

Implementation on the International Covenant on Economic, Social and Cultural Rights in Austria

Comments to the Third and Fourth
Periodic Report of the Republic of
Austria Based on Selected Issues

September 2005

Part I: Fulfilment of Domestic Obligations

published by

FIAN Austria & Protestant Development Co-operation (EAEZ)

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1. PREFACE

In spring 2004, the Austrian Federal Government submitted its third and fourth periodic reports on the observance of the rights recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR) to the relevant committee of the United Nations.

For FIAN Austria, this was both an opportunity and a challenge to invite Austrian civil organisations to prepare a parallel report. With the Evangelische Entwicklungszusammenarbeit (Protestant Development Co-operation), a strong partner could be won to also cover the international obligations of states with regard to development co-operation.

The project was made possible inter alia by the financial support of the educational commission of the Protestant Church in Austria, the "Renner Institut", the „Grüne Bildungswerkstatt“, the „Dreikönigsaktion“ and the Austrian Human Rights League. Sincere thanks are given to all of them!

The goal of our initiative is to popularise the ICESCR and its practical application. With increasing income gaps and massive cuts in social services, Austria has taken some steps backward regarding the implementation of the rights recognised in the ICESCR. The present report analyses selected problem areas from a human rights perspective. That important issues like for example the right to housing (Art. 11) or the right to form trade unions (Art. 8) are not addressed, is due only to the limited resources of the organisations specialised in the field and in no way means that these rights are fully observed.

The parallel report and the recommendations of the Covenant's committee, the CESCR, are means to highlight the importance of this international treaty, especially as compared to international economic agreements dutifully implemented by Austria.

The demand of the ecumenical *Sozialwort* (305)¹ of the Christian churches in Austria from 2003, „(...) that more value be attached to multilateral agreements on human rights and the environment as compared to trade agreements“ is thereby supported and its urgency emphasised based on concrete issues.²

The catalogue of demands of non-governmental human rights organisations in Austria, adopted during the Human Rights Year 1998, included the following: „The federal

¹ The Ecumenical Council of Churches' „social mission statement“.

² Ecumenical Council of Churches: „Sozialwort“, Vienna 2004, p. 113 (305)

government shall publish in Austria and submit to parliament any periodic reports submitted by Austria to bodies established by international treaties on human rights."³

Up to now, the fulfilment of this demand has remained a distant vision. In many regards, both the debate on human rights issues in parliament and the dialogue with civil society organisations are non-existent.

By publishing this comment on the Republic of Austria's third and fourth periodic report to the CESCR, the publishers and participating organisations and experts intend to highlight that in Austria, economic and social human rights are a long way from being fully observed and that on the contrary, the Federal Government's neoliberal economic policy has led to substantial steps backward.

The report does not pretend to be comprehensive. Instead, it focuses on issues relating to the fields of activity of the participating organisations or authors. Our hope is that this comment will help us initiate a constructive dialogue on the future observance of economic and social human rights in Austria and contribute to a change in the Federal Government's human rights policy, so that the relationships highlighted by us may be successfully addressed and the appropriate measures implemented.

³ www.univie.ac.at/bim: Search for „Forderungskatalog“

2. INTRODUCTION

The International Covenant on Economic, Social and Cultural Rights (ICESCR) came into force in 1976 and was ratified by Austria in 1978. Every five years, state parties to the convention are required to report on the progress made in implementing its provisions. Thus in 2003, Austria's fifth report would have been due. In fact, Austria only submitted its second report in 1992 and has since been in default of its reporting obligations.

Our efforts to get our hands on the third and fourth Report met with substantial difficulties. It took many phone calls just to find out who was actually responsible for preparing it, and only in February 2004, from an answer to a parliamentary enquiry on behalf of the opposition parties by former Foreign Minister Ms. Benita Ferrero Waldner, did we learn that the report was already due to be finished and submitted soon to the CESCR. Yet up to the time of writing, neither the Foreign Ministry nor the Federal Chancellery has seen it fit to publish the report on its web site in order to make it accessible to the public.

After repeated requests to the Federal Chancellery's constitutional service, we were finally provided with the government's report in its English version. The difficulties in accessing the report and a lack of financial resources meant that several organisations withdrew their participation in preparing the parallel report, even though they had been greatly interested in doing so.

Among the consequences of the reconstruction of the Austrian state based on neoliberal principles, public responsibilities, such as the protection of human rights or the provision of social services, are delegated to non-governmental organisations or private businesses. Since the latter by their very nature are profit-oriented, they tailor their services to the needs of higher income groups e.g. the health sector, or try to benefit from lowering the quality of service, as can be observed in the field of refugee care. Non-profit organisations lose out in two ways: They are affected by ongoing cuts in public subsidies while losing their better-off customers to private service providers. The state eludes its responsibility, transferring its duty to comply with human rights obligations to the market. Deregulation, i.e. reducing governmental control of the economy, is meant to stimulate competition, but leads to social dumping and a disregard of environmental standards, while more flexible working times are at odds with labour law provisions. From a human rights perspective, the state as the „buyer“ of services has a duty to secure compliance with social and environmental standards in order to impede a levelling downwards.

Immediately upon assuming office in 2000, the right-leaning conservative government provided clear indications of its priorities by integrating the Ministry of Labour into the Ministry of Economics and by abolishing the Ministry for Women's Affairs and transferring its responsibilities to the Ministry for Health and Social Affairs⁴.

Economic and social human rights embody the entitlement of each human being to a life in dignity. Participation in political and social life is a precondition for the realisation of each and every human right. The International Covenant on Economic, Social and Cultural Rights recognises rights like the right to health or the right to an adequate standard of living as human rights to be exercised without „discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status“.⁵

In their contributions, **Max Preglau** and **Werner Vogt**, both former protagonists of the referendum „Welfare State Austria“⁶ in 2002 which never had to be debated in parliament because of the change of government in the same year, give an analysis of how economic and social rights are observed or infringed by the Austrian Federal Government's social and health policies during the reporting period. Recent alarming developments are addressed as well.

In 21st century Austria, gender, national or social origin still determine access to education and work. Which social groups are especially threatened and/or affected by unemployment and how the government's policy transforms **unemployment** into a **poverty trap** is described in the contribution of **Dietmar Köhler**, founding member of „**Arbeitslosensprecherin**“, a nation-wide platform for the unemployed, and the network „**Grundsicherung**“ (Basic Income Security).

Eva Lachkovics from FIAN and WIDE (Women in Development Europe) shows how, the Equal Treatment Act of 1979 and the existence of Equal Treatment Advocacies notwithstanding, the government's restrictive policy leads to steps backwards with regards to equality and to structural **disadvantages** and the **rising poverty** of women.

⁴ Now (2005) the Ministry for Health and Women's Affairs

⁵ International Covenant on Economic, Social and Cultural Rights, Article 2 lit.2

⁶ <http://www.renner-institut.at/frauenakademie/volksbg/sozialvbg.htm>

The referendum was signed by 712,102 persons or 12.2% of the eligible voters.

Time and again, infringements of the non-discrimination principle occur in Austria, especially concerning the **rights of migrants**. In their contribution, **Anny Knapp (asylum co-ordination)** and **Karin Lukas (Boltzmann Institute for Human Rights)** focus on asylum seekers, an especially vulnerable group: The exercise of many of the rights enshrined in the Covenant is completely denied to them or only possible with great difficulties.

Bernadette Karner from LEFOE (LEFÖ – Counselling, Education and Assistance for Female Migrants) dedicates her contribution to the increasing cases of trafficking in women, a special challenge for Austria. Her conclusion is that both the existing legislation and the infrastructure provided so far are by no means sufficient to secure the human rights of the women affected.

Pursuant to the International Covenant, the human rights recognised in it have to be realised „progressively (...) by all appropriate means, including particularly the adoption of legislative measures“. ⁷ What is intended is clearly continuous progress in the realisation of human rights. In a rich country like Austria, delays or even steps backwards cannot be justified by a lack of funds. Instead, the realisation of human rights and in particular the protection of vulnerable groups have to be understood as a priority concern and must not be subordinated to fiscal policy considerations.

With this parallel report, FIAN Austria and the Evangelical Development Co-operation would like to highlight that the protection of human rights in Austria requires a new, timely structure commensurate with the challenges of a globalised economy.

⁷ ICESCR, Article 2 (1)

3. POVERTY AND WEALTH IN AUSTRIA

3.1 POVERTY AND WEALTH – AN OVERVIEW

Table 1 shows that the wage ratio, after remaining more or less stable in the 1960s and 1970s, dropped substantially during the subsequent years – the distribution of income between profits and wages has become significantly more unequal.

Table 1: Wage ratio and profit ratio in Austria 1961 - 2003⁸

Year	Adjusted wage ratio	Adjusted profit ratio
1961	69	31
1971	69	31
1981	70	30
1991	64	36
2001	59	41
2003	58.5	41.5

Source: Guger und Marterbauer 2005, pp. 260, 263

Wage incomes, too, have become significantly more unequal during the last 10 years.

Table 2: Inequality in wage incomes 1976 – 2002

Income earners	Income share of each quintile in %					
	1976	1982	1987	1992	1997	2002
1 st Quintile	4,8	4,5	5,4	6,9	2,8	2,4
2 nd Quintile	12,7	12,4	12,7	13,7	10,8	9,9
3 rd Quintile	18,3	18,0	17,7	17,6	17,6	17,4
4 th Quintile	24,0	23,9	23,1	22,7	24,1	24,4
5 th Quintile	40,2	41,2	41,0	39,1	44,7	45,9

Source: Guger/ Marterbauer 2005, p. 266

Based on the relation between the income shares of the 5th and 1st quintile, the wage distribution in Austria in 1999 was more unequal than in the Scandinavian countries, Germany and the Netherlands, but less unequal than on average in the European Union as a whole (EUROSTAT 2003).

Though for the last 20 years the inequality in the wages earned by men and women has continually decreased, it is still higher than the European average (EUROSTAT 2002).

⁸ The wage ratio is defined as the ratio of income from employment to national income. It is an important indicator for the functional income distribution, i.e. the share of income received by the factors of production. The so-called „adjusted“ wage ratio is calculated assuming that the number of income earners in each category remains unchanged.

Table 3: Female wages in % of male wages
1980 – 2002, median, adjusted for hours worked⁹

Year	share in %
1980	71.2
1990	76.5
1995	80.6
2000	81.2
2002	82.2

Source: Guger/ Marterbauer 2005, p. 270

Pension benefits have on average increased during the last ten years, the number of pensioners receiving income support payments (“Ausgleichszulagen”)¹⁰ has decreased, but the pension disadvantage of women has remained constant. Yet in 2004, the number of pensioners receiving such income support increased again to 228,391 (11.2% of all pension benefits paid out)¹¹.

Table 4: Pensioners and average yearly pension benefits in Austria 1995, 1999 and 2003

Gender	1995	1999	2003
Women: cases	987.345	1.057.861	1.083.827
Amount in ATS / Euro	9.460*	9.910	10.764
Index/Austria	82,4*	82,3	82,7
with income support payments	189.056	166.716	153.547
% of all cases	19,4	15,8	14,2
Men: cases	559.383	609.040	636.645
Amount in ATS / Euro	14.119*	14.809	15.830
Index/Austria	123,0*	123,0	121,7
with income support payments	69.783	61.122	60.908
% of all cases	12,5	10,0	9,6
Total	1.546.728	1.666.901	1.720.472
Amount in ATS / Euro	11.481*	12.041	13.009
Index/Austria	100,0	100,0	100,0
with income support payments	258.839	227.838	214.455
% of all cases	16,7	13,7	12,5

* Values for 1997

Source: Statistik Austria 1996, p. 166ff; Statistik Austria 2001, p. 212ff; Statistik Austria 2005, p. 230ff, own calculations

⁹ Unadjusted for hours worked, the situation looks much worse: From 1980 to 2002, the ratio between the average female income and the average male income increased only from 65% to 67% (see section on poverty of women).

¹⁰ *Ausgleichszulagen* are paid to pensioners with net pension benefits below the legal standard rate of Euro 662,99 (2005) (“Ausgleichszulagenrichtsatz”) in an amount equal to the difference between their net income and the standard rate. In Austria’s official report, *Ausgleichszulagen* are translated as “compensation grants”.

The number of people receiving unemployment benefits including unemployment assistance¹² has increased during recent years in line with unemployment. On average, the unemployment benefits and unemployment assistance received are modest: The median unemployment assistance for both men and women and the median unemployment benefits of women are lower than the standard rate for income support payments to pensioners (2003: Euro 643.54¹³), an amount usually taken to be the official poverty line.

Table 5: Unemployment benefits and unemployment assistance in Austria 1995 - 2003

Gender	Benefit category*	1995	1999	2003
Women	Unemployment benefits	193.007	191.883	209.574
	Median**	7.410	7.455	637
	Unemployment assistance**	73.469	87.174	82.103
	Median**	6199	6.505	477
Men	Unemployment benefits	6.227	315.607	354.073
	Median**	10.013	10.215	754
	Unemployment assistance **	70.928	90.811	107.200
	Median**	8.040	8.224	611
Total	Unemployment benefits	519.234	507.490	554.647
	Median**	8.957	9.077	673
	Unemployment assistance **	151.632	173.252	218.064
	Median**	7.135	7.499	551

* amount per month, ** only Austrian citizens

Source: Statistik Austria 1996, Statistik Austria 2001, Statistik Austria 2005, own calculations.

Austria has a highly unequal distribution of wealth, in particular with regard to company shares, where 90% are owned by just 1%, but also as regards real estate, where 70% of all assets belong to just 10% (Table 6).

Table 6: Distribution of wealth in Austria, 2002

% of owners	% of monetary assets	% of real estate assets	% of company shares	% of total assets
Oberste 1%	10	15	91	34
Obere 2 -10 %	25	56	9	35
Untere 90 %	65	29	0	32

Source: Eizinger et.al. 2005, p. 248

¹¹ Federation of Austrian Social Insurance Institutions, www.sozvers.at/hvb/statistik

¹² "Notstandshilfe", literally „emergency assistance“. Unemployed persons are entitled to „Notstandshilfe“ after expiry of their period of entitlement to regular unemployment benefits. In Austria's official report, „Notstandshilfe“ is translated as „relief payments“.

¹³ The rate was increased to € 653.19 in 2004 and € 662.99 in 2005

Both poverty and risk of poverty decreased from 1994 to 1998 but have again been on the rise since then (Table 7). Particular risk groups include people with a low level of education (compulsory school at best), the unemployed, single mothers and women, families with many children and migrants. A striking fact is the poverty/risk of poverty of households with part-time employment – the phenomenon of the “working poor” – exists also in Austria. Within the EU, Austria’s rate of risk of poverty is below the average, but higher than the rate in Scandinavian countries, Germany and the Netherlands (Till-Tentschert et.al. 2005).

19.7% of the population suffer from a “lack of participation” (multiple deprivations in at least one key area of life), 7.3% are “income poor” and 5.9% of the population are living in “consolidated poverty”¹⁴ (both income poor and lack of participation) (Till-Tentschert et.al. 2005, pp.230).

Table 7: Risk of poverty rates* and risk of poverty gaps** in Austria, 2003

Affected groups	Quote	Lücke
Total [figures for 1994 /1998]	13,2 (14/11)	20
Men	12,3	-
Women	14,0	-
Persons with no gainful activity	19	-
Highest educational level: compulsory school	20	-
Migrants	27	-
Naturalised migrants	26	-
Households (HH) with no gainful activity	28	-
HH with part-time work	18	-
HH of long-term unemployed	36	-
HH of pensioners	17	16
- of which single women	26	14
HH of single women	23	34
HH of single mothers	31	17
HH with 3 or more children	18	21
HH with social security benefits as main income:		
- main income earner: man	41	27
- main income earner: woman	56	25

* share of persons earning less than 60% of the median income

** Difference between the average income of those at risk of poverty and the risk of poverty threshold, as a percentage of this threshold.

Source: Till-Tentschert et.al. 2005, p. 212f.

In this regard, the developments shown in Table 8 are striking: While the government reduced public debt at the cost of employment and social security benefits, therewith depriving private households of livelihood resources, personal bankruptcies increased progressively and almost doubled between 2000 and 2004.

Table 8: Company bankruptcies vs. personal bankruptcies 2000 – 2004

Year	Company bankruptcies		Personal bankruptcies	
	Number	year on year change in %	Number	year on year change in %
2000	5.340		3.456	
2001	5.178	- 3,0	3.599	+ 4,1
2002	5.281	+ 2,0	3.766	+ 4,6
2003	5.643	+ 6,9	4.458	+ 18,4
2004	6.318	+ 12,0	5.613	+ 25,9

Quelle: KSV (Kreditschutzverband)

In Table 9, the lines under “open social assistance” (granted to private households without accommodation in homes) show that the increase in inequality and the rising number of people at risk of poverty went hand in hand with an increase in the number of people receiving social assistance benefits, which has more than doubled during the last 10 years. Considering that in Austria (see Pfeil 2001):

- no legal right to social assistance benefits exists
- foreign citizens are mostly excluded from social assistance benefits
- social assistance benefits are granted only if members of the closer family circle have neither spare income nor sellable assets
- social assistance benefits are repayable
- the standard rates for social assistance benefits are – with the exception of Vienna – far below the standard rate for income support payments to pensioners (BMSGK 2005, p. 95), one can guess that what is distributed here are just drops in a bucket.

¹⁴ „Verfestigte Armut“.

