



## **Quality in Gender+ Equality Policies**

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## **Issue Histories Austria: Series of Timelines of Policy Debates**

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## 1. Review of Equality Policies and Responsible Institutional Structures

### a) A history of the development of equality law and equality strategies<sup>1</sup>

The idea that a person should be given equal rights regardless of certain criteria has historically developed in various stages and levels in Austrian policies and law. Due to the political system and its particular structure, **gender equality policies** in Austria developed slowly after the Second World War compared to other European countries such as Germany (for an overview, see Sauer 2001). The causes for the slow transformation of the conservative gender regime are located in the structure of the political system. Austrian corporatism with its particular combination of social partnership, parties and bureaucracy is a fortified structure of 'male-bonding' (Appelt, 1995). This setting makes the substantive representation of women in policy processes concerning the labour market and social security especially difficult, even though the quantitative political representation of women in elected bodies increased. However, since the 1970s the Austrian women's movement has been successful in bringing women and movement goals into women's policy processes and to gender policy debates (Köpl, 2001 and 2005, Sauer, 2004). Women's policy agencies have been founded on the national, federal and community levels. These have cooperated with women's movement groups and have mediated between movement and state apparatus.

The history of Austrian women's policies can be divided into four stages: the *initial stage* or *introductory phase* at the end of the 1970s, the second *phase of consolidation* in the 1980s, the third of *expansion* in the 1990s (Siegmond-Ulrich 1994). The *fourth stage of institutional decline* started with the new government coalition between the conservative People's Party (ÖVP) and the national populist Freedom party (FPÖ) in the year 2000. In January 2007, a new government coalition between SPÖ and ÖVP changed the institutional setting for gender equality policies yet again. These stages are outlined in detail below.

**Equality policies for other inequalities** for a long time were restricted to general anti-discrimination guarantees for citizens under constitutional law (see below) and under international obligations. Apart from such general anti-discrimination guarantees, a law prohibiting discrimination of disabled people in federal employment in 1970 (Behinderteneinstellungsgesetz), in access to goods and services in 2006 (Bundes-Behindertengleichstellungsgesetz) and the final decriminalisation of all homosexual acts in 2004 are important. In the area of equality legislation due to ethnic origin, religion or belief, sexual orientation, and age, the European Union Directives were extremely influential. The respective development is outlined below.

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<sup>1</sup> This section draws on: Sauer, Birgit and Karin Tertinegg (2003): 'History of Austrian Gender Equality Policies and Gender Mainstreaming' in: State of the Art Report and Mapping of Competences: Austria. MAGEEQ Report, IWM, Vienna

## Gender equality policies

*The introductory stage on the 1970s* was characterised by social modernisation 'from above' involving a stronger integration of women in the labour force. These policies were accompanied by an equality discourse. In the first stage of Austrian equal opportunity politics, the Socialist Kreisky government increased the number of women in government – in the beginning by enlarging the number of government positions (state secretaries). In 1979, seven women (of 23 members) were in the Austrian government, only two of them ministers.<sup>2</sup> This was the starting point for female representation on the government level. Dissent of the interest organisations and increasing party influence weakened the social partnership, which traditionally focused on (male) organized interests. This opened a door for equal opportunity policies and enabled women's policy institutions to establish. Both the women's movement and social democratic party feminists<sup>3</sup> were important actors in this development. The legalisation of abortion within the first 12 weeks of pregnancy in 1975 for instance, was one main achievement by the women's organisation of the Socialist Party.

In the *introductory phase*, pressure towards equality policies did not come so much from an 'autonomous' women's movement (as in the issue of abortion in Germany). Rather, a close cooperation between the women's movement and women from the SPÖ was established (Köpl 1999: 65). In Austria, the 'autonomous' anti-institutional feminist movement remained relatively weak compared to party feminism.

1979 was a milestone year for equality policies in Austria. Not only was the 'Equal Treatment Act' (*Gleichbehandlungsgesetz*) passed in 1979, but the first Women's Policy Agencies were also established. As an accompaniment to the law, an 'Equal Treatment Commission' of the social partners (*Gleichbehandlungskommission*) was founded within the ministry of social affairs. Although it should have played an active role, it did not possess the power of sanctions (Rosenberger 1998, 26). The debates surrounding the 'Equal Treatment Act' of 1979 were indicators of the social partnership conflicts that were erupting and optimising the chances for the women's political agenda (Tálos 1997, 436). The anchoring of institutional women's politics in the administrative system, as well as the establishment of Women's Policy Agencies, initially met with strong opposition from within the SPÖ and the state administration. The erosion of the social partnership toward the end of the 1970s, along with the co-operation of both women from the Social-Democratic Party and the women's movement, contributed to the formation of an opportunity structure in which women's issues could be discussed. The secure position of SPÖ's parliamentary majority in 1979 gave the SPÖ-women the possibility to lobby in favour of more women's policy agencies, despite the social partnership's defence mechanisms that had previously hindered this development (Köpl 1999, 65)<sup>4</sup>. Moreover, they were able to strengthen their position in the government by assigning two state secretaries in charge of women's concerns: one for the 'issues of working women' (Franziska Fast, SPÖ)

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<sup>2</sup> For a comparison: The government of 2000 had 16 members, five of them were women, one of the female members had a position as state secretary (Steininger 2001).

<sup>3</sup> The socialist party established a separate women's organisation already in the 19th century.

<sup>4</sup> The share of women in the National Assembly at the time was 9.8% (Steininger 1998, 285).

and the other for 'general women's issues' (Johanna Dohnal, SPÖ). The institutionalisation of two state secretaries was a signal of the integration of women into the labour market and the recognition of women's politics as a special policy field.

The state secretary responsible for 'issues of working women' was located in the Ministry of Social Welfare, where a women's department already existed. The state secretary for 'general women's issues' was installed in the Federal Chancellery (ibid., 66). Johanna Dohnal, a well-known SPÖ feminist with strong backing from the party's women's organisation and the women's movement, was appointed to head the state secretariat. Yet the degree of institutionalisation still remained minimal, though on a rather high level of government. Women's politics, as Eva Kreisky states, followed a 'paternalistic political model' during this phase (Kreisky 1998, 29): The Austrian constitution does not designate state secretaries as members of government. Instead, they are subordinates of the heads of the department – as in the case of the federal chancellor for the state secretary of 'general women's issues', who was dependent on the good will of the federal chancellor (ibid.). However, the office was allotted a minimal amount of staff and received no independent budget. Nonetheless, the first stage institutionalisation of women's policy was established by the end of the 1970s, albeit equipped with comparatively weak instruments.

#### *Consolidation stage: the 1980s*

This women's policy setting led to the '*consolidation phase*' of the 1980s. In 1981, an initial program for the advancement of women in the federal civil service (*Frauenförderung im öffentlichen Dienst*) came into effect, which was extended in 1985 (Köpl 1999, 66; Kreisky/Walther 1990). In the same year, the 'Equal Treatment Act' was amended. However, the '*consolidation phase*' of the 1980s began with a major setback. The transition to a 'minor coalition' between the SPÖ and the ante-Haider FPÖ (Freedom Party) in 1983 resulted in a dissolution of the state secretary's office in the Ministry of Social Welfare. The agenda was partially transferred to the women's state secretary in the Federal Chancellery and to a women's affairs officer located in the Ministry of Social Welfare's department for 'General Principles' (Köpl 1999, 66f.). The state secretary's resources for 'general women's issues' were still sparse, although the secretary did hold a cross-sectional mandate and remained high in the national political hierarchy. It had a purely advisory function, though it did need to be consulted for governmental issues related to women's policies. In the early 1980s, the Women's Policy Agency's main issues were abortion, equal pay, equal opportunity, and discrimination in the workplace.

