



Parallel Report

By the Forum on Economic, Social and Cultural Rights in Austria

5th State Report of the Austrian Republic

To the International Covenant on Economic, Social and
Cultural Rights (ICESCR)



Vienna, August 2013

Imprint

Contributing Organizations

Alternative and Green Trade Union AUGE
Association of the Active Unemployed
Asylum Coordination
Austrian Armutskonferenz – Austrian Network against Poverty and Social Exclusion
Austrian National Council of Disabled Persons (ÖAR)
Austrian Students' Association
FIAN Austria
National Alliance of Organizations working for the Homeless (BAWO)
National Association of Social Workers (OBDS)
National Coalition for the Rights of the Child
NGO Forum CEDAW in Austria „Women: Rights now!“
Orientexpress – Women's counselling centre
Stay visible – Organization of people affected by poverty

Co-Ordination Group

Elisabeth Sterzinger (FIAN Austria)
Gaby Skokan (FIAN Austria, Stay Visible)
Gertrude Klaffenböck (FIAN)
Martin Mair (Active Unemployed)
Eringard Kaufmann (OBDS)
Christine Wurzinger (ÖAR)
Christina Meierschitz (ÖAR)
Rosy Weiss (NGO Forum CEDAW in Austria „Women: Rights now!“)

Contact

FIAN Österreich,
Schwarzspanierstrasse 15/3/1
1090 Wien

Telefon: 01/ 2350239
Mail: wskforum@fian.at

Web: www.fian.at/ WSK Rechte Forum

Editorial Team

Gaby Skokan, Rosy Weiss, Elisabeth Sterzinger, Martin Schenk, Angelika Hoffmann, Eringard Kaufmann, Gertrude Klaffenböck, Judith Stummer-Kolonovits, Caroline Paar, Gundi Dick, Philipp Salzmann, Ana Maria Suárez Franco

Layout

Philipp Salzmann

Preface:

The WSK Forum Austria was first called by FIAN Austria in May 2012 to invite organisations from the fields of social affairs, anti-racism and human rights to participate in work on the parallel report to the UN WSK committee.

Fortunately, mainly Austrian umbrella organisations are represented in the WSK Forum. Even though the coordination meetings and the work on the report took place in Vienna, the contents of the report apply to the whole of Austria through the nationwide networks of the member organisations.

The process started in autumn with two workshops in October and December. On these occasions, representatives of various organisations were informed about the content of the government's report, the investigation procedure and the reporting guidelines of the CESCR, as well as about other already successful processes of parallel reporting.

In December, working groups had been constituted. They started to collect data and facts around the articles of the covenant and began to write contributions. During the monthly meetings of the coordination group, the topics were reflected upon and different aspects of human rights were discussed.

The report is mainly structured by the articles and the questions of the guidelines. Numbers beside of the headline of a paragraph correspond with the respective question in the reporting guidelines.

Cross-cutting themes in all articles represent the fragmentation of competences between the federal governments and national government, the poor realization of equality between women and men, as well as the discrimination of people with disabilities, asylum seekers and migrants.

The experience, that, due to the economic crisis, there is less space for democratic processes, accompanied all phases of the project.

Despite numerous applications by FIAN and other Organisations forming part of the Forum ESC Rights for subsidies for the preparation of the report, it was not possible to get financial support by relevant ministries. Applications for subsidies to the large humanitarian organizations of the country remained unsuccessful as well.

Though the conveners to the report preparation invited them, several organisations could not take part due to lack of staff capacity, others provided information on their work fields but wanted to remain anonymous.

Disclaimer of Liability:

The organisations of the Forum ESCR supported the preparation of the articles and requests within this report according to their expertise and their association's goals.

The common goal is to publish a parallel report from a civil society perspective.

Naturally, not every single opinion or request of each of the organisations can be supported by all of them. A list of the organisations contributing to each chapter can be found at the end of the report.

List of organisations that provided information to the chapters of this report.

Chapter 1: Abstract: All organizations corresponding to chapters and articles

Chapter 2: General Protection of HR in Austria: Platform “Human Rights now”, National Association of Social Workers (OBDS)

Chapter 3: Article 3: NGO Forum CEDAW in Austria „Women: Rights now!“

Chapter 4: Article 6: Alternative and Green Trade Union AUGE, Association of the Active Unemployed

Chapter 5: Article 7: Alternative and Green Trade Union AUGE, Asylum Coordination, Association of the Active Unemployed, NGO Forum CEDAW in Austria „Women: Rights now!“

Chapter 6: Article 9: Association of the Active Unemployed, Austrian Armutskonferenz – Austrian Network against Poverty and Social Exclusion, Asylum Coordination, National Association of Social Workers (OBDS)

Chapter 7: Article 10: Orientexpress – Women´s counselling centre, Asylum Coordination, Austrian National Council of Disabled Persons (ÖAR),

Chapter 8: Article 11: FIAN Austria, Association of the Active Unemployed, Asylum Coordination, National Alliance of Organizations working for the Homeless (BAWO), Stay visible – Organization of people affected by poverty

Chapter 9: Article 12: National Coalition for the Rights of the Child, Austrian National Council of Disabled Persons (ÖAR), Asylum Coordination, NGO Forum CEDAW in Austria „Women: Rights now!“, Alternative and Green Trade Union AUGE , FIAN

Chapter 10: Article 13: Austrian National Council of Disabled Persons (ÖAR), Austrian Armutskonferenz – Austrian Network against Poverty and Social Exclusion, Asylum Coordination, Austrian Students´ Association

Chapter 11: Conclusions: FIAN agreed by the Forum ESC Rights

Acknowledgment:

The report in hand could only be finished due to the exceptional commitment of the organisations taking part. Because of the scarce financial resources, numerous voluntary working hours were contributed to the project.

Marianne Schulze, Elisabeth Schaffelhofer García-Marquez and Martin Schenk supported as consultants with their expertise out of other processes of parallel reporting and advocacy work against poverty. Many Thanks!

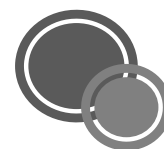
That the project did not fail mid-way is primarily due to the members and contributors of FIAN Austria, who provided the core funding!

Our special thanks go to the humanitarian aid organisation “Evangelische DIAKONIE”, who was the only one who provided financial support to our project.

Table of contents

1	Abstract	1
2	General: Protection of Human Rights in Austria	9
2.1	Structural Human Rights Deficits	9
2.2	Effects of Structural Human Rights Deficits	11
3	Article 3: Equality of men and women	14
3.1	Gender pay gap – an invariable	14
3.2	Poor promotion prospects for women – the glass ceiling	14
3.3	Atypical employment – typical for women	15
3.4	Working poor – Poverty despite employment	16
3.5	Child care facilities - a constant shortage	17
3.6	Unemployment – Continuation of the discrimination	17
3.7	In law and in fact	17
3.8	Female poverty in Austria	18
3.9	Retirement pension of women – overwhelmingly low	19
3.10	Female migrants – multiply discriminated	19
3.11	Needs-based minimum benefit – a measure against poverty?	20
3.12	Women with a disability	21
3.13	Demands	22
4	Article 6 Right to Work	23
4.1	Successful Employment Policy or Cosmetic Treatment on Statistics? (Nr 15 a)	23
4.2	Reintegration of Long-Term Unemployed (Nr 15 b)	27
4.3	Informal Economy, Moonlighting (Nr 16)	27
4.4	Dismissals (Nr 17)	27
4.5	Further Education and Training Programs of the Public Employment Service (Nr 18)	28
4.6	Demands	29
5	Article 7 Right to fair and favourable working conditions	30
5.1	Obligatory minimum salary and its coverage (Nr 19)	30
	Collective agreements	30
5.2	Integrational measures (Nr 15 b)	30
5.3	Precarious jobs (Nr 20)	32
	Low wages	33
	Compensator	33
5.4	Compatibility of job and family (Nr 20)	33
5.5	Equal pay- Gap – women discriminated at all levels of qualification (Nr 21)	33
5.6	Demands	33
6	Article 9 Right to Social Security	35
6.1	Unemployment Sanctions (Nr 27)	35
6.2	Need Oriented Minimum Security Benefit (Nr 27)	36
6.3	People with Disabilities – Long-Term Care Benefit (Nr 27)	38
6.4	Invalidity Pension (Nr 28)	39
6.5	Lacking Public Health Insurance (Nr 29)	43
6.6	Private Providers of Social Security Benefits (Nr 30)	44
6.7	Informal Labour Market (Nr 32)	45
6.8	Social Security of Marginalised Non-Austrians (Nr 33)	45
6.9	Demands	46

7	Article 10 Protection of the family, maternity protection, child and youth protection	48
7.1	Marriage by mutual agreement (Nr 34)	48
7.2	Social measures and child care (Nr 35 a)	48
7.3	Domestic care of people with disabilities or elderly people (Nr 35 b)	50
7.4	Economic and social rights of asylum-seeking women and men (Nr 39 a)	51
7.5	Demands	52
8	Article 11 Right to an adequate standard of living	53
8.1	Poverty line (Nr 42)	53
8.2	Combating poverty (Nr 43)	53
8.3	The right to adequate food and nutrition (Nr 44-47)	57
8.4	Food aid – increasing food insecurity (Nr 46)	57
8.5	The right to water (Nr 48)	60
8.5.1	Demands	61
	The right to adequate housing (Nr 50 – 54)	61
8.6.1	Demands	64
9	Article 12 Right to Health	65
9.1	National Healthcare Policy (Nr 55)	65
9.2	Access to Healthcare Facilities and Services (Nr 56 a)	66
9.3	Human Rights Training for Healthcare Staff (Nr 56 d)	68
9.4	Mother and Child Health (Nr 57 a)	68
9.5	Access to Safe Drinking Water (Nr 57 b)	69
9.6	Alcohol and Tobacco Abuse Among Adolescents (Nr 57 d)	70
9.7	Demands	71
10	Article 13 Right to Education	73
10.1	Access to the Educational System for People with Disabilities (Nr 59-60)	73
10.1.1	Demands	74
10.2	Access to (Vocational) Education of Asylum Seekers (Nr 60 b)	74
10.2.1	Demands:	76
10.3	Equal Free Access to Tertiary Education (Nr 62)	77
10.3.1	Demands	79
10.4	Access to Education for Members of Minorities and / or Socially Disadvantaged Groups (Nr 63)	80
10.4.1	Demands	81
10.5	Equality (Nr 64)	81
10.5.1	Demand	82
11	Conclusions	83
11.1	Institutional and Legislative Establishment of ICESCR Rights	83
11.2	Financial Resources to Implement ICESCR Rights	84
11.3	Transparency, Participation, Accountability	85



1 Abstract

General

The most important structural deficits in the implementation of the rights vested in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their consequences are outlined in the introductory part of the report.

The Covenant is still not embodied in the Constitution and, therefore, is not directly applicable in Austria.

The already well known human rights deficits, as for instance the lack of a national human rights action plan and of an independent national human rights institution based on the Paris Principles, prevail. A recommendation by the Universal Periodic Review on Human Rights (UPR) urging the establishment of such mechanisms has been declined by the Austrian government. The Austrian Ombudsman Board (AOB), despite new responsibilities in the area of torture prevention, cannot be recognized as a substitute of the National Human Rights Institution by civil society, due to its limited mandate, which in any how covers the ESCR.

The human rights competences of the federal government and provincial governments lack transparency. This lack of clarity creates confusion for rights holders, when they have to hold their authorities accountable. Uniform nationwide standards are still missing and the mandate of the human rights coordinators appointed in various federal ministries and provincial governments remains unclear.

In almost all political fields there is urgent need for improved human rights implementation.

Recommendations issued by UN bodies are not implemented systematically, their realization being largely dependent on individual commitment.

Civil society organizations, working for human rights, lack the necessary financial means to fulfill their mandate. They receive little public support and can only attract limited donations due to the low level of human rights awareness of the Austrian population.

Results of these structural human rights deficits are systemic violence, on-going xenophobia and massive discrimination against women, migrants, asylum seekers and people with disabilities, as well as an increase in poverty.

Art. 3 Equality between women and men

Women are far more affected by poverty than men. The high gender pay gap of 23.7% (Eurostat) is caused by the high rate of part-time employment among women (44% in 2011) and by the small proportion of women having acceded to decision-making positions (under 10% in federal institutions and companies in 2008). The consequence of these facts is that Austria ranks second to last among the EU27 (followed only by Estonia)¹.

The very slow extension of child-care facilities severely restricts the participation of women in the labour market. Single mothers are among the groups most affected by poverty. The low income as well as gaps in their working life history, caused by years spent caring for children, leads to lower payments from unemployment insurance and to lower old-age pensions. Measures taken by the government to eliminate this inequality remain almost ineffective.

¹<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=de&pcode=tsdsc340> - 26.4.2013

Women with disabilities have to shoulder multiple disadvantages. According to the Austrian National Council of Disabled Persons almost no reliable data exist in this respect².

Art. 6 Right to Work

Unemployment data in Austria are embellished. Participants of training courses, people in search of a job after completed vocational training, young people seeking apprenticeship possibilities, people registered at the Public Employment Service (AMS) while being on sick leave or receiving an advance payment on their pension are not included³. Taking all these facts together, the actual unemployment rate is therefore about 55% higher than the officially published one. In February 2013, an unemployment rate of 9.1% - including participants of training courses - is the highest since 1945⁴.

Many of the persons concerned describe AMS⁵ vocational skill acquisition measures as not suitable for them and increasingly complain to be excluded from the choice of measures that would indeed be appropriate and desirable⁶.

10,000 adolescents, mostly from immigrant families, are not able to find apprenticeship placement or jobs after completing compulsory education⁷. According to Asyl Coordination for asylum-seekers there is practically no entrance to the official employment market.

As in the case of the unemployment rate, the employment rate has also increased to reach 3.4 million in 2013⁸. It is, however, important to note that 25% of these new jobs are only part-time occupations and that the persons working primarily in this category are migrants and women⁹. Consequently, these groups constitute the new class of “working poor”. So far, any attempts by the Austrian government to ensure their basic rights to a decent living remain unsuccessful.

Art. 7 Right to Just and Favourable Conditions of Work

Austrian legislation does not provide for a statutory minimum income. In some industrial sectors, collective wages negotiated by the social dialogue partners (negotiating body of employers and employees in Austria) remain below the official poverty threshold of €1,031 for a single person even among those fully employed.

For all non-regulated forms of employment such as free-lance contracts, working contracts or part time jobs, collective wages do not apply. Until now, only a few noticeable efforts have been made to protect those affected by poverty¹⁰.

In addition to the gender pay gap, this chapter focuses on the disadvantages of the long-term unemployed, who are often forced into the “secondary labour market” despite being highly qualified and experienced. In these “transitional jobs” - partly in training companies or in community projects - employees are not allowed to organise themselves into unions. They

² See also: Oliver Koenig:

<http://www.disability-europe.net/content/aned/media/AT%20Employment%20report.pdf> p.4. and p. 8; 9.8.2013

³http://www.arbeiterkammer.com/bilder/d61/WIFO_Aktive_Beschaefigung_In_OOE_2006.pdf, see also p. 27

⁴ Die Presse, Feb. 2, 2013, p.11

⁵ ArbeitsMarktService = Public employment service

⁶ Perception of “Active Unemployed” working with unemployed persons– see also chapter 4 on Art. 6 “Right to work”

⁷ <http://kurier.at/chronik/oesterreich/bildungsreport-einstieg-statt-ausstieg/732.773>, 3.5.2013, 19:42

⁸ Die Presse, Feb.2, 2013, p.11

⁹ Ibidem, see also table p. 29 and 37

¹⁰ See also chapter 4 on Art. 6

are threatened with denial of unemployment payments, a measure actually enforced as a sanction in 100,000 cases per year¹¹.

In the low-wage sector it is possible to pay a gross hourly wage of €7.65(!). 18.2% of women and 5.2% of men are working full time at this low pay scale¹².

The authors of this parallel report therefore conclude that the Austrian government did not implement recommendations E.22 and 23 (of the Concluding Observations 2006)¹³.

Art. 9 Social Security

The Austrian Unemployment Insurance Act (AIVG) foresees denial of unemployment payments for a period of 6 to 8 weeks as a sanction in case of (alleged) violation of obligations by the unemployed person¹⁴. Such sanctions may be repeated as often as deemed necessary. This also includes the refusal to take part in measures of the Public Employment Service, which are considered as often ineffective and superfluous by the organisation Active Unemployed. Both, the permanent threat and the real denial lead to the conclusion that the right to work (ICESCR Art. 6) by perverting its meaning¹⁵, is reinterpreted¹⁶ into an obligation to work.

Since September 2010, the former social welfare scheme exists in the form of the so-called “means-tested minimum income scheme”. In its first report, published at the end of 2012, the group established within the Federal Ministry of Labour, Social Affairs and Consumer Protection to work on this new scheme, noting the following: “The designation “means-tested minimum income scheme” is misleading: neither does it reflect the real costs of living (minimum income) nor is it means-tested as only two of the nine federal provinces provide for additional payments under this scheme in case of demand.”¹⁷

The reform of the invalidity pension from December 2012 provides for the obligation of persons claiming this pension to participate in medical rehabilitation measures (“priority to rehabilitation”). They must agree to be examined by doctors they cannot choose freely and are not allowed to participate in the decision regarding treatment. If they refuse, the payment of pension is revoked¹⁸.

In summary, it has to be noted that recommendation E.27 has been in no way fulfilled. In many cases a deterioration of the recipients’ situation has taken place¹⁹.

¹¹See the respective annual reports of the Public Employment Service Austria - www.ams.at. The quota of sanctions (the ratio of „overall number of notices“ to the „number of notices about sanctions“) is on average approx. 25 % with a tendency to a slight increase within the last two years., see also p.39

¹² Geisberger Tamara, Knittler Kätthe: „Niedriglöhne und atypische Beschäftigung“ Statistische Nachrichten 6/2010, see also p. 39

¹³Concluding observations of the UNCESCR, January 2006, <http://www2.ohchr.org/english/bodies/cescr/cescrs51.htm>

¹⁴http://www.arbeitslosennetz.org/arbeitslosigkeit/rechtshilfe/gesetzestexte_urteile/alvg_arbeitslosenversicherungsgesetz/alvg_10_vereitelung.html, 10.8.2013, 10:00

¹⁵ WSK-Covenant, Article 5 - “No regulation of this covenant may be interpreted so that ... it justifies the right, ... to commit an action, which ... aims to repeal the rights and liberties acknowledged in this covenant.”

¹⁶ International Labour Organisation (ILO) - A global alliance against forced labour 2005

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_088431.pdf; ILO Agreement 122

¹⁷ http://www.bmask.gv.at/cms/site/attachments/4/2/7/CH2090/CMS1314620142419/1_bericht_des_arbeitskreises_bms_web.pdf - 27.4.2013

¹⁸ SRÄG 2012 §8 see: http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00641/fname_279341.pdf, 1.5.2013, 17:19

¹⁹ anti-poverty network: Monitoring need oriented minimum security benefit (May 2012) www.armutskonferenz.at/images/pk/zusammenfassung_bms-monitoring.pdf 20 ff.

The system of basic support for asylum-seekers in need of help provides for financial support in organised accommodations (inns, hostels, NGO-shelters) or in privately arranged homes. Since September of 2012,²⁰ the maximum daily payment for organised board and lodging, which has not been adjusted to the inflation rate for a long period of time, amounts to a maximum of €19 per person.

The gap to Austrians becomes particularly evident in the case of privately arranged homes: Single asylum-seekers have to cope with a basic support of approx. €300 per month, whereas Austrians entitled to the means-tested minimum income are entitled to €700²¹ per month.

The recommendation E. 29 from January 2006 to ensure that adequate social support is provided to asylum-seekers throughout their asylum procedure has not been fulfilled.

People with intellectual disabilities, who are active in so-called occupational therapy facilities and in occupational therapy workshops (currently about 20,000 persons) are not entitled to their own social insurance. Even as adults they are insured with their parents or through an orphan pension²².

An increasing group of people without health insurance are immigrants from new EU member states, who cannot find work and are excluded from social benefits. According to organizations contributing to this report, which prefer not to give their name, private institutions offering a basic living are reaching their limits and are not adequately supported by the Austrian government²³.

Art. 10 Protection of Families, Mothers and Youth

In recent years, there have indeed been distinct improvements with respect to child care, but in order for Austria to be able to reach the EU-wide Barcelona Objectives (33% of children under the age of three in child care), 35,000 additional child care places for toddlers are required. In addition, better opening hours of at least 70,000 places for children between three and six years are necessary (afternoon care, school holidays)²⁴.

Recommendation E.26 of the Commission must therefore be regarded as only insufficiently fulfilled.

Against the background of the demographic development and due to the low attractiveness of the caring profession there is a blatant imbalance between the growing need for care of persons of very advanced age and qualified personnel.

At present 7,000 vacancies in caring and support professions are on the job market²⁵. The "Sozialwirtschaft Österreich", a partnership of 300 organizations working in the field of social care even suggests that 1,000 new jobs need to be created so that future care needs can be catered for²⁶.

Experts estimate that up to 1,000 young Austrians with disabilities are forced to live in old people's homes, sometimes even together with disoriented people partly their elder by 50 years²⁷.

²⁰ Art 9 Grundversorgungsvereinbarung / LGBl Nr 13/2004

²¹ Art 9 Grundversorgungsvereinbarung / LGBl Nr 13/2004

²² Information from Austrian National Council of Disabled Persons, see also p. 42

²³ See also p.49 chapter 6 on art. 9 to social security

²⁴ http://www.frauenrechte-jetzt.at/images/cedaw_schattenbericht_2012_final_lang.pdf, p.36f, see also p. 52 in this report

²⁵ Die Presse: Printausgabe, 3.4.2012, „Notstande bei der Pflege: 7.000 Mitarbeiterinnen fehlen bereits“

²⁶ <http://oe1.orf.at/artikel/323213>, 11.5.2013

²⁷ Ö1, Journal Panorama – Radio Broadcast by Georgia Schultze, 5.12. 2011

Only 500 housing places are made available for the particular needs of approx. 1,500 unaccompanied minor refugees. Only one of these institutions provides for young persons with intensive care and support needs. It offers approx. 20 places. Due to the lack of places, many unaccompanied minor refugees have to stay for several months in the initial reception centers for asylum seeking refugees²⁸.

Art. 11 Right to an Adequate Standard of Living

In 2011, more than half a million people (511,000) or 6.2% of the Austrian population lived in manifest poverty²⁹ and the number of people living in continued financial deprivation has doubled since 2004 to reach 10.2%³⁰.

These indicators have improved slightly compared to the EU SILC Survey 2011. Yet, it has also to be seen that the gap between the income available in poor households and households at risk of poverty on the one hand and the poverty line on the other (i.e. 60% of median household income) has increased continuously since 2008³¹. In conclusion: the intensity of poverty has increased.

Compared to 2004, the group of persons affected by two out of the three main problem areas – poverty risk, material deprivation and low or no income out of labour – has increased by 106,000 persons to reach 388,000 persons in 2011. Their share among the people at risk of marginalisation grew from 19% to 28%³². These people are not in a position to effectively claim their right to an adequate standard of living.

In the institution for homeless people „VinziWerke“³³, working in Vienna and Graz, approx. 210 people were supplied with food on a daily basis in 2005. In 2012, 850 meals were distributed, 340 persons were supplied with clothes and 464 with accommodation³⁴.

The number of organisations collecting food surpluses from supermarkets and the food industry (often after expiry date) increased tremendously. In 2005 approx. 80 tons of food had been delivered to approx. 45 institutions, in 2012 462 tons were delivered to approx. 85 facilities. These organisations estimated having supported over 12,000 people experiencing in the year 2012³⁵. These numbers show that the access to resources which allow people to feed themselves is decreasing and that this people remain depending of charity, a concept which is far from the concept of food as a human right as established in the general Comment 12 of the CESCR,

According to FIAN Austria's analysis, the Voluntary Guidelines on the Right to Food are not taken into account in Austria, neither in the National Nutrition Action Plan nor when it comes to land acquisition or agricultural policy-making.

The nation-wide umbrella organization of homeless service providers (“BAWO”) reports, that in 2012 more than 12,000 homeless persons have been registered³⁶. 4,936 evictions were

²⁸ See <http://oe1.orf.at/programm/313310>, http://diepresse.com/home/politik/innenpolitik/1304881/Asyl_Loesung-fuer-minderjaehrige-Fluechtlinge-fehlt, 4.8.2013

²⁹ Figures by anti-poverty network, source: Statistik Austria 2012

http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236

³⁰ <http://www.bmask.gv.at/cms/site/attachments/3/7/2/CH2171/CMS1353079209699/zusammenfassung.pdf>, p.20

³¹ Armuts- und Ausgrenzungsgefährdung in Österreich, Ergebnisse aus EU SILC 2011, Studie des BMASK, März 2013

³² http://www.statistik.at/web_de/statistiken/soziales/armut_und_soziale_eingliederung/index.html, 14.6.2013

³³ <http://www.vinzi.at/vinzenz/frames.html>.

³⁴ Source: VinziWerke, 10.5.2013

³⁵ http://www.wienertafel.at/fileadmin/uploads/img/presse/Presseausendung/2013/WienerTafel_PA_20130207_Bilanz2012.pdf, 10.5.2013

³⁶ Statistik Austria, Armuts- und Ausgrenzungsgefährdung in Österreich; Ergebnisse aus EU-SILC 2011, Wien 2013, p. 105 - 106

executed in 2012 creating 14,808 newly homeless persons, whose right to housing is not being realized.

No systematic inquiries by the public authorities have been undertaken neither with regard to the increasing number of persons depending on food supplies nor to homelessness.

Art. 12 Right to Physical and Mental Health

The national health care policy is based on a framework of health goals but lacks concrete indicators or benchmarks.

Problems with the availability of health services already exist in Austria. Under these conditions it is alarming that under the recently agreed health care reform budgetary cuts in health expenses worth 11 billion Euros are planned by 2020³⁷. And this in spite of the already striking staff shortage of nurses, who already suffer under exhausting work shifts, low salaries and a bad professional image³⁸.

There is also an urgent need for action in child and youth health care. It should also be noted that no facility for child rehabilitation exists in Austria³⁹.

Migrants and asylum-seekers are discriminated against in their access to health services because of language barriers and their economic and social disadvantages⁴⁰. People with disabilities suffer from the fact that only a few medical practices are accessible to handicapped persons and that financial support for personal assistance by the public authorities is far from being sufficient⁴¹.

A risk for mothers is the high nation-wide Caesarean rate of 30%. According to a WHO recommendation this rate should not be higher than 5–10%⁴².

Midwives are disadvantaged compared to gynaecologists in antenatal care and obstetrics. This might explain the low breastfeeding rate of only 55% after six months.

In the Weinviertel, a part of Lower Austria, north of Vienna, drinking water is endangered because of trial drilling to extract shale gas and tight oil⁴³. A citizens' initiative speaking out against further drilling does not believe the information of OMV (International Oil and Gas Company headquartered in Vienna) from September 2012 that drilling will be stopped and that the company does not have anymore interest in extraction of shale gas. Until February 2013 200 polish workers were accommodated in the region in order to take geological measurements under contract of a polish partner company of OMV⁴⁴. Politicians keep silent on this issue.

The fight against drug, tobacco and alcohol abuse among young people is compromised by the absence of a nation-wide uniform law for the protection of minors⁴⁵.

Substitution treatments for drug addicts is less successful than in neighbouring Germany, due to the fact that accompanying psycho-social support is only available for 10% of those concerned⁴⁶.

³⁷ http://diepresse.com/home/politik/innenpolitik/1315322/Aerzte-mobilisieren-gegen-die-Gesundheitsreform?from=suche.intern.portal_24.2.16:09 see also p. 69

³⁸ Die Presse: Print edition, 3.4.2012, „Notstande bei der Pflege: 7.000 Mitarbeiterinnen fehlen bereits“, see also p. 69

³⁹ http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, see also p. 69 in this report

⁴⁰ Migration&Integration Zahlen, Daten, Indikatoren 2012, see also p. 70 in this report

⁴¹ Information provided by Austrian National Council of Disabled Persons (ÖAR) see also p. 69 in this report

⁴² <http://www.youtube.com/watch?v=qSbEDPJp8k>, see also p. 71 in this report

⁴³ www.weinviertelstattgasviertel.at, see also p. 72

⁴⁴ <http://derstandard.at/1358305181330/Niederosterreich-Mit-Fracking-laesst-sich-keine-Wahl-gewinnen>, 4.8.2013

⁴⁵ See also p. 75, chapter 9 on the right to health

Art. 13 Right to Education

The Austrian educational system discriminates against children of migrant families and children with disabilities at every level.

Almost 50% of children with disabilities, as well as many non-native German speaking children, especially Roma children, attend special schools⁴⁷.

In Austria the household income determines the school career to a great extent. Poverty is inherited through education.

Lessons in their mother tongue are only available for 20% of the children who do not speak German at home. In the capital Vienna, only ten native-speaking employees are available for about 8,000 non-German speaking parents of kindergarten children with linguistic problems⁴⁸.

Asylum seekers are obliged to pay for a certificate of completed secondary education. After finishing compulsory school many of these children will not find an apprenticeship. Very often further training after compulsory school remains out of reach because of the fares to and from school which cannot be paid from the monthly allowance of 40€⁴⁹.

The social situation of students has been aggravated because of the discontinuation of the family allowance at the age of 24 and the longer duration of studies because of the fact that universities are being underfinanced and student counselling reduced. Foreign students from third countries (other than EU countries) are obliged to pay twice the tuition fee from the very beginning of their studies.

Access to university education is becoming more and more restricted due to limitations of study places and corresponding selection procedures.

Conclusions

ESC rights cannot be enforced in Austria and are insufficiently protected by law. This situation has not changed with the enactment of the EU Charter of Fundamental Rights, unfortunately. There is no nation-wide human rights action plan and structural deficits remain unsolved. The persons affected by human rights violations don't have effective humanrights remedy mechanisms to defend themselves.

Due to the economic and financial crisis, the unequal distribution of income and wealth has intensified. The austerity budgets of 2008 and 2010 negatively affected marginalized and disadvantaged groups in particular, the reasons being the lack of consideration of their particular situation and a deficiency in understanding it under human rights in general.

By joining the European Stability Mechanism and the Fiscal Compact in July of 2012, the Austrian government transferred part of its budgetary sovereignty to the EU. In consequence, national opportunities for an anti-cyclic economic policy are very limited. Budgetary means for necessary future investments in education, health and professional care are lacking. At present no taxation of wealth and property is envisaged, which could be dedicated to improve the realization of ESCR. The banking secrecy for Austrians remains intact and the

⁴⁶ Diepresse.com/home/politik/innenpolitik/1345041/Drogenkonsum-in-Oesterreich_Straftat-oder-Krankheit?from=suche.intern.portal

⁴⁷ Feyerer, E.: 2009 see above, p. 80, see also p.76 in this report

⁴⁸ http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, 16.

⁴⁹ <http://www.no.e.gv.at/bilder/d29/Englisch.pdf>, 9.8.2013, p.7.

discussion of a fair taxation of higher incomes is still at its very beginning. This means that the Austrian state is not dedicating the maximum of available resources for the realization of ESCR, in contradiction to article 2.1 of the Covenant.

Considerable money has been lost due to the corruption scandals of recent years, which have not yet been fully solved. A parliamentary investigation committee failed in October of 2012 because of unwillingness of witnesses and political parties to provide information⁵⁰. This has not encouraged confidence in the democratic institutions.

There is much doubt among Austrian NGOs as far as the political will and the sense of duty of the Austrian government to progress, through the use of the maximum available resources, in the implementation of the rights vested in the ICESCR are concerned.

⁵⁰ <http://derstandard.at/1348285838823/Moser-zu-U-Ausschuss-Politische-Zukunft-wird-sauberer>, 10.5.2013



2 General: Protection of Human Rights in Austria

In 2013, economic, social and cultural rights are still not part of the Austrian Constitution. A direct connection to the human rights laid down in the treaty is still denied to individuals and associations (federations). The recommendation to the Austrian government within the scope of the Universal Periodic Review on human rights (UPR) to include social basic rights into the constitution was denied.⁵¹

The claim of the government, „*It is true that the esc-covenant itself is not directly applicable in Austria, but it can be assumed that the rights granted therein, are legally already put into action to a great extent,*” must therefore be strictly opposed.⁵²

Austria is a welfare state; the distribution of social welfare benefits is closely linked to the federalist structure of the constitution and administration and is determined by a welfare paradigm, which shows no changes towards a human rights approach.