Table 9: Social assistance and care benefits in Austria, 2000 and 2002

Recipients	1994: N	%	2000: N	%	2002: N	%
Open social assistance:						
Single/main recipients			40.587	26,0		
Indirect recipients	> 42.942	(48,0)	24.235	15,5	> 90.738	46,1
People in old age/care homes	-		39.133	25,1	50.372	25,6
Recipients of provincial care benefits	46.477	(52,0)	52.081	33,4	55.638	28,3
Total	(89.419)	(100,0)	156.036	100,0	196.748	100,0

Source: Statistik Austria 1995, p. 150;

Statistik Austria 2002, p. 194; Statistik Austria 2005, p. 212

Furthermore, persistent problems exist with regard to basic support for asylum seekers in Austria. In autumn 2002 – in response to a higher inflow of refugees (UNHCR 2005) – the Ministry of the Interior withdrew basic support to asylum seekers from certain countries of origin based on an internal guideline. With this measure, things went from bad to worse since concerning accommodation, the situation of a majority of asylum seekers had already been precarious for several years. In February 2003 the Austrian Supreme Court found that both the guideline mentioned and the general refusal to provide basic support contravened the law. Though one year later the provision of basic support had been properly regulated by new legislation, the Federation and some of the Provinces refused to provide the required resources hoping that a new and more restrictive Asylum Act adopted in parallel would lead to a substantial reduction in the number of refugees (see also section on social policy in Austria). This new Asylum Act has meanwhile been repealed in part by the Constitutional Court. Up to the time of writing this report (February 2005) this emergency situation remains unresolved.

3.2 CONCLUSIONS IN REGARD OF RIGHTS UNDER THE ICESCR

The inequalities and risks of poverty described above constitute an infringement of several rights under the ICESCR, in particular the rights pursuant to Art. 7 (fair wages and equal remuneration for work of equal value, infringed with regard to female incomes), Art. 9 and Art. 11 (right of everyone to social security, right of everyone to an adequate standard of living – infringed concerning pension benefits, wages, insurance benefits and social assistance below the poverty line) and as regards asylum seekers also pursuant to Art. 12 (the enjoyment of physical and mental health).

For proposals of appropriate measures to correct these infringements see the conclusions at the end of the section "Is Social Policy on the Way to Implement ICESC Rights in Austria?".

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4. IS SOCIAL POLICY ON THE WAY TO IMPLEMENT ICESCR RIGHTS IN AUSTRIA?

4.1 SITUATION AT THE OUTSET: EPOCHAL SOCIAL CHANGE

Since the 1970ies, Austria – along with other developed western countries – has undergone a period of radical social change (see Preglau 2003):

- As the quantity of work decreases, unemployment and involuntary underemployment are on the rise; at the same time, social insurance contributions are decreasing
- „atypical employment relationships“ are proliferating, leading to an increase in the percentage of employment relationships neither offering enough income to secure livelihood nor sufficient protection by statutory social insurance
- traditional forms of marriage and family are losing their monopoly; as a consequence, fewer and fewer people enjoy the “safety net” services linked to these social institutions as for example sustenance, co-insurance, right to inheritance, right to dependent care leave
- as a consequence more and more people not covered by statutory insurance or co-insurance turn to the “second social net”, i.e. public social assistance; however this net was not designed to be used that frequently
- for reasons such as migration or fleeing, ever more people live in the country who for lack of citizenship or a work permit have neither access to the labour market and to the social security system nor to social assistance.

Under these conditions the traditional social security system, built on the foundations of full-time work, middle class family life and citizenship, is overstrained and heading for a crisis.

4.2 SOCIAL POLICY SINCE 1994/95: SUMMARY

In light of the problems described above, basically two scenarios seem possible: on the one hand a development towards a “two thirds society” by privatising opportunities and risks and by a cutback in social spending; on the other hand a development towards a “world citizen society” by disconnecting social rights and opportunities from gainful employment, from marriage as a safety net and from citizenship.

In Austria, the option of a *cutback in social spending* had been chosen already by the coalition between the Social Democratic Party (SP) and the Austrian People’s Party (PP), primarily for pragmatic reasons, i.e. as an adjustment to perceived systemic constraints. This was exemplified by the two austerity packages in 1994 and 1995 which brought

cutbacks in health, unemployment and pension benefits and in parental leave (Tálos 1996).

The new coalition government formed by the PP and the Austrian Freedom Party (FP), in power since February 2000, continued and reinforced this cutback policy, now also motivated by ideological reasons, namely a “neoliberal” confidence in the market. The neoliberal programme of a cutback in social spending even has its own motto: “Less welfare state, more entrepreneurship” (Minister of Finance Karl Grassler, *derstandard* online February 5, 2002).

During its first period of government, the first substantial effects of the PP/FP coalition’s policy of cutbacks in social spending came with its *fiscal consolidation measures*. These included in particular broad-based increases in taxes and fees, fees for ambulatory care (since discontinued), taxes on accident benefits, the introduction of university tuition fees and some changes for the worse with regard to pension benefits (e.g. abolishment of the early retirement scheme). It became clear that contrary to the announcements, the fiscal consolidation relied mainly on measures on the revenue side and to the detriment of employees, especially hitting disadvantaged groups like the unemployed, the ill, accident victims and people with low pension benefits (General Social Insurance Amendment Act (Sozialrechtsänderungsgesetz) 2000, Pension Reform Act 2000, July 5, 2000 – PdP¹⁵ July 5, 2000, Budget Accompanying Act (Budgetbegleitgesetz) 2001, November 23, 2000 – PdP November 23, 2000, see also *derStandard-online* September 4, 2000).

By contrast, the so-called “billion for the disabled” (“Behindertenmilliarde”) (PdP, February 20, 2002) may be described as a social policy achievement of the first *Wendekoalition* (“turnaround coalition”), though only up to a degree.

In a far-reaching systemic change, first steps were taken to transform the pension system from a statutory defined-benefit system to a system with two or three pillars, including privately funded pension plans, which for many are not affordable and in addition plagued by risks (Act on Corporate Staff Provision [Betriebliches Mitarbeitervorsorgegesetz], June 12, 2002 – PdP, June 12, 2002 and the so-called “prämienbegünstigte Zukunftsvorsorge”, an equity-based private pension scheme supported by premiums and tax allowances, September 19, 2002 – PdP, September 19, 2002).

¹⁵ PdP = Press releases of the Austrian Parliament’s Press Service (“Parlamentskorrespondenz”)

By aiming for privatisation and an increase in the social security system's "hit accuracy", this neoliberal reform is mainly directed against its statutory, equality oriented components, i.e. what could be called its "social democratic" features. It was linked to a whole range of policy changes:

- **Family or gender policy measures to reinforce the "conservative" orientation of the system towards traditional family and gender role models by putting more emphasis on women's role as mothers and making them dependent on family allowances.**

The model project in this regard is doubtless the "child care benefit" (Child Care Benefit Act, July 4, 2002 – PdP, July 4, 2002). Though public social transfers are now extended to new beneficiaries (students and the self-employed), they are no adequate substitute for income from gainful activity, delay a (re-)entry into the labour market and make such a re-entry more difficult (derStandard-online, March 6 and 7, 2001)¹⁶.

Further moves in this direction were made with the new Objectivation Act, a step backwards as regards the advancement of women in public service (Amendment of the Federal Equal Treatment Act - derStandard-online, July 23 and 24, 2001)¹⁷, and by abolishing the contribution-free co-insurance of no less than approx. 20,000 spouses or companions in life (General Social Insurance Amendment Act (Sozialrechtsänderungsgesetz) 2000, Pension Reform Act 2000, July 5, 2000 – PdP, July 5, 2000, derStandard-online February 13, 2001).

- **Furthermore, social policy underwent a reorientation towards protectionist and xenophobic positions, mainly on account of the FP, and focussing in particular on foreigner and asylum policy.**

The shortcomings of the laws concerning foreigners in terms of solidarity and basic rights (though inherited from the former SP/PP coalitions) include in particular the tardiness (high backlog) and restrictiveness (application of quotas; exclusion of children over 14) regarding family reunification and the detention pending deportation of children under 14.

A significant example of the PP/FP coalition's restrictive foreigner policy is the new legislation package on foreigners including the so-called "Integration Contract", which – in contrast to the "Dutch model", to which it was compared by the government – does not provide for positive incentives (like for example

¹⁶ Such fears have been confirmed by a study of the Institute for Economic Research (WIFO). The percentage of women who restart working after two years fell from 54% to 35%, and even fewer fathers than before take parental leave. The WIFO concluded that up to now, "neither has the goal of an increased employment of women with younger children been reached ... nor a fairer sharing of parenting duties between parents during the first years of a child". (APA OTS, March 20, 2003).

¹⁷ From May 2001 until February 2002, for almost nine months, the Equal Treatment Commission for the private sector was paralysed because the Minister for Women's Affairs, Mr. Haupt, failed to appoint a successor to the commission's chairwoman who had stepped down. (derStandard-online February 5, 2002).

easier access to the labour market and public housing, right to vote in local elections, earlier granting of citizenship etc.).

There are hardly any improvements for the persons concerned. Instead, it introduces new obligations (language and civics courses) and hurdles (health certificates) and provides for negative incentives (progressively increasing co-payments for health services, a range of sanctions from monetary fines up to expulsion from the country, withdrawal of unemployment benefits) (Amendment of the Aliens Act 2002, July 9, 2002 – PdP, July 9, 2002)¹⁸.

In its second period of government, the *Wendekoalition* continued with this policy:

LABOUR POLICY

The opening hours were further liberalised (Opening Hours Act 2003, July 7, 2003 – PdP, derStandard-online, July 8, 2003), while the conditions for granting subsidies under the part-time work programme for older employees were tightened (in the framework of the “Budget Accompanying Act” [Budgetbegleitgesetz] adopted on June 11, 2003 – PdP, June 11, 2003). With regard to unemployment insurance, the provisions on the “suitability” of a job offer had been tightened already with the consent of the Social Democrats (SP): The condition that the job has to match the previous vocational experience and pay level (the so-called “Berufsschutz”) was relaxed, and instead of having to be in the same Province, a work place now just has to be reachable within a “reasonable” time (Labour Market Reform Act 2004, June 6, 2004 – PdP, June 6, 2004). An other part of the government programme (PP/FP 2003) is to transform the unemployment assistance¹⁹, currently an unemployment insurance benefit, into a means-tested (and repayable) social assistance benefit. On December 22, 2004, a draft bill for a “household service cheque” (“Dienstleistungsscheck”) was presented by the Ministries of Economics and Labour, for Health and Women’s Affairs and for Social Security, Generations and Consumer Protection and submitted to review (derstandard online, December 22, 2004). Its objective is to get undeclared work in the household services sector – up to a ceiling of two times the small income exemption limit for social insurance contributions – out of the “shadow economy”. It would provide for accident insurance up to the exemption limit, while any income above the limit would be subject to pension and health insurance contributions. Further proposals of the government programme yet to be implemented include an unemployment insurance for the self-employed and a minimum wage of € 1,000 (PP/FP 2003)²⁰.

¹⁸ An initiative of the provincial parliament of Vienna, a bill granting third country citizens a right to vote in municipal elections, adopted on December 13, 2002, has been repealed by the Constitutional Court in June 2004 (VfGH, June 30, 2004).

¹⁹ „Notstandshilfe“ (literally: „emergency assistance“)

²⁰ Provided for in the government programme but not yet implemented is a plan to replace social assistance, up to now governed by provincial legislation, with uniform benefits based on the standard rate for income support

PENSION REFORM

The reform of the pension system, the central social policy project of the second PP/FP coalition, comprises an extension of the period for determining pensionable earnings to the entire career, lower yearly pension increases and deductions for early retirement (before the age of 65). This amounts to massive reductions (up to 30% once fully implemented), hitting in particular people younger than 30 with flat and discontinuous career pathways (which are typical for women). After the “carrot” of the tax premium, the “stick” of foreseeable losses is meant to provide an incentive to switch to a privately funded pension. After fierce protests, the losses were temporarily limited to 10% (adopted despite fierce opposition and grass root protests in the framework of the “Budget Accompanying Act” [Budgetbegleitgesetz] 2003, June 11, 2003 – PdP, June 11, 2003). On July 12, 2004, after almost year-long negotiations with the social partners, the government presented its model for harmonised pension systems. After controversial debates with the opposition and the conclusion of an agreement with civil servants on their particular “harmonisation path”²¹ the Act was finally adopted by the government’s majority in parliament on November 18, 2004 (Pension Harmonisation Act, November 18, 2004 – PdP, November 18, 2004).

The key provisions are the following (derStandard-online July 12, 2004; September 7, 2004):

- As of January 1, 2005, the new system applies to anybody under the age of 50
- the contribution rates are 22.8 percent for blue collar/white collar workers, 17.5% for the self-employed and 15% for farmers
- pension benefits first start to accrue after 7 years of gainful activity instead of only after 15 years as before
- substitute qualification periods: four (up to now two) years for parenting; for periods of parenting, dependent care leave, community service and military service, the assumed income for pension assessment is the median income of female employees (1,350 Euro), while for periods of unemployment, the assumed income is 70% of the assessment base for unemployment benefits and 92% of the assessment base for unemployment assistance
- the loss ceiling was lowered to 5% for 2004, but will increase by 0.25 percent per year until 2024, reaching the level of 10 percent fixed in 2003

payments to pensioners („Ausgleichszulagenrichtsatz“; 2005: € 662,99) that would secure the livelihood of the recipients. The proposal was agreed to in principle by both the Federation and the Provinces in March 2004, and a related expert draft was forwarded to the ongoing constitutional convention (derStandard-online March 16/March 18, 2004).

²¹ The agreement provides for a pension insurance fund for all civil servants under 50 years. The remuneration system is to be redesigned, with higher initial salaries but lower automatic salary increases. An immediate reduction of the contribution rates from 12.55% to 10.25% as initially demanded by the civil servants union („Gewerkschaft der öffentlich Bediensteten – GÖD“) will not be implemented; instead the rates will go down slowly as proposed by the government. (derStandard-online, November 17, 2004).

- contribution years are valorised using the wage index, while the yearly pension benefit adjustment increases with the change in the consumer price index. To assure financial viability, the system is to be linked to the demographic development by use of a “sustainability factor”
- heavy workers may retire three years earlier after a minimum of 15 years of heavy work, though the definition of “heavy work” remains to be agreed upon
- the so-called “Hackler-Regelung” (= the right to retire after paying pension contributions for 45 years) is to be maintained until 2024.

So the “cutback” model of the pension reform in 2003 was applied to all the pension systems.

HEALTH REFORM

Changes to the health system included further increases in contributions and co-payments – exactly in line with the purpose of the neoliberal reform project. For more details see section on the Austrian health system.

TAXES AND FEES

With regards to taxes and fees, an increase in the mineral oil tax was introduced in parallel with a tax relief in two stages. The first stage in 2004 includes an increase of the tax exempt allowance to 14.500 Euro/year, reducing tax revenues by an amount of 544 million. Subtracting higher charges of 375 million leaves a net relief of 160 million (Federal Finance Act 2003 and 2004, June 18, 2003, – PdP June 18, 2003; derStandard-online June 19, 2003, August 13, 2003). The tax reform's second stage provides for a cut in the nominal corporate income tax rate from 34% to 25%, fewer income tax brackets with the double objective of simplification and a general tax relief, and higher tax-deductible amounts for single income earners, the family policy feature of the reform (Tax Reform Act 2005, May 6, 2004 – PdP May 6, 2004; derStandard-online January 9 and 11, 2004)²².

²² Besides, by redistributing revenue increases and reductions the Federation transfers fiscal consolidation pressures to the Provinces and Municipalities (Financial Equalisation Act 2005, December 9, 2004 – PdP December 9, 2004, ORF ON May 10, 2004), which are now increasingly forced to cut their expenditures, too.

FAMILY AND GENDER POLICY

The conservative programme to “bring women back to the home” is being maintained. The higher tax-deductible amounts for single income earners promote the role of marriage as a safety net, while the child care benefit, which works like a “shutdown bonus”, is increased by a further 50% (218 Euro) for each additional child (Amendment of the Child Care Benefit Act, July 7, 2003 – PdP, derStandard-online July 7, 2003)²³.

All the same, a right to part-time work for employees was adopted in parliament on May 26, 2004 in order to improve the compatibility of family and work (right to parental part-time work, May 26, 2004, – PdP May 26, 2004). However, this right applies only to companies with 21 employees or more and only to employees having worked a minimum of three years for the same firm – that is to only 23% of all employees (derStandard-online October 7 and 10, 2003).

Shocked by Austria's poor scoring in the new Pisa Study on the quality of education in Europe, Education Minister Elisabeth Gehrler gave the green light for a comprehensive school which hitherto had been vehemently opposed by her party, the PP. The new reality of working women had to be taken in account, she commented (ORF ON January 25 and 26, 2005).

In addition, the new Equal Treatment Act was adopted on May 26, 2004 (PdP, May 26, 2004) with a view to implementing the new EU directive on equal treatment. It purports to protect against discrimination in employment on the grounds of gender, race, ethnic origin, religion, political or other opinions, age or sexual orientation. In light of the EU directive's half-hearted, “minimalist” implementation, the EU commission is considering suing Austria. (derStandard-online, July 29, 2004)

ANTI-FOREIGNER PROGRAMME

The nationalist anti-foreigner programme (“integration before new immigration”) is maintained: Family reunification continues to be restricted²⁴, the immigration quota for 2005 has been further reduced, and it is planned to further limit the opportunities for early naturalisation.

The inflow of asylum seekers was first limited by a guideline on asylum in October 2002, providing a very restrictive interpretation of the term “safe country of origin”²⁵, followed by a new Asylum Act adopted on October 23, 2003 which brought several restrictions

²³ However, the government is thinking about raising the allowances for additional income, which would lower the barrier against employment or re-entry into the job market (derStandard-online, August 12, 2003).