The state secretary served as a catalyst for the growth women's projects in Austria. In the 1980s, the women's movement changed its strategies and focus, expanding and becoming more of a project-oriented movement (Geiger/Hacker 1989, 100). The projects, mostly state-subsidised by state institutions (e.g. the Ministry of the Interior and Social Affairs and the City of Vienna) co-operated with the women's state secretary and with the Social Democratic administration in gaining funding for their work. The movement was critical of the Socialists in power, remaining sympathetic but at a distance from the left (Dick 1991, 214-215). The SPÖ women were mainly concerned with abortion and equal opportunity, while the autonomous

women's movement primarily stressed issues of sexuality and violence against women (Geiger/Hacker 1989, 37-38.).

As of 1986, the 'large coalition' between SPÖ and the conservative ÖVP (Austrian People's Party) once again created a relatively conducive environment for the settlement process of social partnership. The greater influence of parties, primarily the newly formed parties of the Greens and the Liberal Forum (LIF) (the latter in the 1990s), led to a potential increase in the presence and influence of women in the framing of problems in a gendered discourse. This was because women constituted an important reservoir of votes as of the 1970s. Naturally, the social partnership's decreasing influence on the political process did not mean an automatic increase in the parliament's status. Because of the increasing party-politicisation of political regulation and the decreasing role of interest group-settlement, the parliament became a 'mere notary' for parties, organisations, and government negotiated compromises (Tálos 1997, 449).

The decade between 1985 and 1995 can be described as the 'decade of institutional equal opportunity politics' (Köpl 1995, 592). The Equal Treatment Act was optimised through several amendments. In 1985, voluntary employer's contributions to social security and company vocational training were included in the discrimination ban (see below). In 1990, the amendments suggested positive action for equal opportunity and a 'Lawyer for Equal Treatment Issues' (*Anwältin für Gleichbehandlungsfragen*) was established. Austria completed a women's political 'Europeanisation' (Falkner 1995, 417) i.e. Austria adopted women's politics measures which were established in other EU-countries, and even became the 'model student' in a European comparison.

As an effect of the women's political movement, all Austrian parties have included a section on women's politics, gender equality (SPÖ) or women and men (ÖVP) in their party programs during the 1980s and 1990s. All parties apart from the right-wing FPÖ and BZÖ have adopted a women's quota for election lists and for party functions.

#### *Expansion stage: the 1990s*

The 1990s was the period of growth, consolidation and expansion of women's politics in Austria. In 1990, the state secretary for general women's issues was restructured to become the 'Federal Ministry of Women's Affairs' due to the logistics of the new coalition in government. For the first time, the ministry was allotted its own budget. Its resources in 1992 and 1993 were 37 million ATS (2 688 895 Euros) per year<sup>5</sup>, which is rather low compared to other cross-sectional ministries. However, it was able to expand its staff and design three new sub-departments. The minister's status also expanded beyond the previously limited advisory function, gaining a veto right in the Council of Ministers as well as the power to initiate further political women's initiatives. The Ministry still maintained its cross-sectional manner of work. Johanna Dohnal became the first Austrian Minister of Women's Affairs. In 1995, Helga Konrad (SPÖ), not a committed feminist but more a Social Democrat from the party apparatus,

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<sup>5</sup> Council of Europe, [www.coe.int/T/E/communication\\_and\\_Research/press](http://www.coe.int/T/E/communication_and_Research/press)

succeeded Dohnal. In 1997, Barbara Prammer (SPÖ) took over the office. During the course of restructuring the federal government in 1997, the Ministry of Women's Affairs also took on the field of consumer protection. A re-evaluation of the ministry resulted in the establishment of a separate woman's section within the Ministry of Women's Affairs and Consumer Questions in 1998. The minister still had a cross-sectional responsibility for women's issues. She initiated and co-ordinated women's policies, gathered information concerning women's policy and initiated research on the situation of women in Austria (e.g. Frauenbericht 1995).

The 1990s in particular were characterized by the successes of the women's movement and women's politics. The constitutional court's decision on the validity of different retirement ages for men and women (a man won a lawsuit claiming unequal treatment) provided the motivation for passing a comprehensive 'Equal Treatment Act' (Rosenberger 1997, 695) (see below). In 1992 an 'equal treatment package' was passed, which contained both an amendment of the equal treatment law and the 'law for the report of the federal government to the parliament concerning the removal of disadvantages for women.' In 1993, the 'Federal Act on Equal Treatment of Women and Men and on the Advancement of Women in the Civil Service' (Federal Equal Treatment Act/*Bundes-Gleichbehandlungsgesetz*) was enacted (see below). The law established anti-discrimination regulations and stated explicit demands for supporting labour and educational relations in the federal government. In all areas in which women were under-represented, it was proposed that the percentage of women should be increased to 40%. All branches of the federal administration had to implement positive action towards women (*Frauenförderpläne*). Due to the 'Federal Act on Equal Treatment of Women and Men and on the Advancement of Women', all ministries have implemented measures for the advancement of the status of women within the administration. Most of the ministries established working groups on questions of equal treatment and the promotion of women and they developed affirmative action plans for women within the ministry. However, the number of women in leading positions in the federal administration remained rather low. At the same time, the 'Federal Committee for Equality of Treatment' at the Federal Chancellery was established to implement the law and to examine complaints and appeals concerning violations of the Act.

In 1996 Austria was the first European country to pass a law against domestic violence, which allows the police to expel the perpetrator from the common apartment or house and requires him to participate in anti-violence counselling (Dearing/Haller, 2000). Finally, in 1998 the Austrian constitution was amended with a paragraph on affirmative action due to EU requirements.

#### *Institutional decline: the new century*

In February 2000, the new conservative right-wing government dissolved the Federal Ministry of Women's Affairs. Women's issues were relocated, becoming a part of the Ministry of Social Welfare, Family and Generations. The ministry was headed by a male elective of the FPÖ partner in coalition. In the re-organisation of the government in 2003, the Ministry for Health

and Women's Issues was established<sup>6</sup>. It was headed by Maria Rauch-Kallat from the ÖVP's women's organisation. According to the Treaty of Amsterdam, the Austrian Council of Ministers implemented structures and measures of gender mainstreaming in July 2000. Austria claimed to apply a dual-track approach in equality policies. Firstly, to implement gender mainstreaming as a method to reveal the structural obstacles against the active participation of women in all spheres of society and to sensitise policy makers to gender differences. But at the same time proposing that existing women's policy machineries should not be dissolved. In other words, the main focus of women's policy in Austria during this time was positive action for women. However, feminist critiques of the new government showed that resources for positive action and the funding of women's projects were reduced, and sometimes legitimised by a reference to gender mainstreaming. The dissolution of the Federal Women's Ministry, the shift of the former 'women's section,' and the establishment of a non-feminist 'men's section' within the new Ministry of Social Affairs and Generations in 2000 were also legitimised as gender mainstreaming.