2.1 Structural Human Rights Deficits

The already known structural human rights deficits⁵³ – national human rights institution, human rights approach and participation of the civil society – have only been rudimentarily improved within recent years.

National Human Rights Institution

The reform of the Ombudsman Office focused on the integration of the national preventive mechanism based on OP-CAT. The evaluation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) – „A clear, transparent and participatory selection process is of critical importance in ensuring the pluralism and independence of a National Human Rights Institution”⁵⁴ – remains legitimate.

There are numerous institutions, which cover aspects of a national human rights institution.⁵⁵ However, the fragmentation thereof causes confusion, no matter how regularly it is internationally criticised. A comprehensive national human rights institution with status A is still missing, relevant recommendations within the scope of the Universal Periodic Review on human rights have been declined by the government⁵⁶.

1. In the single federal ministries and state governments, there are human rights coordinators who were also obtained by the NGO list of requirements on the occasion of 50 years AERKM in 1998⁵⁷. Their role, mandate, resources and possible influence are still unclear to date. There is a department in the BMeiA (Federal Ministry for European and International Affairs) which is responsible for human rights agendas. The overall coordination is incumbent on the Federal Chancellery.

⁵¹ See recommendation 93.7 Acceleration of the Process to Include Social Basic Rights into the Constitution (Azerbaijan)

⁵² Fifth State Report of the Austrian Republic, p.1

⁵³ Pay special attention to the joint report to the first universal periodic review on human rights, supported by 360 NGOs: www.menschenrechte-jetzt.at/English

⁵⁴ Continued: „The SCA refers to Paris Principle B.1 ‘Composition and Appointment’ and to General Observation 2.1 on “Ensuring pluralism” and to General Observation 2.2 on “Selection and appointment of the governing body”, see SCA Report May 2011, p.11

⁵⁵ See also the list in the joint report by the NGO “Koalition menschenrechte. jetzt”: www.menschenrechte-jetzt.at

⁵⁶ See recently: Independent Expert of the United Nations in the field of cultural rights, Farida Shaheed, report on the visit to Austria, June 2012, A/HRC/20/26/Add.1, paragraphs 35-42, see also the Commissioner for Human Rights of the European Council, report on the visit to Austria, 11th September 2012, CommDH(2012)28: http://www.coe.int/t/commissioner/Activities/countryreports_en.asp

⁵⁷ <http://rog.mediaweb.at/menschenrechtsjahr/forderungen.html>, 11.5.2013

The human rights competence in the federal and state governments is unclear. This is problematic since the states have many competences such as youth welfare, the need-oriented minimum security benefit or the basic provision support for asylum-seekers. Where health care is concerned, much is regulated and organized at state level. In case of the human rights violations, as they are explained subsequently in this report, the state authorities do not feel responsible, but the federal authorities do not provide any homogeneous standards which conform to human rights either. All this makes it difficult for right holders to hold their authorities accountable in cases of non compliance with human rights obligations assumed by the Austrian government.

Human Rights Approach

A structural problem is caused by the lack of consideration given to human rights as a cross-cutting issue in legislation and administration. Since control by the Constitutional Court is only on a review basis, basic rights deficits in draft bills – until a possible repeal by the Constitutional Court – are accepted as a given⁵⁸.

With the Federal Budget Act 2013 (BHG), the effect-oriented impact assessment becomes part of the process of budgetary preparation. The single aspects are specified in regulations. A regulation of the Minister of Social Affairs regulates the impact assessment “in a social aspect”⁵⁹. It discusses opportunities to participate, such as the available per-capita household income within the EU-2020-social target group (people at risk of poverty, those being strongly materially deprived, those being furthest from the labour market)⁶⁰.

Impact assessments are principally very welcome; focusing on opportunities to participate is a step in the right direction. The efforts however, completely fail to consider an integrated approach to human rights, especially structurally.

An impressive example of the lack of a human rights orientation of impacts of effects is how politics deals with gambling. Ignoring the potential of addiction completely and the associated personal and family problems, the increasing number of betting shops and other gambling halls, mainly in urban spaces, remains uncurbed. Almost 15 billion bets and wagers are taken per year in Austria⁶¹. Licenses for slot machines (“small gambling”) are issued by the state authorities, therefore there are also different standards of regulation. Whereas the number of slot machines decreases because of changes in regulations, betting as well as internet-based gambling prospers. The danger, mentioned by the ESC committee in Nov. 2005, for young people in Austria caused by tobacco and alcohol abuse is made greater by the extra facet of gambling addiction.

Human rights assessments are so far not foreseen for legislative projects or for political guidelines.

Participatory Processes – Participation of the Civil Society

In 2008, the federal government passed “Standards of the Participation of the Public” which “are supposed to support administrative employees of the federal authorities carrying out qualitative participation processes”⁶². They are clearly declared as a contribution to good

⁵⁸ See e.g. the numerous cases of the Constitutional Court (VfGH) regarding the laws on asylum and aliens

⁵⁹ Regulation by the Federal Minister for Labour, Social Affairs and Consumer Protection about the effect-oriented impact assessment regarding social effects (WFA-Soziales-Verordnung, WFA-SV)

⁶⁰ Ibidem § 4 WFA-SV: see

<http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40145822>

⁶¹ See interdisciplinary symposium „Glücksspiel im Spannungsfeld der Interessen,“ Vienna, October 2012

⁶² Federal Chancellery (2009), „Standards der Öffentlichkeitsbeteiligung. Empfehlungen für die gute Praxis.“ Vienna; Council of Ministers’ decision of July 2nd, 2008 http://www.partizipation.at/standards_oeb.html, English Version:

governance. But the experience of the platform “Human Rights now”⁶³ showed that public institutions are not aware of these standards, therefore, they are not applied.

Implementation of the UN treaty-bodies’ recommendations with structurally foreseen participation from representatives of civil society does not take place in a systematic way. Instead, working groups are formed fragmentarily and with limited capacity depending on the portfolio and commitment of single officials.

Following the Universal Periodic Review on Human Rights in 2011, appropriate improvements were promised⁶⁴. Actually putting them into action however, does not meet the minimum requirements, not even those which have been passed by the federal government itself. Although single recommendations of the Universal Periodic Review on Human Rights have been discussed in working groups, but main part of those recommendations has not been addressed in a participative way.

The basic problem lies with the term, “civil society,” which has affected Austria for decades. Within the scope of the so-called “Sozialpartnerschaft” (social dialogue partners), a co-ordination between employers and employee representative bodies was established, which sometimes mutated into a “shadow cabinet”. The government’s perception that the social dialogue partners, complemented by representatives of religious institutions represent civil society as a whole, comes from this time. Nonetheless this model is not really participatory, since a number of society sectors remain marginalized from the discussion, adoption and political decisions affecting human rights.

This leads to a second basic problem, the financing of civil society’s work. In Austria, there are many foundations, but relatively few with a non-profit purpose. A culture of supporting political work, as is normal elsewhere, is completely unheard of. Federal authorities refuse the substantial support of advocacy work or similar civil society’s work on the pretext of not wanting to create political dependencies. The lack of a systematically embodied human rights education in the formal educational system causes an insufficient consciousness for human rights among the Austrian population. Thus, it is almost impossible to get substantial financial resources for civil society’s work regarding human rights from private donations.

2.2 Effects of Structural Human Rights Deficits

Systematic Violence

In recent history, several cases of domestic violence in Austria made international headlines. The case where a daughter endured years of violence by her father in the cellar of a detached house consequently led to an investigation into the need of reform in youth welfare institutions. In this context, but also other cases of domestic violence sometimes resulting in death, it is correct that the legal regulations for protection from violence in Austria are exemplary. It is frequently overlooked that savings in the field of social work make the work of authorities more challenging.

A report by the People’s Advocate’s Office of April 2009, came to the conclusion that between 1996 and 2009, the number of cases at youth offices all over Austria increased by 150%⁶⁵.

In the responsible Viennese Municipal Department 11, the clarifications in cases of violence increased by 30%, between 2004 and 2007, and cases of social education advice for

http://www.partizipation.at/fileadmin/media_data/Downloads/Standards_OeB/oeb_standards_engl_finale_web.pdf; Recommendation European Commission KOM (2004) 704

⁶³ Drⁱⁿ Marianne Schulze Coordinator of the Austrian UPR process

⁶⁴ UPR report Austria, paragraph 66

⁶⁵ <http://www.sozialarbeit.at/images/MEDIA/documents/30.%20wien-bericht%20hauptteil.pdf>; p. 15-17

socially marginalized families increased from 1752 to 2873 – a rise of 50%. Strongly inconsistent with this is the planning for personnel of the city of Vienna: the number of positions has increased by only 7% from 319 to 340 between 1993 and 2008⁶⁶! In single states the reaction to this development was an increase of positions to 10%, which is still far from sufficient. Consequently social workers and social education workers have to cope with a continuously increasing work load and often do not intervene in time to avoid violence and neglect of women and children.

The structural problems as lack of personal, lack of human rights educations among officers inter alia, especially in the field of social work, continue to increase the probability of infringements and avoidable escalations.

Xenophobia

The concern of the UN CESCR expressed in 2006, about racist and xenophobic tendencies is still highly relevant in light of pertinent statements. Within the scope of the Universal Periodic Review on Human Rights, Austria was reminded that "international treaty bodies expressed concerns about Austrian cases of the element of crime of instigation by politicians which were mainly directed against migrants and members of minorities. They were also very concerned about neo-nazi, racist and xenophobic attitudes and the associated intolerance against migrants and specific ethnic groups, as well as about the effects on their children."⁶⁷

The element of the crime of instigation was extended, actual emphasis on the regulation and the protest against relevant formulations and statements are still sparse. The contribution of the media to an "ethnicising" of criminality by sensationalised coverage has already been strongly criticised internationally, and rightly so⁶⁸.

Gender Discrimination

The situation of Austrians has only slightly improved within the reporting period. The reason for this is that incentive measures and sanctions under existing legislation are sparsely put into action and a systematic control and evaluation of equality measures are rare. On the contrary, measures are still set punctually and are strongly dependent on the political tendencies of the individual ministries and states. Working out a gender equality action plan as part of a national human rights action plan was also just recently recommended by the CEDAW committee⁶⁹ but already accepted by the federal government as a recommendation by the Universal Periodic Review on Human Rights (UPR)⁷⁰ in 2011. Details are explained in the article concerning art. 3.

The efforts to ensure protection against all reasons of discrimination have, contrary to relevant promises, failed more than once. The "other reasons"⁷¹ as postulated by the ESC-committee – disabilities, age, nationality, matrimonial and family status, sexual orientation, gender identity, health status, place of living as well as the economic and social situation – are partly accepted in Austria. The recognition of potential discrimination on the grounds of the social and economic situation was, following the economic crisis, not understood as a dimension of human rights but, if at all, as a dimension of the welfare state. Concerning the

⁶⁶ ibidem

⁶⁷ ECRI Report, CRI(2010)2, para 78; see also International Helsinki Federation Report 2007, p. 19

⁶⁸ [http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Stellungnahme_UPR_Empfehlungen.pdf)

[Aussenpolitik_Zentrale/Menschenrechte/Stellungnahme_UPR_Empfehlungen.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.AUT.CO.7-8.pdf), f.e. 93.22 p.5

⁶⁹ <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.AUT.CO.7-8.pdf>, Top 15, 6.5.2013, 13:18

⁷⁰ [http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Stellungnahme_UPR_Empfehlungen.pdf)

[Aussenpolitik_Zentrale/Menschenrechte/Stellungnahme_UPR_Empfehlungen.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Stellungnahme_UPR_Empfehlungen.pdf)

⁷¹ General Comment 20 CESCR Committee, paragraph 27 cont.

recognition of multiple discriminations⁷², especially when applying the statutory offence, there is ample room for improvement.

Poverty

In reaction to the legitimate concern of the ESC-committee regarding the increasing number of people who live in poverty and the support that people who live in poverty receive, the State Report has terribly little to offer. The stated danger by the ESC-committee of 13% of people and 18% of families with several children in poverty⁷³ is answered in the report of the federal government with the following comment: „To counteract the special risk of poverty of families with several children, an additional multiple child bonus of €36,40 per month has been granted since 2002 for each third and any further child living permanently in the federal territory or in the EU/EWR territory – for which family allowance is granted⁷⁴.“ The minimum social protection (minimum income) introduced henceforth is economically inaccurate for one and cannot prevent the manifold social effects of poverty. A structural fight against poverty is lacking (e.g. also in form of controlling rents – see also the article concerning art. 11 right to an adequate standard of living), which is proven by the shortness and orientation of the presentation in the State Report.

Recent statistics on poverty from the biennial report of the Austrian Ministry of Social Affairs from March 2013 show what little success the federal government has had with its measures to fight poverty: the fact that 6.2% of Austrian people live in manifest poverty is alarming. This equates to 511,000 people in 2012, equivalent to an increase of 1% within only one year⁷⁵. In 2012, 10.2 % of Austrians were permanently financially deprived during the previous two years. This number has even doubled since the last State Report in 2005⁷⁶.

For this group of the population it is very unlikely that they will ever get out of their situation of poverty. Instead, they will pass on poverty to their children, they have a higher risk of chronic illnesses or losing their accommodations. The groups most at risk are single parents, the long-term unemployed, people with disabilities and migrants. The right to an adequate standard of living is refused to these people, let alone the right to social security (see also the chapters concerning article 9 and article 11 in this report).

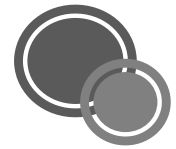
⁷² Ibidem, paragraph 17

⁷³ Concluding Observations 2005, paragraph 14

⁷⁴ Fifth State Report of the Austrian Republic, p. 29

⁷⁵ <http://www.bmask.gv.at/cms/site/attachments/3/7/2/CH2171/CMS1353079209699/zusammenfassung.pdf> p. 20

⁷⁶ ibidem



3 Article 3: Equality of men and women

3.1 Gender pay gap – an invariable

According to a study by the Chamber of Labour, the pay gap between women and men remained the same over the last decade despite the fact that women caught up with regard to their educational level and to the labour force participation rate. 15 years ago (1998) women had to put up with a disadvantage of 39.4% in regards to their gross annual earnings in comparison to men. This gender pay gap even increased during the last decade to the detriment of women and only decreased in 2010 again to about 40%. But the alleged improvement must be attributed to the economic crisis: men's wages decreased.⁷⁷ Measured in figures and for the year 2011 this means that on average employed women earned about € 18.549,- gross whereas men earned € 30.690,- gross.⁷⁸

Again according to Statistic Austria, a part of the difference in income must be attributed to the more frequent and increasing part-time employment of women. But even after taking the different working times into consideration – hence on an hourly basis – the difference in income still lies at 25,4%. And even when taking all objective factors into consideration, such as education, occupation, industry sector etc., women get left with a disadvantage of 19%, which simply cannot be explained.⁷⁹ Considering the differences in type of employment (part-time, partial-year employment) and limiting the comparison to all-year-round full time workers, the yearly gross income of women (€ 31.598,-) still lies 18.5% under those of men (€ 38.776,-).

According to the „Gender Pay Gap“ published by Eurostat, the gender specific difference in income lies at 23.7% (2011), measured according to the gross hourly rate in the private industry. In this respect Austria is second to last in the EU-27.⁸⁰

3.2 Poor promotion prospects for women – the glass ceiling

The gender pay gap also has to do with the fact that promotion prospects for women are worse than for men.

The reason for this is due to a variety of social processes, which are still shaped by male standards. Due to the dominance of male-characterized rules, there is a discrimination of women „caused“ by structures. The so called “glass ceiling” describes that women hit an invisible barrier at a certain point of their career. Established male networks still exclude women from influential positions in research, education and administration areas at universities⁸¹. Although the percentage of women among the teaching staff at universities increased slightly from 15% to 17,7% in the years from 2005 to 2009⁸², it is still very low in European comparison.

⁷⁷ Chamber of Labour Vienna 2012 (hereafter: AK 2012) Verteilungspolitik (*Distribution policy*). *Wo bleibt die Verteilungsgerechtigkeit? (What about the distribution justice?)* Band 2, Pirklbauer Sybille, p.20

⁷⁸ Statistik Austria, http://www.statistik.at/web_de/statistiken/soziales/gender-statistik/einkommen/index.html 22.4.2013

⁷⁹ AK 2012: Verteilungspolitik (*Distribution policy*) Band 2, Pirklbauer Sybille, p.19

⁸⁰ <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=de&pcode=tsdsc340> - 26.4.2013

⁸¹ CEDAW NGO-Schattenbericht (*NGO-Shadow report*) 2012, p.61, See annex 2. Figure 2: Glass ceiling index at public universities (2006-2009). Source: uni:data of bmwf

⁸² Frauen in Führungspositionen (*Women in leading positions*), Study of the Ministry of Women's Affairs, Vienna 2011, p.37 <http://www.frauen.bka.gv.at/DocView.axd?CobId=42821> - 11.5.2013;

Similar figures apply to women in the economy: A survey by the Chamber of Labour in February 2011⁸³ revealed, that the percentage of women in Austria's 200 companies with the highest turnover slightly increased from 9.7% to 10.3% since last year. Within the boards of directors and executive boards the percentage decreased from 5.3% to 4.4%. One third of all companies did not have any women at the highest decision-making levels.

The percentage of women in the board of directors of companies publicly traded at the Austrian Trade Index (ATX) and the prime market lies at 3.9% and at 8.5% in the supervisory board and at 7,7% in the supervisory board of the prime market companies⁸⁴.

A report of the Austrian Court of Auditors covers the leading positions and the distribution of income in the institutions of the Federal Government.⁸⁵ In the year 2009 data was collected in a gender-disaggregated way for the years 2007 and 2008: from the 1,183 members of the boards of supervisors 13.9% were female in 2007 and 16.1% in 2008.

From the 590 and 592 members of the boards of directors and executive boards of the Federal Government institutions and enterprises only 11.2% were female in 2007 and 11.6% were female in 2008. The percentage of women in the executive bodies of universities (rector / vice-rector) was the highest at 22%. In seven areas there were no women in the boards of directors and executive boards (among those again the transport sector)⁸⁶.

3.3 Atypical employment – typical for women

Another major reason for the gender pay gap is that women tend to be employed in precarious jobs.

44% of employed women work in atypical employment.⁸⁷ The number of part-time working women increased within 10 years from 561.600 (2001) to 843.400 (2011). This means that the part-time quota of women increased from 34.3% (2001) to 44.0% (2011). About 81% of all part-time employees were female in 2011.⁸⁸ Part-time in comparison to full-time means lower wages and fewer opportunities for advancement. In addition, hourly wages for part-time jobs are on average a quarter lower than for full-time jobs.⁸⁹

The increase in the employment rate of 15 to 64 year-old women from 59.9% (2001: 1.618.700) to 66.5% (2011: 1.887.100) must basically be seen positively. However, this quantitative increase results from an increase of part-time jobs with a simultaneous decrease of full-time jobs for women.⁹⁰

38% of part-time employed women „decide“ for themselves to cut back on their professional activity because they have to take care of children or relatives in need of care, but only 3,1% of all men work part-time due to care responsibilities. The result is, that women earn less and have to perform more unpaid work in the household and the family.

⁸³ ibidem, p.29

⁸⁴ ibidem, p.29

⁸⁵ Report of the Austrian Court of Auditors on average income and additional payments for pensions of the Federal Government public economy 2007 and 2008, cited in : <http://www.frauen.bka.gv.at/DocView.axd?CobId=42821> - p.30, 11.5.2013

⁸⁶ ibidem, p.30

⁸⁷ Part-time work, time limitations, temporary work, temporary agency work and minor employment are considered to be atypical employments.

⁸⁸ http://www.statistik.at/web_de/statistiken/soziales/gender-statistik/erwerbstaetigkeit/index.html - 22.4.2013

⁸⁹ See AK 2012, p.26

⁹⁰ http://www.statistik.at/web_de/statistiken/soziales/gender-statistik/erwerbstaetigkeit/index.html - 22.4.2013

71.4% of women with children under 15 years of age are part-time employed, but only 4.7% of the fathers.⁹¹

The survey on the usage of time 2008/09 showed, that 9.7 billion hours per year are performed for housework, child care, the care of sick or invalid persons or voluntary work, whereby 2/3 of these hours are performed by women and 1/3 by men. Almost reverse proportions are true for paid work - here 39% by women in contrast to 61% by men.⁹²

Graphic: Development of atypical employment 2000-2010
Atypical employment (in 1000)

	2000	2005	2010	Increase 00-10	Increase in %
workers in minor employment	196,8	229,7	295,9	99,2	59,4%
women thereof	141,7	161,6	192,5	50,8	35,9%
in %	72,0%	70,4%	65,0%	51,3%	
part-time workers ⁹³	603,7	807,5	1030,4	426,7	70,7%
women thereof	520,0	679,3	832,2	312,2	60,0%
in %	86,1%	84,1%	80,8%	73,2%	
freelance employment contracts	22,2	26,6	21,8	- 0,4	- 2,0%
women thereof	10,5	12,5	11,5	1,0	9,6%
in %	47,4%	46,8%	53,0%	- 226,9%	
freelance minor employment contracts	-	45,4	37,4	-	-
women thereof	-	26,9	22,7	-	-
in %	-	59,2%	60,5%	-	
new self-employed ⁹⁴	15,1	24,6	45,8	30,8	204,0%
new freelancer ⁹⁵	13,0	23,7	27,7	14,7	112,4%
Workers leased	30,1	46,7	66,1	35,9	119,3%
women thereof	-	8,4	15,0	-	
in %	-	18,0%	22,7%	-	
temporary workers	-	302,3	329,8	-	
women thereof	-	136,1	149,0	-	
in %	-	45,0%	45,2%	-	

Source: Statistik Austria (Arbeitskräfteerhebung/work force survey)/ Hauptverbandsdaten

3.4 Working poor – Poverty despite employment

Reason for concern is particularly the income-disadvantage in fields where even with full-time employment income is not enough to make a living. According to EU-SILC 2011 in 2011 5% of all employed people at a working age are considered „Working Poor“. This corresponds to 198.000 persons, of which 121.000 are men (6%) and 77.000 are women (4,7%).⁹⁶ In the so called low-wage sector the hourly wages are below € 7,65 gross, hence are less than 2/3 of the median hourly wage.⁹⁷

⁹¹ Statistik Austria press release 8.3.2013, http://www.statistik.at/web_de/dynamic/statistiken/soziales/gender-statistik/einkommen/070176

⁹² Statistik Austria 2009: Zeitverwendung (*Usage of time*) 2008/09. Ein Überblick über geschlechtsspezifische Unterschiede (*An overview of gender-specific differences*), https://www.statistik.at/web_de/statistiken/soziales/zeitverwendung/zeitverwendungserhebung/index.html - 22.4.2013

⁹³ Including self-employed workers

⁹⁴ Estimation: two thirds of the total increase

⁹⁵ Estimation; trustees, dentists, journalists, artists and veterinary surgeons are excluded

⁹⁶ Vgl. BMASK (Hg) 2013: Armuts- und Ausgrenzungsgefährdung in Österreich (*Poverty and risk of poverty in Austria*). Results from EU-SILC 2011, p.42

⁹⁷ See. Geisberger, Knittler 2010, VESTE 2006, Medianwert (Median level)

Disaggregated on the basis of gender, 24% of working women, but only 7% of working men belonged to the group of low-wage workers. Looking only at the employees with an income below the low-wage threshold, the percentage of women was 68% and the percentage of men 32%.⁹⁸

3.5 Child care facilities - a constant shortage

The main bulk of unpaid care and support work is performed by women. Women do almost twice as much house work and one quarter more child care than employed men. Hence they lack this time for their own gainful employment.⁹⁹

The birth of a child has a much stronger effect on the employment of women than on the employment of men. 87 out of 100 women, but only six out of 100 men interrupt their employment after the birth of a child. When the women return to (part-time) work, they can only count on the support of their partner in a very limited way. This of course negatively affects their income level, a disadvantage they will not be able to reduce within their working career. Child care facilities do not meet quantity requirements by far. But even women having access to child care facilities are confronted with inadequate opening times, too many closing days during school holidays and high costs, as more than 100.000 parents complained.¹⁰⁰

3.6 Unemployment – Continuation of the discrimination

Austria reports the lowest unemployment rate within the EU-27 at 4.3% for the year 2012¹⁰¹. This positive report is in contrast with the fact that the number of unemployed persons increased since 2000 from 223.000 by 87.000 Persons up to 310.000 as an annual average.

From 2008 to 2010, the number of women returning to work and seeking employment who had children under the age of 15 increased by 22 %, which is a significantly higher growth than the increase of 18% unemployment of women in total. This means that women who try to return to the labour market after the crisis encounter considerable difficulties¹⁰².

In 2010 the monthly unemployment benefit of women was 18% below that of men and the unemployment assistance was 21% below¹⁰³.

3.7 In law and in fact

The establishment of the Equal Treatment Commission in 1979, Gender Mainstreaming 2005, Gender Budgeting 2009, the National Action Plan for the equality of women and men in the labour market 2010 are positive steps. However, legal incentives as well as sanctions are hardly ever made use of and systematic monitoring and evaluation measures to promote equality remain the exception rather than the rule¹⁰⁴.

⁹⁸ See. AK 2012, p.24.

⁹⁹ Compare: Statistik Austria 2009, *Zeitverwendungserhebung (Time utilization survey) 2008/09*

¹⁰⁰ AK = Chamber of Labour 2012, p.23

¹⁰¹ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Unemployment_rate,_2001-2012_%28%25%29.png&filetimestamp=20130417141135-24.4.2013

¹⁰² CEDAW NGO-Schattenbericht (*NGO-Shadow report*) 2012 p. 32 Cf. Statistics Austria, *Arbeitskräfteerhebung - AKE 2008*

¹⁰³ Report on the reduction of discrimination against women. Report period 2009 – 2010. Edited by the Ministry of Women's Affairs and Public Services at the Federal Chancellery Austria (Vienna 2011) p.iii.

¹⁰⁴ NGO Shadow Report to CEDAW, May 2012, p. 7

With a view to counteract the discrimination at the university level, a Working Group on Equal Treatment (AKG) has been established. One part of its mandate is the counselling of university members in gender equality issues (gender, sexual orientation, age, religion and ethnicity) and the receipt of relevant complaints. The AKG must be included in all matters regarding appointments and has diverse rights according to the Universities Act and the Women's Advancement Plan of the respective University. The Working Group (AKG) is responsible for all university members and acts autonomously and independently. Members are subject to confidentiality and must not be discriminated against because of their work in the AKG. The establishment of an AKG is compulsory for universities and colleges of teachers education but it would be important to implement such a mechanism at the colleges of applied sciences as well.

3.8 Female poverty in Austria

The fact that in Austria – one of the richest countries in the world - 1,4 million people (that is 17% of the population) are at risk of poverty and social exclusion and 1,05 million of these people are at risk of poverty¹⁰⁵, has to be seen as a political failure of the government.

In the year 2010 511.000 or 6.2% of the population were affected by manifest poverty.¹⁰⁶ In the year 2011 this figure decreased to 431.000 or 5.2% of the population while rising to 511.000 again in the year 2012.¹⁰⁷

The systematic (wage) discrimination of women in employment and society implies a higher risk of poverty. Altogether women are over-proportionally at risk of poverty (13%), according to Statistik Austria (EU SILC 2009). Men bear a slightly under-proportional risk at 10%. Especially sole parents have a very high risk of poverty. 30% of the single-parent households are at risk of poverty. About 87% of the sole parents are women. The reason for the high risk of poverty in this group is the reduced opportunity to earn income due to care obligations. At the same time women living on their own on a pension have a very high poverty risk of 28%. The figure is slightly lower for single women without pension, but still lies way above average(18%).¹⁰⁸

Groups especially at risk of poverty

Single-parent-households (92% women): 24% (2010: 28%)

Persons living on their own with pension: men: 13%, women: 26% (2010: 13% / 26%)

Migrants: third country nationals: 32% (2010: 31%)

Naturalized Austrians: 23% (2010: 26%)

Persons in households with more than one person (more than 2 children): 26% (2010: 18%)

¹⁰⁵ Definition risk of poverty: € 1.066 (60% of the weighted median per-capita income, annual twelfth) disposable monthly income for persons living on their own, plus € 320 for every child per month and € 533 per month for each additional adult.

Definition risk of poverty and exclusion: income above the at-risk-of poverty threshold, but this population group is considerably materially deprived or lives in households with no or very low employment (compare BMASK (Hg): *Armut- und Ausgrenzungsgefährdung in Österreich – Risk of poverty and exclusion in Austria*. Results from EU-SILC 2011, p.13)

¹⁰⁶ Definition manifest poverty: monetary risk of poverty in conjunction with financial deprivation means manifest poverty. In Austria the following criteria are applied for the evaluation: * To keep the house reasonably warm, * To finance unexpected expenses, * To eat fish or meat every second day (or vegetarian meals), * To be able to cover payments (e.g. rent) in due time within the last twelve months; * Necessary doctor's or dentist's visits, * To buy new clothes, * To invite friends or relatives once a month for dinner. Manifest poverty – if at least two of the criteria apply. (compare BMASK (Hg): *Armut- und Ausgrenzungsgefährdung in Österreich – Risk of poverty and exclusion in Austria*. Results from EU-SILC 2011, p.100)

¹⁰⁷ http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236#Armut-gef%C3%A4hrdungsschwelle

¹⁰⁸ Die Armutskonferenz, http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=64

Persons living on their own without pension: men: 23%, women: 26% (2010: 19% / 24%)
Long-term unemployed (unemployed for at least six months): 41% (2010: 40%)
Households with non-working persons: 54% (2010: 53%)
Working poor: 38% (2010: 38%)

The at-risk-of-poverty rate for children and youths (up to the age of 19) lies at 15% (2010: 14%), which is 268.000 children and youths.¹⁰⁹

Noted should also be the redistribution of resources within a household. Household-related income calculations conceal a discrimination of women in those cases where the distribution of resources within a household is carried out to the disadvantage of women and girls.

This fact applies for instance when job seeking people do not receive unemployment assistance due to the income of the life partner. Due to the principle of taking this income into account, which is a highly questionable socio-political principle, especially women are disadvantaged. Hence as a result of this income being taken into account, about 18.440 people did not receive unemployment assistance in the year 2010, more than 80% of which were women.¹¹⁰

In the case of unemployment, the average unemployment benefit (2010) lays at only € 831,- per month (men € 915,-, women € 708,-) and the average unemployment assistance at only € 639,- (men € 705,-, women € 531,-).¹¹¹

3.9 Retirement pension of women – overwhelmingly low

Low income and an insurance history which shows interruptions mainly due to child care periods, on average also lead to lower pensions for women. Looking at pensions paid from the statutory retirement insurance funds (not counting civil servants), it can be noted that in the year 2011 the median pension of women lay at € 793,- and of men at € 1.668,-. Hence on average the pensions of women were 52,5% lower than the ones of men. Hereby women living on their own were at special risk of poverty. According to EU-SILC 2011 26% of female pensioners living on their own were at risk of poverty in comparison to only 13% of male pensioners.¹¹²

3.10 Female migrants – multiply discriminated

Female migrants and women with a migrant background belong, along with sole mothers and elderly women, to the group being most often affected by poverty and social exclusion. The higher risk of poverty can be ascribed to a multitude of factors: restricted access to the employment market, low education level, non-recognition of completed educations in their home countries, low income, discrimination in the housing market, discriminating legal regulations, racism, etc. In comparison to other employed people, female migrants often have badly paid jobs that only require a low qualification level and have low social prestige. Children from families with a migrant background have much fewer education opportunities than children from non-migrant families. Apart from that, migrants have to live in badly equipped, overcrowded and in many cases overpriced homes¹¹³.

