



European Network Against Racism  
Réseau européen contre le racisme

# ENAR Shadow Report 2012-2013

## ENAR SHADOW REPORT

### **Racism and related discriminatory practices in employment 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 in 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 racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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## Executive summary

Migrants, asylum seekers and ethnic minorities in Austria face discrimination in everyday life, and are confronted with different forms of direct and indirect discrimination and structural barriers to equal participation in the labour market. Therefore this Shadow Report takes a more narrow focus than previous reports by exploring racism and discrimination specifically in the field of employment in Austria for the period of March 2012 to March 2013.

### Key findings

Migrants in Austria face structural barriers in **access to employment** within the overall framework of immigration law. Restricted labour market access for certain groups of migrants and high income requirements for attaining citizenship or residence status, which provide for unrestricted labour market access, lead to the situation where migrants are forced to take up any job, even ones for which they are overqualified. Furthermore, as work permits are restricted to one specific employer only, people hesitate to legally claim their rights in cases of unequal treatment for fear of losing their jobs. Asylum seekers are almost completely excluded from access to the labour market as employment is limited to work permits for a particular quota of seasonal work (e.g. in the catering industry) or harvest work only. Under the current situation, they are excluded from being active in the labour market until they are granted a protection status after many years of waiting.

- Austria should reject the discriminatory legal regulations for non-EU nationals and asylum seekers which would help foster equal access in the labour market.

Another obstacle in access to employment is the **lack of recognition of foreign qualifications**. Informal qualifications or practical work experience are not considered and not subject to any formal accreditation process.

- Austria should simplify the process for the recognition of informal qualifications and practical work experience and improve the conditions for their assessment. The project "Du kannst was"<sup>1</sup> in Upper Austria, which provides for assessment of informal qualifications and individually targeted training measures, could serve as a good example for the implementation of such measures in other Austrian states.

The amendment to the **Equal Treatment Act**, adopted in May 2013, did not bring the desired improvement. Though NGOs have long pressed for an extension of the protection against discrimination on grounds of sexual orientation, age, belief and religion to areas outside employment ('levelling-up' of the protection) it was again not implemented within the current amendment to the Equal Treatment Act. It was also criticised that minimum damages are only provided in cases of sexual harassment. Limitations to a maximum amount, as low as 500 Euros, in cases where the burden of proof rests on the employer to prove that the victim would not have been recruited or promoted if no discrimination had occurred, should not be considered effective, dissuasive and proportionate. The amendment also lacks criteria for the assessment of non-pecuniary damages.

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<sup>1</sup> <http://www.dukannstwas.at/>

- To ensure that damages in cases of discrimination act as a deterrent, criteria for the assessment of non-pecuniary damages and a minimum amount of compensation should be introduced in existing legislation.
- Protection against discrimination on all grounds<sup>2</sup> should be extended to areas outside the field of employment and the Equal Treatment Act should be harmonised at federal and provincial levels.

There is still a **lack of awareness** concerning the prohibition of discrimination on grounds of ethnic affiliation in employment, an issue rarely discussed with the general public. Less than 30% of the Austrian population<sup>3</sup> know that such practices are prohibited by law.

- Measures should be taken to increase awareness about discrimination legislation among employers, employees, as well as specific authorities and administrative employees.

The lack of awareness runs parallel with the lack of **public policies** to address and combat structural discrimination in employment. Though there are some smaller individual initiatives (e.g. the Charter of Diversity or the Diversity Day)<sup>4</sup>, a comprehensive strategy does not exist in Austria. To date, Austria has not developed a National Action Plan against Racism, as promised at the Durban Conference in 2001<sup>5</sup>. After initial attempts, anti-racism measures were adopted as part of the National Action Plan on Integration<sup>6</sup>, where however only selective and vague explanations can be found on how to combat racism. No concrete measures have yet been implemented to tackle the issue. Due to the weakness of these measures in the fight against racism, the NAP on Integration cannot replace a NAP against Racism as required by the Durban process.

- Austria should adopt a National Action Plan (NAP) against Racism and fulfil its promise made in Durban 2001 in order to meet the challenges regarding discrimination and racism which are prevalent in all areas of society.

Financial resources for the **Ombud for Equal Treatment and the Equal Treatment Commission** are still marginal in relation to the tasks assigned to them. The results are lengthy proceedings before the Equal Treatment Commission and a lack of personnel within the Ombud for Equal Treatment.

- Financial resources should be increased in order to ensure that they can fulfil their tasks effectively and increase their efforts in raising awareness about anti-discrimination provisions.

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<sup>2</sup> Discrimination on grounds of ethnicity, religion or belief, age and sexual orientation.

<sup>3</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on 25 July, p 75.

<sup>4</sup> [http://portal.wko.at/wk/format\\_detail.wk?angid=1&stid=731567&dstid=9502](http://portal.wko.at/wk/format_detail.wk?angid=1&stid=731567&dstid=9502)

<sup>5</sup> Report on the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance, Durban 2001, [http://www.un.org/WCAR/aconf189\\_12.pdf](http://www.un.org/WCAR/aconf189_12.pdf), accessed on 30 August 2013

<sup>6</sup> State Secretary for Integration, [http://www.integration.at/integration\\_in\\_oesterreich\\_en/nap/nap\\_en.aspx](http://www.integration.at/integration_in_oesterreich_en/nap/nap_en.aspx), accessed on 30 August 2013

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## 1. Introduction

Racism is a reality in the lives of migrants and ethnic minorities in Austria. The extent and manifestations of this fact are often unknown and undocumented, especially with regard to official data sources. As a consequence, it can be difficult to analyse the situation and to establish solutions. Even when there is extensive official data, NGOs offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become a major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR's national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated action, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Austria as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment Austria for the period of March 2012 to March 2013. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

### 1.1 Definitions

Different definitions are used in different contexts and by different actors, which often makes the comparability of data difficult. Since 2008, Statistics Austria has been collecting data on migrants by referring to their country of birth. In some of its publications, Statistic Austria also refers to "persons with a migrant background"<sup>7</sup> using the definition of the UN Recommendations for the 2010 censuses of population and housing.<sup>8</sup> According to this definition, these are persons of whom both parents have been born abroad. This group is further divided into migrants of the first generation, who have been born abroad and migrants of the second generation who have been born in Austria.<sup>9</sup> If specific groups within migrant communities are addressed, they are referred to according to their country of origin but not as ethnic minorities. This latter term is dedicated to the recognised national ethnic minorities (autochthon minorities).

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<sup>7</sup> Statistik Austria, [http://www.statistik.at/web\\_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_migration\\_shintergrund/](http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migration_shintergrund/), accessed on 30 August 2013.

<sup>8</sup> UN Economic Commission for Europe, [http://www.unece.org/fileadmin/DAM/stats/publications/CES\\_2010\\_Census\\_Recommendations\\_English.pdf](http://www.unece.org/fileadmin/DAM/stats/publications/CES_2010_Census_Recommendations_English.pdf), accessed on 30 August 2013

<sup>9</sup> Statistik Austria, [http://www.statistik.at/web\\_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_migration\\_shintergrund/index.html](http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migration_shintergrund/index.html), accessed

In legislation, the term of ethnic minorities is reserved for the autochthon minorities, providing special rights for them. There are six recognized national minorities in Austria: Croats, Slovenes, Hungarians, Czechs, Slovaks and Roma. They are protected according to the state treaties of 1919 and 1955; their legal status and rights are guaranteed by various constitutional provisions that were partly implemented by the National Minorities Act (*Volkgruppengesetz*) of 1976.<sup>10</sup>

## 1.2 Statistical overview

At the beginning of 2012, Austria had a total population of 8,443,018 people, of which 970,541 were non-Austrian citizens (11.5% out of the total population). The largest group of non-Austrian citizens come from the EU-27 countries (390,464) with the largest group coming from Germany (153,491), followed by the countries of former Yugoslavia (excluding Slovenia, 296,377) and Turkey (114,011).<sup>11</sup> Counting together all Austrian inhabitants who were not born in Austria, are non-Austrian citizens or have a migration-background, this group makes up 19% of the total population (1.578.900 of the annual average population of 8.351.700 in 2012). 1.166.800 (74%) of this group belong to the first generation and 412.200 (26%) belong to the second generation.<sup>12</sup> The number of women with migrant-background (826,500) is slightly higher than that of men (752,500).<sup>13</sup> The majority (38,4%) of people with migrant background live in Vienna.<sup>14</sup>

There are six recognized national minorities in Austria: Croats, Slovenes, Hungarians, Czechs, Slovaks and Roma. Data are only available from the last Census in 2001, where data on speakers of minority languages have been collected. According to this census, 1,49% of the population belonged to a recognized minority.<sup>15</sup> According to estimations of the *Initiative Minderheiten*, the biggest groups are Slovenes (40,000 - 50,000) and Croats (50,000), followed by Czechs (30,000) and Roma and Sinti (10,000 to 40,000).<sup>16</sup>

The last survey on religious groups and the number of adherents in Austria is the Census from 2001. At this point, about three quarters of the population were members of the roman-catholic church, 4,7% were protestants, 4,2 % Muslims and 0,1% Jews. 2,2% considered themselves as belonging to the Orthodox churches, mostly immigrants from former Yugoslavia and 12% considered themselves atheist. Current figures are mostly based on estimations. The biggest group are Catholics (5,36 Mio), followed by Muslims (500,000 to

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<sup>10</sup> Bundesgesetz über die Rechtsstellung von Volksgruppen in Österreich. BGBl. 396/1976, last amended by BGBl. I Nr. 35/2002.

<sup>11</sup> Statistik Austria, Bevölkerung am 1.1.2012 nach zusammengefasster Staatsangehörigkeit, Geschlecht und Altersgruppen, , accessed on 23 June 2013.

<sup>12</sup> Statistik Austria, Bevölkerung mit Migrationshintergrund im Überblick (im Jahresdurchschnitt 2012) [http://www.statistik.at/web\\_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_migration\\_shintergrund/033240.html](http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migration_shintergrund/033240.html), accessed on 23 June 2013.

<sup>13</sup> *ibid.*

<sup>14</sup> Statistik Austria, Bevölkerung nach Migrationshintergrund nach Bundesländern (Jahresdurchschnitt, 2012) [http://www.statistik.at/web\\_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_migration\\_shintergrund/033241.html](http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migration_shintergrund/033241.html), accessed on 23 June 2013.

<sup>15</sup> According to the 2001 population census 119.667 inhabitants considered themselves as speakers of one of the recognized minority languages. see: Statistik Austria, Volkszählung 2001, nach Umgangssprache, Staatsangehörigkeit und Geburtsland, [http://www.statistik.at/web\\_de/statistiken/bevoelkerung/volkszaehlungen\\_registerzaehlungen/bevoelkerung\\_nach\\_demographischen\\_merkmalen/022896.html](http://www.statistik.at/web_de/statistiken/bevoelkerung/volkszaehlungen_registerzaehlungen/bevoelkerung_nach_demographischen_merkmalen/022896.html), accessed on 25 June 2013.

<sup>16</sup> Initiative Minderheiten, <http://minderheiten.at/stat/Service/volksgruppen.htm>, accessed on 25 June 2013.

600,000), Orthodox (500,000) and Evangelical (302,000). Since 2010, the Alevites (60,000) belong to the official registered religious communities.<sup>17</sup>

## 2. The context: labour market and legal framework

Austria is a country with a long history of immigration, always in need of people to increase the workforce. In the 1960's and 70's, Austria started a pro-active recruitment policy to attract so called "guest-workers" (*Gastarbeiter*) mainly from rural areas in Turkey and Yugoslavia, to work mostly in unskilled jobs, e.g. in construction. The guest-worker regime envisaged a rotation system of strictly temporary migration but, contrary to the expectations of the policy makers, people stayed and founded families. The fact that people were presumed to come as guests and later became immigrants was ignored for the subsequent decades. Today, immigrants who were born in Turkey and former Yugoslavia, account for more than 40% of the foreign born people. About 75% of immigrants aged 20-34 have parents from these countries.<sup>18</sup> Even third generation migrants, specifically from Turkish origin are still perceived as "foreigners" and are confronted with discrimination in everyday life. Segregated forms of living of second generation migrants, who had been never welcomed on a long term basis, have led to problems in terms of language competences, in German as well as in their mother-tongue. As a result, the second and third generation are facing barriers in education; a problem which is further exacerbated by school system in which children are sorted at the age of ten between a higher and lower track of education<sup>19</sup> and thus resulting in lower opportunities at the job market.<sup>20</sup>

The prohibition of discrimination in employment on grounds of ethnicity and ethnic origin was only introduced in 2004<sup>21</sup>, when Austria was obliged to implement the EU Racial Equality Directive 2000/43/EC. Since then, discrimination on grounds of ethnicity has been prohibited with respect to education, social security (including social insurance, healthcare and social benefits) and the supply of public goods and services (including housing).

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<sup>17</sup> Medienservicestelle, Weltreligionen in Österreich, [http://medienservicestelle.at/migration\\_bewegt/2013/01/18/weltreligionen-in-osterreich-daten-und-zahlen/](http://medienservicestelle.at/migration_bewegt/2013/01/18/weltreligionen-in-osterreich-daten-und-zahlen/), accessed on 25 June 2013.

<sup>18</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on 25 July, p. 26-28.

<sup>19</sup> After primary school, gifted students have the option to visit higher learning institutions (Gymnasium) that usually last 8 years and prepare students for university, whereas the others go on to vocational preparatory schools (Hauptschule) lasting only 4 years. The parents educational background have been found to have a strong impact on this first selection process, that is based on grades, parents preferences and teacher recommendations.

<sup>20</sup> Wladasch, K., Country Report 2010 on Employment, Ethnicity and Migrants, Networks of socio-economic experts in the Anti-discrimination field, p.2.

