

Legal Indicators for Social Inclusion of New Minorities Generated by Immigration

Regional Report Styria

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I. Introduction

“Austria is no immigration country” – this statement, which is actually a policy of an Austrian party¹ was regularly heard throughout the last years. Sticking to the facts, this statement however is not true since immigration has played an important role for the Austrian society, culturally as well as economically.² Nevertheless, it depicts a certain attitude that is partly reflected in the Austrian legislation and even more in daily social life, and the aim of this report is to give an overview on the actual situation of immigrants as minority groups in Styria. This new minorities are also of interest due to the diverse treatment they experience compared to old minorities which are legally recognized by constitutional law. Some definitions have to be given in order to clarify significant differences.

The concept of minorities *per se* is not a new one; on the contrary, it is a concept fully recognized by international law³ and defined as “culturally, denominationally, linguistically, ethnically or racially distinct population groups that live within a larger society, do not occupy a dominant position and wish to preserve their own culture”⁴. So what is a “new” minority then? And why – and to what extent - is it different from other minorities, called “old” in this context?

In order to explain this difference, it is necessary to take a closer look at the specific Austrian situation, where certain ethnic groups, namely the Slovenes in Carinthia and Styria, the Croats, Roma and Hungarians in Burgenland and the Czechs and Slovaks mainly in Vienna and partly in Lower Austria have been accepted as minorities in the sense described above and therefore got certain rights: primarily, they are entitled to enjoy equal treatment without any discrimination due to race, language or religion; more specifically, Croats and Slovenes

¹ See Art. 4 of the FPÖ’s party programme; <http://www.fpoe.or.at/fpoe/bundesgst/programm/programm4.htm>.

² See Fassmann/Münz: Einwanderungsland Österreich? Historische Migrationsmuster, aktuelle Trends und politische Maßnahmen. Wien. (Jugend und Volk) 1995.

³ In fact, the history of minority protection in Europe began quite early with the protection of various religious groups. The first important document that does not only protect religious, but also national minorities is the Final Act of the Congress of Vienna of 1815; see: *Mock, A.: Minderheiten- und Volksgruppenrechte als Voraussetzung für ein friedliches Zusammenleben verschiedener Nationalitäten*; in: *Geistlinger, M.: Dissonanzen in Europa – Der neue Nationalismus und seine Folgen*; Wien (Braumüller) 1994, S.27 and *Spénlé, C.A.: Der internationale Schutz der Menschenrechte und seine Durchsetzung*, <http://www.mensch-im-recht.ch/pdfs/Online.Publ./Referat.Spenle.pdf>.

⁴ From: *AEIOU* - The culture information system of the Austrian Ministry of Education, Science and Culture, Encyclopaedia “Minderheit”, <http://aeiou.at/aeiou.encycloped.m/m659872.htm>.

have the right to use their native tongue as an official language in all administrative and court districts in Burgenland, Carinthia and Styria with a mixed population.⁵ Furthermore, in areas where about one quarter of the population belongs to an ethnic minority, topographic names and inscriptions have to be bilingual⁶; these areas are denominated by the Federal Government. In addition, the province of Carinthia provides the possibility for members of a minority to visit a secondary school where – in addition to German – lessons in their own language are offered.⁷

All these rights are safeguarded by a series of international treaties as well as by national legislation: The State Treaty of Saint-Germain 1919, the State Treaty of Vienna 1955, the Minorities' School Act for Carinthia 1959, Article 14 of the European Human Rights Convention ratified 1958, the Federal Constitutional Act concerning the Prohibition of Racial Discrimination 1973 and the Ethnic Minorities Act 1977.

Compared to this, the situation of the new minorities, which have not been historically documented as ethnic groups is of appreciable difference. First of all, the new minorities are groups that are not fully recognized in their ethnicity and they do not have any of those rights the old minorities still enjoy; secondly, they are confronted with prejudices, xenophobia and racism to a much higher degree.⁸

The starting point of the new migration was shortly after World War II, when thousands of refugees searched for asylum in Austria. Migration in the more common sense of working migration initiated in the early sixties; foreign labour force was urgently needed at this time and was provided first from Italy, later on mainly from Ex-Yugoslavia and Turkey. Aside, asylum-seekers and refugees from former Eastern-bloc states, such as Hungary, Czechoslovakia, Poland, Bosnia and, more recently, Kosovo, immigrated to Austria and

⁵ For a list of these districts see § 2 of the Ordinance on Slovenian as Official Language (verordnung über das Slowenische als Amtssprache), BGBl. 307/1977.

⁶ This issue was quite controversial: When the Nationalrat in 1972 first passed a law on road signs according to which all Carinthian settlements with a bilingual population should have bilingual road signs, extremists demonstrated against it and prevented the implementation of the law. Since 1977, the areas where bilingual road signs have to be placed are denominated by the Federal Government in the "Ordinance for Slovenian denominations" (Verordnung über slowenische Ortsbezeichnungen), BGBl. 308/1977. Recently, however, the discussion started again when Jörg Haider, Governor of the Province of Carinthia, refused the placement of new bilingual road signs, although the Federal Constitutional Court had pronounced in its judgement G 213-01 of 13. 12.2001 that such additional signs had to be placed also in areas where the minority population reaches less than one quarter, but is still significant; for an interesting overview of opinions expressed in international newspapers, see: <http://www.bka.gv.at/aps/aps2001/aps9001>.

⁷ This issue is regulated by the Minorities' School Act for Carinthia (Minderheiten-Schulgesetz für Kärnten), BGBl. 101/1959.

⁸ To give just one illustrative example: Kap. IV, Art.4 of the FPÖ's party programme states that "Multicultural experiments have to be refused as they can wilfully generate social conflicts"; see: <http://www.fpoe.or.at/fpoe/bundesgst/programm/programm4.htm>.

found a new home, including work, family and housing. By now, 757.877 people – or 9,34% - of the whole Austrian population of 8,110.244 are foreigners, of which 61.431 live in Styria; compared to the Styrian population of 1,202.275 they constitute not more than 5,11% - less than the all Austrian average.⁹ Regarding the ethnic groups, 28.825 Bosnians, 5.203 Turks and 27.583 citizens of other countries are presently living in Styria.¹⁰

Migrant workers, asylum-seekers and refugees are the new minority groups on which this report will largely focus, because as the data given above clearly shows, they are most relevant in terms of absolute numbers. It should not be forgotten, however, that there are also other, by all means interesting, groups. These are, on the one hand, seasonal workers, who can only come to Austria according to certain quotas scheduled by the Federal Government, working primarily in the agricultural sector or the tourism industry, and cross border workers from Slovenia in the south of Styria who have adjust to the very special situation of working in one country but living in the other. This can easily lead to double discrimination. On the other hand, another interesting group are those migrants who stay in Austria without any working or residence permit and are frequently referred to as “illegal”; though a doubtlessly important issue, they will not be included in this study, because their social inclusion is almost impossible.

Regarding the method, it has to be said that the legal and social situation is rather similar for migrants, asylum-seekers and refugees in some respects, but as far as noticeable differentiations are to be made – mainly on the topics of residence and employment – the conditions for all of the three groups will be examined separately; otherwise, the statements will be valid generally.

Taking these definitions and limitations as a starting point, a closer look at the circumstances of living the new minorities have to face in Styria will be taken within the next chapter. The legal framework and the social background will be examined, whereby the presumed areas of concern are listed according to the common distinction of human rights: civil and political on the one hand and economic, social and cultural rights on the other hand. Best – and worse - practices from daily life in this new environment shall be found by the examination of the

⁹ Data valid for the year 2000 and taken from *the Austrian Forum for Migration Studies* (Österreichisches Forum für Migrationsstudien, ÖFM), <http://www.oefm.org/findit.html>.

¹⁰ Ibid.

legal framework and case studies as well as by a critical study of more general coherences and contradictions between the idea of multiculturalism and a rising xenophobia.¹¹

¹¹ Volf, Patrik/Bauböck, Rainer: .Wege zur Integration. Was man gegen Diskriminierung und Fremdenfeindlichkeit tun kann; Klagenfurt (Drava) 2001.

II. Areas of concern

1. Civil and Political Rights

1.1. Political Rights

1.1.1. Political Elections

Voting rights in Austria are relevant on three levels: at the federal level, where the National Council¹² is elected, the provincial level, where the Parliaments¹³ of the regarding provinces are elected, and at the local level, where the Municipal Councils¹⁴ are elected.

For all these levels, the suffrage is conceded only to Austrian citizens;¹⁵ the only exception can be found at the municipal level, where according to an EU-Directive¹⁶ EU-citizens have to be given the same rights to vote and to be elected as Austrian citizens. What does this mean for non-Austrian citizens living in Austria? Do they have any rights to participation?

As a matter of fact, they do not, at least not regarding the right to vote or to be elected in political elections. The idea behind – to allow only citizens to take part actively in political life – is quite questionable taking into consideration that the relevance of the foreign population is steadily increasing, and it gets even more problematic as the prerequisites to acquire a citizenship are very strict in Austria. A legal claim to the acquisition of an Austrian citizenship emerges only after thirty years of regular residence in Austria, but after ten years –

¹² The National Council (Nationalrat) has 183 members and is in charge of all legislative acts on the Federal level.

¹³ These Parliaments (Landtage) are the legislative organs of the provinces for all legislative matters which are part of the provinces' competences given to them by the federal constitution.

¹⁴ The Municipalities are not only administrative districts, but do have a right to self governance. Within these framework, they have limited legislative powers because they can enact general ordinances.

¹⁵ Details can be found in the following Acts:

- The Electoral Regulations of the National Council (Nationalratswahlordnung) for the right to vote and the right to be elected to the National Council; every Austrian citizen who is at least 18 years old on January 1st of the election's year is entitled to vote, and every Austrian citizen who is at least 19 years old on January 1st of the voting year can be elected.
- The corresponding Acts of the provinces which must not deny the right to vote or to be elected to any citizen who is allowed to vote on the Federal level.
- The corresponding acts of the municipalities.

¹⁶ Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals; Official Journal L 368 , 31/12/1994, pp. 0038 – 0047.

in certain cases even after four or six years¹⁷ – an application can be made. Since this is not a legal claim then, the bestowal is up to the discretionary power of the public authorities. Obviously, the implications for democracy policy are far-reaching when political rights to participation are denied to a relatively large part of the society affected by the political decisions taken.¹⁸

Lately, however, new institutions have been set up to ensure at least a minimum of political involvement: the Foreigners' Advisory Boards, which have the right to debate political issues with the responsible authorities at the municipal level. Graz was one of the first cities who set up such a council; its functions and tasks will be described more exhaustively in chapter 1.3 as a medium of quite effective participation in public life.

1.1.2. Elections to Works Councils

Different to political elections, non-Austrian citizens have the right to participate in the elections to works councils hold in the company they are working for as well as in the election for representatives at the regional level. This right, however, is not unrestricted, because the participation is confined to the right to vote and does not extend to the right to be elected. Prerequisites of the right to vote are an age of 18 years and an employment in the company the works council is representing¹⁹, whereas for the right to be elected the employee has to be at least 19 years of age, has to have worked for the company for at least six months and has to be eligible to the Federal Council – and only Austrian citizens can meet this criterion. An exception is explicitly made for citizens of the EEA²⁰, who are therefore eligible to works councils; all other non-Austrian citizens remain excluded.

Regarding the main lobbies representing occupational interests – these are the Chamber of Labour, which is a public corporation, and the Austrian Federation of Trade Unions, a registered corporation according to the rules of private law – political rights in the Chamber of Labour are organized similar as for the works councils: everybody who is a member of the

¹⁷ These exceptions are regulated in §§10 (4) ff of the Citizenship Act (Staatsbürgerschaftsgesetz); for details see the chapter on the right to citizenship.

¹⁸ See *Bauböck*: Verschachtelte und überlappende politische Gemeinschaften; in: Stimme von und für Minderheiten Nr. 34/I (2000); <http://www.initiative.minderheiten.at/Zeitschrift/stimme34b.htm>.