#### *Institutional change following elections in October 2006*

National elections in October 2006 resulted in a change in government. Coalition negotiations lasted until January 2007, when the new government consisting of the Social Democratic party and Conservative Party was formed. Women's issues were moved yet again to the minister for Women, Media and Public Service, and Doris Bures (SPÖ) was situated within the federal chancellery under Chancellor Alfred Gusenbauer (SPÖ). Within the coalition agreement, the following points of concern of gender equality are mentioned: child-care facilities, violence against women, and poverty of women. As first steps, the law on child-care benefit has been made more flexible and the budget allocated to prevent violence against women and support victims has more than doubled.

#### **Gender equality policies on the federal state and local levels**

When Austria joined the EU, the federal states were forced to enact similar laws for the federal state administrations. But the Austrian federal states (*Bundesländer*) were latecomers in equal opportunity politics relative to the national level. The *Länder* and cities were reluctant to establish either equal opportunity institutions like women's bureaus or ministries, and did not adopt the federal equal opportunity law of 1979. With respect to quantitative political representation of women, the *Länder* level also lagged behind the national level. Federal state and local structures proved to be more 'equal opportunity sceptical' than central structures (Rosenberger 1997, 692), and the federal states could not be forced to enact federal equal treatment legislation because of their constitutionally anchored federal state autonomy. While at a central-state level the 'party politicisation' of politics in Austria opened the political space, the corporatist relations at federal state and community levels remained impenetrable for women's political actors. The establishment of federal state equal opportunity laws resulted from a mixture of assimilation to international standards and the involvement of women in the parties: Under massive pressure from women in all factions, Salzburg became the first federal

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<sup>6</sup> The women's agenda was transferred from the Ministry of Social Welfare and Generations on May 1st, 2003.

state to pass a women's support program in 1991 (Haller et al. 1993). Carinthia and Upper Austria followed in 1994. With the entry into the EU in 1995, federal states were also forced to enact equal treatment guidelines for public service. Vienna and Salzburg passed a federal state equal treatment law in 1996, Lower Austria, Styria, Tyrol and Burgenland in 1997. Vorarlberg still has no equal treatment legislation, rather a law for the 'equal opportunities of women and men' which contains non-mandatory discretionary provisions (Rosenberger 1998, 11). It was only at the end of 1997 when the National Assembly enacted the regionalisation of the 'Equal Treatment Advocates' that the federal states were required to set up such offices (ibid., 26).

At the federal state level, women's agendas are often attached to existing departments such as family, youth and health. In Vienna for instance, the agendas on women's issues were added to the existing departments responsible for family and social welfare, youth, sports and health. In the 1980s and early 1990s, the ministers responsible for women's affairs in Vienna (*Stadträtin für Frauenangelegenheiten*), Christine Schirmer and Ingrid Smejkal, were SPÖ members. By 1987, only the federal state of Vienna had established an independent municipal office for the support of women, called the 'Women's Service Office,' initiated by Christine Schirmer. This counselling agency concentrated on matters of violence. The tasks of the Vienna's *Stadträtin* of Women's Affairs were designed in a cross-sectional manner. Its main issues were equal opportunity in employment and violence against women, which included the installation of a crisis hotline (*Notruf*) and shelters for battered women. Since the 1990s, women's departments and women's affairs officers have been set up in several larger cities. At the beginning of 1995 there were 14 women's affairs officers on the municipal level in Austria (Köpl 1995, 600f.). This is a low number in comparison to Germany where there has been much co-operation between women's groups and political and administrative institutions in cities and communities.

During the mid 1990s a sub-state feminism emerged and women's policy machineries were regionalized. In all nine Austrian federal states the governments have ministries or departments for women's issues (*Landesrätinnen für Frauen*), some of them responsible for 'women plus', for instance 'minister for women, families and generations' in Lower Austria or 'women and migrant integration' in Vienna. In the federal state of Salzburg, the office is established at the office of the federal state governor, a SPÖ woman, while in Carinthia the women's section is institutionalised at the office of the deputy federal state governor, the SPÖ chairwomen in Carinthia. Moreover, step-by-step all federal states adopted regional laws for the equal treatment of men and women in the federal state civil service (CEDAW, 2004: p. 30). Women's offices in the regional administration (*Landesfrauenreferentin* or *Frauenbeauftragte*) are responsible for the advancement of women in the federal state administration and organize a regular meeting, the Conference for Women's Officers ([www.bmgf.gv.at](http://www.bmgf.gv.at), accessed 23 January 2006). Also, some major cities such as Linz, Innsbruck, Salzburg, Graz and Vienna, have established women's offices as an interface to a wider public ([www.noel.gv.at](http://www.noel.gv.at), accessed 24 January 2006).

## **Gender Mainstreaming: consequences of the EU membership**

The adoption of gender mainstreaming as an instrument to increase gender sensitivity in all stages of the policy process and on all levels of the federal administration led to several activities in the ministries and administration. In summer 2000, an inter-ministerial working group for Gender Mainstreaming (IMAG Gender Mainstreaming) was formed which contains representatives of all federal ministries, the Constitutional Court, the Administrative Court, the Court of Audit and the Ombudsman's Office, the Parliamentary Administration and the public service trade union ([www.imag-gender-mainstreaming.at](http://www.imag-gender-mainstreaming.at)). Its task is to watch, advise and coordinate the implementation of the gender mainstreaming strategy at the federal government level. The working group organises workshops and gender training. Due to the initiatives of the IMAG GM all ministries have at least adopted the language of gender mainstreaming and established a gender mainstreaming section on their websites.

Most of the ministries started to implement gender mainstreaming by organising gender training by external experts, following the 'top-down focus' of the gender mainstreaming approach. Between 2000 and 2003 the ministry of Social Security and Generation was quite active in implementing gender mainstreaming because it had the infrastructural resources of the women's ministry (*Frauengrundsatzabteilung*). One of its initiatives was to generate gender specific data and statistics for further policies. Together with the so-called 'future ministry' (the now Ministry for Transport, Innovation and Technology) some research on gender specific statistics and gender specific differences in the fields of education, health, and income was funded (*Geschlechtsspezifische Disparitäten 2002*).

The 'Division for Labour Market Policy and Gender Equality' in the Ministry of Economic Affairs and Labour organised gender impact assessment according to the principles of gender mainstreaming. The employment guidelines of the European Union were transformed in the Austrian National Action Plan for Employment (NAP). The country applied the principle of gender mainstreaming in the NAPs of 1998 and 1999. The 'GeM Coordination Unit' was established as the Austrian coordination unit and information platform for gender mainstreaming within the European Structural Fund (ESF), focusing on gender mainstreaming and equal opportunities in the labour market. It became defunct in May 2007.

The Ministry of Finance was also active in implementing gender mainstreaming. In June 2000, CEDAW requested that the Austrian government evaluated the gender impact of the federal budget on a regular basis ([www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)). In December 2001, the working group on gender mainstreaming in the ministry launched a report on 'Is the Austrian tax system gender neutral?' As one of the consequences, the ministry elaborated the controlling procedures for tax reform as well as for the federal budget in order to avoid male bias.

The Federal Ministry for Education, Science and Culture has been active concerning gender mainstreaming. Its active nature is due to a long tradition in women's politics within the ministry. The working group on gender mainstreaming in the ministry (established in 2001)

elaborated several working papers (on schools, universities, research funding, gender sensitive language), which function as tools for gender sensitive policy implementation.