<sup>21</sup> Equal Treatment Act (*Gleichbehandlungsgesetz - GLBG*), Federal Law Gazette I Nr. 66/2004, last amended by BGBl. I Nr. 71/2013, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>, accessed on 30 August 2013

## 2.1 Outlook of the labour market

Numerous indicators for the labour market situation of migrants reveal potential discrimination of Austria's migrant population, compared to the native mainstream society. Migrants face lower rates of labour market participation, are more often affected by unemployment irrespective of their educational level, are more often overqualified and have a generally lower occupational status. They are also to a lesser extent self-employed and are particularly affected by special forms of working hours and poor working conditions.

### 2.1.1. Employment rates

In general, the labour market participation of persons with a migrant background is lower than that of the majority population. In 2012<sup>22</sup>, the employment rate of persons aged between 15 and 64, who have a migrant background, was 66%, compared to 74% of the population without migrant background. This difference is mainly caused by the lower employment rates of women with migrant background (59% compared to 70%), but is also visible for men (73% compared to 79%). There are also large differences between the various migrant groups. The employment rates of persons from EU/EEA countries and Switzerland (72%) and from former Yugoslavia (66%) were higher than those of persons from Turkey (56%) and from other non-European states (61%).<sup>23</sup>

The employment rates of women<sup>24</sup> from EU/EEA countries and Switzerland (67%) and from former Yugoslavia (60%) were only marginally lower than those of Austrian women who did not have a migrant background (70%). Noticeably the employment rate of women from Turkey was significantly lower (43%) and only around half of the women from other third countries (54%) participated in the labour market.<sup>25</sup> A 2011 OECD report on the labour market integration of migrants and their children in Austria also highlighted the "large and longstanding differences for immigrant women from Turkey"<sup>26</sup> who in 2011 had "both the lowest employment rates (only 38% of those in working-age are employed) and the highest unemployment rate (13.6%, almost four times the level for native-born women) among all major origin groups".<sup>27</sup>

According to the OECD report, native-born children of migrants face lower employment rates than the children of the native-born, and the female offspring of immigrants is particularly disadvantaged.<sup>28</sup> Migrant children with tertiary qualifications have lower employment rates than those with vocational qualifications, however when compared to the employment rates of the children of the native born, significant gaps between their employment rates can be observed. Differences in employment rates are largest, for youth who completed vocational schools that offer school-based intermediate-level programmes without extensive on-the-job training. Here, the children of migrants have an employment

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<sup>22</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräftehebung 2012 (annual average 2012, population in private households).

<sup>23</sup> *ibid.*

<sup>24</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräftehebung 2012 (annual average 2012, population in private households).

<sup>25</sup> *ibid.*

<sup>26</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on , p. 19.

<sup>27</sup> *Ibid.* P 45

<sup>28</sup> *ibid.* p 66

probability that is 18% lower than that of the children of the native-born.<sup>29</sup> The OECD report concludes, that "the large and persistent gaps in the labour market outcomes, even for immigrant offspring with good Austrian qualifications, point to the existence of other, structural obstacles to labour market integration, such as lack of networks or lack of familiarity with labour market functioning, as well as discrimination."<sup>30</sup>

Concerning age-specific differences in employment rates, there is a much lower participation rate of persons with migrant background in all age groups under 55, compared to those without a migrant background. Only in the group of 55 to 65 years old persons, the employment rate is nearly the same (31% with migrant background, 35% without). This is valid for women and men likewise.<sup>31</sup>

### 2.1.2. Unemployment

Unemployment rates also reflect existing barriers for migrants. Migrants are more affected by unemployment, irrespective of their educational levels. In 2012, where the overall unemployment rate was 7%, unemployment was significantly higher for non-Austrians (9,7%) than for Austrian citizens (6,5%). The unemployment rates for Turkish nationals (13,8%) and other third country citizens (15,8%) were double that of the Austrian population. Non-Austrian citizens with no more than compulsory schooling showed a considerably higher rate of unemployment (18,1%), compared to Austrians with the same educational background (14,4%). In this group, unemployment rates were significantly higher for Turkish nationals (21,4%) and other third country nationals (26,6%). Conversely, the unemployment rate of migrants with a higher educational level (University/high school degree) is almost equal to the level of Austrian citizens (3,4% compared to 3,8%).<sup>32</sup>

Particularly worrisome are the unemployment rates of children of immigrants. According to the OECD report, "even those children who manage to obtain a higher educational degree have difficulties in finding employment, pointing to structural obstacles in the Austrian labour market that are specific to immigrants and their children, including discrimination".<sup>33</sup>

According to labour market projections<sup>34</sup>, the proportion of unemployed migrants will increase by 7.700 until 2017. At the same time, the number of unemployed nationals will decrease by 2.200. Among the reasons for the steady increase of unemployed migrants is the high share of people entering the work force and the fact that they will benefit to a lesser extent from the economic recovery projected to start in 2014.<sup>35</sup> Moreover, the Aliens' Employment Act (*Ausländerbeschäftigungsgesetz*) provides for a preferred employment of Austrians.<sup>36</sup>

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<sup>29</sup> *ibid*, p. 67

<sup>30</sup> *ibid*. p 86

<sup>31</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräfteerhebung 2012 (annual average 2012, population in private households).

<sup>32</sup> *Ibid*.

<sup>33</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on 25 July, p 5.

<sup>34</sup> Forschungsnetzwerk AMS, Ausblick auf Beschäftigung und Arbeitslosigkeit im Jahr 2017, März 2013 <http://www.forschungsnetzwerk.at/downloadpub/Prognose2013-2017.pdf>, accessed on 13 July 2013.

<sup>35</sup> *ibid*.

<sup>36</sup> According to Article 4b Aliens' Employment Act (*Ausländerbeschäftigungsgesetz*) work permits will only be granted if the labour market test shows that there is no Austrian worker or no non-Austrian worker (already integrated in the Austrian labour market) registered with the public employment service (AMS) available for the job.

### 2.1.3. De-qualification

In 2008, Statistics Austria conducted a micro census survey<sup>37</sup> with a special focus on the de-qualification of migrants on the Austrian labour market. According to this survey, more than one third of the foreign born employees were overqualified in 2008 (28%), whereas only 10% of the Austrian born employees felt they were not being employed in positions which reflected their qualifications. Among foreign-born employees, women were more often overqualified than men (32% compared to 25%). Women from member states that have acceded to the EU since 2004 (40%) and women from former Yugoslavia were particularly affected. Over-qualification is more frequent in the first generation (29% compared to 15%) and again women were more affected than men (33% compared to 26%).<sup>38</sup> According to migration expert August Gächter from the *Centre for Social Innovation (ZSI)*<sup>39</sup>, de-qualification is significantly more prevalent in the lower education segments. Around half of the people without a migration background, who have only completed compulsory schooling, are employed in unskilled and semi-skilled jobs, whereas the other half has attained intermediate and higher positions. In contrast, 90% of immigrants with only compulsory schooling are employed in unskilled and semiskilled jobs and only 10% find themselves in intermediate and higher positions. When one compares with the rest of Europe, it is striking to see that no other country's immigrants with low education levels find it so hard to reach higher or intermediate occupational positions.<sup>40</sup>

### 2.1.4. Occupational status and branches

In 2012, persons with a migrant background were predominantly blue collar workers (44,7% compared to 23,3 % without a migrant background), whereas persons without a migrant background were predominantly white collar workers and public servants (combined 61,6%).<sup>41</sup> Among persons from Turkey and former Yugoslavia the shares of blue collar workers are the highest (62,7% and 62,6%). The occupational level of the second generation can be considerably distinguished from the first generation and can be considered similar to the situation of persons without a migrant background. The proportion of white collar workers is significantly higher for second generation workers, both for men (46% for the second generation compared to 29%) and for women (63% compared to 45%, respectively).<sup>42</sup>

The most important branches in 2012 for migrants and non-migrants alike were manufacturing, trade, health and social services, followed by the building industry. Especially in manufacturing, the building industry, as well as in the hospitality, restaurant and lodging industries, migrants are slightly overrepresented, whereas they are significantly under-

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<sup>37</sup> Statistik Austria, Migration & Integration, Zahlen, Daten, Indikatoren 2012, [http://www.bmi.gv.at/cms/BMI\\_Service/Integration\\_2012/migration\\_integration\\_2012\\_72dpi.pdf](http://www.bmi.gv.at/cms/BMI_Service/Integration_2012/migration_integration_2012_72dpi.pdf), accessed on 3 July 2013.

<sup>38</sup> Statistik Austria, Migration & Integration, Zahlen, Daten, Indikatoren 2012, [http://www.bmi.gv.at/cms/BMI\\_Service/Integration\\_2012/migration\\_integration\\_2012\\_72dpi.pdf](http://www.bmi.gv.at/cms/BMI_Service/Integration_2012/migration_integration_2012_72dpi.pdf), accessed on 3 July 2013.

<sup>39</sup> <https://www.zsi.at/>

<sup>40</sup> Author's Interview with August Gächter, Centre for Social Innovation, on 15 July 2013.

<sup>41</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräftehebung 2012 (annual average 2012, population in private households).

<sup>42</sup> *ibid.*

represented in the public administration, which traditionally provides secure jobs in Austria (only 2% compared to 7,6%).<sup>43</sup>

### 2.1.5. Self-employment and migrants in leading positions

In 2012, migrants were to a lesser extent self-employed (only 9,7% compared to 14,1% of persons without a migrant background) and this was particularly valid for female migrants who show very low rates of self-employment (for example only 2,1% of Turkish women are self-employed, compared to 10,9% of Turkish male migrants).<sup>44</sup>

In general, migrants are under-represented in leading positions. According to the Chamber of Labour managers' survey<sup>45</sup> for the year 2011, only 9% of the 500.000 managers in Austria have a migrant background. In positions without leadership duties, the share of migrants is 13%. Also, it appears to be paradoxical that a higher level of education is considered to be much less useful for migrants. While 21% of those who have a high school degree and no migration background are in leading positions, this starkly contrasts to only 7% of migrants. Among the university graduates in leading positions, only 21% have a migrant background, compared to 26% without a migrant background.<sup>46</sup>

### 2.1.6. Quality of work

Migrants are particularly affected by special forms of working hours. 14,8% work in the evenings for at least half of their working days, compared to 11,6% of persons without a migrant background. 8,3% work during the night for at least half of their working days, whereas only 5,9% of non-migrants are involved in night work.<sup>47</sup> The proportion of migrants who were affected by shift work and changing working hours is strikingly high (22,4% compared to 15%). There is also a higher proportion of migrants who work in contract or temporary work (4,1% compared to 1,4%).<sup>48</sup>

## 2.2 Legal framework

The legislative provisions addressing discrimination in employment are:

a) Equal Treatment Act (*Gleichbehandlungsgesetz - GLBG*), Federal Law Gazette I Nr. 66/2004, last amended by BGBl. I Nr. 71/2013.

Since 1979, the Equal Treatment Act has regulated equal treatment of women and men at work in private enterprises. Only in 2004, when Austria was obliged to implement the EU Racial Equality Directive 2000/43/EC and the Framework Directive 2000/78/EC, the Act was extended to include discrimination on grounds of ethnicity, religion or belief, age and sexual

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<sup>43</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräfteerhebung 2012 (annual average 2012, population in private households).

<sup>44</sup> *ibid.*

<sup>45</sup> AK Führungskräftemonitor 2011, [http://media.arbeiterkammer.at/ooe/presseunterlagen/2011\\_und\\_aelter/PKU\\_Fuehrungskraeftemonitor\\_2011\\_Juli.pdf](http://media.arbeiterkammer.at/ooe/presseunterlagen/2011_und_aelter/PKU_Fuehrungskraeftemonitor_2011_Juli.pdf), accessed on 10 June 2013.

<sup>46</sup> *ibid.*

<sup>47</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräfteerhebung 2012 (annual average 2012, population in private households).

<sup>48</sup> All data provided by Statistik Austria, Mikrozensus Arbeitskräfteerhebung 2012 (annual average 2012, population in private households).

orientation.<sup>49</sup> Since then, the scope of discrimination has been extended to the areas of education, social security (including social insurance, healthcare and social benefits) and the supply of public goods and services (including housing) on grounds of ethnic affiliation<sup>50</sup> The amendment to the Equal Treatment Act was adopted in May 2013 and entered into force in August 2013.<sup>51</sup> NGOs criticize that the long demanded extension of protection against discrimination (*levelling-up*) on grounds of sexual orientation, age, belief and religion to areas *outside* employment was not introduced.<sup>52</sup> However, through the amendment, the level of protection for self-employed persons will be further clarified and the limitation period for cases of sexual harassment will be extended to three years. Other measures introduced by the Act include the obligation to indicate minimum wages in job advertisements for sectors where no such minimum wage exists and the establishment of a regular dialogue with civil society.<sup>53</sup>

b) Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz*), BGBl. Nr.100/1993, Federal Law Gazette Nr. 100/1993, last amended by BGBl. I Nr. 120/2012. The Federal Equal Treatment Act applies to all persons employed with the federal authorities or applying for employment or training with the federal authorities; it forbids discrimination on grounds of gender, age, sexual orientation, ethnic affiliation, religion or beliefs.

c) Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment, ETC/OOEC Act (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*), Federal Law Gazette No. 108/1979, as amended in the Federal Law Gazette I No. 66/2004, last amended in Federal Law Gazette No. 7/2011 ). It installs and regulates the function of the Equal Treatment Commission and the Ombud for Equal Treatment. The Equal Treatment Commission, which now consists of three Senates, was set up to scrutinise matters relating to discrimination under the Equal Treatment Act. Its task is to decide upon cases of discrimination and give opinions in this regard, prior to the initiation of court proceedings.<sup>54</sup>

The general principle of equality is furthermore enshrined in Article 2 of the Basic Law of the State (*Staatsgrundgesetz, STGG 1867*) and in Article 7 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz, B-VG*). It applies to all Austrian and EU citizens, as well as to recognised refugees and is interpreted to be relevant also among third country nationals.