¹⁰⁹ Statistic Austria (2012). Cited from Die Armutskonferenz, http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236#Ausgew%C3%A4hlte%20Gruppen

¹¹⁰ (Chamber of Labour) AK 2012, p.16

¹¹¹ (Chamber of Labour) AK 2012, p.16

¹¹² Statistik Austria, http://www.statistik.at/web_de/dynamic/statistiken/soziales/gender-statistik/einkommen/070176

¹¹³ Die Armutskonferenz i.e. Austrian Network against Poverty and Social Exclusion -

Female migrants, although being an important part of the work force, are more often affected by unemployment, employment beneath their acquired qualification and by underpayment. Important reasons for this are that they are mainly employed in areas where working conditions are worse and the job-security is lower. But other reasons are also, that the recognition of acquired qualifications is especially difficult and that companies less often abide by the social and work laws and regulations.¹¹⁴

The risk of poverty lies at 32% for female migrants (see above: Risk of poverty according to socio-demographic indicators 2010). Two thirds of (female) migrants earn less than € 1.400,- gross per month, 9% even earn less than € 900,-.¹¹⁵ Accordingly, in the case of unemployment, the unemployment benefit is low. On the other hand, the needs-based minimum benefit is tied to a permanent residency or the Austrian citizenship. Proof of a minimum income of € 793,40 per month for persons living on their own and € 1.189,56 for couples, whereby rent, alimony and possible debt-repayments or leasing payments are considered, is a precondition for the granting of residency or the extension of a residency permit¹¹⁶. For elder female migrants there are additional structure-immanent barriers regarding the granting of certain social benefits. The entitlement to federal-state attendance allowance is dependent on the pension payment and the duration of residency in Austria. In order to receive pension, one must have been employed in Austria within the last 15 to 30 years. Many migrants, especially women, can only reach this number of contribution years if they include their working years abroad. But these years are not taken into account in all cases. Another barrier is created by the fact, that in some municipalities, e.g. in Vienna, persons without Austrian citizenship are not entitled to coverage of the difference in costs through social benefits, if one's own income and estate is not sufficient to fund a place at a nursing home.¹¹⁷

3.11 Needs-based minimum benefit – a measure against poverty?

Women represent the majority of social beneficiaries (53%). Hence the design of the needs-based minimum benefit is of special importance for women. Positive is the entitlement of all needs-based minimum benefit recipients to the services of the statutory health insurance – due to their dual burden and the high (sole) responsibility women bear a higher risk of disease. Positive is also, that, in comparison to previous regulations, sole mothers are rated equally to other adult persons. (...) In regard to recipients of the needs-based minimum benefit, further consideration should be given to the reconciliation of possible access to child-care and nursing services and the stipulation that they must be available for the employment market. The wording of the regulations regarding the question whether the placement in the employment market is reasonable must be improved. Currently there is no restriction regarding the previously performed qualification and the earned income. (...) This regulation must be rejected in consideration of the system-immanent de-qualification dynamic especially of women being at risk of poverty¹¹⁸.

In the year 2013 the monthly needs-based minimum benefit lies at € 795,- for people living on their own, at € 1.192,- for couples sharing an accommodation, and at €

¹¹⁴ Compare: (*Chamber of Labour*) AK 2012, p.32

¹¹⁵ Vgl. Riesenfelder, A. et al 2011 cited from AK 2012, p.24

¹¹⁶ CEDAW NGO-Schattenbericht (*NGO-Shadow report*) 2012, p.21

¹¹⁷ City of Vienna 2006, Wiener Frauengesundheitsbericht (*Vienna Women's Report*), Vienna, p.390

¹¹⁸ CEDAW Schattenbericht (*Shadow report*) 2012, p.42.

596,- for persons sharing an accommodation without the right to mutual alimony (e.g. siblings). Benefits for children are different depending on the federal state, but lie at least at € 143,-.¹¹⁹

Regarding the topic needs-based minimum benefit also see the report part on Article 9.

3.12 Women with a disability

Despite the anchoring of the principle of equality of women and men in the Constitution (Art 7 Par 2 B-VG) and Equality and Non-Discrimination Laws at national and federal levels there are no specific rules (e.g. in Disability Acts) for the protection and advancement of women with disabilities. Women with disabilities have a 50% higher risk of poverty than men with disabilities (23 % vs. 16 %). Apart from deficits in legislation and implementation, there are no specific responsibilities or programs for disabled women on the political level. The existing measures for people with disabilities (initiated among others by the Ministry of Labour and Social Affairs – BMASK) barely consider the gender aspect and programs for women (for instance, by the Ministry of Women’s Affairs) lack the aspect of disability.¹²⁰ The general lack of consideration as a cross-sectional matter, in accordance with the UN-Convention, by all ministries and federal institutions appears even more clearly when looking at the consideration of rights of disabled women. The lack of political awareness in this area also explains why for instance, the situation of women with disabilities was not dealt with so far in the previous Austrian State Reports on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) – and this despite the recommendations of the CEDAW-Committee to provide information on this question.¹²¹

Furthermore, the lack of disability-specific and gender-specific statistical data as a basic precondition for the visibility of the specific situation of women with disabilities makes the implementation of political measures even more difficult.

Summarizing the above, it can be said, that women with disabilities are more seldom employed than disabled men. This fact is also supported by regional qualitative studies concerning the labour market situation of disabled women¹²². But at the same time disabled women only account for a good third of the registered unemployed persons with disabilities. Furthermore data show, that unemployed women with disabilities receive the least financial benefits, more seldom receive disease-related pensions and that their average income from these pensions is only about half the amount of the pensions of disabled men¹²³.

¹¹⁹ http://www.ams.at/_docs/bms_basisinfo.pdf - 27.4.2013

¹²⁰ Compare also the official reports concerning the situation of women with disabilities, which clearly show a lack of awareness. The Disability Report of the Federal Government 2008 at least partially goes into women-specific aspects, whereas the Women’s Report 2010 of the Ministry of Women’s Affairs covers this topic only with little statistical data in the chapter “Health and Care”.

¹²¹ CEDAW A/46/38, 4th of January 1991, General recommendation No. 18, Women with disabilities.

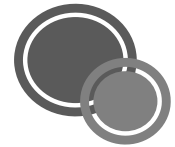
¹²² Compare LUZIA, Study on the life situation of women with disabilities remote from the labour market in Vienna, fn, see also Buchinger/Gschwandtner, Frauen mit Behinderungen und Beeinträchtigungen am Salzburger Arbeitsmarkt., Eine qualitative Studie, (*Women with disabilities and impairments in the Salzburg labour market. A qualitative study*) Salzburg 2008.

¹²³ See Tertinegg, Karin and Sauer, Birgit (2008): Context Study Austria. QUING Project, Vienna, Institute for Human Sciences. See also Austrian Women’s Health Report 2010/2011

3.13 Demands

developed on the basis of the analyses contained in the present report and respectfully submitted to the Committee for consideration during the dialogue with the Austrian government

- to regulate a minimum wage by law (and unconditional basic income);
- to establish specific additional allowances for low incomes in order to achieve levelling of income groups;
- to adopt effective measures for the protection of atypical employees;
- to adopt and implement all necessary measures in order to prevent wage and social dumping through consequent application of the Law Combatting Wage and Social Dumping;
- to ensure that priority is given to part-time and marginally employed persons when filling a company-internally advertised full-time or nearly full-time position;
- to adopt and implement all necessary measures in order to guarantee the further expansion of high quality child care facilities and facilities for the care of family members;
- to adopt and implement all necessary measures required to ensure that activities such as taking care of children or sick people are compensated appropriately;
- to increase the obligatory quote of women in leading positions in institutions and companies of the Federal State as well as in the boards and professorships of universities and colleges of applied sciences;
- to adopt and implement a strategy for the increase of women's quota in management, boards of directors and supervisory boards of companies;
- to foster a fifty-fifty work share between life partners;
- to reduce the standard working hours in order to facilitate redistribution of paid work, care work and socio-political work;
- to change the means-tested minimum income scheme in such a way that it becomes truly sufficient for a living, also with children, and to provide for individual access to social benefits
- to establish a central authority for the validation of foreign education certificates;



4 Article 6 Right to Work

4.1 Successful Employment Policy or Cosmetic Treatment on Statistics? (Nr 15 a¹²⁴)

Austria is known for its low unemployment rate compared to the rest of the EU. But in Austria, there is still a considerable number of hidden unemployment¹²⁵.

The distortion happens on both sides:

On one hand, the number of employees is overestimated. Especially persons who work involuntarily part-time or who – in order to be insured for social security, for example, are registered with the company of their spouse – do not appear as part of the unemployed people.

On the other hand, the unemployment numbers are underestimated.

The Upper Austrian Chamber of Labour ordered a study in 2007 by the Institute of Economic Research (wifo) into the labour market in Upper Austria. The result of this study is that in 2006 the real unemployment number was 6,7% which is 55% higher than the officially registered 4,3% reported by the Public Employment Service¹²⁶.

According to same research, the following groups have not been considered:

- People in training schemes of the Public Employment Service
- People who receive an advance on their pension
- People who are registered with the Public Employment Service or are on sick leave
- Apprenticeship-seekers

But this list is far from being complete. The following are also not included in the official unemployment statistics:

- People looking for a job after graduating or leaving early from school or university
- People who receive family allowance and are still looking for a job
- Retired people who are looking for an additional income to their pension
- Asylum-seekers and tolerated aliens
- People who are not registered as job seeking with the Public Employment Service for another reason even though they are looking for a job (“hidden reserve”)
- Involuntary part-time workers who are looking for a job offering more hours

Thus it can be assumed that the actual unemployment rate is at least 60–70 % higher than the officially published one¹²⁷.

The reliability of unemployment figures is doubted by the public. The “Humaninstitut” asked 850 persons at the beginning of May of 2010 about the quota method procedure of labour market politics in Austria¹²⁸. Regarding the question about the meaning of the regularly published unemployment statistics, the results were as follows:

As reassurance & cosmetic treatment of reality:	53%
Propaganda material by the labour market authorities:	31%

¹²⁴ Numbers refer to the questions of the Reporting Guidelines

¹²⁵ Hidden unemployed persons are integrated in courses of the public employment service or are not registered there because they are not entitled to receive benefits e.g. persons, who have just finished their education or mothers who actually would want but don't have access to adequate child care facilities

¹²⁶ Österreichisches Institut für Wirtschaftsforschung HG: Peter Huber:

WIFO_Aktive_Beschaefigung_In_OOE_2006.pdf, Okt. 2007

¹²⁷ Estimate by the organisation „Active Unemployed“

¹²⁸ http://www.ots.at/anhang/OTS_20100504_OTSO081.pdf, p. 38

Information about the unemployment rate:	12%
Enable comparison with other countries:	4%

But even after the statistical cosmetic treatment of unemployment figures, there has been a considerable increase in unemployment: it went up from 223,000 in 2000 (by 87,000 persons) to 310,000, the yearly average in 2011, which was still over the yearly average (by 47,000) of 2008¹²⁹ – the “year before the crisis”.

Youth Unemployment

For apprenticeship-seeking youth, there is a program by the government with training workshops – so-called vocational training. The reason that thousands do not find an apprenticeship place is not caused by a lack of training places but by the educational deficits of compulsory education leavers. This is mainly true for migrants in first or second generations. An economy-oriented daily newspaper stated: “The Austrian youth has educational deficits. Calculating, writing and reading is difficult for many. Also social competences and polite interpersonal relations seem not to be internalised for many¹³⁰.” 10,000 young people do not continue with their education after compulsory school. Two thirds of the unemployed youth have a migration background. They end up as unskilled workers or on the street¹³¹. In Vienna, 70% of people under 20 years of age already have an immigrant background¹³². The reform of the educational system which eliminates discrimination against migrants has not succeeded so far.

Women: Precariousness – Atypical Jobs

Atypical jobs have continuously increased in Austria within recent years. In the “years before the crisis” 2005–2008, the number of dependent employees increased continuously, in 2009 and 2010 it remained stagnant and there was a clear shift from normal jobs to atypical jobs. The “positive turning point” in 2011 was mainly caused by an increase in exclusively part-time and atypical jobs (together: + 24.000, + 2,2 %). All in all, normal jobs decreased by 51.000 (men: - 31.000, women: - 20.000)¹³³.

Especially dependent on atypical jobs were women new to the job market. 85% of all part-time workers are women¹³⁴.

The part time rate of women decreases with an increase in formal education.

Part-time and temporary agency work are mainly concentrated on persons graduating from compulsory school or apprenticeship, 33% of male temporary agency workers and 47% of female temporary agency workers were born abroad. Marginal employment affects women more often than men. The higher the number of women in one industrial sector, the higher the number of part time workers.

¹²⁹ Hauer Gerlinde, Wallner Josef: „Beschäftigung – Zugang – Arbeitslosigkeit, Job-Qualität in: Verteilungspolitik. Wo bleibt die Verteilungsgerechtigkeit?“ volume 2 „Sozial-, bildungs- und rechtspolitische Dimensionen“ http://m.noel.arbeiterkammer.at/bilder/d174/Verteilungspolitik_Band_2_Mai_2012.pdf

¹³⁰ <http://kurier.at/thema/bildung/wie-gehts-dir-eigentlich-lehre/3.003.730>, 3.5.2013, 19.30

¹³¹ <http://kurier.at/chronik/oesterreich/bildungsreport-einstieg-statt-ausstieg/732.773>, 3.5.2013, 19.42

¹³² <http://kurier.at/thema/bildung/wie-gehts-dir-eigentlich-lehre/3.003.730>, 3.5.2013, 19.30

¹³³ Knittler Käthe, Stadler Bettina: „Atypische Beschäftigung während der Krise nach soziodemographischen Merkmalen“ in: „Statistische Nachrichten“ 7/2012

http://www.statistik.at/dynamic/wcmsprod/idcplg?IdcService=GET_PDF_FILE&dDocName=065680

¹³⁴ Geisberger Tamara, Knittler Käthe: „Niedriglöhne und atypische Beschäftigung“, statistische Nachrichten 6/2010, p. 451

	Women		Men	
	2005	2011	2005	2011
„Normal“ jobs	55%	51%	88%	86%
Part-time jobs	40%	44%	6%	8%
	621.700	756.400	99.900	142.200
Marginal employment of it	6,4%	7,5%	1,5%	2,4%
Fixed term employment contracts	5,9%	6,4%	5%	5%
Temporary agency employments	1%	2%	2%	3%

Q: STATISTIK AUSTRIA, Mikrozensus-Arbeitskräfteerhebung (Jahresdurchschnitt über alle Wochen). Bevölkerung in Privathaushalten ohne Präsenz- und Zivildienst. In Knittler Käthe, Stadler Bettina: „Atypische Beschäftigung während der Krise nach soziodemographischen Merkmalen“ in: „Statistische Nachrichten“ 7/2012, p. 481

Low Income and Atypical Jobs

The connection between low income and atypical jobs was investigated within the scope of the Structure of Earnings Survey in 2006¹³⁵. The low income threshold was 66% of median income, i.e. € 7.65 gross per hour.

It was clear to discern that an imbalance exists:

- 7.4% of women but only 4.2% of men belong to the group of low income employees. 43.5% of the group of low income employees had a normal job, the remaining 56.5% had an atypical job.
- Full time employment does not protect women from low income: 18.2% worked in normal jobs for a low income, but only 5.1% of men¹³⁶.
- Women with a completed apprenticeship had about four times as many low income jobs than men with a completed apprenticeship.
- Compared to men, women remain in a low income situation for longer: 36.5% of men aged between 15 and 19 worked under the low income threshold, 12.6% at the age of 20 to 29 and at the age of 30 to 59 only 5%. 68.8% of women at the age of 15 to 19 worked below the low income threshold, at the age of 20 to 29 still 30.7% and at the age of 30 to 59 still 20%.¹³⁷

Discrimination Against Migrants

In 2010, the unemployment rate for Austrian citizens was 7%; the one for non-Austrian citizens, however, was 11%. Members of the states of former Yugoslavia (without Slovenia) had an unemployment rate of 12% and Turkish citizens even one of 16.9%. If 12% of Viennese people without a migration background were affected by unemployment between 2010 and 2011 at least once, this value for migrants, at 43% is almost four times as high¹³⁸.

Migrants are employed in segments of the labour market which are especially affected by unemployment or unsure/short-term employments, such as the seasonal sectors, construction industry and hospitality industry as well as temporary agency work.

¹³⁵ Geisberger Tamara, Knittler Käthe: „Niedriglöhne und atypische Beschäftigung“, statistische Nachrichten 6/2010

¹³⁶ Ibidem p. 455

¹³⁷ Ibidem, p 457

¹³⁸ Wallner Josef: „Migrantinnen – Arbeitsmarkt & Job-Qualität“, in: „Verteilungspolitik. Wo bleibt die Verteilungsgerechtigkeit?“ volume 2 „Sozial-, bildungs- und rechtspolitische Dimensionen“ http://m.noe.arbeiterkammer.at/bilder/d174/Verteilungspolitik_Band_2_Mai_2012.pdf

Sectors with highly insecure jobs have a disproportionately high number of migrants: hospitality: men 39%, women 33%, corporate services (especially temporary agency work): men 28%, women 45%, construction: men 25%¹³⁹.

According to the OECD in Austria, only 55% of all high-qualified workers born abroad and only 40% of all high-qualified workers born in a low income country are employed according to their qualification; of nationals it is 70%. In Vienna, 33% of migrants compared to 11% of workers without a migration background are employed below their level of qualification.

In 2009, the net annual income (median) of the all-year round employed was € 22,303 for Austrians, the income of non-Austrians with € 18,367 in comparison was only 82% and that of Turkish citizens with € 17,454 was only 78% of the net annual income of nationals¹⁴⁰.

Especially discriminated against amongst migrants are **asylum-seekers**.

The EU-Enlargement-Amendment-Law from 2004¹⁴¹, which also brought changes to the Law on the Employment of Foreign Nationalists (AuslBG), allows asylum-seekers access to the labour market for three months after permission of entry. A decree by the federal Minister of Economics and Labour limits this access to seasonal employment (tourism). Furthermore, there are quotas on state and federal level and temporary worker regulations¹⁴², which in reality act to block access to permissions.

There is very little secured data on the employment of **people with disabilities**¹⁴³.

It is not possible to make an empirically-based statement about how the current support systems for (re) entering the labour market are actually of benefit to the people who need them most.

The percentage of people with disabilities among the unemployed was 15.03% in May of 2010¹⁴⁴. Because of the limited chances of finding a job, persons with health-related employment limitations stay unemployed for longer and it is harder for them to find a job¹⁴⁵.

Two thirds of the companies who are obliged to employ people with disabilities pay a monthly compensation payment of €223¹⁴⁶ to be released from this obligation. However, many people with disabilities are not considered in the unemployment statistics, namely those who are considered to be unable to work and are employed in segregated facilities.

Approximately 17,000 people¹⁴⁷ with learning difficulties and multiple disabilities currently „work“ in sheltered workshops which are protected facilities that are segregated from the rest of the labour market¹⁴⁸. This concerns measures of the states within the scope of social welfare or services for the disabled and is not considered as gainful employment, even though many regularly go to work at the workshops, work there with machines and tools, or also partly in external groups in companies of the economy. Since social insurance depends on gainful employment, these people do not have independent social insurance (accident, health and pension insurance)¹⁴⁹. Whereas in the sector of health and pension insurance a right to insurance cover might exist at least indirectly caused by their status as family member, this possibility does not exist in the sector of accident insurance. People with disabilities in daily and employment structures do not receive payment (based on a trade union agreement) for their work, but only a small amount of money of sometimes less than €10 per month. They are not insured against unemployment and are not included in the statistics of the Public Employment Service. The legal regulations about occupational safety,

¹³⁹ Ibidem, p.30

¹⁴⁰ Ibidem, p. 31

¹⁴¹ Louise Sperl / Karin Lukas /Helmut Sax, „Wirtschaftliche, soziale und kulturelle Rechte von AsylwerberInnen. Die Umsetzung internationaler Standards in Österreich“. Verlag Österreich, 2004, p. 60 of 94

¹⁴² ibidem

¹⁴³ see. art. 31 paragraph 1 BRK

¹⁴⁴ <http://www.arbeitundbehinderung.at/de/arbeitsmarkt/arbeitsmarktdaten/gesamtarbeitslosigkeit.php>

¹⁴⁵ BMASK; Behindertenbericht 2008

¹⁴⁶ Ombudsman for people with disabilities Dr. Erwin Buchinger; in "Die Presse", print version, May 7th, 2010

¹⁴⁷ See: Oliver Koenig, "Report on the employment of disabled people in European countries", p.11

¹⁴⁸ See: Oliver Koenig, „Europäische Modelle eines institutionalisierten Ersatzarbeitsmarktes zwischen Entwicklung und Bewahrung“, p.2 and 3;

¹⁴⁹ See also art. 28 BRK

vacation, sick leave, employee income provision as well as trade union representation do not apply. In case of sickness, there are different regulations concerning the continued granting of money¹⁵⁰.

The regulations about the capacity for work¹⁵¹ present both a central obstacle and discrimination cause. According to unemployment insurance law one is capable of working if one does not suffer from invalidity or incapacity to work. The **term invalidity** is referred to in the regulations of the General Social Security Act (ASVG). The only deciding factor is if the capability is at least equivalent to 50% of a mentally and physically healthy person. If the capability is below, these persons are considered as not capable of working or as being incapable of gainful employment.

In order to be registered as a **beneficiary disabled person** according to the Act on the Employment of People with Disabilities, it is necessary that the disability reaches a level of at least 50%. Still, there must be a (remaining) capability of at least 50%. Especially regarding occupational integration and supportive help, this strict classification must be questioned. If somebody is actually capable of working/of being gainfully employed, also ultimately depends on the support/the general set-up available on the way to occupational integration. The difficulties accessing an invalidity pension and the problems with judicial expert opinions in Austria are discussed in detail in the analysis regarding art. 9.

The 50% limit for capability also has consequences for the distribution of competences between the federal government (labour market) and the state governments (social welfare) and leads to big differences in the actual arrangement of the general set-up.

4.2 Reintegration of Long-Term Unemployed (Nr 15 b)

A second labour market is established by programs to reintegrate the long-term unemployed. The consequences are discussed in article 7.

4.3 Informal Economy, Moonlighting (Nr 16)

The different trades in Austria are organized in the Chamber of Commerce and are protected by legal standards. Still, there is a considerable amount of moonlighting, especially in the hospitality and construction industries. Migrant women and victims of trafficking in women often don't have access to any other source of income than unregistered prostitution.

From public authorities little to no efforts are made to open a way to the legal labour market to these people, or to offer them a minimum of social security. When controlled, illegal workers must pay a fine. In the case of sex workers, the women are also discriminated against and fined, but not the clients.

The difficult situation of people without health insurance is discussed in art. 9. These people are mainly asylum-seekers or EU citizens from new member states.

4.4 Dismissals (Nr 17)

Dismissals are legally regulated in Austria with corresponding notice periods. You may take legal actions against unfair dismissal by the employer.

¹⁵⁰ See also statement of the monitoring committee „Konventionsverletzung durch die Situation von Menschen in Tagesstrukturen, insbesondere in der so genannten Beschäftigungstherapie, Arbeit in Werkstätten oder „Fähigkeitsorientierten Aktivität“, 24. 3. 2010; www.monitoringausschuss.at

¹⁵¹ See: Oliver Koenig: „Europäische Modelle eines institutionalisierten Ersatzarbeitsmarktes zwischen Entwicklung und Bewahrung.“

There is no law regulating strikes in Austria¹⁵² and the trade unions work together with the government in a social dialogue partnership. Hence upon mergers of big companies and the mass dismissals associated with them, the labour force is not in a position to apply pressure.

The legal regulations only apply to normal employment, not to atypical employment, which, as stated before, has increased in recent years in Austria.

Since the trade union does not represent the unemployed and only a small share of people in precarious employment, an increasing number of people are left to their own devices when looking for or upon losing a job.

The pressure by the economy for a more flexible workforce is given priority over duties to provide respect, protection and guarantee obligations as prescribed by human rights.

4.5 Further Education and Training Programs of the Public Employment Service (AMS) (Nr 18)

Even though there are numerous contractors of the Public Employment Service which offer various types of courses, we want to draw your attention to the contribution to article 9, in which those affected argue that the courses do not sufficiently consider the real requirements of the unemployed. They are often obliged to attend short courses like “Project Management”, “Application Training”, “Communication” or language courses which last several weeks. This gives the impression that these measures are rather used as a cosmetic treatment of the unemployment statistics (as described above) than to really improve the chances to be integrated in the labour market.

For **people with learning difficulties** the situation is especially tragic, since 59% of pupils who were educated following a special pedagogic curriculum are not supported by labour marked policy measures following their school attendance¹⁵³.

For **asylum-seekers**, access to supported training measures is linked to being placed on the labour market. Since asylum-seekers cannot be registered with the public employment service, the access to training measures is de facto not possible.

Resulting from the **principle of non-discrimination** of the treaties under international law which are binding upon Austria, it is clear that the national legislative authorities must not proceed discriminatingly when enacting laws and thus an inequality of comparable groups must be substantially and objectively justifiable. Furthermore, the principle of proportionality applies: The used measure must be appropriate to the legitimate goal. In the given case, the needs of the state to regulate the labour market with appropriate measures following economical, socio-political etc. points of view must be balanced with the right to work for asylum-seekers. This intention and details of the legislation is at odds with the fulfilment of the daily needs of asylum-seekers, especially when they do not receive any state provision and have to tide themselves over for sometimes long periods until a decision about their asylum procedure is made. This touches the core of the right to work: the right to work to ensure their (and their families’) livelihood.

If you compare these interests with each other, it becomes clear that the right to work for asylum-seekers to ensure their livelihood, if they are not granted any other means to secure their existence, comes before the state’s interest to regulate the labour market. The right to work for asylum-seekers must follow after an appropriate period (immediately after the date of request for asylum a phase of tranquillity, acclimatisation and sole concentration on the procedure should follow) if no sufficient state provision is granted. Within the scope of this acclimatisation phase, the access to the labour market should be supported by

¹⁵² <http://www.nachrichten.at/nachrichten/wirtschaft/Streik-OeGB;art15,84005>, 9.8.2013;

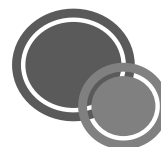
¹⁵³ Oliver Koenig, “Report on the employment of disabled people in European countries”, p.11

accompanying measures in the form of language courses and other qualification measures under consideration of the individual's skills.

4.6 Demands

According to this analysis we would suggest the Committee to consider the following demands of civil society as a base for recommendations to the Austrian State on this topic:

- To adopt and implement all necessary measures towards the elimination of marginal employment as well as other atypical types of employment
- To adopt and implement all required measures to ensure a clear financial improvement of social, health and educational jobs – sectors with a high proportion of women and low income
- To adopt and implement all necessary measures to ensure a requirements-based overall improvement of social infrastructure – especially professional care as well as child care/educational facilities for children under 3 years and over 6 years of age, to enable a higher participation in the labour market for all
- To refrain from further spin-offs/privatisations in the public sector, an overall evaluation of privatisation and spin-off measures already taken, especially regarding the effects on income (esp. women/men income), employment, types of employment, employee structure and security of supplies as well as the withdrawal of the measures concerned if needed
- To establish specific consulting services by the public employment service for people with disabilities and asylum-seekers
- To ensure the right to participate to the unemployed in the choice of further educational measures and ensure the existence of complaint mechanisms which allow the rights holders to claim in cases of irregularities in this services.



5 Article 7 Right to fair and favourable working conditions

5.1 Obligatory minimum salary and its coverage (Nr 19)

There is no guaranteed minimum salary in Austria (only in public services are there legally regulated remuneration schemes). In Austria, the calculation processes of salaries are carried out by union negotiations, minimum salaries are set by sectors. Determining a legal minimum salary has failed up to this point due to parliamentary majorities, but also due to social dialogue partners, who thereby see an interference with autonomous wage policy. The reference budget level is not achieved in many sectors and in some sectors, even salaries for full-time jobs are well below the poverty threshold¹⁵⁴.

Collective agreements

In Austria, collective agreements are being negotiated between unions and employers federations within specific sectors.

The results of these collective agreements are applicable only to employees possessing the attributes of an employee. The employee attributes come from the employment contract and have specific characters of employment such as personal and economic dependency, a continuing obligation to work, provision of working means by the employer, dependency to directives of the employer and integration into the organization of the company.

Employee-like types of work, as for instance so-called free working contracts or contracts for work labour are completely beyond the regulation of collective agreements negotiated by social dialogue partners. Employers thus often avoid legal minimum standards related to work (weekend, holiday, vacation, working break regulations, etc.). Not least the often cited high economic dependency on an employer indicates this. According to the social report of the Ministry for Labour, Social and Consumer Protection (BMASK), atypical job conditions have increased dramatically within the last ten years. Three fifths of the increase of employees concerned part time work¹⁵⁵.

5.2 Integrational measures (Nr 15 b)

An additional system which undermines collective agreements is that of the „second labour market, created by so-called „integrational measures“ by the unemployment service. In the following paragraphs we analyse the most typical negative impacts on the conditions of work caused by these measures.

Transitory employment regulations in the collective agreement of „Sozialwirtschaft Österreich“ (social economy Austria: a federation of employers in the social sector)

In 2006, in the collective agreement by the employer's federation "Austrian Social Economy" (formerly BAGS – working committee for social jobs), an addition was introduced in 2006 for transitory jobs that are valid for compulsory integration measures of the unemployment service in the form of „social economic companies“(SÖB) and non-profit job-creation projects (GBP). In this regulation, which was agreed to by the unions from the side of the employers, deprives the employees of collective rights like such as:

-consideration of work experience

¹⁵⁴ ibidem

¹⁵⁵ Sozialbericht 2011- 2012 des BMASK, p. 220

https://www.bmask.gv.at/cms/site/attachments/2/4/6/CH2081/CMS1354173257281/sozialbericht_2011-12_web.pdf, 12.4.2013, 15.26

- consideration of qualifications
- the right to bi-annual salary steps

Thus the main principle of collective agreements, namely the 'collective discrimination criteria', which makes the exploitation of social weaknesses of the employees harder is being violated by the BAGS -"Transitarbeitskräfteregulation"¹⁵⁶. This regulation, in our opinion, does not comply with international human rights obligations deriving from the ICESCR. The right to equal salary for equal jobs and the constitutional right to equal treatment are violated and the regulation on transitory employees does not adhere to the law¹⁵⁷.

The unions „vida“ and GPA claimed that after the 2013 trade union negotiations, monthly minimum salary of 1,400-€ had been negotiated. The lowest pay grade for transitory employees in 2013, however, is only 1,253.60€ and the highest grade of the four salary categories is 1,431.93€. Normally all employees are placed in the lowest pay grade, even when a higher grade would be applicable¹⁵⁸.

Transitory employees are usually occupied for no longer than 6 months, which means that they don't qualify to be candidates of the staff association and are declined representation by the union.

Non-profit personnel leasing companies – union agreement “BABE”

A similar regulation for transitory employment was agreed with the employers federation of private education institutions with the difference that here there is a limitation to only one pay grade and an additional payment of 2€ for technically qualified employment per each agreed working hour (maximum 80€ per month). This collective agreement is only applicable to non-profit leasing companies¹⁵⁹.

During times of non-lease only this minimum wage is being paid, during lease at a company, the applicable pay grade of the leasing company is paid.¹⁶⁰ In our opinion this is a violation of Austrian labour legislation, according to which collective payment is to be made even in non-lease periods.¹⁶¹

Action “Gemeinde”

In the province of Styria, unemployed people have been leased out since 2009 by non-profit agencies to communities and municipalities through the “Action Gemeinde”¹⁶². During the lease, payment is not according to the borough's pay scheme, but at the minimum level for transitory employees.

This drawback has been pointed out to the union of community workers in Styria but there has been no reaction. Persons concerned usually have no legal protection insurance and the cost of lawsuit is too high to be risked.

¹⁵⁶ Csebrenyak , Geppert , Maßl , Rabofsky : ABGB und Vertragsrecht. Wien 1987, ÖGB-Verlag, Seite 128

¹⁵⁷ <http://www.arbeitslosennetz.org/arbeitslosigkeit/rechtshilfe/transitarbeitsplaetze.html>, 5.5.2013, 17:49

¹⁵⁸ <http://www.aktive->

[arbeitslose.at/news/20130208_mindestloehne_tranistarbeitskraefteregulation_kollektivvertrag_sozialewirtschaft_osterreich.html](http://www.aktive-arbeitslose.at/news/20130208_mindestloehne_tranistarbeitskraefteregulation_kollektivvertrag_sozialewirtschaft_osterreich.html)

¹⁵⁹ See collective Agreement BABE § 16 art. 3 and 4, p.16; <http://www.babe.or.at/1003,,2.html>, 9.8.2013;

¹⁶⁰

http://www.arbeitslosennetz.org/arbeitslosigkeit/rechtshilfe/gemeinnuetzige_personalueberlasser_oder_doch_arbeitsvermitter.html 5.5.2013, 17.45

¹⁶¹ (ABGB § 1155)

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=1&paid=1155&mvpa=1032> 12.4.2013, 14.23

¹⁶² <http://www.arbeitslosennetz.org/arbeitslosigkeit/rechtshilfe/transitarbeitsplaetze.html>, 5,5,2013, 17:56

Job training and Job testing

Job trainings have been developed for people with 'limited productivity' and are intended to improve productivity step by step. Job tests must only be used in order to evaluate existing or acquired skills and proficiencies and their application in the job for a limited time.¹⁶³

There is no regular payment for these kinds of employment in collective agreements. These people are kept on the payroll of the unemployment service and the respective employer has no obligation to pay to the worker. According to the regulations of the unemployment service, the maximum period of three months should not be exceeded. As a rule, this job training is introductory to transitory employment and the maximum period is three months. But according to information of Active Unemployed this period is usually exploited completely. In their opinion, this is a misuse, as, per legal definition, job training is only intended for people with limited productivity.