Gender budgeting is another issue of the federal Women's Ministry. In 2004 an IMAG gender budgeting group was established, also headed by the women's minister: Its task is to evaluate state budgets using a gender sensitive perspective. In April 2005, the minister organized a conference in Vienna on the issue with national experts to elaborate standards for gender budgeting ([www.bmgf.gv.at](http://www.bmgf.gv.at), accessed 10 January 2006). Moreover, the federal governments followed the national administration and slowly integrated gender mainstreaming in the federal administration (CEDAW, 2004: p. 30). In 2004, all federal governments have adopted the principle of gender mainstreaming in all areas of federal state policy making (Considerations, 2004: p. 24). Some of the social democratic governments – as for instance in the federal state of Vienna – built the vanguard of gender mainstreaming, signalling a more women friendly policy environment than the national government ([www.IMAG-Gendermainstreaming.at](http://www.IMAG-Gendermainstreaming.at) accessed 21 September 2006).

Until now, the activities in gender mainstreaming had not been evaluated in any systematic way. It also remains to be seen how the change in government in January 2007 will affect gender mainstreaming activities within the various ministries.

### **Equality legislation: general**

This section gives an overview of the historical development of gender equality legislation. Jurisdiction by the Constitutional Court assessing whether 'simple' laws are in accordance with constitutionally guaranteed gender equality provisions is presented in this context to draw attention to the importance of the process of interpretation and its impact on legislation. Equality guarantees in Austrian constitutional law are contained in various legal documents. The oldest one dates back to 1867, when a general principle of 'equality of all citizens' was laid down in Article 2 of the Basic Law on the General Rights of Nationals (Staatsgrundgesetz). The Federal Constitution Law (Bundes-Verfassungsgesetz), dating back to 1920, regulates in Article 7, paragraph 1 that 'all Federal nationals are equal before the law'. It further specifies that 'privileges due to birth, sex, estate, class or religion are excluded.'<sup>7</sup>

A number of important equality provisions – some of which were not part of equality guarantees in Austrian constitutional law previously – are laid down in various international legal instruments to which Austria is a State Party. These treaties have a range of different implementation, monitoring and sanctioning procedures in case of non-compliance. Equality guarantees enshrined in Austrian constitutional law are subject to interpretation by the relevant highest courts that have the competency to determine the meaning of an equality regulation and whether or not other (Austrian) laws contradict or are in accordance with it. Interpreting the meaning of constitutional equality provisions is the competence of the national highest

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<sup>7</sup> 'Privileges due to birth' means privileges granted to members of Aristocracy. This regulation is a direct result of the situation after World-War I and the subsequent abolishment of monarchy and the disempowerment of the formerly ruling aristocratic Habsburg family .

courts, the Constitutional Court (Verfassungsgerichtshof), and the Administrative Court (Verwaltungsgerichtshof). In cases where equality rights are invoked under a procedure following obligations under international treaties, international courts such as the European Court of Human Rights or the European Court of Justice have the competency to interpret whether Austrian legislation or a particular legal provision is in accordance with the respective international obligations or not. Both the interpretations of the international courts and the national courts are thus highly relevant in deciding exactly what a certain equality guarantee means, and consequently for the shaping and changing of equality policies.

Some of the most influential of these international treaties are the European Convention of Human Rights, the Treaty of Amsterdam, and relevant UN instruments such as CERD, the ICCPR, ICESCR, and CEDAW. In 1972, the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) was ratified and entered into force. The International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) were ratified and entered into force in 1978. The ratification of the *UN Convention on the Elimination of All Kinds of Discrimination* (CEDAW) in 1982<sup>8</sup> obliged Austria to report to the CEDAW committee on a regular basis on the progress regarding *de jure* and *de facto* gender equality.<sup>9</sup> On the European level, obligations to prohibit discrimination under the *European Convention of Human Rights*,<sup>10</sup> were incorporated into Austrian constitutional law in 1964. Since Austria's accession to the European Union in 1995, various obligations under European law regarding gender equality had to be incorporated into national law and thus generated and accelerated gender equality legislation.

### **Equality legislation: gender equality**

Article 7 of the Federal Constitution Act (*Bundes-Verfassungsgesetz, B-VG*) addresses the right to equal treatment before the law. The last amendment in 1998 also imposes an obligation on federal, regional and local levels to pursue equality of men and women in practice and explicitly states that these measures (e.g. quotas) are in accordance with the law. The right to equality guaranteed in Article 7 has repeatedly been subject to interpretation by the Constitutional Court (*Verfassungsgerichtshof, VfGH*) in relation to discrimination on the grounds of sex. During the 1980s and 1990s, numerous findings<sup>11</sup> of the Constitutional Court in respect to equal treatment provisions in Austrian constitutional law had considerable consequences for the implementation of equality policies as embodied in legislation.

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<sup>8</sup> BGBl Nr. 443/1982.

<sup>9</sup> For an assessment of Austria's combined third, fourth and fifth periodic reports to CEDAW, (Sporrer 2002, 208-210). Austria's sixth periodic report was considered by CEDAW at the 37<sup>th</sup> session in February 2007.

<sup>10</sup> BGBl 1958/210.

<sup>11</sup> The most influential ones being the finding concerning retirement age (Pensionsaltererkenntnis VfSlg 12568/1990), Finding concerning prohibition of women's work at night (Erkenntnis zum Frauennachtarbeitsverbot VfSlg 11774/1988, 13038/1992), Findings concerning name law in marriage and name law of children born in wedlock (Erkenntnisse zum Ehenamensrecht und Namensrecht der ehelichen Kinder (VfSlg 10348/1985, 13661/1993, 15031/1997, 13661/1993).

The *finding concerning retirement age* was one of the most disputed. The Constitutional Court found that women's lower retirement age was not objectively justified anymore. Up to this point, it had been generally recognised that women often disrupted their employment because of care work for children and elder family members and thus it was held as objectively justified that women were entitled to retire five years earlier than men. As a consequence of this finding, the lower retirement age for women was abolished and a retirement age of sixty-five years became the same for both men and women.<sup>12</sup>

Apart from the general right to equality set out in Article 7 of the Austrian Constitution, legislative efforts to promote equality for women were adopted in federal legislation in the early 1970s, focusing on legislation concerning the *labour market*, as well as several changes in *marriage law, family law and penal law*.

### **Gender equality legislation: labour market**

The earliest efforts were undertaken due to obligations under international law. Two international treaties on equal pay, the *Convention on Equal Pay of Male and Female Workers for Equal Work*<sup>13</sup> and the *Convention No. 111 on Discrimination in Employment and Occupation*<sup>14</sup> of the International Labour Organization were incorporated into national law in 1953 and 1973, respectively. In 1979 the new Act on Protection of Maternity (*Mutterschutzgesetz*)<sup>15</sup> came into force, regulating maternity leave, as well as an Equal Treatment Act (*Gleichbehandlungsgesetz*).<sup>16</sup> Its range was restricted to the private sector only, thus not including public service. The aim was limited to creating equal pay; differentiation without justification was to be prohibited. An Equal Treatment Commission (*Gleichbehandlungskommission*) was established to address situations of discrimination and make suggestions on how to abide by the law. In 1985, the first of four amendments to the law extended anti-discrimination obligations beyond equal pay to include voluntary social transfers, education and voluntary measures. The gender-neutral wording of job announcements was also made compulsory, except in a few exempt cases.