On the level of the Austrian provinces (*Bundesländer*), the Equal Treatment Acts or Anti-Discrimination Acts contain prohibitions of discrimination concerning the employees of provincial and local authorities (public sector employment law) on grounds of ethnic affiliation, religion or beliefs, disability, age or sexual orientation. These Acts also contain the prohibition of discrimination with regards to social security, social benefits, social security and health, education and access to goods and services including housing, but the

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<sup>49</sup> Part II Equal Treatment Act, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>, accessed on 30 August 2013

<sup>50</sup> Part III, Article 30 Equal Treatment Act

<sup>51</sup> Federal Law Gazette No. 107/2013

<sup>52</sup> Klagsverband, *Gleichbehandlungsgesetz: Jüngste Novelle bringt wenig Neues, Diskriminierungsschutz bleibt eingeschränkt*, 30 April 2013, <http://www.klagsverband.at/archives/7797>, accessed on 10 June 2013.

<sup>53</sup> Amendment Equal Treatment Act (*Gleichbehandlungsgesetz*), [http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_02300/fname\\_301331.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02300/fname_301331.pdf), accessed on 10 June 2013.

<sup>54</sup> Equal Treatment Commission, <http://www.bka.gv.at/site/6814/default.aspx>, accessed on 2 August 2013.

application of these Acts differs according to the laws of the specific provinces.<sup>55</sup> All provinces are obliged to install specialised bodies which meet the requirements of Art 13 of the Directive 2000/43/EC. Throughout the country, these bodies are shaped quite differently and vary in their levels of activity and visibility.<sup>56</sup>

Generally, the relevant Directives on anti-discrimination have been completely transposed and implemented into the Austrian legal framework. However, there are some shortcomings which should be mentioned:

According to Directive 2000/78/EC, the damages that can be afforded in cases of discrimination should act as a deterrent. However, it is questionable whether compensation limited to a maximum of 500 Euros, as provided for in Article 26 of the Equal Treatment Act<sup>57</sup>, can be considered to be effective, dissuasive and proportionate.

The same is true for discriminatory job advertisements, where pursuant to Article 24 of the Equal Treatment Act<sup>58</sup> penalties amount for a maximum administrative fine of as low as 360 Euros and first time-offenders are excluded from punishment.

Following an amendment to Article 20(2) of the Federal Constitution Act (BVG) in January 2008, the "specialised bodies" (the Equal Treatment Commission and the Ombud for Equal Treatment) are formally independent when carrying out their functions. However, the financial resources for these bodies are still very limited in relation to the tasks assigned to them.<sup>59</sup>

The duty to disseminate information about legal protection against discrimination according to Article 12 Directive 2000/78 is not given a high priority by the Federal Government, though there have been some activities recently. The Ministry of Labour, Social Affairs and Consumer Protection published a brochure to increase public awareness of the rights to equal opportunities and the discrimination prohibitions. It includes a list of references to legal foundations and a list of contacts to facilitate the access to information and counselling.<sup>60</sup> In previous years, there was some governmental support for initiatives to sensitise judges, judges in training, as well as lawyers, and the Ministry of Education, Art and Culture has financed some trainings and brochures for persons working in the field of education.<sup>61</sup>

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<sup>55</sup> Klagsverband, [www.klagsverband.at](http://www.klagsverband.at), accessed on 13 June 2013.

<sup>56</sup> Schindlauer, Dieter, Report on Measures to combat Discrimination. Directives 2000/43/EC and 2000/78/EC, Country Report 2011, January 2012, [http://www.non-discrimination.net/content/media/2011-AT-Country%20Report%20LN\\_FINAL.pdf](http://www.non-discrimination.net/content/media/2011-AT-Country%20Report%20LN_FINAL.pdf), accessed on 5 August 2013 p 7.

<sup>57</sup> Equal Treatment Act, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>, accessed on 30 August 2013

<sup>58</sup> Equal Treatment Act, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>, accessed on 30 August 2013.

<sup>59</sup> Schindlauer, Dieter, Report on Measures to combat Discrimination. Directives 2000/43/EC and 2000/78/EC, Country Report 2011, January 2012, [http://www.non-discrimination.net/content/media/2011-AT-Country%20Report%20LN\\_FINAL.pdf](http://www.non-discrimination.net/content/media/2011-AT-Country%20Report%20LN_FINAL.pdf), accessed on 5 August 2013, p.6.

<sup>60</sup> See: <http://www.chancen-gleichheit.at/NR/rdonlyres/E502F419-EA00-434C-899C-AB77573834C4/0/BrochureEqualOpportunitiesEqualTreatmentLegislationinAustria.pdf>, accessed on 23 July.

<sup>61</sup> Schindlauer, Dieter, Report on Measures to combat Discrimination. Directives 2000/43/EC and 2000/78/EC, Country Report 2011, January 2012, p. 93.

### 3. Manifestations of racism and structural discrimination in employment

#### 3.1. Perceptions of discrimination in employment

The public often underestimates labour market discrimination and racism. Instead, there is still a strong focus on gender discrimination given the relative novelty of other discrimination grounds, as they hadn't been introduced in the Equal Treatment Act until 2004. According to Constanze Pritz-Blazek from the Ombud for Equal Treatment, the fact that racism in employment is legally prohibited is still quite unknown and not the subject of considerable debates.<sup>62</sup> As indicated by an OECD report on labour market integration of migrants, less than 30% of the Austrian population know that such practices are prohibited by law. This share is among the lowest in OECD countries. This is true for employers as well as for employees.<sup>63</sup>

There is still a lack of sensitization concerning, for example, the discriminatory character of certain expressions or types of behaviour; and for many, who face such discriminatory behaviour at the workplace; it is part of their everyday reality. Migration expert Johannes Peyrl from the Chamber of Labour (*Arbeiterkammer*) calls it the phenomenon of the "satisfied deceived" who are aware that they face discrimination but don't want to put what they have at stake.<sup>64</sup> According to Volker Frey, secretary general of the Litigation Association of NGOs Against Discrimination (*Klagsverband*), "there is generally little willingness to deal with racism. There is a lack of political will, when it comes to structural changes, for instance concerning the sensitization of police, independent monitoring of racism and a more sensitive legal terminology".<sup>65</sup>

The lack of awareness about anti-discrimination provisions in Austria is accompanied by a lack of research on this topic. So far, no large-scale audit studies to single out discriminative behaviour in employers' hiring practices have been conducted.<sup>66</sup>

#### 3.2. Incidence of discrimination in employment

The groups who suffer most severely from labour market discrimination and racism in Austria are people of African descent and Muslim women. Stereotypes against these groups strongly influence discrimination on the labour market. Large sections of public opinion, partly also encouraged by the media and right wing political parties, stereotypically perceive

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<sup>62</sup> Author's Interview with Constanze Pritz-Blazek, Ombud for Equal Treatment, on 8 August 2013.

<sup>63</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on 25 July, p 75.

<sup>64</sup> Author's Interview with Zoreh Ali-Pahlavani and Johannes Peyrl, Chamber of Labour Vienna, 16 July 2013

<sup>65</sup> Author's Interview with Volker Frey, Klagsverband, on 2 July 2013.

<sup>66</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on 25 July, p 76.

Turkish Muslim men as backwards and women wearing headscarves as oppressed.<sup>67</sup> People of African descent, many of them being asylum seekers or recognised refugees, are frequently depicted by the media and right-wing politicians<sup>68</sup> as criminals and drug-dealers, who are too lazy to work. According to Wolfgang Zimmer from the NGO ZARA<sup>69</sup>, it appears that the more visible the characteristic of “foreignness”, the more people are discriminated against. This is especially true in jobs with customer contact, where employers often argue that they want to protect their employees against racist remarks or that they have to respect customer wishes. Women with headscarves are frequently asked during job interviews whether they could take the scarf off while they are at work. Also, foreign sounding names and accents in general are typical barriers for access to employment with customer contact.<sup>70</sup>

Another group which is strongly affected by discrimination are Roma with a migrant background. Within the framework of a study<sup>71</sup> conducted by the Vienna Chamber of Labour between January 2010 and July 2011 on the situation of migrants on the Viennese job market, a sub-study<sup>72</sup> was conducted to examine the particular situation of ethnic minorities with migrant background. The study was based on telephone interviews with members of the Vienna Chamber of Labour<sup>73</sup>, 90 of them Roma and 90 Kurds. While the employment situation of ethnic Kurds was quite similar to the total migrant population who didn't have a minority background, it was found that Roma were disproportionately affected by unemployment. One in five had no job at the time of the interview. Roma also showed to have a significantly lower level of qualifications in contrast to people from other ethnic minority groups and migrants without a minority background. Ethnic minorities are also more frequently affected by stress in the workplace like time pressure, physically demanding activities, health conditions, fear of losing the job, overtime, limited social contacts, conflicts etc. 80% of the Kurds interviewed said that they are exposed to high levels of stress in at least one of these areas, while this is valid for all of the interviewed Roma (compared to "only" 65% of migrants without ethnic minority background). In addition to a higher level of stress, ethnic minorities also experience a higher share of unequal treatment in the workplace, compared to their colleagues without a migrant background. One in five experienced unequal treatment in at least one of the asked areas (remuneration, company education and training, type of activity, company co-determination). Some of the interview partners mentioned that they had experienced a deprecating or hostile work environment, but would not define it as discrimination – a reason for this could be that they faced difficulty in objectively defining discrimination. Often people have a vague feeling of being treated unequally but cannot provide concrete evidence. Only in a few cases the

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<sup>67</sup> e.g. Da Standard.at, Heute überschreitet Grenzen, <http://dastandard.at/1353208508447/Heute-ueberschreitet-Grenzen>, accessed on 30 August 2013.

<sup>68</sup> e.g. APA-OTS, FP Gudenus: Hartes Vorgehen gegen afrikanische Drogenmafia, [http://www.ots.at/presseaussendung/OTS\\_20110217\\_OTS0048/fp-gudenus-hartes-vorgehen-gegen-afrikanische-drogen-mafia](http://www.ots.at/presseaussendung/OTS_20110217_OTS0048/fp-gudenus-hartes-vorgehen-gegen-afrikanische-drogen-mafia), accessed on 30 August 2013.

<sup>69</sup> <http://www.zara.or.at/>

<sup>70</sup> Author's Interview with Wolfgang Zimmer, Secretary General ZARA, 2 July 2013.

<sup>71</sup> Riesenfelder A, Schelepa S. and Wetzl P., Beschäftigungssituation von MigrantInnen, Arbeiterkammer Wien, January 2012, [http://media.arbeiterkammer.at/wien/PDF/studien/Kurzbericht\\_MigrantInnen\\_kurz2012.pdf](http://media.arbeiterkammer.at/wien/PDF/studien/Kurzbericht_MigrantInnen_kurz2012.pdf), accessed on 2 August 2013.

<sup>72</sup> Riesenfelder A, Schelepa S. and Wetzl P., Beschäftigungssituation von MigrantInnen, Arbeiterkammer Wien, January 2012, [http://media.arbeiterkammer.at/wien/PDF/studien/Kurzbericht\\_MigrantInnen\\_kurz2012.pdf](http://media.arbeiterkammer.at/wien/PDF/studien/Kurzbericht_MigrantInnen_kurz2012.pdf), accessed on 2 August 2013, p 44-53.

<sup>73</sup> Membership is attained automatically once one is employed by an Austrian company.

interviewees mentioned that they have been discriminated against on grounds of their ethnic origin.<sup>74</sup>

### 3.3 Patterns of inequality over the course of time

Over the last ten years there has been an increasing awareness of issues of equal treatment. The relevant stakeholders and multipliers in the field of labour law (courts, law firms, chambers) and also recruiters are increasingly dealing with the subject matter. The greater awareness and need for knowledge on the issue has also been triggered by recent ECJ decisions on age discrimination (e.g. Case C-144/04 Mangold<sup>75</sup>) where as a result, the topic of discrimination in employment has received greater publicity. Through the anchoring of the prohibition of discrimination in job advertisements, advertisements have become "cleaner" and discrimination is done less openly and more discretely. However in the field of racism there is still a lack of awareness about existing legislation both on the part of persons who are discriminated against, as well as on the part of the employers.<sup>76</sup> According to Wolfgang Zimmer from ZARA, discrimination patterns have changed only slightly. Whereas in the last 10 or 15 years black people have been most affected, in recent years there has been a dramatic increase in discrimination incidents against Muslim women wearing headscarves. They are now gradually entering the job market and are increasingly well educated. Most of these women who have had an Austrian education career have not been experiencing discrimination until they enter the job market.<sup>77</sup>

### 3.4 Discrimination in access to employment

Migrants in Austria face various barriers in access to the labour market. Additionally, they face structural barriers within the overall framework of immigration law. Austria is among the few OECD countries that do not grant full and immediate labour market access to all permanent-type migrants<sup>78</sup>. EU and EEA citizens and their family members, as well as recognised refugees and persons with subsidiary protection status, get full and immediate labour market access. A big group of migrants, however, have to acquire a work permit until they are able to change their status to an "unrestricted permanent residence permit (*Daueraufenthalt- EG*)".<sup>79</sup> The people affected by this policy are third country members with a "settlement permit"<sup>80</sup> and third country members with a residence permit "student" or

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<sup>74</sup> Riesenfelder A, Schelepa S. and Wetzel P., Beschäftigungssituation von MigrantInnen, Arbeiterkammer Wien, January 2012, [http://media.arbeiterkammer.at/wien/PDF/studien/Kurzbericht\\_MigrantInnen\\_kurz2012.pdf](http://media.arbeiterkammer.at/wien/PDF/studien/Kurzbericht_MigrantInnen_kurz2012.pdf), accessed on 2 August 2013, p 44 - 56.