²⁴ The pertinent provision of the Aliens Act was found to be unlawful by the Constitutional Court in October 2003 (VfGH, October 8, 2003).

²⁵ In practice, only refugees from Iraq and Afghanistan were recognised.

(including making lodging an application more difficult, a prohibition to raise new issues/matters on appeal during the asylum procedure, limitations of appeals against asylum decisions; see Amendment to the Asylum Act 2003, October 23, 2003 – PdP, derStandard-online October 23, 2003).

After substantial parts of the new Asylum Act were repealed by the Constitutional Court on October 15, 2004, a new bill was submitted to review in January 2005 containing tougher provisions on detention pending deportation, a simplified procedure at the Independent Federal Asylum Senate (UBAS) and the elimination of the third instance in the Asylum procedure (i.e. the possibility to appeal at the Administrative Court). However, the prohibition to raise new matters on appeal is to be relaxed (derStandard-online January 12, 2005)²⁶.

After problems with the provision of basic support for refugees escalated into an emergency persisting throughout the whole winter season of 2003/4, an “Agreement between the Federation and the Provinces on Basic Support for Refugees” was unanimously adopted in parliament on March 24, 2004. This was an important precondition for assuring basic support for refugees and implementing a pertinent EU directive (Amendment of the Federal Care Act and Basic Support Agreement, March 24, 2004 – PdP March 24, 2004). The agreement came into force in May 2004; however in six Provinces, in particular in Carinthia and Tyrol, its provisions have yet to be implemented.

4.3 CONCLUSIONS: CONSEQUENCES WITH REGARD TO ICESCR RIGHTS

1. Through its neoliberal policy of tax relief and cuts in (social) expenditure, the Republic of Austria ensures that income earners have more money to spend, but fails to *do its utmost* to provide work and income to as many people as possible (Art. 6 ICESCR) and refuses to face the challenge of ensuring adequate social security to persons with discontinuous and atypical employment contracts (Art. 9 ICESCR).

Alternatives:

- tapping the full potential for *investment* in job creation/employment
- shifting the financial foundation of the social security system from wage-related contributions to contributions based on *total value added*
- introduction of a basic support scheme and basic pension benefits.

²⁶ However, Liese Prokop, the new head of the Ministry of the Interior and successor of Hermann Strasser who stepped down in December 2004, argued in January 2005 for a staff increase at the UBAS and against **the** abolition of the asylum procedure's third instance. (derStandard-online, January 2, 2005).

2. The Republic of Austria provides more social security for persons living in conventional marriages and families, in particular women (Art. 10 ICESCR), but does little to encourage women to seek employment or other gainful activities and thus to become financially independent (Art. 7 ICESCR), and equally little to ensure that persons with unconventional careers enjoy the same level of social security as persons with conventional careers.

Alternatives:

- consistent equal treatment and anti-discrimination policy
- introduction of a basic support scheme

3. The Republic of Austria, through its restrictive foreigner and asylum policy, excludes many migrants from enjoying ICESC rights (Art. 3 ICESCR)

Alternatives:

- policy change regarding family reunification, harmonising the right to residence and the right to work, general right to vote in municipal elections
- full access to the social security system for all persons with lawful residence
- an asylum law in conformity with human rights conventions.

4.4 LITERATURE

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5. THE AUSTRIAN HEALTH SYSTEM AND ITS CURRENT REFORMS

Dr. Werner Vogt, Vienna Care Ombudsman and Co-initiator of the referendum “Welfare State Austria” and Elisabeth Paschinger, Project Director, Vienna Care Ombudsman Office and Co-initiator of the referendum “Welfare State Austria”

5.1 HEALTH REFORMS AND LEGAL AND STRUCTURAL FRAMEWORK

„The current debate on the development of the health system mostly focuses on the amount of expenses and the ability to finance them. This corresponds to a very narrow approach, discussing the health system mainly from the perspective of the public budget and its constraints.” (Health Economical Structures and Linkages in the Austrian Health System, published by the Federal Ministry for Health and Women’s Affairs, October 2004) Austria is the sixth richest country of the OECD, yet the financial viability of its public health system is permanently under review. Hospitals, independent physicians, pharmaceuticals, medical and therapeutic products²⁷ are continuously controlled and evaluated, the services and products provided progressively curtailed. These measures are justified on the one hand by constantly rising costs related to demographic change and medical-technical progress (more expense), and on the other hand by rising unemployment and economic recession (less revenue). Thus within the last three years, several new measures were introduced to counteract these trends, though some of them were later taken back (e.g. fees for ambulatory care). Prescription fees and co-payments for medical and therapeutical products, cures, patient transport and hospitalisation were increased substantially. For example, the co-payment for spectacles jumped from € 23 in 2004 to € 72.60 in 2005. According to Statistik Austria – OECD, in 2002 public health expenditure in Austria amounted to 5.4% of the gross domestic product (GDP), representing 68.5% of total health expenditure. Yet according to experts from social insurance funds and the IHS (Institute for Higher Studies)²⁸, public health expenditure would climb to 5.5% of GDP in 2010 even if all health system reforms currently known were perfectly implemented.

Thus, contrary to the expectations of the Federal Government, the health reforms will have no effect on the public budget. Instead, low-income groups will be strongly affected in particular by higher social insurance contributions and co-payments.

²⁷ e.g. **spectacles**, prosthetic devices

²⁸ IHS Healthecon 2002

„Co-payments primarily hit weaker groups like the chronically ill and people with low income and thus come into conflict with the caring society's social aims.“ (Austrian Federal Institute for Health)²⁹

The following examples, provided by the Vienna Health Insurance Fund (WGKK), illustrate the effects of this charges package.³⁰

1. Retired woman, 74, gross pension benefits € 700, 19 days in hospital, 8 packages of pharmaceuticals: Additional charge per month € 48.7
(before reform: € 215.3; after reform: € 264)
2. Single income earner, 37, wife and 2 children, gross income € 1,500; 5 days in hospital, 7 packages of pharmaceuticals: Additional charge per month € 15.8
(before reform: € 125,7; after reform: € 141.5)
3. Top manager, 48, gross salary € 9,500; 1 package of pharmaceuticals: Additional charge per month € 5.8
(before reform: € 132.05; after reform: € 137.85)

Old people living in a private, non-profit care home and receiving monthly pension benefits of for example € 665 are neither exempted from the prescription fee nor from the so-called “hospital cost contribution” since the exemption limit is € 662.99 (set by the WGKK in 2005). Apart from the care benefits, they transfer 80% of their pension benefits to the care home. That leaves them approximately € 130 with which they have to pay both the prescription fees and the hospital cost contribution. Thus the health reform amounts to a breach of the solidarity principle. The financially weak – and among them in particular old people – are partly or completely excluded from health care services, while on the other hand – in relation to monthly incomes – the charges are unevenly distributed between employees and employers to the detriment of the employees.³¹

Thus the Ministry for Health is ignoring the findings of the study prepared by the Federal Institute for Health, an institution subordinated to the Ministry!

One reason why the solidarity principle can be breached so easily is that, despite being part of the federal legislation, i.e. of the General Social Insurance Act (ASVG), it may be changed at any time by a simple majority in parliament or circumvented by an agreement between the Federation and the Provinces. The health reform just enacted is based on such an agreement between the Federation and the Provinces. The only remedy

²⁹ „Selbstbeteiligungen. Internationaler Vergleich und Implikationen für Österreich“ (Co-Payments. International Comparison and Implications for Austria), Austrian Federal Institute for Health (ÖBIG) 2003, commissioned by the Federal Ministry for Health and Women's Affairs.

³⁰ : „Gesundheitspaket“ der Bundesregierung (The Federal Government's “Health package”), WGKK 2004

³¹ According to the „solidarity principle“, described as the foundation of the Austrian social insurance system, the contribution rates should be set **so as** to achieve a balance between high income and low income earners.

to prevent a circumvention of the solidarity principle would be to explicitly recognise it in the Federal Constitution.

A constitutional amendment to this effect was one of the demands of the referendum "Welfare State Austria" in 2002, supported by more than 700.000 Austrians. However, its implementation has since been successfully blocked by the Federal Government.

Apart from recognising the solidarity principle in the Constitution, the referendum demanded the introduction of a social impact assessment to examine the effects of a proposed legislation on the social fabric before it is enacted.

If such a social impact assessment had already existed in Austria, all health reform measures introduced up to now would have been identified as being inappropriate and extremely detrimental for the financially weak and would thus have been prevented.

5.2 PEOPLE WITHOUT HEALTH INSURANCE IN AUSTRIA

While an estimated 1 percent of the Austrian population had no health insurance in 2002, in 2003 –according to a survey by the Federation of Austrian Social Insurance Institutions (Hauptverband der Sozialversicherungsträger) – only 97% were covered by statutory health insurance. Thus the number of persons without health insurance tripled to 3%.

In absolute numbers, up to 160.000 persons over the age of 15 are excluded from health care in case of illness, i.e. they neither have private health insurance nor are they otherwise entitled to any help in case of illness.

According to a study commissioned by the Federal Ministry for Health and Women's Affairs in 2003³², people without health insurance are persons:

- with low income (average monthly income of about € 240)
- of low school education (completion of compulsory school at best) and
- in bad health: suffering from depressions, psychological disturbances, alcoholism.

³² Quantitative und qualitative Erfassung und Analyse der nicht-krankenversicherten Personen in Österreich (Quantitative and qualitative survey and analysis of persons without health insurance in Austria), Federal Ministry for Health and Women's Affairs, 2003

They are in general

- single
- male
- 35 years old (average)
- asylum seekers not covered by Federal Care
- unemployed and not entitled to unemployment insurance benefits

There is an ongoing debate over models to integrate the group of uninsured persons into the health insurance system, but a solution still remains to be found. It is conceivable however that the problem may not be solved by a general inclusion alone but will require an additional bundle of measures, in particular regarding prevention:

For example, access to unemployment insurance benefits has been restricted recently by the Unemployment Insurance Act 2004 which shortened the period of entitlement to such benefits, leading to an increase in the number of persons without health insurance³³. A further increase in the number of persons without health insurance can be traced back to a substantial reduction in the number of asylum seekers covered by Federal Care.

5.3 PATIENTS' RIGHTS

The rights of patients in Austria are subject to the Hospital Acts of the Provinces. Since 2002, a part of the hospitalisation fee is transferred to the Patients' Advocacy Service to facilitate out-of-court settlements in case of damage suffered by patients. However, this arrangement is very controversial. While it requires all the patients to insure themselves against possible damage, those responsible for such damage pay no contributions.

Persistent problems exist with regard to care for old people in private and public care homes.

These persons are not sufficiently covered by the existing legislation on patients' rights since they are not "patients" in a legally recognised sense. Long-term nursing care is not provided by the so-called Acute Care Hospitals ("Akutspitäler") but by separate public or private institutions. These institutions are entitled to cost contributions under provincial legislation on social assistance and/or charge such contributions based on private legal contracts. In such cases, no services are provided by statutory health insurance institutions nor is there a legal duty to do so. Thus the responsibility of the Patients'

³³ This is a two-step-process. The expiry of the period of entitlement to unemployment benefits („Arbeitslosengeld“) does not lead to a loss of health insurance cover. This will happen only if the unemployment assistance paid out thereafter („Notstandshilfe“, literally „emergency assistance“) is withdrawn. The shorter entitlement period leads to a faster „progression“ to such a point.

Advocacy Services (which exist in all the Provinces) for complaints and concerns as regards long-term care is very limited, extending only for example to damages suffered by persons in need of care as a consequence of medical misdiagnosis or mistreatment. Shortcomings in the provision of care and psycho-social support may only be dealt with by Patients' Advocacy Services if care advocacy belongs to their duties under provincial legislation. As of now, this is only the case in Lower Austria, Styria, Upper Austria and Burgenland. However, it would be desirable and necessary to establish care advocacy services in all the Provinces.

However, after problems involving the geriatric centre "Am Wienerwald" in Vienna became known (massive complaints about care shortcomings), a provisional solution was found by the Care Ombudsman in October 2003. His role is based on a political rather than a legal mandate and thus not subject to interference by the authorities.

The main problem resulting from this lack of a legal mandate is that neither the bodies/institutions legally responsible for the care homes nor their operators have a legal obligation to expose their care documentation to inspection by the Care Ombudsman. An inspection is still possible if a care receiver has agreed thereto in writing. However, since this group of persons often lacks the mental capacity to give such an agreement, and since the care home has no duty to disclose who is acting as solicitor to the persons under care, the work of the Care Ombudsman and his team is still significantly hampered.

Despite this basic difficulty, the Office of the Vienna Care Ombudsman (consisting of Care Ombudsman Dr. Werner Vogt, 2 graduate nurses, 2 social workers, 1 project manager and 2 secretaries) successfully resolved 685 of a total of 713 queries (complaints, requests for assistance, commendations, proposals) received during 2004. The complaints referred mostly to care shortcomings and insufficient communication. Assistance by the Office was sought mainly for legal and financial problems related to long-term care. All individual cases were positively resolved.

Furthermore, the Office of the Care Ombudsman Vienna has a political mandate to highlight structural and organisational shortcomings and to encourage the responsible bodies to take action by implementing required changes. A further focus of its activity is to establish a vision for long-term care, to attract public attention and thus to sensitise the population to the challenges of dealing with old people. In principle, the priority concern is to open the homes to the world outside and not to seclude them.

One outcome of this activity was that the entire management of the hospital network responsible for public care homes in Vienna was replaced, and the lack of care personnel identified and acknowledged as the main reason for the existence of care shortcomings.

A further success came in December 2004, when the provincial parliament of Vienna – as one of the last provincial parliaments in Austria – finally passed a bill on care homes. The bill will enter into force in 2005. It includes many improvements, in particular with regards to the enforceability of the rights of persons in need of care. What the bill failed to do, regrettably, was to establish a legal foundation for the activity of the Care Ombudsman.

But there are many problems – throughout Austria – for old people in need of care which have not been satisfactorily resolved or not resolved at all.

- There is a **lack of the outpatient care personnel** required to enable old people to stay as long as possible in their own apartments
- Old people are **legally incapacitated** too often and too quickly, and their appointed solicitors don't devote enough attention to them.
- because of a lack of institutions providing low-level care such as for example flat-sharing communities, young people in need of care are placed in care homes tailored to the needs of old people
- there is still a pervasive lack of day care facilities/services and psycho-social and occupational care in care homes
- **"private" often means higher costs and lower quality:** As the number of places in public care homes decreases, often low-quality care services in private homes have to be expensively paid for
- the care costs are **barely covered by the care benefits**, which were only slightly increased in 2005 after remaining unchanged for more than five years. The procedure to claim care benefits is time-consuming, and benefits are very often only awarded after legal action has been taken.
- **restrictions concerning employment or work permits for care personnel from new EU member states** lead to illegal employment and undocumented migration. Without them, however, it would often be impossible to care for older people because of a lack of Austrian personnel and the high costs to be borne by the people in need.

There is no doubt that the bill on care homes in Vienna and the Federal Acts on Residential and Nursing Homes (Heimvertragsgesetz) and on the Protection of Personal Freedom in Residential and Nursing Homes (Heimaufenthaltsgesetz) adopted in the years 2003 and 2004 respectively, contribute to an improvement in the current situation. They represent steps in the right direction. Real change though requires farther-reaching

measures such as for example the establishment of a legal foundation for care advocacy, a change in the laws on solicitorship to stem the flow of appointments of solicitors, an increase in care benefits and the assurance of better coverage and fairness of representation in damages cases.

Something must be done to counter the inclination of public institutions to eluding their challenging responsibility to provide old people in need of care with social security and a pleasant retirement by leaving it all to private institutions!

All persons, regardless of origin, income or wealth, have the right to receive the medical treatment, care and social attention required in old age.

This human right has to be recognised in and guaranteed by the Federal Constitution. Such a constitutional provision was part of the demands of the referendum "Welfare State Austria" in 2002, which despite having been signed by 700,000 citizens is still ignored by the Austrian Federal Government.

Summarised, the following **Ten Theses on Austrian Health Policy** apply³⁴:

1. The public health system in Austria, up to now in reasonably good shape, owes its good standing to the fact that "free market" principles were never applied.

2. Patients are responsible for themselves, but are not to blame for getting ill; thus 'no' to co-payments.

3. The economy keeps creating more wealth. The health system and the people who depend on its services should benefit to the same extent.

4. One-stop health services, regardless of how many institutions and service providers are involved.

5. Professionalisation of health care and prevention, relying on experts in epidemiology.

6. No chance exists to assure health in the long term without prevention.

7. Increased legal protection for patients and physicians.

8. Patients vote for their representatives.

9. Recovery of patients, quality of treatment and thus the education and training of physicians and care personnel are inseparable.

10. Health and social status are linked; thus there is a joint responsibility between health authorities and welfare authorities. There is an urgent need for welfare legislation to be constitutionally secured.

³⁴ Thesen zur österreichischen Gesundheitspolitik (Theses on Austrian Health Policy), Dr. Werner Vogt 2002

6. POVERTY AND RISK OF POVERTY AMONGST WOMEN IN AUSTRIA

6.1 THE STATE OF AFFAIRS

Despite being one of the world's ten richest countries, Austria has not managed to avoid poverty. Quite the contrary: Under the current federal government, the risk of poverty has actually increased and in particular for Austria's women. Within the European Union, a person is deemed to be at risk of poverty if her/his available income is less than 60 percent of the median income in the respective member state. According to the Austrian Conference on Poverty (Österreichische Armutskonferenz), to be poor also means a lack of opportunities for self-realisation. Poor people have almost no opportunity to participate in social life. Their opportunities to exercise their economical, social and cultural rights are severely limited. Discrimination against women in a whole range of social realms which causes poverty amongst them or puts them at risk of becoming poor also represents an infringement of women's rights.