In 1990 the Parental Leave Act (*Eltern-Karenzurlaubsgesetz*)<sup>17</sup> opened the possibility for fathers to take parental leave. The Equal Treatment Act (*Gleichbehandlungsgesetz*)<sup>18</sup> was

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<sup>12</sup> For detailed analyses of this finding in its context with other findings regarding gender equality, Sporrer (1997).

<sup>13</sup> BGBl Nr. 1953/36.

<sup>14</sup> BGBl Nr. 1973/111.

<sup>15</sup> BGBl Nr. 221/1979 as last amended by BGBl I Nr. 100/2002.

<sup>16</sup> BGBl Nr. 108/1978, as last amended by BGBl Nr. 129/2001. (Bei and Novak 1996, Bei 1998)

<sup>17</sup> BGBl Nr. 651/1989. (Schiffbänker 1997).

<sup>18</sup> BGBl Nr. 410/1990.

amended yet again, extending the anti-discrimination provisions, and for the first time including a special treatment provision – with regard to Article 4 of the CEDAW-Convention.<sup>19</sup> This amendment also opened the possibility of claiming compensation for discrimination suffered and established a Lawyer for Equal Treatment Questions (*Anwältin für Gleichbehandlungsfragen*).

Due to the Constitutional Court's finding concerning retirement age, women's retirement age was raised to equal men's, and to minimise the negative effects on women a comprehensive package of equal treatment measures was decided upon in 1992 (*Arbeitsrechtliches Begleitgesetz*).<sup>20</sup> Along with considerable extensions concerning maternity protection and parental leave provisions, for the first time sexual harassment was defined as discrimination on the basis of gender<sup>21</sup> within the amendment to the Equal Treatment Act. This amendment also opened the possibility to claim financial compensation from the employer and/or the perpetrator.

In a series of decisions, the Constitutional Court held that various acts bearing provisions which are discriminatory for women were in accordance with the right to equality addressed in Article 7 B-VG (Holzleithner 2002, 53-59). Therefore, numerous restrictions for women's night work as embodied in the Act on Women's Night Work (*Frauennachtarbeitsgesetz*)<sup>22</sup> prevailed in Austria despite a ruling by the European Court of Justice of 1991<sup>23</sup> which found that legislation prohibiting night work by women was not compatible with European law. In 2002, these restrictions were finally abolished and superseded by much less restrictive regulations<sup>24</sup> consistent with European Law.

In 1993 a Federal Equal Treatment Act for the Public Service (*Bundes-Gleichbehandlungsgesetz für den öffentlichen Dienst*)<sup>25</sup> – that included universities,<sup>26</sup> – was finally passed, introducing special measures (quota) for the promotion of women in public service and establishing several institutions<sup>27</sup> responsible for the implementation of its

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<sup>19</sup> Temporary special measures to advance de facto equality of women and men. (Sporrer 1996).

<sup>20</sup> BGBl Nr. 1992/883. (Eichinger 1997).

<sup>21</sup> The definition of which is grounded upon the recommendation of the European Commission 92/131/EWG of November 27, 1991.

<sup>22</sup> BGBl Nr. 237/1969, as last amended by BGBl I Nr. 37/2000.

<sup>23</sup> Judgment of 25/07/1991, Criminal proceedings against Stoeckel (C-345/89).

<sup>24</sup> BGBl I Nr. 122/2002.

<sup>25</sup> BGBl Nr. 100/1993, last amended by BGBl I Nr. 87/2001. (Bei and Novak 1996, Siegmund-Ulrich 1997).

<sup>26</sup> BGBl Nr. 805/1993, Universitäts-Organisationsgesetz.

<sup>27</sup> Federal Equal Treatment Commission (Bundes-Gleichbehandlungskommission), Equal Treatment Official (Gleichbehandlungsbeauftragte), Working Group for Equal Treatment Questions within

provisions (Fürst 1998). Due to their constitutional federal state autonomy, the *Bundesländer* had to adopt their own Federal state Equal Treatment Acts; except for the federal state of Vorarlberg, all federal states have adopted such acts.

In the context of the most recent attempts to integrate *gender mainstreaming* into the process of legislation, the reform of the organisation of universities<sup>28</sup> is important. Holzleithner (2002a, 30) states that compared to the former gender equality standard within universities, the reorganisation measures have resulted in diminished gender equality standards, despite gender mainstreaming efforts during the legislative process.

### **Gender equality legislation: marriage law, family law, penal law**

In *marriage and family law* legislation, the original legal model was the 'head of the family' model, with the head being explicitly the male spouse. Due to substantive reforms in marriage and family law in the 1970s, this model was changed into a model of 'partnership' of both spouses in 1975.<sup>29</sup> However, numerous provisions constituting an unequal status of women (e.g. in the law regulating the right to bear a name, Reitmaier 2000) remained unaltered.

After a reform to the *penal law code (Strafgesetzbuch, StGB)*<sup>30</sup> in 1974, abortion (§ 96, 97 StGB) remained generally prohibited but was constructed as having no legal consequences if carried out by a doctor after counselling up to the third month of pregnancy. In 1989, a reform of the penal code<sup>31</sup> penalized rape and sexual coercion in marriage and partnership. With regard to gender-based domestic violence, Austria adopted the Act on Protection Against Family Violence (*Gewaltschutzgesetz*)<sup>32</sup> in 1996, which shifted the focus from the victim of domestic violence to the perpetrator. This Act makes it possible for the police to send the perpetrator away and prohibit his return (see Dearing 2000) and Haller 2000). The approach resonated widely on both national and international levels, including acclaim by the CEDAW Committee; recently, Germany also adopted a law following the Austrian model.

A substantive reform of the penal law code in 2004 abolished the privileged treatment of sexual violence crimes within partnership and marriage. It is now legally entirely irrelevant whether such a crime takes place inside or outside a relationship or marriage. Another amendment in June 2006 allows the prosecution of dangerous threats regardless of the consent of the victim.

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Ministries, (Arbeitsgruppen für Gleichbehandlungsfragen in allen Ressorts), Interministerial Working Group (interministerielle Arbeitsgruppe).

<sup>28</sup> Act on Universities 2002, (Universitätsgesetz 2002), BGBl I Nr. 120/2002.

<sup>29</sup> For a critical assessment of marriage law, (Gimpl-Hinteregger 1997).

<sup>30</sup> BGBl I 134/2002.

<sup>31</sup> BGBl 242/1989. For recent discussions on reforms of the sexual penal law: (Schäffer-Ziegler 2002), (Migutsch 2002), (Perner 1998), (Holzleithner 1997).

<sup>32</sup> Sicherheitspolizeigesetz, BGBl 566/1991, last amended by BGBl I Nr. 146/1999, especially § 38a.

### **Relationship of country (gender) equality policies to EU**

Despite formal constitutional equality guarantees, equality legislation and policies in Austria were mostly initiated by obligations under international and European law. The Constitutional Court can be viewed as an essential actor in the legislative process in respect to either promoting or delaying gender equality efforts. Although Austria has been obliged to ensure both *de jure* and *de facto* equality of women and men since the CEDAW ratification in 1982, many legislative efforts have focused on a *de iure* approach; although more recent legislation such as the Parental Leave Act, the Federal Equal Treatment Act for Public Service, or the Act on Protection Against Family Violence adopted a strong *de facto* approach as well. Obligations to pursue gender equality under European law, as set out in Article 2 and 3 of the Treaty of Amsterdam, have resulted in legislation which is assessed as only partially successful thus far.