¹⁹ See § 6 (1) of the Electoral Regulations for works councils (Betriebsrat-Wahlordnung), BGBl. 314/1979.

²⁰ See § 8 of the Electoral Regulations for works councils (Betriebsrat-Wahlordnung).

Chamber has the right to vote²¹, but the right to be elected is restricted to those who are at least 19 years of age, working in an employment that constitutes the – obligatory – membership in the Chamber for at least two of the last five years and eligible to the National Council - which is possible only for those having the Austrian citizenship; there again an exception is made for citizens of the EEA.²²

The Austrian Federation of Trade Unions is not a public, but a private corporation and therefore has a different democratic legitimacy. Where representatives are directly elected, every member – different to the Chamber of Labour, the membership in the trade unions is voluntary – has the right to vote and to be elected independently of his or her citizenship.²³

1.1.3. Students' representation at the University

Next to the right to effectively participate in at least local elections and the right to a functioning representation at work, the right to vote und to be elected has also a certain role to play in elections at the university level. The National Unions of Students, a corporation under public law, represents all students enrolled at Austrian universities - no matter if of Austrian or non-Austrian citizenship – in contacts with Federal Ministries, the Government, political parties and other relevant institutions as well as at the direct university level where its representatives have a right to co-determination in various conferences and committees.²⁴

Legally, the matter of representation und participation of students is regulated by the Act for the National Union of Students²⁵ and by the Electoral Regulation for the National Union of Students²⁶.

It is primarily the latter mentioned regulation which is of importance in the context; §15 (1) states that all students who are regularly – which means according to §35 (3) of the Act for the National Union of Students - enrolled at an Austrian university have the right to vote;

²¹ See § 21(1) of the Electoral Regulations for the Chamber of Labour (Arbeiterkammer-Wahlordnung), BGBl. 340/1998.

²² See § 29 of the Electoral Regulation for the Chamber of Labour (Arbeiterkammer-Wahlordnung).

²³ For more detailed information on the structure and functioning of the Austrian Federation of Trade Unions (Österreichischer Gewerkschaftsbund, ÖGB) see: <http://www.oegb.at/index1.html>.

²⁴ See *AEIOU*-Encyclopedia „Hochschülerschaft“; http://www.aeiou.at/aeiou.encycloped.h/h672164.htm;internal&action=_setlanguage.action?LANGUAGE=en.

²⁵ Act for the National Union of Students (Hochschülerschaftsgesetz), BGBl. I 22/1999.

²⁶ Electoral Regulation for the National Union of Students (Hochschülerschaftswahlordnung), BGBl. II 122/201.

foreign students are explicitly included²⁷, whereas § 35 (2) excludes them from the right to be elected. Again, as already described for works councils, an institution supposed to represent the interests of all students does not consider a significant part of them – after all, in 1999, 16.238 students from non-EU countries - by denying foreigners the right to be elected.

1.2. Rights to freedom of association

The right to freedom of assembly and association is guaranteed on the constitutional level by Art. 11 of the ECHR and by Art. 12 of the Austrian Fundamental Laws governing the general rights of the citizens.²⁸ The relation between the two norms is rather interesting: the Fundamental Laws came into being in 1867 and were the first laws which ensured certain fundamental rights and freedoms to the citizens of the Austrian-Hungarian Monarchy, and enhanced by some amendments, they are still part of the Austrian Constitution.

In the Fundamental Laws, the guaranteed rights were divided into two categories – one category of rights everyone was entitled to²⁹, and a second, larger, category with rights that were assured for citizens only. The right to freedom of assembly and association is one of these rights fully guaranteed for citizens only, and the scope of this right was extended to non-citizens only when the ECHR was ratified by Austria in 1958. Due to the provision in Art. 11 (2) ECHR, it is, however, still possible for the state to restrict the right under some conditions, and the Austrian restrictions as made in Art. 12 of the Fundamental Laws would therefore not necessarily conflict with the ECHR.

As little convincing as this legislative situation at the constitutional level may seem to be, from a more practical point of few the results are not that discriminating. The right to freedom of assembly and association in its daily forms is regulated in the following acts: the Assembly Law 1953³⁰ and the Association Law 1951³¹. Both do not make any obvious distinctions between citizens and non-citizens, because all persons are entitled to form assemblies and to found associations under the condition that these activities are registered at the Law Enforcement Authorities. One exception can be found in § 8 of the Assembly Law according to which foreigners are not allowed to organise or lead assemblies in which matters of public interest are discussed.

²⁷ See § 35 (1) of the Act for the National Union of Students (Hochschülerschaftsgesetz),.

²⁸ Fundamental Laws governing the general rights of the citizens (Staatsgrundgesetz, StGG); RGBl. 142/1867.

²⁹ So-called „Jedermannsrechte“, which would mean „every man’s rights“, literally translated.

³⁰ Assembly Law (Versammlungsgesetz); BGBl Nr. 98/1953.

³¹ Association Law (Vereinsgesetz); BGBl Nr. 233/1951.

An association is defined as a group of people coming together in order to reach a certain purpose on a long-term, voluntary and organised basis. Other associations, such as profit-oriented and political ones, are not subject to the Association law; special laws exist for their regulation. For religious associations, the applicability of the Association Law depends on their recognition as own religion; recognized are, for example, the Jewish and the Islamic Religion; individual Acts guaranteeing them certain rights exist for them.

1.3. Effective participation in public life

1.3.1. Political participation through advisory councils

As already mentioned in chapter 1.1.1. on rights to political participation special councils established during the past few years in order to represent interests of foreigners have gained a vital role in ensuring the effective participation of non-Austrian citizens in public life.

In Styria, Foreigner Advisory boards have been established in 3 cities: Graz, Leoben and Kapfenberg.³² Their main task is it to give advice to political responsible persons at the municipal level and to report on the foreigners' situation in their cities; furthermore, they battle against all forms of direct and indirect discrimination of the foreign population with the aim to support a multicultural society where cultural diversity is preserved and where integration without assimilation can take place.

In Graz, the Board has 7 regular and 7 surrogate members, in Leoben and Kapfenberg 5 respectively; these members are elected every 4 years by all non-EEA citizens who have their permanent residence in these cities at the same time as the elections for the Municipal Council are held. In 2000, when the Board was first elected in Graz, the voter turnout was quite low, probably due to the fact that no regular election campaign had taken place. As a consequence the next elections will indicate society's interest in this institution. In any case, and even if they have only advising power and no right to direct participation, the Foreigner Advisory Boards are an important first step towards involvement in political life.

³² The legal basis are §§ 38b-38g of the Styrian Municipal Act (Steiermärkische Gemeindeordnung), BGBl. 115/1967; according to § 38b in all cities with more than 1000 resident foreigners a Foreigner Advisory Board has to be established, which would be true for one more city, Knittelfeld, but has not taken place there yet. All other cities can establish such board voluntarily, which did not happen so far.

1.3.2. Access to public service

Public Service plays a vital role in our society, and the behaviour of civil servants reflects – at least to a certain extent – the general attitude of the state towards certain population groups. Especially foreigners are very often confronted with complicated procedures, prejudices unfriendliness and similar barriers. Various studies³³ reach to the conclusion that foreigners frequently feel discriminated when having contact with public authorities and they feel that this factor is an important part of the general experience of being discriminated. The intensity of this feeling depends, however, on the security of the social and legal status, and even if all groups of foreigners are concerned, such experiences are frequently made with institutions like the aliens' police, police in general and the employment service.³⁴

Foreigners, however, do not only face discrimination when contacting public authorities, but also when they search access to public service as employees. Public service in Austria can be done by two kinds of employees: civil servants, who are appointed by an unilateral act³⁵ of the public authority they are working for – which can be a federal, provincial or municipal one – and contractual civil servants; unlike civil servants, their employment is based on a contract under private law and not subject to an unilateral act of the sovereign authority. Practical differences between these two categories are increasingly diminishing within the last years, as contractual civil servants are not only entrusted with private sector administration, but also with responsibilities regarding public administration tasks.³⁶

Regarding the access to the public sector for non-Austrian citizens – except those from EEA-countries - it has to be said that due to a constitutional regulation it is extremely restricted for them. Art. 3 of the Fundamental Laws proclaims that all public offices are accessible to all citizens – a formulation which implies that the entry depends on the acquisition of the Austrian citizenship. This rule has not been changed up to now, but it has been slightly modified in practice, because since an amending law to the federal civil service regulation³⁷ in 1994³⁸, for citizens of the EEA an Austrian citizenship is now only required to be appointed as a civil servant in the core areas of public administration.³⁹ The situation, however, has not

³³ For a summary and details of some of these studies see *Volf/Bauböck*, pp. 149-150.

³⁴ *Ibid.*

³⁵ These unilateral acts (*Bescheide*) are notices of decisions; they are a particularity of Austrian public law.

³⁶ For issues regarding the duties of contractual civil servants, refer to the Contractual Civil Servants Act (*Vertragsbedienstetengesetz*), BGBl. Nr. 86 /1948.

³⁷ Civil Service Regulation (*Beamten-Dienstrechtsgesetz, BDG*), BGBl. 333/1979.

³⁸ BGBl. Nr. 389/1994.

³⁹ These core areas are described in §42a of the Civil Service Regulation (*Beamten-Dienstrechtsgesetz*).

changed for citizens from all other countries, with the result that for them it is still not possible to serve as a civil servant in public administration. Nevertheless, Art. 3 of the Fundamental Laws applies to civil servants only – and not necessarily to contractual civil servants⁴⁰ - in case that there are no other qualified job applicants foreigners can be appointed as contractual civil servants.⁴¹

Considering the general employment situation in the public sector, only 7000 out of 163.000 employees are foreign citizens, which makes a percentage of 4%. If integration means the equality of opportunities, then the public service as an employer is seemingly not a role model.⁴²

One exception within the public sector can be found at the universities, where a foreign citizen who is appointed to a regular chair has a legal claim to get the Austrian citizenship.⁴³

1.3.3. Possibility to serve in the army

The recruiting policy of the Austrian Federal Armed Forces is based on an universal conscription concept, which means that every male Austrian citizen has to perform a compulsory military service for a certain period,⁴⁴ and only in 1998, women were allowed to serve in the army, too. Regarding foreigners, there is no explicit regulation, and obviously the army itself is not very sure about how to react if a foreigner wants to become a soldier voluntarily; on request, the only statement was that “this situation is not expected”.⁴⁵

1.4 Justice

⁴⁰ see §3 (2) Contractual Civil Servants Regulations (Vertragsbedienstetengesetz), which states that the employer can desist from the requirement of the Austrian citizenship (§3 (1)) if other qualified applicants are not available.

⁴¹ See *Davy/Cinar: Ausgewählte europäische Rechtsordnungen: Österreich*, in: *Davy (ed.): Die rechtliche Integration von Einwanderern. Rechtliche Regelungen im europäischen Vergleich*, Wien (Campus) 2001, p.639-641.

⁴² See *Eckhart: MigrantInnen in der öffentlichen Verwaltung (Justiz, Polizei, Schule, sonstiger öffentlicher Dienst)*, In: http://www.netzwerk-innovation.at/downloads/themen/toleranz/10ZI_B_Eckhart.pdf.

⁴³ This provision can be found in § 25 (1) of the Citizenship Act (Staatsbürgerschaftsgesetz).

⁴⁴ For details, see Federal Defence Act (Wehrgesetz), BGBl I 146/2001; in addition, it is also possible to do an alternative civilian service.