<sup>75</sup> <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-144/04>

<sup>76</sup> Author's Interview with Constanze Pritz-Blazek, Ombud for Equal Treatment on 8 July 2013.

<sup>77</sup> Author's Interview with Wolfgang Zimmer, ZARA, on 2 July 2013.

<sup>78</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", p 43.

The OECD study uses "permanent-type migrants" for resident migrants. Free movement is by far the most important category of entry for new permanent-type migration. Migrants from the enlarged European Union (EU-27) accounted for almost 60% of inflows in 2009 (see Krause/Liebig p 34).

<sup>79</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", p 43.

<sup>80</sup> Provided for in Article 43 Settlement and Residence Act (NAG).

"special protection"<sup>81</sup> and new EU citizens (Romanians and Bulgarians until the end of 2013 and Croats for the next seven years). The issuance of a work permit is subject to a labour market test. In addition, the work permit has to be requested by the employer and is only valid for the specific employer. To change one's status to an unrestricted residence permit, a stable amount of income is required during the first five years of residence. A steady and sufficient income has also to be proven when applying for Austrian citizenship or in cases of family reunification. According to Judith Hörlsberger from the Counselling Centre for Migrants (*Beratungszentrum für MigratInnen*), many employers are aware of these facts and take advantage of these migrants who are forced to take on jobs with working conditions that nobody else would accept. The fact that those migrants depend on their work permit in order to get a residence permit makes it hard to legally claim discrimination on the part of the employers especially in an existing employment relationship.<sup>82</sup>

The provisions regarding the labour market access of asylum seekers are also rather restrictive. During the approval procedure and in the first three months after approval, asylum seekers have no access to employment. Thereafter, access is limited to temporary work permits for harvest- work (maximum six weeks) and seasonal work (limited to a period of six months with the possibility to prolong). The issuing of such work permits is restricted by annual quotas. Given the lengthy procedures before some kind of humanitarian status is granted means that a significant proportion of migrants who will remain in Austria have to wait many years before getting in touch with the regular labour market. Paradoxically, in cases where asylum seekers have not been granted a protection status, the fact that they have not worked during their stay in Austria, is interpreted as a "lack of integration" when it comes to examining the possibility of deportation.<sup>83</sup>

In addition to the legal hurdles that need to be overcome, migrants also face direct and indirect discrimination in access to employment on grounds of ethnic origin or religion by the employers. When it comes to discrimination in the recruiting process, the headscarf is one of the major issues. Companies hesitate to employ women wearing headscarves for fear that their costumers don't want to be served by a veiled woman<sup>84</sup>. Teachers and trainers in vocational schools, who support migrants in job search, report that it is often not possible to even get a pre- or post- interview trial day for young girls wearing headscarves.<sup>85</sup>

In a case that was handled by the NGO ZARA (*Zivilcourage und Anti-Rassismus-Arbeit - Civil Courage and Anti-Racism Work*) in 2012, a German teacher called the head office of a flower shop and asked about application possibilities for one of her students. When she mentioned that her student was from Turkey, the women replied: "I tell you one thing, a headscarf is not possible here", and added that perfect knowledge of German and completed compulsory schooling were mandatory requirements. After this incident, the teacher resorted to the NGO ZARA, which wrote an anonymous complaint letter. In his reply, the

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<sup>81</sup> Provided for in Article 96a Settlement and Residence Act (NAG) to execute civil law claims in connection with criminal offense in particular witnesses or victims of human trafficking or cross boarder prostitution or for the protection of further violence against unaccompanied minors.

<sup>82</sup> Author's Interview with Judith Hörlsberger, Beratungszentrum für MigrantInnen, on 19 July 2012.

<sup>83</sup> Ammer, Margit: Zugang zum Arbeitsmarkt für Asylsuchende aus menschenrechtlicher Perspektive, Schriftreihe des BIM zu den Forderungen des Refugee Protest Camp, [http://www.asyl.at/fakten\\_1/BIM\\_Zugang\\_zum\\_Arbeitsmarkt\\_aus\\_menschenrechtlicher\\_Perspektive\\_2013.pdf](http://www.asyl.at/fakten_1/BIM_Zugang_zum_Arbeitsmarkt_aus_menschenrechtlicher_Perspektive_2013.pdf), accessed on 10 July 2013, p 6 .

<sup>84</sup> See cases below.

<sup>85</sup> Author's Interview with Wolfgang Zimmer, ZARA, on 2 July 2013

manager contended the argument and said that in his company workers of all religions and nationalities are welcome.<sup>86</sup>

Another case was forwarded to ZARA by the Chamber of Labour. At the end of 2010, Ms R applied for a part-time job in a bakery in Vienna. The job interview started very positively, and she was told that after submitting the missing documents, she could start work in the following week. However, at the end of the interview the branch manager asked her if she would remove her headscarf while at work. Ms R did not reply affirmatively to the question, whereupon the branch manager said that they could discuss this issue another time. Shortly after the interview, Ms R. received a call from the branch manager who told her that after speaking to the regional manager she could not be hired because of the headscarf. Though Ms R explained that she could wear her headscarf in a different way, her application was rejected.<sup>87</sup>

Foreign sounding names are also a barrier for certain jobs. According to Wolfgang Zimmer from the NGO, ZARA, trainers in vocational schools report that young job seekers sometimes change their names before applying to a job in order to have better chances in the recruiting process. Often people are also confronted with unjustified requirements like perfect knowledge of German for jobs where there is no customer contact or high educational backgrounds for unskilled or semiskilled jobs.<sup>88</sup>

In addition, the lack of informal networks that would allow for upwards mobility also plays a certain role. Existing networks are often restricted to migrant dominated sectors with poor working conditions which subsequently hinder the integration process into the wider society.<sup>89</sup>

#### **3.4.1. Recognition of foreign qualifications**

Another obstacle to the access to employment is the lack of recognition of foreign qualifications. Both employers and the Public Employment Service (AMS) have difficulties in evaluating foreign educational credentials in the absence of information and knowledge about the “value” of qualifications, and there is a heavy reliance on Austrian qualifications.<sup>90</sup> Foreign qualifications which are not covered by Directive 2005/36/EC on the recognition of professional qualifications and which are not otherwise formally recognised cannot be assigned by the Labour Market’s digital registration system. In such cases, their holders are generally assigned the code “PO”, which implies that compulsory education has not been completed, or “PS”, which implies only compulsory schooling.<sup>91</sup> In addition, the determination of remuneration in collective agreements is based on Austrian qualifications.<sup>92</sup>

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<sup>86</sup> ZARA, Rassismus Bericht 2012, Case 55, [http://www.zara.or.at/wp/wp-content/uploads/2013/03/ZARA\\_Rassismus\\_Report\\_2012\\_Web.pdf](http://www.zara.or.at/wp/wp-content/uploads/2013/03/ZARA_Rassismus_Report_2012_Web.pdf), accessed on 23 June 2013, p 35

<sup>87</sup> *ibid.* case 54, p 35

<sup>88</sup> Author's Interview with Wolfgang Zimmer, ZARA, on 2 July 2013

<sup>89</sup> Author's Interview with Norbert Bichl, Beratungszentrum für MigrantInnen, on 19 July 2013

<sup>90</sup> Interview with August Gächter, Centre for Social Innovation (ZSI), on 15 July 2013.

<sup>91</sup> Bichl, Norbert, Österreich – Anerkennung von aus dem Ausland mitgebrachten Qualifikationen, unpublished manuscript, July 2011.

<sup>92</sup> Author's Interview with Manfred Wolf, GPA-djp (work@migration), on 10 July 2013.

Statistical analysis of labour market outcomes of migrants who acquired their qualifications abroad suggests that the country of origin is of considerable relevance.<sup>93</sup> Migrants with degrees from lower income countries appear to have significantly lower occupational outcomes compared to foreign-born with Austrian qualifications and migrants with degrees from high income countries. Gächter and Smoliner conclude that "Austrian employers treat schooling in certain countries of origin (e.g. Serbia, Turkey and EU2<sup>94</sup> countries) differently from the way they treat schooling in other countries of origin, for example EU1<sup>95</sup> countries."<sup>96</sup>

The Austrian system for the recognition of foreign qualifications is rather complex and fragmented. Depending on the educational level, different bodies are in charge. Academic qualifications are recognised through a so-called "nostrification" process, which provides for the full equalisation with an Austrian academic degree, an Austrian title and the entitlement to conduct a profession that is connected with the respective graduation in Austria. The nostrification, which is conducted by the respective university, is based on a comparison of the curricula and often requires taking additional courses in an Austrian University.<sup>97</sup> Between October 2011 and September 2012, 119 nostrifications have been conducted at Universities, 9 at Universities of Applied Science and 8 at Universities of Education.<sup>98</sup> If needed, the National Academic Recognition Information Centre (ENIC-NARIC AUSTRIA) issues a non-binding recommendation for the evaluation of the academic degree and provides advice in further steps for the recognition process.<sup>99</sup>

The nostrification of foreign certificates, carried out by the Federal Ministry of Education, Arts and Culture is based on a comparison of the educational experience abroad with current Austrian curricula. If certain courses are not considered equivalent to the Austrian curricula, supplementary exams have to be taken.

Foreign vocational qualifications – whether it is a qualification from an EEA country or not - can be equalized (made 'equivalent') with Austrian certificates (Gleichhaltung). The competent authority is the Federal Ministry of Economics, Family and Youth (BMWFJ). In the case of foreign apprenticeship certificates, the assessment of 'equivalence' is rather difficult because Austria operates a dual education system, combining company and school-based training, whereas several key origin countries only provide school based training. This often leads to difficulties in the recognition process and as a result, vocational qualifications are only partly recognised. In such cases, the applicant is required to pass either the practical part of the relevant Austrian apprenticeship examination or even the complete exam before

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<sup>93</sup> Gächter, A. and S. Smoliner (2010), "How well does education travel? Education and occupation with and without migration", FIW Research Reports 2009/2010, Vol. 10 / Migration Issues, Vienna: FIW, p 63-68

<sup>94</sup> Including Hungary, Slovenia, Slovakia, Czech Republic, Bulgaria, Estonia, Latvia, Lithuania, Poland, and Romania, plus also Croatia and Bosnia-Herzegovina.

<sup>95</sup> Including Italy, Switzerland, Liechtenstein, Andorra, Belgium, Finland, France, Greece, Ireland, Iceland, Luxembourg, Malta, Monaco, the Netherlands, Norway, Portugal, San Marino, Sweden, Spain, Vatican, United Kingdom.

<sup>96</sup> Gächter, A. and S. Smoliner (2010), "How well does education travel? Education and occupation with and without migration", FIW Research Reports 2009/2010, Vol. 10 / Migration Issues, Vienna: FIW, p 67

<sup>97</sup> Bichl, Norbert, Österreich – Anerkennung von aus dem Ausland mitgebrachten Qualifikationen, unpublished manuscript, July 2011.

<sup>98</sup> Data provided by Statistics Austria. Numbers on applications and rejections are not available as reporting obligations in accordance with the "Bildungsdokumentationsgesetz" does only include positive nostrifications.

<sup>99</sup> ENIC NARIC Austria, [http://www.bmwf.gv.at/startseite/studierende/academic\\_mobility/enic\\_naric\\_austria/](http://www.bmwf.gv.at/startseite/studierende/academic_mobility/enic_naric_austria/), accessed on 22 July 2013.

the certificate is issued. Other practical obstacles in the recognition process are the procurement of the required documents (e.g. certificates and curricula) and their translation, which is both time and cost-intensive. In addition, there are application fees of up to 300 Euros.<sup>100</sup>

In 2012, 1.036 applications for the notification of foreign certificates and apprenticeship diplomas have been assessed. 420 of those were recognised and 360 persons received a notice to submit additional examinations. 256 requests were rejected.<sup>101</sup> Most recognitions are in regulated professions as there are more requests.

The framework of the Aliens Law also presents a structural barrier to the recognition of foreign qualifications. This is especially relevant during the first years of residence where the achievement of a secure residence title and work permit is of primary relevance and for which a certain minimum income (on a sustained basis, without requiring social benefits) is required. Persons with an insecure residence title are thus more likely to be excluded from the recognition of their qualifications as they cannot afford further training. Also, the aggravated conditions of family reunification and the acquisition of citizenship are creating a situation where persons are forced to take up jobs for which they are overqualified.<sup>102</sup>

Informal qualifications or practical work experience are generally not considered in the assessment procedure and are not subject to any formal accreditation.<sup>103</sup>

In 2007, in the state of Upper Austria, the Social Partners, in cooperation with the Public Employment Service, launched a pilot project, called "Du kannst was"<sup>104</sup> that assesses informal qualifications. Existing practical skills are assessed and through individually targeted training measures participants are trained for a skill level that corresponds to the Austrian apprenticeship examination in the respective profession. So far the project has enjoyed considerable success and companies have shown considerable interest.<sup>105</sup>

#### **3.4.2. The role of hiring agencies and education networks in reinforcing discrimination patterns**

Personnel service providers depend on their customers, who often have discriminatory wishes and are thus reinforcing discrimination patterns. In a recent case from 2013, a mobile company was looking for door-to-door promoters via a personnel service provider. When the recruiter of the mobile company noticed that the agency had chosen a dark-skinned person, he said that they could not hire this person as there had been problems with openly discriminatory remarks made against black people by their customers. In a complaint letter,

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<sup>100</sup> Bichl, Norbert, Österreich – Anerkennung von aus dem Ausland mitgebrachten Qualifikationen, unpublished manuscript, July 2011.

