-Yugoslavian (64 %) descent, work as manual labourers more often than the working population without a migrant background (23 %).¹⁷ Another interesting tendency is that second generation migrants have a significantly higher level of labour participation than that of the first generation. Especially within the age range of 35–54 years old. There is no significant difference in labour participation within this age range between people with or without migrant background. However, this cannot be said of women; in particular those of Turkish origin, who have a much lower level of labour participation (41 %) than, for instance, of ex-Yugoslavian women (62 %).¹⁸ In addition, it should be noted that independent of educational levels, non-Austrian citizens have a higher unemployment rate (11 %) than Austrian citizens (7 %).¹⁹ Therefore, it should not be surprising that the wage level of non-Austrian citizens is 16 % lower than that of Austrian citizens and the poverty rate is about three times higher in migrants of ex-Yugoslavian (13 percent) and Turkish (18 %) origin than it is amongst Austrian citizens (5 %).²⁰

In particular, people of sub-Saharan and Turkish descent are highly affected by racist and discriminatory practices both during the recruitment process and within employment, as is indicated by anecdotal data from NGOs. In August 2010, the Ombudsman for Equal Treatment (OET) reported a case of unjustified discrimination against a female Muslim supermarket cashier who wished to wear a headscarf at work. Arguing that she would breach internal rules banning the wearing of headscarves, a superior urged her to resign from her job. The OET found out that the prohibition of religion-based discrimination had been violated. It concluded that as the non-wearing of headscarves is not an essential prerequisite for the work to be performed the continuation of the employment

¹⁷ See the Austrian Annual Statistical Yearbook (migration and Intergration: Zahlen, Daten, Indikatoren 2011) at www.statistik.at, p. 52.

¹⁸ *Ibid.*, p. 50.

¹⁹ *Ibid.*, p. 56.

²⁰ *Ibid.*, p. 62.

relationship may not be conditional upon it either.²¹ The ZARA racism report of 2010 also documented discrimination within employment and during recruitment. For instance, in March 2010 Mrs. E, a Muslim woman, who worked in one branch of a large supermarket chain, was told by her deputy branch manager that wearing a headscarf is forbidden. Nonetheless while she kept on wearing the headscarf, she was pressured into signing a document with twisted facts that later turned out to be a redundancy notice. ZARA confirmed to Mrs. E. that her treatment due to her religion and wearing of the headscarf was discrimination; and referred her to the OET. After a rapid intervention and a note from the OET, the management withdrew the dismissal of Mrs. E and reinstated her back.²² There were also instances of discrimination during recruitment, as is demonstrated by the following example: Mrs. X, a right's advisor for refugees, reported to ZARA that a client of hers, who is of an Afghani descent, was not invited for a job interview as a service employee because, in the words of the hotel manager, he surely could not speak excellent German (which was not the case) and also would not be "presentable." ZARA Informed Mrs. X that a rejection of the candidate only because of his ethnicity is unlawful according to the Austrian Equal Treatment Act (Gleichbehandlungsgesetz, GIBG). Mrs. X informed the OET of the case.²³

Examples of NGO Good Practice

The Latin American Women in Austria (Lateinamerikanische Frauen in Österreich, LEFÖ) is a Vienna-based feminist migrants' organisation founded in 1985. It provides information for sex workers and deals with labour conditions of migrant women. www.lefoe.at.

The Centre for Migrants in Tyrol (Zentrum für MigrantInnen in Tirol, ZEMIT), founded in 1985, is a right's information centre for migrants and also carries out various projects on the integration of migrants into the labour market. www.zemit.at.

V.ii. The political and legal context

An assessment by the Migration Integration Policy Index (MIPEX)²⁴ indicates that, although the objectives in National Action Plan for Integration (NAP) of 2010 may allow for the inclusion of immigrant residents in Austria's labour market, non-EU temporary residents can neither access jobs nor receive general support the

²¹ Author's Interview with Mag.^a Barbara Liegl, 4 August 2011.

²² ZARA Racism Report 2010, http://www.zara.or.at/_doc/2011/Zara_RassismusReport_2010.pdf, accessed 25 July 2011, p. 41.

²³ Ibid., p. 40.

²⁴ MIPEX is an interactive tool and reference guide that assesses and compares integration policy in all European Member States plus Norway, Switzerland, Canada and the USA. It is produced by the British Council and the Migration Policy Group.

way that Austrians can.²⁵ NGOs concerned with employment issues have been demanding an end to discrimination against migrants in the labour market. Unlike in other countries, the right to stay in Austria does not imply an automatic access to the labour market. This is a major problem, for instance, for asylum seekers throughout their asylum procedure. Although from the government's perspective the validation of foreign educational certificates is expected to improve within a short period of time, there is fear that this may result in an enforced internal division between "good" and "bad" migrants. While the demand for equal labour rights will continue to be the focus of many NGOs, some progress can be noticed, for example, with an initiative by the Vienna-based activist-group "Prekär Café," which provides union-based information to undocumented workers.

²⁵ Migration Integration Policy Index (MIPEX), MIPEX III, <http://www.mipex.eu/>, accessed 25 July 2011.

VI. Racism and related discrimination in housing

VI.i. Manifestations of racism and related discrimination in housing

People with a migrant background and especially non-Austrian citizens are discriminated against in the rental market in various ways. Issues regarding renting quality houses and discrimination in the private rental market can be observed in the examples below. In addition, the effect of the current economic crisis, primarily the rising costs of housing and energy, are hitting migrants hard. In urban areas—at least in the big cities like Vienna—the effects of gentrification processes are also being felt by migrant communities. This is more apparent in the changing composition of the inhabitants of mainly former migrant quarters and the increasing eviction of people with migrant origins from certain areas and their subsequent enforced relocation to areas with less access to city centres. This results in less access to social and cultural services and more money for rent. The government's intervention in quarters with a high number of people with migrant background is often augmented with antiracist and many other reasons. In Vienna, the local government works towards a greater “ethnic mixing” of certain parts of the city but a non-publicised effect of this political intervention is rising rental costs, which has the effect of undermining the self organised structures within relatively homogeneous migrant communities. On the one hand, these interventions can be seen as neoliberal division and the separation of existing social networks. On the other hand, and in line with the neoliberal trend towards privatisation, the law of tenancy is increasingly hollowed out and council housing is more and more neglected and left to the free market, with all the consequential social problems. The housing conditions of asylum seekers is also an issue of concern even when asylum seekers are in governmental care (Bundesbetreuung). The available space is much too small and the social tension between people—often traumatised as a result of wars—is an additional burden for asylum seekers. This is especially true when they are concentrated in small villages in mountainous areas without adequate social and cultural facilities; and where asylum seekers are not allowed to leave the asylum centres.

Even the GIBG prohibits discrimination based on ethnic origin; many cases of discrimination have been reported to ZARA. For instance, Mr. G who is an Italian descendent found an advert with a title “Only tenants with Austrian citizenship. Thank You”. ZARA contacted the operators of the webpage and informed them about the GIBG and demanded the removal of this unlawful part of the advert. The advert was removed, although the operators' did not comment.²⁶

The average living space for people with a migrant background (31 m²) is one third less than the overall average (43 m²) for people without migrant origins.