⁴⁵ E-mail received from the press and information service of the Ministry for Defence, 4.4.2002

1.4.1 The legal background - legislation against discrimination

The constitutional framework against racial discrimination in Austria has a rather broad variety of norms. Beginning from a general statement in Art. 7 of the Federal Constitution that all Austrian citizens have to be treated equally before the law and continuing with Art. 14 of the ECHR – the ECHR enjoys constitutional standing – which states that all rights guaranteed in the convention are applicable to all persons without differentiation of race, colour or national origin, discrimination is legally excluded. In addition, since 1973 the Federal Constitutional Act pertaining to the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination⁴⁶ is in force and provides that every kind of differentiation, exclusion, restriction or favouritism which aims at or leads to a restricted enjoyment of human rights and fundamental freedoms with regard to political, economic, social, cultural or any other sector of public life has to be considered as racial discrimination.

As promising as these provisions appear to be at first sight, they show considerable on closer examination, because Art. 7 of the Federal Constitution is applicable for Austrian citizens among themselves, Art. 14 ECHR has a limited effect as it refers to those rights mentioned in the convention only and the Federal Constitutional Act pertaining to the implementation of the International Convention on the Elimination of all forms of racial discrimination primarily includes general provisions and not necessarily individually enforceable rights; according to Art. 2 of the Convention, its member-states impose the obligation on themselves to undertake all possible steps to avoid discrimination, and in administrative law some provisions referring to this can be found.⁴⁷ The Constitutional Court, however, has developed a jurisdiction according to which foreigners among themselves have to be treated equally.⁴⁸

New regulations on the European level have recently become more important thanks to a directive implementing the principle of equal treatment between persons irrespective of racial

⁴⁶ Übereinkommen über die Beseitigung rassistischer Diskriminierung, BGBl. 390/1973; the Convention itself has been made public in BGBl. 377/1972.

⁴⁷ see for example Art. IX, par.1/3 of the Introductory Law to the Administrative Code (EGVG) which imposes an administrative penalty for unjustified discrimination because of race, colour, national or ethnic origin. Other examples can be found in the Penal Code (Strafgesetzbuch, StGB), where §3 (5) states that racist or xenophobic motives are aggravating circumstances for committing a crime; see *Hausenschild: Ein allgemeines Gleichbehandlungsgebot in Österreich? Möglichkeiten, diskriminierendes Verhalten zu sanktionieren*; in: <http://www.univie.ac.at/staatsrecht-thiene/AntidiskG.pdf>, p. 25f.

⁴⁸ see *Krausnegger/Landgrebe/Schindlauer: Report on Racism 98/99*, Wien (Helping Hands) 1999.

or ethnic origin.⁴⁹ This directive has to be implemented in the member-states until 19 July 2003; in Austria, work on a draft for a new Anti-discrimination Act is in progress.⁵⁰

1.4.2. The legal practice

Foreigners face many prejudices regarding criminality, but statistical data do not show a significant rise in foreign criminality when taking into consideration the increase of the foreign resident population. In 1975, 10,9% of the convicted adults were of non-Austrian citizenship, during the 1980s the percentage increased from 9,3% in 1980 to 18,5% in 1990; in 2000, it was 23,2%.⁵¹ Considering that during the same period the foreign resident population multiplied, this seems to be a common development.

A criminal sentence has serious consequences for foreigners, because according to §36 (2) of the Austrian Alien Law a criminal sentence is a reason for expulsion without any possibility to return; exceptions are made for a protection of the private and the family life. This provision refers to the case law of the ECtHR which considers that in certain cases an expulsion can be permitted by national law though it is against Art. 8 of the ECHR. It must be noted, however, that the legal practice of the Austrian Administrative Court in this regard is partly very strict.⁵²

Regarding the treatment of foreigners by judges and in court, it has been noticed that there are cases where “racially derogatory speech and racial stereotyping [has been] used by some judges in the exercise of their functions or on public occasions”,⁵³ and no special legal aid is available for victims of discriminating and racist acts.⁵⁴

One more problem to be shortly examined in this context is people’s treatment in deportation custody because they are not recognized as refugees and/or do not have any kind of a valid visa or other permit for their residence in Austria. The conditions of such detentions – and

⁴⁹ Council Directive 2000/43/EC of 29 June 2000, Official Journal L 180, 19/07/2000, p. 0022-0026.

⁵⁰ This work is done by the *Ludwig Boltzmann Institute for Human Rights*, Vienna; for details see <http://www.univie.ac.at/bim/projekte1.html>.

⁵¹ *Statistik Austria*: Statistical Yearbook 2002, pp.447-448; Statistical data on the kind of legal offences are not available separately for foreigners.

⁵² Relevant cases in this regard are: VwGH 14.11.1996, 95/18/0995; 23.7.1998, 98/18/0132; 23.7.1998, 98/18/0203; whereas in VwGH 15.10.1998, 98/18/0226 the court expressed the opinion that after a residence of five years and close family relations the private interest for staying in Austria exceeds the public interest of expulsion: see *Muzak/Taucher/Aigner/Lobner*: Fremdenrecht, commentary on § 37.

⁵³ *ECRI*: Second Report on Austria, Straßbourg 2001, p. 8.

⁵⁴ *Ibid.*

especially the fact that also minors can be arrested for the purpose of deportation - have often been criticized by various NGOs⁵⁵ and were mentioned in the last report of the CPT on Austria.⁵⁶ In this report, some positive statements on the situation in police jails in Graz and Leoben, where people in deportation custody in Styria are mainly kept, were made, but it was also stated that the occupancy in some of cells in Leoben was too high and that in Graz the ventilation did not work properly. Furthermore, the foreign detainees in Graz reported that some of the recreational facilities were not available for all detainees and that neither books nor newspaper in foreign languages existed. Medical treatment in Graz was explicitly labelled as very good, and generally it was said that the situation in the visited institutions in Styria was much better than in Vienna. Nevertheless, especially the consulting service done by NGOs⁵⁷ has to be intensified for better information on legal procedures and better monitoring of human rights violations.

1.5. Right to Citizenship

Before considering the right to citizenship itself, it might be useful to take a look at the preceding forms for a legal stay in Austria. In most cases it is required that the applicant has legally lived in the country for a certain period before the citizenship can be obtained. Here the situation for migrants on the one hand and asylum seekers and refugees on the other is quite different, so the situation of both groups will be examined separately.

1.5.1. Residence

⁵⁵ See, for example: *Asylkoordination*: <http://www.asyl.at/umf/frepo/schubhaft.htm>; *SOS-Mitmensch*: http://www.sos-mitmensch.at/service/studien/stu_sos-schubhaft.html; *ZEBRA*: <http://www.zebra.or.at/zebratl/2k1/5/bericht-ECPT.htm> and <http://www.zebra.or.at/zebratl/2k/4/schubhaft-jugendliche.htm>.

⁵⁶ *CPT*: Report to the Austrian Government on the occasion of the CPT's visit from 19-30 September 1999, Straßbourg 2001

⁵⁷ Mainly *CARITAS* and *ZEBRA*.

1.5.1.1. Migrants

A foreign national from a non-EU country who comes to Austria in order to work as an employee needs a valid travel document and a legal entitlement for his/her entry and residence. This legal entitlement (“Niederlassungsbewilligung”, which is a residence permit) has to be applied for from abroad and can only be issued only if certain prerequisites are fulfilled⁵⁸ First of all, every year a certain quota is set by the Federal Government⁵⁹ which regulates the number of non-EU citizens that are allowed to come to Austria. This quota, however, provides places for just four categories of potential immigrants: Managers and specialized workers and their closest family members,⁶⁰ other non-EU citizens who have the intention to pursue an occupation in Austria and their closest family members, family members of persons who have been legally settled down before 1 January 1998⁶¹ and non-EU citizens who want to stay in Austria without the intention of pursuing an occupation.

For Styria, the quota for 2002 provides 770 places, of which 260 are dedicated to managers and specialized workers and their families, 30 for working non-EU citizens and their families, 450 for the above mentioned cases of family reunification and 30 for non-EU citizens without intention to find occupation.⁶²

In addition to this availability of a place within the – rather strict – limits of the quota, the applicant has to meet a series of further requirements: S/he must prove a legal claim to adequate housing in Austria, must be entitled to work according to an Austrian occupational legal entitlement⁶³ and a reason for the denial of a resident permit as listed in §10 (1) of the Austrian Alien Law⁶⁴ must not exist. The public authority in charge of the issue of the residence permit has a certain discretionary power and has to take into consideration the personal circumstances of living as well as of public interests.

⁵⁸ §§ 18,19 Austrian Aliens’ Act (Fremdengesetz), BGBl. I 75/1997.

⁵⁹ Settlement Regulations; in 2002, 8280 places are available for the whole Austrian State Territory, and additional quotas for seasonal workers and harvesters; see § 1 of the Settlement Regulation 2002 (Niederlassungsverordnung 2002), BGBl. II 2/2002.

⁶⁰ Family in this sense are spouses and minor unmarried children; for the problem of family reunification, see below chapter 1.6.

⁶¹ This provision concerns the rules on family reunification that will be examined closer below in chapter 1.6.

⁶² §3 (6) of the Settlement Regulation 2002 (Niederlassungsverordnung 2002).

⁶³ For details on occupational legal entitlements see chapter 2.1.

⁶⁴ These reasons include various cases, from a preceding prohibition of residence or an illegal entry into the country to lacking means of subsistence or the assumption that the foreigner would not leave the country voluntarily after the end of the permit.

If the residence permit is finally issued, it is valid for one year in all of the State Territory – which means that there is no territorial restriction - and has to be made apparent in the travel document. After this first year, one can apply for a prolongation if s/he still fulfils the above mentioned requirements with the quite important difference that the public authority no longer has any discretionary power but has to issue a second residence permit because the applicant has acquired a legal claim. Moreover, the issue does not depend from the availability of a place within the limits of the yearly quota anymore. The second residence permit is valid for two years like every further permit until an indefinite one is issued.⁶⁵

An indefinite residence permit can be obtained when the applicant has been living in Austria on a legal basis for at least 5 years, has a secure income out of legal occupation and if it is not likely that s/he will realize circumstances under which the public authority could refuse the application.⁶⁶ The right to perpetual residence, if once obtained, can be lost in two cases only: expulsion or the prohibition of residence.⁶⁷

1.5.1.2. Asylum-seekers

Since the early 1990s, as a result of the emotional discussion on the issue during the election campaign for the Federal Council, the legal provisions on asylum became rather restrictive. Asylum was no longer given to persons crossing the border from a “safe” state, “obviously arbitrary applications for asylum” could be settled in abbreviated procedures and the right to interim residence was reduced. Only when the war in former Yugoslavia started, refugees from this region got a special right to interim residence as “de-facto-refugees”. Meanwhile the profile of refugees’ migration has changed from European to primarily non-European refugees.⁶⁸

The problems asylum-seekers have to face start at the Austrian border, because the citizens of almost all states the refugees mainly come from need a visa for a legal entry, but most of the time it is extremely difficult to obtain a visa in the regarding home countries. Without a visa,

⁶⁵ §23 of the Austrian Aliens’ Act (Fremdengesetz).

⁶⁶ All these provisions can be found in §24 of the Austrian Aliens’ Act (Fremdengesetz); regarding circumstances that enable the public authorities to deny the issue of a residence permit, see §10 (2) of the Austrian Aliens’ Act (Fremdengesetz).

⁶⁷ For details on expulsion and prohibition of residence see *Davy/Cinar*, pp.582-590.

⁶⁸ In 1991, the main countries where applicants for asylum came from were Romania (7.506), Ex-Yugoslavia (6.436), Turkey (2.252), Iran (1.587), China (1.374) and Albania (1.032). In 2000, this had changed considerably to Afghanistan (4.205), Iran (2.559), India (2.441) and Ex-Yugoslavia (1.631); see *Statistik Austria*, p.99.

two possibilities remain; the first is to apply for asylum directly at the border, the second is to try to get into the country illegally with the aid of facilitator organisations. Both is not very promising, because applications for asylum are very often immediately refused and when taken up while crossing the border illegally, it is not sure that the refugees get any possibility to apply for asylum – although Art. 31 (1) of the Geneva Convention on Refugees states that a refugee shall not have any disadvantages only because of an illegal entry.⁶⁹

As soon as the refugees are in Austria and have made a regular application for asylum at the responsible public authority,⁷⁰ they may get an interim residence permit which protects them from deportation, but does not give them any other rights; for example, they do not have the possibility to work. As the asylum procedure can take a rather long time – in single cases up to five years – this interim residence permits are of quite some relevance.