Practical placements

Over the past years it has become more and more frequent that unemployed people are being forced by integration measures of the unemployment service to undertake practical placements in companies or public institutions. The persons concerned do not receive a regular salary but only their unemployment benefits. The respective employer does not have to pay anything. There is no legal foundation for this kind of pay-free work because practical placements must not be forced upon a person by threatening to stop unemployment benefits.

By using these measures, the unemployment service creates a second labour market that degrades the people concerned to employees of second choice. Officially, this 'transitory employment' is supposed to support integration into the first labour market, which, however, rarely succeeds.

Because of that, the second labour market is often the last stop with low wages and no real prospects. Transitory jobs are often only offered on a part-time basis, so that payment is even lower than unemployment benefit and always below the poverty threshold.

Transitory job positions are predominantly in the lowest category of qualification and were originally intended for young people without qualifications. Non-profit personnel leasers frequently sub-let their workers into low-skilled positions. The official goal is for the unemployed person to gain a foothold in the chosen company, which is rarely the case. The unemployment services tend to place old and experienced unemployed people into such jobs. These compulsory measures clearly disregard human dignity.

5.3 Precarious jobs (Nr 20)

As has been shown in 4.1. in recent years, precarious jobs have been on the rise in Austria. In the years 'before the crisis' 2005 – 2008, the number of employed people continually rose, but in 2009 and 2010 it stagnated and there was a clear shift from normal jobs towards precarious jobs¹⁶⁴.

In precarious jobs, there is a deterioration of labour law regulations. Overtime work is mostly compensated by overtime pooling and not by payment. Work on Saturdays and Sundays is common in trade jobs, care and social work. Overtime payment is regulated by union agreements. In case of sick leave, colleagues are expected to be flexible and provide cover if they wish to retain their jobs.

¹⁶³ AIVG § 9 Absatz 8

¹⁶⁴ See p. 29 in this report

Low wages

The connection between low wages and precarious jobs has been researched in a survey of income structures in 2006¹⁶⁵. 66% of the median income considered to be on the low wage threshold, which was 7.65 Euro gross per hour. Even in this area, there is an uneven distribution between men and women¹⁶⁶.

Compensator

Almost three-quarters of all recipients of minimum security benefit are „compensators“¹⁶⁷ which means that their regular income from jobs or from unemployment benefit is insufficient to exceed the already very low guaranteed minimum security benefit. See also the contribution to article 11.

5.4 Compatibility of job and family (Nr 20)

Regarding insufficient measures to ensure compatibility of jobs and family see also the contributions to articles 3 and 10.

Besides the insufficient availability of child care institutions, there is little consideration of family and children's needs in careers in public services and even less in the private economy. With regard to conditions in universities, students' unions maintain that the traditional perception of a career in science is oriented on the career progression of men. Disruptions of career, for example, by paternity leave are not scheduled on the path to post-doctorate qualification. Another reason for double pressure on women is the fact that women are mostly responsible for household and family commitments beside their study and research. This difference in time budget can already be seen in the student population.¹⁶⁸

5.5 Equal pay- Gap – women discriminated at all levels of qualification (Nr 21)

A general and complete presentation of the pay gap between men and women can be seen in article 3.

The explanations show clearly that the final recommendations Nr 22 and Nr 23 of the committee from January 2006 have not yet been implemented.

5.6 Demands

We request the Committee to consider the following demands of civil society as basis for its recommendations to the Austrian State regarding working conditions:

- To adopt an offensive minimum wage policy, for example like a legal minimum wage level, involvement of all social dialogue partners and in the framework of union agreements¹⁶⁹ as well as a completion of percentual wage rises by fixed amounts in order to favour low income groups.
- To adopt and implement protection measures regarding income in part-time jobs like a legal minimum working time that must not be disregarded either by time standards or by wage standards.
- To evaluate and - if precedent - implement a general collective reduction of working hours with full wage compensation in low and average income levels up to the

¹⁶⁵ Geisberger Tamara, Knittler Käthe: „Niedriglöhne und atypische Beschäftigung“

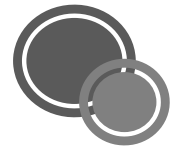
¹⁶⁶ See 4.1. p. 30 in this report

¹⁶⁷ L&R Sozialforschung 2012, „Auswirkung der Einführung der Bedarfsorientierten Mindestsicherung auf die Wiedereingliederung der LeistungsbezieherInnen ins Erwerbsleben Endbericht“

¹⁶⁸ IHS (2012), „Studierendensozialerhebung 2011“, p. 92-95

¹⁶⁹ AIVG § 9 Absatz 8

maximum contribution level in the social security system. Introduction of a right to individual forms of reductions of working hours like sabbatical leave or vocational leave.



6 Article 9 Right to Social Security

6.1 Unemployment Sanctions (Nr 27)

The Austrian AIVG (Unemployment Insurance Act) provides suspension of unemployment benefits as a sanction in case of (supposed) violation of obligations by the unemployed person for a period of 6 to 8 weeks (with no limits for repetitions)¹⁷⁰.

This includes, among others, the refusal to take part in measures of the public employment service, which have at any rate been identified as pointless and unconstructive. Both the permanent latent threat and the real imposition of the suspension of benefits therefore perverts the meaning¹⁷¹ and leads to the conclusion that the right to work¹⁷² is reinterpreted¹⁷³ into an obligation to work.

Per year approx. 100,000 suspensions of unemployment benefits are imposed¹⁷⁴. A suspension leads to an immediate lack of income. Since the affected households often do not have any capital reserves¹⁷⁵, necessary expenses cannot be met – this leads directly to economical emergencies, which often lead to even more intense social emergencies like starvation¹⁷⁶, homelessness (devolution)¹⁷⁷, insolvency¹⁷⁸, etc. for those affected and their families¹⁷⁹.

Many participants of such measures arranged by the Public Employment Service¹⁸⁰, as well as many trainers of the servicing contractors¹⁸¹, react to this pressure with severe health problems¹⁸².

The „need oriented minimum security benefit“ (BMS) which was introduced in 2010, is directly connected to benefits and sanctions according to the unemployment insurance law. If the AMS imposes suspensions of benefits according to the unemployment insurance law, the “BMS”-authorities are informed immediately by an automated procedure. In case of suspension of benefits by the AMS, the “BMS”-authorities often also immediately stop payment¹⁸³, since the “willingness to work” is a precondition for receiving the BMS¹⁸⁴.

¹⁷⁰

http://www.arbeitslosennetz.org/arbeitslosigkeit/rechtshilfe/gesetzestexte_urteile/alvg_arbeitslosenversicherungsgesetz/alvg_10_vereitelung.html 10.8.2013, 10:00

¹⁷¹ ESC-Covenant, Article 5 - “No regulation of this covenant may be interpreted so that ... it justifies the right, ... to commit an action, which ... aims to repeal the rights and liberties acknowledged in this covenant.”

¹⁷² ESC-Covenant, Article 6 – Right to freedom to choose an occupation

¹⁷³ International Labour Organisation (ILO) – „A Global Alliance Against Forced Labour“ 2005 - http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_088431.pdf; ILO Declaration 122.

¹⁷⁴ See the respective annual reports of the Public Employment Service Austria - www.ams.at. The quota of sanctions (the ratio of „overall number of notices“ to the „number of notices about sanctions“) is on average approx. 25 % with a tendency to a slight increase within the last two years.

¹⁷⁵ According to an actual wealth census of the department of economics of the OeNB (“Household Finance and Consumption Survey of the Euro System” 2010, “First Results for Austria” - www.oenb.at/de/img/gewi_2012_q3_schwerpunkt_tcm14-250394.pdf) „One tenth (of the population) “ have “less than approx. 1000 EUR net income” available.

¹⁷⁶ ESC-Covenant, Article 11 – Right to an appropriate standard of living - food

¹⁷⁷ ESC-Covenant, Article 11 – Right to an appropriate standard of living – Right to housing

¹⁷⁸ ESC-Covenant, Article 15 – Right to participate in culture

¹⁷⁹ ESC-Covenant, Article 10 – Right to the respect of family life

¹⁸⁰ Health project “WÜST“ (“Würde statt Stress”) -

http://www.alterskompetenzen.info/?gesundheitsprojekt_%22W%FCST%22 and

<http://www.fgoe.org/veranstaltungen/fgoe-konferenzen-und-tagungen/archiv/gemeinsam-gesundheitliche-chancengerechtigkeit-fordern-strategien-und-modelle-intersektoraler-zusammenarbeit/GF-AL-Hedwig%20Presch.ppt>

¹⁸¹ “Erhebung rollenspezifischer Belastungen und Konfliktsituationen von TrainerInnen im AMS-Kontext“ - Mag.a Eringard Kaufmann und Dr.in Ingrid Weikert, dissertation submitted for the WIFI Didactics-Diploma, not published, 2010

¹⁸² ESC-Covenant, Article 12 – Right to health

¹⁸³ Die elements of the BMS “allowance for housing“ and “allowance for family members“ must not be suspended. It is unclear if this rule is actually adhered to.

6.2 Need Oriented Minimum Security Benefit (Nr 27)

In Austria the „Need Oriented Minimum Security Benefit“ was introduced on September 1st 2010¹⁸⁵. The claim to contribute “to an intensified fight against and avoidance of poverty and social exclusion”¹⁸⁶ was not met by the reform project, actually securing livelihood was not achieved¹⁸⁷. Putting the federal law into action lies within the competences of the states, based on an agreement with the federal government¹⁸⁸. This leads to the fact that per state there are different interpretations and executions.

This is mainly caused by the following facts:

Rules of Access

- Demand of third-party contributions and realisation of assets¹⁸⁹
 - Obligation to work – independently of the type of work¹⁹⁰, which is contradictory to the ESC-Covenant Art. 6 (“freely chosen or accepted work”), the ILO-declarations C-29 and C-105 as well as the results from the ILO-meeting 2005¹⁹¹.
- These facts are the reason why – despite existing legal rights – the need oriented minimum security benefit is not always claimed¹⁹².

Transfer Payments

- Is based on the equalisation supplement reference rate for minimum retirees¹⁹³. It is, however, considerably lower since the equalisation supplement is paid 14 times a year, the need oriented minimum security benefit only 12 times a year¹⁹⁴.
- Planned cuts of up to 50 %¹⁹⁵, in exceptional cases up to 100 %, miss the goal of the “need oriented minimum security benefit” by far, but are differently executed in different states.
- Generally, for all measures of poverty reduction, the reference budget (need oriented) should be used instead of the poverty threshold (mathematical construction). The following table shows the enormous gap between demands and transfer payments.

¹⁸⁴ The BMS-authorities must control the „unwillingness to work“ themselves, which, however, often does not happen – the same as with „social support“. http://www.armutskonferenz.at/images/pk/zusammenfassung_bms-monitoring.pdf

¹⁸⁵ BGBl I Nr 96/2010

¹⁸⁶ Nationwide need oriented minimum security benefit (BMS) Art. 1

¹⁸⁷ http://diepresse.com/home/meinung/gastkommentar/764546/Das-letzte-Netz_Die-Mindestsicherung-im-Test, Printausgabe 11.6.2012;

¹⁸⁸ § 15 a agreement according to BVG:

<https://www.help.gv.at/Portal.Node/hlpd/public/content/99/Seite.991408.html>

¹⁸⁹ BMS Art. 13.

¹⁹⁰ BMS Art. 14

¹⁹¹ www.ilo.org/public/german/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf

¹⁹²

http://www.armutskonferenz.at/images/Mindestsicherung/bms_monitoring/zusammenfassung_bms_monitoring.pdf f 10.

¹⁹³ BMS Art. 10

¹⁹⁴ See also:

http://www.armutskonferenz.at/images/Mindestsicherung/bms_monitoring/zusammenfassung_bms_monitoring.pdf f 15f.

¹⁹⁵ BMS Art. 14 (4)

	2012 ¹⁹⁶	
Reference Budget ¹⁹⁷	12x € 1.269,-	€ 15.228,- p.a.
Unemployment Benefit ¹⁹⁸	€ 28,1/Tag	€ 10.256,50 p.a.
Unemployment Assistance ¹⁹⁹	€ 22,7/Tag	€ 8.285,50 p.a.
Minimum Pension	14x € 773,25	€ 10.825,50 p.a.
Need Oriented Minimum Security Benefit ²⁰⁰	12x € 773,25	€ 9.297,- p.a.
Risk of Poverty Threshold ²⁰¹		€ 13.098,- p.a.
Average Capital Expenditure ²⁰²	12x €1.930,-	€ 23.160,- p.a.

Critical Points

- Housing requirements: 25 % of the minimum security benefit is supposed to cover the requirements for housing. Within the scope of the BMS, there is no additional housing benefit in all states, which also does not normally cover complete rental charges. The provinces of Burgenland, Carinthia, Lower Austria and Upper Austria do not provide for additional allowances within the minimum security benefit for housing; in Burgenland it is not even possible to obtain housing benefit (as payment of individual support within the scope of the housing subsidy). In Vienna however, housing subsidy is index-linked, although the increase in rental costs was not taken into account²⁰³.

Additional benefits: only in Tyrol and Vorarlberg is there a legal claim to additional benefits, which is mainly limited to housing needs. For any further non-standard expenses, the requestors depend on the goodwill and adequate budgetary resources of the executive authorities²⁰⁴.

Groups of persons especially discriminated against are minors who are criminally liable ("mündig") (if living alone/being a single mother/father), precarious self-employed persons and legally established and resident third country nationals with an assured residency status but without a permanent residence permit²⁰⁵ - although the law differs considerably from state to state.

In the 1st report of the working group for need oriented minimum security benefit of the BMASK²⁰⁶ published in 2012, the following is stated: "need oriented minimum security

¹⁹⁶ Euro per year for an (equivalent-) person; for 2012

¹⁹⁷ ASB Schuldnerberatungen GmbH: „Referenzbudgets zur Stärkung sozialer Teilhabe“, http://www.schuldenberatung.at/downloads/fachpublikum/Referenzbudgets_2012_OESTERREICH.pdf

¹⁹⁸ Labour market data online - [http://iambweb.ams.or.at/ambweb/LB551 - Arbeitslosengeld-Gesamt DS Tagatz](http://iambweb.ams.or.at/ambweb/LB551-Arbeitslosengeld-Gesamt-DS-Tagatz), version of: 6.4.2013

¹⁹⁹ Labour market data online - [http://iambweb.ams.or.at/ambweb/LB551 Notstandshilfe-Gesamt DS Tagatz](http://iambweb.ams.or.at/ambweb/LB551-Notstandshilfe-Gesamt-DS-Tagatz), version of: 6.4.2013

²⁰⁰ Federal Ministry of Work, Social Affairs and Consumer Protection

http://www.bmask.gv.at/site/Soziales/Bedarfsorientierte_Mindestsicherung/Mindestsicherung_im_Ueberblick.

²⁰¹ Statistik Austria, EU-SILC 2011

http://www.statistik.at/web_de/statistiken/soziales/armut_und_soziale_eingliederung/022861.html - produced on 17.12.2012 value valorised for 2012 with and inflation rate of 2,4 %

²⁰² Statistik Austria -

https://www.statistik.at/web_de/statistiken/soziales/verbrauchsausgaben/konsumerhebung_2009_2010/055857.html version of: 6.4.2013

²⁰³

http://www.armutskonferenz.at/images/Mindestsicherung/bms_monitoring/zusammenfassung_bms_monitoring.pdf, p. 20 cont.

²⁰⁴

http://www.armutskonferenz.at/images/Mindestsicherung/bms_monitoring/zusammenfassung_bms_monitoring.pdf, p. 34

²⁰⁵

http://www.armutskonferenz.at/images/Mindestsicherung/bms_monitoring/zusammenfassung_bms_monitoring.pdf, p. 34

²⁰⁶

http://www.bmask.gv.at/cms/site/attachments/4/2/7/CH2090/CMS1314620142419/1._bericht_des_arbeitskreises_bms_web.pdf [27.4.2013]

benefit” is misleading: since there is no connection to the actual cost of living, it cannot be called “minimum security benefit”. Since claims to additional benefits within the scope of the BMS only exist in two states, there is also no “need orientation”. (see “Armutskonferenz”, monitoring study: “Need Oriented Minimum Security Benefit”).

Overall, it can be established that the demands of item 27 of the concluding observations were nowhere near fulfilled. In many cases, the situation of the recipients (e.g. housing assistance) even deteriorated.²⁰⁷

Asylum seekers are subject to the federal basic care provision laws after their asylum applications have been admitted for content review.²⁰⁸ This is another example of the federal government transferring competence and thus the obligation to human rights via §15a agreement to the federal states.

The system of basic care provision for asylum seekers in need allows for provisions of services in organised accommodations (inns, guesthouses, NGO homes) or in homestays. Since September 2012, the maximum per diem rates for organised room and board, which had not been adjusted for value for a long time, amount to € 19,- per person and day at the maximum.²⁰⁹

The gap to services for Austrians becomes especially apparent in regards to privately supported persons: Austrian citizens and equivalent persons who are in need because they are not capable to pay for their own subsistence are granted needs-oriented guaranteed minimum resources. An Austrian family with two children thus receives – depending on the federal law – approx. € 1,500,- of guaranteed minimum resources, an asylum-seeking family of four however receives basic care provision, which amounts to merely half as much, € 790,-.²¹⁰ Asylum seekers living on their own have to get by with approx. € 300,- basic provision per month, recipients of guaranteed minimum resources, however, get € 770,-.²¹¹

Thus, asylum seekers still do not receive adequate social support, which the committee had recommended already in the concluding observations of 2005, item 29.

Asylum seekers’ access to the labour market is still limited in practice, with few exceptions for seasonal work (agriculture, tourism),²¹² so there are hardly any possibilities to become proactive or independent, or to escape these poor basic underlying conditions.

Different implementation practices and complex legal matters result in socially active, counselling NGOs being essential for the persons eligible for benefits to assert their rights with regard to needs-oriented guaranteed minimum resources as well as basic care provision. The current counselling network is nowhere near adequate.²¹³

NGOs that feel obliged to seek humane conditions for their clients have to raise funds with ever-growing efforts to find additional resources through private donations in order to ensure appropriate standards.

6.3 People with Disabilities – Long-Term Care Benefit (Nr 27)

Social transfers and pensions serve to reduce the poverty risk of people with disabilities.

To cover the extra effort and expense attributable to care, a so-called „long-term care benefit“ is provided as fixed payment according to the extent of the care dependency. In practice, especially lower income brackets benefit from the long-term care benefit.²¹⁴

In the course of this, it is problematic that since its introduction in 1993, it has merely been minimally value adjusted four times and thus massively depreciated (between 20 and 60% depending on the long-term care benefit level). In addition, the assessment procedure to

²⁰⁷ Die Armutskonferenz: Monitoring bedarfsorientierte Mindestsicherung (Mai 2012); www.armutskonferenz.at/images/pk/zusammenfassung_bms-monitoring.pdf p. 20 ff.

²⁰⁸ http://www.asyl.at/fakten_2/betr_2012_06.htm

²⁰⁹ Art 9 Grundversorgungsvereinbarung LGBl Nr. 13/2004

²¹⁰ Art 9 Grundversorgungsvereinbarung LGBl Nr. 13/2004 Austrian citizens may receive further support, e.g. child benefit, housing benefit, heating subsidy or other benefits provided for in the respective federal laws.

²¹¹ Art 9 Grundversorgungsvereinbarung LGBl Nr. 13/2004

²¹² §7 Grundversorgungsgesetz – Bund BGBl 405/1991 idF 87/2012

²¹³ www.armutskonferenz.at/images/pk/zusammenfassung_bms-monitoring.pdf, p. 38f.

²¹⁴ Behindertenbericht der Bundesregierung 2008, p. 25

ascertain the care requirements does not conform to the criteria of the social model of disability as per the UN convention, since it is based on a purely medical examination method²¹⁵.

A legal title to non-pecuniary benefits, which are currently either not available regionwide or simply not affordable, is lacking. Services such as short-term care, personal assistance, day care, hourly care, surrogate care, benefits for informal caregivers, etc. are meant here. An expansion of non-pecuniary benefits would especially help the more than 42,000 caring children and adolescents²¹⁶, who are taking care of an adult care recipient at home, to grow up in a way more suitable for children.

People with disabilities are often forced – due to their disability – to retire early, but nevertheless have to expect the same deductions as non-disabled people, who retire early by their own choice.

Finally, invalidity pensions are located in the lowest section of contribution levels and there is a shorter receipt period.

People with intellectual disabilities, who work in facilities of so-called occupational therapy / workshops (currently about 20,000 persons), are not entitled to their own social insurance, except work accident insurance. Even in adulthood, they are co-insured with their parents, or medically insured through orphans' pension. Public pension insurance for this group of person is completely lacking. As a result, people with intellectual disabilities are completely dependent on benefits of social assistance.

6.4 Invalidity Pension (Nr 28)

Unequal Conditions for Entrance – Vocational Protection

The unequal conditions for entrance of people with and without vocational protection constitute a considerable problem. Those who have trained or at least done an apprenticeship for their job enjoy vocational protection. Those who have worked for at least 90 insurance months over the past 15 years in this job acquire vocational protection as well. People who have vocational protection only have to be unfit for work in this occupational group on their qualification level, or otherwise can only be referred to jobs in the same occupational group and on the same qualification level. People without vocational protection can be referred to any job offered on the labour market, so would also have to be unfit for lightest labour (e.g. concierge) in order to receive invalidity pension.²¹⁷

In addition, white-collar workers enjoy a sort of income protection: They can only be referred to jobs, the collective agreement level of which is one lower than in the job previously held.²¹⁸

Due to the different shares of people with vocational protection, different chances of success ensue for the different groups of employees. On the long-term average, the rate of pension award was approximately²¹⁹:

Blue-collar workers:	40%
White-collar workers:	50%
Civil servants:	70%
Men:	50%
Women:	40%

These figures demonstrate that people who especially suffer under the current labour conditions because of lacking education / training and are discriminated against the most, also have to break down the highest barriers regarding their entrance into invalidity pension.

²¹⁵ Information from Austrian National Council of disabled Persons

²¹⁶ http://www.bmask.gv.at/site/Startseite/News/Neue_Studie_ueber_pflegerische_Jugendliche_und_Kinder

²¹⁷ Brochure "Invaliditäts- bzw. Berufsunfähigkeitspension", Pensionsversicherungsanstalt 2013, http://www.pensionsversicherung.at/mediaDB/03%20-%20IV_BU_Pension.pdf

²¹⁸ Pensionen: Von Hacklern, Schwerarbeitern und Invaliden, Kleine Zeitung 18.2.2011,

<http://www.kleinezeitung.at/nachrichten/politik/2677584/pensionen-hacklern-schwerarbeitern-invaliden.story>

²¹⁹ http://www.bmask.gv.at/cms/site/attachments/4/5/5/CH2171/CMS1232705650368/14_invaliditaetspensionen_getrennt.pdf

Proceedings at the Federal Pension Fund

Proceedings around the application for invalidity pension are alarming in several aspects: Since the authority, the federal pension fund, decides itself at first instance, problems regarding the independence of decision makers for the purpose of fair proceedings occur. In addition, there is no procedural aid at this stage.

Further points of criticism regarding the transparency of the proceedings are the following:

- No independent advisory or informational opportunity.
- No publicly accessible guidelines on the course and the decision criteria in the pension proceedings.
- Primarily insurance data are scanned in the application form. There is almost no space for the essential item “diseases, ailments, infirmities” as well as rehabilitation measures. An indication of the option to add an extensive account of ailments in an addendum is lacking.
- There is no protocol or transcript of the medical examination for the pension applicants. They thus have neither an opportunity to review the transcript nor to a statement on flaws.
- Most of the times, only diseases that the pension applicants have demonstrably and explicitly pointed out are examined and included in the file, even though the law provides for an objective inquiry on the state of health. Statements not included cannot be proven in retrospect in case of a dispute.
- The decree drawn up by the federal pension fund contains actuarial issues in particular, but not the medical assessment and the recommendations of therapies. This non-information makes it difficult for pension applicants to fight for their rights (e.g. opposing opinion, lawsuit, etc.).
- Only on request for access to records can pension applicants gain insight into these assessments and defend their rights fully.
- There is de facto no right to be heard. In general, the examining physicians hardly give the pension applicants the opportunity to express their own view.
- A pension application is also considered a rehabilitation application. There are no legal remedies or a right to independent review of the medical reasonableness of this rehabilitation measure. In case of unexcused non-start of the therapy, the pension applicants’ receipt of unemployment benefit or the needs-oriented guaranteed minimum resources is discontinued. Because of the denial of a free choice of doctors, it is often a compulsory treatment from the viewpoints of the persons affected.

Legal Action Before the Labour Court

Suits can be filed against decrees of the federal pension fund before the labour court. There are no charges or procedural fees; however, because there is no obligation to be represented in court there is no procedural aid, either.

This can have disastrous consequences because procedural aid can only be applied for during the appeal proceedings before the federal court. But at the federal court alterations are prohibited! That means, what has not been demonstrably introduced up to the first hearing before the labour court cannot be complemented or changed in the later appeal proceedings.

Medical Opinions

- Expert witnesses are sworn in by the court under an obligation to “objectivity”. Legal rules on the conditions for expert witnesses and their selection are lacking. There are no concrete statutory provisions for the approach of expert witnesses and the generation of the opinion. Everything remains at the discretion of the expert witnesses.

- The inquiry after sick leaves to be expected is assessed independently of sick leaves taken in the past. However, the sick leaves to be expected are an important basis of the evaluation of the ability to work.
- The court and expert witness fees are paid by the public pension scheme. According to § 42 of the labour court law²²⁰, these expert witnesses may receive fees higher than envisaged by the fee claims law if the federal pension fund consents. Thus, the amount of remuneration is dependent on the complaisance of the federal pension fund, a case that does not allow for the independence of expert witnesses.
- The opinions are mainly made up of text blocks thrown together. The facts and assessment criteria that the medical assessments are based on are not named. Arguments that can in no way be deduced from the conducted examinations are alleged. Often a capability to work under certain strains is attested without a test having been conducted that involved the stressors mentioned. Facts documented in reports are often simply ignored.²²¹

The hearing

- By law, judges have to attend to their duty to instruct plaintiffs without competent representation (attorney). Often, the hearings are concluded at 20-minute intervals. In general, judges do not take their time to inform plaintiffs of their rights, which hurts the interests of the plaintiffs and does not comply with the requirements of a fair trial.²²²
- At the hearing, the plaintiff has, admittedly, the rights to file an application to produce evidence, to interview the expert and other witnesses, to request additional opinions, etc. Because the pension applicants often do not know about their rights, however, they cannot ordinarily exercise these rights. There is no independent advisory service. The official representation of employees (AK) only supports few proceedings, which appear promising to them.
- Statements and pleas by the pension applicants are often transcribed very poorly. The pension applicants mostly do not know that they have to bring flaws to notice immediately at the reading of the minutes. When they receive the minutes several weeks later as transcripts, they only have three days for objections!
- When a negative ruling is foreseeable for judges, they generally ask the pension applicants downright whether they are going to abandon their lawsuit. One incentive is that in this case, the waiting period for a new proceeding is shortened to 6 months, whereas in case of a negative ruling this waiting period is 12 months (18 months starting in 2014!). Thus, only very few pension applicants let the labour court ruling be reviewed in an appeal to the federal court, whereby this control function is virtually removed.
- If the pension fund assesses pension applicants' prospects to be proved right, it often offers settlements, according to which the pension applicants receive the pension, but no back pay for the time when they received the usually significantly lower pension advance.

In 2006, the proceedings before the labour court were handled the following way.²²³ Newer figures were not available to us:

Granting of the pension:	3%
Settlement with the federal pension fund:	24%
Abandonment of action by pension applicant:	57%
Suit dismissal by the court:	17%
Appeals to 100 dismissals:	18%

²²⁰ <http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR12011302> - 16.4.2013

²²¹ http://www.aktive-arbeitslose.at/download/aergernis_pensionsverfahren_2010.pdf - p. 17f.

²²² http://www.aktive-arbeitslose.at/download/aergernis_pensionsverfahren_2010.pdf - p. 24f.

²²³ Table 1.5. Proceedings at pension insurance carriers and social courts in: Sozialbericht 2007, Kapitel 14: Invaliditätspension, p. 198. source: http://www.bmask.gv.at/cms/site/attachments/4/5/5/CH2171/CMS1232705650368/14_invaliditaetspensionen_getrennt.pdf

So merely in 20 per cent of proceedings there is a ruling. In 80 per cent of the cases the pension applicants defer to the offered settlements or the abandonment of the action offered by the court itself. That means: The pension applicants estimate the litigation risk as so great that they do not dare insist on a ruling they could appeal: Only in 3% of the filed suits appeals are brought at the federal court.

Only 54% of invalidity pensioners received the invalidity pension at the first application. However, the chances of granting of the invalidity pension at the first application are unequally distributed:

For white-collar workers, the granting rate at first application is independently of sex 66%, for blue-collar workers this rate was 52% for men and only 43% for women. About 13% of white-collar workers received the pension only at the third application and about 2 % only at the fourth application; of the blue-collar workers, 19% of received invalidity pension only after the third application and 5% after the fourth.²²⁴

In many respects, the trial before the labour court does not meet the requirements of a fair trial. Pension applicants who are not represented by counsel, seldom possess the necessary knowledge to introduce all the relevant facts in order to be successful in the appeal proceedings. The prohibition of alterations makes it additionally difficult.

We have no statistical information on proceedings before the federal courts and the supreme court of justice.

Invalidity Pension and Poverty

The average amount of invalidity pension is below the poverty line: The average invalidity pension for men decreased after the pension reform of 2000 from € 1,048,- in 2001 to € 973,- in 2007. The average invalidity pension for women admittedly increased from € 610,- in 2001 to € 626,-²²⁵ in 2007, but it was still distinctly below the poverty risk threshold according to EU-SILC 2007 of € 912,-!²²⁶

Detailed statistics on the distribution of income in regards to the invalidity pension have not been published yet.

Through the equalisation supplement,²²⁷ a sort of minimum pension is guaranteed: In 2013, € 837.63 for individuals, € 1,255.93 for a (married) couple, actual amount: € 977.24 respectively € 1,465.25 since it is paid out 14 times a year.

However, these “minimum pensions” are below the poverty risk threshold according to EU-SILC 2013 of € 1,066,- (individual) and € 1,599 for a two-person household.

It is problematic that recipients of the equalisation supplement, similar to the guaranteed minimum income, are not allowed to make extra money. People who do not receive the equalisation supplement may make extra money, but on average about half of the extra income is deducted from the pension. The invalidity pension must thus be declared a poverty trap.

The above description of procedural flaws is based on an extensive documentation of experiences of affected persons compiled by the coordinator of a support group that is known to the team of authors.²²⁸

²²⁴ Sozialbericht 2007, Kapitel 14: Invaliditätspension, p. 184 and table 1.41. on page 197. source: http://www.bmask.gv.at/cms/site/attachments/4/5/5/CH2171/CMS1232705650368/14_invaliditaetspensionen_getrennt.pdf

²²⁵ Stefanits Hans, Mayer-Schulz Michaela: Fakten und Trend bei den Invaliditätspensionen. Bundesministerium für Arbeit, Soziales und Konsumentenschutz, Wien 2007. http://www.bmask.gv.at/cms/site/attachments/6/6/3/CH2311/CMS1218442571151/fakten_und_trends_bei_den_ip.pdf

²²⁶ http://www.bmask.gv.at/cms/site/attachments/5/8/4/CH2170/CMS1218527491861/silc_2007_homepage.pdf

²²⁷ The equalisation supplement should ensure a minimum income for all pension recipients who live in Austria. If the total income (gross pension plus other net income plus possible maintenance claims) is lower than a statutory minimum amount, the pension recipients receive an equalisation supplement to raise their total income. Cf.: <https://www.help.gv.at/Portal.Node/hlpd/public/content/27/Seite.270224.html>

²²⁸ http://www.aktive-arbeitslose.at/download/aergernis_pensionsverfahren_2010.pdf

Rehabilitation Obligation

The national and federal assemblies passed the most recent reform of invalidity pension in December 2012. Thereby, the access to vocational and health rehabilitation was to be improved. This means that people, whose capacity to work was limited for health reasons, now have to be available for medical examinations and rehabilitation measures²²⁹ that take place at “competence centres” that were established by the pension fund. In case of temporary “partial invalidity”, the affected person is entitled to rehabilitation benefits.

