



european network against racism

ENAR Shadow Report 2009-2010

ENAR SHADOW REPORT 2009/2010

Racism and Discrimination in Austria

Dr. Di-Tutu Bukasa
**"Die Bunten" - Forum for Dignity, Justice and
Democracy**

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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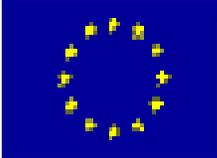
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I. Executive summary

Developments in Austria in 2009 and 2010 show no improvement in relation to racism. On the contrary, some developments and tendencies can be seen as worrying and dangerous, especially when reflecting on Austrian history.

The general political situation in Austria is characterized by the reunification and strengthening of the right wing, leading to a significant increase in racist acts.

The economic situation in the aftermath of the economic crisis is promoting racism in mainstream society, because the fear of losing social status creates an aggression that can be channelled into racism by clever and ruthless politicians.

In recent years, especially people of African descent, Muslims, Jews, Roma, immigrants and asylum seekers have been the groups most vulnerable to racism.

The manifestations of racism and religious discriminations in employment, housing, education, health, policing, crime, access to goods and services and in the media are many. The political and legal context is characterized by the political will to defend Austria against its reality being in fact a country of immigration, but denying this fact. The institutional expression of this struggle is the establishment of a court for asylum that is the only state authority exempted from the control of the court of administration, which is a clear breach of the principle of the rule of law¹.

Anti-discrimination legislation is insufficient. The Austrian legislator found a way to circumvent the shifting of the burden of proof set out in the EU regulations. Migration is not wanted, but rather seen as something to defend Austria against. Integration is subject of debate only to conclude that it is the immigrants' fault that they do not integrate. The promotion of integration is reduced to German language classes. Racist crime is not prosecuted sufficiently.

Ethnic profiling is common practice among the police to identify undocumented persons. The forces of social exclusion are far more effective than the forces of social inclusion. Therefore national recommendations focus on many necessary changes on the highest level. The Austrian constitution has to be changed in many aspects, to stop racism from escalating.

The conclusion of this report is that in order to end racism it would be necessary to go beyond the given political system. However, there is some hope coming

¹ The court of asylum began its work on 1 July 2008; it is the successor institution to the Independent Federal Asylum Senate (Unabhängiger Bundesasylsenat, UBAS). See www.asylgh.gv.at for general information on the court and details on its legal structure.

from the perspective, that immigrants are needed starting from 2015, in order to keep the social system from collapsing due to an ageing society.

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III. Introduction

Racism cannot be stopped like switching off the light. To the extent that these manifestations of systematic discrimination are grounded in fear, ignorance, unfairness and misconceptions, we need to find and develop mechanisms and tools for reaching and educating people and transforming the way we deal with difference, interests and conflicts over time.

There are many grounds for discrimination each of which should not necessarily be a source of conflict and yet, depending on the extent of people's understanding and ability to cope, they have proven to be potential sources of tension. Because these grounds are constant features of our humanity and social organization, it is necessary that we focus on ways of improving diversity through changing people's spirit and modifying their values as a competence in social and professional advancement.

Policy and leadership have very important roles to play in re-educating the population about identity and how to deal with values. This is more so in a rapidly changing and globalizing world where concepts and perceptions are also changing. The word 'deportation' for example does not exist in the Austrian law; what exists in place of 'deportation' is 'Abschiebung', a word that could be translated as "pushing away someone". There are historical and political reasons for this terminological masquerade and they seem to endure.

It seems as if the political virus spread by Karl Lueger, mayor of Vienna in the 1920s, who was known as a proponent of anti-Semitism, is still alive. Lueger's tradition historically went through different time-sequences: In the 1930s Adolf Hitler implemented National Socialism as a mental reception of what Karl Lueger already had conceived in the society. After the Second World War a silent cohabitation between Nazis and Democrats was established. In this cohabitation much of the Nazi-ideology could survive as long as it was not voiced too openly in the second Austrian republic. That is why the ground was so fertile for the politics of xenophobia (Fremdenfeindlichkeit) that started with the era of Jörg Haider in 1986 – not dared to be named racism in the mainstream during the 1990s. The other political parties tried to earn symbolic capital from symbolic condemnations of the right wing, but behind the scene they negotiated arrangements with the right wing, thereby making the situation worse. In 2000 the taboo was broken. The FPÖ came into government power with the help of the conservative ÖVP. Haider was so effective and endearing to his constituency that after his death 2008 he was celebrated as one of the most important Austrian politicians of all times. Today Heinz Christian Strache (Austrian Freedom Party - FPÖ) is the leading figure of this extreme-right political tradition and stands for the linkage between rightwing-extremism and neo-nazism in this country. The third president of the Austrian parliament, Martin Graf, an active

member of the Freedom Party, is known for his strong and active membership in various right-extremist-groups. H.C. Strache himself is running to be elected mayor of Vienna in October 2010. Madame Barbara Rosenkranz was also running to be elected president of the Austrian republic in April 2010. The dynamic of this situation is troubling. The cohabitation is still in place and the right wing is on the rise, setting the pace for the shift to the right all over Europe.

A transformation of the general mental situation of the Austrian population is taking such a retrograde development and unfortunately disorienting NGO's in particular and civil society in general. It is therefore necessary to find ways of building firm resistance against the political goal of the Freedom Party and all right-wing-extremism through political campaigns that stir up conflicts that can be won in the end, followed by education in terms of transforming the consciousness, which the people have in regard to values. All this shows that the struggle in this country against racism and discrimination is a matter of implementing new visions dealing with new values of democracy to avoid discrimination in transforming the visions of the people against right-wing political values that have reached the mainstream and infected the political spectrum up to the left centre.

IV. Communities vulnerable to racism and discrimination

The present shadow report shows no significant improvement regarding vulnerable ethnic or religious minorities in comparison to previous years. Racism intersects with other forms of systematic discrimination – attached to differences of class, gender/identity, age, sexual orientation, health, belief, etc. Certainly the colour of skin is often the reason for discrimination as well as the difference between the wealthy and poor, though those with formal and those with little education can be affected differently. But there is a second very prominent racist divide, running along the symbol of “Islam”, targeting the population with a Turkish background. Acts of racism are accompanied by complex underlying socio-psychological mechanisms that serve as camouflage in order to hide another subjective logic of the discriminating person. Consequently, the aspect of vulnerable communities will be treated in correlation with those engaged in a racist and discriminatory mindset.

The aspect of the vulnerability/social fracture in the racist and discriminating political classes is a very important component in the phenomenon of racism. The practice to draw attention to the failure of others is a way to distract from ones own problems or problematic factual truths. In addition, the imposition of a fluent knowledge of the German language, as a pre-condition before immigrating to Austria makes immigration, in light of the circumstances virtually impossible.²

The political logic is that immigrants (a certain category of persons related to cultural attributes, to foreign/strange cultures) would in the long run harm or ruin the basis of the own Austrian existence. To be against Muslim women and the burka, as mediated by the FPÖ in the municipal election 2010 “We protect liberal/free women” (Wir schützen freie Frauen) shows this in bright daylight.³ With the above example the FPÖ promotes the general feeling of the Austrian majority of being besieged by immigrants and surrounded by criminals. This amounts to nothing less but the political use of paranoia. In Austria there is a specific type of politician – a populist acting individual, with alleged attributes like being strong, ambitious, witty, energetic and supportive. These people often seem to possess a pronounced conscience for 'law and order'. They act as self-proclaimed knights, fighting against asylum seekers, Romanies and Sinti without mercy.