On February 3, 2005, the Federal Minister for Social Security, Generations and Consumer Protection, Ursula Haubner, and her State Secretary Sigisbert Dolinschek presented the "Report on the Social Situation 2003 – 2004". According to this report, an alarming 1,044,000 persons, or 13.2% of the population, were at risk of poverty in the period covered, 571,000 or 54.7% of which were women. This is an increase of 164.000 persons or 20% compared to the period 2001/2002! In addition, the difference between the average income of those at risk of poverty and the risk of poverty threshold (60 percent of the median income) increased: This so-called "risk of poverty gap" rose from 17% to 20%. Statistically, the risk of becoming poor is 50% higher for a woman than for a man since the income of female employees is more than 40% lower than the income of male employees.

According to the previous Report on the Social Situation 2001 – 2002 (based on data for 1999), 204,000 women, or 5% of all women in Austria, lived in „acute poverty“ which affected a total of 313,000 persons. Thus the share of poor women amounted to 65%! So has the situation of women improved since then or not? Lamentably, the new report does not allow one to derive such conclusions: „Acute poverty“ is no longer surveyed; it was substituted by the concept of „consolidated poverty“³⁵, defined as having an income below the risk of poverty threshold (€ 785 per month) and being affected by a „lack of participation“ or deprivation in one of five key areas of life. Furthermore, the respective data are not broken down by sex. However, according to the new report, a total of 467,000 persons, or 5.9% of the population, are living in „consolidated poverty“.

UNEMPLOYMENT

The actual situation of women may still be inferred from other facts, one example being the current record numbers of jobless women – 108.558 as of February 2005. For a considerable time, the unemployment rate of women has been climbing faster than the unemployment rate of men. The government is taking no action to increase the female employment rate; on the contrary— funds of the Labour Market Service (AMS) earmarked for supporting women were cut. One additional reason for female unemployment is the insufficient provision of child care facilities. Both facts have been repeatedly criticised by the European Commission. Also the child care benefit introduced by the coalition government of the Austrian People's Party (PP) and the Austrian Freedom Party (FP) contributes to keeping women out of the labour market and increasing their unemployment, mainly because no sufficient protection against dismissal was provided for. This has been criticised by the OECD, apart from the fact that such a lack of protection contradicts all recommendations for economic policy. A further reason for high unemployment among women is the lack of educational programmes for women and girls. From 2000 to 2004, the percentage of unemployed women with low educational level (no more than compulsory school education) increased by a third, a development affecting female migrants in particular. But unemployment is even rising among women with an university degree.

INCOME GAP AND PRECARIOUS EMPLOYMENT

Poverty amongst women is principally related to their low earnings. Within the EU, Austria has the third highest "gender income gap" and has been admonished accordingly by the Commission. In Austria, a woman's average income is just two thirds that of a man. From 1980 to 2002, this ratio only rose from 65% to 67%, despite a dramatic rise in the educational levels of women over the last 30 years.³⁶ Thus overall, women are grossly underpaid when taking their qualifications into account. Since 1980, the income gap has actually further increased. Worst affected are female blue-collar workers. In 2003, their average gross annual income stood at Euro 9,500 compared to Euro 21,230 for male blue-collar workers. Thus, female workers earn not even half as much as their male colleagues. Since 2000 (when the PP/FP coalition assumed office) the income situation of women has gone from bad to worse, and there can be no talk of equal pay for equal work in Austria.

³⁵ „Verfestigte Armut“

³⁶ The situation looks better when considering the median income adjusted for hours worked : Then the percentage share increased from 71.2% to 82.2%. See Section on poverty and wealth in Austria.

At the same time, the number of jobs available to women with which they can support themselves is decreasing. All too often they have to settle for poorly paid part-time work or to accept an even worse-paid atypical employment. 40.1% of all working women have a part-time job compared to just 5.9% of men. More than 70% of the persons with "minimum employment contracts"³⁷ are women. 52% of working women with children under 15 years do not earn enough to secure a livelihood, i.e. they belong to the so-called "working poor".

SINGLE MOTHERS

The growing risk of poverty amongst single mothers and their children is alarming. Very often they can't afford to pay for school snacks or appropriate winter clothing for their children. From 1999 until 2003/2004, the risk of poverty amongst working single mothers doubled from 14% to 28%, a significant reason being their increasing difficulties to find sufficiently well-paid jobs to provide for themselves and their children.

Poverty leads to social exclusion, loneliness and a higher risk of physical and mental illness, and those affected may fall into a poverty trap. In addition, poverty is transmitted to the children: They get almost no assistance in school, higher education is not affordable, and poverty-related social exclusion contributes to a much less stimulating learning environment. Their chances of greater success than their parents, once grown up, are rather low. Their right to education is not assured.

UNEMPLOYMENT ASSISTANCE AND SOCIAL ASSISTANCE

While pensioners are entitled to income support payments ("Ausgleichszulagen") if their pension benefits are below a certain minimum level³⁸, no such income support exists with regards to unemployment assistance³⁹. Of course, the low income levels of women translate into low levels of unemployment benefits and unemployment assistance. From 2002 to 2003, both increased for women at just half the rate for men, on average. The average unemployment assistance received by women was Euro 475, an amount far below the poverty line. Many women receive no unemployment assistance at all, since the amount of these benefits is calculated by also taking a partner's income into account. For better or for worse they have to depend on a man for survival.

Two thirds of the persons permanently receiving social assistance are women. They are kept in complete dependency, are not allowed to own any sellable assets and are forced

³⁷ Employment with an income equal to or lower than € 316,19 (2004), i.e. the small income exemption limit for social insurance contributions.

³⁸ The minimum income guaranteed by these payments (2005: € 662,99) is usually taken to be the official poverty line. In Austria's official report, *Ausgleichszulagen* are translated as "compensation grants".

³⁹ The „Notstandshilfe“, literally „emergency assistance“ (approx. 50% of the net wage) are unemployment insurance benefits provided after expiry of the period of entitlement to regular unemployment benefits.

to humiliating regular visits to the Social Assistance Office ("Sozialamt"). In addition, no single standard rate of social assistance exists in Austria. In Upper Austria in 2003 for instance, a single mother with a ten year old child would get Euro 600, but in Carinthia only Euro 447. All these rates for social assistance are below the EU's risk of poverty threshold. The consequence is that once in this situation, women stay poor despite official support, have almost no opportunity to participate in social life and thus only few opportunities to overcome poverty.

OLD-AGE POVERTY OF WOMEN

Low female earnings logically translate into extremely low pension benefits and in a high number of female pensioners at risk of poverty. Four out of ten women receiving pension benefits, currently 400.000 in absolute numbers, did not earn those benefits themselves⁴⁰, while practically all male pensioners did. The pension benefits of women are on average a third lower than those of men. In 2003, women represented more than two thirds of pensioners receiving income support, i.e. their pension benefits were below that which is taken to be the official poverty line in Austria (2004: € 653; 2005: € 662.99), with tax-funded payments making up the difference. But this amount is below the risk of poverty threshold, set at 60% of the median income (Euro 785). Accordingly, the more than 200.000 pensioners in Austria receiving such minimum pension benefits have an income below the risk of the poverty threshold. In 2003, approx. 70% of them or 153.000 were women! According to the "Report on the Social Situation 2003-2004", in 2002 the wealthiest 10% owned 70% of the total wealth in Austria (€ 944 billion, comprising monetary assets, real estate and company shares). As all over the world, most of the wealthiest 10% are men. Of the total wealth existing worldwide, women own just 1%. By a range of measures and failures since assuming office, the PP/FP coalition government has facilitated a redistribution from the poor to the rich, thus also from women to men. For instance, Austria has still the lowest wealth taxes in the European Union.

6.2 GOVERNMENT FAILURES

INCOME GAPS

Nothing has been done to reduce the income gaps between women and men. Instead, more flexible working times have been promoted, leading to an increase in the number of women doing badly paid part-time jobs or working under „atypical“ and minimum employment contracts, and therefore to a loss of income amongst them. These measures included the extension of shop opening hours. This, too, has led to an increase in part-

time jobs for women, but to a decrease in jobs which would provide for a secure livelihood. Such jobs are synonymous with time poverty (work in the evening, on Saturdays) and income poverty, thereby further reducing the opportunities of women to participate in social and cultural life. For women, the last five years have in fact been a period of social descent. There was no redistribution from top to bottom; what actually occurred was a reverse redistribution benefiting the wealthiest 10% of the population. However, a whole range of measures could be taken to increase women's incomes.

These include:

- a minimum wage of 1,000 Euro as demanded by the European Commission which would benefit many more women than men
- measures to enforce the principle "equal pay for equal work" in the private sector to reduce the gaps between wages in industries dominated by women and industries dominated by men
- a disproportionate increase of lower wages in collective bargaining agreements
- amendment of the Federal Public Procurement Act such as the introduction of conditions for granting public subsidies and awarding public contracts to private companies, for example: installation of a plan for the advancement of women, no cases of discrimination against women, no "glass ceiling" for women's professional careers etc.
- enacting legislation to better protect persons working under atypical employment contracts both in terms of social security and employees' rights.

The "household service check"⁴¹ ("Dienstleistungsscheck") recently proposed by the Government is in no way conducive to a reduction of the income gap. Instead, it will stigmatise women, in particular those with lower qualifications, and reduce their chances of leaving the lowest income bracket to almost nil. In addition, it will contribute to a displacement of qualified employees in institutions providing professional care. In the long term, women will be pushed into badly paid jobs.

LABOUR MARKET POLICY

No labour market programmes were initiated to reduce female unemployment or to increase the opportunities for women to get well-paid jobs. There are no effective programmes to facilitate the re-entry of women into the labour market who took leave to have a baby. Instead, the new child care benefit model works as an incentive to keep women out of the labour market for as long as possible, lowering their chances of a successful re-entry. With the previous parental leave model, either of the two parents could receive benefits for up to 18 months after the birth. If both parents took parental

⁴⁰ They receive a survivors' pension.

⁴¹ For details see section on social policy in Austria

leave, the period was extended to 24 months, with protection against dismissal ensured for the same period. Though the period of entitlement to the new child care benefit was extended to 36 months, the period of protection against dismissal remained unchanged at 24 months.⁴² With such insufficient protection against dismissal, the benefit works as a further hurdle against re-entry into the labour market, transforming it into a distant and almost hopeless dream for many women.

Though gainful activity by itself does not guarantee a livelihood, it is a significant precondition of financial independence which for many women will be out of reach because of the child care benefit. For a start, the following urgent measures would be required:

- an employment offensive for women
- a redress of the cuts in Labour Market Service programmes for women
- effective assistance for re-entry into the labour market
- reform of the child care benefit model, including protection against dismissal for the whole period of entitlement to the benefit
- income-dependent child care benefit as an incentive for men to take parental leave.

EDUCATION, VOCATIONAL TRAINING

Education is a significant precondition for a well-paid job. While for well-off households, providing their children – including girls and young women – with an education is usually no problem, the same is not true for poor and educationally disadvantaged households. In such households, in particular the girls' education is neglected. There is a lack of measures to introduce girls (in particular from poor and educationally disadvantaged households) to a broad range of professional career options, to motivate them to make use of educational opportunities and especially to support them in building self-esteem. The introduction of a comprehensive school for children from 10 to 14 combined with gender-sensitive pedagogics would be a significant step to start with. Both approaches have been neglected so far. Also very important for the education opportunities of young women is free access to education including university education. The introduction of university tuition fees by the current government is actually hindering many young women from poor and educationally disadvantaged households from taking up studies.

Women in poorly paid jobs and professions would need qualification programmes, vocational training courses they can afford and an equal treatment act for the private sector to make it impossible to exclude women from vocational training. None of these measures currently exist.

⁴² Lutz Hedwig, *Wiedereinstieg und Beschäftigung von Frauen mit Kleinkindern (Re-entry and Employment of Women with Infants)*, Institute for Economic Research/WIFO (publisher), February 2004

Likewise, vocational training offers and the promotion of vocational training are needed towards the end of the period of parental leave before re-entry into the labour market. However, Austria is among the worst performers in the EU with regard to promotion of professional vocational training for women.

In addition, information centres for women and girls have to be promoted. What the Federal Government did instead was cut subsidies for such institutions during the last years-- several times, indeed.

CHILD CARE

The money spent on the child care benefit model, which works against female employment, increases the risk of poverty, and has thus been criticised by the EU and the OECD, would be better spent for the establishment of child care facilities. Across Austria, child care places exist for just 8% of children under three years old. The OECD recommends three times as many, arguing that such an offer is an essential "building stone" for working parents and in particular for single mothers. But the current government seems not to be interested in providing opportunities for work, and thus financial independence or a secure livelihood, for all women.

An income-dependent allowance for parental leave, combined with reliable protection against dismissal, would make it possible for more men to take parental leave. This would reduce the particular disadvantage of women in the labour market arising from fears that they could take leave to have babies.

GENDER MAINSTREAMING

The significant reforms introduced during the last few years by the government were all implemented without application of gender mainstreaming, though the EU requires this. No examination took place as to whether the relevant measures would have differential effects on women and men or would result in disadvantages for women (men). Thus, several reforms have led to significant disadvantages for women, including the following:

PENSION REFORM

The pension reform would have opened the way to improving the pension benefits of women, but the government wasted this opportunity. Though more time spent for parenting and caring will now count as substitute qualifying periods ("Ersatzzeiten") for determining pensionable earnings, the bottom line is that the cuts in pension benefits, in particular the general extension of the period for determining pensionable earnings, will lead to tremendous losses for women, who in general receive much lower pension benefits than men. In the next 20 years, massive old-age poverty of women is to be expected. What should be done instead is to increase the minimum pension benefits and establish an independent old-age social security system for women.

TAX REFORM

The last tax reform⁴³ implemented by the government led to no improvements for those in the lowest income brackets, whether employed or self-employed. While income tax allowances were increased, no “negative income tax” was introduced. An opportunity to reduce the risk of poverty of women was wasted while benefiting higher income groups and the wealthy.

Also among entrepreneurs, women belong to those in the low-profit and high-risk category (including risk of poverty in case of business failure). Thus they benefit from neither the reduction in the corporate income tax nor from the new tax allowance for re-invested earnings. 98% of entrepreneurs don't gain with the tax reform; the beneficiaries are just big corporations.

HEALTH REFORM

Low-income earners, a majority of which are women, are of course disproportionately affected by the new co-payments and higher prescription fees that were introduced. Since poverty leads to illness, the impact of these charges is even more dramatic. In particular single mothers in difficult situations and female pensioners affected by old-age health problems are severely hit.

PRIVATISATION OF PUBLIC SERVICES

Since such moves increase the cost of public services, low-income earners are disproportionately affected.

WEALTH TAX

Austria has the lowest wealth taxes in the European Union. An increase is overdue, but the government failed to take advantage of this potential source of funds for measures to avoid and eliminate poverty.

NEEDS-ORIENTED BASIC SUPPORT

The government has up to now made no effort to introduce a needs-oriented basic support scheme though experts say that such a scheme would be an excellent instrument to combat poverty and reduce the risk of poverty. In addition to financial aspects, such a system would include infrastructure, compatibility of family and work, securing qualification and education and a just distribution of both paid work and unpaid work of reproduction.

⁴³ For details see section „Is Social Policy on the Way to Implement ICESCR rights in Austria?“

7. UNEMPLOYMENT AND MALNUTRITION

Malnutrition and restricted access to health care services are mainly related to the low income of the unemployed, in particular the long-term unemployed. The wage replacement rates of unemployment benefits (55%) and unemployment assistance⁴⁴ (about 50%) paid in Austria are very low compared to prevailing rates in the EU.

7.1 INCOME

Risk of Poverty threshold (2003/4)	785,- €/month (12x p.a.)	
Unemployment benefits (average 2003)	704.70 €/month (12x p.a.)	Women: 611.10 €
Unemployment assistance (average 2003)	553.50 €/month (12x p.a.)	Women: 475.50 €

Since the amount of unemployment assistance is calculated by taking the partner's income into account, long-term unemployment affects life partners and children directly and negatively. In addition, unemployment assistance is completely withdrawn if a small allowance for additional income is exceeded. The person affected by such a withdrawal is no longer covered by health insurance and ceases to acquire substitute qualifying periods ("Ersatzzeiten") for determining pensionable earnings.

Poverty and risk of poverty are especially high among the unemployed:

	Risk of Poverty, %	Risk of Poverty Gap, %	Poverty index
Households, unemployed	26,3	25	6,6
Households, partly employed	9,5	22	2,1
Unemployed (> 6 months)	31,6	24	7,6
Unemployed, total	17,4	25	4,3

Rate of risk of poverty

Percentage of persons at risk of poverty from each population group

Risk of Poverty gap:

Difference between average income of people at risk of poverty and risk of poverty threshold, expressed as percentage of risk of poverty threshold

Poverty index:

Product of rate of risk of poverty and risk of poverty gap (26.3 x 0.25 = 6.6)

⁴⁴ „Notstandshilfe“ (literally „emergency assistance“)

7.2 CASE EXAMPLES

a) Mr. NN, 58, unemployed, living with his wife who receives a minimum pension. Their combined income (household income) is € 1,450 per month. The weighted risk of poverty threshold is € 1,170 per month⁴⁵. Mr. NN suffers from diabetes, asthma and changes in the spine (confirmed degree of invalidity 50%). The monthly costs for therapeutic products and special nutrition appropriate to his medical condition amount to about € 250. The cures required every year cost about € 400. The nutrition recommended by physicians, i.e. rich in vitamins and dietary fibres, is only affordable to a very limited degree.

b) Ms. MM, 46, unemployed, single mother with 2 children subject to compulsory education, has a monthly income of € 1,150. The weighted risk of poverty threshold is € 1,248⁴⁶. The family is living in poverty.