Rehabilitation measures and retraining are outsourced to companies / organisations, which are contractors of the public employment service and the pension fund and have to accomplish certain quantitative objectives. A certain number of persons “must” be reintegrated into the labour market. The economic pressure thus building is passed on to the affected unemployed or pension applicants.

Data Protection

Provider institutions²³⁰ of rehabilitation and training measures may pass on clients’ personal data, even sensitive medical data or data on migrant background, to the AMS and the federal pension fund.²³¹ Clients’ consent to the long-time retention and transfer of personal data is not sought. This contradicts Art. 8 ECHR²³², the human right to informational self-determination.

Vocational rehabilitation concerns retraining measures, during which the affected persons can receive “retraining benefits”. If the affected persons refuse to participate in the rehabilitation or retraining, the receipt of the AMS benefits, the retraining benefits, or the pension advance is halted.

This reform is contrary to human rights, because it does not allow for the right to free choice of doctors and undermines the right to free choice of employment. This reform, too, was developed and passed without involving the organisations of affected persons and thus violates crucial human rights principals.

6.5 Lacking Public Health Insurance (Nr 29)

About 1.5% of people living in Austria are not medically insured. That is approximately 100,000 persons who primarily live in the capital, Vienna.²³³

Among these are, for example, asylum seekers who have dropped out of the basic care provision system because they have received a negative decision on asylum but remain in Austria. Women or men who had been co-insured with their spouses do not have any public health insurance after the divorce. The same applies to persons who are looking for work in Austria but are not entitled to AMS benefits yet.

For people without public health insurance, there are only a few facilities in the federal capitals like, for example, the outpatient clinic “Amber Med” in Vienna that is run by the evangelic relief organisation Diakonie in cooperation with the Red Cross or the hospital of the brothers of mercy.

Public funds only provide basic financing for such facilities – in the case of “Amber Med” less than 50% in 2012, while the number of patients has nearly doubled from 2011 to 2012.²³⁴

²²⁹ SRÄG 2012 §8 - http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00641/fname_279341.pdf - 1.5.2013

²³⁰ For example: “Ibis ACAM”, “Fit2Work”, “ÖSB”, “Trendwerk”

²³¹ Art. 4 “Änderung des Arbeits- und Gesundheitsgesetzes” §7

http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00641/fname_279341.pdf - 1.5.2013

²³² http://www.aktive-arbeitslose.at/news/20120907_stellungnahme_invaliditaetspensionreform_2012.html

²³³ Claudia Hahl: “Gesundheit und soziale Ungleichheit”, in Hg. Nikolaus, Dimmel, Karin Heitzmann, Martin Schenk, Handbuch Armut in Österreich, Innsbruck 2009, p. 179

²³⁴ <http://www.ambermed.at> - Jahresbericht 2012

In the facility Amber Med alone 1,592 people were treated. Way more contacts with patients had to be handled, namely 4,053. 10 per cent of treated patients were minors.

The patients live in relative poverty, which slows down their recovery. They live in existential insecurity, and accordingly, the housing conditions and possibilities of a healthy, balanced diet are poor.

Only emergency treatments can be performed in the outpatient clinic Amber Med. Great problems arise when an in-patient stay becomes necessary or chronically ill persons need permanent medication or other resources as for example in the case of diabetes. With pregnancies, it is not possible to give birth in a hospital with expert obstetric assistance. If a woman nevertheless gives birth in Austria, a person needs in-patient stay or an operation, high costs arise. In case of setting up a business or taking up a regular employment relationship in Austria, the person concerned has to pay these costs retroactively. Particularly through the immigration of persons affected by poverty from the new EU member states, especially since the last round of accessions in 2007, these facilities are stretched to the limits of their capacities²³⁵.

6.6 Private Providers of Social Security Benefits (Nr 30)

In Austria, there are church-based relief organisations, charitable organisations that are close to the political parties, and NGOs derived from private initiatives. They all compete for the limited Austrian donation market and for lower running resources of the health and social budget in Austria. Whether these organisations can accomplish their goals to the benefit of marginalised population groups depends on their fundraising success and their skill in drafting project proposals. Bigger organisations can also apply for EU funding. Additionally, there are also charitable societies and CSR activities of corporations that use their selective charity activities to improve the image of their products. The particular project guidelines of the sponsors, which have often also been outsourced from the ministries (for example the *Fund Healthy Austria*) and with respect to which they have to negotiate their annual budgets, determine what money is allocated for. A similar situation applies to the providers that are contractors of the public employment service and offer trainings and rehabilitation measures. Civil society organisations also compete with these “businesses” and increasingly have to submit to business principles and goals. After the analysis of the authors, the work for human rights and the participation of persons concerned often come off badly as a result.

Matters are complicated further by the fact that there are no established communication channels between civil society and ministries. NGOs are still treated like supplicants and not cooperation partners and expert pools by the government. Analogously, affected persons are viewed as and treated like aid recipients, rather than rights holders.

There are no strategies and in most areas, as for instance homeless aid, (nursing) care or people without public health insurance, no systematic data collection or regular monitoring that would make a demand estimation and purposeful planning of suitable projects possible. In addition, organisations are confronted with the situation that appropriate value adjustments of services are not implemented, and they have to resort to other sources of funding like sponsoring, so they can provide their services on behalf of the public sector at all. Here, the state deflects its human rights obligation to private organisations. High-quality services are increasingly dependent on private donations and sponsoring funds due to the precarious financial situation.

²³⁵ See also paragraph 6.8.

6.7 Informal Labour Market (Nr 32)

According to a report by the ministry of finance, in 2010, illegally employed foreigners were discovered in a quarter of businesses²³⁶. The majority of the shadow economy takes place in the construction industry and trades. In particular, the fiscal police, together with the immigration authorities and social insurance, monitor large construction sites. The businesses are held accountable for illegal employment. Possible consequences are contribution back-payments and up to two years in prison. The employees lose their jobs. There are no protective measures for them.

If workers are discovered on the so-called “labour streets”, they are fined for merely standing in commonly known places²³⁷.

This especially concerns a growing group of predominantly job-seeking men from the new EU member states. They come to Austria in the search of work and a better life and repeatedly employed for shorter time periods. Companies recruit two thirds of the workers, but also private homebuilders get manpower off the “labour streets”. Often they are cheated of their payment, but do not have the option of taking action against it. They have neither medical nor pension insurance or claims to other services.

Asylum seekers can merely work within the limits of so-called “seasonal quotas” as harvest hands, seasonal labourers, or earn income from independent work, where they mostly end up in sex work.²³⁸ They then drop out of the “basic care provision system”. If they have gotten used to a somewhat higher income and perhaps reside privately, it is very difficult to re-enter the basic care provision after the loss of employment.

6.8 Social Security of Marginalised Non-Austrians (Nr 33)

Aside from those groups that are counted as entitled to social services in the government report, there is also the growing group of EU citizens from the new member states, who fall through the cracks in the social system.

They come to Austria in search of work and a better life. They stay the night on the streets and in establishments of homeless aid, because there is no other affordable accommodation for them. Often they struggle along for years with unlawful employments and repeatedly return to their home countries. In many cases, however, the long absences also result in the loss of the family and they have no possibilities to return to their former home countries. Many also cope with health and mental problems; alcoholism is common.

The annual report of the night shelter and counselling centre for the homeless “Second Crypt” run by the Caritas for EU citizens gives an insight into the only barely manageable care by social organisations of such EU citizens from the new member states of the accession rounds of 2004 and 2007 “stranded” in Austria.²³⁹

In the winter of 2011/12, the counselling centre also took over the evaluation, counselling, and assignment of homeless EU citizens to various winter emergency shelters or extra beds in other night shelters for the homeless of the city of Vienna.

Almost half of the clients originated from Bulgaria or Rumania. They only have the permission to work legally in Austria since 2014, and thus hardly find any employment and

²³⁶ http://diepresse.com/home/wirtschaft/economist/717547/Wien_Das-lange-Warten-auf-dem-Arbeiterstrich?from=suche.intern.portal; Die Presse, printed edition 18.12.2011

²³⁷ ibidem

²³⁸ http://www.wienerzeitung.at/themen_channel/wz_integration/gesellschaft/530079_Arbeitsmarkt-braucht-Asylwerber.html, 15.4.2013

²³⁹ Unpublished annual report of 2012 by the “Zweite Gruft – Notschlafstelle und Beratung, Sozial- und Rückkehrberatung“ for EU citizens, Bernardgasse 27, 1070 Vienna.

are dependent on aid²⁴⁰. 39% came from countries of the accession round of 2004. They are permitted to work in Austria since 2011. Many commute because the benefits system in Hungary and Slovakia is only poorly established. They work in Viennese households and hotels, but do not have any lodgings in Vienna and spend the weekends in their home countries. From Poland, mostly the elderly come, who have made ends meet for years with odd jobs as handymen and – women or in construction but are entitled neither to social security benefits nor to AMS benefits due to a lack of recorded and insured times. Many have health problems and struggle with alcoholism due to the strenuous labour.

Due to additional unfavourable external influences (e.g. severe winter, especially at the end of 2011 / beginning of 2012), welfare facilities with night shelters are overcrowded, and there are no provisions covering basic needs like overnight stays, food, and hygiene.

According to the above-mentioned report of the night shelter for the homeless “Second Crypt”, 84% of their clients entered Austria only in 2011 or 2012. Especially in case of such intensified “immigration peaks”, the resources do not cover a fulfilment of demand.²⁴¹

6.9 Demands

- All possible sanctions in AIVG (esp. §§ 8, 9, 10, 11, 39b, 49), in the “agreement between the federal government and the federal states according to Art 15a B-VG on a nationwide needs-oriented guaranteed minimum resource” (esp. Art 14, possibly Art 17) and the nine federal guaranteed minimum income laws and in the regulations of the invalidity pension (ASVG §§ 99, 143) are to be dropped without substitution.
- A nationwide standardisation of the needs-oriented guaranteed minimum resources should be implemented according to human rights standards. Measures should be taken to ensure the equalisation of Austrians and non-Austrians (asylum seekers).
- Until then: The improvement of the financial resources of the current network of socially active counselling NGOs should be guaranteed. The current supply is nowhere near sufficient.
- Effective recourse mechanisms should be made available for people whose application for guaranteed minimum income has been rejected.
- Adopt all measures to ensure transparency in the approval procedure for invalidity pensions (comprehensibility, expert witness appointment, information obligation).
- To establish representations of persons concerned at the federal pension funds and at the rehabilitation facilities with full rights to information.
- To develop regulations for people without public health insurance, who are in need of in-patient stays or suffer from chronic illness.
- In the area of social work and in the area of care, strategies have to be developed and requirement plans should be implemented, taking into account the professional organisations and representations of concerned persons respectively their relatives.
- Nationwide consistent quality standards as well as legally covered claims to non-pecuniary benefits in care and support should be established.
- Independent social insurance should be introduced for people with intellectual disabilities in occupational therapy / workshops.
- To adopt all measures to ensure that anticipatory identification of facilities that can provide emergency beds for non-entitled EU citizens in winter, along with a corresponding human resource planning.
- To ensure the cooperation with the governments of these countries, so more people are enabled to return to their home countries as well as their placement in welfare facilities, provided that according minimum standards for a humane existence can be guaranteed.

²⁴⁰ ibidem

²⁴¹ There were 1,806 consultation contacts from July 2011 to June 2012. On average, there were 150 consultations per month. In comparison to the first half year of 2011 (83 consultations per month), that is almost double. On that point: Annual report 2012 by “Zweite Gruft – Notschlafstelle und Beratung, Sozial- und Rückkehrberatung“ for EU citizens, Bernardgasse 27, 1070 Vienna, p. 12

- To ensure care facilities for people who are not placeable on the labour market due to health problems but do not have any prospects in their home countries.



7 Article 10 Protection of the family, maternity protection, child and youth protection

7.1 Marriage by mutual agreement (Nr 34)

In Austria there is no reliable statistical data on forced marriage. But in the year 2012 alone, 89 girls and young women (of which 58 were endangered and 31 affected) contacted the association Orient Express²⁴². For more than 10 years the staff of the association Orient Express has offered counselling, intensive support and accompaniment for girls and young women endangered or affected by forced marriage. In the past years a structural obstacle in the support of these girls and women was, among others, the absence of a specialized and secure accommodation. Until now the affected girls and young women were put in crisis centres and women's shelters. But as this target group requires intensive support and especially protection (in a secret place) these institutions turned out to be unsuitable. Hence Orient Express has time and again urged the creation of an emergency accommodation especially for women affected/endangered by forced marriage. With the joint financing by the Ministry of Internal Affairs and the Federal Chancellery and the Ministry for Women's Affairs and Public Service, it became possible in 2013 to implement this plan. Currently rooms are being adapted and the opening is planned for July 2013. As a pilot project the accommodation shall provide a secure accommodation for up to ten young women for the time being²⁴³.

7.2 Social measures and child care (Nr 35 a)

In regard to paragraphs 13 and 26 of the Concluding Observations²⁴⁴ passages may be cited and references made to the remarks in the NGO Parallel Report 2012 to the CEDAW-Committee²⁴⁵:

It is noted, that, compared to other EU-countries, in Austria an above-average amount of money is spent on family benefits. The vast part of this is used on monetary benefits, whereas in comparison little means are available for non-monetary benefits. The employment quota of women, but also the gender pay gap are over-proportionally high (see also Article 3). Austria is a long way away from the target of fair distribution between men and women of paid and unpaid work – especially of the care work. A constant large part of unpaid care work is carried out by women.²⁴⁶

The family measures within the tax reform 2009 intensified the imbalance between monetary benefits and non-monetary benefits. Altogether the family package, agreed within the realms of the tax reform 2009, amounts to 510 million Euros per year. In comparison the additional expenses of the Federal Government for the development of child care facilities at 15 million Euros per year are small. Although there were significant improvements in child care in past years, an additional 35.000 care places for toddlers are necessary in Austria to reach the

²⁴² <http://www.orientexpress-wien.com/de/kontakt/>

²⁴³ http://www.orientexpress-wien.com/de/wir_fuer_frauen/notwohnung/

²⁴⁴ E/C.12/AUT/CO/3

²⁴⁵ http://www.frauenrechte-jetzt.at/images//cedaw_schattenbericht_2012_final_lang.pdf, p.36f

²⁴⁶ According to Statistic Austria) in the year 2011 the working quota of men was 91,4%, of women 88,5%.

However, the increase of labour participation of women must primarily be ascribed to the strong increase of part-time work. Mainly women with children under 15 years of age particularly often see their only possibility to do paid work alongside with care work in a part-time job. With increasing age of the children the number of full-time working women increases. However, the limitation for employment coincides with a lower position in the labour market and in the social security. Although the tendency is rising, there are still very few fathers with an existing employment which receive paternal leave benefits or child care benefits according to the data of the Main Association of Austrian Social Security Institutions (2002: 1.290; 2011: 3.345). When fathers make the decision for child care, discrimination and significant hurdles by employers are reported regularly. For instance:

<http://derstandard.at/1326249160688/Karrierechance-ade-Vaeter-in-Karenz-werden-haeufig-gemobbt> - 13.1.2012

EU-wide Barcelona targets (33% of all children under 3 years of age in child care facilities). Furthermore improved opening hours for at least 70.000 places for children between three and six years of age are required (afternoon care, holidays).

Since 1.9.2009 the Federal States are obliged to provide free half-day care of 20 hours a week within institutional child care facilities for the year before entering school, starting with the kindergarten year 2009/2010. The costs for the non-payable parents-contribution are covered by the Federal Government with a subvention of 70 million Euros per year. This mandatory cost-free "pre-school year" is an important step towards the advancement and equal opportunities for all children, independent of their socio-economic background.

Generally, a sufficient number of high-quality child care places would be an important prerequisite for the reconciliation of work and children for both parents and would contribute substantially to equal opportunities of children, independent of their social background. In order to accelerate the expansion, the Federal Government provided 15 million Euros per year between 2010 and 2012 for the expansion. These funds had to be co-financed by the Federal States at a ratio of 4:3 (Federal State : Federal Government). As data shows, the subsidy of the Federal Government was extremely effective. This investment would not only be of advantage to the children, but would also have significant effects on employment: with this, more than 10.000 jobs are created within the child-care industry itself. Additionally more than 27.000 parents – especially mothers - would be able to participate in gainful employment, which are hindered otherwise through care responsibilities²⁴⁷.

Persons with disabilities often find it hard to exercise their right to marry and to a family life; in comparison to non-disabled persons they live on their own more often. According to the Disability Report 2008 of the Federal Government, 31% of all people with disabilities live in single-person households. 19% of men and 23% of women of all people with disabilities at a working age (16 to 64 years) live on their own; with the over-65-year-old men the percentage is 21% and significantly higher with elder women (52%).²⁴⁸ Especially women with disabilities and learning difficulties are often not seen as fully adequate and equal women within the society and hence are unable to engage in partnerships, start a family and experience motherhood. There is no recent data available at the moment.

In Austria basic social framework conditions for enabling parents with disabilities to a life with their child are barely existent.²⁴⁹ There is hardly any support to accompany persons with learning disabilities during pregnancy or parenthood. Help is often only requested in an acute crisis, which, in most cases turns out to be insufficient. The persons in charge are overwhelmed with these requests due to lack of knowledge. In these cases help can then also have a competence-hindering effect. Fathers are often excluded from the support network and families are separated, since only mothers with their children can be accommodated within an institution offering assistance in living. In crisis situations mother-child-institutions often see themselves as the wrong contact point or as not competent when women with disabilities ask them for support.²⁵⁰ Future-oriented projects for increased-needs oriented counselling of mothers partially fail due to prevailing traditional attitudes towards the capabilities and possibilities of women with disabilities.²⁵¹

²⁴⁷ http://www.frauenrechte-jetzt.at/images/cedaw_schattenbericht_2012_final_lang.pdf, p.37

²⁴⁸ Disability Report of the Federal Government 2008, p.22

²⁴⁹ See Kassoume, Unterstützungsangebote bei Schwangerschaft und Elternschaft von Menschen mit Lernschwierigkeiten in Wien, Diplomarbeit, (*Support Facilities for pregnancy and parenthood of people with learning difficulties in Vienna, thesis*) 2006, <http://bidok.uibk.ac.at/library/kassoume-schwangerschaft.html#ftn.id2781150>

²⁵⁰ See Ferrares, Behinderte Frauen und Mutterschaft. Eine Bestandsaufnahme (*Disabled women and motherhood, A record*), in: Behinderte in Familie, Schule und Gesellschaft. No. 1/2001; [bidok http://bidok.uibk.ac.at/library/beh1-01-ferrares-mutterschaft.html](http://bidok.uibk.ac.at/library/beh1-01-ferrares-mutterschaft.html)

²⁵¹ Compare the example of a project by "Pro Mente" Upper-Austria, which, due to massive demand, was planning on a concept for needs-oriented support of psychologically ill mothers with their children, but eventually was not approved by the Federal Government.

People with learning difficulties or psychological disabilities are in most cases deprived of the possibility to bring up their child themselves as a result of a court decision. So long one parent is not fully legally competent he/she is, according to legal provisions, not allowed to represent the child or to take care of the asset management. If the parents cannot execute their custody, it is transferred to youth welfare. Youth welfare will primarily look within the closer family for care possibilities. There is no statistical data on this. Affected people state, that children get taken away from them already at the hospital or mother-child-home, sometimes without previous warning.²⁵²

In practice it is noticeable, that in many cases the removal of children on the grounds of child welfare is the preferred way instead of enabling a life as a family through appropriate counselling and support, although studies prove, that the mothers are usually able to take care of their children with the appropriate support.²⁵³

7.3 Domestic care of people with disabilities or elderly people (Nr 35 b)

Mobile care services for elderly and persons in need of care were extended in the last few years. Due to the demographic development and the low attractiveness of care professions, there is still a crass disproportion of demand for care and care personnel.

Currently 7.000 void places in care and nursing professions cannot be filled²⁵⁴. The existing care personnel have to work over-hours, fill in for sick-leave and postpone vacations. Although expenses for care increase every year, the quality is not ensured. Due to work overload of nursing personnel, no activating care can take place which would foster the existing capabilities of the patients. *Sozialwirtschaft Österreich*, an association of 300 organisations in the care and social area even talks about 17.000 new positions that need to be established in order to cover the future needs in care²⁵⁵.

The 24-hour-care can only be covered by care workers from the neighbouring foreign countries, which work as self-employed workers under unacceptable conditions from a labour-law perspective.

There is a lack of innovative concepts which would make it possible to include the resources from the social network of persons in need of care and a lack of new forms of supported living close to their home-town.

There is an urgent need for a reform of nursing-education. With an entrance age of 17 years it is not possible for young people to make a decision after 8 years of school for an education in the nursing sector. Through this many choose different vocational schools. Another big problem is the lack of nation-wide standards for quality assurance. The payments for care are quite different in the different Federal States. In Styria for instance, it is still possible to access the financial funds of relatives for the care²⁵⁶.

There are also vast differences in the care of people with disabilities. While in Vienna up to 500 hours of personal assistance per moth are paid through public financing, in Tyrol it is only up to 250 hours.

²⁵² Hahn, Sexuelle Erfahrungen von Frauen mit geistiger Behinderung unter besonderer Berücksichtigung einer Einzelfalldarstellung, Diplomarbeit, (*Sexual experiences of women with mental disabilities with special consideration of a single case, thesis*) 2002, <http://bidok.uibk.ac.at/library/hahn-sexualitaet.html>

²⁵³ Hahn, Sexuelle Erfahrungen von Frauen mit geistiger Behinderung (*Sexual experiences of women with mental disabilities*), FN 252

²⁵⁴ Die Presse: Printed edition, 3.4.2012, "Notstande bei der Pflege: 7.000 Mitarbeiterinnen fehlen bereits" (*„Emergency in care: 7.000 workers lacking already“*)

²⁵⁵ <http://oe1.orf.at/artikel/323213> - 11.5.2013

²⁵⁶ Die Presse: Printed edition 29.3.2013, "Unterschiedliche Pflegekosten extrem ungerecht" (*„Different costs for care extremely unjust“*)

With younger disabled persons, this leads to the fact that it is too expensive to live at home in Carinthia or Tyrol. Since there are no other appropriate institutions for them, they must transfer to old-people's homes, where they sometimes have to live together with demented persons, which are sometimes up to 50 years older than them²⁵⁷. Experts estimate, that in Austria there are up to 1.000 "misplaced persons", thus young persons with disabilities that have to live in old-people's homes. They don't have access to suitable therapies. Geriatric care takers are neither pedagogically nor therapeutically trained. Since the number of young persons with disabilities rises due to medical progress, there is an urgent need for action.

7.4 Economic and social rights of asylum-seeking women and men (Nr 39 a)

Family benefit

Since the amendment of the Law on Family Benefits (*Familienlastenausgleichsgesetz*)²⁵⁸, the retroactive entitlement to the family benefit was eliminated for persons that were granted the right to permanent residency (granting of asylum). The interim provisions of the amendment of the Law on Family Benefits, whereby asylum seeking persons whose asylum proceedings were already pending before 2006, would have the right to the family benefit after a period of five years of residency or after more than three months of continuous employment, caused vast insecurity concerning existing rights, even with the administrative authorities.

The receipt of the family benefit is counted as income within the realms of the basic-benefit for asylum-seeking persons and hence is therefore reduced.

From the moment of granting the asylum-status, refugees have the right to the family benefit. Within the first four months after granting asylum, they still receive the basic-benefit. If persons with asylum-status stay at an organized accommodation, the family benefit is retained as a fee to cover costs. Only those people which are granted protection and live individually are entitled to needs-based minimum benefit from the time they are granted the status. This right is derived from the EU-status directive. Those in organized accommodations still only receive the much lower basic-benefit (either as full board or meal allowance of € 5,- per day, whereby in Tyrol only € 80,- (which is the allowance of individually living persons) is paid out for minors.

Unaccompanied minor refugees

The Youth Welfare Law is unrestrictedly applicable to unaccompanied minor refugees (UMF). Nevertheless, in practice there is a significant discrimination. Minor asylum seeking persons are accommodated in youth-welfare homes only in exceptional cases. In these cases the well-being of the child is subordinated to financial considerations. Instead UMF are accommodated within the realms of the Basic-benefit Agreement (*Grundversorgungsvereinbarung*) and considered as a target-group in need of protection. Accommodations with a different care-taker ratio are intended. Also, for UMF language courses (up to 200 teaching units) and secondary-school graduation courses are paid within the realms of the basic-benefit. A problem is that currently only a small percentage of the affected persons can actually be accommodated in appropriate institutions: For about 1.500 UMF there are only 500 specific accommodation places available. Austria-wide there is only one institution that provides about 20 places for youths with intensive care needs. Due to the lack of places, many UMF have to stay in the preliminary reception centre. Others are placed individually within the realms of the basic-benefit – and hence without pedagogical support.²⁵⁹

²⁵⁷ Ö1, Journal Panorama by Georgia Schultze, 5.12.2011

²⁵⁸ BGBl No.142/2004 dated 15.12.2004

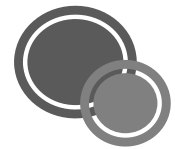
²⁵⁹ <http://oe1.orf.at/programm/313310>

Apart from this, another problem is that for the majority of UMF the question of custody is not clear. Often the youth welfare department refuses to initiate the necessary steps for the custody proceedings, although this would be a legal obligation. There is a vast variety of different practices concerning the clearing of custody, depending on the region. Whereas in Upper-Austria in almost all cases the custody is transferred to youth welfare, in Federal States such as Vienna, Salzburg and Styria the clearing is hardly ever carried out. If custody is transferred to youth welfare, the obligations involved are usually not fulfilled or only to an insufficient extent.²⁶⁰

7.5 Demands

- To ensure permanent financial assurance and extension of existing services and resources for girls and young women that are affected or endangered by forced marriage (counselling offices, emergency homes, prevention and sensitization work, etc.).
- To create a specialized women's advice centre
- To establish an advice centre for affected or endangered males
- To adopt all possible measures in order to facilitate the cooperation of governmental and non-governmental actors at a national and international level
- To dedicate the maximum of available resources and adopt other measures needed for the further expansion of high-quality child care facilities, especially for under-three-year-olds, and to ensure the compliance of the obligation of the Federal States for co-financing
- To improve the data situation on parents with learning difficulties and other disabilities and develop appropriate support provisions, so that families of parents with learning difficulties can be maintained.
- To carry out a survey on the development of care needs of elderly and dement people and adopt all necessary measures to ensure adequate personnel development
- To carry out a survey on the number of "misplaced" people with disabilities in old people's homes
- To reform of the education and payment-schemes of nurses in cooperation with their representatives
- To advance in innovative projects concerning accompanied living
- To regulate nation-wide and in an uniform manner for the receipt of the family benefit for asylum-seeking persons additional to the basic-benefit
- To dedicate all available resources for the expansion of suitable accommodations for UMF with the appropriate pedagogical support.

²⁶⁰ Compare for instance: Report of the Human Rights Commission in the Ministry of Internal Affairs on children and youths in immigration proceedings, 2011, p.28f



8 Article 11 Right to an adequate standard of living

8.1 Poverty line (Nr 42)

In Austria poverty is measured by the EU-indicators of the EU SILC survey. All persons whose household income lies below the EU-determined threshold (60% of the median income), are identified to be at risk of poverty or as income poor²⁶¹.

The figure for this threshold was approximately 12.792 Euros per year or approximately 1.066 Euros per month (on the basis of a single-person-household) in the year 2011. For each child in the household another standardized 320 Euros and for each adult 533 Euros is added.²⁶² In comparison to this, the needs-based minimum benefit for a single-person household lies at € 773 Euros. Regarding poverty line and reference budgets see also Art. 9.

According to the EU-SILC survey, in the year 2011 1,4 million people (that is 17% of the Austrian population) are at risk of poverty and social exclusion²⁶³, 1,05 million i.e.12,6% of the population in Austria lived at risk of poverty²⁶⁴.

8.2 Combating poverty (Nr 43)

a) As a member state of the EU, Austria is obliged to participate in the EU 2020 strategy. The goal of this strategy is to reduce the number of people affected by poverty by 20 million by the year 2020. (Starting point is 2008: 120 million people in the EU being at risk of poverty).

With the permanent monitoring of poverty and living conditions, Statistic Austria fulfils this statutory order: Since the year 2004 a joint regulation by the European Council and the European Parliament obliges all member states to carry out a survey concerning income and living conditions (EU-SILC). In Austria every year about 6000 households are included. In the representation of poverty and risk of poverty, common definitions are applied that make an international comparison possible.

Nevertheless, there are Austrian indicators defined by Statistic Austria, which differ slightly from the common indicators. Time and again different results have caused confusion – most recently in March 2012 when the newest statistics on poverty were published²⁶⁵.

The Austrian indicator for financial deprivation means, that someone cannot afford 2 out of 7 necessary regular expenses. Materially deprived, according to the EU-SILC indicator means that someone cannot afford 4 out of 9 necessary regular expenses²⁶⁶. In Austria the financing of a car, the yearly holiday trip or a mobile phone or land-line telephone are not part of the expenses considered to be necessary. On the other hand doctors or dentists visits are not part of the survey criteria.

²⁶¹ Till-Tenschert, Ursula: „Armut in Österreich- statistisch betrachtet“ („*Poverty in Austria – in statistical terms*“), Statistic Austria, Vienna 2012, p. 3

²⁶² Ibidem

http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236 - 13.6.2013

²⁶³ Definition risk of poverty and social exclusion: income above the at-risk-of poverty threshold, but this population group is considerably materially deprived or lives in households with no or very low employment (compare BMASK (Hg): Armut- und Ausgrenzungsgefährdung in Österreich – *Risk of poverty and exclusion in Austria*. Results from EU-SILC 2011, p.13)

²⁶⁴ Die Furche, 15.3.2013, p 22, see also

http://www.statistik.at/web_en/statistics/social_statistics/poverty_and_social_inclusion/index.html, 10.8.2013

²⁶⁵ ibidem

National indicator of financial deprivation (2 out of 7 not affordable)	EU SILC indicator material deprivation (4 out of 9 not affordable)
To pay expenses (e.g. rent) in due time within the last 12 months	Arrears of payment of rent, operating costs, loans
To finance unexpected expenses	Unexpected expenses not affordable
To keep the home reasonably warm	Not affordable to keep the home appropriately warm
To eat meat, fish (or vegetarian meals) every second day	Not affordable to regularly eat meat, fish or comparable vegetarian meals
To be able to attend necessary doctor's or dentist's appointments	Not able to afford a washing machine
To invite friends or relatives once a month for dinner	Not able to afford a colour TV
To buy new clothes	Not able to afford a land-line telephone or a mobile phone
	Not able to afford a holiday trip once a year
	Not able to afford a car

For combating poverty in the next few years, the national indicator for the solidified financial deprivation (2 out of 7 continuously over two years) is especially interesting, because this indicator has more than doubled since the year 2004 from 5,1% to 10,6% in the year 2010.²⁶⁷

The proportion of manifest poor, hence of those people whose income lies below the poverty line and that are financially deprived continuously over 2 years (they cannot afford 2 out of 7 necessary regular expenses) was at 6,2% in 2010, that is 511.000 people²⁶⁸. That means that, in comparison to 2004, in 2010 the visible poverty status among the people with a low income below the risk-at-poverty line solidified significantly more often.

The term manifest poverty is often confused with severe material deprivation based on the EU-indicator. This indicator was only introduced in 2010 along with the Strategy 2020, while the national indicator for financial deprivation has been used since 2008.

All EU-indicators together, namely risk of poverty, material deprivation and the (nearly) unemployed households²⁶⁹, describe the group of at-risk-of-exclusion which is the target group for the EU 2020 measures.