This argument concerning the specific political class complicity in racism and discrimination is described as follows by the Austrian scientist Bernhard Perchinig:

2 "Fluent knowledge of the German language is the key for participating in society and for successful integration / Gute Deutschkenntnisse sind der Schlüssel für eine Teilhabe in der Gesellschaft und damit für erfolgreiche Integration." Maria Fekter, Minister of the Interior, www.integration.at » [Nationaler Aktionsplan](#)» [Bericht](#)

3 Freiheitliche Partei Österreich, www.fpoe.at/kampagne/wien-0910

“The Vienna faculty of law has been an Austrian specificity, i. e. politically it has always been related to the conservative right wing. The major part of the Vienna faculty of law still has this tradition. There is evidence that between the years 1999 and 2006/2007 persons from right wing students' associations (Burschenschaften) accommodated their acquaintances and political friends as successors in terms of a socialization phenomenon. The political reason behind this certainly was the coalition government between Wolfgang Schüssel (ÖVP – Österreichische Volkspartei/Austrian People's Party) and Jörg Haider (FPÖ – Freiheitliche Partei Österreich/Austrian Freedom Party). Since then the doors to the institutions have been opened to the Haider-FPÖ and his friends. For example, look at the third President of the National Council, Martin Graf, and his colleagues.”⁴

Perchinig believes that the political target is to divide citizens in terms of belonging and not belonging. In Austria, the question whether law rules over politics or vice versa becomes superfluous according to this analysis. The decision makers implemented a very 'nationalistic' system of the state within the labour market, social security and welfare, these were owned by 'national' citizens. All other citizens are implicitly second class and do not own this common wealth. At the same time the fact that Austrians in the era of National Socialism and even before have displaced Jews and heisted their property has been concealed.

Karl Öllinger, a member of the Austrian parliament delegated by the Green Party elaborates on the subject in a similar way:

“Existing data shows, that, on one hand, the number of offences related to right wing extremism or national-socialist re-enactment has increased, and, on the other hand, is ignored by the authorities and the ministry. Then there are attacks which are not found in any statistics. Racist attacks are documented by the NGOs but only slight traces of them are found in the official statistics. Therefore, my criticism aimed at the authorities is: You do not acknowledge this; you are not working properly in any way. Our approach is to take a look at this problem by ourselves, so that it will not stay invisible. We will make sure, that the problem is noticed by the public. We do not do this for our own sake; we do this, because this is a big problem in our society.

But our question is: what are the political reasons for not indicating this problem to the widespread public? A conscious approach that exists at least for the past ten years is to ignore and exclude these themes from the official reports on constitutional protection. And, nevertheless, why is our society accepting this so willingly?”⁵.

4 Bernhard Perchinig, in “Diagnose einer politischen Schizophrenie eines Staates”, Global Player No. 3, 2010, p. 67

5 Karl Öllinger, in “Unvernünftiger Staat – Österreich”, The Global Player No.3, 2010, pp. 54-55

From theory about racism we know that racism is flexible, focussing on new targets from time to time. In Austria in 2009 and the first half of 2010 the groups hit most by racist behaviour and structures have been Black people, Muslims, Roma, Jews and asylum seekers/migrants.

One symptom of the limited perception of the political elite is shown in the recurring measures against minorities such as the Roma and Sinti. In June 2010 a tightened law on beggars was applied in Vienna. According to the report of the Global Player, No. 2, 2010, this law gives the police the privilege to apply oppressive measures and discrimination toward this group.

People of African descent with dark skin are another vulnerable minority group that are seriously affected. In Austria they often have the status of asylum seekers, which makes their situation even more difficult due to less favourable legal status with the possibility of being deported hanging over them like the sword of Damokles. They are constructed as a problem, as liable to commit criminal acts, especially drug dealing. In addition, there are continuously at risk of deportation. This is accompanied by constant infringements by the police. The latest peak of this tendency was the deportation of two FC Sans Papiers football players on 4th May 2010.

Attacks against Jews are on the rise again. According to statistics provided by the government the anti-Semitic violence and crime has risen by 53 % from 2008 to 2009. The Forum against anti-Semitism even notes an increase of over 300 % of the cases reported to them in 2009.⁶

Within mainstream discourse asylum seekers and new immigrants are constructed as criminals being a threat for public security and as poor being incapable to manage their own lives and therefore a burden on the social welfare system. The legislation is increasingly restrictive and offensive against this group, preparing the ground for police and civil violence. Asylum seekers in particular are far from protected by the authorities. For the purposes of illustrating the boundless aggravation of measures, the Minister of the Interior, Maria Fekter, appointed in March 2010 within the frame of the “national plan for integration” stated that foreigners need to be able to speak German before coming to Austria.⁷

In addition, dissident Umar Israilow sought protection from the Austrian police in January 2009. Protection was denied and he was killed some days later in the streets of Vienna on the 13 January 2009 by gunmen allegedly sent by President

6 Jelena Kopanja 2010: Racist Violence Study, Vienna, p. 5

7 Kronenzeitung http://www.krone.at/Oesterreich/Fekter_fuer_Deutschenntnisse_vor_der_Einreise_Integrations-Plan-Story-138646/index.html, 25. March 2010

Ramzan Kadyrow from Chechnya.⁸ According to the Guardian, “Umar Israilov, 27, was shot dead in as he left a grocery shop outside his Vienna flat. He was a high-profile opponent of Chechnya's pro-Kremlin president, Ramzan Kadyrov, and had filed a complaint to the European Court of Human Rights in 2006, alleging Kadyrov had tortured him. Israilov, a former insurgent, was arrested in 2003. During his time in detention, Israilov claimed he was tortured with electric shocks, and said he witnessed fellow detainees being beaten and kicked by Kadyrov and others.”⁹

⁸ Gesellschaft für bedrohte Völker, <http://www.gfbv.de/inhaltsDok.php?id=1903&stayInsideTree=1&PHPSESSID=c481cf0ded37b7f2c96f0596abe514e1> accessed 28. August 2010

⁹ The Guardian, <http://www.guardian.co.uk/world/2009/jan/15/chechen-murder-austria-russia>, 15 January 2009

V. Manifestations of racism and religious discrimination

V.i Employment

Globalisation is progressing. The economy is changing rapidly and so is the labour market. Due to the rapid technological developments and the related optimization of prosperity, products from almost all branches are becoming short lived. Nowadays, professions like carpenters, shoe makers, locksmiths, etc. - which in the 1970s and 1980s still had been part of the middle class – are becoming useless because they are no longer able to compete with large enterprises and multi-national corporations. Conflicts concerning racism and discrimination are a logical consequence of this development. They illustrate a sort of social fracture which in the end functions as a crisis that favours the popularity and rise of right wing extremism. This historical economic background is one of the main motors for the rise of racism in the majority in recent years.

Concerning the Austrian labour market in 2009 there have been no significant changes in the legal status of third country nationals. The last improvement of the legal situation was enacted in 2006, when there was a change in the law regarding access to the labour market for those coming to Austria under family reunification. Under this law (Gleichbehandlungsrichtlinie 76/207/EWG)¹⁰ immigrants can be granted unlimited access to the Austrian labour market 12 months after having entered the country if they are granted a permanent residence permit.¹¹ However, this legal innovation did not take into account the fact that within this one year many reunified families have new babies, which is the reason why many women in this group stay away from employment for a longer period and incomes of the respective households stay low.

Another legal obstruction concerning employment is the fact that university graduates from non EU-countries do not have automatic access to the Austrian labour market. In addition, there is limited access to the labour market, if such graduates find an employer who is paying them a wage of 2.466.- EUR per month and the labour market service is approving the qualification for this job as not sufficiently supplied on the Austrian labour market¹². That is why most university graduates from foreign countries leave Austria after finishing their studies. This is to illustrate the sad fact that in Austria racist structures still prevail over very simple economic arguments. Austria is giving away university graduates due to the racist and protectionist mindsets of decision makers.