<sup>101</sup> Medien-Serviceestelle Neue ÖsterreicherInnen, [http://medienservicestelle.at/migration\\_bewegt/2013/03/28/2012-wurden-420-nostrifikationen-durchgefuehrt/](http://medienservicestelle.at/migration_bewegt/2013/03/28/2012-wurden-420-nostrifikationen-durchgefuehrt/), accessed on 6 August 2013.

<sup>102</sup> Bichl, Norbert, Österreich – Anerkennung von aus dem Ausland mitgebrachten Qualifikationen, unpublished manuscript, July 2011.

<sup>103</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on 25 July, p. 26-28.

<sup>104</sup> <http://www.dukannstwas.at/>

<sup>105</sup> Author's Interview with August Gächter, Centre for Social Innovation (ZSI), on 5 July 2013.

the NGO ZARA asked the company to suggest an appropriate solution, but the complaint has yet to be answered.<sup>106</sup>

In the field of education and training, the dependency relationship between the trainee and the institution is a particular problem when it comes to reporting discriminatory behaviour and asserting their rights.<sup>107</sup> That is why many cases remain undocumented. In October 2012, a group of students in a vocational school in lower Austria turned to ZARA to seek advice about frequent racist and sexist remarks by a teacher. The students then launched a complaint before the competent regional school authority (*Landesschulrat*) who initiated an investigation. As a result, the students were intimidated by the teacher and other members of the teaching staff in order to withdraw their complaint. One week after they had launched the complaint, a conference was convened to exclude the students from school, a decision that was later cancelled. ZARA informed the school about the fact that the Equal Treatment Act also applies to the education sector and about the prohibition of discrimination during a complaint procedure. Due to the previous conduct of the teaching staff, many of the concerned students were afraid of subsequent prejudice in case they had to act as witnesses. Finally, a conference by the regional school authority discussed measures to improve the teaching situation.<sup>108</sup>

In another case handled by ZARA and the Ombud for Equal Treatment, a man of Lebanese origin, Mr V., who had been living and working in Austria for many years, enrolled for a course in order to get his training as a carpenter recognized. During the course, Mr V. was continuously subjected to racist remarks by the teacher and other students. When he asked the teacher to stop this behaviour he was accused of disturbing the lessons and was asked if he wouldn't notice that he was "not welcome". Subsequently he was dismissed from the course and he turned to the complaints office of the institute to inform them about the racist remarks. The person in charge just told him that the withdrawal from the program would not fall into his competence. In a mediation meeting initiated by the Ombud for Equal Treatment, Mr V. was able to give his view on the discriminatory behaviour and an individual coaching for the completion of the professional examination was organised.<sup>109</sup>

### 3.5 Discrimination in the workplace

The most common forms of discrimination in the workplace are bad working conditions and harassment by co-workers or employers. Harassment at the workplace is widespread towards black people and Muslims. Cases are reported frequently to the competent NGOs and the Ombud for Equal treatment. According to Manfred Wolf from the GPA-DJP (Union of Private Sector Employees and of Printers, Journalists and Paper Workers), among the recurring themes are jokes, insinuating remarks, degrading treatment by the employer or linguistic humiliation (use of a simple slang e.g. "you go there", "you make this").<sup>110</sup>

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<sup>106</sup> Author's Interview with Wolfgang Zimmer, ZARA on 2 July 2013.

<sup>107</sup> *ibid.*

<sup>108</sup> ZARA, Rassismus Bericht 2012, [http://www.zara.or.at/wp/wpcontent/uploads/2013/03/ZARA\\_Rassismus\\_Report\\_2012\\_Web.pdf](http://www.zara.or.at/wp/wpcontent/uploads/2013/03/ZARA_Rassismus_Report_2012_Web.pdf), accessed on 23 June 2013 Case 51, p. 34-35.

<sup>109</sup> *ibid.* Case 60, p 37.

<sup>110</sup> Author's Interview with Manfred Wolf, work@migration, GPA-djp, on 10 July 2013.

An increasingly frequent request to the Ombud of Equal Treatment concerns the use of the mother tongue at the workplace. In particular, the question if it may be prohibited to use one's mother tongue with colleagues during work time or breaks, in front of costumers, with costumers or in the presence of other colleagues who do not speak the same language. Though a blanket ban of speaking one's mother tongue is clearly discriminatory, each case has to be examined individually as different grounds of discrimination can be relevant.<sup>111</sup>

Another form of discrimination, which is frequently reported, is when employers demand their employees to change their names in customer interaction, which often happens in hairdressing saloons.<sup>112</sup> At the end of 2012, the Chamber of Labour informed ZARA about the following case: Mrs. A., who is an Austrian citizen with a Turkish background, worked as a dental assistant from 2009 to 2010. The employer asked her to call her by a different name, because her own name would sound too foreign and "like a curse word". Though she vehemently expressed her disagreement, he started calling her "Daisy" during working time. During the time of Ramadan, Mrs A. wanted to observe fasting rules according to her Muslim belief. Though the employer was aware of this, he ordered her to sit with him at a table during lunch break. He also expressed his aversion against this religious custom. Mrs. A. turned to the Ombud for Equal Treatment, who filed a complaint to the Equal Treatment Commission which then determined the existence of multiple discriminations on grounds of ethnicity, gender and religion. Subsequently, the Chamber of Labour filed a court complaint to claim outstanding remuneration and compensation for the proven discrimination. In 2012, an out-of-court settlement regarding the level of compensation was reached.<sup>113</sup>

Though Article 27 of the Equal Treatment Act<sup>114</sup> provides for the protection of victims, in many cases, complaints about discriminatory behaviour lead to the termination of the employment relationship. In such cases it is often difficult to prove that the complaint was the trigger for termination. Therefore, in most cases, victims seek remedies just after the employment contract has been terminated. In a case that was tackled by the Equal Treatment Commission, a man had been harassed by two of his colleagues who repeatedly called him "nigger" and "scum-nigger". When he turned to the shift supervisor, the supervisor transferred him to another group but then took back the transfer after a couple of hours. During a talk with the production manager, the manager praised his motivation and ensured his support but said that it was not possible to change shifts. After working in his old group for another month without incidents, he was called to the office of the production manager where he was told that it had been decided to terminate the work relationship. The ECT decided on discrimination by harassment through his two colleagues and in terminating employment by the employer.<sup>115</sup>

Unequal treatment is moreover reported in cases of career advancement and promotion. Migrants do generally have less opportunities for upwards mobility and encounter the so called "glass-ceiling effect". This effect is also encouraged through the counselling policy of the Public Employment Service whose mandate is limited to procurement within the job level held by the person previous to unemployment and does not include upwards

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<sup>111</sup> Author's Interview with Constanze Pritz-Blazek, Ombud for Equal Treatment, on 8 July 2013.

<sup>112</sup> Interview with Wolfgang Zimmer, ZARA, on 2 July 2013.

<sup>113</sup> Zara, Rassimus Report p. 34.

<sup>114</sup> Equal Treatment Act, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>

<sup>115</sup> GBKII/103/10, Senat II der Gleichbehandlungskommission, Anonymisiertes Prüfungsergebnis gemäß §12GBK/GAW Gesetz, <http://www.bka.gv.at/DocView.axd?CobId=44115>, accessed on 5 August 2013.

mobility.<sup>116</sup> Furthermore, there is a high demand for unskilled workers which is met by migrants who are often overqualified.<sup>117</sup>

Wage discrimination is particularly relevant when it comes to grading staff in wage categories according to collective agreements. For instance, collective agreements in trade provide for grading persons who conduct sales conversations in another language on a higher salary level. However, often companies employ multilingual workers who do not speak German as their mother tongue, but do not pay them accordingly. According to Manfred Wolf from the GPA-DJP (Union of Private Sector Employees and of Printers, Journalists and Paper Workers), this leads to a dangerous situation of classification where one's mother tongue is not valued as a foreign language, whereas natives who learn another language are graded and remunerated accordingly.<sup>118</sup> The working climate index which is periodically conducted on behalf of the Chamber of Labour showed that migrants with a Turkish background earn on average 300 Euros (20%) less than their colleagues without a migrant background, having the same level of qualifications; employees from former Yugoslavia earn 10% less.<sup>119</sup>

Migrants are also disproportionately affected by terminations. Unskilled workers, who are mostly migrants, are the first to be laid off and are later easily replaced by other unskilled workers.<sup>120</sup>

Many employers argue that they only want to protect their staff from discrimination. In many cases, they refer to bad experiences where previous colleagues have been discriminated or were subject to racist remarks by customers. According to Wolfgang Zimmer from ZARA, "though small and medium-sized enterprises do have responsibility, it is not their task alone to reach a change of consciousness. More campaigns of larger enterprises are needed to set an example."<sup>121</sup>

### 3.6 Economic sectors

According to August Gächter, in Austria all economic sectors are prone to labour market discrimination. "If we regard de-qualification as discrimination I would say, the higher the occupational level, the worse it is. If we look at wage discrimination, the incomes on low educational levels do not differ so much between Austrians and migrants. But with every step to the top the difference gets strikingly bigger, the higher the educational level, the higher the income gap."<sup>122</sup>

Racism and discrimination is also very common in the care sector where migrants are overrepresented and people in need of care are often not very open to people of a different origin. Male home care workers and accredited nursing professionals with a "foreign"

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<sup>116</sup> Author's Interview with Norbert Bichl, Beratungszentrum für MigrantInnen (Perspektive) on 19 July 2013.

<sup>117</sup> Author's Interview with August Gächter, Zentrum für soziale Innovation (ZSI), on 5 August 2013.

<sup>118</sup> Author's Interview with Manfred Wolf, work@migration, GPA-djp, on 10 July 2013.

<sup>119</sup> M-Media, *Arbeitsklima: Bei gleicher Arbeit, weniger Geld für Migranten*, 27 April 2012, <http://www.m-media.or.at/wirtschaft/migranten-ehlen-im-offentlichen-dienst/2012/04/27/>, accessed on 13 August 2013.

<sup>120</sup> Author's Interview with Judith Hörsberger and Norbert Bichl, Beratungszentrum für MigrantInnen, on 19 July 2013.

<sup>121</sup> Author's Interview with Wolfgang Zimmer, ZARA, on 2 July 2013.

<sup>122</sup> Author's Interview with August Gächter, Zentrum für soziale Innovation (ZSI), on 5 August 2013.

appearance thus face discrimination by employers who justify their discriminatory behaviour by using customer wishes as an excuse.<sup>123</sup>

## 4. Tackling the challenges

### 4.1 Public policies

Though there are some smaller individual initiatives (e.g. the Charter of Diversity or Diversity Days/Awards), a comprehensive strategy to address and combat structural discrimination does not exist in Austria. Though at the World Conference against Racism in Durban 2001, Austria had made a commitment to introduce an independent National Action Plan against racism<sup>124</sup>, no such Action Plan (NAP) has been introduced yet. The government's position in the recent Universal Periodic Review of Austria was that it does not intend to establish a NAP against Racism "since Austria is already taking a number of concrete measures in this area, which are inter alia provided for in the National Action Plan on Integration".<sup>125</sup> However the National Action Plan on Integration only contains punctual and vague explanations on how to combat racism and until now no concrete measures have been implemented to tackle the issue.<sup>126</sup> The NAP on integration is overwhelmingly focused on "performance" by migrants and concentrates on German-language proficiency as a key to social, economic and cultural integration. Integration measures are unilateral and mandatory, and since July 2011, the obligation to learn German has been strengthened further under the "Integration Agreement" (Integrationsvereinbarung).<sup>127</sup> Despite significant expenses on language courses, there has been no comprehensive evaluation on the effectiveness of these measures. Figures show that even one year after having participated in a language course by the Public Employment Service, less than 35% of these participants are in employment.<sup>128</sup>

NGOs heavily criticise<sup>129</sup> the lack of efforts in combating structural discrimination in employment and the lack of a national strategy to counter racism in Austria. The tightening

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<sup>123</sup> Interview with Norbert Bichl, Beratungszentrum für MigrantInnen.

<sup>124</sup> Amnesty International, Austria. Briefing to the UN Committee on the Elimination of Racial Discrimination (CERD), 81th session August 2012, [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/AI\\_Austria\\_CERD81.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/AI_Austria_CERD81.pdf), accessed on 14 August 2013, p5.

<sup>125</sup> *ibid.*

<sup>126</sup> Klagsverband, Annual Report 2012, [http://www.klagsverband.at/dev/wp-content/uploads/2008/05/Jahresbericht-2012\\_englisch1.pdf](http://www.klagsverband.at/dev/wp-content/uploads/2008/05/Jahresbericht-2012_englisch1.pdf), p 19.

<sup>127</sup> The Integration Agreement includes basic knowledge of German (A1-level) prior to immigration for all migrants from non-EEA countries (as well as from Romania and Bulgaria until 2014) who are neither labour migrants nor part of the family of labour migrants, if they apply for certain categories of residence titles. There are exception for highly qualified migrants, holders of the so called "Blue Card" and "Long-Term Residence Permit", minors and persons who cannot provide such evidence because of their mental or physical health. To fulfil the Integration Agreement, migrants are required to obtain an A2-level of German two years after immigration. The requirements for obtaining a permanent residence status and for naturalisation are language skills at B1 level (approximately 600 hours of German courses). (<http://www.migration.gv.at/en/living-and-working-in-austria/integration-and-citizenship/integration-agreement.html>, accessed on 10 August 2013).

<sup>128</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", p. 57.