²⁶ ZARA Racism Report 2010, p. 45.

While EU-citizens have about 47 m², people from Turkey have on average 21 m². 35 % of non-Austrian citizens were spending more than 25 % of their household income on living-costs compared to 16 % for Austrian citizens. Despite the economic crisis, between 2004-6 and 2007-9 this percentage remained stable for Austrian citizens; while this percentage of household income spent on living-costs increased from 29 to 35 % for non-Austrian citizens.²⁷

Examples of NGO Good Practice

The Association Refugee Project Ute Bock (Flüchtlingsprojekt Ute Bock) provides free housing possibilities for vulnerable groups such as immigrants from the former Eastern bloc and Africa, and for asylum seekers. In addition, it also provides social and legal consultancy services for undocumented migrants. In 2010 it accommodated more than 350 people.²⁸ www.fraubock.at.

VI.ii The political and legal context

ZARA Chief Executive Officer, Barbara Liegl, stated that some legal restrictions were put in place in 2010 in regard to access to housing. For example: A recent survey by statistics Austria showed that 21 % of residents in Traun (Upper Austria) were born in third countries, making it the city with the highest share of people born in third countries in all of Austria. In July 2010, the Traun city council decided that the increasing number of migrants should be limited and that the mayor of the city should raise an objection before the Real Estate Transfer Commission if non-EU nationals not resident in Traun should intend to purchase residential or real estate property in the city.

The Austrian Platform of Social Services (*Bundesarbeitsgemeinschaft Wohnungslosenhilfe*, BAWO) expressed its concern about the housing conditions of some 300-400 homeless EU citizens in Vienna who were denied the right to basic shelter. The BAWO expressed this in its Annual Report to the International Committee on Economic, Social and Cultural Rights. The reason put forward was that, by the virtue of the city law on social welfare, persons who cannot prove more than five years of continuous residence in Austria and access to the Austrian labour market would be excluded from the system of social assistance, which includes access to homeless institutions.²⁹ This shows that migrants and minorities and people belonging to different religious denominations are often confronted with various obstacles and complex regulations.

²⁷ The Austrian Annual Statistical Yearbook, p. 74.

²⁸ For the association's activity report of 2010 check at http://fraubock.at/download/tb/Taetigkeitsbericht_2010.pdf. accessed 23 August 2011.

²⁹ Information for both instances was extracted from an interview the Author did with Mag.^a Barbara Liegl, 4 August 2011.

Many NGOs have been demanding consistent anti-discrimination laws in access to housing, a decrease in the upper limit of rent, and intervention against the various forms of economic discrimination against the migrant population in the housing market. However, as of yet there is no consistent legal provision against the discrimination towards non-EU citizens. Another criticism of NGOs is the ongoing process of gentrification and the limited possibilities for the participation of migrant communities regarding city planning processes, as can be observed in Vienna's 16th district.³⁰ The Litigation Association (LA), the BAWO and Volkshilfe through an EU Equality Project, are working to harmonise the implementation of equal treatment and anti-discrimination in the allocation of housing space.³¹

³⁰ See "Wien's Notting Hill" in malmoe-online: <http://www.malmoe.org/artikel/alltag/142>, accessed 12 August 2011.

³¹ For more information see the Litigation Association's Annual Report of 2010 at www.klagsverband.at.

VII. Racism and related discrimination in education

VII.i. Manifestations of racism and related discrimination in education

It is obvious that ethnic minorities and immigrants should have equal rights in regards to accessing education in order to have the possibility of actively contributing to society. Three aspects of the development of racist discrimination in education can be highlighted: the problem of recognition of educational achievements and degrees received in countries other than Austria or the EU; the high concentration of pupils with a migrant background in so-called special needs schools (sonderschulen); and the reduction of the importance of language proficiency in the learning of the German language. While the first problem of recognition of qualifications was recognised, at least, as of July 2011, in the recommendations of the Expert-Commission on Integration, there have been no attempts to change the system of the special needs schools for 6–10 year olds. The system of special needs schools was referred to as a human rights abuse by the UN Monitoring Commission,³² which recommended that it be abolished.

Previously, the education system was highly selective, especially in the practice of the division of pupils at the age of 10: filtering the higher and middle class children into the so-called gymnasiums, while children of workers and migrants were channelled into what is known as the Main School (Hauptschule). At the moment there appears to be some attempts towards the installation of an integrated school system for 10-14 year olds, however, the ÖVP is delaying the introduction of nationwide common schools for all 10-14 year olds. If we analyse the distribution of pupils of foreign origin in different types of schools in Austria, it becomes evident that pupils with a migrant background are grossly over-represented in so-called special needs schools: 27,8 % of the pupils in these schools have a non-German speaking background. However, people with a foreign background are represented above average in institutions of higher education, such as universities or technical colleges: 34,9 % of the non-Austrian population have matriculation standard or higher compared to 28,8 % of those with Austrian citizenship in 2010, but these figures are mainly resulting from other EU-citizens coming to Austria to study.³³ Ethnic minorities, asylum seekers and immigrants face considerable problems in various sectors in education.

Example of NGO Good Practice

The Intercultural Centre (Interkulturelles Zentrum, IZ) is an independent non-profit organisation based in Vienna. Its aim is to enhance intercultural relations

³² See Die Presse at <http://diepresse.com/home/bildung/schule/pflichtschulen/680306/UNO-ruegt-Oesterreich-Sonderschulen-muessen-abgeschafft-werden?from=suche.intern.portal>, accessed 12 August 2011.

³³ The Austrian Annual Statistical Yearbook, p. 44-6.

both at the national and international levels. IZ promotes the development of communication between people of different cultural origins and educates people to carry out practical intercultural work. www.iz.or.at.

The Autonomous Centre of and for migrants (Autonomes Zentrum von und für Migrantinnen, MAIZ) is a Linz based information and educational association. MAIZ works with migrant women based on the principles of self-empowerment and autonomy. Their educational projects range from adult literacy to the preparation of young migrant women for jobs in the health sector and workshops for the improvement of democratic relations. www.maiz.at.

VII.ii. The political and legal context

Discourse about the “low language skills” of people with migrant background has emerged more frequently since 2010. This discourse (as well as that of anti-Muslim stereotypes) has been a key issue in the generation of a racist climate in Austria. Although Austria recognises two more languages (Croatian and Slovenian) other than German as official languages, the only instrument towards “integration” seems to be a proper knowledge of the German language. Experts and pedagogical scientists highlight the importance of knowledge of the languages of the country of origin. In times of economic and cultural globalisation the knowledge of more than 1-2 languages is widely accepted as a precondition for social participation. However, integration politics in Austria appear to remain in narratives of integration from the pre-EU-times, as can be noticed from the recommendations of the Assembly of Experts (Expertenrat für Integration, Expertenrat 2011).³⁴

Since March 2010 a new development in education policy is the discussion about preparations for Turkish to be offered as a foreign language in high schools and also to be included as a subject of High School Certificate Examination.³⁵ These changes have been kick-started by the SPÖ led Ministry of Education but were blocked by its coalition partner, the ÖVP. Another important political development was the protest movement that started at the end of 2009 at the University of Fine Arts in Vienna and later spread across the country, protesting against the financial cuts in the education sector, which will lead to more inequality in society because higher education becomes more and more a privilege for those who can afford to study, resulting in additional disadvantage for migrant population and other discriminated against groups.³⁶ Although the movement was organised

³⁴ See

http://www.integrationsfonds.at/fileadmin/Integrationsfond/NAP/Vorsch%C3%A4ge_Zusammenfassung.pdf, accessed 12 August 2011.