In Austria the right to stay is separated from the right to enter the labour market. That is why even family members of Austrian citizens are allowed to stay due to

¹⁰ <http://www.bmask.gv.at/cms/site/liste.html?channel=CH0672>

¹¹ See [wien.at](http://www.wien.at),

<http://www.wien.gv.at/amtshelfer/dokumente/personenwesen/einwanderung/niederlassungsbewilligung/familienzusammenfuehrung.html>

¹² See http://portal.wko.at/wk/format_detail.wk?AnglID=1&StlID=433736&DstlID=0&titel=Arbeiterlaubnis

Article 8 of the European Convention on Human Rights (the right to private life), but they are not allowed to work legally unless they have reached the level A2 in German¹³. Without an A2 language diploma, the family members are treated like other foreigners on the labour market with only a theoretical chance of finding an employer willing to apply for their employment at the labour market service, who is likely to deny the application due to the bad situation on the labour market.¹⁴

The bad situation concerning the employment of groups discriminated on the grounds of racism is still prevalent. The statistics after the economic crisis say that the situation of people with a migrant background has worsened. Men have been hit by the crisis significantly more than women, and men with a migrant background have been hit significantly harder than men with a majority background. Persons with a migrant background had less chance of access to the labour market before the crisis. There are reports going back to 2007 saying that two thirds of the people under the age of 21 officially registered as seeking employment are youth with migrant background. In 2009 their chances to get jobs, to stay in employment, getting raises or better positions have become even worse due to the economic crisis. With the gradual recovery of the economy we witness in 2010 a tendency towards more employment of all groups, with the exception of female third country nationals, who seem to have extreme difficulties of getting back into employment in this phase.¹⁵

In cooperation with foreigners (Ausländer) who can express themselves well enough in German, the association FC Sans Papiers – Die Bunten describes the problems in the field of employment with the following examples:

(1) Mr. Philo A., living in Austria for ten years, married and father of two children at the age of six and eight years, sole earner, was working for the company Billa (supermarket). Due to the tightening of state measures against foreigners he was refused a prolongation for his work permit and Billa was forced to dismiss Mr. Philo. Soon his wife and the two children were obliged to return to the wife's parents in Austria and were forced to live on social aid separately.

(2) The second example demonstrates the frustration of young foreigners: Mr. Mubenga M., 28 years old, has been living in Austria for eight years. He was married to an Austrian woman for six years, was working in a restaurant and fully integrated. He, as a foreigner, was also requested to quit his job because the prolongation of his work permit had been refused in the course of stiffening measures. Mr. Mubenga's case is the consequence of the contradiction between decisions of institutions, namely the Ministry of Interior which agreed to grant the visa and the police itself which refused to renew it and the magistrate 35 which is in charge of issuing visa. The police is opposed to granting the visa and thus the magistrate 35 is unable to act on Mr. Mubenga's behalf. His case remains

13 See <http://www.vhs.at/5815.html>

14 Interview, Dunja Bogdanovic, Beratungsstelle für Migrantinnen und Migranten, 3.11.2010

15 Interview, Sarah Galehr, AMS (labour market service), 23.08.2010

pending between the Ministry of Interior and Magistrat 35, a municipal unit – even though Mr. Mubenga's lawyer has demonstrated that he complied with all the requirements for integration.

(3) The Sinti and Roma, who are not Austrian citizens, often do not manage to enter the labour market successfully. Many members of this minority group are traditionally rejected because they look different, and do not have a curriculum vitae, etc. in addition due to language barrier they are excluded from the official services for the unemployed (labour market service, AMS). To earn a living, they have to find ways of self-subsistence. Their fate is even harder due to the fact that they are confronted with racism and discrimination, also from the side of the police. For example, they are banned by the police from selling street-newspapers in Upper Austria (Oberösterreich). They can be fined by the administration or be locked by the police legally for up to 48 hours in a prison cell, in order to make them pay fines which they simply cannot afford.¹⁶ Discrimination can be proven by the fact that selling those newspapers is not forbidden in Vienna. Fines and detentions work as instruments of intimidation to stop newspaper sellers to be active in public areas. Furthermore, sexual harassment of young Sinti and Roma women, and even rapes are reported to happen at police stations.¹⁷ Consequently, the newspaper sellers are obliged to change their points of sale and sometimes to leave the city for another place. The distribution department of the street papers “The Global Player” and “Bedrohte Völker” (threatened minority populations) receive reports of this kind two to three times per week, especially from persons having difficulty with the German language. For example: The province of Salzburg legislation (RIS Landesrecht, § 29), prohibits all kinds of begging. As mentioned before, the police utilize this tool to curtail the Roma and Sinti's freedom of movement in a non-objective manner (unobjektivierbare Weise). Allegations that they are impolite, rude and aggressive when selling newspapers serve as basis for the threat of a legal contravention.¹⁸

These are some cases among many others documenting the difficulties which foreigners are facing when dealing with employment. Furthermore, they offer a behavioural pattern of racist and discriminating acts inherent to the entire Austrian governing and administrative entities.

V.ii Housing

Referencing Austrian newspapers, the daily repeating racist statements made by politicians has an influence on the social housing situation that cannot be underestimated. Social and financial insecurity among immigrants is increasing. Housing costs for immigrants are far above the average rates (34% of the

16 e.g., § 29 of the Salzburg state security law (Salzburger Landessicherheitsgesetz)

17 The global Player has received several complaints about sexual harassment and rape from young Roma and Sinti women

18 See the official letter of the province Salzburg/Hallein, No.: 14/120-2029

income of a household compared to only 18% in the total population). Simultaneously the living space for immigrants is one third less, compared to the total population. Substandard housing (no toilets and no running water in the apartment) is far more common among immigrants.¹⁹ Asylum seekers are sharing a room among four or five persons for on average seven years. There are several reasons for the poor housing situation: the lack of the right to work and the fact that immigrants do not have secure employment to pay rent on a regular basis and thus cannot fulfil the expectations of landlords. They are generally not considered as human beings. They are just migrants.

The last “nomads” of Europe – the Sinti and Roma are facing greater difficulties on the housing market. This leads to irregular situations. For example, often Roma can only pay higher rents when additional families support the payments and co-inhabit the facilities. Sinti and Roma are also often forced to sleep in their automobile or in caravans.

Maria Vassilakou, the leader of the Green Party in Vienna, describes the attitude of the social democrats and the conservative people’s party towards immigrants as follows:

“In my view the ÖVP (Österreichische Volkspartei/Austrian People's Party) sees foreigners as servants. They prefer them to live somewhere in the outer districts of the city without attracting attention. They should come during the day and get their work done, be well-behaved and return in the evening to the suburbs. They are supposed to greet nicely and be polite all of the time but they do not belong to the society, as the ÖVP defines the Austrian society.”

“The problem of the SPÖ is a historical one: the unions define the point of view on immigrants. Workers and employees from abroad are seen as competitors to the local workforce. The SPÖ propagates working immigrants as guest-workers, staying as long as their work force is needed and then departing, one, who should be paid well and treated fair, but also as one, who is not here to stay.”²⁰

Immigrants/asylum seekers are searching for ways to cope with the politically induced paranoia and racisms in a subtle manner. For example, immigrants send Austrian friends as the official lodger in order to by-pass racist reactions from landlords.

A huge amount of asylum seekers are living in hostels of the Caritas²¹ or the Diakonie²² for example. They are not allowed to leave their assigned district and have to carry a proof of presence for the police – like prisoners on parole. Young people (asylum seekers) must sit around for days, weeks or years (up to seven

19 Migration & Integration, Statistik Austria 2010 p.72

20 Maria Vassilakou, “Wer weiss, wie die WienerInnen ticken?“, The Global Player No. 3, 2010 p. 49

21 Catholic association for aid

22 Protestant association for aid

or eight years), unable to work or travel and get ill therefore, mentally and physically.

Example of Good Practice

The association "Flüchtlingsprojekt Ute Bock" established a project to provide housing for vulnerable groups such as immigrants from the former Eastern block and asylum seekers, without money.

V.iii Education

Research on the situation of "guest workers" and their children showed that their social status in this country is generally bad. This can be explained by the fact that today the Austrian school system and labour market are ethnically divided. If politicians don't react to these facts, the further development of an "ethnic lower class" will be the consequence.