Given that most expenses (rental fee including heating costs etc.) are fixed, the family has to save expenses for food. Cheap food (e.g. pasta) and special offers (clearance sale of products nearing expiration date) are the rule. Food with higher value – needed especially by the children – is a luxury. Time and again, the family needs to be supported by friends.

c) Ms. CC, 49, unemployed, single, had to accept a part-time job when she was threatened with a withdrawal of unemployment assistance. What she earns with this part-time job is less than her former unemployment assistance. Her monthly income is € 580. The risk of poverty threshold is € 780⁴⁷.

Ms. CC can only afford the cheapest food articles and time and again has to skip meals. She hopes – unrealistically – to find a better paid job. If she quit her current job, she would have to live for one month without any income at all.

7.3 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) VS. UNEMPLOYMENT INSURANCE ACT (ARBEITSLSENVERSICHERUNGSGESETZ – ALVG).

a) While **Art. 6** ICESCR recognises the right to freely choose or accept work, Art. 9 and 10 ALVG refer to “suitable” work and provide for a withdrawal of unemployment benefits for at least 6 weeks if such work is not accepted. With particular relevance to the long-term unemployed, any work is deemed “suitable”.

⁴⁵ Based on the previous risk of poverty threshold of € 780. Weighting rules: 1 for the first adult, 0.5 for any additional adult in the household and 0.3 for children under 15 years.

⁴⁶ See previous footnote.

⁴⁷ Previous threshold; now (2005): € 785

- b) **Art. 7** ICESCR recognises the right to work remuneration providing for a “decent living”. In contrast, the Austrian Administrative Court found that based on the AIVG, employment has to be accepted (under threat of a withdrawal of benefits) if its remuneration complies with the terms of a collective bargaining agreement and is higher than the small earnings exemption limit for social insurance contributions (2004: € 316.19 per month; 2005: € 323.46)
- c) The right to social security recognised in **Art. 9** ICESCR is not assured since unemployed persons not entitled to monetary benefits are not covered by social insurance.
- d) The “widest possible protection and assistance” that according to **Art. 10** ICESCR should be afforded to the family is not assured since the amount of unemployment assistance is calculated by taking the partner’s income into account. This represents a breach of the insurance principle, while instead applying the principle of “clan liability”.
- e) An adequate standard of living and protection against hunger according to **Art. 11** ICESCR is not assured; see: 1) Income, 2) Case examples and 3b).
- f) As the financial support provided to the unemployed is completely insufficient, there is also strong evidence of non-compliance with **Art. 12, 13** and **15** ICESCR.

8. ECONOMIC, SOCIAL AND CULTURAL RIGHTS FROM A CHILD RIGHTS PERSPECTIVE - ISSUES OF CONCERN IN AUSTRIA

Summary of the (second) Shadow Report on the Rights of the Child 2004 - a Contribution to the Austrian CESCR Shadow Report 2005

Helmut Sax, Ludwig Boltzmann Institute for Human Rights, Vienna/National Coalition for the implementation of the Convention on the Rights of the Child in Austria („Netzwerk Kinderrechte“ - www.kinderhabenrechte.at)⁴⁸

In fall 2004 NGO preparations for a shadow report to the Austrian state report under the 1966 UN Covenant on Economic, Social and Cultural Rights (CESCR) started. At the same time Austria is due to discuss its state report under the 1989 UN Convention on the Rights of the Child (CRC) in January 2005; for this purpose the Austrian National Coalition for CRC implementation has already prepared its own CRC shadow report and submitted it to the UN Committee on the Rights of the Child in June 2004.

This short summary paper here is based on that National Coalition's shadow report and offers extracts of CRC issues relevant also in the CESCR context, as a contribution to the Austrian CESCR shadow reporting process.

Overview of concerns and recommendations

- Basic demands: Austria should withdraw its treaty reservations, establish specific constitutional rights for children⁴⁹, implement the National Action Plan on children's rights and promote children's participation
- Situation of child asylum-seekers/refugees
- Juvenile justice
- Child and Youth Welfare
- Child poverty
- Child care
- Education
- Violence against children, sexual exploitation
- Development co-operation

⁴⁸ For any questions please contact helmut.sax@univie.ac.at, Phone: +43-1-4277-27424.

⁴⁹ In accordance with the CRC, „children“ subsequently refers to all persons under the age of 18.

8.1 GENERAL ISSUES

Treaty reservations, constitutional rights, National Action Plan, child participation

- Withdrawal of reservations to Arts 13, 15, 17 of the UN Child Rights Convention
- Austrian Constitutional Law: ensures comprehensive child rights incorporation during current national Convention process for a new Austrian Federal Constitution as well as on regional/"Länder" level
- Adoption and implementation of Austrian National Plan of Action for Children's Rights started in 2003 ("Young *rights* Action Plan/YAP process")
- As part of YAP implementation process: establish child impact assessment procedures at all levels of government and legislation
- Establish a child focus in statistics and research
- Ensure child participation and establish democratic structures for involvement of children and youth and their interest groups - establish representatives for children and adolescents in all Austrian communities and adopt designated budgets for children and adolescents in all communities
- Lower voting age to 16 years at all levels of elections

8.2 ARTICLE 2 CESCR - NON-DISCRIMINATION; INTERNATIONAL COOPERATION

Recommendations as regards federalist system of government in Austria (differences in standards and practical implementation of various "Bundesländer" governments):

- Prevent child discrimination in areas such as child and youth welfare, youth protection standards, social assistance, asylum seeker/refugee protection, educational matters, day care services etc.

Recommendations as regards development cooperation:

- Develop and implement strategy for a child rights-based implementation of Millennium Development Goals
- Implementation of UNGASS Children 2002 International Action Plan
- Establish binding step-by-step programme in order to reach the agreed target of 0.7% of the Gross National Income.
- Child-focused, rights-based Austrian ODA strategies, programmes, capacity building and resources required.

Recommendations as regards non-discrimination of specific groups in Austria:

- Ensure rights of separated asylum-seeking/refugee children (see Convention on Rights of the Child), including protection and support, prohibition of detention pending deportation, access to vocational training

- Ensure rights of accompanied child asylum-seekers/refugees, including access to kindergarten/pre-school services, support for secondary education (above 15), vocational training
- Ensure rights of migrant children and their families - end restrictive quota system

8.3 ARTICLE 3 CDESCR - EQUALITY OF MEN AND WOMEN

- Prevent discrimination of female children, e.g. through stereotypes in media, vocational training etc

8.4 ARTICLES 6, 7, 8 CDESCR - RIGHT TO WORK, VOCATIONAL TRAINING, WORK CONDITIONS, TRADE UNIONS

- Ensure access of adolescents to vocational training, labour market, including for adolescent asylum-seekers/refugees

8.5 ARTIKEL 9 WSK-PAKT: RIGHT TO SOCIAL SECURITY

- Access to the social insurance system for the individual child/adolescent should be guaranteed!
- Ensure protection and support to separated asylum-seeking/refugee children - implement the formal Agreement between "Bundesländer" and Federal government on basic social services for refugees of May 2004

8.6 ARTICLE 10 CDESCR - PROTECTION OF FAMILIES, MOTHERS, CHILDREN/PROHIBITION OF CHILD EXPLOITATION, CHILD LABOUR (SEE ALSO ART 12)

Recommendations as regards child/youth welfare:

- Establish a legal right of the child to adequate day care - ensure high-quality day care institutions with flexible opening hours for all age groups
- Support women to re-enter the labour market after parental leave
- Harmonise legal child/youth welfare framework/standards and their implementation by the "Länder" at the highest level - standardised welfare statistics should be reintroduced; increase research on / monitoring of quality, accessibility and availability of services

- Ensure custody through public welfare authorities and courts to separated asylum-seeking/refugee children, ensure adequate legal protection/representation

Recommendations as regards protection from violence and exploitation:

- Address through comprehensive measures specific forms of violence, including violence against children with disabilities, against children in foster care, violence among children/adolescents, violence within context of church organisations, violence within context of migration (FGM, arranged/forced marriages).
- Address systematically sexual violence against children, in particular with regards to sensitisation of the public, education and training for professionals, supervision, victim protection in court proceedings
- Support specific research focus, empirical data, statistics on violence against children
- Strengthen support and counselling institutions, including special services for girls
- Adequate care, psycho-social support and permit of residence for child and adolescent victims of sexual exploitation and trafficking

8.7 ARTICLE 11 CESC - RIGHT TO ADEQUATE STANDARD OF LIVING, INCL. FOOD, CLOTHING, HOUSING

- Adopt a comprehensive approach to decrease poverty of children and adolescents (with 14 % of the male (126.000) and 16 % of the female (142.000) persons under the age of 20 being threatened by poverty; 4 % of the male (40,000) and 5 % of the female (49,000) children and adolescents are living in acute poverty (average 4 %)): adopt a Basic social security model for children/families (“demand-oriented basic social security system”/ “bedarfsorientierte Grundsicherung”)
- Extend qualified and financially achievable child care institutions
- Support especially women re-entering the labour market - ensure equal opportunities and equal remuneration for women/mothers
- Ensure equal opportunities for migrants in terms of access to social welfare

Recommendations with regard to the situation of juveniles in conflict with the law:

- Juveniles in detention must be kept separated from adults; educational, work, leisure, sports opportunities must be ensured; adequate medical and psychiatric help for prisoners and qualified/trained staff to deal with juveniles must be guaranteed

8.8 ARTICLE 12 CDESCR - RIGHT TO HEALTH, PROTECTION FROM VIOLENCE (SEE ALSO ART 10)

- Address through comprehensive measures specific forms of violence, including violence against children with disabilities, against children in foster care, violence among children/adolescents, violence within context of church organisations, violence within context of migration (FGM, arranged/forced marriages)
- Address systematically sexual violence against children, in particular with regards to the sensitisation of public, education and training for professionals, supervision, victim protection in court proceedings
- Support specific research focus, empirical data, statistics on violence against children
- Strengthen support and counselling institutions, including special services for girls
- Adequate care, psycho-social support and permit of residence for child and adolescent victims of sexual exploitation and trafficking; research and analysis into dimensions and extent of sexual exploitation and child trafficking to/from/through Austria; implementation of "Code of Conduct for the protection of children of sexual exploitation in tourism", in cooperation with the tourism industry
- Comprehensive implementation of Stockholm Agenda (1996) and Yokohama Global Commitment (2001), taking into account the already existing governmental NPA against sexual abuse and child pornography on the Internet (1998)
- Improve situation of juvenile suspects and offenders, as regards over-crowding, aggression and protection from violence, medical and psychiatric support

8.9 ARTICLES 13, 14 CDESCR - RIGHT TO EDUCATION

- Implementation of the Convention on the Rights of the Child in the curriculum and practice in all types of school
- Establishment of independent school-ombudspersons
- Strengthen participatory structures at school, training, conflict resolution
- Reduce allowed maximum number of students (36) per teacher in class.
- Adopt integration package for children with disabilities - inclusive education at all levels of schooling, including adequate staff and equipment
- Adopt integration package for migrant children
- Abolish tuition fees for tertiary education

8.10 ARTICLE 15 CDESCR - RIGHT TO TAKE PART IN CULTURAL LIFE; SCIENTIFIC FREEDOM

- Ensure right to play to all children and adolescents (Art 31 CRC)

9. ESC RIGHTS OF ASYLUM SEEKERS

In 2004, 24,676 asylum applications were registered in Austria. About 37,000 asylum procedures were pending, many of them already for several years. 6,921 of the 24,676 applications in 2004 were lodged by women. Statistical information on age distribution is not available. 88 separated minor asylum seekers were under 14 years old, 982 between 14 and 18 years. The main countries of origin are the Russian Federation, Serbia-Montenegro, India, Nigeria and Georgia.

9.1 BASIC SUPPORT

The Agreement on Basic Support⁵⁰ between the Federal Government and the Provinces, a constitutional provision according to Art. 15a Federal Constitution Act, defines the respective responsibilities of the Federation and the Provinces, the target groups and the services to be provided. The Agreement, effective from May 1, 2004, is also seen as a contribution to implementing the EU directive on minimum standards for the reception of asylum seekers.

Support for basic needs of asylum seekers at the federal level is governed by the Federal Care Act⁵¹. The Act establishes conditions for entitlements to services, for their kind and duration. It was last amended in April 2004 in order to adapt it to the new framework established by the Agreement on Basic Support. Significantly, in the amended version effective from January 1, 2005, the Federation limited its responsibility to ensure the availability of material reception conditions (in particular accommodation, food, health insurance and clothing) to asylum seekers in federal care centres (there are five such centres, three of which are first reception facilities). From this date, the provision of support to the vast majority of asylum seekers is subject to provincial legislation. However, several responsibilities were transferred to the Provinces already as of May 1, 2004.

For example, the Provinces are now responsible for supporting asylum seekers not or only insufficiently able to support themselves (i.e., they have to provide social assistance). Until April 2004, the support of destitute asylum seekers should have been ensured by the Ministry of the Interior; in practice, federal care was often arbitrarily refused. From May 1, 2004, basic support for asylum seekers is governed by the Basic

⁵⁰ Agreement on Basic Support – Art. 15a Federal Constitutional Act (FCA), Federal Law Gazette I No. 80/2004, July 15, 2004.

Agreement between the Federation and the Provinces pursuant to Art. 15a FCA on joint measures for providing temporary basic support to aliens in need of help and protection (asylum seekers, recognised refugees, displaced people and other persons *who* may not be deported for legal or factual reasons) in Austria

⁵¹ Federal Law Gazette I No. 32/2004, April 27, 2004, in force since January 1, 2005. According to the annotations to the Act, its intention is to implement the EU directive.

Support Agreement mentioned above. Both the Federation and the Provinces are now responsible for social assistance.

In most provinces asylum seekers are (legally) entitled to social assistance. These legal provisions should be amended to conform with the Basic Support Agreement. Up to now, this has only been done in Styria and Vienna; in the other provinces only government resolutions to implement the Basic Support Agreement exist. The provinces have failed to enact both the legal provisions required to implement the Art. 15a agreement and the necessary adjustments to the laws on social assistance; this legal void has already created confusion regarding entitlements. In particular the province of Carinthia refuses stubbornly to implement the Agreement between the Federation and the Provinces. From January 1, 2005, the Federal Care Act applies only to a fraction of asylum seekers, i.e. mainly to asylum seekers during the admission examination that has to be completed within 20 days of lodging an asylum application.

9.2 LOWER RATES OF SOCIAL ASSISTANCE TO ASYLUM SEEKERS

A comparison between asylum seekers and Austrian citizens as far as social assistance is concerned is only possible for asylum seekers living in private flats, since in the case of organised accommodation the daily rates include the costs incurred by the provider of such accommodation (staff, investments, maintenance).⁵² The gap between social assistance to asylum seekers in private flats and to Austrian citizens is significant. In Styria for example, an Austrian citizen receives € 479, but an asylum seeker only € 180. However it has to be noted that in all Provinces except Salzburg and Vienna, social assistance may have to be repaid once the emergency situation has ended. As regards the reimbursement of rental costs, the example of Vienna shows that the rental costs of asylum seekers are assumed to be only half of those of Austrians: Asylum seekers are entitled to a maximum reimbursement of € 110 per month, while the ceiling for Austrian citizens is € 220. Rental costs are usually much higher than € 110.

9.3 INSUFFICIENT HEALTH CARE

Basic support includes also health care services provided by social insurance institutions. Costs not covered by statutory health insurance may be reimbursed on a case-by-case basis. Even seven months after the introduction of basic support the issue of health

⁵² The daily rate of € 16 translates into € 480 per month, an amount already below the social assistance provided by the Provinces taking reimbursements for rental costs into account.

insurance forms⁵³ is plagued with problems. Registration in the health insurance system takes several weeks. Grave problems regarding health care have not been reported, since in most cases a solution can be found with the treating physicians. However, some patients lacking a valid social insurance number have to try to find a physician ready to provide treatment even in the absence of this legal requirement.

Pursuant to Art. 6 (4) Basic Support Agreement, emergency health care is a service not to be restricted or withdrawn. Before its last amendment, effective from January 1, 2005, some clauses of the Federal Care Act provided for a withdrawal of services to asylum seekers (regardless of their need for these services) without explicitly referring to the unrestricted provision of emergency health care. As such it could have been in conflict with the EU Directive on minimum standards for the reception of asylum seekers. However, this legal void has been eliminated by the amendment mentioned above. Still, problems concerning the database and data forwarding have resulted in long periods between data entry and final registration in the health care system and thus to difficulties in accessing medical care. In practice hospitals have a duty to provide medical care even to patients with no health insurance. In such cases, the related costs have to be born by the institution legally responsible for the hospital.

9.4 LOSS OF FAMILY ALLOWANCE

In determining rates of social assistance, entitlement to family allowance is usually taken into account. Asylum seekers are only entitled to retroactive family allowance if granted a permanent residence (i.e. if granted asylum). However, entitlements to retroactive allowances were abolished by an amendment of the Family Expenses Equalisation Act (Federal Law Gazette No. 142/2004, December 15, 2004). Refugees having been granted asylum after November 17, 2004 may only file for retroactive allowances accrued until May 1, 2004. Furthermore, a hitherto important financial assistance (for renting an apartment after conclusion of the asylum procedure, usually leading to extraordinary expenses like for commissions, deposits, furniture), was eliminated as well. The situation of recognised refugees is becoming increasingly precarious. Four months after recognition, they lose their rights under the basic support system and have to leave their accommodation without follow-up accommodation being available and regardless of their ability to rent an apartment at market rates.