1.5.1.3. Refugees

If the asylum procedure ends with the recognition of the asylum seeker as a refugee according to the provisions of the Geneva Convention on Refugees, the person gets a permanent residence permit. Generally spoken, recognized refugees theoretically have the same rights – except political rights – as Austrian citizens. In the year 1999, out of 20.096 applications for asylum 3.434 cases were settled this way.⁷¹

If the asylum procedure does not end with the recognition as a refugee, this does not necessarily mean the expulsion from Austria. According to the principle of *refoulement*⁷² a person can get a residence permit with a duration of one year if s/he can not return to his or her home country; different to recognized refugees, their legal status is not equal to that of Austrian citizens. This residence permit can be prolonged two times for a year, afterwards for three years; as soon as the refugee can return to his home country without danger, the permit can be revoked by public order.

The last group of refugees is that which has a temporary protection only; this possibility was developed mainly during the war in former Yugoslavia. The Federal Government by public

⁶⁹ See *Volf/Bauböck*, p. 102

⁷⁰ These are the Federal Offices for Asylum (Bundesasylämter)

⁷¹ See *Volf/Bauböck*, p. 95.

⁷² In Austria, this principle can be found in § 57 of the Aliens' Act (Fremdengesetz) and § 8 of the Asylum Act (Asylgesetz).

ordinance can provide a temporary right to residence to groups of foreigners who can not find protection elsewhere.⁷³ As the idea of temporary protection is based on the principle of the refugees' return to his or her home countries as soon as possible, the right to residence which the ordinances provide is always limited in time.⁷⁴ In addition, people do not have full access to the regular asylum procedure, so that it is almost impossible to get an individual residence permit.⁷⁵

1.5.2. Citizenship

An application for the Austrian citizenship is possible after a legal residence within the state territory of at least ten years. The applicant must not have served a sentence which precludes the citizenship nor face on-going court proceedings of that kind; furthermore his or her behaviour during this time must ensure a positive attitude towards the Federal Republic of Austria. S/he must neither have disturbed public order or safety nor maintained any relationship to other states which could endanger the interests or the reputation of the Austrian state.⁷⁶ As a final criteria, his or her means of subsistence have to be made sure.⁷⁷

A dual citizenship is, generally spoken, not possible, since the applicant has the obligation to undertake all necessary steps in order to give up his primary citizenship, otherwise the Austrian citizenship can not – or just exceptionally – be obtained.

If the applicant does not fulfil the criteria of a ten-years residence, this does not automatically mean that s/he cannot obtain the citizenship; this is still possible under the condition that s/he is a minor or if, after a stay of at least 4 years, especially considerable reasons for the acquisition exist.⁷⁸ Moreover, the Federal Government can decide that the citizenship can be obtained without taking into account the duration of stay at all if it is likely that the applicant will achieve extraordinary performances in the fields of science, economics, arts or sports

⁷³ See § 29 of the Aliens' Act (Fremdengesetz).

⁷⁴ For example, for refugees from Bosnia-Herzegovina it was for one year at the first time, then two times for half a year, then again one year and one last time it was prolonged for two more years. After this 5-year period, though, refugees who were already integrated in the Austrian society could apply for a regular residence permit; see *Volf/Bauböck*, pp.108-109.

⁷⁵ An exception was made for refugees from Bosnia-Herzegovina; see above Nr. 58.

⁷⁶ *Kurnik*: Österreichisches Staatsbürgerrecht: Von der Heimatrolle zur Staatsbürgerevidenz, Beitrag zur Festschrift „50 Jahre Fachverband der österreichischen Landesbeamten, 1997, p. 27-28

⁷⁷ All these prerequisites are listed in §10 of the Austrian Citizenship Act (Staatsbürgerschaftsgesetz); BGBl 311/1985.

⁷⁸ §10 (3) of the Citizenship Act (Staatsbürgerschaftsgesetz).

which are within the interests of the Republic.⁷⁹ Another exception is made for non-Austrians who are married to Austrian citizens.⁸⁰

A legal claim to the acquisition of the citizenship comes into being after a continued legal residence of 30 years; in that case, the public authorities do not have any discretionary power but have to give the citizenship to the applicant if there are no other reasons for denial according to §10 of the Citizenship Act.

Regarding the situation in Styria, in the year 2000, 2.209 naturalisations took place, 763 for discretionary power of the public authorities according to §10 of the Citizenship Act, 269 for a legal claim according to §§11a, 12-14, 25, 58, 58c and 1.177 for family members according to §§16 and 17; in all of Austria, the number of newly obtained citizenships reached 24.645.⁸¹

1.6. Right to family life

1.6.1. Migrants

One of the most important aspects of the right to family life threatened by alien politics is the right to family reunification, and in fact this is one of the very controversial issues in Austria, too. The regarding legal provisions are, even in the European context, extremely strict.⁸² Although in 1997 a reform with the primary objective to adjust the Austrian legal situation to Art. 8 ECHR took place, it is however questionable if this aim was reached.

The core provision is § 20 of the Austrian Aliens' Law,⁸³ which gives the right to family reunification to two groups of beneficiaries: spouses and unmarried minor children.

For spouses, the minimum prerequisites of a valid matrimony in order to have a legal claim to family reunification are not completely clear; the only point explicitly defined by law is that a fictitious marriage does not fulfil the necessary criteria.⁸⁴ Cases in which homosexual or polygamous forms of cohabitation are concerned are especially problematic.

⁷⁹ §10 (4) of the Citizenship Act (Staatsbürgerschaftsgesetz).

⁸⁰ §§11a, 16, 17 of the Citizenship Act (Staatsbürgerschaftsgesetz).

⁸¹ See *Statistik Austria*, p.83

⁸² For a comparison of several European states see *Davy: Integration von Einwanderern: Instrumente – Entwicklungen – Perspektiven*; in *Davy (ed.): Die rechtliche Integration von Einwanderern. Rechtliche Regelungen im europäischen Vergleich*, p. 970ff.

⁸³ Austrian Aliens' Law (Fremdengesetz, FrG) 1997, BGBl. 75/1997.

⁸⁴ See §8 (4) of the Austrian Aliens' Law (Fremdengesetz); therefore, even after a person got a residence permit, s/he can be expelled if the marriage proves to be fictitious.

For children, the Austrian provisions regarding their minority apply,⁸⁵ and as a consequence they have to be under the age of 19; additionally, § 20 of the Austrian Alien Law provides that they have to be unmarried. Other relatives do not have the possibility to acquire the right to entry or residence by the special provisions for the immediate family; they have to apply for a normal residence permit.

Apart from the prerequisite of close family relationship some other requirements have to be fulfilled: the person who already lives in Austria has to be settled down in Austria on a steady basis and therefore has to be entitled to a – permanent or temporary – residence permit. Furthermore, no prohibition of residence must be imposed on the person who wants to come to Austria as part of the family reunification programme, and a legal claim to a domicile in accordance to local customs has to be proved. In addition, the public authority is not allowed to deny the residence permit because the person does not have a sufficient health insurance or for other reasons that could lead to a financial burden for an Austrian territorial authority.⁸⁶

But even if all these provisions regarding the person who wants to come to Austria are fulfilled, it still depends on the legal status of the attachment figure in Austria if claim to the issue of a residence permit within the limits of family reunification exists. Since 1 January 1998 the family member that first comes to Austria is supposed to indicate in his/her own first application for a residence permit if spouses or minor children want to follow. If yes, the conditions under which the residence permit can be issued change, because then it no longer depends only on the limits of the quota for him/her, but also for his or her indicated family members; moreover, a legal claim to adequate housing for all family members has to be proven.⁸⁷ Under these – stricter - conditions, a first residence permit has to be issued for the applicant and the family members insofar as these family members apply for their residence permit within the next calendar year.⁸⁸

In cases where the applicant does not indicate in his application that other family members want to follow, a family reunification *ex post* is only possible if a place within the quota of the year in which the application is made is available and for children if they are under 15 years

⁸⁵ §21 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) 1811.

⁸⁶ These provisions can be found in §§8, 10 and 12 of the Austrian Aliens' Act (Fremdengesetz).

⁸⁷ §22 of the Austrian Aliens' Act (Fremdengesetz).

⁸⁸ §21 of the Austrian Aliens' Act (Fremdengesetz).

of age. This restriction is unique in its strictness and against the principle of equal treatment, because there is no apparent reason why a child has to be under 15 – and not 19 – when the first applicant did not indicate that other family members want to follow.⁸⁹ In the year 2000, the Austrian Constitutional Court has pronounced that this provision is against the Constitution; however,⁹⁰ but the only thing changed so far was the formulation – it is now 15 instead of 14 years.

For those who had a residence permit before 1998, a family reunification depends on the availability of a place within the limit of the quota, and children have to be under the age of 15, whereas in this case the Federal Government could set an own quota⁹¹ for older children until the year 2000; meanwhile, the situation is more or less the same for both groups of migrants.⁹²

The status of residence family members can obtain is dependent on title of residence the person already living in Austria has, because the period of validity of their residence permit must not exceed the period of validity of their attachment figure for the reunification in Austria. For a prolongation, the same requirements as for the first residence permit, aside from the place within the limits of the quota, have to be fulfilled. Only if the attachment figure has an indefinite residence permit, family members have a legal claim to such a permit, too, as soon as they have had their domicile in Austria for at least 2 years together with the attachment figure and as long as it is not expected that any of the reasons for denial according to the second part of the Austrian Alien Law will be realized.

One particularity of the Austrian law is that the first residence permit within the limits of family reunification has to be issued for any reason of stay, except occupation. This means that that reunified family members have to wait for at least 4 years before they are freely available on the labour market⁹³ – a considerable restriction which has often been criticised; in general it can be said that the separation of residence and work permit poses a big problem, and one of the main aims of Austrian alien policy it should be to simplify this procedure.

⁸⁹ For a more detailed analyses of this problem see *Davy/Cinar*, p.576

⁹⁰ Austrian Constitutional Court, G 16/00 on 19.6.2000 , VfSlg. 15.836.

⁹¹ §113 (10) Austrian Aliens' Act (Fremdengesetz).

⁹² See *Davy/Cinar*: Österreich, p.573-577

⁹³ §21 (4) Austrian Aliens' Act (Fremdengesetz).

1.6.2. Asylum-seekers and refugees

As soon as an application for asylum is made, the applicant can seek for the extension of asylum to his or her family members, including spouses, minor unmarried children or, if the child has come to Austria, for his or her parents.⁹⁴ The extension depends on the status of the applicant and is connected to his or her recognition as a refugee according to the Geneva Convention. Therefore it is not possible for refugees who are allowed to stay in Austria only because of the prohibition of *refoulement*. The extension of asylum is not connected to the regular quota set for family reunification; the family members are recognized as refugees themselves.⁹⁵

1.7. Right to Identity

When talking about the right to identity it is necessary to clarify its contents, because every human being has an identity understood as the entirety of his or her circumstances of living. Understood as a human right, however, it can best be defined as “...the essential cultural patrimony of the individual, made up by a multiplicity of varied aspects – such as, *inter alia*, identity of origin, family identity, and intellectual, political, religious, social and professional identity of each person [which] is not to be argued, distorted, cut short, or denied...”⁹⁶

Thus, the right to identity is the most individual right anyone has: It is, in its core element, the right to decide what to be, how to be and also the right to decide to which ethnic group to belong - including the right to conserve, to give up or to change this identity.⁹⁷ But how can this right be guaranteed by the state?

One possibility is it to ensure that everybody is able to declare his or her membership to a certain minority group, for example in census or other statistical data.