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 represented far above average in so-called Sonderschulen ("special needs schools"). There we find 28% of the pupils with a non-German speaking background. However, they are also represented above average in institutions for higher education, such as universities or technical colleges. However, these last figures (35,1 % of the non-Austrian population with matriculation standard or higher compared to 28 % within Austrian Citizens in 2009) are resulting mainly from EU-citizens coming to Austria to study. Compared with other European countries, there are not only socioeconomic or cultural, but also historical reasons (lower class of migrants during the Habsburgs monarchy) responsible for this situation in Austria. The situation concerning migrants with a non-EU migration background can be summarized as follows:

- The most important explanation of the situation is the correlation between a selective school system and a homogeneous labour market.
- The educational system produces ethnic groups that are condemned to work in the lower positions on the labour market.
- The self-image of the members of these groups corresponds with their education and job careers. Furthermore, there is no positive and effective political elite as role model for young women and men from these groups.
- An absence of diversity in the pupils' life plans is noticeable.

A relatively new direction of the racist discourse in Austria is the focusing on German as the primal language. Although education research shows clearly that

a profound knowledge of the mother tongue is crucial for further language acquisition for pupils with a migrant background, the mainstream-media and also the Austrian authorities insist on German as a universal remedy for better “integration”. Due to this development the great opportunities of a multilingual population are wasted and pupils with non-German background are under great pressure. While multiethnic classes contain important opportunities of the coming together of pupils from migrant and non-migrant backgrounds, the right-wing parties are continuously agitating towards a limited rate of pupils with a migrant background. Although research in education as well as teachers are insisting on the positive effects of a multiethnic composition of school-classes, populist forces are steadily trying to divide pupils along ethnic and linguistic lines. However, resistance against racism is growing within schools. Austrian police forces are not even refraining from deporting the children of undocumented migrants right out of their classrooms. As a result there is a growing opposition against deportations of minors in particular but also against the deportation-system in general within teachers, students and pupils. This attitude toward pupils leads “native” Austrian pupils to have a disadvantageous position when it comes to acquiring foreign languages.

A big problem for well-educated migrants in Austria is the widespread non-recognition of foreign diplomas. Migrants are often working in jobs significantly below their qualification. The extremely bureaucratic procedures of recognising foreign diplomas are holding back people with migrant backgrounds to carve out a career.²³

Example of good practice

Due to the good practice and engagement of the Islamische Glaubensgemeinschaft In Osterreich (Islamic community of believers in Austria, www.derislam.at), the Islamic community in Austria has, in contrast to Islamic communities in Germany and Switzerland, been able to maintain its status as religious community with equal rights vis a vis the state of Austria. Numerous mosques and facilities for praying as well as Islamic schools and integrative activities seeking the dialogue with the Austrian community at large are proof of this.

V.iv Health

The field of health shows no significant improvement, according to actual data and figures. The access of immigrants to pre-emptive health services differs significantly from the majority. Medical services that are more expensive, for example dental services or treatments by ophthalmologists, are consumed far

²³ Source for this chapter: Interview with Martin Birkner, 12.10.2010
Statistical figures: migration & integration. Zahlen.daten.indikatoren 2010 (Statistik Austria)

less by people with a migrant background. Relevant data also shows the high psychological and physical pressures to which immigrants are exposed. Thus this part of Austrian society suffers from chronic anxiety disorder and depression far more, than other groups.²⁴ Those psychic problems could be attributed partly to mistrust and real fear of immigrants concerning authorities, especially police forces. Fears are caused by numerous police raids, subway controls and deportations. Fears affect and traumatize asylum seekers in many aspects. Asylum seekers are forced to undergo medical control involving x-rays and other medical examinations, without understanding the impact of this procedure, due to withheld information from the authorities, and with no necessity for such examinations. It must be emphasized at this point that in Austria legal measures precede mental change, legal measures are the tools to change people's mentality. The attitude of those working in the health sector is discriminatory to migrants which creates fear and disillusionment within the migrant community.

Andrea Eraslan-Weninger, head of the Wiener Integrationshaus (an NGO with integration projects for refugees, asylum seekers and migrants) states from her experience:

"We are also convinced that the age determination method which is applied to all teenagers - not only to separated children whose age is in dispute. In Traiskirchen (refugee camp), is not acceptable. Again, these dubious wrist x-rays are being conducted. This must be rejected. Firstly, there is a risk to their health, and secondly young people, which are arriving in Austria, foremost need counselling and care. The concrete needs of every young person here in Austria can only be distinguished during the care. There is a similarity between the debate on asylum misuse and the age determination method. It is a way of trying to discredit persons."²⁵

Measures as described above lead young people (asylum seekers) to adopt symptoms of "Dissociative Identity Disorder"²⁶. The pressure leads to contradictory statements, and so the authorities find reasons for the mentioned asylum misuse or likewise. To recapitulate, one sick class causes sickness in another class – the heritage of the right wing extremism in Austria. An overdone detailed view on racisms and discrimination in the area of health is not reasonable. Political schizophrenia is modified into an ideal type of realpolitik by persons within the mental boundaries of right wing extremism. Regardless of the consequences, they pursue their goals and harm others. They cover up their incompetence with racism and xenophobia. And they consciously ignore the fact that Austria is a member of the European Union, which holds up higher values for its policies. There are many reasons to presume that Austrian institutions are not

24 Migration & Integration, Statistik Austria 2010, page 64

25 Andrea Eraslan-Weninger, "Das Integrationshaus, ein Beispiel für good practice", the Global Player No. 3, pp. 71 - 72

26 The FC Sans Papiers has recorded many cases of dissociative identity disorder. This, together with the research done by ENARA on racism, is proof that dissociative identity disorder is a result of institutionalized racism

strong enough to give solutions to young people's problems, whether they be students, immigrants or the often referred to Roma and Sinti. The youth's frustration and lack of perspective in general is a big challenge for the coming decade.

V.v Policing and ethnic profiling

While not naming it ethnic profiling, the Austrian police are openly using problematic methods. Johann Golob, director of the press department of the Vienna police department said that it is necessary for the research on potential dangers to let police officers seek and question persons with a migration background even if there is no specific suspicion against them.²⁷ Amnesty International criticises the Austrian police for this practice: The non-white Austrians are "more likely to be suspected of crime and ill-treated by police."²⁸ This police practice is resulting in a general distrust against the police by people with a migrant background. So their access to public security services is significantly reduced.

The underlying problem seems to be a racist esprit de corps within the police in Austria. Many (mostly male) police officers seem to see themselves as the last frontier against immigration and the upholding of Austrian identity in a rapidly changing globalising world. They are more than willing to execute racist laws directed against immigrants.²⁹

In February 2009 the Afro-American teacher Mike B. was waiting for the subway, when he was beaten up brutally by two police officers in civil clothing without warning and lacking any visible cause. Later the two said it was a misunderstanding, because they thought, Mike B. was a drug dealer. Mike B. was severely hurt and had to be brought to the hospital. Several politicians commented in the media, that such Rambo behaviour by police officers was not acceptable. Even the New York Times reported about the case. However, the video-tapes of the incident in the subway station could not be found and the case against the police officers was turned down by the state attorney.³⁰

V.vi Racist violence and crime

Every society has its culture of aggression. In Austria, the culture of aggression is rather verbal, and disguised, seldom being openly confronting. That is why even in a massive racist climate, racist violence is not as violent as in eastern Germany for example. Surveys show that although Austria is a low-crime

27 ZARA report 2009, p. 18

28 Jelena Kopanja 2010: Racist violence study, p. 7

29 Interview: Andreas Görg, 23. August 2010

30 ZARA Report 2009, case 55, pp. 31f

country, hate crime is significantly directed against people with immigrant status. Almost 9 % of the people with immigrant background reported to have experienced hate crimes.³¹ The potential for violence is actually much higher. Austrian history shows that the authorities play a crucial role in keeping the aggressive potential on a verbal level or inciting racial violence. That is why the rise of the right wing FPÖ is coinciding with the rise of racist violence.³²

Another important aspect of racist violence in Austria is the fact that there is a strong tendency within the police to deny protection against this violence. In July 2010 a study about racist violence was concluded by Jelena Kopanja commissioned by ENAR and OSI. This report shows that the Austrian police itself have a very problematic role regarding racist violence.