In the EU SILC survey 2011 these indicators showed a positive development with regard to the reference year 2008, when all figures shot up as a result of the financial crises. Severe deprivation (4 out of 9 regular expenses are not affordable), was at 3,9% in 2011 and therefore only marginally above the level retrospectively calculated by the statistic for the year 2004 at 3,8%²⁷⁰.

²⁶⁷ Till-Tenschert, Ursula: „Armut in Österreich- statistisch betrachtet“ (*Poverty in Austria – in statistical terms*), Statistic Austria, Vienna 2012, p.10

http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236 - 13.6.2013

²⁶⁸ ibidem, p.11

²⁶⁹ 0- to 59-year olds, whose 18- to 59-year old household members are not (or at the most 20%) employed. Proportions are in relation to this age group. 497.000 affected persons in 2010 are 6 % of the entire population.

²⁷⁰ Till-Tenschert, Ursula: „Armut in Österreich- statistisch betrachtet“ (*Poverty in Austria – in statistical terms*), Statistic Austria, Vienna 2012, p.8

However, in 2011, compared to 2004, the group of persons that were affected by at least two of the three problem areas – such as risk of poverty, severe material deprivation and a household with a low or non-existent employment level – rose by 106.000 to 388.000 persons. The proportion of these persons rose from 19% to 28%²⁷¹.

The national indicators for solidified financial deprivation and for manifest poverty show, that poverty in Austria has continuously increased since 2004. The statement “poverty in Austria is increasing” can, for the first time since 2010, also be proved statistically. The proportion of people that have a low income and cannot afford basic things any more, increased.

According to EU SILC 2011 there was alleviation regarding these two indicators. The number of manifest poor decreased to 5,2% and the proportion of solidified financially deprived decreased to 9,7%²⁷². It is unsure whether this trend will continue in the next few years.

However, since 2008 the poverty gap, thus the difference between the income of the risk-of-poverty households or the affected households and the poverty line continuously increased. According to EU SILC 2011, in 2010 it was at 0,86% of the gross domestic product or 2,6 billion Euros. In the reference year 2008 it was still at 0,6%²⁷³.

The length of time in deprivation is increasing. This polarizing tendency in Austria is also verified by other results. While unemployment in general decreased, the long term unemployment rate rises. In addition to that the number of social welfare beneficiaries increased as well.²⁷⁴

b) Distribution of poverty and wealth in Austria:

There is a massive inequality of wealth distribution.²⁷⁵ About 7% of all households have a negative net-asset, hence their assets do not cover their debts (over-indebtedness). The lowest 10% of households hold net-assets under € 1.000,-. About 50% of the private households own less than 5% of the total assets. The top 5% of private households hold almost half of the total assets. “The richest tenth of households holds 233,7 times as much gross-assets of the poorest 10%. Considering the net-assets, this figure even lies at 581,1 fold!”²⁷⁶. Since these figures are a result of random household queries, it must be assumed, that especially in the area of large assets, they are not really representative – the concentration of assets with the top one percent is probably significantly higher²⁷⁷.

The inequality of income distribution in Austria has significantly increased. The wage share decreased from 73% to 66% within the time period 2000 to 2008²⁷⁸. Due to the crisis it has

²⁷¹ http://www.statistik.at/web_de/statistiken/soziales/armut_und_soziale_eingliederung/index.html - 14.6.2013

²⁷² Armuts- und Ausgrenzungsgefährdung in Österreich (*Risk of poverty and exclusion in Austria*), Results from EU SILC 2011, Study of the BMASK, March 2013

²⁷³ Armuts- und Ausgrenzungsgefährdung in Österreich (*Risk of poverty and exclusion in Austria*), Results from EU SILC 2011, Study of the BMASK, March 2013

²⁷⁴ Till-Tenschert, Ursula, „Armut in Österreich- statistisch betrachtet“ (*Poverty in Austria – in statistical terms*), Statistic Austria, Vienna 2012

http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236 - 13.6.2013

²⁷⁵ National Bank Austria – Focus: Household Finance and Consumption Survey of the Euro System 2010 / First results for Austria – Monetary policy and economy Q3/12

http://www.oenb.at/de/img/gewi_2012_q3_schwerpunkt_tcm14-250394.pdf

²⁷⁶ Markus Kocza – Dummverteilen, Social survey 2011 – 2012 (part 3): Vermögens(ungleich)verteilung in Österreich (*Mis-distribution of assets in Austria*),

<http://diealternative.org/verteilungsgerechtigkeit/2012/11/sozialbericht-2011-%E2%80%93-2012-teil-3-vermogensungleichverteilung-in-osterreich/>

²⁷⁷ Die vergessenen Superreichen (*The forgotten super-rich*) by Wilfried Altzinger

<http://derstandard.at/1348285076842/Die-vergessenen-Superreichen>

²⁷⁸ Chamber of Labour Vienna: Verteilungspolitik (*Distribution policy*) –

http://www.arbeiterkammer.at/bilder/d174/Verteilungspolitik_Band1_Mai12.pdf

been characterized since then by strong fluctuations²⁷⁹, but the trend seems to continue (also on an international level). Furthermore the distribution of income among the employed themselves seems to be characterized by an increasing inequality. Persons whose earnings lie in the lowest income-tenth had to put up with heavy losses of income, median-income earners only had to put up with a smaller loss of real wages.

Working people are generally confronted with a massive loss of purchasing power. Only income recipients who are in the top income-tenth could achieve an increase in real wages²⁸⁰. The increase in numbers of precarious employment, of subcontracted labour and of part-time employment that does not generate a wage sufficient for a living as well as the increasing percentage of persons recurringly obtaining social welfare benefit (now needs-based minimum benefit)²⁸¹, lead to a growing social „zone of vulnerability” and a manifesting “zone of decoupling”²⁸² – from the employment sector as well as from social and cultural participation. As a result, the binding and integration power of employment decreased and this lead to an increase of social disintegration processes²⁸³. Policy makers reacted to this with increased repression.²⁸⁴

The State Report 2010, announcing the reform of the social benefit system, stated: „As a further development of the existing social welfare systems in the Federal States and as an additional important pillar in the social protection system as well as an important plan for combating poverty, the introduction of a needs-based minimum benefit (Bedarfsorientierte Mindestsicherung - BMS) is planned”²⁸⁵.

In the first report of the working group “Bedarfsorientierte Mindestsicherung” (needs-based minimum benefit) of the Ministry of Labour and Social Affairs, published at the end of 2012²⁸⁶ the following is noted: “The term “Bedarfsorientierte Mindestsicherung” (needs-based minimum benefit) is misleading - since there is no relation to the actual costs of living, one cannot talk about “minimum benefit”. Since in only two Federal States there is a right to additional payments within the realms of the needs-based minimum benefit there it is also not “needs-based”²⁸⁷.

The needs-based minimum benefit does not enable the recipients to an appropriate standard of living. The same is true for “tolerated persons” and asylum seekers whose monthly entitlement to benefits is again a lot lower²⁸⁸ (also see remarks concerning Article 9).

²⁷⁹ Statistic Austria: https://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/index.html

²⁸⁰ Income Report of the Audit Court 2012 –

http://www.rechnungshof.gv.at/fileadmin/downloads/2012/berichte/einkommensbericht/Einkommensbericht_2012.pdf

²⁸¹ Incomes potential in social welfare in Vienna

[http://www.lrsocialresearch.at/files/Erwerbspotenzial_SH__\(Publikation\).pdf](http://www.lrsocialresearch.at/files/Erwerbspotenzial_SH__(Publikation).pdf)

²⁸² Manfred Krenn – Precarization and social welfare – the diversification of poor and their precarious re-integration in: Stelzer-Orthofer, Christine, Weidenholzer, Josef (Hg.): Aktivierung und Mindestsicherung (*Activation and needs-based minimum benefit*) Nationale und europäische Strategien gegen Armut und Arbeitslosigkeit (*National and European strategies against poverty and unemployment*). Vienna 2011

²⁸³ Robert Castel, Die Metamorphosen der sozialen Frage (*The metamorphosis of the social question*). Eine Chronik der Lohnarbeit (*A chronicle of wage labour*). Konstanz 2000

²⁸⁴ Kulturrat Österreich, Selbstständig, Unselbstständig, Erwerbslos. Infobroschüre für KünstlerInnen und andere prekär Tätige (*Self-employed, employed, unemployed. Info brochure for artists and other precariously working persons*), 3rd Edition, February 2012, http://kulturrat.at/agenda/ams/infoAMS/infobroschuereAMS_kulturrat.pdf

²⁸⁵ 5. Bericht der Republik Österreich gemäß Art. 16 und 17 des Internationalen Paktes über wirtschaftliche, soziale und kulturelle Rechte (CESCR)

²⁸⁶ <http://www.bmask.gv.at/cms/site/attachments/4/2/7/CH2090/CMS1314620142419>

/1_bericht_des_arbeitskreises_bms_web.pdf Stand 27.4.2013

²⁸⁷ ibidem

²⁸⁸ Michael Frahm - Zugang zu adäquater Grundversorgung für Asylsuchende aus menschenrechtlicher

Perspektive (*Access to an adequate basic benefit for asylum seeking persons from a human rights perspective*)

http://bim.lbg.ac.at/files/sites/bim/4_Zugang%20zu%20ad%C3%A4quater%20Grundversorgung_Michael_Frahm_Schriftenreihe_Refugeecamp_BIM_0.pdf and

Hannes Tretter – Grundversorgung für AsylwerberInnen in Österreich muss deutlich angehoben werden (*The basic benefit for asylum seeking persons in Austria must be significantly increased*) –

<http://bim.lbg.ac.at/de/aktuelles/grundversorgung-fuer-asylwerberinnen-oesterreich-muss-deutlich-angehoben-werden>

For the topics: how women, migrants, asylum seeking persons and persons with disabilities are affected by poverty or have a risk of poverty, also see analysis on Article 9. So far children are not entitled to an individual needs-based minimum benefit. A basic right to an individual needs-based minimum benefit for children has been requested by the Platform for Sole Parents for a long time now.²⁸⁹

8.3 The right to adequate food and nutrition (Nr 44-47)

A national nutrition commission (NEK) for the implementation of the National Nutrition Action Plan was established in 2010²⁹⁰. The NAP.e is continuously updated every year and, “as the prime goal, aims at minimizing bad nutrition, over-eating and malnutrition as well as at turning around the trend of increasing overweight and obesity figures until 2020”. Compared to the nutrition policy of past years, it can be considered to be an overall positive development, that the Federal Government for the first time puts nutritional health and disease problems into the focus of a measures plan through a wide consultation process. For the time being institutions of the governmental administration (schools, nursing homes, hospitals and the like) are in their focus. Apart from these institutions the NAP.e is extended continuously to new target groups (youths, pregnant and breastfeeding women). According to the goals, these measures are targeted mainly at health promotion and disease-preventive nutrition. Apart from the continuous implementation of measures, monitoring and evaluation, the action plan also aims at networking of relevant institutions and the cooperation with various social areas (agriculture, industry, etc.). Insofar the NAP.e must be seen as a real progress within its own goals.

Many passages of the NAP.e explicitly mention socially disadvantaged groups, but unfortunately these are only listed as persons affected by a medical condition (obesity prevalence) or groups with increased obesity risk. The lack of a more comprehensive structural and socio-economic analysis and of a possible focus on excluded or discriminated groups is a significant shortcoming in the NAP.e. People affected by bad nutrition or malnutrition and possible structural causes are not considered. As a FAO-member state Austria recognized the Voluntary Guidelines on the Right to Food but these are not taken into consideration by the NAP.e.

8.4 Food aid – increasing food insecurity (Nr 46)

As early as 1999 the first social-aid markets were established in Austria (Upper Austria). In the study „Strukturanalyse Sozialmärkte in Österreich“ (*Structure analysis of social-aid markets in Austria*) a social-aid market is defined as a “small-scaled, non-profit oriented retail shop with a highly restricted range of goods for everyday needs at symbolic prices, which are offered on a self-service basis. Only financially weak persons are entitled to shop there. The goods, which are fit for consumption but cannot be sold in regular shops due to small defects or over-production, are provided for free by trade and industry companies. The profits obtained are re-invested into social projects“.²⁹¹

Social-aid markets advertise with the target to support re-distribution. Foods that would otherwise be disposed of are transferred or sold to income-weak persons or persons at risk of poverty. While food producers and retailers profit from the transfer by saving the costs for disposal, people who otherwise could barely or not afford food for regular meals, on the other hand, are supported by reducing the strain on their household budget.

²⁸⁹ http://www.alleinerziehende.org/index.php?option=com_content&task=view&id=133&Itemid=115

²⁹⁰ <http://www.bmg.gv.at/cms/home/standard.html?channel=CH1046&doc=CMS1264514565545>, 10.8.2013

²⁹¹ Vgl. Lienbacher, Eva/Holweg, Christina (2011): Strukturanalyse Sozialmärkte in Österreich. (*Structural analysis of social-aid markets in Austria*) in: Schnedlitz, Peter (Hrsg.): Schriftenreihe für Handel und Marketing, (Printed series for trade and marketing) Volume 74.

Most social-aid markets are operated by charity organisations²⁹² and they developed criteria and principles for accepting and transferring goods, which are made transparent and understandable through publications on internet pages. Persons affected by poverty are the main target group, whereby the income limit of the entitled persons differs significantly between € 770,- and € 950,- depending on the Federal State. The fact, that these incomes must be “supported” by goods offered in social-aid markets shows that the economic access to food is not guaranteed for a growing number of people.

In addition there is a network of increasing associations concentrating on the transfer of “excess” foods from industry and trade to charitable institutions and/or local food supply points, operating in Vienna since 1999 and in the Federal States since 2007. Many of the associations have the word “Tafel” (*dinner table*) in their name, but basically work independently from each other or cooperate with different institutions such as social-aid markets, municipalities and aid organisations.

According to reports of Team Österreich²⁹³ “2.500 Team Österreich members work regularly with the Team Österreich Tafel and service altogether 10.000 people in need with excess foods at 59 Team Österreich “dinner tables” every weekend. Each Saturday consumable but no longer sellable foods are collected at supermarkets. On average about 2.700 guests visit the 59 service points in all of Austria and also take foods home for their families. Through this the initiative reaches about 10.000 people weekly. The distribution is, among others, carried out through (mobile) social-aid markets and regional Red Cross stations²⁹⁴. Thereby in 2012 about 1.100 tons of excess food was distributed to persons in need. Similar activities are reported by one of the largest regional associations “Wiener Tafel”, distributing no longer sellable excess foods to 85 social institutions in Vienna with more than 400 voluntary and unsalaried assistants free of charge. The amount of delivered food in 1999 was only about 1.000 kilos, increasing to about 80.000 kilos in 2005 (for about 45 serviced institutions), amounting to 462.400 kilos in the year 2012 (for about 85 serviced institutions). According to estimates of the association about 12.000 people affected by poverty were supported through this in 2012.²⁹⁵

Apart from this, not only the number of free food banks operated by aid organisations (Volkshilfe, Caritas, VinziWerke and many more) has massively increased since 2005. In the comparable period of time, the number of the distributed meals in the respective institutions also increased significantly each year. There are fixed as well as mobile distribution points operated by church aid organisations, NGOs or charity associations, distributing free warm meals on a regular basis. But neither a systematic survey was carried out in regard to this, nor was aggregated data published by the Government. A momentary overview is given by publications of the mentioned institutions (homepages, annual reports and similar) or by personal talks carried out specifically for this report (interview via telephone or in person – conversational records between December 2012 and March 2013). According to this, in Vienna more than 68.000 soups were served or distributed by the mobile Canisibus in 2011.²⁹⁶ Whereas in 2001 more than 58.000 meals were served at the “Gruff” to persons in need and homeless, the number increased to more than 94.000 distributed meals in 2012²⁹⁷. Similar figures are reported by the VinziWerke²⁹⁸, which especially operate in Vienna and Graz. They state, that in 2005 about 210 persons per day were supported with food by their institutions. This number rose to 800 persons per day in 2011. In 2012 850 meals were

²⁹² Compare ECR-Report 2011, listed in this are Caritas, Red Cross, Samariterbund, Volkshilfe, VinziMarkt or local non-profit associations

²⁹³ Project by the Red Cross and Hitradio Ö3. <http://oe3.orf.at/teamoesterreich/stories/428346/>

²⁹⁴ A list of all distribution points can be found under <http://oe3.orf.at/teamoesterreich/stories/428346/>

²⁹⁵ <http://www.wienertafel.at/fileadmin/uploads/img/presse/Presseaussendung/2013>

WienerTafel_PA_20130207_Bilanz2012.pdf - 10.5.2013

²⁹⁶ <http://www.caritas-wien.at/hilfe-einrichtungen/menschen-in-not/wohnungslos/mobile-angebote/essensbusse/>

²⁹⁷ <http://www2.gruff.at/aktuell/presse/>

²⁹⁸ <http://www.vinzi.at/vinzenz/frames.html>

distributed and 340 people received clothes and 464 were accommodated. 5 persons were treated daily in their consultation room.²⁹⁹

Most of the time, public institutions explicitly welcome the use of volunteers and the committed work of church organisations, NGOs or associations: “The Public Employment Service, municipal authorities of the various cities, Federal Governments and representatives of the Chamber of Labour and the Chamber of Economy defined the idea of social-aid markets as a suitable instrument for combating poverty”³⁰⁰. In most Federal States and municipalities specific information, such as addresses of social-aid markets, food distribution points and institutions is provided. Particular websites³⁰¹ or reports by provider organisations give an insight to personal motivation, background and the social circumstances.

Since 2008, a number of studies have been carried out by universities as well. But these studies mostly focus on factors such as waste avoidance and waste disposal, economic aspects for retail or motivation for companies to join these CSR activities. So far, no studies carried out by public institutions (ministries, federal states, municipalities, and/or universities) were published, that put customers, recipients or collectors in the focus or that give information on how people affected can imagine to overcome their food-precarious situation. How can they recover their food autonomy and how can they complaint about irregularities that could take place in the food distribution? Which monitoring systems are available from the human rights approach and moreover which discriminatory effect could the “tafeln” produce among their users? These are further burning questions around the future implementation of the right to adequate food and nutrition in Austria.

Momentary information can be drawn from surveys carried out and published by the operating institutions themselves³⁰² or from the occasional talks conducted by the authors. In the individual conversations it is criticized, that customers of social-aid markets can only receive / buy goods resulting from “excess” or even “waste goods” from producers and retail. One woman affected by poverty remarked in the course of a personal conversation, that one can barely create a complete meal from the goods offered.³⁰³

A survey commissioned by Hilfswerk Wien with selected “customer groups” shows, that for instance sole parents mainly spend the money saved by receiving foods from social-aid markets on providing for their children, whereas pensioners mainly spend the money saved on accommodation and heating.³⁰⁴

In Austria access to agriculture or gardening is only possible with private ownership of land. So far public land that can be commonly utilized is only very rarely available. Reason for concern also results from the increasing sealing of agricultural areas, which then are no longer available for the production of foods.

In recent times “land occupations” by young people occurred, that created garden beds on unused pieces of land, in order to save these from building developments or to make the public aware of the connection between poverty and hunger through the centralized industrial food production. Such initiatives are sanctioned through political repression. Last year one of

²⁹⁹ Information from the VinziWerke, 10.5.2013

³⁰⁰ Compare <http://www.soma-salzburg.at/>

³⁰¹ Compare <http://www.soma-salzburg.at/>

³⁰² Compare “Sozialmärkte unter der Lupe“ (*Social-aid markets examined carefully*), KundInnenbefragung (*Customer survey*) Sozialmärkte des Hilfswerk (*Social-aid markets of the Hilfswerk*) Vienna 2010, <http://www.hilfswerk.at/wien/soziale-angebote/soma-sozialmarkt>

³⁰³ *From a political conversation*, Armutskonferenz 2010 – Protocol GK

³⁰⁴ “Sozialmärkte unter der Lupe“ (*Social-aid markets examined carefully*), KundInnenbefragung (*Customer survey*) Sozialmärkte des Hilfswerk (*Social-aid markets of the Hilfswerk*) Vienna 2010, <http://www.hilfswerk.at/wien/soziale-angebote/soma-sozialmarkt>

these occupations was cleared in a brutal way³⁰⁵ and a current initiative starting in May 2013 in Vienna is in danger of being cleared and will probably no longer exist by harvest time.

In Austria every day 20 hectares of agricultural area is lost irretrievably to building and traffic areas. In Vienna this becomes visible by the loss of 20% of agricultural areas between 1999 and 2010. The number of farms in Vienna reduced drastically from 1.200 to about 550 Farms between 1995 and 2010. The closed down farms were mostly small and medium sized farms: 68% of the farms were smaller than 5 hectares³⁰⁶.

The owner of the area occupied in May is the Wohnfonds Wien, previously "Flächenbereitstellungsfond" (area providing fund). Its function is to buy areas in order to provide them to housing developers. Since 2004 the City of Vienna itself does no longer build public housing. Instead, a policy of subsidies to housing developers was introduced.³⁰⁷

The occupants criticize the lack of transparency and the missing involvement of the population into the zoning plans within the realms of city planning.

On the one hand there is increased demand of living space and on the other hand there are up to 80.000 empty apartments and a further few thousand empty offices.³⁰⁸

Par 47. The existing NAP.e should be further developed and expanded according to the concept of the right to food as a holistic right in which the diverse phases of the food chain are interconnected. Moreover, the NAP.e should incorporate human rights obligations and principles, in line with the General Comment 12 of the ICESCR and the Voluntary Guidelines on the Rights to Food, including principles such as participation, public accountability, the right to appeal and non-discrimination. So far there has been a deficit of participation and a lack of understanding for the human rights approach in the area of food and nutrition, just as in many other political areas.

8.5 The right to water (Nr 48)

a) The quality of drinking water in Austria is generally very good. The legal regulations concerning drinking water are issued within the realms of the Food Act³⁰⁹ (BGBl. 86/75 and BGBl I 21/2001) through the Drinking Water Regulation (Trinkwasserverordnung - TWV) BGBl. II 304 from 21st of August 2001³¹⁰.

Unsecured landfills and the generous handling of fertilizers and pesticides in intensive agriculture contaminate large ground water areas and hence drinking water. Especially contamination with nitrate and pesticides make it impossible for some water suppliers to provide clean drinking water which complies with the legal limits for contaminants. The supply is only possible with problematic exemption permits. Remedial measures to fix the causes are overdue.³¹¹

³⁰⁵ <http://17april.blogspot.eu/2012/05/01/presseaussendung-obvvia-campesina-gentechnikversuch-grund-fur-raumung-der-landbesetzung-in-jedlersdorf-privatjustiz-statt-polizeieinsatz-raumung-illegal/> - 11.5.2013

³⁰⁶ http://www.umweltbundesamt.at/fileadmin/site/umweltthemen/boden/termine/Bodenverbrauch_LKOE_131212.pdf - 13.5.2013

³⁰⁷ <http://www.wienerwohnen.at/dokumente-downloads.html> - 13.5.2013, "Der Wiener Gemeindebau. Zahlen, Daten, Fakten", Broschüre zur Ausstellung, (*The Vienna Municipal Housing, figures, data, facts, brochure for the exhibition*), April 2013

³⁰⁸ <http://derstandard.at/1256743517593/Wohnungslasterstaende-in-Wien-Kein-Gott-kein-Staat-kein-Mietvertrag> - 11.5.2013

³⁰⁹ <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010375> - 13.4.2013

³¹⁰ <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001483> - 13.5.2013

³¹¹ <http://www.greenpeace.org/austria/de/themen/umweltgifte/hintergrund-info/Trinkwasser-in-Osterreich/> - 7.5.2013

b) The majority of Austrian households are linked to the public water supply network. About 5,1 million people are provided through 185 large water works, a further 1,8 million by small regional water works. The rest of the Austrian population, about 1 million receive their drinking water directly from springs and wells³¹².

c) Obligation for operators of water works to inform:

Customers must be informed at least once a year about the analysis results on nitrate and pesticides. This can be performed on the water bill or in municipal newspapers. If the customers are not single persons but a property management, the report must be put up as a notice in the building. This obligation of providers is unknown with the citizens, hence nobody takes notice. The internet page of the responsible Vienna municipal authority³¹³, which is listed on the Greenpeace homepage³¹⁴ does not work.

Last year the water supply was also endangered by the exploration of shale gas deposits in the Lower Austrian Weinviertel³¹⁵. A citizen's initiative takes action against it, but the people are left uninformed by politics about the further plans of the OMV, the Austrian oil production company, see also remarks on Article 12.

8.5.1 Demands

The Austrian Federal Government shall develop a comprehensive NAP based on the holistic concept of the right to food and nutrition, according to the FAO Voluntary Guidelines on the Right to Food, which especially takes the following principles and areas into account:

- Food excess caused by food production and retail must be minimized there as well; that also means, that structural (and economic) over-production must be regulated through legal provisions (companies must be regulated).
- The focus must lie on the most marginalized and disadvantaged groups (refugees, migrants, sole parents, pensioners) – guarantee for economic access to self-determined food and nutrition. Especially persons affected by poverty must not be discredited in a discriminating way as “market participants” for second-choice/second-quality. Their economic access to self-determined food and nutrition must be guaranteed through adequate measures and programmes, which ensure availability, access and quality to and of food and nutrition. In case marginalized and disadvantaged persons temporarily have to take part in assistance programmes, their right to claim for right to food violations and in general to hold their authorities accountable shall be respected, protected and fulfilled as well as such of all other citizens.
- Securing the participation in the creation of framework regulations and the monitoring of its implementation of people affected (e.g. people affected by poverty, people affected by nutrition-caused diseases)
- Legal security for people affected by poverty in order to guarantee their right to food and nutrition, for instance through a complaints procedure and the right to appeal
- Installation of monitoring and recourse mechanisms.

8.6 The right to adequate housing (Nr 50 – 54)³¹⁶

In its 2010 report on the right to housing, the Federal Government refers to a survey carried out between 2006 and 2008 by the BASW (Federal Homeless Aid Working Group = umbrella association of the homeless aid institutions in Austria, <http://www.bawo.at/>) on the utilization

³¹² ibidem

³¹³ <http://www.magwien.gv.at/ma31/wasweg6a.htm>, 10.8.2013

³¹⁴ <http://www.greenpeace.org/austria/de/themen/umweltgifte/hintergrund-info/Trinkwasser-in-Osterreich/>

³¹⁵ <http://derstandard.at/1361240665507/Schiefergas-im-Weinviertel-Die-sind-schon-laengst-da> - 7.5.2013

³¹⁶ BAWO – Sepp Ginner, Heinz Schoibl

of institutions of the Homeless Aid.³¹⁷ But it does not mention at all what the situation concerning the right to housing is actually like in Austria. The results of this survey concerning the extent of homelessness and the range of aid by the Homeless Aid (WLH), the critical remarks on the state of the Homeless Aid -development and the measures resulting from this recommended by the authors, are not mentioned at all. Instead the Federal Government emphasizes, that the existing regulations concerning rent law on the one hand and housing development policies on the other hand are committed to the goal to support income-weak parts of the population in regards to housing security and the preservation of housing as well as in regards to providing affordable housing. In the official Austrian report it is also not mentioned that income-weak households can only find adequate access to affordable housing with great difficulty and restrictions, and that they are systematically disadvantaged in the various housing markets (this is especially true for the private housing market).

Indeed, the right to housing is not a part of legal reality in Austria. Although the EU Charter of Fundamental Rights is valid and legally effective for Austria through the Treaty of Lisbon and hence social protection and the right to housing is quasi at a constitutional level, Austria did not ratify the Articles 30 and 31 of the Revised Social Charter of the Council of Europe and hence did not declare it as binding.

The right to housing as a part of Article 11 of the WKS-parcel is not anchored in the constitution.

The reasoning of the Federal Government for the selective ratification of the European Social Charter states, that the right to housing is guaranteed by the Federal State Laws and that the provisions in the needs-based minimum benefit, the housing assistance and the housing development enhancement laws are sufficient. Hence there is no reason to supplement or even replace the principles of subsidiarity and the federally regulated housing policy competencies with basic federal provisions.

The refusal to regulate this on a federal level leads to a confusion of provisions and entitlements. In the end each Federal State puts its own different conditions into practice how people affected by poverty and housing shortage are entitled to their right to social protection and – even more important to their right to housing.

In a comparative study on the needs-based minimum benefit, the Armutskonferenz pointed out the striking differences of actual help being granted for combating similar situations of hardship in the individual Federal States³¹⁸. In open letters and press releases the BAWO also emphasized the fact that people in need are discriminated or even excluded from the entitlement to the securing of housing or to adequate housing and pleads for an amendment of regulations – substantiated with practical examples. If and in how far Austrians affected by housing shortage receive sufficient social protection or can make use of the right to housing is therefore not dependent on the actual need but rather on the fact in which Federal State they live.

In all Federal States the homeless aid was taken out of the binding and with legal entitlement provisioned area of social welfare laws. In the meantime it is organized as a private sector and secured by provision agreements with NGOs. The extent of social protection is different depending on the Federal State and additionally the access to homeless aid is affected by regulations within the Settlement and Residence Act (NAG).

While there is a clear regulation on the responsibility of administrative bodies within the granting of social security, depending on the actual residency of the person in need of help or

³¹⁷ http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Publikationen/Grundlagen/BAWO-Studie_zur_Wohnungslosigkeit_2009.pdf, 7.5.2013

³¹⁸ Die Armutskonferenz: Monitoring bedarfsorientierte Mindestsicherung (Mai 2012); www.armutskonferenz.at/images/pk/zusammenfassung_bms-monitoring.pdf

in the case of absence of residency depending on the actual whereabouts where the need for help occurred, a number of hurdles are installed in the currently applicable provisions for homeless aid which act as a filter. This especially affects foreigners with non-secured residency in Austria and EU-citizens whose entry into Austria lies less than three months back. This de facto exclusion from the homeless aid also affects especially those people that have to move away from their previous residence where they have lost their home and have to apply for acceptance in a homeless aid institution in a Federal State where they were not resident until then in order to combat their existential crisis. The latter are rejected with the information that their Federal State of origin is responsible. The application is usually not even accepted in the first place.

The financing of the homeless aid lies exclusively in the responsibility of the Federal States which use the budgets of social welfare (assistance in special living situations), of the disability aid and partially the provincial hospital fund (*Landeskrankenanstaltenfonds*) as well as financial means from housing funds (*Wohnbauförderung*). But exactly those financial means from the housing funds were freed from the purpose relevant use by a resolution of the Federal Government and in recent years not primarily used for investment into affordable housing but as gambling money in large-scale speculative transactions. The fact that this mostly resulted in significant losses, as for instance in Lower Austria³¹⁹ and recently in Salzburg³²⁰ must be mentioned at this point, even if it is rather only marginally of importance for the right to housing.

It is evident from the BAWO survey in 2006 and 2007 that per year about 40.000 people in need of housing turn to an aid organisation. With a rising tendency, the recently collected data shows an unsettling manifestation of homelessness as well as an endangerment through homelessness:

Data and facts concerning homelessness in Austria

inadequate housing	
* in arrears with payments:	611.000 (EU-SILC 2011)
* cannot afford adequate heating in their house:	216.000 (EU-SILC 2011)
* overcrowding:	450.000 (EU-SILC 2011)
* substandard housing:	110.000 (EU-SILC 2011)
insecure housing	
* endangered by eviction:	84.500 (36.731 proceedings ³²¹ each 2,3 persons)
* supported through eviction prevention:	15.150 (BAWO survey ³²² , 2006)
homeless / unsheltered (figures related to a 1 year period)	
* provided with housing by WLH	8.400 (BAWO survey, 2006)
* overnight stays in shelters:	3.000 (BAWO survey, 2006)
* WLH – in ambulatory care:	13.500 (BAWO survey, 2006)

Source: http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Publikationen/Grundlagen/BAWO-Studie_zur_Wohnungslosigkeit_2009.pdf, 7.5.2013

The strategies propagated by the Federal Government to avoid poverty and housing shortage completely fail to address the main problem of imminent or acute homelessness. This becomes especially evident in important functions of the Homeless Aid (WLH), such as

³¹⁹http://www.ots.at/presseaussendung/OTS_20090423_OTS0305/eine-milliarde-verlust-bei-spekulation-mit-den-noe-wohnbaugeldern-fpoe-fordert-sonderlandtag, 10.8.2013

³²⁰<http://www.salzburg.com/nachrichten/salzburg/politik/sn/artikel/finanzskandal-auch-spekulation-mit-wohnbaugeldern-39967/>, 10.8.2013

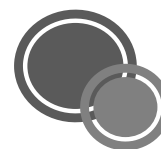
³²¹ Notification of the Ministry of Justice: Proceedings for the termination of rental contracts in 2012

³²² BAWO 2008: In the survey on homeless-figures for 2006, neither a complete survey nor an adjustment of double-figures was possible; the mentioned figures are empirically founded estimates.