³⁵ See <http://derstandard.at/1301873776306/Maturafach-Tuerkisch-als-zweite-Fremdsprache---Schmied-relativiert>, accessed 14 August 2011.

³⁶ The demands of this movement were many: starting from the miserable monetary situation of colleges and universities, over the negative effects of neo-liberal educational policy on the concrete situation of

from the grassroots level, many progressive NGOs supported the demands of the movement, making it the most dynamic protest movement since 2000,³⁷ when the FPÖ came to power in coalition with the ÖVP.³⁸

students', the discussion of racism and sexism and other forms of the division of labour and the role of the universities therein.

³⁷ http://www.slp.at/cwi/infos_int/austria_newgovernment.html, accessed 20 October 2011.

³⁸ See http://de.wikipedia.org/wiki/Studierendenproteste_in_%C3%96sterreich_2009/2010, accessed 14 August 2011.

VIII. Racism and related discrimination in health

VIII.i. Manifestations of racism and related discrimination in health

Immigrants are exposed to high psychological and physical pressure in Austria. This section of the society suffers from chronic anxiety disorder and depression far more than other groups.³⁹ Probably due to the high concentration of people with migrant backgrounds (mostly from ex-Yugoslavia and Turkey), the degree of health problems within this group is significantly higher than that of amongst Austrian citizens. Chronic diseases are especially prevalent amongst immigrants (high blood pressure 22 %, spinal column problems 37 %), while people without immigrant background suffer from lesser percentages (high blood pressure 17 %, spinal column problems 30 %).⁴⁰

Health care services in areas with a high concentration of migrants are far worse than in others. It must also be mentioned that the level of utilisation of preventive health care (which is significantly lower amongst people from a migrant background) is part of the so-called integration indicators (integrationsindikatoren). However, the facts about the higher degree of chronic diseases are not. This fits into the neoliberal tendency of the individualisation of social problems. Another form of discrimination is the low level of diversity-consciousness and diversity measures in the health system. Especially in metropolitan areas, and even in emergency departments in hospitals, it is hard to find doctors, caregivers, or administrative employees speaking the most important migrant languages such as Bosnian/Croatian/Serbian or Turkish. This is a real obstacle to equality in one of the most important sectors for society.

Example of NGO Good Practice

Hemayat is a non-profit medical, psychological and psychotherapy treatment centre for survivors of torture and wars. It was founded in 1995 with the aim of providing free services to people who have suffered extreme trauma from torture or war. It provides specialised services to survivors living in Vienna and aims to restore their health, social skills, and eventually their ability to work. Hemayat has linkages with integration institutions in Vienna and offers its services to other NGOs, government agencies and hospitals. www.hemayat.org.

VIII.ii. The political and legal context

³⁹ The Austrian Annual Statistical Yearbook, p. 66.

⁴⁰ Ibid., p. 66.

In 2010 the handling of the social insurance card (e-card), which documents one's health history, was restricted due to suspicions of 'abuse' of the e-card by undocumented migrants. Therefore, it has become necessary not only to show the e-card but also an ID-Document when utilising health care services. It must be pointed out that this results in the scandalous fact that people in one of the richest countries in the world are excluded from their basic human rights to health care.

"Caritas" which is the biggest NGO concerned with migration and above all with asylum seekers in Austria provides a mobile infirmary in Vienna that provides basic health care-services for undocumented migrants and migrants without sufficient health insurance. Nevertheless, it is important to provide sufficient healthcare services for all people living in Austria irrespective of their legal status in accordance with article 25 of the UN Universal Declaration of Human Rights.⁴¹ Another important issue that needs to be addressed is the lack of diversity measures in the health system, as demanded by the 20-Point-Programme of the "Assembly of Experts on Integration" in July 2011.

⁴¹ See <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>, accessed 13 August 2011.

IX. Racism and related discrimination in criminal justice

IX.i. Manifestations of racism and related discrimination in criminal justice

IX.i.i. Policing and ethnic profiling

Many NGOs and international human rights organisations have expressed their concern about the attitudes of the police and law enforcement bodies in prosecuting offences and providing protection for victims of crimes in Austria. For instance, Amnesty International criticised the Austrian police force for its failure to provide equal protection to victims of crime who are from ethnic minorities.⁴² ZARA reported that in 2010 people were stopped and searched by the police because of the colour of their skin and their ethnic origins. In addition, there was also a case where police officers misused their power: bringing a man to a police station and telling him that he would be deported, without taking into consideration that the man had a permanent residence permit for living in Austria. At the police station, the police discovered that the man had a permanent residence permit, and the police officer then accused the victim of allegedly making noise and aggressively resisting orders from a police officer.⁴³ NGOs constantly criticise this type of behaviour, which is perpetrated by some police officers. Amnesty International also expressed its concern, particularly regarding the process of recording and prosecuting offences—especially if such offences involve police misconduct—as the victim can be made into a suspect.

Example of NGO Good Practice

Amnesty International is one of the major public voices against police brutality and torture as well as abuse of police power. Amnesty International is a campaigning organisation. Its mission is to protect people wherever justice, fairness, freedom and truth are denied. They campaign for change and defend individuals, especially prisoners or people in police custody, around the globe. Cases of police brutality, torture and abuse of police power can be reported at the organisations office and be transferred to another country, which is in charge of monitoring the situation in Austria. The complaint will be examined and included in the country report. <http://www.amnesty.at/>

⁴² See Amnesty International, victim or suspect.

⁴³ Author's Interview with Mag. Wolfgang Zimmer, Head of ZARA's Counselling Unit, 29 March 2011, Vienna. Detailed data on the stop and search practices cannot be provided at the moment as most of the cases are pending.

IX.i.ii. Racist violence and crime

Incidents of racist violence and crimes are frequent in Austria. In the society, there are many racist perceptions and common negative associations, such as: black people with drug dealing and aggressive behaviour; Muslims with being anti-Western values; Eastern Europeans with organised crime; Roma with begging; Jews with being more loyal to Israel than to Austria and obsessed with what had happened to them during the Holocaust; and asylum seekers with abusing the welfare system, all of which continue to fuel an environment of racist violence and crime.⁴⁴ It should be no surprise then most victims of hate crimes happen to be people with migrant backgrounds. For instance, in 2005 a Muslim woman was physically assaulted by a shop assistant, who claimed not to want “money from foreigners.”⁴⁵ However, attacks such as this are not always documented in Austria’s official statistics on racist violence, as they are often not categorised as political violence. It is a serious problem that the Austrian government does not provide systematic documentation of such cases concerning racist and other discriminatory acts of violence.