Gender equality policies and other equality policies in Austria frequently came into being because of EC or EU influence, even prior to officially joining the EU in January 1995. In 1979, Austria followed European examples and international obligations against discrimination of women in employment, and adopted the first law on equal treatment when determining wages (Gleichbehandlungsgesetz) (see Falkner 1995: 416). At the same time, feminist actors were able to make themselves heard in governmental structures. Due to negotiations for the EU accession, several gender laws or amendments of laws relevant for gender equality were passed (as has been outlined above). The reluctant regional level (Länder) were also forced to implement equal treatment acts for the regional public service due to EU obligations.

The most recent incorporation of anti-discrimination guarantees into Austrian law for instance resulted from two court procedures initiated by the European Commission against Austria in 2004 and 2005 for failing to implement anti-discrimination directives (race-directive and equal treatment directive, as provided for by Article 13 of the Treaty of Amsterdam). This resulted in an enlarged mandate for the equal treatment commission, to cover discrimination on the additional grounds of ethnic origin, religion, belief, sexual orientation, and age. This was also the case for the federal equal treatment commission (for employment in federal service).

In addition, the 'disability equality package' came into force in January 2006, establishing anti-discrimination in access to goods and services for disabled persons, alongside the existing anti-discrimination guarantees in employment. The same amendment established an equal treatment lawyer and an equal treatment advisory board for disabled persons, situated in the ministry for social affairs.

### **Major controversies and shifts**

In 1995, Austria joined the EU. Prior to the accession, several laws addressing gender inequality were enacted because Austria did not fulfil European anti-discrimination standards. The most debated ones included the Federal Equal Treatment Act of 1993 and the amendment to marital name law in 1995. Quota as a means to end under-representation of women had been the source of heated debates ever since the first quota regulations in an

amendment to the Equal Treatment Act for the private sector in 1990.<sup>33</sup> This amendment made reference to Article 4 of the CEDAW Convention in order to justify temporary special measures as a means of achieving de-facto equality. The Federal Equal Treatment Act of 1993 also introduced quota regulations for the public service to advance women's representation. Introducing this measure for the area of public service was necessary both with reference to the CEDAW-Convention and with a view to acceding to the European Community in 1995. However, until the amendment to the Constitution in 1998, quota regulations in Austrian law remained much disputed, especially after the quota-decisions by the European Court of Justice such as *Kalanke*<sup>34</sup> and *Marschall*. In 2001, the regulations for advancement of women by means of quota in the Federal Equal Treatment Act were changed in order to take into account cases of hardship for men. This was done as a reaction to the latest decision by the European Court of Justice in 2000,<sup>35</sup> establishing that a general preference for a woman who is sufficiently but less qualified than a male competitor was against EU law.

In 1996/1997, the minister for women's affairs, Helga Konrad (SPÖ), launched a campaign to promote greater equality in the sharing of household and care work between men and women. The campaign was controversial and gained much media attention. Helga Konrad resigned shortly after the campaign due to lack of party support, and was followed by Barbara Prammer (SPÖ).

In 1997, a group called the 'Independent Women's Forum' (Unabhängiges Frauenforum) initiated a petition for a referendum on women's equality policy (Frauenvolksbegehren). The text for the referendum demanded comprehensive changes in federal law relevant to women's equality. The demands included: constitutional equality guarantees, social security for part-time work, basic social welfare regardless of partner income, public facilities for child-care, extended period of child-care allowance for single mothers, right to part-time employment for parents, right to a basic income securing a living, and the right to keep the earlier age limit for pension until de-facto equality of women and men had been achieved in all areas. The referendum gained huge media attention and was highly contentious. Frictions ran along both party lines and within parties. The women's section of the Social Democrats, the Green party and the Liberal Forum Party supported the referendum, while the Conservative party and the right-wing Freedom party did not support it. The referendum was signed by 11,7 % of all eligible voters. Of 30 referendums conducted since 1964, it gained eighth place in ranking by votes.

In 1997, an amendment to the constitution added that 'No one shall be discriminated against because of his disability. The Republic (Federation, Länder and municipalities) commits itself to ensuring equal treatment of disabled and non-disabled persons in all aspects of every-day life.'

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<sup>33</sup> Amendment to the Equal Treatment Act (Gleichbehandlungsgesetznovelle, BGBl. Nr. 410/1990).

<sup>34</sup> *Kalanke vs. Freie Hansestadt Bremen* (October 17, 1995, Rs. C-450/93); *Marschall gegen Nordrhein-Westfalen* (November 11, 1997; Rs. C-409/95).

<sup>35</sup> *Katarina Abrahamsson and Leif Anderson vs. Elisabet Fogelqvist*. July 6, 2000. Rs. C-407/98.

In 1998, an amendment regarding de-facto equality of women and men was added to the constitution. This regulation explicitly states that the federation, the federal states and the local communities commit to the de-facto equality of women and men and that measures to promote the de-facto equality, such as quota, are in accordance with constitutional principles.<sup>36</sup> This regulation was the result of both the women's referendum and the necessary implementation of European requirements under the Equal Treatment Directive (Council directive 76/207/EEC).<sup>37</sup>

In 2000, a new government was formed by the Conservative Party (ÖVP) and the right-wing Freedom party (FPÖ). The EU imposed diplomatic sanctions as a reaction to the nomination of Jörg Haider as minister. The ministry for women's affairs was dissolved, and the competency for women's affairs was handed to the ministry of social affairs. This measure was justified by the principle of gender mainstreaming. It was widely debated and attracted heavy criticism from the women's movement as well as the CEDAW committee.

In 2001, a new Childcare Benefit Law was adopted. It was the subject of controversial debates, both prior to its adoption and in the election campaign for early federal elections in November 2002. The new law attracted harsh criticism from various women's NGOs, which feared it would strengthen traditional gender roles and increase women's economic dependence on the male breadwinner (Sauer 2007).

In 2004, the mandate of the Equal Treatment Commission and the Federal Equal Treatment Commission was enlarged. Previously, both commissions only covered discrimination on grounds of sex in employment and in federal service, respectively. Due to the implementation of the EU-Anti-discrimination Directives, the Equal Treatment Commission now consists of three bodies instead of one, covering other grounds of inequalities as well.

Inequality between women and men became a major issue in the election campaign for federal elections in October 2006. In 2007, the focus of the new government (SPÖ and ÖVP) coalition in their governmental programme is on policies around public child-care facilities, violence against women and poverty of women. The need for public child-care facilities and the conditions for receiving child-care benefit are hotly debated.

*Recent primary sources on general gender equality policies:*

Consideration of reports submitted by States parties und Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Sixth periodic report of state parties. Austria. 2004. (CEDAW/C/AUT/6). E-text, 72 pages.

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<sup>36</sup> Article 7 Paragraph 2 Federal Constitution Law (Bundes-Verfassungsgesetz, BGBl. I Nr. 68/1998)

<sup>37</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

NGO Shadow Report to the Sixth Periodic Report Austria. Vienna October 2005. E-text. 47 pages

Report of the Federal Government relating to the elimination of disadvantages of women. Period of reporting: 2003-2004. (Bericht der Bundesregierung betreffend den Abbau von Benachteiligungen von Frauen) E-text, 138 pages.

Consideration of reports submitted by States parties und Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Fifth periodic report of state parties. Austria. 1999. (CEDAW/C/AUT/5). E-text. 88 pages.