“A 2009 report by Amnesty International criticizes Austrian police for its failure to provide equal protection to the victims of crime who belong to ethnic minorities. (...) Their grievances are far less likely to be promptly and thoroughly investigated and perpetrators brought to justice.”³³ During the process of recording and prosecuting offences – especially if they involve police misconduct – the victims can be made into suspects, a fact that is reflected in widespread fear of counter-charges.³⁴

“Responding to the offences by the police: The police officers often fail to record the details of alleged assailants and available witnesses, undermining further investigations. Amnesty International believes that the reason behind this omission is the “failure on the part of Austrian authorities to take effective measures to eliminate racism amongst police officers.”

Investigation/ Prosecuting offences: Although the prosecution has the authority to conduct independent investigations, more often than not it relies on police records and gives greater weight to police testimony than to the statement of the alleged victims if they belong to ethnic minorities.

The main source of the official statistics on racist violence is *Verfassungsschutzbericht*, the Report on the Protection of the Constitution published on a yearly basis. The available data³⁵ reflects an increase in racist violence over a long-term period (11.6% from 2000 to 2008). In 2009 there was a slight drop in the number of complaints (2009: 791, 2008: 835). It is important to

31 Jelena Kopanja 2010: Racist violence study, 8

32 Interview Andreas Görg, 23. August 2010

33 Amnesty International, *Victim or a Suspect*.

34 In cases of racially motivated police misconduct, Amnesty International has noted the practice of filing counter-charges against plaintiffs for resisting lawful authority and (less often) for calumny. Such practices – and widespread fear of them - are often a deterrent for victims to disclose their cases and insist on prosecution.

35 The data available reflects the number of complaints filed by the police that correspond to legal provisions which include the violation of the Prohibition Statute, sec 283 Penal Code, Insignia Law, Art III para 1 no 4 IPCP on access to publicly available goods and services and other sections of the Penal Code like secs 126, 83-88, 107.

note that the Interior Ministry issued guidelines for police officers in 2006 to report possible xenophobic, racists or anti-Semitic motives to Regional Office for the Protection of the Constitution. The number of complaints reflected in the annual report has increased since,³⁶ although the system for recording remains incomplete. While reports in 2007 and 2008 included disaggregated data on Islamophobic, anti-Semitic, xenophobic/racist and right wing extremist motivations, the most recent report for 2009 does not have this information.

Victim support: There are no public organizations with a special focus on victims of racist violence. These cases can be taken to the Weisse Ring, which is an organization supporting victims of violence. Victims can also turn to NGOs like Helping Hands Graz, ZARA or other NGOs giving support to people that have been traumatized (Peregrina, Hemayat both located in Vienna and Aspis in Carinthia). The EU-MIDIS report, however, shows that more than 80 per cent of persons belonging to the two largest minority groups in Austria were not aware of the existence of any organizations offering support to people facing discrimination”.³⁷

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

There is a strong tendency in 2009 to deprive asylum seekers from access to legal advice and all other relevant services by isolating them in remote sites, like putting them in a motel somewhere in the mountains far away from any city. This is to be considered a very strange method of integration in terms that decision-makers want immigrants to learn “German” on one hand, on the other hand they prevent immigrants from getting into contact with the native population to improve their Austrian language. In January 2010 the amendment of the asylum law came into force, creating some kind of Residenzpflicht (German model) for asylum seekers in Austria. Therefore asylum seekers are not free any more to move around all over Austria, but now they are not allowed to leave the district in which they are registered until the federal authority for asylum has determined, whether Austria is responsible for dealing with their case under the provisions of Dublin II. In reality this can take some months. In this time the asylum seekers are bound to do nothing but wait for a first decision. But this concept is contested not only by antiracist groups. People in remote areas do not like to be the resort for asylum seekers. In February 2010 the population of Eberau, a small town in Styria, near the border to Croatia and Hungaria, voted against the plan of the

36 2005:406; 2006:419; 2007:752; 2008:835. Amnesty International reports however, that few police officers referred to the guidelines in their interviews, leading the researchers to believe that there still exists a widespread unawareness.

37 European Union Agency for Fundamental Rights: EU-MIDIS European Union Minorities and Discrimination Survey: Main Results Report (2010), http://fra.europa.eu/fraWebsite/eu-midis/index_en.htm, accessed June 20, 2010. The report surveyed people with former Yugoslav and Turkish background in Austria. 84 per cent of the Turkish respondents and 82 per cent of ex-Yugoslavs said that they were not aware of the existence of an organization offering support/advice for people that have experienced discrimination.

Minister of the Interior Maria Fekter to build a new centre for Asylum seekers in their town. Small communities are not equipped to cope with many new inhabitants. This vote turned down the plans of the ministry of the interior to isolate asylum seekers far away from the cities, where they could find sufficient infrastructure to start a new life. But those plans have only been set aside for the moment. We do not expect this general line of policy to change in the next years, because legal advice for asylum seekers is causing trouble for the authorities and has therefore to be impaired. The actual mentality of decision-makers from major Austrian political parties is counter-productive with regard to all things considering foreigners. Especially the working class implements tools and strategies to exclude immigrants from access to goods and services

A constant major barrier for the access to goods and services remains the discourse about language. The dominant discourse in Austria says: All immigrants have to learn German. There is not even the slightest voice within the mainstream asking for the Austrian majority to integrate itself into a globalised world by learning several other languages at least for communication in daily life. The dominance of the German language and other German attributes are so normal that even the Ombudsman for equal treatment (Gleichbehandlungsanwaltschaft) in 2008 showed a lack of awareness when it comes to language barriers, by not providing translation but asking people with migrant backgrounds who do not speak German well enough to bring their own translator when they lodging a complaint regarding being discriminated against. The language barrier is only a symptom for the general lack of transcultural openness of institutions that is discouraging many immigrants to use those services. However, there is progress. In some institutions like the labour market service AMS there are at least some newly recruited members of staff who have a migration background and speak other languages than German. But this development is not yet part of a strategic process of transculturalisation.

The most important barrier to accessing goods and services remains of course an indirect one: The access to the labour market is restricted for many people with a migration background. With no income, those people simply cannot afford most goods and services altogether that are within the range of mainstream population. The main problem in the back of the minds of persons representing the main stream is that the left and the right oriented alike do believe and are firmly convinced that persons with a migrant background are really low-minded and cannot think in complex contexts.

Public

In 2009 a study about the access of immigrants to culture and arts has been concluded by Iodo, a member organisation of ENARA. The study shows, how artist and cultural workers with migrant backgrounds are kept away from public funding and how the population with a migration background is kept away from accessing mainstream cultural institutions. Although this 220-page-study was

formally assigned by the city of Vienna, the city counsellor for cultural affairs – with social democrats having an absolute majority, governing Vienna – refused to comment on the study and gathered another group of intellectuals that would not stress the problem of lacking access to cultural institutions for population with a migrant background too much. In May 2010, iodo held a press conference to publicly protest against this obvious discrimination of population with migration background. Here it is essential to refer to the iodo study which can be retrieved at <http://www.iodo.at/studie.htm>.

Private

Discrimination in discos is still a major problem especially for young black men. They are often refused entrance by doormen and bouncers, who are ordered to do so by their superiors. The unofficial argument behind this unofficial policy is to hinder drug dealers to enter discos and other places where young people meet. The black young people believe that drugs are the main problem of this society prevalent in all societal levels. This shows how the prejudiced mainstream discourse about black drug dealers has infiltrated their hearts and minds. In Austria young black men are under suspicion of being drug dealers.³⁸

V.viii Media, including the internet

In 2009 and the first half of 2010 brought no significant change regarding the attitude of the Austrian media and their interpretation of the situation of immigrants and ethnic or religious minorities.