Example of NGO Good Practice

There are no public organisations with a special focus on victims of racist violence. However, victims can turn to “Weisser Ring” (white ring), which is an organisation supporting victims of criminal attacks by providing legal aid, counselling, information about public authorities in charge and information about proceedings. <http://www.weisser-ring.at>.

IX.i.iii. Counter terrorism

The key problem is that the government and corporate media are permanently creating a connection between Muslims, migration, and terrorism. As can be seen from the terrible attacks in Oslo,⁴⁶ populist newspapers with a high circulation for instance, the tabloid newspaper “Österreich” immediately fabricated a connection between the attacks and Al-Qaida.⁴⁷

In 2011 the Austrian government initiated a debate around tightening up anti-terrorism laws towards people who are suspected of participating in so called “terror camps” or endorsing terrorist acts.⁴⁸ These developments must be seen in

⁴⁴ Kopanja, 2010 Racist Violence Study.

⁴⁵ Ibid.

⁴⁶ See http://de.wikipedia.org/wiki/Anschläge_in_Norwegen_2011, accessed 20 September 2011

⁴⁷ See <http://derstandard.at/1310511975907/Terror-in-Norwegen-Der-Moslem-wars>, accessed 14 August 2011.

⁴⁸ See <http://www.kleinezeitung.at/nachrichten/politik/2336785/stichwort-terrorismuspraeventionsgesetz.story>, accessed 14 August 2011.

the context of the broader post 9/11 discussions of counter-terrorism measures: terror-law paragraphs on organised crime (organisationsparagrafen) were tightened and also have been applied in two cases. These two cases attracted much attention in the media: the so-called “Islamist Trial” in 2008, and the “animal rights trial.” In the first case a couple was found guilty of being members of a terrorist organisation, they had translated texts by Islamist groups and published videos. In the second trial, which received even more public attention, 13 animal rights activists were accused of being part of a “criminal organisation” for campaigning for animal rights and against the production and sale of furs. Including the observation reports, the indictment was 200,000 pages⁴⁹ and the trial went on for 98 days.⁵⁰ Finally, all of the accused were released, although their sentencing is not decided yet.

Example of NGO Good Practice

The Initiative of Muslim Austrians (Initiative Muslimischer ÖsterreicherInnen, IMÖ) is doing media-work and public relations with special focus on fighting hostility against Islam, civil society engagement with a special focus on antiracism, political participation of migrants in general and Muslims in particular, interreligious dialogue, and integration work for Muslims. <http://www.islaminitiative.at>.

IX.ii. The political and legal context

As mentioned above, the responsiveness of the police and criminal justice system to racist violence, in particular with regard to providing support for victims, investigating offences and prosecuting offenders, is far from satisfactory. Political and legal efforts to stop ethnic profiling by the police have yet to take place. There is no systematic documentation of ethnic profiling practices at the national level. Such documentation can only be accessed through regular country reports such as the ECRI, which has been expressing its concern about ethnic profiling in Austria.

Although the 2010 NAP does not effectively address issues of racism and xenophobia, Austria has not adopted any other national action plan on racism and xenophobia. Despite the recommendation of the UN Human Rights Council for Austria “to prepare a study on the scale of direct and indirect racial discrimination in the criminal justice system, Austria rejected the recommendation and continues to have an ambiguous stance on the collection,

⁴⁹ See http://de.wikipedia.org/wiki/Wiener_Blue_Neust%C3%A4dter_Tiersch%C3%BCtzerprozess, accessed 13 August 2011.

⁵⁰ See <http://tierschutzprozess.at/>, accessed 14 August 2011.

generation and publication of relevant data and statistics.”⁵¹ In addition, as the 2010 Racist Violence Study found out “there exists no legal definition of racist violence, although there are different legal provisions covering various aspects of the phenomenon. This contributes to a lack of systematic statistics. Data available from NGOs reflects anecdotal and qualitative evidence, which therefore makes it difficult to draw conclusions and evaluate trends based on available information.”⁵²

Some of the public debate that concerns migration politics has been around the language spoken at sermons in mosques, intertwining it with the constructed connection between Islam, migration and terrorism already mentioned. The ÖVP demanded in September 2010⁵³ that the sermons must be held in German. This discourse is connected with the ongoing racist debate around so-called “preachers of hate” (Hassprediger), which puts the whole Muslim communities—regardless of all their internal differences—under general suspicion. Given such discussions, it is no surprise that populist tabloid newspapers like the “Kronen Zeitung”, “Heute” or “Österreich” frequently report on ‘so and so Austrian citizen’ of Islamic belief suspected to be in an “Islamist terror camp.” This in turn supports and strengthens the politics of fear in Austria. Seen against this background it should not be surprising that in the official Austrian Statistical Yearbook about Migration & Integration of 2008⁵⁴ and 2009⁵⁵, the section on religious affiliation was replaced with “security.”

The term ‘hate crime’ does not exist in Austrian legislation. In § 283 of the Austrian Penal Code (Strafgesetzbuch), there are provisions against sedition on the grounds of racism. However, this law is very rarely applied. The second norm that could be used to fight hate crimes is § 33 Z 5 of the Penal Code. This law makes it an aggravating circumstance when a crime is committed with racist motives. However, this law is never applied in practice.⁵⁶ The EU Framework decision on racism and xenophobia has not been transposed in Austria so far. It could be argued that parts of the Framework decision are already put in effect in Austria, taking into account the abovementioned § 283 of the Penal Code. However, there is no explicit mention in Austrian law of the second part of the Framework decision concerning publicly condoning, denying or grossly trivialising crimes of genocide. Perfidiously there have been recent attempts to transpose the Framework decision within a new law to prevent terrorism, but the draft for

⁵¹ Amnesty International Public Statement, 7 June 2011, <http://www.amnesty.org/en/library/asset/EUR13/001/2011/en/e452da33-873d-4004-a964-9939351f81ba/eur130012011en.pdf>, accessed 30 July 2011.

⁵² Kopanja, 2010 Racist Violence Study.

⁵³ Refer to <http://www.oe24.at/oesterreich/politik/OeVP-verlangt-Deutsch-als-Pflicht-in-Moscheen/1651127>, accessed 3 August 2011.

⁵⁴ See

http://www.integrationsfonds.at/fileadmin/Integrationsfond/5_wissen/Zahlen_Fakten_2008/statistisches_jahr_buch_2008.pdf, accessed 21 September 2011.

⁵⁵ See http://www.demokratiezentrum.org/fileadmin/media/data/migration_integration.pdf, accessed 21 September 2011.

⁵⁶ <http://www.klagsverband.at/archives/2934>, accessed 23 August 2011.

this law did not pass the first round of review due to a lack of quality and has been postponed for the moment.⁵⁷

⁵⁷ Interview with Mag. Volker Frey, Klagsverband, 23 August 2011.

X. Racism and related discrimination in access to goods and services

X.i. Manifestations of racism and related discrimination with access to goods and services in the public and private sector

Manifestations of racism and discrimination often occur when ethnic minorities and immigrants try to access transport, or try to enter shops, clubs, or bars. Discrimination in discos based on ethnic background or skin colour is a major problem for young black men and other ethnic minorities. In particular young black men are often refused entrance by doormen and bouncers, working on the orders of their bosses. The argument behind this informal policy is to prevent young black men, who are often suspected of being drug dealers, from entering discos and other places where young people meet.