Consideration of reports submitted by States parties und Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Combined third and fourth periodic reports of state parties. Austria. 1997. (CEDAW/C/AUT/3-4). E-text, 85 pages.

NGO Shadow Report Austria. May 2000. E-text. 34 pages

## **b) A history of the development of gender equality machinery and machineries for other inequalities in government**

The Austrian women's policy machinery has been characterized by a history of institutionalization and de-institutionalization since 1979 (Rosenberger 2006: 746). Gender equality machinery in Austria changed frequently in terms of institutional setting, budget and staff. Its development in government can also be divided into four stages of women's policy: the introductory phase at the end of the 1970's, the phase of consolidation in the 1980's, the phase of expansion in the 1990's (see Siegmund-Ulrich 1994, Sauer 2001) and the phase of institutional decline between 2000 and 2006. Following national elections in October 2006 and a change in government (coalition of Social democratic and Conservative parties), the institutional gender equality machinery was changed again.

### **Gender equality at ministerial and state secretariat level**

After winning national elections in 1979, and due to the influence of the party's women's section, the Socialist party extended its government team. Two state secretariats for women's issues were established, one for general women's issues and one for issues related to female employment (Sauer 2001: 272, Köpl 1999:66). State-secretaries are formally not members of government, but are dependent on the chancellor. They have little personal resources and no budget of their own. The coalition of SPÖ and FPÖ in 1983 dissolved the state secretariat in the ministry for social affairs, and the competencies were distributed between the women's state secretariat within the federal chancellery and the department for women's questions in the ministry for social affairs (Sauer 2001: 272, Köpl 1999: 66f).

The next change followed in 1991, when the women's state secretariat became a federal ministry for women's affairs situated within the federal chancellery. This change implied more

staff, a budget of its own, and a right to veto in the Council of Ministers. The successes in gender politics in the 1990s were largely due to the stabilization, upgrading and expansion of the Federal Women's Ministry and the expansion of women's policy agencies to the federal state and community levels since the beginning of the 1990s. In addition to the creation of the Federal Women's Ministry, an equal opportunity structure has been established in all federal ministries since the end of the 1990s. All ministries had to implement the Act on Equal Treatment in Federal Service (B-GBG) (1998). Meanwhile all ministries have adopted Plans for the Advancement of Women, which give 'preference to female applicants in areas where they are under-represented' (CEDAW 2004: 27) until a 40 percent quota of women is achieved. All ministries established women's officers to enforce the law.

In 2000, the new government coalition of ÖVP and FPÖ dissolved the women's ministry and placed the competencies within the ministry for social affairs. From February 2003, following national elections, women's issues were placed within the Ministry for Health and Women, in the renewed governmental coalition of ÖVP and FPÖ, under minister Maria Rauch-Kallat (ÖVP). In January 2007, women's issues were transferred again to Women's Minister Doris Bures (SPÖ), heading a ministry for women, media and public service. This ministry is situated within the federal chancellery.

Since 2000, an **inter-ministerial working group on gender mainstreaming** (IMAG gender mainstreaming) was established. Each ministry had to name one person responsible for gender mainstreaming activities within that ministry. A website was launched, giving an overview of the activities and pilot-projects that have been carried out.

### **Gender equality at the level of specialised bodies**

An amendment of the Equal Treatment Act of 1990 established a Lawyer on Equal Treatment. Following the implementation of the EU-Anti-discrimination Directives in 2004, the mandate of the Equal Treatment Commission enlarged to cover discrimination on the additional grounds of ethnic origin, religion or belief, age, and sexual orientation.

### **Relationship between governmental competencies**

Policies on **gender equality** have seen frequent institutional changes as described above. Policies on **age** inequalities are divided into policies for elderly people and policies for the youth. While policies on elderly people were usually situated in the Ministry for Social Affairs, policies for the youth were typically situated the Ministry for Family Affairs. In the period 2002 to January 2007, both competencies were situated within the Ministry for Social Security and Generations.

Policies on **sexual orientation** inequalities, **disability** and **ethnic origin** are situated within the Ministry of Social Affairs. However, policies concerning migrant women – especially on violence against migrant women – have also been situated in the Ministry for Women's Affairs, the Ministry of Justice and the Ministry of the Interior.

Austria has few minorities that have been recognised in international treaties and the constitution as recognised autochthonous ethnic groups involving a minimum set of rights regarding use of maternal language and cultural rights. These minorities are the Slovenes in Carinthia<sup>38</sup>, the Croats in Burgenland, the Czechs and Slovaks in Vienna, the Hungarians in Burgenland and Vienna and the Roma and Sinti, predominantly living in Burgenland (Sembacher, Kochanowski et al. 2004: 35). The governmental competences for these ethnic groups lie in various ministries.

Policies around **religious belief inequalities** are not officially situated in any particular ministry. They are dealt with by the minister of education and of the interior.

## **Relationship between specialised bodies**

### **Gender**

In 1979, the first **equal treatment body** was created along with the adoption of the first Equal Treatment Act (on ending discrimination in determining wages for women and men). This **Equal Treatment Commission** consisted of representatives of the social partnership. Its mandate was to act in cases of complaints of discrimination on grounds of sex in employment in general before the case was taken to court, but it did not have any sanctioning power. The debates around the 1979 Equal Treatment Law were seen as an indication of open conflict between the social partners (Sauer 2001: 272, Talos 1997: 436). The 1993 Federal Equal Treatment Law established a Federal Equal Treatment Commission responsible for discrimination on grounds of sex in federal service.

### **Disability**

Before the recent incorporation of the EU Anti-discrimination Directives, there were no special bodies to address other inequalities. One exception for discrimination on the grounds of disability is the Federal Social Authority (Bundessozialamt). It offers counselling, advice on all issues related to social benefits to people with disabilities and gives information on the Federal Act on the Employment of People with Disabilities (Bundesbehinderteneinstellungsgesetz) and the Federal Act on Disabled Persons (Bundesbehindertengesetz). Arbitration procedures can be brought before this body in cases of discrimination on grounds of disability under the Federal Act on Equality of People with Disabilities, adopted in 2005.

### **Ethnic origin, religion, belief, age, sexual orientation**

The most recent institutional changes regarding gender equality machinery and machinery for other inequalities were the result of the incorporation of EU anti-discrimination guarantees into Austrian law. Two court procedures were initiated by the European Commission against

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<sup>38</sup> Policies and political struggles around the recognition of rights of the Slovene minority in Carinthia have a long history and have hotly been debated, especially since the year 2000. The struggle mainly evolves around the symbolic recognition of the Slovene minority by language. The issue of schooling in Slovenian mother tongue and two-language traffic signs indicating names of towns and villages in both German and Slovenian language has been at the centre of the debate. The debate, however, has been not made any link to any other inequality than ethnic origin.

Austria in 2004 and 2005 for failing to implement anti-discrimination directives (race-directive and equal treatment directive) as provided for by Article 13, Treaty of Amsterdam. The Race Directive (2000/43/EC) and the amendment to the Equal Treatment Directive (2002/73/EC) were implemented by adopting a new Equal Treatment Law (Gleichbehandlungsgesetz BGBl I. Nr. 66/2004). Both the Equal Treatment Act and the Federal Equal Treatment act were entirely revised and not simply amended, because the European anti-discrimination directives imposed 'completely new challenges' to Austrian law (Radlingmayr 2006: 186).