The mainstream media – for example “Kronen Zeitung” or the free daily newspapers “Heute” or “Österreich” - are still publishing tendentious reports stamped with racist and xenophobic stereotypes³⁹ leaning towards open hatred, without protest or legal measures. The renowned Austrian communication scientist Fritz Hausjell especially mentions the newspaper “Kronen Zeitung” as working with fabricated statistics and giving guidelines for banal prejudices.⁴⁰

These hate campaigns have been a challenge for the Austrian press in regard to their code of conduct (Ehrenkodex für die österreichische Presse), which was introduced by the press’s self-regulatory body (the Austrian Press Council, österreichischer Presserrat). However, this body ceased to function properly in 2002, because of the withdrawal of the Austrian Newspaper Association (Verband österreichischer Zeitungen). The above mentioned media products are transformed into a tool for promoting an extension of institutionalized racism on the basis of journalism.

38 Source for this chapter: Interview Andreas Görg, 15.09.2010

39 ECRI REPORT ON AUSTRIA (fourth monitoring cycle) December 2009 p. 27

40 <http://derstandard.at/3323930/Hinweise-auf-Migrationshintergrund-sind-voellig-entbehrlich>

Similar but better masked tendencies can also be seen in the so-called quality press, especially in the coverage of issues relating to Islam or Turkey.

One positive development is the inclusion of a special page in the newspaper "Neue Freie Presse"⁴¹, a page that is edited and written by "M-Media", a self organized initiative of journalists with relations to the African continent.

Another problem affects the public radio and television company of Austria (ORF). Although noticeable efforts towards objectivity can be observed regarding public radio, there is still the problem of narrow-minded, Austrian-based perspectives. Therefore a policy of equality targets would be very desirable for the ORF in order to open up for intensified recruitment of staff with a migrant background.

The situation in public television is even worse. Persons of immigrant origin are widely underrepresented. There have been some moves to correct this problem, mainly by independent media, like the Okto cable TV station (Wiener Community-TV Okto), which is creating broadcasting opportunities for minorities other than national ones. However, reporters of Okto cable TV with migrant origins are misused and exploited, as is the case in society in general: They are given the title of reporter or producer but in fact work unsalaried. This common practice is also typical for almost all NGOs where native Austrians and immigrants cooperate. There are two major groups among the actors in Okto TV: The administration group and the producers. In the administration, 99% of the persons there have salaries and are Austrian natives; likewise, 100% of the immigrant producers are unsalaried. For example, in the broadcasting group "Radio Orange", the administration is a managing group which receives salaries including insurance and other related benefits whereas a group of producers and editors works in an honorary capacity (ehrenamtlich) since nine years. The same applies to Radio ICAP (International Centre for African Perspectives). All that is related to the Austrian mentality toward 'migrants' and their image as transmitted by the media.

Also the public broadcast channel ORF2 has a weekly programme entitled Heimat, Fremde Heimat (home, foreign home) which seeks to inform minorities, and two programmes - "Dobar Dan Hrvati" and "Dober dan Koroska" addressing Austrian ethnic minorities. A more distinguished view on the problem of immigration than on the normal TV news, can be found in the weekly TV magazine "Kreuz und Quer", a production by the ORF department for religious issues.

Concerning the sector of new media, especially the internet, the increasing number of webpages with rightwing, extremist and racist content is disturbing, while the government sits back and ignores the situation. This leads to an

41 <http://diepresse.com>

improved grade of organization and coordination for right wing groups throughout Europe, shifts the political dialogue to the right and presents economic advantages for right wing groups, as the internet is also used for the distribution of products like shirts, music and other articles all stamped with right wing ideology. The Federal Office for the Protection of the Constitution (Verfassungsschutz) specifically mentions the important role of the new media for the collaboration of right wing groups in Europe.⁴²

A positive development is the growing number of media projects, which are organized and operated by persons of immigrant origin. But most of these appreciated projects are suffering from severe financial problems, due to circumstances mentioned above, which are in large ignored by the authorities in charge. This ignorance hinders the development of new media products at large⁴³.

42 Federal Office for the Protection of the Constitution Report 2010 p. 32

43 Interview with freelance journalist Karim Duarte October 2010

VI. Political and legal context

VI.i Anti-discrimination

In 2000, the extreme right wing Freedom Party (FPÖ) came to power in coalition with the conservatives (ÖVP, Österreichische Volkspartei). Since then Austria has been setting the pace for a shift to the right that has become visible all over Europe in the last decade. The economic crisis in 2008 and its aftermath gave another push to this development.

In 2010, the division of the right wing, that was separating the BZÖ (Bündnis Zukunft Österreich/ alliance for the future of Austria) from the FPÖ since 2005, has almost been overcome. After Jörg Haider's death in 2008, the BZÖ today is marginalized, losing elections and its mandate in the institutions. The complete reunification of the right wing is only a matter of time. The FPÖ is on the rise. The consequences of racism in Austria are visible. The parties of the centre, the conservative peoples party (ÖVP) and the social democrats (SPÖ) have formed a coalition government since 2007. However, the racist line of policy of the Ministry for the Interior did not change. Since 2008, Maria Fekter from the ÖVP has been put into office, responsible for all affairs concerning immigration and integration that have become a matter of police work over the last 2 decades. Fekter has adopted some kind of racist "iron lady" style politics, being the forefront of the government for all measures against immigrants.

As a reaction to the formation of the right wing government in Austria, the EU issued regulations against several forms of discrimination, that were reluctantly transposed into national law. In 2004, after a one year delay, the new law on equal treatment (Gleichbehandlungsgesetz) came into force. Originally, this law was created in the 1970's to promote equal treatment of women. In 2004 it was supplemented with parts concerning other forms of discrimination, one part devoted for equal treatment when discrimination based on ethnicity would occur.

Today, after witnessing some years of the application of this amended law on equal treatment in Austria, we can say that progress is coming very slowly. While discrimination at the workplace and in daily life is obvious, cases coming to the courts are very few. In fact, only a handful of cases are brought to the court every year. NGOs like the Klagsverband (association for law suits) are doing their best to prepare cases for legal action, but the development on the legal side of antidiscrimination is not encouraging. It shows that the legal instruments do not reach the discriminated groups and/or do not promise enough success, which would move people to take the financial risk and bear the re-traumatisation that is likely to happen in court. We also note that the law is toothless, unless the discrimination is significantly beyond average. The cases won so far show that courts are reluctant to decide in favour of the discriminated, if the discrimination suffered is subtle instead of blatant. So there is a counterfactual bias in court. In

reality, discrimination is normality. In court, non-discrimination is taken for granted, unless the contrary cannot be overlooked. This is of course against the intention of the EU-regulations that tried to create a formal advantage for the discriminated by shifting the burden of proof to the discriminating person. The Austrian law has almost undone this shift of the burden of proof by creating a first formal step in the proceedings, where the discriminated party has to make discrimination plausible. This plausibility-clause can be interpreted as next to proof, very much depending on the judge in charge.⁴⁴

Case:

A global company terminated the contract with Mrs X, a black woman in a mid management position. She went to court against this expulsion from her job. The only legal remedy was the law on equal treatment. Before her expulsion she was the only black woman left in the company headquarters that employed up to 100 people and was among other regions responsible for the whole African continent. Mrs. X had recorded the process of discrimination she faced over the last year in detail and collected many hints for the fact that racist attitudes could have been the trigger for the ill will against her. However, the judge required more facts to establish the plausibility of racist discrimination. Finally in 2009 after one year in court, where many subtle hints for racism within the management of this global enterprise were heard and discussed, the judge denied the plausibility of racist discrimination in this case and refused to move on with the process and listen to any additional witnesses of Mrs X.