In 2010 a pub in the 10th district in Vienna discriminated against a Nigerian man for a second time. Initially, the first time he was discriminated against, ZARA had asked for approximately 1000 Euros of compensation, which the pub paid to the man. The second time that the pub discriminated against the man, ZARA asked for higher compensation, around 1500 Euros. However, the pub appealed against it and the final verdict is expected in the near future.⁵⁸

Example of NGO Good Practice:

ZARA - Zivilcourage und Anti-Rassismus-Arbeit (Civil Courage and Anti-Racism Work) is an anti-racism NGO founded in 1999. ZARA's mission is to enhance civil courage and to promote a racism-free society. Its aim is to help people to combat all forms of racist discrimination in their everyday lives by supporting and accompanying them on mutually agreed upon courses of action (e.g. filing complaints, initiating proceedings at the National Equality Body) and by documenting their complaints. ZARA's work is based on three pillars: training (which aims to enhance awareness and civil courage), public relations, and the counselling of victims and witnesses of racist discrimination. ZARA offers training to a broad range of target groups including companies, educational institutions, and public authorities. Its' public relations work aims to raise awareness around anti-racism, as well as for political advocacy in order to create meaningful legislation against racism, and comprehensive and sustainable anti-discrimination policy. Its counselling unit helps refugees as well as victims and witnesses of racism. www.zara.or.at.

⁵⁸ Author's Interview with Mag. Wolfgang Zimmer, 29 March 2011.

X.ii. The political and legal context

In May 2010, Iodo, member organisation of ENARA, held a press conference to publically protest against how an important study had been swept under the rug: the study originally funded by the city of Vienna, showed how artists and cultural workers with migrant backgrounds are prevented from accessing public funding and how the access of the general migrant population to mainstream cultural institutions is obstructed. The 220-page study⁵⁹ was published in 2009, but the city government did not show any willingness to react to the findings and do something about the obvious discrimination against migrants in the field of culture and arts. Instead, the city counsellor in charge, Mr. Mailath-Pokorny, preferred to refer to another group of intellectuals, who gave him less critical recommendations, as a result of which the discrimination against immigrants was sidelined. As a reaction to this, in autumn 2010 a platform called 'transculturing.at' was created in order to coordinate actions of civil society for change in the field of culture and arts. It is mostly composed of cultural workers and artists, the majority of whom have migrant backgrounds.⁶⁰

The behaviour of decision makers described above is symptomatic because access to goods and services is very much a structural problem that cannot be tackled within a short period of time but needs long-term adjustments and the reallocation of resources. In a society where the rich get richer and the poor get poorer, and where there is over-representation of the immigrant population among the poor, it is necessary to promote special measures in order to secure their access to goods and services on a very basic level, for day-to-day survival. Poorer parts of the population often cannot afford goods and services, which is an even more effective form of exclusion than anybody actively denying them access. Goods and services, essential for modern day life, have to be provided in an anti-discriminatory way, in order to reach out to the more deprived sections of the population. However, policy makers are reluctant to accept this fact with respect to migrants because this part of the population is under constant suspicion of taking advantage of the system, anyway.

One of the major economic obstacles in accessing goods and services is the restrictions faced by many people with a migrant background when attempting to access the labour market. Another major structural problem hindering access to goods and services is the language barrier. Migration and integration discourses are dominated by the precondition that migrants must learn German to be able to integrate into society. Even public institutions specifically designed to act against discrimination such as the OET do not always provide translation. Thus, people who want to complain against discrimination have to bring their own interpreters along if they do not speak German well enough.

⁵⁹ For the Iodo study see <http://www.iodo.at/studie.htm>, accessed 23 August 2011.

⁶⁰ Interview with Andreas Görg, Iodo, 30 March 2011.

The most alarming development is concerning the weakest group. The amendment to the Asylum and Aliens Act that entered into force in January 2010⁶¹ deprives asylum seekers of the option of looking for their own lawyer in the first few days of their asylum procedure. This is done through restricting access to legal aids in the refugee facilities, where asylum seekers are *de facto* detained for the first 5 days. Protests against such restrictions by civil society organisations and anti-racism NGOs in February 2011 were not taken into consideration by political decision makers.

⁶¹ http://www.asyl.at/fakten_1/upr_austria.pdf, accessed 20 October 2011.

XI. Racism and related discrimination in the media

XI.i. Manifestations of racism and related discrimination in the media, including the internet

In its fourth report on Austria, the ECRI indicated that authorities have not taken serious measures to influence the publication of certain sections of the press, which contribute to the “ethnicisation” of crimes and sensationalist reporting on immigration and asylum issues.⁶² The Kronen Zeitung, which is Austria’s most widely read daily newspaper with a circulation of approximately three million, daily occupying over 40,4% of market share,⁶³ published a sensationalist story on its 17 February 2011 edition under the title “Hundreds of Nigerians as Drug Dealers: Embassy Does Not See it as a Problem.” The National Association of the Nigerian Community in Austria sent out a press release on 14 March 2011 denouncing the newspaper for its distortions and for quoting the Nigerian Embassy Staff incorrectly out of context. Despite that the newspaper continues to negatively influence the political discourse vis-à-vis people of African descent in Austria.

Due to the possibility of being relatively anonymous, the internet is a broad area of racist activities. Although there have not been any changes during the period of this report, there has been many racist defamations both on “serious” internet forums and on genuine racist and fascist websites. The closing down of the neo-Nazi page Alpen-Donau.info, for instance, took a long time because its server was located in the United States, where the right to freedom of expression doesn’t forbid racist and fascist propaganda on websites. It was finally closed down in April 2011. ZARA reports a number of racist defamations in various Austrian internet forums and an increase of racism on the internet.⁶⁴

In the yearbook of ‘Statistics on Migration and Integration’, no section on the media can be found.⁶⁵ This illustrates the narrow approach of the government. The impact of the representation of both migration and racism in the mainstream media obviously is not considered important and from a governmental perspective as there is nothing wrong with the underrepresentation of people with a migrant background within the media – both as role-models and within media agencies.

⁶² ECRI Report on Austria: Fourth Monitoring Cycle, P. 27.

⁶³ Kopanja, 2010 Racist Violence Study.

⁶⁴ ZARA Racism Report 2010, P. 29-31.

⁶⁵ See

http://www.integrationsfonds.at/fileadmin/Integrationsfond/5_wissen/Statistisches_Jahrbuch_2011.pdf, accessed 21 September 2011.

Examples of NGO Good Practice

The Vienna based street-newspaper “Global Player” is a monthly grassroots-newspaper, which is distributed mainly by people who are ‘Sans Papiers’ with an African or Roma background. It provides an alternative view on the reality of migrants and in particular ‘Sans Papiers’ and provides a perspective on self-empowerment.