Even more important is the official recognition of minorities as groups of their own with special needs and rights, but whereas this recognition is extensively given to old minority

⁹⁴ § 10 Asylum Act (Asylgesetz).

⁹⁵ § 12 Asylum Act (Asylgesetz).

⁹⁶ *Bonasso, Alejandro*: The right to an identity, at the „Permanent Seminar on Human Rights Education“ held at the School of Law of the University of the Republic of Uruguay, June 20, 2001; see: http://www.iin.org.uy/ponencia_derecho_a_la_identidad_ingles.htm.

⁹⁷ *Schruff, Franjo*: Für ein Recht auf politische Vielfalt; in: *Stimme von und für Minderheiten* No. 25; <http://www.initiative.minderheiten.at/Zeitschrift/stimme25b.htm>

groups⁹⁸, it is almost not existing for new minorities generated by migration. Even though immigrants have the possibility to declare themselves – with their nationality, language etc. – in the census, they do not represent a protected group of their own. Of course certain social networks have come into being within time, including cultural associations, but they are not recognized as official representatives of ethnic minorities. Without a strong representation, it seems to be quite obvious that unintentional assimilation can take place.

2. Economic, Social and Cultural Rights

2.1. Employment

Discrimination – as well as, of course, inclusion – on the labour market can happen on four different stages: First of all, the question of who is allowed to work and what it takes to get such an allowance arises. Secondly, one must consider how the chances to get a job, to apply for it and the treatment in daily working life differ for foreigners and nationals. Thirdly, the existing opportunities to obtain better positions on the labour market and, in connection with this occupational carrier, better positions in social life, are of interest. Lastly, it has to be clarified what are the consequences of unemployment.

With regard to migrants, the main problem in Austria is that for a long time nobody really cared for an integration policy, because the prevailing approach was rather that of a “guest-worker policy” managed by labour market and regulatory policy than that of a policy for integration of foreigners.⁹⁹ As the situation changed and integration has obviously become one of the most important issues of contemporary labour market policy-making, the current situation in Styria at the four levels of access, treatment, carrier and unemployment will be examined. For asylum-seekers, the problem is of different nature because during the asylum procedure they have no access to the labour market at all, whereas refugees recognized according to the Geneva Convention on refugees have – theoretically – the same status as Austrian citizens, but face the same forms of practical discrimination as migrants. Other refugees allowed to stay in Austria for reasons of non-refoulement have a limited access to the

⁹⁸ For the recognition of old minorities and their legal protection, see chapter I.

⁹⁹ See *Volf/Bauböck*, pp. 51-52.

labour market; they can be employed if no other persons with a higher level of integration are available for the job.¹⁰⁰

2.1.1. Access to the labour market

Before taking up a legal occupation in Austria, every non-EU citizen – except asylum-seekers, who have access to labour market as soon as they are recognized as refugees and are not allowed to work before that - needs some kind of a public permit to work. According to the duration of occupation, different kinds of public occupational permits exist, granting more rights to the employee with time.

The first permit that can be issued is the so-called “Beschäftigungsbewilligung”¹⁰¹ or occupation allowance, which has to be applied for by the potential employer and not by the foreigner him- or herself. As difficult as this may be in certain cases for the employee, it has at least the advantage that if a foreigner is employed without having an occupation allowance, only the employer – and not the employee – will be sentenced. The allowance is valid for a certain place of employment and territorially restricted to the political district where this place is situated. Furthermore, it is limited in time for a maximum of one year and has to be connected to certain obligations, as for example the obligation to equal treatment of foreign and domestic employees, but also the obligation to dismiss foreign employees before domestic in case that the general economic situation demands such measures.

Apart from these provisions, the most important condition for the issue of an occupation allowance is that the yearly maximum number of foreign employees is not exhausted. This maximum number is set every year by the responsible Minister for the entire Federal Territory; the primary idea behind is that no more than eight percent of the total Austrian labour force potential¹⁰² should be of foreign nationality. Next to the Federal maximum number, separate maximum numbers for the provinces are set as well. These numbers on provincial levels are of quite some relevance, because as long as less than 80% of these numbers are exhausted, it is not necessary for public authorities to scrutinise the occupational situation in every single case before issuing the occupation allowance.

¹⁰⁰ § 4b Aliens' Occupation Act (Ausländerbeschäftigungsgesetz).

¹⁰¹ §3ff of the Aliens' Occupation Act (Ausländerbeschäftigungsgesetz), BGBl. 218/1975.

¹⁰² The total labour force potential is the number of all employed foreign and domestic workers.

If the allowance is once issued, its prolongation mainly depends from the availability of a place within the maximum numbers; it is not necessary to verify the validity of the employee's residence permit again.

After one year of legal occupation¹⁰³ it is possible to obtain a better legal basis for further occupation: the so-called “Arbeitserlaubnis”¹⁰⁴ or labour permit. The main difference compared to the occupation allowance is that the foreigner is now a legal subject by him- or herself – s/he has to apply for it his- or herself, it is not restricted to one certain place of employment and it is valid for all the territory of the province where the occupation allowance was issued. It is no longer connected to any obligations and valid for a maximum of two years. Various exceptions to these provisions are made regarding certain professions¹⁰⁵ and for Turkish citizens according to the decision of the association council 1/80.¹⁰⁶

For the next kind of permit, the “Befreiungsschein” – which could best be translated as exemption certificate – a permanent occupation of at least five years during the last eight years has to be proved. Its duration of validity is five years for all kinds of occupation within all of the Federal Territory; in order for further prolongation, one has to be employed for at least two and a half year during these five years.¹⁰⁷

The exemption certificate is the best occupational permit that exists for non-EU citizens in Austria, but even if once obtained, quite some uncertainties remain, because the prolongation is always connected to the condition that the holder of the certificate – as well as the holder of an occupational allowance or a labour permit - is employed for a certain minimum period; if s/he does not fulfil this requirement, the status already required is lost no matter how long one has already lived in Austria.

This can practically have rather dramatic consequences considering the case that the holder of an exemption certificate loses his or her job under circumstances where it is – due to the general situation on the labour market – impossible to find a new one within a reasonable period. As a result of this unemployment, the condition of a working period of two and a half year during the five years of validity of the certificate can not be fulfilled and therefore further

¹⁰³ Exactly it is 52 weeks of legal occupation out of 14 months.

¹⁰⁴ §14a Aliens' Occupation Act (Ausländerbeschäftigungsgesetz).

¹⁰⁵ §1 of the Aliens' Occupation Act (Ausländerbeschäftigungsgesetz), for example diplomats, consuls, University professors; other exceptions can be found in the Foreigner Occupation Regulation 1990 and some bilateral agreements.

¹⁰⁶ *Davy/Cinar*, pp. 591-597.

¹⁰⁷ *Ibid.*, p. 600.

prolongation will be denied. The former holder of an exemption certificate has to apply for a labour permit or, even more dramatically, for an occupational allowance with all its consequences: different legal status, restricted territorial validity etc. and hence a reduced chance of finding a new job.¹⁰⁸ Furthermore, a long period of unemployment can have implications for the residence permit, because one of the conditions for a prolongation is the existence of sufficient means of subsistence, a criterion that will probably not be met without having a job.

2.1.2. Treatment on the labour market

Problems, however, do not end where a legal employment starts; on the contrary, foreigners often face heavy forms of discrimination on the labour market. Apart from the already mentioned fact that as soon as the maximum numbers for the occupation of foreigners are exhausted a scrutiny of the employment situation has to take place in order to ensure that there is no domestic applicant for the job and the similar situation that occurs when it comes to reductions in staff, other disparities can be found as well.

Starting from job-seeking and the application for a – seemingly – suitable job, discrimination occurs in extremely open forms; examples can be found every day in job advertisement of Styrian daily newspapers, where formulations like “only Austrian Citizens” are rather the rule than the exception. Even more, cases are known where people who had the Austrian citizenship were discriminated on the labour market just because of their colour; to give just one example, an Austrian newspaper reported the case of a woman in Graz who did not get a job in a bakery because she was black.¹⁰⁹

2.1.3. Occupational carrier

Noticeably, most employed non-EEA citizens are working in a rather small variety of sectors, mainly building (17,9% of the total labour force) and textile industry (24,8%) as well as services (25,4% hotel and restaurant industry, 16,4% cleaning)¹¹⁰ which are sectors where average wages tend to be quite low. In addition, very often they are employed in small and

¹⁰⁸ Ibid., p.

¹⁰⁹ See *Der Standard*: White bread in black hands, 9/10 May 1998.

¹¹⁰ *Volf/Bauböck*, p.49.

medium sized enterprises¹¹¹, and their positions are those of unskilled or semi-skilled workers.¹¹² This indicates rather clearly that there are little chances for any vocational advancement, and of course the difference can also be noted by the income gap between the foreign and the domestic labour force: the median net income between 1989 and 1999 of male foreigners was on average 25,4%, that of foreign women 22,2% below the comparative values for Austrian citizens.¹¹³ Moreover, especially women face a double discrimination, and only within the last years the number of female employees has significantly increased: In 2000, the number of employed male foreigners grew by 0,5%, that of females by 7,5%. An explanation for this development could be the provisions of family reunification which exclude family members from the labour market for a period of at least 4 years, but also religious, cultural and traditional beliefs may be responsible for a certain isolation of women. The NGO DANAIDA is working in this field and offers language courses as well as general information on the legal and social situation in Austria especially for women.

2.1.4. Treatment in case of unemployment

As already mentioned, unemployment can have serious consequences for foreigners, because they can lose an already obtained better type of permit to work, and in certain cases a long time unemployment may have implications for their residence permit as well. Additionally, it is much more difficult to get a new employment for migrants than it is for Austrian citizens, because the labour offices¹¹⁴ have the duty to place nationals with priority, and existing programmes for those who are long-time unemployed are often not accessible for foreigners.

At least, however, the differences regarding the unemployment benefit are not that discriminating as the other measures described above. For the first time a legal claim to an unemployment benefit comes into being after an occupation of 52 weeks during the last 24 months before becoming unemployed, afterwards it is enough to be employed for 26 weeks during the last 12 months. Apart from this time related criteria, the person has to be available for a new employment – which means that s/he is allowed to take up a new occupation, is

¹¹¹ Enterprises with less than 200 employees.

¹¹² See *Volf/Bauböck*, p.49; according to them, in 1993 48% of Turkish citizens employed in Austria were unskilled workers, 28% semi-skilled and only 3% made it to executive positions. Regarding citizens of former Yugoslavian countries, 40% were unskilled workers, 35% semi-skilled and 6% executive employees.

¹¹³ *Biffi*: Arbeitsmarktrelevante Effekte der Ausländerintegration in Österreich. Studie des Österreichischen Instituts für Wirtschaftsforschung im Auftrag des Bundesministeriums für Wirtschaft und Arbeit, Wien (2001), p. 16.

¹¹⁴ The labour offices in Austria are called Arbeitsmarktservice (AMS)

physically able to work and shows its good will to do so – and that s/he has not already exhausted the maximum period for which the unemployment benefit can be paid.¹¹⁵ Insofar, no differentiation between foreign and domestic unemployed persons is made, but in other regards, as for example the transfer of benefits to other countries or the assessment of times worked abroad, discriminatory provisions can be found. Regarding the first issue, it has to be said that unemployment benefits are not paid as long as the beneficiary sojourns abroad for more than two months a year; exceptions, though, can be made. In order to obtain a legal claim to unemployment benefits, the insurant must have worked in Austria, which means that the risk of an initial unemployment has to be borne by the foreigner. Moreover, the Unemployment Insurance Act contains two more discriminatory provisions: It is one of the prerequisites for the receiving of an unemployment benefit that the potential recipient is available for placement at the labour market; this implies that the unemployed person has the right to work legally in Austria – or, to put it the other way round, s/he must have some kind of a work permit.¹¹⁶ However, it cannot be the sense of a provision that a person having an occupation allowance – which expires as soon as the occupation is lost – does not receive any unemployment benefit although s/he has paid the regular contributions and meets all other prerequisites. This leads to the conclusion that only those whose residence permit excludes the possibility to work in Austria cannot receive unemployment benefits, because they are definitely not available for the labour market.¹¹⁷

Another discriminatory provision exists with regard to the duration of unemployment: A person who has – though legally – been living in Austria for less than 8 years and is continuously unemployed for more than one year, loses his or her claim to an unemployment benefit.¹¹⁸ As the insurance times in such cases are rather short, it has to be said that it is not likely, however, that the regular claim of 20 weeks is abbreviated; problems can arise only if the insurant wants to participate in professional training measures, because then the payments would be extended for Austrian citizens. More problematic is the loss of the claim to special support payments (Notstandshilfe) which are normally not limited in time.¹¹⁹

¹¹⁵ see §7 of the Unemployment Insurance Act, (Arbeitslosenversicherungsgesetz, AIVG)

¹¹⁶ see. §7 (3) Z 2 of the Unemployment Insurance Act (Arbeitslosenversicherungsgesetz).