<sup>129</sup> e.g. Klagsverband, Annual Report 2012, [http://www.klagsverband.at/dev/wp-content/uploads/2008/05/Jahresbericht-2012\\_englisch1.pdf](http://www.klagsverband.at/dev/wp-content/uploads/2008/05/Jahresbericht-2012_englisch1.pdf), p 19.

of the rules in the Alien's Law and the Citizenship Law, in particular the high income requirements, are especially criticised as further exacerbating the situation. According to Wolfgang Zimmer from ZARA, this leads to the fact that a deterioration in all areas is accepted because everything depends on whether somebody has a job and how much the person earns.<sup>130</sup>

## **4.2 Access to effective remedies**

### **4.2.1 Judicial remedies**

Court cases in the field of discrimination in employment typically concern non-recruitment or discriminatory dismissals. In a court case that was handled before the Labour and Social Court (Arbeits- und Sozialgericht) by the Litigation Association of NGOs against Discrimination (Klagsverband) in 2008, Dr. A. a general practitioner of Muslim faith applied for a post as a rehab physician. Although she had the right qualification she would have only been considered if she agreed not to wear the headscarf during work. Just before the second hearing the counter-party paid the demanded damages and therefore no judgment was given.<sup>131</sup> However, in general, very few cases are brought before court. This has several reasons. Especially for migrants who have fought for many years to get a secure residence status in Austria, there is a certain unwillingness to go to court. Many fear to be again confronted with prejudice and mistrust, a fear which is often not unfounded. According to Volker Frey from the Litigation Association of NGOs against Discrimination (Klagsverband),<sup>132</sup> experiences from court proceedings have shown that many victims cannot count on being treated fairly and with understanding. Particularly in criminal proceedings, there is often little understanding or knowledge of racist issues. Other factors that make court procedures unattractive are the low amounts of damages that can be awarded and the high risk involved in litigation.

Pursuant to Article 26(1) of the Equal Treatment Act, in cases where the victim can provide evidence that he or she would have been chosen for the job in a non-discriminatory selection procedure, the compensation payment amounts to two monthly salaries. If the employer can prove that the only damage suffered by an applicant as a result of discrimination was the refusal to take his/her job application into consideration, the compensation amounts only to a maximum of 500 Euros. In addition, the procedure takes one to two years and the losing party has to bear the costs of the proceedings (in cases where the costs are not met by the Klagsverband or the Chamber of Labour). In many cases it is also difficult to find witnesses who want to give evidence before court, especially if they still work in the company and have to testify against their employer.

Another problem is that it is hard to get to the stage where a judgment by the court is given, as in most of the cases, out-of-court settlements are reached. This can be in the interest of the plaintiff but is undesirable for strategic litigation purposes.

Statistical data on court complaints and decisions related to discrimination on the ground of ethnic origin or religion in employment are not available, as the Federal Ministry of Justice

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<sup>130</sup> Author's Interview with Wolfgang Zimmer, ZARA, on 2 July 2013.

<sup>131</sup> Klagsverband, Kein Job für Ärztin mit Kopftuch, <http://www.klagsverband.at/kommentare/kein-job-fuer-aerztin-mit-kopftuch>, accessed on 30 August 2013.

<sup>132</sup> Author's Interview with Volker Frey, Klagsverband, on 2 July 2013.

does not single out discrimination cases and does not provide information to the public.<sup>133</sup> On its homepage, the Klagsverband publishes cases which have been published on the homepage of the Federal Legal Information System (*Rechtsinformationssystem – RIS*).<sup>134</sup> However the Legal Information System does not include court decisions at lower instances.<sup>135</sup>

## Sanctions

In cases of harassment, the Equal Treatment Act (ETA)<sup>136</sup> only provides for a minimum compensation of EUR 1000. In case the discrimination proves decisive for non-employment, the compensation amounts to two monthly salaries.<sup>137</sup> For non-promotion, the compensation for the difference in remuneration amounts to at least three monthly salaries for the person who would have met the requirements.<sup>138</sup> Since the amendment of the Equal Treatment Act in 2008<sup>139</sup>, in a case of discriminatory termination of employment, a victim can challenge the termination or dismissal in court.<sup>140</sup> This also applies when the employment is terminated on discriminatory grounds during the probation period. If a fixed-term employment contract has not been renewed on account of discrimination, the employee can sue for a declaration of the existence of an open-ended employment contract.<sup>141</sup> Another option is to accept the termination and claim damages and compensation for sustained personal impairment.

If the employer can prove that the victim would not have been recruited or not promoted even in the event of discrimination-free selection compensation for non-pecuniary damage, in the case of non-recruitment and non-promotion, is limited to a maximum of EUR 500. For discriminatory job<sup>142</sup> or housing<sup>143</sup> advertisements, the maximum penalty is EUR 360 and punishment for employers is excluded for first time offenders (admonition only). In all other cases (access to social benefits, in job counselling, job training, or with respect to membership in an employees' or employers' organisation and in the access to services provided by such organisations) the law lacks specification on minimum damages. It is rather stated that the discriminated person is entitled to request elimination of discrimination or claim material damages, as well as compensation for sustained personal impairment. However in practice, courts have difficulties in finding criteria for the assessment of non-pecuniary damages which result in the attribution of very low amounts of compensation (between 250 and 1500 Euros).<sup>144</sup>

Litigation costs are only covered in cases where the applicant fully wins the case. If the applicant only partially wins (e.g. 250 of 1500 Euros), one sixth of his/her costs will be

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<sup>133</sup> Author's Interview with Volker Frey, Klagsverband, on 2 July 2013.

<sup>134</sup> See: <http://www.ris.bka.gv.at/>.

<sup>135</sup> Author's Interview with Volker Frey, Klagsverband, on 2 July 2013.

<sup>136</sup> Article 26 (11) Equal Treatment Act, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>, accessed on 30 August 2013

<sup>137</sup> Article 26 (1) ETA

<sup>138</sup> Article 26 (5) ETA

<sup>139</sup> Federal Law Gazette No 98/2008

<sup>140</sup> Article 26 (7) ETA

<sup>141</sup> *ibid.*

<sup>142</sup> Article 24 ETA

<sup>143</sup> Article 37 ETA

<sup>144</sup> Author's Interview with Volker Frey, Klagsverband, on 2 July 2013.

reimbursed, but five sixths of the costs of the adverse party have to be covered by the applicant.<sup>145</sup>

Claims related to discrimination in the establishment of employment or promotion must be lodged in court within a period of 6 months. If the employee accepts the termination of employment and claims damages, action must be brought within 6 months. A discriminatory notice of termination or summary dismissal – also during the probationary period – must be contested in court within 14 days. Submitting a request to the Equal Treatment Commission suspends the time limit for the assertion of claims in court. This suspension ends upon the delivery of the examination result. Thereafter, the employee can assert claims in court within a period of three months.<sup>146</sup>

## 4.2.2 Non-judicial remedies

### 4.2.2.1 Ombudsman or equality body

There are two main public institutions on the federal level to implement the Equal Treatment Act. The first is the Equal Treatment Commission (*Gleichbehandlungskommission*) situated in the Federal Ministry for Women and Civil Services. The Commission is divided into three senates: Senate I deals with the equal treatment of women and men at work; Senate II is in charge of equal treatment at work irrespective of ethnicity, religion or beliefs, age or sexual orientation; and Senate III is responsible for equal treatment irrespective of gender or ethnicity in other areas. Senate II is comprised of two representatives of the Chamber of Labour, the Chamber of Commerce, the Federation of Industry, the Federation of Trade Unions and one representative appointed by the federal Chancellor and the Federal Minister for Social Security and Consumer Protection. Proceedings can be initiated on request by the affected person, a member of a work council, representatives of the Social Partners or the Ombud for Equal Treatment. Proceedings are free of charge and not public. Decisions are not binding for courts and are more like legal recommendations. However if a court provides a dissenting verdict, it must give reasons for its decision. The examination results must be finalised within three months after the decision and must be publicised anonymously on the homepage of the Federal Ministry for Women and Civil Service.<sup>147</sup>

Proceedings are rather lengthy and in many cases the outcome is not to the benefit of the complainant. Between January 2010 and March 2013, the Commission received 43 requests related to ethnic discrimination in employment, five requests related to discrimination on grounds of religion and three requests related to both discrimination grounds. Within the same period, 20 examination results have been established. In six cases, examination results confirmed that discrimination had occurred, while 14 results were "negative" for the applicants. 14 requests had been withdrawn or were dismissed for lack of content. The average length of proceedings in 2012 was 10.3 months.<sup>148</sup> According to Constanze Pritz-Blazek from the Ombud for Equal Treatment the problem about the length of the proceedings is that cases tend to lose their drive, witnesses are no longer available or can't remember the facts. Often also applicants lose interest in the procedure as they continue

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<sup>145</sup> *ibid.*

<sup>146</sup> Article 15 Equal Treatment Act, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>, accessed on 30 August 2013.

<sup>147</sup> Equal Treatment Commission, <http://www.bka.gv.at/site/6814/default.aspx>, accessed on 6 August 2013.

<sup>148</sup> Query response by Karina Brugger-Kometer, Management Equal Treatment Commission Senate II via e-mail on 9 August 2013.

their lives and don't want to expose themselves to a burdensome situation and a renewed confrontation with what they had experienced. Additionally, the consideration of evidence before the Commission is rather problematic as competently acting employers often appear more credible. Moreover, when motives for the termination of employment overlap, or other conflicts have existed, it gets rather difficult to grasp the incidence of discrimination.<sup>149</sup>

The second key body is the Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*)<sup>150</sup>, which has also been established at the Federal Ministry for Women and Civil Service and is structured similarly to the Commissions' senates. The respective ombudspersons offer counselling and representation to potential victims of discrimination against their employers and also accompany them in proceedings before the Equal Treatment Commission. Furthermore, the Ombud for Equal Treatment engages in disseminating information about the rights of victims through information materials, workshops or lectures and provides advice for employers or members of work councils wishing to avoid discrimination. The main part of consultation concerns telephone requests related to information about the legal situation and legal possibilities, or questions concerning concrete cases and how to deal with them. When persons desire intervention, the ombudsperson either writes an intervention letter adapted to the specific situation of the client or assists with independent initiatives for conflict resolution... Further steps include careful negotiations with the aim that the person remains in the company and that the situation improves with respect to claims for damages or settlement. Promising cases with chances of success are brought before the Equal Treatment Commission.<sup>151</sup>

In 2012 the Ombud received 253 requests for counselling in cases of ethnic discrimination in employment and 77 requests concerning discrimination on grounds of religion. Like in the previous years (2010/2011), there have been a strikingly high number of cases of discrimination in 2012 concerning non-recruitment because of the Muslim headscarf. In many of these cases the ombudspersons were confronted with particularly strong resistance by the employers when drawing attention to the alleged discrimination.<sup>152</sup>

Following an amendment to Article 20/2 of the Federal-Constitution Act (B-VG), in January 2008, the "specialised bodies" finally obtained formal independence to perform their functions. However, in practice Senate II and Senate III of the Commission are composed of members nominated by Ministers and Social Partners only. Schindlauer states that "although they can act independently as members of the Commission, the image is that the Commission consists of persons sent by institutions to represent those institutions' attitudes and political opinions."<sup>153</sup> Another point of critique is that financial resources for both bodies are still insufficient in relation to the tasks assigned to them.

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<sup>149</sup> Interview with Constanze Pritz-Blazek, Ombud for Equal Treatment, on 8 July 2013.

<sup>150</sup> Ombud for Equal Treatment, <http://www.gleichbehandlungsanwaltschaft.at/site/6432/default.aspx>, accessed on 30 August 2013.

<sup>151</sup> Author's Interview with Constanze Pritz-Blazek, Ombud for Equal Treatment, 6 July 2013. See also: Beratungsprozess: <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=32029>

<sup>152</sup> Author's Interview with Constanze Pritz-Blazek, Ombud for Equal Treatment, 6 July 2013.

<sup>153</sup> Schindlauer, Dieter, Report on Measures to combat Discrimination. Directives 2000/43/EC and 2000/78/EC, Country Report 2011, January 2012, p. 90.

## 4.3 Civil society initiatives

### 4.3.1 Trade Unions

The Austrian labour market policy is strongly shaped by the principle of social partnership. It favours voluntary co-operation and the reconciliation of interests between the state, employers and employees. Among the social partners, the key actors for integration are the Chambers of Labour (AK) and the Austrian Trade Union Federation (ÖGB) on the employees' side and the Federal Economic Chamber (WKÖ) as the representatives of employers' interests. Within the advisory centre of the ÖGB, special counselling for migrants is provided in matters pertaining to labour law and social law and counselling is offered in languages of origin (Bosnian, Croatian, Serbian and for migrants of African descent).<sup>154</sup> The GPA-DJP (Union of Private Sector Employees and of Printers, Journalists and Paper Workers) has set up a dedicated interest group for migrant workers, called work@migration.<sup>155</sup> It focuses on the special needs of migrants at work and cuts across economic sectors. Main topics are access to the labour market for asylum seekers and undocumented workers, recognition of foreign qualifications and every-day discrimination at the workplace. In discrimination cases, the group takes up an intermediary role between employees, the employer and the works council and tries to find good solutions for the company. The union also collaborates with the Public Employment Service (AMS) in social partnership committees on a national and regional level where the topics of employment of foreigners and qualifications of migrants are discussed.<sup>156</sup>

Cases reach the interest group via their general legal counselling, or members of works councils address the group with specific requests. According to Manfred Wolf from the GPA-djp, legal action is very difficult in the field of employment of foreigners. There are various barriers for people seeking consultation in discrimination cases because people are strongly dependent on their work permit. Also, people from other cultural contexts are unfamiliar with the concept of a workers union and have to establish trust first.<sup>157</sup>

### 4.3.2 Employees' Organisations/ Vienna Chamber of Labour

The Vienna Chamber of Labour (*Arbeiterkammer - AK*) is strongly involved in shaping the labour market integration of Vienna's immigrant population. It provides personalised legal advice in roughly 40,000 cases per year, half of which are requested by members with an immigrant background. Membership is attained automatically once one is employed by an Austrian company. Immigrants are overrepresented among those seeking legal support, as this group only makes up one third of the members of the Vienna Chamber of Labour.<sup>158</sup> The majority of discrimination inquiries are related to gender discrimination, as awareness on other discrimination grounds is only slowly taking hold. Most discrimination inquiries are combined with other labour-law related queries. Due to the difficulties for victims to provide proof of discrimination, it is often more promising to just tackle the labour-law related

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<sup>154</sup> ÖGB Beratungszentrum, <http://www.gpf.at/system/files/OEGB-Beratungszentrum.pdf>, accessed on 29 July 2013.