M-media (Diversity Media Watch Austria) is a self-organised migrants association that aims to create “migrants own image” within the Austrian mainstream media. It works towards the empowerment of people with migrant backgrounds concerning both the representation and participation of migrants in mainstream media. www.m-media.or.at.

XI.ii. The political and legal context

As shown in the section on counter-terrorism, Austrian media, especially daily newspapers, are reproducing stereotypes of Muslims and Islam. But in the so-called “quality newspapers” there has also been an opposite tendency, especially in regard to the local elections in Vienna. Der Standard and Die Presse focused on migration and integration topics and they also provided space for the perspectives of migrants and migrant communities. However, the general view on racism and migration-politics is still widely that of the majority of Austrian population – migration as a problem and integration as an obligation only for migrants. There is significant underrepresentation of journalists with a migrant background. It has also been noted in the ECRI report that there are almost no journalists of immigrant origins, or people who belong to ethnic minorities, in the daily press or on regular programs on public TV. Some independent media, such as the Okto cable TV station set up in 2005 and financed by the city of Vienna, are considered by the ECRI to be positive developments as such programs allow wider broadcasting opportunities for minorities.⁶⁶ Some tendencies towards better representation are visible at the moment. For example, Claudia Unterweger, is the first Austrian with an African background to moderate the main news on Austrian Federal Television (ORF) as of February 2011;⁶⁷ and the news presenter, Amira Awad,⁶⁸ also another Austrian with an African background, from PLUS 4 Television are two examples of positive progress.

⁶⁶ ECRI Report on Austria: Fourth Monitoring Cycle, p. 28.

⁶⁷ See: <http://www.m-media.or.at/medien/claudia-unterweger-zib-flasch/2011/02/23/> accessed 12 August 2011.

⁶⁸ <http://www.puls4.com/content/austrianews/Amira-Awad/artikel/5905>, accessed 12 September 2011

XII. Political and legal developments in anti-racism and anti-discrimination

There have been some changes to the 2004 law (Gleichbehandlungsgesetz / Equal Treatment Act)⁶⁹ in particular in the area of payment and gender equality, but these changes were minor and there were no major new developments in policy regarding discrimination based on ethnic origin. One of the changes that took place in early 2011 was in the proceedings before the Equal Treatment Commission (ETC). Previously, the procedure was based on the victim first describing their experiences, then followed by the defendant doing likewise. This has now changed so that both parties are asked questions at the same time. Minor as it is, this is a positive development in formalising the proceedings before the ETC. However, the impact of this development on ethnic and religious minorities is anything but positive. This minor change does not do much to tackle individual incidents of racism and structural discrimination. The decisions of the ETC do not really try to do away with structural discrimination. What is also a concern is that the measures suggested by the ETC against structural discrimination are not far reaching enough to change policies within companies, for instance.

Therefore, it is very difficult to measure the effect of these changes. There is neither a national nor regional strategy put in place against racism in Austria, although some regions try to deal with the issue of discrimination by making public statements. The NAP, which was published by the Federal Ministry of the Interior, Mol (*Bundesministerium für Inneres*, BMI) in January 2010, only includes a couple of lines referring to racism. Besides that, Austria lacks a national action plan against racism and xenophobia. However, it should be mentioned that, as a result of the EU Equality Directives, Austria did amend its Equal Treatment Act (ETA) to include Equal Treatment Legislation on the grounds of ethnic origin. Austria's previous ETA focused solely on gender equality. There was no protection against ethnically based discrimination in the labour market. Therefore, the ETA that was put in place after the EU Equality Directives were issued was a major step forward as it provides stronger protection than the one before it. Overall, it can be said that the minimum requirements of the EU Equality Directives have been implemented to a large extent. However, many civil society organisations agree that the shift of the burden of proof has not been implemented in accordance with the Directive and that there should be an amendment of the ETA in this regard. In addition, in 2010 the LA drafted eight statements on laws at the federal and provincial levels, but was disappointed to

⁶⁹ The law prohibits discrimination based on ethnic origin at the labour market, in employment and outside employment in having access to public goods and services, education and social benefits. In addition, it allows any aggrieved party to notify the Equal Treatment Commission or the court for remedies.

find out that the promised harmonisation of the protection against discrimination based on the ETA has been refused.⁷⁰

In general, it is very hard to assess the impact of the EU Equality Directives at the national level as there is only a small community of civil society organisations that know about it and try to implement it either by lobbying for improvements or by bringing cases to the ETC or the court. Moreover, information is anecdotal and qualitative. Another problem is that the EU Directives do not really focus on structural discrimination but on individual discrimination and put the burden of fighting discrimination on the individual.

Moreover, the equality bodies in Austria are understaffed and underfunded. The OET is located in Vienna, with its regional offices in Tirol, Steiermark and Kärnten, dealing only with gender discrimination. The ETC is also located in Vienna. So, victims of ethnic discrimination from the provinces have to travel to Vienna to have their cases heard. Access to these equality bodies is very difficult for most people. Furthermore, these equality bodies have very limited budget: in addition to their staff costs, they have an annual budget of approximately 20,000 Euros.

Another problem is that the government barely initiates positive action measures, and there is no systematic method of data collection on racist incidents. Added to that is the fact that there is hardly any tradition of civil society organisations in Austria. Civil society organisations, in particular those focusing on human rights and anti racism, only started to develop in the early 1990s. In general, civil society organisations and in particular those dealing with human rights issues are not needed. Instead the government has a better relationship with the Red Cross, Caritas and other organisations involved in fields of refugee and migration.

The following are some of the cases demonstrating the prevalence of racism and discrimination in Austria and where the LA took on legal representation in court in 2010.⁷¹

Case 1: Discrimination on grounds of ethnic origin.

At the beginning of 2010 a married couple asked the LA for help: The husband, who is a Turkish citizen, was not allowed to enter a club in a southern city of Austria. His Austrian wife had no problems with the bouncer but did not want to spend the evening in the club without her husband. The LA took on legal representation of the case, based on discrimination against ethnic origin. The couple did not accept an out-of-court settlement and decided to go on with the procedure. The case is pending.

Case 2: Discrimination on the grounds of religion

⁷⁰ See the 2010 Annual Report of the Litigation Association.

⁷¹ All these cases were taken from the 2010 Annual Report of the Litigation Association.

A woman, who applied for a job as a secretary at a Catholic hospital in Vienna, asked the LA for help. Her excellent qualifications were accepted by the potential employer; however, her application was not taken into consideration because she was not a member of any religious denomination. She was asked to join one to get the job but she refused to do so and did not get the job. The applicant felt discriminated against on the ground of her not belonging to any religious denomination. The LA accepted her case and took it to court. The proceeding ended with a settlement.

Case 3: Discrimination on the grounds of disabilities

At the end of 2010 a final judgment was made in the case of a man who felt discriminated against by a public transport company that offers free rides to heavily disabled ex-soldiers, but not people disabled otherwise. The man, represented by the LA, asked for compensation of both his financial loss and for an immaterial personal damage. The Judge dismissed the complaint arguing that the Federal Act on Equal Treatment for Persons with Disabilities cannot be applied to people otherwise disabled.