¹¹⁷ See *Davy/Cinar*, p. 616.

¹¹⁸ See §7(3) Z 3 of the Unemployment Insurance Act (Arbeitslosenversicherungsgesetz) which refers to §34 (2) Z 2 and §34 (4) of the Austrian Alien Act (Fremdengesetz).

¹¹⁹ *Davy/Cinar*, p. 617.

Various projects organized by NGOs (for example by ISOP and ZEBRA) try to facilitate the re-entry to the labour market for unemployed foreigners through contacts to the labour offices, help with language barriers and similar measures.¹²⁰ Even if these programmes are of great value, it is necessary that the Austrian labour market and recruiting policy changes from a mere satisfaction of economic needs to a concept of integration and participation of foreign employees.¹²¹

2.1.5. Self-employment

1.531 foreigners¹²² in Styria have proved that working for a company is not the only way to earn money: they are running their own businesses, from restaurants to groceries or delivery services and building companies. The way to get there is anything but easy, because a foreigner needs – in addition to all other permissions generally required – an acceptance of equivalence issued by the provinces which have to verify if the planned businesses is of public and macroeconomic interest.¹²³ Moreover, in certain cases a special evidence for qualification has to be provided. For refugees recognized according to the Geneva Convention the situation is a bit easier, because after a legal residence of 3 years they enjoy the same rights as Austrian citizens for taking up a business.

Apart from this administrative difficulties, other problems can arise with regard to the residence permit, since its prolongation is bound to the securing of a sufficient income. Public authorities tend to see self-employment as less secure source of subsistence and therefore resident permits for foreign entrepreneurs are often limited in time. Additionally, infringements of administrative laws – for example with regard to road traffic, market regulations etc. – can have a negative impact on prolongations and on the application for citizenship.¹²⁴

The potential entrepreneurs also have to face serious social and financial barriers on their way to self-employment. Mostly they do not have an adequate seed capital, and due to the relative insecurity of their residence and the fact that the industries they are planning to work in are

¹²⁰ For details on these projects see: <http://www.isop.at/index1.htm> and <http://www.zebra.or.at/migration/>.

¹²¹ For more details on the employment situation of foreigners in Austria, see also: *Göhring: Migranten und Flüchtlinge. Integration - Partizipation – Chancengleichheit*, Graz (ISOP) 2001.

¹²² Data from 1999, see *Volf/Bauböck*, p. 75.

¹²³ See § 14 of the Commerce Act (Gewerbeordnung, GewO), BGBl. 194/1994.

¹²⁴ See *Volf/Bauböck*, p. 80.

usually not very fruitful, banks are rather reluctant to offer them loans; therefore migrants are dependent on private investments and financial help from their community.¹²⁵

Ethnic business, however, can play an important role in a society as they can create places of employment for others, help to conserve ethnic culture as they are mostly designed for the special needs of certain minority groups and can be a meeting point for nationals and non-nationals, raising communication among them. Furthermore, successful entrepreneurs can serve as a role model for the second generation.¹²⁶

2.2. Housing

Generally spoken, the housing market in Austria is divided into 3 segments: social housing in its closest sense, thus flats built by the Municipals or by cooperatives with public subsidies; flats financed by private investments but with housing benefits available later on as a form of social housing in a wider sense and the private housing market which is not state-aided at all. For migrants coming to Austria the access to both forms of social housing is rather restricted.

The entry to social housing in its closest sense usually depends on the Austrian citizenship since only very few Municipals have opened their flats to foreigners who are coming from other than EU-countries and are not refugees. Especially in Graz – and also in Vienna – discussions on this issue have been going on for a long time; the main argument was that the flats built by public authorities should at least be given to foreigners to the extent of their percentage in relation to the domestic population, but so far nothing has been done to make this idea come true. The situation regarding those flats built by cooperatives, where foreigners are not explicitly excluded, is better. Nevertheless, a de-facto-discrimination happens very often due to a complicated system of subsidies and benefits and the need for a high proprietary capital.¹²⁷

Although social housing in its closer sense is not available, certain other subsidies for flats financed by private investments can be obtained. In Styria, for example, the Province supports various kinds of housing, i.e. the construction of freehold flats and houses, the acquisition of

¹²⁵ Ibid, p. 81; the authors state that migrants raise credits very seldom compared to Austrian nationals.

¹²⁶ Ibid, p. 84-86.

¹²⁷ Volf/Bauböck, p. 248-249.

freehold flats, restructuring measures etc.¹²⁸, but again foreigners do have limited access to these subsidies. They are generally excluded from all aids for the acquisition of own property – exceptions are made for EEA-citizens and refugees recognized according to the Geneva Convention – and housing benefits for flats to rent are available only for those who have been living in Austria for more than five years and hold a labour permit or an exemption certificate.¹²⁹

As a result of these provisions, 93% of the foreign population in Graz have a private-law lease contract. Considered that the average income of foreigners tends to be significantly lower than that of nationals, the flats available on the private market are of sub- to low standard, mostly in old buildings¹³⁰ that are badly maintained and often situated in not very attractive quarters. Moreover, the equipment does not meet common Austrian standards, because for usual 81% of Austrian apartments, where 73% of the national population lives, are A-category, equipped with central heating, bath room and toilets, but only around 40% of the non-Austrian population has access to them. 30% are forced to live in D-category flats without running water installations or toilets. In Graz, this percentage is even higher at 52%, and 5% have to come by in basement dwellings.¹³¹

Furthermore, not only the equipment, but also the available size is below common standards: the average living space for an Austrian citizens is 33m², for a citizen from former Yugoslavia it is 16,5 m² and for Turkish citizens 13,5 m² – less than half.¹³² Though foreigners often have to pay more for these smaller accommodations; The difference between the average rent charged per square meter for domestic and foreign tenants is as high as up to 50% price increase.¹³³

As the described sub-standard flats are mostly concentrated in certain quarters, the development of some sort of ghettos can hardly be avoided. In Graz, where the average percentage of the foreign population is at 12%, this amount is significantly exceeded in three quarters: Lend (18,6%), Gries (22,1%) and Puntigam (16,1%). In all the other of the 17 quarters, the percentage is around or even significantly below the average.¹³⁴ These areas

¹²⁸ See § 1 of the Styrian Act for the Promotion of Housing (Steiermärkisches Wohnbauförderungsgesetz), LGBl. 25/1993.

¹²⁹ See § 7 (4) of the Styrian Act for the promotion of Housing (Steiermärkisches Wohnbauförderungsgesetz).

¹³⁰ „Altbau“, build before 1918.

¹³¹ See *Volf/Bauböck*, p. 241-244.

¹³² Data from 1999, <http://www.sos.at/stat0599.htm>

¹³³ See *Volf/Bauböck*, p. 245.

¹³⁴ See *Grazer Stadtplanungsamt: Stadtentwicklungskonzept*, p. 32.

provide a low standard of living not only due to the poor quality of housing but face serious problems also because of criminality and prostitution, which are definitely not problems generated by the new minorities but rather problems they have to live with as they can not afford housing in more secure quarters. However, due to this living situation, they face further prejudices.

As the private housing market does not provide adequate solutions for many migrant families – especially not for extended families, single parents or sole wage earners – it is an important task to solve this problem by legal means. A first step could be the realisation of access to social housing in its closest sense: Different to other European countries, in Austria this kind of housing has a good reputation and the buildings are not situated on the outskirts or in other low-level quarters. Most migrant families would meet the criteria for access to such flats, and as they are paying taxes which are used for the construction of the buildings, it is simply unfair to exclude them.¹³⁵

2.3 Social Security

2.3.1 Health

2.3.1.1. Health Insurance

The regular health insurance in Austria is statutory, so as soon as person takes up an occupation in Austria, s/he is automatically fully insured,¹³⁶ no matter if the employment has been announced by the employer at the responsible social insurance carrier or not.¹³⁷ Services covered by the insurance in case of disease can be cash and non-cash benefits for diagnosis, treatment and aftertreatment of the insurant and his or her family members. The insurant should consult certain physicians who have a contract with the insurance carrier or institutes of the insurance carrier itself in order to get full absorptions of costs, otherwise 80% of the costs are covered.

If a disease leads to work incapacity, the insurance includes a claim to sick benefit of 50% of the normal wage after the fourth day of the work incapacity for a maximum period of 26

¹³⁵ See *Volf/Bauböck*, p. 250.

¹³⁶ See § 10 of the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz, ASVG), BGBl. 189/1955.

¹³⁷ Even though the employer is legally obliged to do so; see. § 3 of the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz).

weeks; this period extends to 52 weeks if the insurant has been employed for at least 6 months during the last 12 months.¹³⁸

For all these benefits, citizenship is not a criterion at all, but the main condition is that the employment is legal – and an employment is not legal if a residence or work permit is missing; furthermore even though the insurance coverage continues in case of unemployment as long as benefits are paid, it ends after this period if the jobless person does not have a claim to other social assistance payments. For a part of the foreign population health services are therefore not accessible because they would have to pay for them themselves; in emergency situations, costs are covered by the social assistance office, but then the aliens' police can be informed and the foreigner runs the risk to be expelled.

In addition, communication in hospitals and ambulances is often difficult due to linguistic problems, a situation that complicates medical treatment. Since interpreters are available, the NGO ZEBRA has launched a project for the training of migrants, refugees and asylum-seekers to multipliers in the medical sector. Their task is it to bridge the cultural, religious and social gaps which divide foreigners from the Austrian help system.¹³⁹ A second NGO in Graz, OMEGA in co-operation with CARITAS and others, runs a clinic – the Marien-Ambulanz - specialized in cases where medical treatment can not be found elsewhere since April 1999; in its first year of existence, more than 2000 people sought help there.¹⁴⁰

2.3.1.2. Accident Insurance

The accident insurance is regulated rather similar to the health insurance as described above: Statutory and beginning with the first day of occupation. Subject to this insurance are occupational accidents and occupational diseases. Available benefits can be non-cash – as medical treatment, rehabilitation and the provision of prostheses – or cash, mainly the payment of an annuity due to a reduced ability to work which remains for more than three months after the accident. Depending from the degree of the impairment of health, which has to be at least 20% of the full ability to work, the annuity can reach a maximum level of 66%

¹³⁸ See *Davy/Cinar*, p.609-610.

¹³⁹ For further details see: <http://www.zebra.or.at/doc/ges-foerderung.htm>

¹⁴⁰ For details on the project, see: <http://www.omega-graz.at/>

of the normal income. As for health insurance, citizenship is no criterion,¹⁴¹ but the same problems as described above may arise.

2.3.2 Social issues

2.3.2.1. Social insurance

Apart from health insurance, the social insurance consists of two more parts: the unemployment¹⁴² and the retirement pension¹⁴³ insurance. As the unemployment insurance has already been described above¹⁴⁴, a closer look at the retirement situation will be taken. Cases covered are, apart from old age, the loss of the ability to work - if it is reduced permanently - and death, where certain benefits for close family members are provided.