<sup>155</sup> Work@migration, [http://www.gpa-djp.at/servlet/ContentServer?pagename=GPA/Page/Index&n=GPA\\_4.7](http://www.gpa-djp.at/servlet/ContentServer?pagename=GPA/Page/Index&n=GPA_4.7), accessed on 30 August 2013.

<sup>156</sup> Author's Interview with Manfred Wolf, work@migration, GPA-djp, on 10 July 2013.

<sup>157</sup> *ibid.*

<sup>158</sup> Krause, K. and T. Liebig (2011), "The Labour Market Integration of Immigrants and their Children in Austria", OECD Social, Employment and Migration Working Papers, No. 127, OECD Publishing, <http://dx.doi.org/10.1787/5kg264fz6p8w-en>, accessed on , p. 40.

problem. Moreover, in more than 90% of the cases, legal advice is only sought after the termination of employment. If cases are brought before court, the Chamber provides legal protection for members. Furthermore the AK acts as member of the Equal Treatment Commission and also provides representation in proceedings before the Commission.<sup>159</sup>

According to migration expert Johannes Peyrl, a group which is particularly discriminated are undocumented or under-documented workers (e.g. students who work more than they are allowed to). As this group mostly doesn't approach the Chamber of Labour or other institutions for legal counselling, the AK plans to set up a specialised low-threshold contact point where undocumented workers get legal advice on how to assert their rights and claims for payment. In order to reach the target group, the project shall at the beginning be based on outreach work in cooperation with the trade unions and respective NGOs.<sup>160</sup> A current project<sup>161</sup> in cooperation with ZARA is a programme that trains children to become "multipliers" by informing their peers about issues of discrimination and providing mediation. The AK also strives for cooperation with the Public Employment Service to launch a comprehensive anti-discrimination training for young people within the AMS. Information activities include a brochure on discrimination for young people in apprenticeships, which is written in youth-appropriate language and articles on discrimination issues in the Chambers' own magazine (*AK für Sie*), which all AK members in Vienna receive. Moreover, the AK Vienna elaborated a diversity strategy for its own employees which includes changes in personnel policy (recruitment of bilingual legal consultants of immigrant origin), trainings in intercultural competence for employees and research studies on migrant specific topics in Vienna.<sup>162</sup>

#### 4.3.2 NGOs activities

There are two main NGOs working in the field of racism and discrimination in employment. ZARA (Zivilcourage und Anti-Rassismus-Arbeit - Civil Courage and Anti-Racism Work) is the only NGO which acts as an observatory and maintains a systematic record of all discrimination incidents provided by victims and witnesses of racist incidents. Furthermore it provides legal counselling for victims of racism and discrimination. Third party intervention within the regime of the Equal Treatment Act in the courts is only allowed for one specific NGO, namely the Litigation Association of NGOs Against Discrimination (Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern). It is also a service centre for its members and provides knowledge on the topics of anti-discrimination and equal opportunities. The *ARGE MigrantInnenberatung Österreich* (Working Group for Migrant Counselling Austria) is an association of NGOs that offers counselling for migrants on the job market and aims at promoting equality and combating racism. Within the framework of the EU initiative EQUAL (2001-2008), the ARGE coordinated the "MIDAS Strategy against Racism and Discrimination on the Job Market" and conducted a bundle of measures against racism between 2002 and 2005. Members are the *Beratungszentrum für Migrantinnen* (Counselling Centre for Migrants) in Vienna, *Migrare* (Centre for Migrants) in Upper Austria, *VEBBAS* (Association for Counselling and Support for Migrants) in Salzburg, *Zemit* (Centre for

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<sup>159</sup> Author's Interview with Zoreh Ali-Pahlavani and Johannes Peyrl, Vienna Chamber of Labour, on 16 July 2013.

<sup>160</sup> Author's Interview with Zoreh Ali-Pahlavani and Johannes Peyrl, Vienna Chamber of Labour, on 16 July 2013.

<sup>161</sup> AK Wien, Peer Education Project, [http://wien.arbeiterkammer.at/service/presse/Peer\\_Education\\_Projekt.html](http://wien.arbeiterkammer.at/service/presse/Peer_Education_Projekt.html), accessed on 30 August 2013.

<sup>162</sup> Author's Interview with Zoreh Ali-Pahlavani and Johannes Peyrl, Vienna Chamber of Labour, on 16 July 2013.

Migrants in Tyrol), and ZEBRA (Centre for Socio-medical, Legal and Cultural Assistance for Migrants) in Graz.<sup>163</sup>

## ZARA

The NGO ZARA (Zivilcourage und Anti-Rassismus-Arbeit – Civil Courage and Anti-Racism Work) was founded in 1999 with the mission of combating racism and promoting civil courage as a positive approach to ethnic diversity. ZARA provides legal counselling for anybody confronted directly or indirectly with racism and maintains systematic records of all incidents reported by victims and witnesses. Results are published in the Annual Racism Report which is currently the only source of information on racist incidents and structures in Austria.<sup>164</sup> In 2012, ZARA documented 772 racist incidents, of which 9% related to employment and entrepreneurship.<sup>165</sup> Furthermore ZARA undertakes social information and awareness activities by offering training courses to businesses and educational institutions as well as an annual training course in anti-racism work.<sup>166</sup>

ZARA also undertakes legal representation of presumed victims before the Equal Treatment Commission or before Court or accompanies clients in mutually agreed courses of action. In cases of an existing employment relationship, counsellors contact the employer and try to convince the employer to improve the working environment. Many cases are handled together with the Ombud for Equal Treatment or passed on if it is better for the case to be handled by a federal body. If labour law claims exist, the case is passed on to the Chamber of Labour.<sup>167</sup>

## Klagsverband

The Klagsverband is a Litigation Association of NGOs Against Discrimination. It was founded in 2004 as an umbrella organisation of NGOs already working against discrimination and consulting victims of discrimination – on all grounds protected by law in Austria. The Klagsverband is the only organization in Austria that helps victims of discrimination to assert their rights by means of all of Austria's anti-discrimination laws. The NGO provides legal support to victims of discrimination and also offers training seminars and counselling on the issue of equal opportunity to its 32 member organizations. The Klagsverband represents victims of discrimination before court. The persons concerned contact the Klagsverband after they have been counselled by one of Klagsverband's member organizations and have decided to proceed to court. In 2012, the NGO received 70 requests of which 47% were related to discrimination on grounds of ethnic affiliation, and 7% on grounds of religion. 70% of requests related to access of goods and services and 30% to employment. Five of these requests have been brought before court. For the purposes of strategic litigation, the Klagsverband takes over legal issues which have not yet been clarified or cases that have been previously dealt with but where results have always been unsatisfactory or damages not dissuasive enough. Such cases are used in order to substantiate demands for legal amendments. Court proceedings are also accompanied by public relation work, mostly via

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<sup>163</sup> ARGE MigrantInnenberatung, <http://www.migrant.at/homepage-2006/argeoesterreich/argeoesterreich.html>, accessed on 10 August 2013.

<sup>164</sup> <http://www.zara.or.at/>.

<sup>165</sup> ZARA, Rassismus Report 2012, [http://www.zara.or.at/\\_wp/wp-content/uploads/2013/03/ZARA\\_Rassismus\\_Report\\_2012\\_Web.pdf](http://www.zara.or.at/_wp/wp-content/uploads/2013/03/ZARA_Rassismus_Report_2012_Web.pdf), p. 13 accessed on 23 June 2013, p 13

<sup>166</sup> <http://www.zara.or.at/>.

<sup>167</sup> Author's Interview with Wolfgang Zimmer, ZARA, on 2 July 2013.

the Klagsverband's website<sup>168</sup> or press releases, where opinions, court decisions and up-to-date information on anti-discrimination issues are published.<sup>169</sup>

## THARA

THARA is an initiative of the Volkshilfe Österreich with the aim of improving the situation of Roma on the job market and enhancing their integration. Since its foundation in 2005, the project offers career guidance, educational counselling and a program targeted at Roma entrepreneurs. Activities also include infotainment events, public relations work in mainstream media but also in target-group media in German and Romani. Workshops to raise awareness about Roma culture and history are offered for institutions working in the labour market environment (e.g. the Public Employment Service), in schools and also for interested companies. Activities to further the understanding of the job market in Austria are also provided in the Roma Community. In the counselling practice, direct discrimination on grounds of ethnic origin is rarely mentioned. Roma instead feel discriminated against because they feel they are treated as though they are outsiders ("foreigners") or their appearance does not conform to stereotypical Austrian impressions. An on-going project is the THARA Business Award for Roma business founders or entrepreneurs who promote diversity and special matters of the Roma Community. The aim is to present role models within the Roma Community to encourage Roma to use their potential as individual entrepreneurs.<sup>170</sup> *Thara biznis* is a website<sup>171</sup> which provides a job exchange service for job-seekers and entrepreneurs from the Roma-Community but is also open for non-Roma.

## Migrare

Since 1985 the Centre for Migrants in Upper Austria (Migrare) offers employment-related counseling, as well as legal and social counseling for migrants and asylum seekers. In 2012, Migrare conducted a campaign called "*Rassismus? Mog I ned!*"<sup>172</sup> (I don't like racism) in cooperation with the youth department of the Trade Union Upper Austria and the initiative "*Land der Menschen - Aufeinander Zugehen OÖ*". The campaign included workshops with the possibility of getting a certificate at the end and campaigns in public space. In 2012, 12.310 persons made use of the bilingual counselling offered by Migrare.<sup>173</sup>

### 4.3.3 Employers' organisations

The Austrian Federal Economic Chamber is the legal representation of all Austrian businesses. The topic of the labour market integration of migrants has gained prominence for the Economic Chamber in recent years. In 2008, the Chamber launched the project "*Mentoring for Migrants*" in cooperation with its project partners, the Austrian Integration Fund (ÖIF) and the Public Employment Service (AMS). Over a period of six months, skilled migrants who are unemployed or overqualified are tutored by a person who is well integrated in the Austrian labour market. The mentors share their knowledge on the Austrian job market, as well as their social networks with the mentees. The project aims at equipping migrants with social capital that will empower them over the long run, including the development of a career plan, the establishment of contacts or the establishment of a

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<sup>168</sup> <http://www.klagsverband.at/>

<sup>169</sup> Author's Interview with Volker Frey, Klagsverband on 2 July 2013.

<sup>170</sup> Author's Interview with Usnija Buligovic, THARA- Projekt, Volkshilfe Österreich, on 16. July 2013.

<sup>171</sup> <http://www.thara-biznis.at/>

<sup>172</sup> [http://www.migrare.at/cms1/images/stories/ws\\_antirassismus.pdf](http://www.migrare.at/cms1/images/stories/ws_antirassismus.pdf)

<sup>173</sup> Migrare, Annual Report 2012, [http://www.migrare.at/cms1/images/stories/jb\\_2012\\_migrare.pdf](http://www.migrare.at/cms1/images/stories/jb_2012_migrare.pdf), accessed on 7 August 2013.

business plan. To date, over 700 mentoring pairs have been formed and numerous mentees have gained a foothold on the Austrian labour market.<sup>174</sup> In November 2010, the Chamber launched a "Charter of Diversity" that aims at promoting diversity in Austrian companies.<sup>175</sup> To date around 100 companies have signed the Charter<sup>176</sup>. It is a public commitment to diversity and serves as a forum for information and exchange of experiences. The local economic chambers also run a range of projects and initiatives. The Viennese chamber, for instance, has its own diversity department which offers, among others, multilingual information events or language trainings in business German for entrepreneurs or company founders or the annual "DiversCity Award" which was launched in 2010.<sup>177</sup>

#### 4.4 Individual employers' initiatives

##### Simacek Facility Management Group GmbH

Simacek is a facility service provider with over 7000 employees. Diversity management is part of the companies' CSR strategy and a core concept of its corporate philosophy. Among the CSR activity fields are responsible management, respect for human rights and the environment, as well as tolerance and fair working conditions. These common values are also anchored in the companies' Code of Conduct.<sup>178</sup> In 2011, together with the Austrian Integration Fund Simacek, a language training project was launched, which offers German training at the workplace, adapted to the working hours.<sup>179</sup> Also in 2011, Simacek has initiated the first "B2B Diversity Day", where companies present their Best Practices for successful diversity management including the areas of age, gender, ethnic affiliation, religion and sexual orientation.<sup>180</sup>

##### Bank Austria

The UniCredit Bank Austria has a long tradition of diversity management, reaching back to the 1990s. In 2005, the principle of equal opportunities and anti-discrimination was anchored in its Integrity Charter and the Joint Declaration of Equal Opportunities and Non-Discrimination of the UniCredit Group. In 2011, Bank Austria was awarded the first "DiversCity Award" of the Vienna Economic Chamber.<sup>181</sup>

##### Wiener Linien

In January 2013, the Wiener Linien, Vienna's public transport company, launched a public campaign against racism. The slogan "*Together against exclusion and racism*" and "*The City*

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<sup>174</sup> Mentoring für MigrantInnen, <http://wko.at/sp/mentoring/Projektbericht-Mentoring.pdf>, accessed on 14 August 2013.