Integration homes do not offer sufficient places, and access to public housing ("Gemeindewohnung") is usually only granted after considerable waiting periods.

⁵³ In Austria, such forms have to be submitted when visiting independent physicians, hospitals etc. to prove entitlement to health care services.

9.5 ACCESS TO THE LABOUR MARKET AND TO VOCATIONAL TRAINING

The last amendment of the Foreign Workers Employment Act (AusIBG) introduced a new definition of migrants who may be granted access to the labour market. Asylum seekers are no longer mentioned as a group. According to a decision of the Administrative Court in 2003, a preliminary residence permit pursuant to the Asylum Act is not considered to fulfil the new conditions for granting an employment permit, namely for a residence permit pursuant to the Aliens Act or an advanced integration in Austria.

The EU Enlargement Adjustment Act of 2004⁵⁴, which included some amendments to the Foreign Workers Employment Act, re-establishes the access of asylum seekers to the labour market after a three-month duration of the asylum procedure. By executive decree of the Federal Ministry of Economics and Labour, this access was restricted to seasonal employment. Quotas at the provincial and federal level and the so-called "Ersatzkraftverfahren" ("substitute worker procedure")⁵⁵ remain in effect, translating into a de-facto exclusion from access to employment permits.

For example, the AMS NÖ (Labour Market Service of the province of Lower Austria) rejected the application for an employment permit ("Beschäftigungsbewilligung") from a 18 year old female asylum seeker who, apart from having lived in Austria already for 8 years, had been granted a temporary work permit ("Arbeitserlaubnis")⁵⁶ in the Province of her former residence. The application, lodged by a firm in Lower Austria, was rejected, pointing out that the condition for facilitating access to employment permits, i.e. a "sustained integration", was not fulfilled, though at that time she was entitled to unemployment benefits.

Access to subsidised qualification measures and vocational training is restricted to persons who may be placed on the labour market. Since asylum seekers are excluded from the placement services of the AMS, they are as a matter of fact also excluded from access to such training measures.

However, according to the non-discrimination clauses of international treaties ratified by Austria, national legislation has to be non-discriminatory; thus any unequal treatment of comparable groups has to be reasonably and objectively justified. Furthermore, the principle of proportionality applies: the measure in question must be reasonably required to achieve the legitimate aim. In the case in question, the government's interest in a

⁵⁴ Federal Act amending the Foreign Workers Act and the Unemployment Insurance Act (EU Enlargement Adjustment Act), Federal Law Gazette No. 28/2004, April 27, 2004.

⁵⁵ With this procedure, the AMS determines if there are no other national or foreign workers available for the job in question. See also <http://wien.arbeiterkammer.at>

reasonable regulation of the labour market according to economic, social and other viewpoints has to be weighed against the asylum seekers' right to work.

Thus, the intention and make-up of the labour market law has to be weighed against the necessity to satisfy the basic needs of asylum seekers, especially if they don't receive any official assistance and have to support themselves while waiting for a decision in their asylum procedure. This affects the core of the right to work, namely the right to be able to work to earn a livelihood (for oneself and one's family).

A weighing of interests in this case leads to the conclusion that the right of asylum seekers to work to support themselves, if granted no other means to secure their livelihood, overrides the government's interest in regulating the labour market. After a reasonable period (the initial period after lodging an asylum application should primarily be used to recover, to adapt to the new environment and to focus exclusively on the procedure), asylum seekers have to be granted the right to work and especially so if the state does not provide for their basic needs. During the adaptation period mentioned, the future access of asylum seekers to the labour market should be facilitated by accompanying measures such as language courses or other qualification measures, taking individual capabilities into account.

9.6 ACCESS TO (PROFESSIONAL) TRAINING AFTER COMPLETING COMPULSORY EDUCATION

After reaching their 15th birthday, minor refugees without sufficient command of German may be admitted to public secondary vocational schools or general secondary schools subject to availability of free places.

Admission to compulsory vocational training schools depends on completion of nine years of compulsory education in Austria or abroad and on an existing apprenticeship contract. Contrary to the recommendations of the International Labour Organisation (ILO), access to apprenticeship is not governed by educational laws but by labour legislation. Minor asylum seekers are subject to the provisions of the Foreign Workers Employment Act (AuslBG) and need an employment permit in order to get an apprenticeship contract. However, they normally do not fulfil any of the conditions for being granted such a permit.

Several school education providers are offering fee-based courses for a certificate of completion of the "Hauptschule" (a lower secondary school). By attending such courses,

⁵⁶ While a „Beschäftigungsbewilligung“ is granted to the employer and is valid only for an employment contract with a specific foreign worker, a „Arbeiterlaubnis“ is granted to the foreign worker herself/himself. It is valid

minors up to the age of 21 may acquire a certificate of completion of compulsory education. Such a certificate facilitates admission to vocational training schools. Substantial difficulties in completing school education arise in particular for minors no longer subject to compulsory education. In contrast to children subject to compulsory education, their travel costs to the educational institution or vocational training school and expenses for teaching materials are not in all Provinces covered by Federal Care or Basic Support, while their monthly pocket money of € 40 is insufficient. Furthermore, especially in certain regions, there is even a lack of a suitable offer.

Thus the question arises as to whether the situation regarding educational rights of asylum seekers in Austria conforms with the obligations of state parties under Art. 13 (2) ICESCR.

Firstly, access to vocational training depends on *labour legislation*. From a human rights perspective, this fact alone represents a systematic deviation: Vocational training measures are clearly measures of higher education (not only pursuant to the ICESCR and the Convention on the Rights of the Child, but also pursuant to ILO recommendations) and as such have to be governed by educational laws and not by labour legislation. Thus, the proper scales to be used in the weighing of interests required to examine the objective justification of a de facto exclusion of asylum seekers from vocational training should be the educational goals defined in Art. 2 School Organisation Act (SchOG), none of which makes any distinction by nationality, language or status. Of course, the objectives of a labour market policy greatly differ from those. The intention of the Foreign Workers Employment Act is to “consider the general situation and development of the labour market” and to “consider the domestic workers’ interest in being protected”.

As opposed to that, the asylum seeker has a right to higher education as the legal interest closest to the right to fundamental education, i.e. the core content of the right to education. Furthermore, access to higher education has several beneficial effects on young asylum seekers which should not be underestimated. Access to higher education not only allows one to find meaning in life, but also to acquire a stable frame of reference after a (often traumatising) escape/migration, thus serving as a means of psychological stabilisation. In addition, it facilitates the acquisition of skills benefiting both the person and the society in which she/he lives.

Though we’re dealing here “only” with the disruption of a right lower in priority than the right to life or physical integrity, the denial of the right to higher education represents an infringement of a legal interest whose protection is essential for personal advancement in

for two years, but only in the Province where it was granted.

society. In comparison, the state's interest in regulating the labour market is clearly an interest of a lesser order. Furthermore it has to be noted that outright exclusion from access to vocational training is the only option pursued; no "means of a more lenient order" exist, such as for example simply *restricting* access by taking into account certain qualifications.

In considering these viewpoints, we conclude that this interference in the right to education of asylum seekers is not objectively justified.

As regards access to higher education institutions other than vocational training schools and apprenticeships, for example secondary academic schools (Allgemeinbildende höhere Schulen – AHS), the legislation contains no provisions discriminating against asylum seekers. However, information gathered from refugee organisations indicates a widespread de-facto discrimination after completion of compulsory education. Given the striking lack of data, it is impossible to determine how many asylum seekers are attending which type of school at which age and for how long. Thus it cannot be determined whether a de-facto discrimination against asylum seekers regarding access to educational institutions other than vocational training schools and apprenticeships after completing compulsory education exists or not. Since there are no data on minor asylum seekers in educational institutions (the authorities do not even have data on the number of asylum seekers by age), no empirical foundation exists for statements on a de-facto discrimination against asylum seekers. The compilation of such statistics by the authorities is urgently required.

Thus, access to vocational training schools and apprenticeships has to be regulated by new legislation, i.e. it has to be separated from the provisions of the Foreign Workers Employment Act. Only then would Austria comply with ILO recommendations – according to which, provision of such access is an educational and not an occupational measure – and thus with its obligations under international law.

9.7 SEPARATED MINOR ASYLUM SEEKERS

The Youth Welfare Act applies without restrictions to separated minor asylum seekers (prohibition of discrimination). In practice however, there is significant inequality of treatment. For example, only in exceptional cases are minor asylum seekers admitted to youth welfare institutions. Concern with the well-being of the child obviously takes second place to financial considerations.

Instead, separated minor asylum seekers are accommodated pursuant to the Basic

Support Agreement, where they are recognised as one of the groups in need of protection. Plans exist to establish various accommodation institutions with differing intensity/levels of care. According to the Basic Support Agreement, separated minor asylum seekers are also entitled to reimbursement of expenses for language courses (up to 200 teaching units) and courses to acquire a certificate of completion of the "Hauptschule" (see above).

A first problem is that currently only a small percentage of separated minor asylum seekers may actually be accommodated in appropriate institutions. Only 500 specific places exist for a total of 1,500 minors. For minors needing intensive care, only one institution exists in Austria with just 20 places.

Given the general lack of places, many separated minor asylum seekers have to stay for several months in a first reception facility. Others are individually accommodated under basic support, i.e. without any pedagogic assistance.

A further difficulty arises out of the fact that, for a majority of separated minor asylum seekers, the question of guardianship remains unresolved. Youth welfare agencies often refuse to take the necessary steps to initiate a guardianship procedure, though there is a legal duty to do so. In practice, the issue of clarification of guardianship/curatorship is handled completely differently in each Province. While in Upper Austria, in almost all cases, guardianship is transferred to the responsible youth welfare agency, this hardly ever happens in Vienna, Salzburg or Styria. If guardianship is transferred to the youth welfare agency, the corresponding duties are usually fulfilled only insufficiently or not at all.

9.8 WITHDRAWAL OF AND RESTRICTIONS IN BASIC SUPPORT

The legislation provides grounds for exclusion of admission to, for withdrawal of, and for restrictions in basic support. Art. 2 (4) Basic Support Agreement refers to convictions that may constitute a ground for exclusion from asylum pursuant to Art. 13 Asylum Act, while Art. 7 (3) provides for a withdrawal of or a restriction in basic support if asylum seekers behave in a manner constituting a continuous and sustained risk to order in an accommodation institution or if they have been subject to a stay-away order by the Police (pursuant to Art. 38a Security Police Act, SPG).

Wider grounds for exclusion are provided for in the Federal Care Act: Lack of collaboration in the establishment of identity or need for help (Art. 3 (1) lit.2), lodging a further asylum application within six months of completion of the first asylum procedure

(Art. 3 (1) lit.3) and lack of collaboration in the establishment of the necessary facts during the asylum procedure (Art. 3 (1) lit.4).

Starting in 2005, the legislation provides for a hearing at the Federal Asylum Office in case of decisions to restrict or withdraw services to asylum seekers in federal care centres under condition that this is possible without delay (Art. 2 (6)) and only if the withdrawal was based on a detention, a stay-away order or unacceptable behaviour against room/house mates. No such hearing is provided for if an exclusion or other restriction etc. is based on other grounds, like for example lack of collaboration during establishment of identity, of need for help or establishment of facts necessary for the asylum procedure, lodging a further asylum application or a conviction that may constitute a ground for exclusion from asylum. In such a case, the asylum seeker may request an inquiry by lodging a *Vorstellung* (a legal remedy pursuant to Art. 57 General Administrative Procedures Act, AVG). This inquiry must take place within two weeks; otherwise, the respective administrative decision is invalidated. However, this legal remedy has no suspensive effect. Should a negative decision be confirmed, an appeal at the Federal Asylum Office is possible but here again, the appeal has no suspensive effect if not explicitly granted. Such a suspensive effect may be applied for in the second phase, namely to the Independent Administrative Panel (“Unabhängiger Verwaltungssenat”). Until suspensive effect is granted, asylum seekers are excluded from access to basic support.

The Basic Support Agreement has generally not yet been implemented in provincial law. In Vienna, no entitlement to basic support services exists; as regards judicial enforcement of entitlements to care services, the proposed Act⁵⁷ contains the same provisions as the Federal Care Act.

Though the Basic Support Agreement was intended to put an end to the long lasting, systematic homelessness of asylum seekers, the problem has apparently not been solved. Among the reasons for this failure are organisational shortcomings (no assignment to a care facility after completion of the admission procedure), but in particular the lack of political will to effectively implement the Basic Support Agreement. Both accommodation facilities and qualified administrative staff are lacking and the non-implementation in provincial law is a reason for concern. After the first phase of the asylum procedure (the admission procedure), asylum seekers are dismissed from the first reception facility without assignment to a care facility as provided for, while the Provinces accept only asylum seekers that have been assigned to them. Thus every day,

⁵⁷ Not adopted at the time of writing.

asylum seekers are made homeless, and it remains a conundrum where the "entitlement"⁵⁸ to basic support services could be enforced.

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⁵⁸ Legal claims are explicitly excluded by the Basic Support Agreement. The agreement is meant to bind only the Federation and the Provinces; no claim of a third party should arise out of it.

10. TRAFFICKING IN WOMEN

10.1 COUNSELLING AND ASSISTANCE FOR VICTIMS FROM A HUMAN RIGHTS PERSPECTIVE

Victims of trafficking in women are at the mercy of arbitrary decisions of public authorities. Often, they are criminalised and deported. As a party to the ICESCR, Austria has a duty to provide these women with access to public services in order to end their life-threatening situations and to enable them to progressively exercise their economic, social and cultural rights.

This report refers explicitly to trafficking in women and not to prostitution, since trafficking in women cannot and must not be seen as synonymous to prostitution. The U.N. protocol on trafficking in persons⁵⁹ was the first international document to establish an extended definition of trafficking in human beings/women (** this separates the concepts of 'human beings' and 'women'—better would be "human beings, especially women".). Thus, not only trafficking into prostitution is considered a grave breach of human rights / women's' rights and an international criminal offence, but also trafficking into other exploitive or slave-like working situations.

LEFÖ has been working on the issue of trafficking in women since the early 1990ies.

In 1995, LEFÖ proposed an inter-ministerial commission on trafficking in women in which LEFÖ staff members participated as experts. In response to and as a consequence of various European guidelines and documents⁶⁰, LEFÖ established a victim protection institution for persons affected by trafficking in women, renamed 1998 as **„Interventionsstelle für Betroffene des Frauenhandels; LEFÖ-IBF“** (Intervention office for persons affected by trafficking in women). LEFÖ-IBF has since been funded in equal proportion by the Federal Ministry of the Interior and the Federal Ministry for Women's Affairs. LEFÖ-IBF is still the only recognised victim protection institution for persons affected by trafficking in women in Austria. Its work is based on a co-operation contract with the Ministry of the Interior and comprises the following areas:

- psycho-social counselling, legal and health advice and assistance
- crisis intervention and psycho-social stabilisation
- accommodation under care in an anonymous emergency home
- assistance for self-help; promotion of capability to act autonomously
- repatriation assistance for women forced to or wishing to return
- national and international networking and lobbying
- prevention activities

⁵⁹ U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children

⁶⁰ Vienna Conference in 1996 and the following documents of the European Union: Joint Action, November 29, 1996; Joint Measures, February 1997 and The Hague Ministerial Declaration on European Guidelines for

Every year about 200 women (2002: 208, 2003: 142, 2004: 167) are cared for. Of course, these women represent only a small number of the persons actually affected in Austria. Reliable estimates are not available. According to the Federal Ministry of the Interior (BMI), in 2003 there were 300 victims and 169 complaints.

The U.N. estimates that every year about four million people, mainly women and children, are trafficked into exploitive work relations/situations.

The number of women recognised as victims of trafficking in women by the authorities is increasing from year to year. Despite this **constantly growing need for support**, only a small number of care places is available. The offer in Austria (10 permanent places and two emergency places provided by LEFÖ-IBF) is far below the need as estimated by the EU, the United Nations and the OSCE (Organisation on Security and Co-operation in Europe).

Austrian Criminal Law: One of the biggest steps forward in the fight against trafficking in persons/women was the entry into force of Art. 104a Criminal Code (StGB) in 2004. As LEFÖ had been demanding for years, a criminal law provision must not be restricted to trafficking into prostitution – as is the case with Art. 217 StGB on “Cross-border trafficking into prostitution” – but has to extend to exploitation in other areas of work as well. The Criminal Code’s new article is based on the definition in the U.N. protocol on trafficking in persons.

In a case of suspected trafficking in women, the relevant authorities have to contact LEFÖ-IBF under the terms of an internal administrative order. Based on Art. 66 (1) Aliens Act, the authority may in such a case refrain from imposing an order for detention pending deportation and apply a measure “of a more lenient nature” (in our case accommodation in the emergency home). Regrettably, a large percentage of those affected by trafficking in women are not recognised as victims according to Art. 104a and Art. 217 StGB and are therefore deported.

Criminalisation: In practice, time and again women are not readily identified as victims. Such misjudgements have grave consequences. They are fined for offences in connection with trafficking in women, e.g. for illegal prostitution, illegal residence or falsification of documents. No legal procedure exists for remitting these fines if the same women are later identified (recognised) as victims. Our demand is for a systematic decriminalisation of the women affected. With the criminalisation and swift deportation of these women,

which could well be avoided, not only is an opportunity to fight trafficking in women wasted:

Also lost is an opportunity to learn about new forms of trafficking in women and to provide those affected – in recognition of the fact that they have suffered an infringement of their human rights or became victims of a criminal offence – with comprehensive care and treatment, which is the primary aim of our victim protection institution. Obviously, the procedure described above, namely to require authorities by internal administrative order to forward women to LEFÖ-IBF in cases of suspected trafficking in women, is not effective enough. The fair treatment of women affected by trafficking in women depends on the good will and readiness to co-operate of individual authorities and thus is not assured.