Regarding the claim to a retirement pension, the scheduled age for men is 65, for women 60 years under the condition that a minimum work period of 180 months of insurance during the last 360 months before the valuation day can be proved. The amount that is paid depends from the income received before retiring from professional life according to a rather complicated calculation method.¹⁴⁵ Again, no difference is made by law between citizens and non-citizens.¹⁴⁶

2.3.2.2. Social assistance

Whereas the system of social insurance depends from a certain reciprocity of benefits – the insurant can obtain services only in return for his or her own regular contribution – the system of social assistance ties in with social indigence, unattached to contributions made by the beneficiaries. The three cases of social assistance are social benefits, family assistance payments and housing assistance benefits.

¹⁴¹ See *Davy/Cinar*, p. 610-611.

¹⁴² Regulated in an own Act, the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz, AIVG*)

¹⁴³ Regulated in the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*).

¹⁴⁴ See chapter 2.1.4.

¹⁴⁵ The basis for this calculation is the sum of the 180 highest monthly incomes divided by 210. This basis is the reference value for the amount of the retirement pension paid, which is a certain percentage according to the total quantity of available insurance months; vgl. §292 of the Austrian Social Insurance Act.

¹⁴⁶ See *Davy/Cinar*, p. 611-612.

Social assistance lies within the competences of the Provinces; in Styria it is regulated by the Styrian Social Assistance Act.¹⁴⁷ Social benefits are supposed to be some kind of “help to self-help”,¹⁴⁸ an aid that is provided when a person faces a social crisis which s/he cannot overcome with his/her own income, capital or help from other (private) side. Benefits available are aid to ensure the most basic needs¹⁴⁹, aid for emergency situations¹⁵⁰ and social services,¹⁵¹ usually, however, a legal claim exists only for the first-mentioned kind of benefits, the others are conceded by discretionary power or according to private law. In Styria, social assistance benefits for the satisfaction of elementary needs are given to all persons who are entitled to a legal stay of more than 3 months,¹⁵² but currently discussions on the denial of this right for asylum-seekers are taking place. The background of this planned modification is that some asylum-seekers to whom social benefits were paid were sentenced for drug-dealing. The result could be that all asylum seekers in the entire Provincial Territory have no right to social assistance even if they were not able to satisfy their most basic needs.

Family assistance payments are financed by a special federal endowment fund¹⁵³ with the objective to support families with a permanent residence in Austria as long as they have minor children or adult children up to a maximum age of 26 if regular support payments¹⁵⁴ are made for them. Prerequisites are a legal employment with a duration of at least 3 months or a legal residence of at least 5 years; refugees recognized according to the Geneva Convention have a claim even without the minimum occupation time. The amount of the public payments depends from the number and age of children.¹⁵⁵ Moreover, since January 2002 the new Child Care Allowance Act¹⁵⁶ is in force according to which €14,53 a day are paid until the child’s third birthday under the same conditions as described above. For migrants this can be a problem insofar as some groups - especially young unemployed women who have not been to Austria for 5 years and asylum-seekers – are excluded from these benefits.¹⁵⁷

¹⁴⁷ Styrian Social Assistance Act (Steiermärkisches Sozialhilfegesetz), LGBl. 29/1998.

¹⁴⁸ Ibid, p. 618.

¹⁴⁹ Nutrition, housing, heating, clothing etc.; see § 8 of the Styrian Social Assistance Act.

¹⁵⁰ These „emergency situations“ are defined in §15 of the Styrian Social Assistance Act.

¹⁵¹ Nursing at home, certain aids for families, counseling services, payments for nursing homes etc.

¹⁵² See § 4 of the Styrian Social Assistance Act (Steiermärkisches Sozialhilfegesetz).

¹⁵³ Familienlastenausgleichfond; originally payments to this fund were made by employers and only employees were benefiting from it, meanwhile, it is co- financed by public authorities and available to all families.

¹⁵⁴ Mostly students; the yearly income of the child must not exceed €8.725.

¹⁵⁵ For the first child, it is €105,40 per month from age 0-9, €123,60 from 10-19 and €145,40 if a legal claim still exists after the age of 19. For the second child, this payments increase by €12,80, for the third child by €25,50. Extra payments are made for handicapped children (additionally €131)

¹⁵⁶ Child Care Allowance Act (Kinderbetreuungsgeldgesetz), BGBl. 103/2001.

¹⁵⁷ *Beratungszenrum für Migranten und Migrantinnen: Stellungnahme zum Entwurf eines Kinderbetreuungsgeldgesetzes*, Mai 2001; <http://www.migrant.at/kibgg.htm>.

Possibilities for housing assistance payments have already been mentioned above¹⁵⁸; basically two types of payments are available: payments for creation or upgrading of living space and subsidies for rents.¹⁵⁹

2.3.3. Exclusion or Inclusion?

At the first sight, non-Austrian citizens are treated equally by insurance law because no reference is made to citizenship at all. When taking a closer look, however, certain kinds of exclusion can be found regarding the export of insurance benefits, the assessment of occupational and insurance periods one has in another country and specific benefits for family members.

A first problem that occurs is that all cash benefits, no matter if paid by the health, accident, retirement pension or unemployment insurance, are not paid as long as the beneficiary sojourns abroad for more than 2 months a year if not agreed differently in bilateral agreements. This means a considerable restriction for foreigners in regard to their freedom of movement: if they decide to stay in their native country for a longer period, they have to face serious financial losses under certain conditions.

Secondly, certain benefits depend from the number and income of other family members; these family members, however, can only be considered if they are resident in Austria, which is, due to the strict family reunification regulations, very often a big problem. Examples for benefits that are limited if family members are not resident in Austria are, for example, health services which are normally fully paid for family members, extra payments for the insurant in case of disease and a lower unemployment benefit due to the loss of additional payments for family maintenance obligations.

Thirdly, periods of employment – which are very important in order to get a legal claim to retirement pension and unemployment benefits – are only considered if the occupation did not take place in Austria. This can be a serious barrier to mobility, too, and if a person who is more than 50 years old takes up an occupation, s/he will not get any claim to an retirement pension at all because the minimum of 15 years can not be reached.¹⁶⁰ Further differentiations are made with regard to the unemployment insurance.¹⁶¹

¹⁵⁸ see chapter 2.2.

¹⁵⁹ See *Davy/Cinar*, p. 619-621.

¹⁶⁰ *Davy/Cinar*, pp. 612-615.

¹⁶¹ For more details, please refer to chapter 2.1.4.

Even more inequalities can be found when leaving the statutory insurance level and coming to the situation regarding social assistance payments. As described above, benefits from social assistance are not connected to contributions made by the beneficiary but depend only on the fact if a person is forced to live in an emergency situation s/he can not overcome by him- or herself.

The Social Assistance Acts are, differently from the Social Insurance Act, part of the legislation competence of the provinces, so their provisions are not consistent throughout the federal territory as there are 9 Acts, one for each province. The Styrian Social Assistance Act has already been considered above, but it has to be mentioned that various forms of discrimination can be found in all provinces; to give just one example the Acts of Burgenland, Carinthia, Lower Austria, Salzburg, Vorarlberg and Vienna explicitly refer to the Austrian citizenship for all kinds of social assistance benefits.¹⁶²

Family assistance payments are only made to persons working for an Austrian employee and only for those children living in Austria. Especially the second provision can be seriously discriminating when considering the strict rules for family reunification.

Housing benefits for the creation and restructuring of freehold flats and homes are generally reserved to citizens; foreigners can obtain such benefits only as tenants.

2.3.4. Social assistance for asylum-seekers and refugees

As soon as a valid application for asylum¹⁶³ has been made, the asylum-seeker has the chance to participate in the Federal care programme which offers nutrition, housing, health insurance, some pocket money, clothes etc. The problem is however that only about 5000 places are available and that a legal claim to a place in the programme does not exist. The decisive criterion for their admission in the programme is a lack of means, but as this term is not sufficiently described in the Act on Federal Care¹⁶⁴, it is often not clear who will be accepted

¹⁶² This means that only Austrian citizens and those foreigners who are equated with Austrian citizen can obtain the full social assistance benefits. Equated foreigners are all EEA-citizens, citizens of other countries if a bilateral agreement exists and, in some cases, asylum seekers; see *Davy/Cinar*, pp. 621-622.

¹⁶³ An application is valid if the asylum-seeker has not already found protection in another secure state, if no other state according to the Dublin Convention is in charge of the asylum procedure and if it is not obviously arbitrary.

¹⁶⁴ Act on Federal Care (Bundesbetreuungsgesetz), BGBl. 405/1991.

and who won't¹⁶⁵; furthermore, only persons who have valid documents for their identification are potential participants.

As asylum-seekers are also excluded from regular social assistance at the Provincial level, they have to rely on NGOs and other institutions; in Styria, it is mainly the CARITAS who cares for them and runs a home for asylum-seekers in Graz.¹⁶⁶

The situation of asylum-seekers whose application is refused because according to the Dublin Convention another member state of the EU is in charge for the procedure is especially precarious.¹⁶⁷ As long as their case is not accepted by another country, they do not get an Austrian residence permit and are not financially supported by the state. As a consequence they run a high risk to be arrested for deportation custody.¹⁶⁸

The situation for refugees recognized according to the Geneva Convention is much better; they enjoy almost the same rights as Austrian citizens, including full access to health care, social assistance benefits from the Province and, in Styria, also access to social housing. Furthermore, special measures for integration, like language courses, events with Austrian citizens to enhance mutual understanding and vocational trainings, are offered to them.

Refugees who do not have this status but are allowed to stay only because of the refoulement-principle are treated like migrants, so that neither certain benefits nor the above mentioned measures for integration are available; therefore they depend much more on the help of the NGOs.

2.4. Education

Education is one of the most important possibilities to influence the ways in which integration can take place, a chance to teach tolerance and to disseminate knowledge about other cultures. In addition, by granting an equal education, an equalisation of opportunities in professional life could be reached. Unfortunately, this does not always happen in Austrian schools.

Since the 1970s, when it got obvious that guest-workers would not entirely return to their home countries but had to be integrated in the Austrian society, the education of their children

¹⁶⁵ See *Volf/Bauböck*, p. 105, who report of cases where the decision was based on the fact if the asylum-seekers owned a mobile phone or not.

¹⁶⁶ For further information see: <http://www.caritas-graz.at/home.php>

¹⁶⁷ In 1999, Austria refused 1.272 cases because of this reason; in the same year, other member states made 2.220 request for the transfer of asylum-seekers to Austria.

¹⁶⁸ See *Volf/Bauböck*, p. 103-106.

became an issue in Austrian education policies. Principally, the Austrian School Organisation Act states that all schools are open to the public without differentiation made because of nationality or language¹⁶⁹, and compulsory schooling is obligatory for all children who permanently live in Austria.¹⁷⁰ Currently, children with 140 different nationalities¹⁷¹ are attending schools in Austria. One positive practice is the possibility that children who are not yet able to master the German language can spend a maximum of one year in school as an associate pupil.

Although the legal situation seems to be quite promising, reality appears to be rather different. Characteristically, children of immigrants are attending schools with a lower reputation and academic standards. To understand this type of social labelling, a short explanatory note to the general school system in Austria is needed. After spending four years in primary school, a child has the choice between two types of secondary education: either to attend a normal secondary school (Hauptschule) with a duration of four years or a comprehensive secondary school (AHS/BHS) with a duration of eight years. At this stage the differentiation already begins to show, since a secondary school is – more or less- a preparation for a direct entry into working life after a total of 9 years in school, whereas a comprehensive secondary school provides - after a total of 12 years in school – a general qualification for university entrance. Of course it is possible to change from a secondary to a comprehensive secondary school, but because of different curricula, this is not easy. Due to this early splitting into two different types of educational systems, a serious restriction of social mobility appears, which is worsened by the fact that since the early 1980s the reputation of the normal secondary schools has continuously declined. Especially in urban areas they have become the only – and not the best – alternative for those who could not make it to the comprehensive secondary schools and are often seen as a place where learning deficits have to be compensated.¹⁷² For children of immigrants – even the second or third generation - who, in addition to social barriers¹⁷³ sometimes also have to overcome linguistic difficulties, the normal secondary schools often remain the only possibility; this is proven by statistical data which shows a strong overrepresentation of immigrant children in these schools, whereas their percentage is much lower in comprehensive secondary schools. This, of course, is reflected in their vocational

¹⁶⁹ See §4 (1) School Organisation Act (Schulorganisationsgesetz), BGBl. 242/1962

¹⁷⁰ See §1 Compulsory Schooling Act (Schulpflichtgesetz), BGBl. 76/1985.