- Prevention of homelessness: eviction prevention is only guaranteed in 6 out of 9 Federal States. The prevention of homelessness resulting from dismissal of institutional care of youth welfare, imprisonment or psychiatric hospitals is only realized in a few municipal WLH-provisions.
- Combating of homelessness: especially persons with multiple impairments and double diagnoses (e.g. addiction and psychiatric diseases) find it very hard to be accepted in appropriate aid structures.
- Rehabilitation: Since the WLH – apart from a few exceptions – has no resources or competencies whatsoever for allocating affordable housing a systematic and regular provision with housing for homeless is in most regions and city only possible with great difficulty. But long waiting periods for regular housing increase the risk of manifestation of homelessness and a chronification of the main poverty factors in regard to education, health and social participation etc.

8.6.1 Demands

- To amend the Rent Law: new regulations for the specification of pricing in the private housing sector with the goal to establish transparency and to eliminate exemption regulations should be adopted and implemented, to standardize surcharges and deductions and to fix reasonable maximum prices. Furthermore the option of rental agreements with time limits must be removed entirely.
- To re-introduce of the purpose relevant use of housing development funds
- To adopt all measures to halt privatization in the public housing sector. Human rights impact assessments should be carried out before any privatization attempt.
- To adopt measures to stimulate communal housing development
- Tax Law: To exclude the property tax or insurance costs from rental prices, to eliminate obligatory fees for rental agreements for main residencies and exemption from VAT
- The Federal States have the duty to guarantee the accessibility of housing with special consideration to poor households
- To adopt all necessary measures in order to advance in housing development: setting priorities for the creation of affordable rental homes
- Housing benefit: to regulate housing aid uniformly for all segments of the housing market and valid for all persons with a regular residency in Austria
- To return to direct housing development funding through the Federal States instead of a subsidy for interest of bank loans
- To introduce a prevention-cent: federal tax of € 0,01 per m² of the living space for financing of nationwide provision for eviction prevention
- Regional planning: To adopt and implement a provision of inexpensive building areas for the development of publically subsidized rental homes
- To adapt the core regulations of the needs-based minimum benefit to the needs of the people affected in order to ensure that housing costs are subsidized at their actual level and in order to provide an entitlement to the realization of housing security
- Termination of homelessness: to adopt and implement target regulations within the agenda of the social and housing policy in Austria, which aim at the improvement of living conditions of homeless people and at improving their chances to combat their critical situation sustainably
- Federal Law Homeless Aid: in order to ensure, that people in need of housing or homeless people have adequate and systematic access to aid, legal framework provisions must be developed and determined at a federal level to guarantee that the human right to housing and the human right to protection from poverty and social exclusion actually reaches the people affected by precarious housing, housing shortage and homelessness.



9 Article 12 Right to Health

9.1 National Healthcare Policy (Nr 55)

Starting in May 2011, ten general health targets were developed in a participatory process under the direction of the health ministry, which were then passed by the federal health commission in June 2012.³²³ The federal health commission is made up of representatives of the federal government, the federal states, the social insurance as well as the patient advocacy, the Austrian medical chamber, and the Austrian pharmaceutical chamber. The fact that the majority of health professions as for instance nurses, physiotherapists or occupational therapists do not have a right to participate in the federal health commission has to be criticised.³²⁴

30 professionals from different ministries, institutions, and stakeholder representations constituted the plenum to develop the goals in the topics on “healthy living conditions”, “healthy circumstances”, “healthy behaviour”, “health / equal opportunities”, “care system design”, “special target groups” and “widespread diseases”. Citizens could contribute suggestions on these topics through an online platform.

The general health targets are guided by the health targets of the WHO (Europe region) and follow the EU strategy “health in all policies” as well as a primary healthcare approach. They serve as control mechanisms for the further development of the Austrian healthcare system in the next 20 years.

The stated aim is to improve the health of all people living in Austria, independent of educational status, income situation or living conditions. The life expectancy in Austria is above the OECD average with 78.21 years for men and 83.4 years for women,³²⁵ however, at 60, Austrians get sick earlier than the EU average.

The highest priority of the general health targets is thus to increase the number of Austrians’ healthy years.

A national action plan on nutrition and a national action plan on exercise have so far been developed based on the general health targets.

This still incipient process of comprehensive strategy development under Federal Minister of Health, Alois Stöger, is appreciated. Especially concerning the topics health / equal opportunities, there is still a lot to be done in the coming years, if everyone in Austria is to have access to health facilities and to preventive health knowledge.

Specific indicators and benchmarks are lacking and it remains to be seen how the strategy is implemented, since economisation is prevalent in the healthcare, education, and social sectors since the international financial crisis of 2008. Through the planned healthcare reform, 3.4 billion Euros are to be economised till 2016, and 11 billion till 2020.³²⁶

Availability of Healthcare Facilities / Healthcare Services

There are problems of availability of healthcare services in Austria due to the massive staff shortage among physicians and nurses. In addition, there is an increasing demand because of the demographic development. In light of the planned cuts in accordance with the current

³²³ <http://www.gesundheitsziele-oesterreich.at/presentation/beschluss-der-rahmen-gesundheitsziele-fuer-oesterreich/>

³²⁴ http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00477/index.shtml

³²⁵

http://www.statistik.at/web_de/statistiken/bevoelkerung/demographische_masszahlen/demographische_indikatoren/index.html

³²⁶ <http://diepresse.com/home/politik/innenpolitik/1315322/Aerzte-mobilisieren-gegen-die-Gesundheitsreform?from=suche.intern.portal>, 24.2.16:09

healthcare reform, an executive functionary of the medical chamber speaks of the current lack of already 1,300 jobs in the resident field. There are great shortcomings in particular regarding outpatient cancer therapy, the treatment of obesity, alcoholics, and mental illness. Due to entrance restrictions of medical training and upcoming retirement surges, there could be a lack of 10,000 physicians till 2030³²⁷.

The situation is even worse with nurses. Already now, there is a lack of 7,000 nurses, according to a statement of the association of Austrian directors of nursing.

The poor image, low pay, and difficult working conditions are the reasons for a short vocational dwelling time, and for which a remedy has not been found so far.³²⁸ In consequence of the demographic development, 25% of the total population will be older than 60 years in 2018 already. The number of over 75-year-olds will increase to 1.03 million in 2030 and will thus amount to 54% more than in 2008³²⁹.

For politics, there is an urgent need for action to ensure the future access to necessary and suitable healthcare and nursing services for all people.

Therapy Spots for Children and Adolescents

In their annual report of 2013, the League for Adolescent Health states a lack of about 60-80,000 therapy spots (compared to the supply rate in Germany) in the fields of occupational therapy, logotherapy, and child and adolescent psychiatry. Compared to Germany, Austria is lagging behind in the healthcare expenditure on under 20-year olds by minus 25-30%. Even though children and adolescents constitute 20% of the population, only 6% of healthcare expenditure is allotted to them.³³⁰ As a result of the fragmentation of competences in the healthcare system within the federalist structure, the implementation of the 2011 strategic plan on children and adolescent health makes only slow progress. This is aggravated by the lack of data and the missing reports by *seven of the nine federal states*³³¹.

The complete lack of rehabilitation beds for children makes matters worse. There are 65 rehabilitation centres for adults, but none for children. By way of contrast, there is a need of 380 primary rehabilitation beds for children.³³²

9.2 Access to Healthcare Facilities and Services (Nr 56 a)

In urban areas, the access to medical facilities is generally good. It is more difficult in Austria's rural areas, where public transportation has been severely reduced over the past few years. This makes it tougher for the elderly and less mobile people to reach physicians or other healthcare facilities.

People with disabilities are disadvantaged as well because only few medical practices are accessible for people with disabilities, and even hospitals are not comprehensively accessible.

The meagre supply has as a consequence that people with disabilities can seldom consult their physician of choice. Hearing impaired people rarely have a chance to confidential medical conversations, since there are almost no physicians competent in sign language.

³²⁷ Die Presse: Print edition from 20.10. 2012; „Frust über das System – Österreichs Ärzte auf der Flucht“

³²⁸ Die Presse: Print edition, 3.4.2012, „Notstand bei der Pflege: 7.000 Mitarbeiterinnen fehlen bereits“

³²⁹ <http://www.aerztekammer.at/gesundheitspolitik3/>

[/asset_publisher/fA6G/content/id/1070303;jsessionid=A902706201E86DEFC26952031699840C?_101_INSTANCE_fA6G_groupId=427872&redirect=http%3A%2Fwww.aerztekammer.at%2Fgesundheitspolitik3%3Bjsessionid%3DA902706201E86DEFC26952031699840C%3Fp_p_id%3D101_INSTANCE_fA6G%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1](http://www.aerztekammer.at/gesundheitspolitik3/3Bjsessionid%3DA902706201E86DEFC26952031699840C%3Fp_p_id%3D101_INSTANCE_fA6G%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1) (2013-04-23 18:49)

³³⁰ http://www.kinderjugendgesundheit.at/publikationen_jahresberichte.php?id=136, p. 17; (all quotes same formats)

³³¹ Ibidem p. 25

³³² http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, p. 31

The lack of personal assistance in all areas of life also impedes the access to and the use of health services of people with disabilities, especially with learning difficulties.

Problems increasingly occur in specialist outpatient clinics and casualty departments.

Especially in the evening, they are crowded and much frequented by patients with migrant backgrounds. There are waits of up to three hours.³³³

Patients come to hospital outpatient clinics with minor afflictions because they have too little health knowledge to treat themselves at home if a physician is not readily available.

Migrants are not provided with enough information on the Austrian healthcare system. Particularly the large migrant group from former Yugoslavia and Turkey have poorer states of health.

Due to labour and meagre income they are at a higher risk for certain diseases, but have neither knowledge of nor the financial opportunities for health-promoting measures. In particular dental and optical services are made use of less by this population group since high deductibles may be incurred. There are also notable shortcomings in the supply of early detection and prevention by people from Turkey and former Yugoslavia. At every doctor's visit or hospital stay, language barriers have to be overcome, since the Austrian healthcare system is not prepared for the language needs of migrants and asylum seekers. They are thus discriminated against in their access to healthcare services.

This is also why, from 2008-2010, people of foreign backgrounds did not see a physician or dentist despite persistent health issues twice as often as people of Austrian backgrounds.³³⁴

Often nurses or cleaning staff act as interpreters, but there is no appropriate advanced training for this kind of interpreting (community interpreting)³³⁵. In everyday life, the translation always takes place under a great deal of pressure in addition to the other work. The practice of using other relatives – usually children – to translate is still widespread, which can lead to burdensome and degrading situations, especially in the field of women's health.

The medical treatment of **asylum seekers** is part of the basic care provision services and is conducted via social insurance. Costs that are not covered by insurance can be requested on a case-by-case basis at the responsible basic provision authorities. While medically insured persons have an e-card, asylum seekers merely get a medical certification. They are thus in danger of being treated and stigmatised as second-class patients. Another problem is that certain treatments as for instance psychotherapy or physiotherapy have to be financed in advance by the patients and can then be submitted to the health insurance fund for reimbursement. Since asylum seekers do not have the opportunity to finance in advance with 40 Euros allowance, they have to forego these treatments.

This also applies to **people who are affected by poverty**, as for instance minimum pension recipients, lone parents or recipients of needs-oriented guaranteed minimum resources. Despite health afflictions on hand, doctor's visits are delayed, especially to dentists and ophthalmologists.

A "**two-tier medical system**" is formed by the different health insurance funds.

Depending on vocational group, people are covered by compulsory insurance. But there are some health insurances that cover more services than others, where patients have to incur high deductibles.

Well-off patients can obtain earlier operation dates with bribes. It is also well established that doctors in charge treat their private patients in public facilities. The use of the hospital infrastructure is in this case borne by public funds. In addition to his or her salary, the doctor

³³³ Daily paper "DiePresse" Printausgabe vom 6.2.2013: „In Problem von Angebot und Nachfrage! V. Oliver Pink

³³⁴ Migration&Integration Zahlen, Daten, Indikatoren 2012

http://www.statistik.at/web_de/dynamic/services/publikationen/2/publdetail?id=2&listid=2&detail=636

³³⁴ Wilfried Schnepf, Ilse Marie Walter (HG.), Multikulturalität in Pflege und Gesellschaft p. 79

³³⁵ Wilfried Schnepf, Ilse Marie Walter (HG.), Multikulturalität in Pflege und Gesellschaft p. 79

gets a fee. Therefore, Transparency International has demanded stricter anti-corruption regulations of the healthcare system for years.

9.3 Human Rights Training for Healthcare Staff (Nr 56 d)

Hospital staff in Austria is strictly hierarchically structured. The contact with patients is characterised by an authoritarian culture. This is formed by the hierarchy and the imbalance in power among the different occupational groups and the general overload due to staff shortage. The “chief physicians” – the “gods in white” – outrank the ward physicians and junior doctors (medical students in practical training). The graduate nurses outrank the nurse’s aides.

Patients who enquire too much or demand their rights are perceived as “unruly”. Especially elderly persons are quickly sedated and not treated appreciatively. Conditions of women are often discounted as “psychosomatic” and not treated³³⁶.

Medical information discussions are very often replaced by the signing of information forms. The lack of communication leads to patients being considered “uncooperative” or “non-compliant” whereby the blame for a systematic shortcoming is shifted on them.

There is special criticism in the field of custodians:

Problematic alterations of custodial law in 2006 have since led to the restriction of the right to self-determination and the right to physical integrity.

The closest relative’s power to represent according to § 284b (3) ABGB³³⁷ allows for the consent to medical treatment provided it were not usually linked to a grave or long-term impairment of physical integrity and personality, and the represented person be lacking in the necessary ability to reason and power of judgment.

Every person and facility in Austria can suggest others be custodialised.

Custodians are often appointed to consent to treatment against the will of the concerned person. If the custodian does not consent, the consent can be substituted by the court (according to § 283 (3) ABGB³³⁸ last sentence).

This means that the comprehensive evaluation of the welfare of the patient can be replaced with one-sided medical logic, which especially does not consider the impact of treatment against the patient’s will and thus their whole living situation.

In aged and / or demented patients this regulation can lead to them being tube-fed and consequently sedated against their will, merely to facilitate nursing and without sufficient medical indication.

In addition to the badly needed improvement of the staff situation in hospitals and nursing facilities, regular advanced trainings in human rights-related topics that are geared to the daily routine of healthcare staff could lead to a sensitisation for human rights problems.

9.4 Mother and Child Health (Nr 57 a)

The **rate of Caesarean sections** is at a high 30% throughout Austria. According to a WHO suggestion, it should not be higher than 5-20%³³⁹.

The rate of home births has constantly been at 2 per cent for more than ten years. The rate of Caesarean sections has doubled in the past ten years for hospital deliveries. There is only one birthing centre run by midwives as an alternative to the hospital. A delivery there costs € 1,400. The public health fund only refunds € 390. The consultation and assistance of midwives is not provided for in the “mother-child passport”. There are only a few midwives

³³⁶ Common experience of the authors

³³⁷ § 284 b ABGB; http://www.jusline.at/284b_ABGB.html;

³³⁸ http://www.jusline.at/283_ABGB.html

³³⁹ <http://www.youtube.com/watch?v=qSbEDPJp8k>

contracting for public health funds, and the health funds' payments are so low that the midwives can hardly subsist on it. Freely practising midwives without health fund contracts have to be paid by parents-to-be. The health fund only refunds 80% of the fee designated by the fund³⁴⁰. For this reason, the access to consultations and delivery attendance by midwives is only possible to a very minor degree for low-income parents.

The initial breastfeeding rate is very high with 93 per cent, however, at six months only 55 per cent of children are breastfed, and at one year it is merely 16 per cent.³⁴¹

A specific set of issues of mother and child health arises from the **insufficiently regulated reproductive medicine**.

In Austria, there are no legal restrictions of the number of transferred embryos or of fertilisation after hormonal stimulation within reproductive medicine. As a result, there is an above-average amount of multiple pregnancies and premature babies (at last, 11.1 per cent)³⁴² compared to a European average, with serious consequences for the health and development of the children concerned (distinctly more disabilities, malformations, developmental disorders, etc.). To date, there is no registry of the children of reproductive medicine and thus no possibility to evaluate their quality of health and life.³⁴³

Migrants – especially of Turkish descent – are at a higher risk for stillbirths and infant mortality in the first year after delivery.³⁴⁴

The reasons are possibly language barriers during prenatal care or birth preparation, so the available offers cannot be made use of sufficiently.

A recent UNICEF study from April 2013 that examined child welfare in 29 industrial countries ascertained that regarding **infant mortality**, Austria is merely at the 14th place with almost four per mille. Regarding the indicator “low birth weight” of less than 2,500 grammes, which is a health risk to further development, Austria was only at the 19th place with 7%. The study does not mention whether the poor performance is due to the discrimination against migrants, but this could be a reason.

Austria was the worst of all countries regarding the **vaccination coverage of children** to prevent infectious diseases. Hardly more than 80% are vaccinated against measles, polio, or diphtheria, pertussis, and tetanus between their first and second years of age.

Even though the study does not state it, it may be assumed that this disadvantage affects children of migrants who are not reached by the health ministry's information.

9.5 Access to Safe Drinking Water (Nr 57 b)

Austria is internationally known for its abundance of water and the good drinking water quality.

In the Weinviertel, a region north of Vienna, the Austrian petroleum company OMV has been conducting exploratory drillings to pump up tight oil and shale gas. A citizens' initiative speaking out against further drilling does not believe the information of OMV (International Oil and Gas Company headquartered in Vienna) from September 2012 that drilling will be stopped and that the company does not have anymore interest in extraction of shale gas. Until February 2013 200 polish workers were accommodated in the region in order to take

³⁴⁰ <http://www.hebammen.at/eltern/kosten/>

³⁴¹ http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, p. 30

³⁴² Ibidem p. 31

³⁴³ Ibidem p. 31

³⁴⁴ Migration & Integration Zahlen, Daten, Indikatoren 2012

http://www.statistik.at/web_de/dynamic/services/publikationen/2/publdetail?id=2&listid=2&detail=636

geological measurements under contract of a polish partner company of OMV³⁴⁵. Politicians keep silent on this issue. The population is kept in uncertainty if and how their political leaders will protect their right to safe drinking water.

Globally, the extraction of shale gas and tight oil is highly controversial on account of its negative consequences on people, landscape, and environment. In the case of the usual hydrofracking technology, the rock is broken open by drillings in which a composite of water, sand, and chemicals is pressed with high hydraulic pressure. Almost 35 tonnes of chemicals are pumped in every borehole, half of which is toxic; the giant amounts of water (up to 174,000 m³ per drilling) are hazardous waste after the use.

According to an EU study from June 2011³⁴⁶, this technology carries great risks and is a substantial danger to the environment and human health.

9.6 Alcohol and Tobacco Abuse Among Adolescents (Nr 57 d)

Compared to other European countries, Austria's 15-year-old adolescents have the highest rate of smokers with 27% and the highest rate of experiences of violence with 25%³⁴⁷. A 2008 sample survey by the Austrian Anton Proksch Institute found that among 15-year-olds, already 50% of boys and 30% of girls drink alcohol at least once a week.³⁴⁸

There are currently efforts for a nationwide uniform law for the protection of children and youth. In seven of nine federal states 14- to 16-year-olds are allowed to go out till 1 A.M., there is no limit for older persons. The legislature intends for legal guardians to determine the times for going out. Due to the high mainstream and peer pressure, it is difficult for parents to make their children come home at lawful times. These statutory provisions are hardly controlled. Only very seldom are there identity checks in venues frequented by adolescents.

In case of checks, only the legal guardians are prosecuted, but not the venue owners. That way, the illegal consumption of drugs and alcohol by adolescents is fostered.

Adolescents can buy cigarettes at a lot of tobacconists under the pretence of buying them for their parents. The vendors are lacking in awareness of the problem, and there are no official controls.

Parents need more support by the public sector in regards to nicotine and alcohol consumption in order to protect adolescents from the interests of the hospitality and tobacco lobby.

Nationwide uniform standards for the protection of children and youth and increased checks of venues by (plainclothes) police are a necessary first step.

Replacement Therapy for Drug Patients

17,000 of about 34,000 heroin-addicted patients in Austria are in replacement therapy. 55% of those are prescribed extended-release morphine by their physicians, a substance that is not internationally admitted. According to the current narcotics ordinance (§ 23c), the legislator intends the prescription of extended-release morphine only in strictly defined exceptions, e.g. if a patient cannot tolerate the other two substances used for drug replacement, methadone and buprenorphine. It is popular among drug patients because it can be sold on the black market.³⁴⁹

³⁴⁵<http://derstandard.at/1358305181330/Niederoesterreich-Mit-Fracking-laesst-sich-keine-Wahl-gewinnen>, 4.8.2013

³⁴⁶ <http://www.europarl.europa.eu/committees/et/envi/studiesdownload.html?languageDocument=DE&file=42751>

³⁴⁷ Health Behavior in School-aged Children“, 2005/2006):

³⁴⁸ <http://www.api.or.at/sp/download/handbuch%20statistiken.pdf>

³⁴⁹ Die Presse: „Heroinersatz: Das Millionengeschäft Drogensucht“ 5.1.2013

In the meantime, 88% of the public health fund's expenses for heroine replacement go to extended-release morphine.

The prescription practice of extended-release morphine so obviously contrary to the narcotics ordinance benefits two companies, which belong to a conglomerate of a former economy minister of the ÖVP.³⁵⁰

Even in the field of addiction medicine, the so-called "sweetening" of physicians by pharmaceutical companies is a widespread practice. Manufacturing companies generously sponsor respective information and enlightenment events. There are, for example, the annual substitution forums in Mondsee or the interdisciplinary symposium on addictive disorders in Grundlsee, where companies are the centres of interest. In between, there are smaller events in fine restaurants with multi-course dinners.³⁵¹

Only few physicians dare question the prescription practice publicly. They are under pressure by their own professional association, the pharmaceutical industry, and the drug welfare work.

Replacement is globally acknowledged, because it works, lowers mortality, and prevents hepatitis and HIV infections and overdoses. Regardless, the number of drug-related deaths in Austria has increased from 176 in the year 2000 to 201 in the year 2012. In the neighbouring country Germany, the number decreased from 2,030 to 986 persons during the reference period³⁵².

According to a renowned court-appointed expert, psychiatrist, and head of an addiction clinic, the reason for this is that merely 10 per cent of affected persons receive accompanying psychosocial care. This is, however, a prerequisite for the full development of the effect of replacement therapy.³⁵³

9.7 Demands

- Regulations shall be adopted to ensure that therapists and businesses are able to settle fee-based therapies and aids for asylum seekers and people who are exempt from prescription charges due to neediness directly with the public health fund.
- Human rights-related further training for physicians and healthcare staff should be carried out.
- To promote the upgrading of the nursing profession through a reform of training, an image campaign, and better pay involving the interest representation.
- To facilitate the recognition of trainings of immigrated healthcare staff.
- The federal government and the national assembly are furthermore (...) called on to pass a permanent prohibition of shale gas and tight oil extraction in Austria along the lines of the 2011 CCS law³⁵⁴ and the nuclear non-proliferation law.³⁵⁵
- On that note, the federal government is likewise called on to campaign for an EU-wide prohibition of shale gas and tight oil extraction at EU level.
- Measures should be adopted to ensure the doubling and better remuneration of public health insurance contracts for midwives
- To adopt all necessary measures to make midwife consultations possible as an alternative in the "mother-child-passport".
- To introduce a legal restriction to the number of artificially inseminated ova that may be implanted for nidation.

³⁵⁰ http://diepresse.com/home/panorama/oesterreich/1329438/Heroinersatz_Das-Millionengeschaeft-Drogensucht?from=suche.intern.portal

³⁵¹ http://diepresse.com/home/panorama/oesterreich/1329438/Heroinersatz_Das-Millionengeschaeft-Drogensucht?from=suche.intern.portal

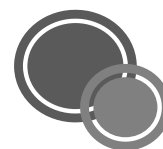
³⁵² [Diepresse.com/home/politik/innenpolitik/1345041/Drogenkonsum-in-Oesterreich_Straftat-oder-Krankheit?from=suche.intern.portal](http://diepresse.com/home/politik/innenpolitik/1345041/Drogenkonsum-in-Oesterreich_Straftat-oder-Krankheit?from=suche.intern.portal)

³⁵³ *Ibidem*

³⁵⁴ Bundesgesetz über das Verbot der geologischen Speicherung von Kohlenstoffdioxid

³⁵⁵ Bundesgesetz vom 15. Dezember 1978 über das Verbot der Nutzung der Kernspaltung für die Energieversorgung in Österreich

- To establish compulsory counselling and information of parents-to-be in reproductive medicine (“child welfare review”).
- The “mother-child-passport” should also be provided in the languages of the large migrant groups (Turkish, Serbo-Croatian, English).
- Nationwide uniform standards of youth protection and effective checks in venues and points of sale of alcohol and tobacco products should be adopted and implemented, monitoring shall be guaranteed.
- To significantly increase the financial expenditure on health promotion and prevention for children and adolescents.
- To adopt and implement all needed measures required to increase the availability of and access to psychotherapy for patients in replacement therapy adequate to the requirements.



10 Article 13 Right to Education

10.1 Access to the Educational System for People with Disabilities (Nr 59-60)

The current Austrian educational system is not an inclusive one but, despite the amendment of the education acts – even verbatim – in line with the concept of integration.

There is no statutory and enforceable right to attend an inclusive preschool or day care centre.³⁵⁶ This fact entails many problems for families of children with disabilities and / or chronic diseases, like a shortage of integrated spots, long waits for a day care spot of up to three years, a lack of nursing and medical services during preschool attendance, short stays (e.g. from 08.00 to 10.00 o'clock), and a lack in afternoon care.

An obligatory (half-day) preschool year for children in the last year before compulsory school attendance was introduced via an agreement between the federal government and the federal states. The exemption of children, who cannot be expected to put up with preschool attendance due to a disability or medical reasons or special educational needs between the place of residence and the nearest suitable institutional preschool facility, once again demonstrates the lack of willingness to include.

Odds are that they do not gain any access to institutional facilities. Reasons that have become apparent in practice are the lack of preschool spots and financial resources, which in turn influences i.a. staff and facilities³⁵⁷.

In the **area of compulsory school**, parents of children with disabilities have the possibility to choose between attendance of elementary school, high school, secondary school, cooperative middle school, new secondary school, and special school.

The extent and kind of implementation of integration at school are state-specific, but also within some states regionally developed in various ways. There are some school districts where the special school system has been effectively disbanded, and others where the engagement with notions of joint instruction of disabled and non-disabled children is still in the early stages. In 2006/07, a total of 27,745 children³⁵⁸ with special educational needs (SEN) attended compulsory school. Of these, 52.58% attended integrated classes and 47.42% of children attended special school³⁵⁹.

Likewise, it becomes apparent in the integrated area that full-time school types and all-day care is often not available. Parents are thus often forced to choose special school attendance since these are frequently all-day. This contradicts the right to freedom of choice.

Children with disabilities receive special educational needs support if special educational needs (SEN) are determined. The determination of SEN as prerequisite for additional assistance measures is the subject of controversial discussion because the logics of the system forces schools to try to receive as many resources as possible through as many SEN-classifications as possible.³⁶⁰ There is an enormous scattering of SEN-quotas in the federal states from 2.58% to 4.43%.

Students with intellectual disabilities, children with grave impairments, as well as blind and hearing-impaired children are frequently separated in the integrative system. The number of the aforementioned children is relatively small in integrated classes. Especially in the secondary education I it becomes apparent that children with SEN are often instructed in separate rooms; the stay in the regular classroom minimised time-wise. Team teaching does

³⁵⁶ Independent Monitoring Committee for the Implementation of the UN Convention on the Rights of People with Disabilities (§ 13 Bundesbehindertengesetz) (2009): Statement on the Agreement according to Art 15a B-VG on the introduction of half-day free and obligatory early advancement in institutional preschools. Vienna: Accessible online under: <http://www.monitoringausschuss.at> (as of: 23.04.2010).

³⁵⁷ Information provided by Austrian National Council of Disabled Persons (ÖAR)

³⁵⁸ Feyerer, E.: 2009 see above, p. 76

³⁵⁹ Feyerer, E.: 2009 see above, p. 80

³⁶⁰ Feyerer, E.: 2009 see above, p. 90

not work in many classes; the use of new ways of instruction often fails because of a lack of willingness.³⁶¹

Compulsory education in Austria amounts to nine years. So far, the statutory access to secondary education II (including agricultural and silvicultural schools), to the tertiary field of education, and likewise to adult education right up to lifelong learning is still lacking. There is no equal access to higher education, in most fields of study there are constructional barriers, and curricula are exclusively designed for people without disabilities.

10.1.1 Demands³⁶²

- To draw up a strategy for inclusion to quickly realise the access to inclusive education at all levels of the educational system.
- To abolish the system of so-called “special educational needs”.
- To transform the special educational centres to competence centres, the knowledge of which is used in an inclusive educational system.
- To guarantee chaperoned transitions between educational institutions and the labour market, e.g. school – university, school – vocational training – labour market.
- To ensure the participation of people with disabilities and their representatives in all discussions and implementation plans as well as their possibility to seek remedies in cases of human rights violations.
- To adopt and implement all necessary measures in order to ensure personal assistance and to facilitate accessibility of local public transport, in order to ensure the attendance of educational institutions.
- To profoundly reform educators’ training with the objective of ensuring inclusionary competence for all teachers.

10.2 Access to (Vocational) Education of Asylum Seekers (Nr 60 b)

The admission to public vocational or high schools of underage, over 15-year-old refugees with a poor command of German is possible, if there are free spots. The completion of nine years of compulsory school domestically or abroad and an apprenticeship contract are prerequisites for the attendance of vocational schools. Contrary to the suggestions of the International Labour Organisation (ILO), the access to apprenticeship positions is determined by occupational instead of educational regulations. Adolescent asylum seekers are thus subject to the provisions of the law on the employment of foreigners (AuslBG) and need a job permit to be able to begin an apprenticeship.

According to a decree by the social minister from 14 June 2012, underage asylum seekers up to the age of 18 years may be issued job permits for all skilled trades that have a proven lack of apprentices and if no other privileged and equally qualified employees can be successfully provided. The decree does open the way to vocational education, but it takes no account of the interests and affinities of the adolescents as the training is only on offer in case of a lack of demand of privileged groups.³⁶³

On 18 March 2013, the decree was extended to cover all asylum seekers less than 25 years of age.

This took place in view of the fact that only few adolescents had come forward in the wake of the apprenticeship extension to 18 years. The extension was also justified with the statement

³⁶¹ Engl, W. (2004): Zur Situation von SchülerInnen mit geistiger Behinderung in Integrationsklassen der Sekundarstufe I aus Sicht der Elternberatung von Integration Wien. In: Integration: Österreich (Hrsg.): Weissbuch ungehindert behindert. Wien: Integration: Österreich, pp. 46-49.

³⁶² In a public session on 2 October 2012, the Independent Monitoring Committee for the Implementation of the UN Convention on the Rights of People with Disabilities extensively discussed the question of barrier-free education for all and subsequently issued a substantial statement.

<http://www.monitoringausschuss.at/sym/monitoringausschuss/Stellungnahmen>

³⁶³ Louise Spertl / Karin Lukas / Helmut Sax, Wirtschaftliche, soziale und kulturelle Rechte von AsylwerberInnen. Die Umsetzung internationaler Standards in Österreich. Verlag Österreich, 2004 page 60 of 94

that asylum seekers less than 25 years of age “should be given the opportunity to an education that may also be useful elsewhere in case of a negative case ruling”. This move was expressly appreciated on the part of NGOs.³⁶⁴

Fee-based secondary school qualification classes offered by various educational providers make it possible for adolescents up to 21 years of age to receive secondary school qualifications. Especially adolescents not required to attend school anymore may have great difficulties in completing training. There is a frequent lack of regional offers. The fare to the educational institution or vocational school and other school resources are – other than for children required to attend school – not generally covered by the basic provision system and cannot be paid with a monthly allowance of € 40, either³⁶⁵.