Residence on humanitarian grounds: An important legal foundation for professional care is Art. 10 (4) Aliens Act, which allows for granting a temporary residence permit on humanitarian grounds, especially to women who are victims of trafficking in persons/women. In practice, this provision is applied almost exclusively to women who are advised or cared for by LEFÖ-IBF.

However, the wording of Art. 10 (4) Aliens Act and its application are not free of shortcomings. First, it is a “may” provision and not mandatory; thus it does not establish a legal right for affected persons. Whether such a temporary residence title is granted or not remains subject to the discretion of the authorities. Second, it is under condition of readiness to co-operate during an interrogation. The wording of Art. 10 (4) Aliens Act must therefore be changed: It should clearly prioritise the aspect of victimhood and not the aspect of criminal prosecution. Third, no legal relation was established between Art. 10 (4) Aliens Act and the new Art. 104a StGB. Since the latter article has not been applied in practice thus far, its actual impact remains to be seen.

Another matter of great concern is that it usually takes several months until women under our care are granted a residence title – even if they are witnesses right from the start. This is a period of extreme instability and existential insecurity since the granting of a residence title is by no means assured. This amounts to a secondary traumatising of women (see section “cutback in social services” below).

Based on our experience, we have to point out that it is questionable to use the readiness of women to testify against their traffickers in court as an indication of the extent to which they are affected; this readiness depends and will depend on how far the women can expect to be treated fairly and protected. Assurance of temporary residence on humanitarian grounds has to be the foundation of a meaningful victim protection programme. Then women may gain confidence and enjoy encompassing care, the latter actually being part of combating trafficking in women. To a significant degree, this combat relies on information provided by women and on their readiness to co-operate.

Thus, it would be only fair to assure them of temporary residence which would help to avoid their further exploitation and criminalisation.

Who decides whether the women are victims or not is another important issue. Up to now this has fallen exclusively to the Police. But it is important and necessary to consult “external” experts as well. The decision could be taken, for example, by a team consisting of representatives of both the Police and LEFÖ-IBF. Furthermore, the decisions should not be oriented towards criminal prosecution (for illegal residence, offences against Prostitution Act) but towards the protection of human rights. Recognition as a victim and the granting of a residence permit must go hand in hand.

Judicial preliminary investigation, video-link evidence, trial: During judicial preliminary investigation, most persons affected by trafficking in women give evidence by video link (“kontradiktorische Einvernahme”), unless they explicitly express a wish to the contrary. However, we often observe that the women concerned are not sufficiently informed about this kind of interrogation, in particular if such interrogations take place only short time after contact with LEFÖ-IBF was established. Often they believe that a testimony during such an interrogation is anonymous. This could be caused by the long time the police interrogations usually take, affecting our clients’ powers of concentration. Severely traumatised women may then no longer be able to “digest” new, complicated legal information. When providing legal advice to our clients, we realise that, in particular at an early stage, they don’t know any more whom to trust and that it takes quite an effort to get them to face the facts. Often it shocks them that they can’t stay completely anonymous. This indicates one of the basic shortcomings: a lack of time for **stabilisation**. Affected women need sufficient time to gain a certain distance to what they have been through. Thus it is very important to establish a period of time that would allow for stabilisation and providing the women with comprehensive care. Furthermore, taking into account the women’s traumatisation, the date of the interrogation should only be determined after consulting the care institution.

Employment permits: Up to now the law does not provide for a right to work. Women who have been granted a residence permit have to apply for an employment permit which is subject to quota limits. The procedure is complicated and may even lead to a new dependency since the employment permit is granted (for a year) to the employer. Our demand is therefore that persons affected by trafficking in women and in need of work should be given a real chance – especially considering that an extension of the temporary residence after the trial depends on the women’s degree of integration and

financial independence. Thus it is important to grant these women access to the labour market by way of a temporary work permit ("Arbeitserlaubnis")⁶¹.

Cutback in social services: In this regard, the situation of victims of trafficking in women has changed from bad to worse. Several external factors are responsible, related to a general cutback in social services and a further deterioration in the situation of migrants.

For example, since last year the decision on an application for a residence permit on humanitarian grounds takes significantly longer than in the previous year (see residence on humanitarian grounds). We don't know the exact reason but suspect that these delays are caused by substantially more thorough and time-consuming investigations by the Aliens' Police. The fact is that our clients have to wait for several months until their residence status is clarified – an unsustainable situation in our view. Another problem is that during this period, the women have no health insurance since the latter depends on a residence title.

Until May 2004, persons with such a residence title could apply for and receive social assistance in Vienna (app. 380 Euro per month). Since then this support has been cut to what is paid to asylum seekers (180 Euro per month). With this 50% reduction in financial assistance, the women face even more difficulties in becoming independent again, and their period of dependence on LEFÖ-IBF has been extended. In addition, the likelihood of re-victimisation increases.

10.2 CASE EXAMPLES

TRAFFICKING INTO PROSTITUTION

For three years, Ms. S. was in the grip of a trafficker in women and his accomplices living partly in Austria, partly in her country of origin. After an accident had burdened her with huge debts, she was offered "help", i.e. the opportunity to work as a waiter in Austria. Once there, it emerged that she had to work as a prostitute. When she refused, she was brutally beaten up by the perpetrator. After some time Ms. S. managed to return to her country of origin, only to find the accomplice waiting there and asking her to repay her debts to him – for his "job procurement" activities, the documents he had produced and for travel expenses. Unceremoniously she was sent back to Austria to work off her debts (again with the same perpetrator). She felt forced to do so because otherwise, she was

⁶¹ While a „Beschäftigungsbewilligung“ is granted to the employer and is valid only for an employment contract with a specific foreign worker, a „Arbeitserlaubnis“ is granted to the foreign worker herself/himself. It is valid for two years, but only in the Province where it was granted.

told, her son would be found in a car boot (that is, killed). In Austria the horror continued. Ms. S. became pregnant. In the seventh month of pregnancy, the perpetrator finally allowed her to travel home. There she gave birth to a child which died two weeks later. For a long time, Ms. S. fell into a coma. After returning home the terror continued and she had to go back to Austria. Here she was investigated by the Police, imposed with a residence ban and deported. During her stay in Austria, her son was threatened by three men armed with pistols. Once back home, she realised that she had to go back to Austria. After years of travelling back and forth she finally came into contact with LEFÖ. She testified during an interrogation by video link. However, the criminal charge was dropped afterwards. It seems that her story did not sound credible to the Austrian legal authorities.

For months already, we have been making every effort to get Ms. S's residence ban lifted, but we have had considerable communication problems with the Aliens' Police. For a long time nobody answered our request. Meanwhile the lifting of the residence ban has been applied for at the Aliens' Police, and we hope for a positive decision.

EXPLOITATION OF ILLEGAL HOUSEMAID:

Ms. R., citizen of a country in Southern Africa, had been referred to our services by an acquaintance. After two meetings dedicated to analysing the facts, determining the rights of Ms. R. and the scope of our offer, Ms. R. decided to make use of our intensive care offer in our emergency home. The meetings had to take place under difficult circumstances as Ms. R. could not visit our office, but had to meet one of our staff members in a nearby café. She could only leave her then-employer (a woman) for a short time and after providing extensive justification.

At this time, Ms. R. had already worked two years in her employer's household. While still in her home country, Ms. R., a widow, had been alone in caring for her children. When a visiting acquaintance of her then-employers asked her to work for her daughter in Austria since she seemed so excellent in handling children, Ms. R. took up the apparently good opportunity and accepted. Ms. R. arrived in Vienna in January 2002, was picked up by her new employer and accommodated in her apartment. At the beginning, she had no idea that her work or her residence in Austria (based on a tourist visa at the beginning) could be unlawful. Only much later did she begin to question her circumstances, namely when her employer advised her to never talk about her work or her domicile when being checked by the Police.

Ms. R. was promised 300 Euro per month plus food and accommodation in exchange for housework and looking after the children. First she shared a room with the family's three children; after the family moved she got a room for herself. But instead of the promised

300 Euro, she was just paid 150, with her employer pretending not being able to pay more. The promised food consisted of semolina, cabbage and two other vegetables, with luck also some dried fish. Ms. R. worked under slave-like conditions. Often she was derided and yelled at; when she was ill or exhausted it would simply be ignored. Her passport was kept by her employer. Ms. R. had to be available from morning to night and had almost no free time.

Finally she reached a point where she couldn't stand it any longer. After her employer hinted that she wouldn't be needed anymore if she fell ill, she became desperate and confided in some acquaintances, which facilitated her contact to LEFÖ in June 2004.

Ms. R. slowly recovered, and it could soon be determined that her future would best be assured by staying in Austria. Thus, the circumstances of the case were brought to the attention of the Aliens Police in Vienna and she was encouraged to apply for a residence permit on humanitarian grounds. Our client declared her readiness to testify during Police investigations in case this should be deemed necessary. Together with Ms. R. it was then decided to inform the Chamber of Labour (Ministry of Employment?) and the local health insurance institution. Ms. R. repeatedly emphasised that she was not interested in getting revenge or satisfaction and that her main concern was to stop her former employer from continuing to exploit other people. Ms. R. was accompanied to the health insurance fund in Vienna and to several appointments at the Chamber of Labour. At these meetings, experts informed Ms. R. of the minimum remuneration she would have been entitled to under Austrian labour law and what the law said on housework. This helped Ms. R. to visibly gain self-confidence. In Autumn, Ms. R. was again interrogated by the Aliens Police which, based on our letter, had decided to start investigating the case.

Meanwhile Ms. R. attended a German language course facilitated by LEFÖ-IBF and visibly enjoyed learning the new language. She had also the opportunity to attend a basic computer course. Regrettably it took rather a long time until her application for a residence on humanitarian grounds was decided upon. Several times Ms. R. went through a state of crisis and lost her courage. She could not understand that such a decision could take so long, and time and again she started to believe that her former employer must have had intervened at the Aliens Police to get back at her. This is just a logical result of the power relation our clients have been subject to.

Shortly before Christmas, the Chamber of Labour informed Ms. R. that they would provide legal protection for a labour law procedure. Proceedings are expected to start at the beginning of 2005, with a lawyer for the Chamber of Labour representing Ms. R.

Only at the end of the year did Ms. R. receive a letter from the Ministry of the Interior informing her about the positive decision taken on her residence and that she would receive her visa some weeks later. At about the same time Ms. R. was informed that her testimony had been forwarded to the State Attorney and that a trial would take place in the coming year.

RECOMMENDATIONS/DEMANDS

1. Persons affected by trafficking in women/persons must not be criminalised: No fines for secret prostitution, no charges for offences related to trafficking in persons.
2. In case of a suspected trafficking in women/persons, the security authorities should consult a staff member of LEFÖ-IBF or members of other women's NGOs in the Provinces so that prompt assistance may be provided to the women affected.
3. During interrogations by the Police or judicial authorities, interpreters and psychologists especially qualified/sensitised or cultural mediators/staff members of LEFÖ-IBF as well as more female Police officers should be present in order to create an atmosphere conducive to confidence.
4. Persons affected by trafficking in women must be entitled to work based on a employment permit ("Beschäftigungsbewilligung") or social assistance and to health care services.
5. A residence permit for at least 6 months (stabilisation period) must be granted to all persons affected by trafficking in women regardless of a subsequent criminal procedure (important in particular for victims not serving as witnesses.) This period of time is required to provide the women affected with the psychological assistance required to stabilise their situation. Amendment of Art. 10 (4) Aliens Act: Establishing a legal right to a temporary residence, linking the provision to the new Art. 104a StGB (Criminal Code).
6. In case of a criminal procedure (concerning women who are both victims and witnesses), i.e. in case of an indictment by the State Attorney, a residence permit shall be granted for one year to be extended for an other year if the procedure takes longer.
7. Likewise in the case of a civil procedure, a residence permit for one year shall be granted extension for an other year if the civil procedure takes longer
8. If a trial has ended and the woman concerned may not be repatriated for security reasons, a permanent residence permit and a right to work based on an employment permit ("Beschäftigungsbewilligung") shall be granted
9. Persons affected by trafficking in women whose lives are under threat must be included in a witness protection programme; if required, they must be provided with the opportunity to take on a new identity.

10. Damages for pain and suffering and other damages must be awarded during the criminal procedure in order to spare the victims the further strain of a civil procedure; a civil procedure, if initiated, should be possible without participation of the victim at least in cases where the right to damages as such is undisputed.
11. The establishment/development of further victim protection institutions (NGOs) in the Provinces must be a long-term objective.

LEFÖ (Counselling, Education and Assistance for Female Migrants) was established by exiled women from Latin America in 1985. The starting point for LEFÖ's work was the transformation of female migration into labour migration towards the "rich countries" of Western Europe, a process leading to ever more exploitive and hopeless work and life situations. It has determined the organisation's fields of activity during the last years. LEFÖ's services include:

For female migrants from Latin America: Social and psychological counselling, family counselling, German language courses and ÖSD courses⁶², autonomous learning centre and individual computer courses.

For female migrants in sex work: Health care and streetwork in the framework of the European network TAMPEP; partner of the "Equal I" project SILA/Counselling Centre for Prostitutes.

Intervention Office for persons affected by trafficking in women: social and psychological counselling, legal and health advice and assistance, accommodation in emergency apartments, repatriation assistance, European networking and national and international lobbying.

Contact: ibf@lefoe.at, www.lefoe.at

⁶² „Österreichisches Sprachdiplom Deutsch“ (www.osd.at), a Vienna-based institute offering a variety of German language certificates.

11. CONCLUSIONS FROM A HUMAN RIGHTS PERSPECTIVE

The parallel report's contributions show clearly that the reconstruction of the Austrian state based on the neoliberal paradigm is creating new vulnerable groups whose basic social rights are under permanent threat. Cuts in public social services combined with a rise in unemployment and atypical employment contracts lead to a rising number of cases of hardship. Yet the growing risk of poverty amongst ever more groups of the population is accepted as an almost unavoidable side effect of measures intended to "safeguard Austria as a business location".

11.1 ARTICLE 2 (1) "PROGRESSIVE REALISATION"

Pursuant to Art. 2 ICESCR, state parties shall take steps "to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". In its General Remarks No. 3⁶³, the CESCR has clarified that all state parties have a duty to immediately undertake reasonable efforts towards the fulfilment of their obligations under the Covenant. Furthermore, the CESCR states that each infringement of the non-discrimination principle related to a right recognised in the Covenant represents an infringement of the Covenant itself. Thus, the non-discrimination principle has to be complied with immediately and at any time.

POVERTY AND HUMAN RIGHTS

In a statement on poverty in May 2001 (Doc. No. E/C.12/2001/10), the CESCR supports a multi-dimensional understanding of poverty reflecting the indivisibility and interdependence of all human rights.

Each person is entitled to all human rights. An infringement of one of them entails consequences for the exercise of the others. Homelessness, for example, is at first glance an infringement of the right to housing. Yet at the same time, homeless people have practically no access to work or health care. The contributions in this report show which groups in Austria are vulnerable and how members of these groups risk being affected by infringements of certain rights. The groups with the highest risks in Austria include – apart from single mothers, female pensioners and families with many children – also migrants, the long-term unemployed and the so-called "working poor".

⁶³ UN Doc. E/1991/23, para 10

In contrast to the Federal Government's report, we try to take into account the fact that human rights infringements are multi-dimensional.

According to the government report (p.81), 900,000 people, or about 11% of the population, are at risk of poverty. The Report on the Social Situation 2003/2004⁶⁴, published by the Federal Ministry of Social Security, Generations and Consumer Protection in February 2005, states the number as 1,044,000 persons, or 13.2% of the population. 571,000 of those affected are women, 437,000 are men. The Report on the Social Situation, prepared on the basis of EU-SILC 2003, the statistical standards of the European Union, for the first time also examines how poverty is created. 235,000 persons in Austria live in households which, despite gainful activity, are not earning enough to support themselves (op.cit., p. 216). 5.9% of the Austrian population or 460,000 persons live in „consolidated poverty“ (op.cit., p. 229). These persons, in addition to having an income below the risk of the poverty threshold, are affected by deprivation in one of five key areas of life. For example, they are not able to replace worn-out clothes, to pay credit instalments when due, have substantial health-related problems, live in flats lacking standard amenities or in a neighbourhood affected by, for example, traffic noise, air pollution or criminality. Since the EU summit in Nice in 2000, Austria has a duty to prepare a national action plan against poverty and social exclusion and to evaluate the progress made every two years. In this regard, the criticism of the „Armutskonferenz“ (Conference on Poverty), a network of NGOs experienced in the field, also applies to the third of those National Action Plans (NAP): „(...) also in this NAP, there are no quantifiable, binding goals (though the Commission had required this time to establish clear targets based on specified indicators), there is no binding schedule and finally not even a clear budget plan, the last being a crucial condition for any policy purporting to reduce poverty and to avoid its creation in the first place.“⁶⁵ Thus, it may be said that Austria is in **breach of its obligations under Article 2 ICESCR** since no serious efforts by the Federal Government to fight against poverty can be observed despite the increase in the number of people at risk of poverty.

11.2 ART. 2 (1) „TO THE MAXIMUM OF ITS AVAILABLE RESOURCES“

What are the „available resources“? According to the Report on the Social Situation, from 2002 to 2030 the social spending ratio (social spending as a percentage of Gross Domestic Product/GDP), assuming an average annual GDP growth of 2%, would only rise from 29.1% to 32.6% despite the rise in spending related to demographic developments.