Example of NGO Good Practice

The Litigation Association of NGOs Against Discrimination (Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern) is a non-political and non-denominational organisation that assists victims of discrimination in enforcing their rights. It has 22 member associations fighting against discrimination under its umbrella. www.klagsverband.at.

XIII. Migration and integration

The amendment to the Asylum and Aliens Act that entered into force in January 2010⁷² creates some kind of residence duty (Residenzpflicht) for asylum seekers in Austria. According to this law, asylum seekers are not allowed to move outside the district that they first register in, or their first asylum reception centre, until the end of their admission procedure. NGOs such as Asyl-in-Not and Asylum Coordination Austria consider this to be the worst legal development in the latest series of amendments. In addition, this law has put more restrictions against asylum seekers and refugees who are deemed to have committed crimes or have been found guilty of not obeying Austrian laws in general. What is also an issue of concern is that in every case where the courts or the police report to the asylum authority that a recognised refugee has been accused by the court of certain crimes, the asylum authority can reopen the case to assess whether the accused can keep their status. Another very restrictive regulation of this law is that asylum seekers can be obliged to report every two days at the next neighboring police station in following cases:⁷³

- If their asylum application was refused in both instances and the police decided on a certain time frame, before the end of which the asylum seeker has to leave the country;
- If the police agreed not to execute an expulsion immediately (Durchsetzungsaufschub);
- If the police decided to apply the so-called “gelinderes Mittel,” which means not to detain the asylum seeker but to allow him or her to stay at a private residence, but require him/her to register every two days.

Asylum seekers in the ordinary procedure are allowed to live where they want and do not have to register every two days; but naturally, they have to inform the authority about their address. Failure to do so can lead to being held in custody pending deportation. Also in 2010, as in the years before, the human rights of asylum seekers were seriously violated by an excessive application of the Dublin II regulation. The consequences of this were that families of asylum seekers were separated, and that traumatised people and victims of torture were detained in and deported to so-called “safe” Dublin states like Greece or Poland where not even minimal standards of procedure, accommodation and health services exist.⁷⁴ Detention of traumatised refugees and torture victims leads always to retraumatisation and must therefore be considered as psychological torture.

⁷² http://www.asyl.at/fakten_1/upr_austria.pdf, accessed 20 October 2011.

⁷³ This information was provided to the author via email by Michael Genner, Chairman of Asyl-in-Not and Legal Adviser in Asylum Procedures, 29 September 2011.

⁷⁴ Ibid.

These kinds of human rights violation have happened in Austria very often, even during 2010.⁷⁵

All concerned NGOs have been demanding the abolition of Dublin II regulation. The European Commission proposed to reform the Dublin II regulation in a way that would allow more respect for human rights. However, the Austrian government did not take any steps in that direction. On the contrary, it announced plans to build a coalition, together with Germany and Poland, against every attempt to reform Dublin. According to another package of amendments in foreigners' laws, which was agreed to by the Austrian government in February 2011, migrants who want to get permanent residence in Austria have to prove that they have a command of German language at B1 level, whereas the requirement was previously A2. The main criticism against this is that if family members of migrants already resident in Austria want to reunite, they have to have a language certificate before they can apply for a settlement permit in Austria. This is a very exclusionary regulation for many reasons: for example, it is not possible to access German language learning institutes in every region of the world and even if such institutions are already in place and accessible, some migrants may not have the resources to take the courses before having a guarantee that their visa request will be approved.

What has also been criticised by NGOs is that there is no discussion about diversity of languages within the majority of Austrian society. This makes integration politics in Austria a one-way discourse: migrants have to integrate into the mainstream through learning the German language but the mainstream does not learn the languages of the migrant minorities. This was expressed by the Minister of Interior, Maria Fekter in March 2010 within the frame of the "National Plan for Integration," where she stated that foreigners need to be able to speak German before coming into Austria and that fluent knowledge of the German language is key for participating in society and for successful integration.⁷⁶ The impact of these developments has not only been negative on the protection of the fundamental rights of migrants but also shows that right wing politics have a very strong influence on legal developments. For example, the FPÖ and its associates have been proposing for a long time that people who have committed any crime or are suspected of committing any crime should be deported immediately.⁷⁷ This plan was put into practice on 29 April 2010 with the deportation of a trainer of the Viennese Football club FC Sans Papiers, although civil society condemned the act and protesters blocked the police vehicle, which the trainer was in, from moving forward for several hours before the police resorted to force in order to resolve the stalemate.⁷⁸ Such public protests did not stop deportations, as deportations continue. In October 2010, the public

⁷⁵ Ibid.

⁷⁶ Dr. Di-Tutu Bukasa, ENAR Shadow Report 2009/2010, p. 11

⁷⁷ Interview with Anny Knapp, Chairwoman of Asylum Coordination Austria, 26 July 2011.

⁷⁸ Video of the protest on 29 April 2010: <http://www.youtube.com/watch?v=jblX03HG394>, accessed 23 August 2011.

condemned the deportation of two 8-year old twins and their father, who were separated from their sick mother who was in a Viennese hospital.

A number of demonstrations against such deportations and the exclusionary integration politics, racism and the new package of amendments of the foreigners' laws took place in second half of 2010 and the first half of 2011. Some of the most important were: "Machen Wir Uns Stark", which took place on 18 September 2010; demonstration against the deportation of the Komani twins, which took place on 6 October 2010; the day of action against the worsening of the asylum laws, which took place on 19 October 2010; and 1 March 2011 transnational migrants strike.

In addition, the huge gains of the FPÖ in the Vienna elections evoked serious reactions. Austria's integration politics and its racist institutions were criticised by Turkish Ambassador Tezcan in an interview that was very unusual for a diplomat, and was widely discussed in mainstream media. He criticised the Austrian Minister of Interior at the time, Maria Fekter, personally, for her racist policies. He also indirectly advised international organisations to leave Austria due to the widespread racism.⁷⁹

Seen in this context, it is not a surprise that the outcome of the MIPEX report for Austria shows mixed results. "In 2010, the government committed to a National Action Plan for Integration, after years of NGO consultations, an integration platform, expert reports and panels, statistics and new indicators. This process of policy change has produced much paper and discussion, but few improvements so far. Since the Plan started translating well-evaluated projects into commitments (e.g. labour market), Austria gained 3 points on MIPEX. Most initiatives to promote integration are still local and regional projects, limited in time and reach. These 'best practices' cannot overcome all the obstacles to integration in the national legal framework, scoring 42 and ranking 24th, behind Switzerland (CH). Long-term residence, where Austria does best, is just average for most European countries. Other established immigration countries tend to provide better opportunities for immigrants to participate politically, become citizens, and fight discrimination."⁸⁰

As there has not been any national strategy on Roma inclusion, the Roma and Sinti often do not manage to enter the labour market successfully. As a result, they are a minority group that is juridically, as well as due to language barriers, excluded from the official services for the unemployed. To earn a living, they have to find ways of self-subsistence. Their fate is made even harder by the fact that they are confronted with racism and discrimination, not only from mainstream society but also from the police.⁸¹

⁷⁹ <http://derstandard.at/1288659993556/Diplomat-Wenn-ihr-keine-Auslaender-wollt-dann-jagt-sie-doch-fort>, accessed 23 August 2011.