This case shows that legal remedies against racism are weak and incomplete and should be amended. Racist behaviour is a widespread practice that cannot be tackled with the remedies in place due to its subtle nature. The re-shifting of the burden of proof in the Austrian law, hitting the discriminated party before the discriminating party, amounts to a circumvention of the EU-regulations in practice.⁴⁵

VI.ii Migration and integration

Migration and integration are heavily debated in Austria, filling the mainstream media almost every day. However, the voices of immigrants and anti-racist organisations are almost not heard in this debate. Their position is marginalized in this discourse for being too provocative. In order to understand this fact, we have to take a look at the collective taboos that are upheld by this kind of censorship. There is a symbolic battle going on, denying the fact that Austria is a country with a background of immigration experience. This symbolic battle is holding up the picture of Austria as a self-determined sovereign nation state, besieged by the forces of globalisation and masses of immigrants, who want to enter the country in order to share some of the achievements of the welfare

⁴⁴ Details can be found in A. Ludwig, Beweislastverteilung im Gleichbehandlungsrecht, DRdA, 2010/2, 167

⁴⁵ Source for this chapter: Interview Andreas Görg, 23. August 2010

state.

The specific landscape of the Austrian discussion about integration shows its footprint in the statistic data. Pessimism about integration is uttered by two thirds of the total population (“Integration of migrants in Austria works “rather bad” or “very bad”).⁴⁶ Pessimism about integration is remarkably high compared to international standards and can not be explained from the objective data of the indicators of integration.⁴⁷

In contrast the optimism about integration dominates within the immigrant population. This demonstrates a noteworthy significant correlation between the process of integration and the duration of stay. With increasing duration of stay the subjective deterioration of life situation also increases significantly.

There was a major change in the Austrian constitution: In 2007 Austrian parliament decided to create a separate court for asylum (Asylgerichtshof), whose decisions are exempted from the control by the court of administration (Verwaltungsgerichtshof). That amounts to a fundamental breach of the basic principles of the Austrian constitution. There is not a single other authority in Austria, whose decisions are not underlying the control of the court of administration. In the years before the installation of the court for asylum, the court of administration used to abrogate around 20% of the decisions of the asylum authorities, who were known and criticised for the bad legal quality of their decisions. The court for asylum took up work in July 2008 recruiting his judges mainly from the former senate for asylum, who was responsible for the bad legal quality of asylum decisions. In summer 2010 after 2 years in action, the conclusion of NGOs gathered in the platform “Agenda Asyl” about the new court was, that the government's initial plans to take away legal remedies from asylum seekers has unfortunately been successful.⁴⁸

The head of the Wiener Integrationshaus, Andrea Eraslan-Weninger, summarizes this problematic situation as follows:

“Actually, this is a big challenge, since the situation of asylum seekers and refugees in the past years has severely deteriorated as a result of continuously tightening the refugee and asylum laws, which have increasingly become more restrictive. And this worries me a lot. Our strategy is to take a position to new legislation with regard to human rights. The third instance in jurisdiction of asylum proceedings - the juridical court of administration (Verwaltungsgerichtshof) - has been switched off. This undermines juridical protection. So this creates a second class law for asylum proceedings. Deadlines for appeal have been reduced. Reasons for compulsory arrest (Schubhaft) have been extended since the beginning of 2010 with the new legislation. Persons in asylum proceedings do

46 Migration & Integration, Statistik Austria 2010, page 84

47 Migration & Integration, Statistik Austria 2010, page 88

48 http://www.asyl.at/fakten_1/asyl_2010_17.htm accessed 15. September 2010

not have the legal protection they had before the new law was implemented. This is very disquieting to us. The mere existence of compulsory arrest for asylum seekers is a horrible fact. Still teenagers end up in compulsory arrest, and all these cases are documented!”

On the other hand we witnessed a significant change in the mainstream attitude towards deportations. There has been successful resistance in small towns against the deportation of “integrated families”, who had lived there for some years before getting the order to leave the country. Due to this resistance, Minister Fekter had to lead a very important symbolic battle that was widely covered over several months in mainstream media against Arigona Zogay, a young girl that came to Austria with her family from Kosovo, finally forcing her to leave the country in summer 2010.

Officially Austria still does not want to admit its status as a country of immigration. That is why the politics directed towards migrants seems to be made for the only purpose to scare them off. Recently Austrian authorities enacted a new amendment in asylum law which came into effect in January 2010. With this amendment the Austrian legislator reached a new level of unhidden hostility against immigration.⁴⁹ In an official statement Amnesty International uttered harsh criticism:

"Amnesty International is concerned about the structure and formulation of the amendment including the clarifying remarks being suitable for creating and increasing xenophobic and racist attitudes within the population as well as within the executive authorities." Amnesty is criticizing the law for its striking amount of sweeping suspicions against foreigners and an omnipresence of the suspicion of misuse, the manifold overrunning penalties and links to criminal law. The intention of the law to give protection to vulnerable persons is therefore put into the background completely."⁵⁰

“What is of great concern for NGOs is that the discourse that was once reserved for the far right has since moved into the political centre and has been legitimized by its adoption into the mainstream public discussion.” As Heribert Schiedel from the Documentation Centre of Austrian Resistance (DOEW) notes, a “foreigner problem” is an established and accepted “fact” within public discourse; the only difference, perhaps, are the proposed “solutions” to the “problem.” Finally, the increasingly restrictive legislation is hardly a product of single-party propaganda.”⁵¹

However, these developments do not take place without any resistance. On April 29th 2010 there was civil society resistance against the deportation of the trainer

49 http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00065/index.shtml

NGOs' positions can be found under <http://deserteursberatung.at/themen/article/905/680/>

50 http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00065_28/imfname_165191.pdf accessed 15. August 2010

51 Jelena Kopanja 2010: Racist violence study, p. 7

of the FC Sans Papiers. He was kept in a police bus, while protesters ensured that the bus did not move forward for several hours, before the demonstration was finally dissolved by the police using force and arresting over 40 protesters.⁵²

With a government holding up the counterfactual idea that Austria is not a country of immigration, the symbolic battles over migration are overshadowing all attempts to make some sense in working for integration and the acknowledgement of diversity. There are many initiatives that are trying to do their best on a small scale, but they lack resources due to the lack of public funding in this sector. In fact, another nuisance for the organisations working in the field of antiracism is that funding of integration projects has been concentrated on language classes in recent years, whereas there is significantly less money for cultural initiatives and next to no money for legal advice, political or media projects of immigrants in Austria. This is another illustration for the fact, that immigration is not wanted by the majority in Austria which in effect means that immigrants tend to stay migrants for their whole lives and for several generations.

The protest movement against the right-wing government after 2000 was a promoter for spreading anti-racist ideas and activities. Many initiatives were founded during those years. Ten years later some organisations are still there, others gave up. Most organisations are weaker today than they have been in the beginning. Every new civil society movement in this decade in Austria had antiracist ideas in its core, providing new power for antiracist organisations. The latest example is the student movement of 2009. However, antiracism still is in a marginalized position in Austrian politics.

VI.iii Criminal justice

VI.iii.i Racism as a crime

Legal remedies against racist crimes are insufficient, as the study on racist violence by Jelena Kopanja points 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. (...)”

The current legislation (and in turn, record-keeping) focuses on racist violence as viewed through the prism of extreme-right ideology and National Socialism, so crimes that do not fall into these categories but which could have racist motivations are harder to register. Even though there are more clear guidelines

52 Impressions of the protest: <http://www.youtube.com/watch?v=jbIX03HG394> accessed 15. June 2010

about recording incidents that fall under the Prohibition Statute against national-socialist activities, incitement to hatred (283 Penal Code) and racist insults (117 Penal Code), NGOs say that even these cases are underreported in the official statistics. For example, SOS Mitmensch informed the Interior Ministry of over 500 cases of racist graffiti in 2006, a clear violation of 283 (2) Penal Code. The official records for the same year reflected only 34 criminal incidents in that section.”⁵³

“Austrian law considers racial motivation an aggravating factor that ought to be reflected in sentencing, however, this provision is rarely used because of several reasons: victims are not encouraged to highlight these motives, police officers are generally not properly trained (or are not willing) to identify and record such motivations, no effective system exists to ensure that the police record possible racist motivations when drafting crime records (unless the incidents can be identified as violations of Prohibition Statute), and prosecutors and judges in turn fail to consider these motivations in court. There exists a general understanding that responsibility for highlighting possible racist motivation lies with the victim and not the police officer recording the crime or the prosecutor. (...)