¹⁷¹ See *Volf/Bauböck*, p. 178.

¹⁷² See *Volf/Bauböck*, p. 183

¹⁷³ These social barriers can be of various nature, beginning from a low social status of the child's parents, an inadequate housing situation and difficult social circumstances in certain quarters to the lack of afternoon tutoring if both parents are working etc.

career, where the percentage of workers is still much higher than that of executives or other employees.¹⁷⁴

This restraint to social mobility should be one of the most important issues to be changed in integration policy, because the equalisation of access to all levels of the schooling as well as the vocational system - together with the strengthening of biculturalism and a training for multicultural coexistence – can be the only basis for the development of a joint identity.¹⁷⁵

In 2000, one project for the promotion of children's integration with non-German mother tongues was launched by ZEBRA, SALE; ISOP and DANAJDA, four NGOs working in Graz. The aim of the project is to enhance the communication between kids, their parents and schools by parent-teacher conferences where interpreters are present and similar measures; in addition, support is given to children with learning difficulties.¹⁷⁶

2.5. Media

Almost every day Austrian newspapers publish reports on “ethnic minorities”, “asylum-seekers”, “refugees” or, more general, “foreigners”. All these reports have one thing in common: the associations coming along with this topic are not very positive, because terms like “criminality” or “danger for social peace and security” are used very often, and mostly it seems that the main contents of these reports have nothing to do with objective background stories about migration, new minorities and their life in Austria, but rather focus on an unfair presentation of the most problematic and shocking cases. A good example is the recent situation in Graz regarding people – mostly asylum-seekers – from Nigeria. A small percentage them has been brought to jail for drug-dealing, but several newspaper articles give the impression that the drug problem in Styria has been generated just by them, and, even more shocking, that more or less everybody who comes from Nigeria is a drug dealer by nature. Illustrative examples are statements like the following: “[new police forces] will hunt dealers, mainly foreigners from Africa...”¹⁷⁷, “Out of 100 Africans, 99 are offering drugs”¹⁷⁸ or “20% of criminals are foreigners”.¹⁷⁹

Obviously such reports render an objective discussion about integration issues more difficult, especially when considering the unique situation within the Austrian newspaper market: 2,9

¹⁷⁴ For details on the occupational situation, see chapter 2.1.

¹⁷⁵ See Volf/Bauböck, p. 181

¹⁷⁶ For further information see: <http://www.zebra.or.at/zebratl/2k1/1/schulprojekt.htm>

¹⁷⁷ *Neue Kronenzeitung*: Fünf Drogentote innerhalb weniger Tage“, 5.11.2001.

¹⁷⁸ *Neue Kronenzeitung*: Lager in Traiskirchen Drehscheibe für Drogen, 6.11.2001.

¹⁷⁹ *Neue Kronenzeitung*: Die beste Kriminalitätsstatistik: Österreich ist sicherer als je, 4.3.1999.

million Austrians¹⁸⁰ – this are more than 40% of the total market share on the news market - read the same newspaper, the *Neue Kronenzeitung*, which is, compared to market share and total population, the most-read newspaper all over the world. Almost all of the articles quoted above were published in the *Neue Kronenzeitung*. No match can be found to this extremely dominant positions; all other newspapers in German language have far less readers, not to talk about newspapers in other languages: except from international editions of other countries' newspapers, hardly nothing can be found. The only regular publications are some newsletters ore information sheets published by migrants' associations and institutions.¹⁸¹

The situation on the market for electronic media is different, but not much better. The TV market in Austria is still monopolistic with the ORF as the only national provider of programmes; additional 50 channels, though, can of course be received from other countries via cable and satellite TV. The ORF itself has a market share of approximately 50% and broadcasts one weekly programme of half an hour for old as well as for new minorities called "*Heimat, fremde Heimat*". It is the only programme hosted by moderators stemming from ethnic minority groups.

Regarding radio programmes, the market has been liberalised within the last few years, and some of the newly emerged non-profit radio stations broadcast minority programmes. The fact, however, remains that in Austria the presence of minorities in the media – public as well as private - is very limited, and foreigners are therefore forced into a rather passive role. Considering the importance of the media for public opinion, this situation is very unsatisfactory. Minorities do not have the opportunity to fight against xenophobic or discriminating reports by publishing their own opinion; the only means are to go to court in a limited number of cases. Furthermore, the access to the existing Austrian media is difficult for them – partly due to the general situation at the labour market, partly because of the combination of two facts: the strong market concentration on the one hand and the non-centralisation of training programs for journalists on the other hand leaves very limited possibilities in general.¹⁸²

¹⁸⁰ Data provided by the *Neue Kronenzeitung*, see: <http://www.kroneanzeigen.at/>

¹⁸¹ See Volf/Bauböck, pp. 125-126

¹⁸² See Volf/Bauböck, p. 127.

One best practice, however, can be reported: In various Styrian cities¹⁸³ the MEGAPHON is sold – an independent street magazine which publishes articles on social and cultural topics in order to disseminate information on the situation of minorities. The best thing is that the magazine is not only made *for* or *about* these groups, but also *by* them as they can actively participate in writing and publishing. In addition, the sale can be a source of income for all those who are in a difficult social situation, because 50% of the price belong to the vendor.¹⁸⁴

¹⁸³ Graz, Bruck a.d. Mur, Knittelfeld, Deutschlandsberg, Gleisdorf, Hartberg, Leibnitz, Leoben, Voitsberg und Weiz.

¹⁸⁴ For further information see: <http://www.megaphon.at/index1.html>

III. Conclusions and Perspectives

1. Perspectives: The Agreement for Integration – new chances for new minorities?

The Agreement for Integration, which has been proposed by the governmental parties earlier this year, suggests a new policy approach for the better integration of new minorities already living in Austria, while at the same time it proposes a restriction of new migration.

Some of the recommended measures to reach this goal - obligatory language courses, new regulations regarding seasonal workers, managers and specialized workers, an obligatory health attest upon arrival in Austria and a new regulation for adoptions similar to the regulation for fictitious marriages - have provoked a lot of discussions, especially the issue of obligatory language courses.

Every non-EEA citizen who has come to Austria after the 1 January 1998 – exceptions are made for refugees and other groups like the old, sick or very young - has to attend such a one-year course in German language and Austrian citizenship education. If the foreigner makes the course within first year, his or her residence permit is prolonged for two more years and the Federal government pays 50% of the course fees, whereas if s/he fails the residence permit is prolonged for only one year, but for additional 6 months the Federal government still pays 50% of the course fees; after this period the payment is reduced to 25%, and no more payments are made after the second year. The real problem arises after the third year, because if the migrant has not even begun the course, his or her residence permit expires; if the course has been begun, but not successfully finished, a fee of €200 has to be paid, and after four years the person has to leave the country in any case, except from certain cases as pregnancy or children's care. It has been remarked by various NGOs that this regulation is unnecessary, very unfair and that there is no reason for such a strict measure because almost everybody coming to Austria will have the desire to learn the language. It would be much better to create a system of positive rewards rather than the proposed negative motivation, for example voting rights at the municipal level etc.¹⁸⁵

¹⁸⁵ Such positive motivations can be found in various other European countries as Sweden, the Netherlands etc.

Almost as much as the issue of obligatory language courses, the new regulation for seasonal workers has been discussed. At the moment, seasonal workers can work in only two industries, tourism and agriculture, whereas according to the new regulation the Federal minister for economics sets – in cooperation with the provinces - a quota for every industry with a lack of specialised workers. It has been pointed out that this could lead to serious distortions on the labour market, because the seasonal workers, for whom the employer has to apply for a six-months labour permit which can be prolonged for a maximum of additional six months, followed by a waiting period to be spent abroad, do not have a normal social insurance, no right to family reunification and are much cheaper for the employer than any Austrian resident – national or foreign – employees. This solution seems to be designed for the needs of the economy rather than for any integration purpose and has also been the main reason, too, why some have cynically renamed the agreement for integration to agreement for disintegration.

Only executives and other highly specialized employees who are, according to a special catalogue of various criteria, requested on the national labour market and earn at least €1.962 a month, will get a combined residence and work permit; for all other groups, the long-requested simplification of residence and work permit is still not provided.

Another novelty is the introduction of an obligatory health attest not older than 90 days that a migrant has to present upon his/her arrival in Austria. It is not yet clear what the consequences are going to be, but it is obvious that a broad range of problems could arise; what happens, for example, if family members want to be reunified but do not have satisfying health attests?

Last but not least, the regulations regarding adoptions have been equalized to those on marriages, which means that if an adoptions seems to be fictitious, it can not be the basis for a legal claim to a residence permit.

Some positive remarks can be made with regard to the situation of foreign students, who would be allowed to work for 3 months a year, and for migrants' children who grew up in Austria, because they should get free access to the labour market more easily.

2. Conclusions

The Agreement for Integration does not provide satisfying solutions for the most urgent problems regarding the social exclusion of new minorities; once more, it seems to be a concept for the interaction with guest-workers much more than – despite its name - a policy approach for practical integration.

Considerable shortcomings have been found in almost all examined areas of concern, and it seems that the legal situation does very often not provide adequate means for the promotion of a social inclusion of new minorities. Regarding civil and political rights, some of the issues that have to be pointed out are the following:

Especially the denial of voting rights and the difficult access to public service pose serious barriers to an effective participation. Without this possibility to participate effectively in a state's most basic functions, though, it is almost impossible for the new minority groups to make their concerns heard. The Foreigners' Advisory Boards that have been established in the main Styrian cities are a first step to an enhancement of this situation, but the current citizenship-based approach on these issues should definitely be reconsidered since an Austrian citizenship is not easily obtained.

Furthermore, the quota set for family reunification and the restriction for children older than 15 is highly problematic from a human rights perspective and do certainly not enhance the individual feeling of social inclusion.

The existing legislation against discrimination should be implemented more carefully, maybe by the establishment of ethnic monitoring bodies; though, the final outcomes of the draft for a new Act against Discrimination (Antidiskriminierungsgesetz) have to be expected.

With regard to economic, social and cultural rights, it is mainly the employment situation which is very unsatisfactory. Currently, on the one hand most migrants are more or less forced to work, because without a job they run the risk to lose their residence permit. On the other hand, those who come to Austria by family reunification have to wait for 4 years before they are allowed to work at all. Asylum-seekers are generally excluded from the labour market. A simplification of the residence and work permit procedures and connected to that a greater security of the residence would help migrants to obtain better positions at the labour market. Other important issues are the access to social housing and social assistance.

What is needed for a real Agreement for Integration are therefore not obligatory language courses, but the necessary infrastructure in order to ensure the possibility for everybody who

wants to learn German, maybe combined with a system of positive rewards. What is needed are not more seasonal workers, but the simplification of residence and work permits in order to open the labour market for people already living in Styria. Furthermore, it is time to recognize certain rights for an effective participation in political rights; therefore eligibility for works councils and at the Municipal level should be accepted at least for those foreigners who have lived in Austria for a longer period. A new solution has to be found regarding the quotas for family reunification, especially regarding children older than 15 years. Social housing should be made available for migrants, too. This list could be continued without ending, because in almost none of the examined areas of concern the situation in Styria is fully satisfying, and it would be indeed high time to establish a real concept for integration.

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