<sup>175</sup> Wirtschaftskammer Österreich, Charta der Vielfalt, [http://portal.wko.at/wk/startseite\\_dst.wk?dstid=9502](http://portal.wko.at/wk/startseite_dst.wk?dstid=9502), accessed on 4 August 2013.

<sup>176</sup> [http://portal.wko.at/wk/format\\_detail.wk?angid=1&stid=665207&dstid=9502&opennavid=53402](http://portal.wko.at/wk/format_detail.wk?angid=1&stid=665207&dstid=9502&opennavid=53402)

<sup>177</sup> Wirtschaftskammer Wien, Diversity-Referat, [http://portal.wko.at/wk/startseite\\_dst.wk?DstID=8730](http://portal.wko.at/wk/startseite_dst.wk?DstID=8730), accessed on 14 August 2013.

<sup>178</sup> Simacek Leitbild, <http://www.simacek.at/unternehmen/csr-nachhaltigkeit/leitbild.html?87f9503a6c2252df12dd394719e2e36d=4f07853078e31fe2aea27871a19254ff>, accessed on 2 September 2013.

<sup>179</sup> Simacek BSB Diversity Day 2011, Best Practice, <http://www.simacek.at/media/addons/downloads/1359389489.pdf?87f9503a6c2252df12dd394719e2e36d=6fe225ceb3dd26d74ba07f0e16df3ec2>, accessed on 2 September 2013.

<sup>180</sup> Simacek, <http://www.simacek.at/>, accessed on 2 September 2013.

<sup>181</sup> Bank Austria, Diversity, <http://www.bankaustria.at/ueber-uns-nachhaltigkeit-mitarbeiter-diversity.jsp>

*belongs to you. And you"* - which was translated into 30 languages, was published on large-format posters in the main transportation hubs. In addition, the campaign was supported by a video on info screens and via Facebook. The campaign was aimed at setting a clear sign against racism and xenophobia and therefore contributing to awareness raising.<sup>182</sup>

## 5. Conclusions and recommendations

### 5.1 Political and societal developments related to racism and discrimination

Many of the issues covered in last year's report concerning the situation of migrants, asylum seekers and ethnic minority groups continue to pose serious problems. People of African descent and Muslims are still particularly affected by racism, discrimination and negative stereotyping by the media, politicians and society at large.

In the last Eurobarometer survey of the European Commission, 84% of the Austrian respondents agreed with the statement that "Immigrants may have difficulties to integrate largely because they don't want to" (compared to the EU average of 73%) and 48% disagreed with the statement that "Immigrants may have difficulties to integrate because of the discrimination they face" (compared to EU average of 36%).<sup>183</sup>

Racist statements and hate speech are common within the right-wing Freedom Party FPÖ (*Freiheitliche Partei Österreich*). For instance, the weekly magazine "Zur Zeit" which is published by FPÖ-politician Andreas Mölzer has used the word "Nigger" in various articles to describe people with black skin-colour (as for example asylum seekers or the Italian soccer player Mario Balotelli).<sup>184</sup> H.C. Strache, head of the Austrian FPÖ, posted an anti-Semitic cartoon on his Facebook page. The posting and in particular the denial of its inflammatory content by Strache drew criticism from the Jewish Community (Israelische Kultusgemeinde), the Green party and from President Heinz Fisher. International reactions came from the President of the Anti-Defamation League in New York and the President of the World Jewish Congress.<sup>185</sup>

Another serious problem are certain newspapers who tend to publish one-sided and poorly researched articles and thus fuel resentment and reinforce stereotypes. In December 2012, the Austrian free newspaper "heute" published an article<sup>186</sup> about a murder case in Klagenfurt where a man killed his wife and daughter. Though there was no information about the origin of the offender, the authors of the article described the man as the "type of

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<sup>182</sup> Der Standard, Wiener Linien gegen Ausgrenzung und Rassismus, 7 Februar 2011, <http://derstandard.at/1360161024555/Gegen-Ausgrenzung-und-Rassismus>, accessed on 2 September 2013.

<sup>183</sup> Eurobarometer, [http://medienservicestelle.at/migration\\_bewegt/wp-content/uploads/2012/06/ebs\\_380\\_fact\\_at\\_de.pdf](http://medienservicestelle.at/migration_bewegt/wp-content/uploads/2012/06/ebs_380_fact_at_de.pdf), accessed on 10 August 2013.

<sup>184</sup> ZARA Rassismus Report 2012, [http://www.zara.or.at/wp/wp-content/uploads/2013/05/ZARA\\_Rassismus\\_Report\\_2012\\_Web\\_fin.pdf](http://www.zara.or.at/wp/wp-content/uploads/2013/05/ZARA_Rassismus_Report_2012_Web_fin.pdf), p. 26

<sup>185</sup> ZARA Rassismus Report p. 29.

<sup>186</sup> *ibid.* p 27.

man who fortunately rather lives behind the moon. In countries where the buttocks are higher than the head during prayers, partners are regarded as property. If she becomes independent, they are wounded in their pride and freak out."<sup>187</sup> After many indignant readers had called the newspaper, it published an apology on its website. In January 2013, Austria's most widely-read newspaper, the "Kronen Zeitung" published an article, which stated that in Vienna's largest hospital every year "50 sick incest babies are born" which are "mostly migrant children from socially weak families". The anonymous source named in the article is a "physician of the hospital".<sup>188</sup>

The most important legal developments regarding migration asylum and integration policies are:

- In July 2012, the Act for the Introduction of a "Federal Office for Aliens Affairs and Asylum" (*Fremdenbehördenneustrukturierungsgesetz*) was adopted. The new Federal Office which takes up work by 2014 is subordinated to the Federal Ministry of Interior and will replace the different offices which are currently responsible for aliens' law.<sup>189</sup> The Act includes a provision which makes it impossible for EU citizens to seek protection under the Geneva Refugee Convention. Additionally, there are a number of provisions which further restrict legal entitlements of asylum seekers, like for instance the elimination of legal representation in Alien Police procedures before the future Federal Administrative Court.<sup>190</sup>
- The amendment to the Citizenship Law from 1985 (*Staatsbürgerschaftsgesetz*) that was adopted in July 2013 entered into force in August 2013 (Federal Law Gazette No. 188/2013). It contains a three-step-model for naturalization according to which Austrian citizenship can be obtained after six years of residence, if a person can prove a "sufficient income" of about 1000 Euros per month and German language competences on the level B2 or in case of a B1 level an additional proof of "sustainable personal integration". The criteria for obtaining citizenship after ten years are a B1 German language level, financial independence, integrity and a positive citizenship test. Exceptions apply for people who cannot fulfil the requirements due to physical disabilities. The amendment also contains a simplified procedure for the naturalization of adopted children; moreover illegitimate children shall receive the same legal status as legitimate children.<sup>191</sup> NGOs particularly criticize the high income requirements which exceed the limit of self-preservation and thus present an unnecessarily high barrier for many well integrated people in Austria. Also the relatively high, when compared to other EU countries, requirements for language skills contribute to further exclusion.<sup>192</sup>

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<sup>187</sup> The original version: (Sorte Mann, die zum Glück eher hinter dem Mond lebt. In Ländern wo das Gesäß beim Beten höher ist als der Kopf. PartnerInnen betrachten sie als Besitz. Macht sich der selbstständig sind sie im Stolz verletzt und drehen durch.)

<sup>188</sup> ZARA Rassismus Report 2012, p. 27.

<sup>189</sup> Fremdenbehördenneustrukturierungsgesetz, [http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01803/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/index.shtml), accessed on 13 August 2013.

<sup>190</sup> Stellungnahme von SOS-Menschenrechte zum Fremdenbehördenneustrukturierungsgesetz, [http://www.sos.at/fileadmin/user\\_upload/downloads/Downloads/Stellungnahme\\_BFA\\_SOS-Menschenrechte.pdf](http://www.sos.at/fileadmin/user_upload/downloads/Downloads/Stellungnahme_BFA_SOS-Menschenrechte.pdf), accessed on 13 August 2013.

<sup>191</sup> Bundesgesetzblatt 136/2013, Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985 geändert wird, 30. Juli 2013, [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_136/BGBLA\\_2013\\_I\\_136.pdf](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_136/BGBLA_2013_I_136.pdf)

<sup>192</sup> Caritas, Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Staatsbürgerschaftsgesetz 1985 geändert werden soll, [http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME\\_00472\\_23/imfname\\_292536.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00472_23/imfname_292536.pdf), accessed on 13 August 2013

Legal developments regarding discrimination and equality legislation include the amendment to the Equal Treatment Act that was adopted in May 2013 and entered into force in August 2013. NGOs criticize that the long demanded extension of protection against discrimination (Levelling-up) on grounds of sexual orientation, age, belief and religion to areas outside employment was not implemented.<sup>193</sup> Through the amendment, the level of protection for self-employed persons is further clarified and the limitation period for cases of sexual harassment is extended to three years. Other measures include the obligation to indicate minimum wages in job advertisements for branches where no such minimum wage exists and the encouragement of dialogue with civil society in the Act.<sup>194</sup>

In the area of integration policies, there have been no major changes from the previous year. Since Sebastian Kurz was appointed the first Secretary of State for Integration in April 2011, migration and integration issues received increased political attention. Initiatives within the framework of the National Action Plan in 2012 were focused on early language development for migrant children, elaboration of a brochure on common values (Wertefibel),<sup>195</sup> measures in connection with the basic principle of "integration based on merit" (mainly facilitation of language competences) and "integration from the beginning" (German prior to immigration, "Welcome Desks").<sup>196</sup>

## 5.2 Conclusions and recommendations

The establishment of the State Secretary of Integration was a positive step as it brought some important changes in the political discourse and tried to give the topic of migration a positive connotation. However, measures so far were overwhelmingly one-sided, mainly focusing on language and performance, and cannot adequately tackle the existing challenges. Therefore a shift to a more pro-active human rights based approach would be desirable. Measures in the area of education that are specifically targeted at children of migrants should go hand in hand with the review of the existing legal framework concerning anti-discrimination to ensure equal starting positions and equal opportunities in accessing the labour market.

### Access to employment

- Austria should abolish the remaining legal obstacles to labour market access for non-EU nationals and grant asylum seekers full access to work in the labour market.
- Austria should ease the process for recognition of foreign qualifications and make the possibilities for recognition more widely known. Conditions for the assessment and accreditation of informal qualifications or practical work experience should be improved. The project "Du kannst was" in upper Austria could serve as a good example for the implementation of such measures in other Austrian states.<sup>197</sup>

<sup>193</sup> Klagsverband, *Gleichbehandlungsgesetz: Jüngste Novelle bringt wenig Neues, Diskriminierungsschutz bleibt eingeschränkt*, 30 April 2013, <http://www.klagsverband.at/archives/7797>, accessed on 10 June 2013

<sup>194</sup> Amendment Equal Treatment Act (*Gleichbehandlungsgesetz*), [http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_02300/fname\\_301331.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02300/fname_301331.pdf), accessed on 10 June 2013

<sup>195</sup> see: <http://www.integration.at/media/files/zusammenleben/Zusammenleben%20in%20Oesterreich.pdf>, accessed on 13 August 2013

<sup>196</sup> Integrationsbericht 2013, [http://www.integration.at/media/files/integrationsbericht\\_2013/Expertenrat\\_Integrationsbericht\\_2013.pdf](http://www.integration.at/media/files/integrationsbericht_2013/Expertenrat_Integrationsbericht_2013.pdf), accessed on 13 August 2013

<sup>197</sup> <http://www.dukannstwas.at/>

- Austria should put more effort into increasing the employment prospects for migrant children in the sector of public administration e.g. through targeted training measures and active diversity-management.
- Austria should make sure that migrant women who are far from the labour market are reached by integration offers. The poor outcomes of labour market participation of women with a migrant background call for urgent policy actions to improve them.

### **Equal Treatment Legislation**

- To ensure that damages in cases of discrimination act as a deterrent, criteria for the assessment of non-pecuniary damages and a minimum amount of compensation should be introduced.
- Penalties for discriminatory job advertisements of as low as 360 Euros and the exclusion of punishment for first time-offenders is neither proportionate nor dissuasive and therefore could be considered to be in violation of the EU Directives on this issue. Therefore penalties should be increased.
- Protection against discrimination on grounds of sexual orientation, age, belief and religion should be extended to all areas outside employment (levelling-up).
- The Equal Treatment Act should be harmonised at the federal and provincial levels.

### **Public Policies**

- Austria should fulfil its promise from Durban 2001 and adopt a National Action Plan (NAP) against Racism in order to meet the challenges regarding discrimination and racism which are prevalent in all areas of society.
- Pro-active measures to tackle discrimination, such as a recourse to diversity policy tools, should be considered.
- Measures against racism should include the media and the public space.

### **Judicial remedies**

- More effort should be put in sensitising the issue of racism of judges and lawyers, e.g. through targeted trainings.
- The Federal Ministry of Justice should specifically identify discrimination cases and provide specialised information about discrimination cases which should be accessible to the public.

### **Non-judicial remedies**

- Financial and human resources should be raised for the independent bodies in order to ensure they can fulfil their tasks effectively. This would contribute in particular to a reduction of the average duration of proceedings before the Equal Treatment Commission (which was 10.3 months in 2012) and to an increase of the capacities of the Ombud for Equal Treatment to fulfil its task of raising awareness about the Equal Treatment Act.

### **Raising Awareness**

- Measures should be taken to increase the awareness about discrimination legislation on the part of the employers as well as employees e.g. through comprehensive public

campaigns including the public employment service, increase of capacities of the Ombud for Equal Treatment as well as general policy measures and incentives to enhance diversity-management by employers.

- The lack of awareness runs parallel with the lack of research on this topic. Therefore it is important to conduct an experimental testing study to capture the incidence of discrimination in hiring practices and to communicate the findings to further increase awareness on this issue.

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