⁶⁴ www.bmsg.gv.at

⁶⁵ www.armutskonferenz.at/taten/napsII_schattenbericht_armutskonferenz.html

With the same growth rates and an annual increase in social security expenses of only 1%, the ratio would even be lower than today. However, with GDP growth rates of only 1%, the increase in expenses arising from demographic developments would translate into a substantially higher spending ratio. Austria's current social spending ratio is somewhat higher than the EU average rate of 27.5%.

In 2001, a study by the Österreichische Gesellschaft für Politikberatung und Politikentwicklung⁶⁶ criticised the fact that Austria subordinates goals like growth and employment to the goal of fiscal consolidation, an argument also taken up by Max Preglau in his contribution (see section on social policy in Austria). Thus, in 2001 the growth rate in Austria fell to 1.1%, the third worst within the EU. Under the PP-FP coalition government, Austria slipped back with regard to unemployment rates as well, losing its leading role within the EU during the 1990ies⁶⁷. Up to now, the reforms undertaken by the PP-FP governments, including its tax reforms, have failed to reverse this trend, supporting Max Preglau in his critical assertion that the government's efforts to lower unemployment rates are insufficient.

Another fact to be highlighted is that Austria's tax and social security system, if considered as a whole, has few redistributive effects. Instead, what exists in terms of redistribution is an effect of public expenses for transfer payments, education, promotion of the family or health care. In 2003, Austria's tax ratio stood at 44% of GDP (including social insurance contributions of 16.3%)⁶⁸, higher than the average ratio within the EU. More details are provided below (all figures for 2003 unless otherwise stated):

- **Consumption taxes** (including value added tax) and social insurance contributions amounted to 21,5% and 37%, respectively, of the total. Both are regressive, the latter because the fixed rate contributions are subject to earnings limits (depending on the kind of income: € 3.360 per month for wage incomes, € 3.930 for self-employed people and farmers). Thus, people with earnings above those limits don't contribute proportionally to the costs of the social system.
- Payroll taxes, i.e. the employers' contribution to the Family Expenses Equalisation Fund and the Municipal Tax) amounted to 5.3% of total revenue. These are proportional taxes and thus have no distributional effects.
- Taxes on wage income and on the income of self-employed people including farmers amounted to 17% and 2.7% of total revenues respectively; these taxes on personal income are the only progressive taxes, with the marginal tax rate being 50%

⁶⁶ [www.politikberatung.or.at/ documents/Konjunkturpolitik2001.pdf](http://www.politikberatung.or.at/documents/Konjunkturpolitik2001.pdf) – May 10, 2005

⁶⁷ *ibid.*

- from 1994 until 2002, taxes on wage income increased by 65%, while the wage ratio fell (see also section on poverty and wealth in Austria)
- overall, wage taxes including social insurance contributions are very high when compared internationally, translating into an excessive tax on labour.

A consistent feature of all of the government's tax reforms up to now is that the opportunity to provide basic support through a „negative income tax“, a very effective tool in the fight against poverty, was wasted. Overall, the regressive effect of the social insurance contributions is more or less offset by the progressive effect of the taxes on personal income. Though the tax system became slightly more redistributive after the tax reforms in 1988 and the spending cuts in 1996, these measures could not offset the increase in income inequality accumulated since the 1980ies (see Predl 2003, p.36). In fact, from 1997 to 2002 wage incomes became even more unequal (see section on Poverty and Wealth in Austria).

- **the property tax** (a tax on net worth) was abolished in 1994. In 2000, the revenue from the remaining wealth taxes (inheritance tax, real estate tax etc.) amounted to just 0.6% of GDP or 1.3% of total tax revenues, putting Austria in last place among all EU and OECD member states (Predl 2003, p.39)
- **capital gains** are not taxed progressively, but at a flat rate of 25%. Speculation gains of natural persons are not subject to capital gains tax, neither are value increases of shares in investment funds. In addition, based on the Act on Private Foundations 1993, huge private monetary wealth is effectively exempted from capital gains tax. With the 25% flat rate, capital gains are taxed much less than wage income and other personal income where the marginal rate is 50%. In addition, up to the year 2000 anonymous investments were possible; so capital gains could only be taxed with great difficulties (Predl 2003, p.37).

In 1998, the total wealth of private households in Austria was estimated at € 581,38 billion.⁶⁹ According to a more recent survey using a different methodology, in 2002 total wealth stood even at € 944 billion (Eizinger 2005, p. 249).⁷⁰

Though the importance of labour as a factor in production, as opposed to capital and technology, is constantly decreasing, the government failed to take the obvious step, namely to shift the financial foundation of the social system from wage-related contributions to contributions related to total value added.

⁶⁸ Statistik Austria (http://www.statistik.at/neuerscheinungen/gebarung2004_teil1.shtml); Austrian National Bank (www.oenb.at/isaweb/report.do?report=7.20); Federal Finance Act 2006 – Annexes (https://www.bmf.gv.at/Budget/Budget2006/beilagen_entwurf_06.pdf); own calculations

⁶⁹ „Reichtum in Österreich“ (Wealth in Austria), Schenk, Brandstätter, Summer, Vienna 1998 in „8.000 Milliarden ÖS Privatvermögen in Österreich“ (Private Wealth of 8,000 billion ATS in Austria), Leseheft der Armutskonferenz (Reader of the Conference on Poverty), Vienna, September 2001

⁷⁰ Eizinger, Christian et al.: „Privater Reichtum in Österreich“ (Private Wealth in Austria), Vienna 2004; http://www.bmsg.gv.at/cms/site/attachments/9/2/3/CH0338/C5975/11_reichtum.pdfMS106422700

All these figures clearly show that Austria suffers from a lack of political will to favour poorer groups within the population by redistributing wealth and income. In contrast, the Federal Government's policies lead to an increase in the number of people affected by poverty despite a rise in total output.

Though the media are filled with reports of a "growth crisis", Austria's GDP in fact increased by Euro 5.8 billion in 2002, 5.9 billion in 2003 and 7.6 billion in 2004.⁷¹

"Poverty is denied participation in social wealth and not a personal fate." (Reader of the "Armutskonferenz", 2001). Several neoliberal policies, i.e. privatisation and reduction of public services, cuts in social services, deregulation of labour law and inequitable tax reforms reinforce each other, thus more and more people are no longer able to exercise their right to an adequate standard of living (Art. 11) and related rights such as for example the right to health or the right to education.

11.3 ARTICLE 2 (1) LEGISLATIVE MEASURES

Public social services may be provided, restricted or withdrawn in line with a changing political landscape. However, the way such services are provided is an expression of the power relationship between the state and the individual. For a person not to become a loser in this relationship, the provision of services must be based on individual entitlements, and these have to be recognised without further conditions. In Austria, too, people are ashamed to claim for certain benefits because applying for and being granted such benefits is often a degrading experience. Excessive waiting times and unfriendly and discourteous civil servants are enough of a reason for unemployed people to feel like unwelcome supplicants, despite having dutifully paid their contributions for many years.

The Austrian constitution still does not contain a catalogue of basic social rights, though such an amendment was suggested by the CESCR already in its concluding recommendations in 1994. While the relevant committee of the constitutional convention developed proposals on the wording of specific basic rights in line with the European Union's Charter of Fundamental Rights⁷², essential fundamental rights like the right to housing and the right to individual basic income support are missing. "There is no agreement on how they should be codified. The question whether basic social rights should be written into the Constitution or only recognised in an ordinary law which could be enacted by the respective government by simple majority remains unanswered." (ibid.). There was also no agreement on how to share responsibilities between the Federation and the Provinces. In many respects, the delegation of responsibilities to the

⁷¹ Österreichische Gesellschaft für Politikberatung und Politikentwicklung, ÖGPP: Armut- und Reichtumsbericht Österreich (Report on Poverty and Wealth in Austria), Vienna 2004, p.3

Provinces in Austria is a big obstacle for implementing international environmental or human rights standards.⁷³ As mentioned in the government report on page 3, the constitutions of several provinces include policy objectives like social security or the protection of the family. But an understanding of economical and social human rights as policy objectives to be pursued only on condition of available funds and political opportunity, whether on the national or provincial level, clearly contradicts the fundamental function of human rights as a part of human dignity. The contributions of LEFÖ/Karner, Knapp/Lukas and Sax describe how, regarding the responsibility of the provinces for social assistance, basic support for asylum seekers and youth welfare and the observance of economic and social human rights translates into to an arbitrary provision of widely differing benefits.

The constitutional reform, made possible by the work of the constitutional convention, has now been postponed, though apart from enforcement some progress was also made with regard to basic social rights. According to the President of the Austrian Lawyers Commission, however, there is a danger that if not implemented during the current legislation period, the reform proposals won't be implemented at all.⁷⁴

Though the government report underlines on page 3 that "Austria has a very comprehensive social-welfare state system on a high level" and "supported by a broad political and social consensus", the problems in the observance of human rights as surveyed in this report show that the welfare state is progressively falling into a fragmentary state. The so-called "reform projects" undertaken during the last 10 years are precisely the reason that more and more people are falling through the social net. While the government report indulges in an "exhibition of achievements" by listing statistics on expenses for health care, social benefits and education, the contributions in this report describe how certain changes in legislation lead to progressive infringements of the rights of vulnerable groups.

11.4 ARTICLE 2 (2) NON-DISCRIMINATION

All contributions refer to infringements of human rights affecting persons without Austrian citizenship. Asylum seekers, for example, are facing existential problems closely related to the outcome of their asylum procedure. But recognised refugees and Austrian citizens with a migration background are also affected by a broad range of discrimination. The EU Anti-Discrimination Directive, which also allows for the legal prohibition of discrimination, was not only belatedly implemented in Austria, but also in a minimalist

⁷² http://www.konvent.gv.at/pls/portal/docs/page/K/DE/ENDB-K/ENDB-K_00001/imfname_036114.pdf

⁷³ www.gruene.at/themen.php?tid=30910&wo=2&kat=vf-konve

way⁷⁵. A particular serious case involved organisations working in refugee care, known for a critical position towards the Ministry of the Interior. They were put under pressure by the non-extension of their contract on repatriation counselling with the Ministry. Instead, in October 2002 the contract was assigned to a German firm charging a daily rate of 12.9 euros per refugee, including care and repatriation counselling⁷⁶. Until then, the Austrian organisations, experienced in the provision of care and counselling, had charged a daily rate of 15 euros. For the organisations affected, the Ministry of the Interior's decision amounted to "punishing" them for their critical position⁷⁷.

11.5 ARTICLE 3 EQUALITY BETWEEN WOMEN AND MEN

Despite the constitutional guarantee of equal treatment of women and despite the establishment of Equal Treatment Advocacies at Federal and Provincial levels, the increase in poverty among women, analysed along with its causes by Eva Lachkovics, could not be stopped.

If looked at more closely, the "child care benefit", described as a new achievement in improving the compatibility of work and family on page 6 of the government report, reveals itself as a kind of "shutdown bonus" (see section on social policy). An evaluation of the child care benefit by the Institute for Economic Research (WIFO) proved that the longer entitlement period (up to 36 months after childbirth) creates incentives for women to take longer career breaks. Thus, their chances of a successful re-entry into the labour market and their position in this market in general are negatively affected.⁷⁸

As shown by Eva Lachkovics, the government's efforts to reduce the structural disadvantages of women are insufficient. As a consequence of spending cuts affecting public administration, the health sector and the education system, qualified jobs for women are lost. Making working times more flexible creates low-paid jobs in the retail sector which do not provide for a secure livelihood. Though Austria achieved the Lisbon Objective – a female participation rate of almost 60% - already in 1999, it was repeatedly criticised by the EU for exactly this reason (see Leitner 2004, p. 48 ff.)⁷⁹

⁷⁴ Wiener Zeitung, May 4, 2005, p.6

⁷⁵ Rassismusreport 2003 (Report on Racism), ZARA (publisher), p.57

⁷⁶ <http://resistor.sos-mitmensch.at/pipermail/presse/2003-August/000092.html>

⁷⁷ http://www.arbeit-wirtschaft.at/aw_09_2003/art6.htm

⁷⁸ Lutz Hedwig, „Wiedereinstieg und Beschäftigung von Frauen mit Kleinkindern“ (Re-entry and Employment of Women with Infants), Institute for Economic Research (WIFO), February 2004

⁷⁹ Leitner, Andrea: "Gender Mainstreaming als erfolgreiche Strategie zur Einkommensgleichheit von Frauen und Männern" (Gender Mainstreaming as successful Strategy for Income Equality between Women and Men) : In Heitzmann, Karin et al: " Wege aus der Frauenarmut" (Ways to overcome Poverty among Women), Frankfurt/Main 2004

11.6 SUMMARY

The government's business-friendly economic policy especially benefits big corporations serving export markets, while the situation of small and medium sized enterprises remains precarious. Among employees, the income gap between top earners qualified according to market demand and those with no or insufficient qualifications continues to increase.

Based on arguments referring to the State's empty coffers and the risk of exceeding limits on public debt (EU stability pact), social spending is cut back. Lower spending in the health sector and education system and lower pension benefits affect population groups with lower income, in particular women, children, pensioners, asylum seekers and migrants.

While non-compliance with rules on trade liberalisation or investment protection is usually threatened with a suit at the European Court of Justice or a procedure at the World Trade Organisation's Dispute Settlement Body, disadvantaged people have no legal procedure at their disposal to enforce their human rights. The existence of a complaint procedure or an international court with the authority to impose damages on non-compliant state parties would provide an incentive to introduce better institutional guarantees for the protection of human rights.

Thus, the infringements of economic, social and cultural rights of the groups referred to in the report are not a mere "accident", they occur for systemic reasons. As to be poor or at risk of poverty means having to fight ever harder to earn a livelihood, the people affected are also restricted in their opportunities for political participation.

The liberalisation of the services sector, to be pushed forward within the EU ("Bolkestein Directive"), adds further pressure on civil society organisations providing social services. These organisations have to compete with cheap providers and are forced to improve their chances of winning public contracts by becoming politically compliant.⁸⁰

At the same time, public bodies which would monitor compliance with minimum human rights standards and penalise non-compliance are non-existent. In this connection, the question arises of how "lean" public institutions may be allowed to become if they are not to lose their ability to effectively protect human rights, in particular the rights recognised in the ICESCR.

The government report shows that problems in the observance of economic, social and cultural rights are neither sufficiently recognised nor taken seriously by the government.

The insight that in order to create more social justice and welfare, economic growth needs to be combined with a democratic, redistributive tax system has thus far not been reflected in Austrian tax legislation. The fight against poverty and the progressive realisation of the rights recognised in the ICESCR are subordinated to other policy objectives such as for example fiscal consolidation, economic liberalisation or military security.

The Report on the Social Situation, published in February 2005, could serve as a starting point to make things better: The main problem areas are identified, the report partly provides very differentiated descriptions, and the groups most affected are taken into account. Also the study "Private Wealth in Austria" cited above, published by the Ministry for Social Security, Generations and Consumer Protection, could be a first step towards more redistribution in favour of structurally disadvantaged groups. However, the insights contained in these reports/studies would have to be taken into account by the relevant institutions, for example by the Federal Ministry of Finance.

An urgent demand is for the **institutionalisation of a dialogue with civil society organisations** on issues relating to economic, social and cultural human rights, organisations whose concrete proposals have fallen on deaf ears up to now. Already in its concluding recommendations in 1994 (point 21), the CESCR prompted the government to open a dialogue with civil society, in particular in relation to the preparation and dissemination of reports to the Committee.

Further matters of urgency, in our view, are points included in the Committee's list of questions to the Federal Government like for example the preparation of a **National Action Plan** to enhance the protection of human rights in line with the Vienna Declaration and the Vienna Action Plan⁸¹ and the **establishment of a national human rights body** in line with the Paris Principles⁸².

While the Human Rights Advisory Board in the Ministry of the Interior is tied up with keeping track of the worst human rights infringements affecting asylum seekers, the monitoring of the rights recognised in the ICESCR, at least with regard to the most important basic social rights, could be entrusted to **national rapporteurs**. A meaningful initiative is the project "Care Ombudsman" in Vienna, though it still lacks a legal foundation. If such Ombudsman offices for the most important basic social rights were established also at the provincial level, they could play a useful role in monitoring and documenting human rights related problems and taking action on them.

⁸⁰ http://www.arbeit-wirtschaft.at/aw_09_2003/art6.htm

⁸¹ Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights 1993 in Vienna, <http://www.humanrights.at/root/start.asp?b=23&m=5>

In response to the catalogue of demands set up by human rights organisations in 1998, **human rights co-ordinators** were established at the federal Ministries. But the government report contains no indications regarding the responsibilities of these civil servants, in particular in regard of ICESCR rights. These existing functions, if upgraded and endowed with the responsibilities and resources required for counselling and evaluation, could serve as an important interface between the Ministries and civil society organisations.

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www.politikberatung.or.at – Österreichische Gesellschaft für Politikberatung und Politikentwicklung (Austrian Society for Policy Consultation and Policy Development), ÖGPP

www.arbeiterkammer.at – Site of the Austrian Chamber of Labour

<http://www.unhchr.ch/tbs/doc.nsf> – Site of the U.N. High Commissioner for Human Rights, CESCR documents

www.univie.ac.at/bim – Site of the Ludwig Boltzmann Institute for Human Rights

⁸² Principles relating to the status and functioning of national institutions for protection and promotion of human rights, <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>

<http://www.humanrights.at>: Site of the Service Centre on Human Rights Education maintained by the Boltzmann Institute for Human Rights; offers the most relevant documents – including the ICESCR – in German.

www.fian.at: Site of FIAN Austria

www.fian.org: Site of FIAN International

www.asyl.at – Site of asylum co-ordination austria

www.lefoe.at Site of LEFÖ

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