If racist violence happens within the field of employment or when trying to access publicly available goods and services, the person affected can turn to the Ombudsman for Equal Treatment. However, they do not specialize in racist violence but rather in “ordinary” discrimination on the grounds of ethnic belonging and they cannot support people when they have to take a case to the criminal court.”⁵⁴

VI.iii.ii Counter terrorism

Experiences in Austria in 2009/10 with terrorism (not happening) show once again, that reference to counter-terrorism is not much more than an attempt to legitimize racist prejudice against certain groups, mostly Muslims. The Federal Office for the Protection of the Constitution (Verfassungsschutz) uses the potential danger of terrorism as justification for its own existence and places the issue in the centre of its work, although Austrian political measures in the past have proven to be very effective to keep terrorism away from the country by using the diplomatic possibilities of neutrality. But this good practice is not given any value in the annual report of the Federal Office for the Protection of the Constitution. In the annual report, the Federal Office tries to create plausible danger by talking about so-called terror camps in foreign countries without giving proof.⁵⁵ The background of this fabricated risk potential lies in the current anti-Islamic sentiment, brought on by the Austrian politics and parts of the media.

The Federal Office also accentuates the danger originating from Kurdish groups

53 Jelena Kopanja 2010: Racist violence study, p. 6

54 Jelena Kopanja 2010: Racist violence study, p. 8

55 Federal Office for the Protection of the Constitution Report 2010 p.19

operating in Austria and tries to document this with four violent incidents relating to the Turkish-Kurdish conflict. A closer view showed, that most of these incidents related to private conflicts.⁵⁶

VI.iii.iii Ethnic profiling

There has been no political or legal effort to stop ethnic profiling from the side of the Austrian police. There is no change in this practice that concerns all visible minorities, especially black people, who have to be aware of the constant possibility to be harassed by police with the aim of finding undocumented, 'illegal' immigrants. "The most systematic documentation of ethnic profiling practices appears in the regular country reports of the European Commission against Racism and Intolerance (ECRI), which in recent years has expressed concern about ethnic profiling in Austria."⁵⁷ That is why the Open Society Justice Initiative⁵⁸ started to evaluate the possibility of focussing on Austria in a study about ethnic profiling in 2009.

VI.iv Social inclusion

There has been no major political or legal effort towards social inclusion of immigrants provided by state authorities in Austria in recent years. However, the problem of "integration" is the subject of a very vivid debate in the mainstream. This debate is actually concluded with the verdict, that migrants are not willing to integrate. Therefore they have to be forced to learn German. Such fantasies of assimilation are forming the core of official "inclusion"-policies. Social inclusion is done by the immigrants themselves, sometimes with the help of some NGOs, who act as gate-openers. The figures show, that managing one's social inclusion against an excluding majority is not an easy job and bears some disadvantages in the economic but also in other spheres of life:

The risk of poverty is much higher amongst immigrants compared to Austrian citizens. In 2008 12 % of the Austrian population was in risk of poverty, but 26 % of non-Austrian citizens. People from Turkey and from Non-EU-countries are hardest hit. This is valid also for the rate of evident poverty (15% vs. 5%). Although the risk of poverty had been reduced in 2008 by the payment of social security benefits, people with migration background (immigrants) are less affected in the reduction of poverty risks than Austrian citizens.

While Austrian citizens earned 21.156 EUR on average in 2008, non-Austrian citizens earned on average 17.949EUR. The average wage for Non-European

56 Interview with Austrian terror-expert Günther Moser, 14th September 2010

57 http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/ethnic_20100512/Factsheet-ethnic-profiling-20091001-ENG.pdf p. 8, accessed 12. March 2010

58 For more information about the Open Society Justice Initiative see <http://www.soros.org/initiatives/justice>

citizens is even less, about 74% (15.720 EUR). In addition to cultural and educational discriminations, significantly lower incomes are a very important aspect of the massive structural obstacles on the road to equality.⁵⁹

The main problem seems to be that the forces of social exclusion are more effective than the forces of social inclusion. Modes of exclusion are discussed in many ways in Austria. For example: The FPÖ demands to expel persons from the country, who have been awarded Austrian citizenship and were subsequently found guilty to have acted in contravention of the penal law.

The mainstream in the political arena, especially the FPÖ, are looking to acquire more popularity through propaganda against foreigners. By doing so, the public debate is degrading immigrants who got the citizenship to second class citizens.

59 Source: migration & integration. Zahlen.daten.indikatoren 2010 (Statistik Austria)

VII. National recommendations

VII.i Anti discrimination

- Austria should amend its laws on equal treatment, putting antidiscrimination laws at constitutional level.

VII.ii Migration and integration

- Austria has to acknowledge that it is a country of immigration. Without accepting this fact, there will be no acceptance of the population with migration background and as a consequence there can be nothing even close to integration in this country.
- Austria has to find a way to integrate in a globalised society and be open to diversity. Decision-makers should direct themselves towards a social diversity system and take distance from solutions based on claustrophobic perspectives.
- Austria should ensure multicultural dialogue, including multiethnic and multi-lingual education, also in the interest of native Austrians who often show deficiency when it comes to language skills.
- Pre-deportation custody (Schubhaft) should be abolished.
- Austria should change its constitution and give the right to vote on all levels to all residents who declare to have chosen Austria as the centre location of their lives.

VII.iii Racism as a crime

- Austria should penalize racist politics. To practice politics does not merely mean to exercise one's own interests but to represent the interest of many others.
- We plead not only that persons exerting political racism have to reckon with criminal law as a consequence, but that racism be included in the law against re-enactment (Wiederbetätigung). Going beyond delegitimation of racist politics is an important measure against racism. (Activities related to national socialism are constitutionally forbidden under the re-enactment (Wiederbetätigung) clause)

VII.iv Social inclusion

- Austria should change its constitution and establish equal rights for all human beings instead of granting equality to Austrian citizens only.
- Austrian authorities should start to prepare the population for the fact that the welfare state and pension system for people retiring from the labour market cannot be upheld without a new major wave of immigration that has to start as soon as 2015, in order to balance the effects of an aging society.
- Austria should remove all institutional barriers. In this context Austria should facilitate the recognition of diplomas from other countries.
- Austria should make a serious attempt towards a fundamental change of the direction of politics. Democracy cannot prevail in a state, where inequalities are massive along racist divisions of the population.

VIII. Conclusion

For more than 2 decades we have witnessed a constant shift to the right in Austrian society. We are very aware of the historical circumstances of this development. We clearly see, that putting an end to racism needs more than constitutional changes. Making recommendations against racism addressed to a nation-state is somehow a paradox. Racism will not end within the structure of the nation state. Therefore we face the challenge of bringing about a new society. Today we stand at the beginning of the age of globalisation. But we have to make sure, that racist structures are not prolonged in the age of globalisation.

It will be crucial for the state in the next phase of history to divide citizenship from nationality. All residents should have reasonable access to citizenship, and the conditions to access citizenship should not be unreasonably harsh. In addition multiple citizenship should be allowed.

To create a countervailing power, we have to invest our efforts in a transnational migration movement based on anti-racist networking. From a realist political point of view, re-generating racism, no matter in which form, is a very dangerous process without limitations in itself. In order to create some outer limitations for this process, it would be advisable to strengthen the trans-national migration movement as a network on European and Austrian soil that provides a balance of powers as long as the state is not capable to fulfil this function.

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X. Annex 1: List of abbreviations and terminology

BZÖ: Bündnis Zukunft Österreich/Conservative Liberal Political Party

ECRI: European Commission against Racism and Intolerance

DOEW: Documentation Centre of Austrian Resistance

FPÖ: Freiheitlichen Partei Österreichs /Austrian Freedom Party

ÖVP: Österreichische Volkspartei/Austrian People's Party

ORF: Österreichischer Rundfunk/ Austrian broadcasting

SPÖ: Sozialdemokratische Partei Österreichs/Social Democrat Party



european network against racism

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