The state obligations resulting from Art 13 (2) ICESCR mean the following for the right to education of asylum seekers in Austria:

Asylum seekers’ access to vocational school is made conditional on labour law-related provisions³⁶⁶.

Already this is a systematic flaw from a human rights-related view: vocational educational measures are not to be governed by labour law-related but educational law-related perspectives, since they are distinctly considered as measures of higher secondary education (not only expressly according to ICESCR and UN CRC but also to suggestions of the ILO).

The weighing of interests of the review whether the de-facto-exclusion of asylum seekers from vocational education is factually justified is thus not calculated according to the educational goals set down in § 2 school organisation law (SchOG), which do not differentiate between nationality, language, or status. The national interests and goals of labour market politics are naturally very different. Here, the intention of the AuslBG is the “consideration of the general state and development of the labour market” and the “consideration of protective interests of domestic workers”³⁶⁷.

This is in opposition to asylum seekers’ right to education higher than merely in the sector subsequent to primary education and the associated enabling of significant goals, a stable frame of reference after a frequently traumatising flight and not least the enabling of the acquisition of qualifications that benefit the person and the society they are a part of.

Even if there is “merely” an infringement on a legally protected right lesser than life or physical integrity, denying the right to higher education means denying a legally protected right that is closest to primary education as the absolute core content of the right to education and which is fundamental to individual societal progress. The aspect of education as a psychological stabilising and “meaning bestowing” factor for adolescent asylum seekers should not be underestimated. This is faced with the comparatively lesser state regulatory interest. Furthermore, it must be stated that no means more moderate than the exclusion from the right to vocational education is applied: The possibility of entrance restrictions with due regard to specific qualifications etc. is not used.

In consideration of these aspects, the conclusion must thus be drawn that this infringement on asylum seekers’ right to education is not factually justified.

³⁶⁴ <http://derstandard.at/1363707677770/Hundstorfer-oeffnet-Lehre-fuer-Asylwerber-bis-25-Jahre>.

³⁶⁵ Louise Sperl / Karin Lukas / Helmut Sax, *Wirtschaftliche, soziale und kulturelle Rechte von AsylwerberInnen*.

Die Umsetzung internationaler Standards in Österreich. Verlag Österreich, 2004 page 60 of 94

³⁶⁶ *ibidem*

³⁶⁷ *ibidem*

10.2.1 Demands:

- To separate access to vocational school and apprenticeship from the AuslBG³⁶⁸ provisions in order to comply with the ILO suggestions, which consider these measures educational and not occupational measures.

³⁶⁸ Ausländerbeschäftigungsgesetz = law on the employment of foreigners

10.3 Equal Free Access to Tertiary Education (Nr 62)

Tuition Fees as Entrance Restrictions

Already in its concluding suggestions in November 2005, the WSK Committee expressed concern at the tuition fees adopted in 2001. The Austrian federal government was requested to replace these with a functioning system of tuitional grants, which should counteract the social selection at Austrian colleges. But even in 2013, parents' social background matters considerably for the access to tertiary education.

After the final abolition of tuition fees (29 February 2012) in the wake of a lawsuit at the Constitutional Court supported by the Austrian representation of university students (ÖH) on 30 June 2011³⁶⁹, the responsible minister for science and research encouraged universities to autonomously collect tuition fees of up to € 500. A few universities followed this appeal in the winter semester 2012/13³⁷⁰. This led to another lawsuit supported by the ÖH at the Constitutional Court against the creation of a state of legal uncertainty for many students. Because a suspension of the autonomous tuition collection by the Constitutional Court was to be expected, a federal law³⁷¹ was quickly passed, which was supposed to retroactively legalise the autonomous collection of tuition fees. Moreover, the (re-)introduction of tuition fees in the amount of € 363 in case of an exceedance of the minimum length of study by more than 2 tolerance semesters is envisaged since summer semester 2013.

Since 2013, third country students have to pay the double fee of € 726 per semester for the overall duration of their studies. Citizens of so-called "least developed" countries (LLDCs) are exempt. In a country with high living expenses, such fees not only constitute a tremendous financial strain on third country students but also discriminatory treatment.

Despite a legal opinion³⁷², which attested unconstitutionality for several reasons, the law was passed. Thus, the Austrian federal government is not only in violation of its own constitution, but – once again – of the obligation stated in Art 13 (2) lit c ICESCR to make higher education equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Admission Restriction by Selection Procedures

Since December 2012, a law on the financing of college places is under review. It plans to limit all university studies quantitatively in the foreseeable future (starting in 2019) by a three-stage selection procedure. This is justified with the great press of students in particular subjects. Presumably starting in the winter semester 2013, a certain number of places will be determined for 5 subject groups (architecture and urban planning, biology and biochemistry, informatics, economics, and pharmaceuticals) in a test run.

However, these places are not being financed, as the name would suggest. The total budget is subsequently allocated according to the number of places, but is nowhere near cost covering.

Because of the introduction of further admission restrictions (in addition to the general matriculation standard)³⁷³ it is to be feared that the share of women as well as the share of

³⁶⁹ Verfassungsgerichtshof (2011), http://www.vfgh.gv.at/cms/vfgh-site/attachments/0/7/5/CH0006/CMS1317213561077/studienbeitraege_g10-11.pdf

³⁷⁰ Among them the University of Vienna, the Vienna University of Economics, the Technical University of Graz, and the University of Innsbruck.

³⁷¹ BGBl. I Nr. 18/2013 of 11 January 2013.

³⁷² Legal opinion by constitutional jurist Theo Öhlinger see <http://www.oeh.univie.ac.at/arbeitsbereiche/bildungspolitik/studiengebuehren/>

³⁷³ In Austria, the „Matura“ – final exam after 12th grade – qualifies for studies at a public Austrian institution of higher education.

students from lower levels of income – similar to the already existing admission restrictions in medical training³⁷⁴ – will decline markedly.

The planned restriction of various subject groups provides for the determination of a number of university applicants who may be admitted to studies of a subject group. It is to be feared that the access to higher education in Austria, especially its funding, will be regulated according to cost-benefit calculations in the future. For example, architectural study places were to be restricted because, according to the responsible minister for science and research, they are disproportionately expensive and the demand of the labour market not as extensive.³⁷⁵ The law on the financing of college places currently under review poses the risk that the right to (tertiary) education established in Art 13 (1) ICESCR, which is “directed to the full development of the human personality”, cannot be ensured anymore due to its alignment with the labour market.

Indirect Admittance Restriction through Underfunding

Despite a valid commitment of Austrian politics in terms of a 2008 resolution by the National Assembly to increase expenditure on the tertiary sector till 2015 to 2 % of the GDP, especially public universities are chronically underfunded. This results in poor staff-student ratios, high drop-out rates, and with 19%³⁷⁶, inevitably in one of the lowest academics rates in the EU.

As a result of tuition fees, selection procedures, and the continuous deterioration of supervision, the government implements direct and indirect admittance restrictions of tertiary education, in spite of the obligation established in Art 13 ICESCR to make higher education equally accessible to all. Graduating college is increasingly becoming a privilege for few.

The Social Situation of Students in Austria

The social situation of students in Austria is surveyed every three years in a large-scale study of the Institute of Higher Studies (IHS) on behalf of the Federal Ministry for Science and Research. In general, it must be stated that there is no social mixing at Austria's universities. Merely 18% of students come from low-income homes. This demonstrates that the educational level is still largely hereditary.

In the Austrian educational system, social selection takes place very intensively already with the educational choices after 4th and 8th grade.

The state supports students primarily through two systems: Student benefits and family benefits. The student benefit is connected to the parents' income and has strict performance requirements. The family benefit is paid for students younger than 24 years and is also connected to performance criteria.

Two thirds of students in Austria have financial problems. The older they are, the more often financial problems set in. This can be explained by the discontinuation of family benefits after 24 years of age on the one hand, and on the other hand, scholarships do not apply to students who do not study fast enough. After exceeding the minimum duration of study by more than two semesters, tuition fees are due since the summer semester 2013.

Two thirds of Austrian students work alongside their studies for an average of 20 hours per week. As a result, there is less time for studies, the duration of study is extended, and consequently benefits are withdrawn and tuition fees due. For 42% of employed students,

³⁷⁴ IHS (2009), Studierendensozialerhebung, Sp 73

http://ww2.sozialerhebung.at/Ergebnisse/PDF/sozialerhebung_2009_ueberarbeitete_version.pdf

³⁷⁵ Wiener Zeitung (2012): Uni-Finanzierung der Zukunft,

http://www.wienerzeitung.at/themen_channel/bildung/uni_aktuell/500826_Uni-Finanzierung-der-Zukunft.html

³⁷⁶ OECD (2012), Education at a Glance, S. 2, <http://www.bmukk.gv.at/medienpool/23173/20120911a.pdf>

the reason for their job is the compensation of discontinuation of state support. But the higher the work extent, the less time the students can invest in their studies. Numerous students are thus forced to terminate their studies. Year after year, the social situation of students deteriorates.

The implementation of the Concluding Suggestion No. 31 of the WSK Committee of November 2006³⁷⁷ has not been successful so far.

Problems of Foreign Students in Austria

Especially third country students – from outside the EU – are affected. It is substantially more difficult for third country students to get admitted to university than for Austrian or EU citizens. They have to prove that they are also entitled to study the same subject in their home country as they are planning to in Austria. The admittance is often just the beginning of a struggle with authorities and regulations. In Vienna, where there are a great many universities, the visa issuance takes about half a year. This impedes a normal start of studies and the planning of accommodation and entry. Regular income or savings that ensure the costs of living in Austria for a year have to be established in order to obtain a visa. Many students can provide this evidence only with great difficulty or not at all.

Since 2011, third country students may earn money through gainful employment (10 hours a week for BA students, 20 hours for MA students), but a job permit, which is issued by the job centre (AMS), is required. This further bureaucratic obstacle has as a consequence that the respective EU directive is indeed implemented in Austria, but businesses prefer applicants who can be employed without these bureaucratic obstacles. The lack of a job permit forces these students to take on illegal and low-paid employment relationships.

The problem of wage work alongside studies and a consequently extended duration of study especially affect migrants at Austrian universities. With their income, they have to pay the tuition fees that are twice as high for foreigners. Students who work without job permits have to expect serious consequences – up to the loss of their residence permit.

While these existential problems could be immediately countered through an amendment of the legal situation, racism, xenophobia, and Islamophobia have more in-depth societal roots. Students themselves get to experience this negative attitude from public authorities, while job seeking, and at university.

10.3.1 Demands

- To abolish the tuition reintroduced fees, in all probability, unconstitutionally.
- To reverse any kind of admittance restrictions and instead, active commitment to the increased social mixing of students.
- To legally establish university funding at an amount that is determined by the actual needs of universities.
- To develop strategies to mitigate social hardship and to eliminate the discrimination against third country students together with student representation.

³⁷⁷ 31. The Committee urges the State party to ensure by all appropriate means, in particular through a comprehensive system of adequate study grants, that applicants from low-income families have the same access to higher education as applicants from higher-income families.

10.4 Access to Education for Members of Minorities and / or Socially Disadvantaged Groups (Nr 63)

Despite low child poverty in comparison to other European countries, Austria fares only average on “upwards” -social mobility. The social origin greatly decides the further life. The household income significantly determines children’s courses of education³⁷⁸.

Next to local conditions, the parents’ educational level is one of the framework conditions that influence children’s school careers the most. That is one of the greatest hindrances that the Austrian educational system still does not compensate; to the contrary, due to early selection, children’s courses of education are already determined at 10 years of age.³⁷⁹

The study “labour market entrance of young people” (2009) by Statistics Austria confirms that young people’s course of education is socially selective in Austria. Merely 5% of children of compulsory school graduates, but 41% of children of academic homes obtain a higher educational qualification.

The study also confirms that children with a migrant background have distinctively poorer educational opportunities than those without migrant backgrounds. Overall, two thirds reach merely the same or lower educational level as their parents.³⁸⁰

Children with first languages other than German are severely discriminated against in their access to the educational system and in the support of special talents. The discrimination begins in preschool: The demand that children with a poor command of German are to be fostered in preschools so they master German at a consistent level when they start school cannot succeed in the present state, since respective preschool possibilities and suitable educators are mostly lacking.

Children with foreign-language backgrounds are structurally discriminated against by the lack of language improvement measures.

This can be exemplified by the situation in the federal capital, where every second child in day care centres is multilingual: There are only ten native-language employees available for about 8,000 foreign-language parents of kindergartners in case of language difficulties³⁸¹.

An important tool to provide equal opportunities for pupils with non-German backgrounds in the choice of school career is the support of the acquisition of the non-German native language: Nearly 32,000 pupils in Austria receive native-language instruction³⁸². That means, only 20% of pupils who do not speak German at home have the opportunity of native-language instruction.³⁸³

Children have not completely mastered their first language when they start school, since essential parts of the language like vocabulary, grammar, and orthography can only be learned completely or at all in school. Consequently, it is of great importance to continue the native-language acquisition after starting school in order to ensure the complete acquisition of the first language. The support and unhindered further learning progress of the native language after starting school has positive effects on the acquisition of the second language, on success in school, and in this way also on the free choice of the course of education.

Whether a school is socially integrative or not is due to the school organisation as well as the quality of instruction, to classroom architecture as well as teacher training. One cannot be separated from the other. In order for the future not to depend on origins, it takes a course of education that does not select socially but supports individually. It would also be important to

³⁷⁸ http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=434&Itemid=142; Schenk (2013): Schulen - Vererbbarkeit von Armut (pdf), 1.

³⁷⁹ http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, 39

³⁸⁰ http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, 39.

³⁸¹ http://www.kinderhabenrechte.at/fileadmin/download/hauptbericht1_DE_LV.pdf, 16.

³⁸² data: school year 2010/11

³⁸³ APA, 21.2.2013.

equip and support schools in socially disadvantaged districts or regions especially well so they remain attractive to all levels of income³⁸⁴.

10.4.1 Demands

- To allocate better resources for schools in socially disadvantaged regions.³⁸⁵
- To review the mechanisms that guide financial resources for school renovations.
- To adopt all needed measures to ensure that better financial endowment and reduction in size of groups in the elementary education sector.
- To adopt strategies in order to improve the support of non-German native languages especially for primary school children.
- To develop full-time school types with mixed classes. Socially disadvantaged children should especially benefit from that.
- To open the school towards the neighbourhood, the community. For activities in healthcare or adult education, language acquisition, cultural and sporting events.
- To adopt and implement all necessary measures in order to ensure that a comprehensive expansion of school-supporting social work takes place as well as to strengthen the points of intersection between school and public youth work.
- To facilitate the (further) education of educators at a tertiary level (from nursery to secondary education II), focusing on mandatory further education and the recruitment of multi-lingual staff.
- To prioritize language development and diversity management in educational strategies in the context of pedagogy training curricula!³⁸⁶
- To reform the 9th grade in a way so that all pupils are straightaway led on training routes suitable to them. The joint school of 10- to 15-year-olds would be the best step in this direction.
- To implement the right to education not only as an independent human right, but also as a central tool to enforce all human rights. Human rights education should become a more self-evident component of all fields of education.

10.5 Equality (Nr 64)

Gender-Specific Selection at University

While there are more women (53.4%) than men (46.6%) among students, the proportion of women steadily decreases among teachers. At the medical universities Vienna and Innsbruck, more men than women were admitted through the selection procedure, even though more women than men participated at the admittance exams. Because of its structure, this “aptitude test” (often abbreviated as EMS test)³⁸⁷ plays into men’s hands; therefore it was evaluated gender-specifically for the first time at the medical university in Vienna in 2012.³⁸⁸

Among first-time degrees, the share of women is still 67.6%, thus more than two thirds. Regarding second degrees, the ratio is reversed in comparison to the students: 46.6% of

³⁸⁴ http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=434&Itemid=142; Schenk (2013): Schulen - Vererbbarkeit von Armut (pdf), 1, 3

³⁸⁵ Socio-economic conditions should be taken into account more regarding the allocation of personnel and other resources to schools: cf Bacher et al, who developed a calculatory model that takes this into account: Bacher et al: Ausgleich unterschiedlicher Rahmenbedingungen schulischer Arbeit durch indexbasierte Mittelverteilung, in: Erziehung und Unterricht, 3-4/2010 384 – 400. See also: Nationaler Bildungsbericht Österreich 2012, Indikatoren und Themen im Überblick, Michael Bruneforth, Barbara Herzog-Punzenberger & Lorenz Lassnigg (Hrsg.), Graz: Leykam 2013, 25.

³⁸⁶ Nationaler Bildungsbericht Österreich 2012, Indikatoren und Themen im Überblick, Michael Bruneforth, Barbara Herzog-Punzenberger & Lorenz Lassnigg (Hrsg.), Graz: Leykam 2013, 27.

³⁸⁷ http://www.unifr.ch/ztd/ems/was_ist_ems.htm

³⁸⁸ <http://derstandard.at/1343743555606/Medizin-Aufnahme-Frauen-heuer-erfolgreicher>

women are faced with 53.4% men. In 2009, 20.7% of lecturers were female, and merely 17.7% of professors were women.³⁸⁹ Even though the share of women has slightly increased since 2005 from 15% to the year 2009, it is still very low compared to the rest of Europe.

There are still “typically female studies” and “typically male studies”. This consequently becomes apparent in the gender distribution among the scientific staff.

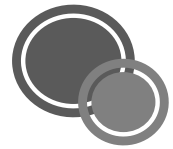
At the technical universities in Vienna and Graz, the percentage of women among professors is under 7.4% respectively 3.6%.

At the medical universities, as well, the percentage of women among professors is lower: 13.8% in Vienna, 12.9% in Graz, and 10.3% in Innsbruck.

10.5.1 Demand

- To adopt and implement quota regulations for the gender balanced allocation of leading positions at universities.

³⁸⁹ Frauen in Führungspositionen, Studie des Frauenministeriums, Vienna 2011, p. 37
<http://www.frauen.bka.gv.at/DocView.axd?CobId=42821>, 11.5.2013;



11 Conclusions

The concluding suggestions of the WSK Committee from January 2006 state under C.7: “The committee registers that there are no substantial factors or difficulties that could impede the effective implementation of the ICESCR in Austria.”³⁹⁰

Nevertheless, in 2012, more than half a million people (511,000) or 6.2% of the population lived in manifest poverty,³⁹¹ the number of people who were constantly financially deprived has doubled since the last report of 2005 to 10.2%³⁹².

The facts compiled in this parallel report raise no claim to completeness, but offer an impression of the fact that the consciousness of human rights obligations in Austrian politics has to be urgently developed further, even 20 years after the global human rights conference in Vienna.

Human rights are still not often enough considered as tools to frame politics in favour of social balance to ensure human dignity, as arguments against the lobbying of powerful economic interests and especially as the basis of legitimisation of policy-makers.

One of the most important outcomes of the UN human rights conference of 1993, namely the prioritisation of human rights implementation versus other political objectives, has been only very marginally implemented to this day.

11.1 Institutional and Legislative Establishment of ICESCR Rights

Structural deficits like those mentioned at the beginning are often stated in outcome documents of reviews by UN treaty bodies, but the political willingness of the traditional governing parties of the Second Republic to correct these deficits is lacking regardless of the particular government constellation.

The badly needed constitutional reform is proceeding exceedingly slowly. The constitutional affairs committee, a subcommittee of the parliament, is tasked with preparing the reform proposals developed by an expert convention³⁹³ from 2003-2005 for a vote. It is hardly successful in party-political disputes. On the contrary, already reached consensus – e.g. on the inclusion of social fundamental rights in the constitution – is repeatedly questioned. In May 2012, the Constitutional Court ruled that the EU Fundamental Rights Charter, which came into effect with the 2009 Lisbon Treaty, has constitutional status.

Aside from the fact that the social rights guaranteed in the EU Fundamental Rights Charter differ considerably from the ICESCR standards, there have been no precedents so far. The ICESCR is still not directly applicable in Austria.

Another hindrance of the realisation of economic and social rights in the field of legislation is the fragmentation of competences between federal government and states through the § 15a agreement³⁹⁴ established by the constitution.

Uniform human rights standards in important areas like the care of asylum seekers, child and youth protection, the development of childcare facilities, the care of the elderly or of people with disabilities are neither predetermined by the federal government nor regularly supervised. Sanctions in case of gross violations of human rights standards – like recently at an accommodation for asylum seekers in Carinthia³⁹⁵ – are not provided for.

³⁹⁰ <http://www.fian.at/assets/060120ConclObservAustria3rdReport-05.pdf>,

³⁹¹ Numbers by poverty conference, source Statistik Austria 2012

http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=243&Itemid=236

³⁹² <http://www.bmask.gv.at/cms/site/attachments/3/7/2/CH2171/CMS1353079209699/zusammenfassung.pdf> p.

20

³⁹³ http://www.konvent.gv.at/KWWillkommen_Portal.shtml, 9.5.2013, 17:30

³⁹⁴ <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=1000138>, 9.5.18:45

³⁹⁵ <http://derstandard.at/1363706150552/Asyl-Volksanwaltschaft-stellt-gravierende-Misstaende-auf-Saualm-fest>, 9.5.2013;

To this day, there is neither a national human rights action plan, nor an independent human rights institution in Austria. The public ombudsmanship has received competences to monitor the Anti-Torture Convention, but may not take action on its own accord in the field of ICESCR rights. It acts on citizens' reports of grievances in the administration. The ombudsmen are also appointed by the political parties, and are therefore not independent.

Policy areas that are central to the realisation of ICESCR like healthcare, educational, social and economic politics are, for a lack of appropriate medium- and long-term strategies, adjusted to the circumstance which political party is ahead and which compromise is possible in the particular constellation.

11.2 Financial Resources to Implement ICESCR Rights

In Art 2 (1) ICESCR the member states are called upon to use "the maximum of its available resources to achieve progressively the full realisation of the rights recognised in the Covenant". The Maastricht Guidelines on the violation of ICESCR rights clarify that it amounts to a violation of the rights if a government does not follow this demand.

A report by the Centre for Women's Global Leadership³⁹⁶ summarises the outcomes of a debate among expert on the topic "maximum resources". How can a country's economic and financial policies be assessed according to human rights criteria?

Even in times of economic and financial crises, state budgets have to keep an eye on the most vulnerable groups of their population and allocate resources so no regresses or violations of human rights occur. In addition to state spending, the raising of taxes has to be designed in a way that results in a redistribution of income and social balance. Magdalena Sepulveda, an independent expert on human rights and extreme poverty, states that governments must exhaust all means to mobilise resources in the country³⁹⁷.

The contributions on Articles 9, 11, but also 12 make a notable point. Austrian politics has fulfilled its human rights duties poorly in the past few years. It rather served to procure new advantages for the country's rich elites. This also becomes apparent in the gross disparity of distribution of wealth. The uppermost 5% of private households possess nearly half of total property, while 50% of private households possess less than 5% of total property³⁹⁸.

The disparity of the distribution of wealth has grown very distinctly, namely from 2000 to 2008 from 73 to 66%, it is subject to great variation³⁹⁹ caused by the crisis since, but the trend seems unbroken.

While recipients of wage income in the highest income decile could achieve real wage raises⁴⁰⁰, workers had to put up with massive losses of purchasing power.

Austria has handed over important economic and fiscal powers to the EU in the monetary union. The scope to realise ICESCR rights has been greatly confined by austerity programmes like the fiscal pact to control the budget deficit and the European Stability Mechanism (ESM).⁴⁰¹

Already in 2008, the government revealed how fast it is possible in Austria to make maximum resources available through the adoption of the banking bailout package of 100 (!) billion Euros; in this case, however, for the rescue of the floundering fiscal system.⁴⁰² The money served to secure savings up to 200,000 Euros and from 2010 on, up to 100,000 Euros;

³⁹⁶ <http://www.cwgl.rutgers.edu/resources/publications/economic-a-social-rights/380-maximum-available-resources-a-human-rights-analytical-report-9.5.2013>;

³⁹⁷ Ibidem. p. 3

³⁹⁸ Markus Kocza - Dummverteilen, Sozialbericht 2011 - 2012 (Teil 3): Vermögens(ungleich)verteilung in Österreich <http://diealternative.org/verteilungsgerechtigkeit/2012/11/sozialbericht-2011-%E2%80%93-2012-teil-3-vermogensungleichverteilung-in-osterreich/>

³⁹⁹ Statistik Austria - https://www.statistik.at/web_de/statistiken/volkswirtschaftliche_gesamtrechnungen/index.html

⁴⁰⁰ Einkommensbericht des Rechnungshofs 2012 -

http://www.rechnungshof.gv.at/fileadmin/downloads/2012/berichte/einkommensbericht/Einkommensbericht_2012.pdf

⁴⁰¹ <http://www.parlament.gv.at/PERK/FAQ/AKTF/Euro-Rettungsschirm/index.shtml>, 9.5.2013,

⁴⁰² http://diepresse.com/home/wirtschaft/finanzkrise/423793/Nationalrat-beschliesst-Bankenhilfspaket-_10.5.2013

notwithstanding, it was still withdrawn from the government budget and could not be invested in education, healthcare, nursing, or development cooperation.

With the adoption of the European Stability Mechanism, Austria partially conceded its budgetary sovereignty to the EU. By consenting to the European Stability Mechanism on 4 July 2012⁴⁰³, Austria committed to pay in about 2.2 billion Euros from 2013 to 2017, that is approx. 450 million Euros a year. The Austrian share of the 620 billion Euros reputation capital and liabilities is about 17.3 billion Euros⁴⁰⁴. Advocates of a national referendum were not able to prevail.

This money is not available either for the implementation of ICESCR rights in Austria.

As signatory of the EU fiscal pact, Austria aims at a balanced budget – the deficit may not exceed 0.5. There are thus barely any possibilities to absorb the ramifications of the economic crisis anticyclically. This results in the aggravation of the social crisis, which we can already perceive in Austria today. In February of 2013, a leading newspaper reported the highest number of unemployed persons since 1945, namely 410,662 (including training participants).⁴⁰⁵

Against this, the EU Fundamental Rights Agency states in a position paper on the ramifications of the economic crisis that, “people who can afford to pay more should also contribute more to the overcoming of the financial consolidation than disadvantaged groups.”⁴⁰⁶ Best practices from a human rights point of view would, according to the Fundamental Rights Agency, mean that the member states provide clear and transparent statements on how social security can be ensured despite consolidation measures. If restructuring programmes result in a loss of social security benefits, governments must account for the reasons why such a programme is preferred to other measures like a capital tax increase or the introduction of a financial transaction tax.

The EU Fundamental Rights Agency states that the EU and its member states should conduct systematic ex ante and ex post evaluations of economic-political measures.⁴⁰⁷

National human rights institutes should have the ability to monitor in which sections and through which measures the social security net becomes deficient. The EU Fundamental Rights Agency further establishes that human rights institutes must build economic capacities to conduct such a monitoring of economic policies. Unfortunately, there is no national human rights institute in Austria, as mentioned above. The suggestions of the only EU institution based in Austria are thus currently a world away from reality.

11.3 Transparency, Participation, Accountability

Already in 2010, the Austrian population was confronted with a “cost-cutting budget” that i.a. put a strain on commuters, students, families, and the disability sector. The opposition called the budget “hostile to education, families, and women”.⁴⁰⁸ The then Finance Minister Pröll had abruptly postponed the budget speech from October to December to spare his party a poor performance at the general elections. This budget also decided massive savings in development cooperation (see also ETO part of the parallel report).

By contrast, property and inheritance taxes are still very low in Austria. Merely 2.3% of fiscal revenue comes from property taxes; on an EU average it is 6.6%⁴⁰⁹.

The budget for 2012 to 2016 is socially imbalanced; 70% of the planned savings target of 26.5 billion concerns cuts of public funds, i.a. of pensions and in the healthcare sector; 20%

⁴⁰³ http://www.parlament.gv.at/PAKT/PR/JAHR_2012/PK0587/ 10.5.2012

⁴⁰⁴ <http://www.parlament.gv.at/PERK/FAQ/AKTF/Euro-Rettungsschirm/index.shtml>, 9.5.2013,

⁴⁰⁵ Die Presse, 2.Feb 2013, p. 11

⁴⁰⁶ European Fundamental Rights Agency (FRA): Protecting Fundamental Rights during the economic crisis – Working Paper (Dec. 2010), p.19

http://fra.europa.eu/fraWebsite/research/publications/studies_discussion_papers/protecting-fr-during-economic-crisis_en.htm

⁴⁰⁷ http://fra.europa.eu/fraWebsite/research/publications/studies_discussion_papers/protecting-fr-during-economic-crisis_en.htm, p. 47, 10.5.2013,

⁴⁰⁸ <http://derstandard.at/1289609171155/Opposition-zerpflueckt-Budget-im-Nationalrat>, 10.5.2013

⁴⁰⁹ <http://www.arbeiterkammer.at/online/bei-den-steuern-laeuft-etwas-schief--71873.html>, 10.5.2013

are raised by new taxes, among them at least a capital gains tax and a solidarity fee for top earners⁴¹⁰. It remains unclear, however, how the capital gains tax may be collected while maintaining banking secrecy.

How much the financial transaction tax, that is to be collected as of 2014 at EU level, is going to yield for member states' budgets has yet to transpire.

The means of direct democracy, like the popular petition, are not taken seriously by the federal government and parliament and fade into obscurity. The demands of the women's petition of 1997⁴¹¹, which was signed by more than 600,000 people, have remained largely unfulfilled, the same holds true for the welfare state petition of 2002.⁴¹² It collected more than 700,000 signatures and demanded the establishment of the welfare state in the constitution and a mandatory social compatibility check of all laws.

The participatory possibilities of opposition parties as well as civil society organisations are made difficult by the non-transparency of governmental activities and goings-on in ministries and federal governments. There is still the "authoritarian-governmental official secrecy", which is established in the constitution. Even parliamentary enquiries fail because of the denial of access to records⁴¹³.

This also explains the cases of corruption in the past few years.⁴¹⁴ Parliamentary investigation committees, which were to shed light on these cases, failed because of a lack of evidence since the ministries did not provide crucial information. The last parliamentary investigation committee alone, which was headed by a Green opposition politician, covered seven cases.⁴¹⁵ In October 2012, it was discontinued without a report on the findings. It had failed because of the refusal of disclosures by witnesses and the lack of support of the governing parties.⁴¹⁶

Since such serious cases of corruption deprive the national wealth of large sums of money, the ineffectual or forestalled solution of these embezzlement cases also has to be classified as a violation of human rights obligations⁴¹⁷.

⁴¹⁰ <http://derstandard.at/1328507461488/Das-Sparpaket-im-Detail-Von-Harmonisierung-der-Pensionen-bis-Halbierung-der-Bausparfoerderung>, 10.5.2013

⁴¹¹ http://www.parlament.gv.at/PAKT/VHG/XXI/I/_00716/fname_139596.pdf, 10.5.2013

⁴¹² http://www.parlament.gv.at/PAKT/VHG/XXI/I/_01161/fnameorig_000000.html, 10.5.2013

⁴¹³ <http://www.kleinezeitung.at/allgemein/tribuene/3187507/amtsgeheimnis.story>, 10.5.2012

⁴¹⁴ <http://diepresse.com/home/meinung/debatte/745283/Plaedoyer-fuer-einen-unabhaengigen-Chefanklaeger?from=suche.intern.portal>. 9.5. 17:41

⁴¹⁵ Hg. Planetverlag 2012: Unschuldsvermutung, ein Kompendium österreichischer Unschuldsvermutungen

⁴¹⁶ <http://derstandard.at/1348285838823/Moser-zu-U-Ausschuss-Politische-Zukunft-wird-sauberer>, 10.5.2013

⁴¹⁷ <http://www.cwgl.rutgers.edu/resources/publications/economic-a-social-rights/380-maximum-available-resources-a-human-rights-analytical-report-> 10.5.2013; p. 3;

Contributing Organizations

Alternative and Green Trade Union AUGE

Association of the Active Unemployed

Asylum Coordination

Austrian Armutskonferenz – Austrian Network against Poverty and Social Exclusion

Austrian National Council of Disabled Persons (ÖAR)

Austrian Students' Association

FIAN Austria

National Alliance of Organizations working for the Homeless (BAWO)

National Association of Social Workers (OBDS)

National Coalition for the Rights of the Child

NGO Forum CEDAW in Austria „Women: Rights now!“

Orientexpress – Women's counselling centre

Stay visible – Organization of people affected by poverty