⁸⁰ <http://www.mipex.eu/austria>, accessed 23 August 2011.

⁸¹ Interview with Dr. Di-Tutu Bukasa, Chief Editor, Global Player, 30 July 2011.

Example of NGO Good Practice

Asylum Coordination Austria (AsylKoordination Österreich) is an umbrella organisation that focuses on developments in asylum issues and provides assistance and advice to people who work with asylum seekers and refugees. In addition, it also monitors developments in the asylum field and writes reports and press releases on it. www.asyl.at.

Asylum-In-Need (Asyl-in-Not) is a non-governmental organisation that provides legal assistance and representation for individuals seeking asylum and wages a political struggle against the unjust and racist system. In 2010, Asyl-in-Not provided 3600 advice sessions to asylum seekers, wrote 389 appeals in asylum procedure based on merits, nearly 100 appeals on Dublin II procedures, 36 appeals against people who had been taken to jail; and accompanied asylum seekers to 114 interviews at the Asylum office and to 82 appeals in the procedures in the asylum court. It won 61 asylum cases for adult refugees, 34 subsidiary protection and 29 cases on Dublin II procedures. www.asyl-in-not.org.

XIV. National recommendations

Employment

- The Austrian authorities should promote labour market mobility and allow foreigners to have equal access to the labour market.
- The Austrian authorities should produce an anti-discrimination booklet instead of "red-white-red booklet"⁸² in order to provide all citizens with the necessary information and enable them to negotiate with knowledge of their rights.
- The Austrian authorities should initiate a nationwide multilingual campaign to inform immigrants about their labour rights and training opportunities.
- The Austrian authorities should abolish any discriminatory rules and discourses like the "Austrians fund" for football teams.⁸³
- The Austrian authorities should promote immigrants as civil servants in sports associations.

Housing

- The Austrian authorities should fund a multilingual information campaign about the existing law on tenancy.
- The Austrian authorities should open up public housing for all people regardless of their citizenship.
- The Austrian authorities should abstain from the practice of "urban renewal" of city districts to the disadvantage of migrant communities.
- The Austrian authorities should provide affordable high-quality housing for all.

Education

- The Austrian authorities should promote multilingualism in the educational system.
- The Austrian authorities should integrate diversity in the education curricula in order to incorporate the social, ethnic and cultural diversity of the country.
- The Austrian authorities should abolish the practice of sending migrant children without disabilities to special needs schools.

⁸² The „Rot-Weiß-Rot-Fibel“ is part of the official Austrian Integration-Report that states migrants should learn about the “culture of the Austrian judiciary” and become familiar with “a common ‘non-negotiable’ juridical core of principles and rules” etc. (See http://www.bmi.gv.at/cms/BMI_Service/STS/Vorschlaege_Langfassung.pdf, accessed 21 September 2011, p. 25.

⁸³ The racist “Austrians Funds“ (“Österreicher-Topf”) by the Austrian Football Federation provides means for the limitation of non-Austrian players and for the appearance of more Austrians. (See <http://de.wikipedia.org/wiki/%C3%96sterreicher-Topf>, accessed 21 September 2011).

- The Austrian authorities should introduce comprehensive full-time schools and create a unified school system instead of the three-class-division that exists.

Health

- The Austrian authorities should develop an integrative health care system for all people who reside in Austria.
- The Austrian authorities should finance a nationwide campaign to raise awareness about rights in the health sector.
- The Austrian authorities should promote diversity initiative in the health care system.

Criminal justice

- The Austrian authorities should do away with structural racism and discrimination in the criminal justice system.

Access to goods and services

- The Austrian authorities should promote policies that will create more equality in society in order to eliminate the structural economic reasons for many migrants not having access to goods and services.
- The Austrian authorities should practice diversity-consciousness, especially with respect to maintaining the monolingual structures. Translation services should, at least, be provided for all public services.

Media

- The Austrian authorities should invest in the media of migrant communities and post-migrants in order to allow them to have public visibility and political power against the triumph of right wing political parties in elections, and to give them the platform to speak for themselves in public.

General

- The Austrian authorities should devise laws that are in accordance with human rights standards in integrating migrants.
- The Austrian authorities should reduce the complexity of the asylum laws, the control and restriction of asylum seekers.
- The Austrian government should stop deporting refugees and asylum seekers.
- The Austrian authorities should reduce the aliens' laws to a minimum and abolish special laws for migrants in general.
- The Austrian authorities should grant full active and passive voting rights for all people who live in Austria.
- The Austrian authorities should provide legalisation to all undocumented people who live in Austria.
- The Austrian authorities should strengthen the human right to freedom of religion instead of discriminating against Muslims.

- The Austrian authorities should establish an inter-religious forum for all faiths.
- The Austrian authorities should give public recognition and credit to the immense contribution of migrants to the Austrian economy.

XV. Conclusion

For a long time civil society activities with regards to anti-discrimination and anti-racism have appeared to be irrelevant in terms of legal and policy developments. Despite that, the year 2010 was the most successful period for activists as they have managed to garner strong public support against deportation. Deportation has become a major issue of contention in Austrian politics and the acts of resistance against it in recent years have been the strongest known in Austrian history.

In some cases, especially when families were deported from small countryside communities, the acts of resistance were carried out not only by activists but also by average citizens taking a stand. However, this resistance is far from being the practice of the majority. If the deportees happened to be children and/or well-integrated families, criticism against deportation would be able to reach the mainstream. However, in most cases the public is calling for humanitarian exceptions rather than changes to the deportation system altogether.

In general, civil society organisations and NGOs have been constantly protesting against Austria's non-inclusive integration politics, racism, and the new package of amendments to the foreigners' laws. However, all of these demonstrations and several smaller street actions did not hinder the new laws from being accepted and coming into force in the first half of 2011. Anti-racism is still in the position of political subculture in Austria, with only a few instances of it being recognised by the mainstream. However, the pressure on the Austrian authorities and institutions is rising simply due to population increase.

In April 2011 a State Secretary for Integration, Sebastian Kurz of the ÖVP, was appointed. As political commentators noted, this was a milestone because Austria has now admitted, indirectly, for the first time in its history that it is, indeed, a country of immigration.

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Annex 1: List of abbreviations and terminology

BAWO - Bundesarbeitsgemeinschaft Wohnungslosenhilfe (Austrian National Platform of Social Services for Homeless People)

BMI - *Bundesministerium für Inneres* (Federal Ministry of the Interior, Mol)

ECRI - European Commission Against Racism and Intolerance

ENARA - European Network Against Racism Austria

ETA - Equal Treatment Act

ETC - Equal Treatment Commission

FPÖ - Freiheitliche Partei Österreichs (Freedom Party of Austria)

OET - (Ombudsman for Equal Treatment, OET)

GIBG - Gleichbehandlungsgesetz (Austrian Equal Treatment Act)

IZ - Interkulturelles Zentrum (Intercultural Centre)

LA – Litigation Association

MIPEX - Migration Integration Policy Index

NAP - National Action Plan for Integration

ÖVP - Conservative People's Party

SPÖ - Social Democrats