Until this point, both laws had only applied to discrimination on the grounds of sex. The implementation of the anti-discrimination directives added other grounds of discrimination. These were age, ethnic origin,<sup>39</sup> religion or belief, and sexual orientation. The institutional bodies for implementing anti-discrimination principles were also changed. The formal contents regulating monitoring procedures and bodies were regulated in a separate law on the Equal Treatment Commission and Equal Treatment Lawyer (Gleichbehandlungskommission und Gleichbehandlungsanwaltschaft). The former body, the equal treatment commission, responsible for discrimination on grounds of sex, was extended and divided into three separate senates overseeing the monitoring of different grounds of discrimination. Senate I deals with equal treatment of women and men in employment, senate II deals with equal treatment in employment regardless of ethnic origin, religion, belief, age and sexual orientation, and senate III deals with equal treatment regardless of ethnic origin in other areas (apart from employment). Before the implementation of these directives, grounds of discrimination other than sex could only be invoked under the respective constitutional guarantees and under separate legislation for people with disabilities.

The new law in 2004 placed the equal treatment commission within the ministry responsible for women's affairs. From 2004 onwards, this was the Ministry for Health and Women. Following the change in government and the reorganisation of ministries in January 2007, it has been the Minister for Women, Media and Public Service, situated within the Federal Chancellery. Before 2004, the institutional setting for the Equal Treatment Commission was with the Ministry for Social Administration, the Federal Chancellery and, from 2000-2004, the Ministry for Social Security and Generations. The fact that the old Equal Treatment Commission continued to exist as an institution to fight discrimination is due to the obligation of Austria to implement the regulations of the EU-directives and to assure that persons who are discriminated against can assert their claims before a settlement body, before court or an administrative body (Radlingmayr 2004).

The Equal Treatment Commission issues decisions that are not binding, but have the character of legal expertises and recommendations. An expertise is intended to give general information on equal treatment without referring to single cases, or to give an opinion on regulations in collective agreements. These expertises are made public in an anonymous form

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<sup>39</sup> The directive's wording is 'racial or ethnic origin'. In German speaking countries, the notion of 'race' ('Rasse') is very much linked to racist Nazi ideology. In order to avoid any reference to Nazi ideology, texts often refer to terms such as ethnicity or ethnic origin instead. For this reason, the wording of the Austrian law only speaks of 'ethnic origin'.

on the homepage of the ministry where the commission is institutionalized. The Commission may also decide in individual cases whether the right to equal treatment was breached, and it may call upon an employer to end discrimination and demand reporting. For these reasons the Equal Treatment Commission is not seen as a public authority, but mainly as arbitration body, the main function of which is to mediate between parties and to promote a settlement out of court. The procedure before the Equal Treatment Commission is relatively unbureaucratic. This enables easier access to complaint for a person affected by discrimination, also during and after a court procedure. However, courts are obliged to justify if their decisions depart from the expertise given by the Equal Treatment Commission.

Since the 2004 law, the Equal Treatment Commission is divided into three senates. Senate I deals with equal treatment of women and men in employment, senate II deals with equal treatment in employment regardless of ethnic origin, religion, belief, age and sexual orientation, and senate III deals with equal treatment regardless of ethnic origin in other areas (apart from employment). While senate I existed in the original equal treatment law, senates II and III were newly created due to the implementation of the EU-directives. In cases of multiple discrimination, senate I is responsible. The composition of senate III diverges from the composition of senate I and II. Senate III is primarily composed by representatives of ministries and only two representatives from the Chamber of Economy (Wirtschaftskammer Österreichs) and the Chamber of Labour (Bundesarbeiterkammer) while Senates I and II are primarily composed by representatives of the social partners (Chamber of Economy, Chamber of Labour, Industriellenvereinigung, ÖGB). Until May 2007, various cases of discrimination brought before the equal treatment commission have been made public on the equal treatment commission's website.

### **Class**

Class differences are institutionalized in the Social Partnership and in the Austrian welfare state. The Social Partnership is generally integrated into all policy processes and is traditionally male dominated.

## 2. Issue Histories

Preliminary note: In German-speaking feminist political science, there is little attention to analysing policy processes in general, and much of the work tends to focus on theory. Feminist political science has focused on social policy analysis. Thus, when analysing policy processes in Austria, it is characteristic for the scientific landscape that policy analysis from a gender perspective is underdeveloped. Apart from exceptions such as the policy process around the issue of domestic violence where women's movement representatives were significantly involved and from the very beginning, there is very little feminist political science literature on which actors are involved in which debates and how debates were influenced by them.

In the absence of scientific analysis, another obstacle is noteworthy. Tracing debates during a policy process in the Austrian legislative system confronts the researcher with serious obstacles regarding transparency of negotiations of bills before they are submitted for approval by Parliament and become binding law. In the absence of scientific analysis mentioned above, it is thus generally difficult to assess which actors were involved in shaping a first draft of a proposal or changes in the legislative process. Unless there is information available in media articles mentioning other actors that were involved, drafts on a law are worked out by civil servants in the relevant ministry. These drafts are then sent to parliament, where they are given to parliamentary working groups.

When a draft has been worked out, the ministry responsible submits this proposal to various interest groups in order to give them the possibility to comment on the proposal. In principle, each citizen has the right to comment on a draft law and to suggest changes and amendments. In practice, each ministry sends out the draft laws to a number of selected addressees. Some of these addressees, such as representatives of the economic sector and the worker's representatives (Chamber of Commerce, Chamber of Labour) have a legal right to receive draft laws and to comment on them. Beyond including these obligatory addressees, each ministry chooses itself which organisations, institutions and interest groups draft laws are sent to. Some ministries have a broad policy of distributing draft laws, some ministries follow a more restricted approach.

At this stage, it is easier to assess which actors are involved in the debate, as all written comments on a particular proposal are made public in the archive of the database of parliament and actors and their arguments can be traced accordingly. Comments by actors at this stage may lead to actual changes of the proposal before it is brought before parliament for approval. Sometimes a petition to change a draft is brought before the plenary session by certain party members. If a majority of members of parliament agrees, the draft becomes binding together with the changes mentioned in the petition.

Regarding formal research restrictions, the parliamentary online archive does not cover the period before January 15, 1996. Research of relevant drafts of laws, suggestions for

amendments and minutes of parliamentary debates thus had to be limited to the period starting January 15, 1996. The same restriction is the case for the online archive for the two major quality newspapers. Regarding recent parliamentary debates, minutes are usually available online after three months.

## a) Issue History for Non-Employment

### Introduction to the Sub-Issue and Topics

Non-Employment has not been debated under the heading 'Non-Employment' in Austrian policy debates. Nonetheless, debates on a number of sub-issues within the period studied for QUING (1995-2007) contain expressions of ideas about what is considered as legitimate reason not to be employed or otherwise be part of the labour market. For an overview of German-speaking political science debates on work/labour and distribution of work and its gendered aspects, see Behning 2004. For the purposes of the issue history report, labour and employment refer to a person's paid contributions to the labour market, while work is a broader concept that is not restricted to contributions to the labour market and need not necessarily be remunerated. For Non-Employment, five categories for sub-issues have been chosen for the QUING research guidelines: **reconciliation of work and family life, care work and informal work, equal pay/gender pay gap, tax-benefit policies, access to the labour market**. The category **equal pay/gender pay gap** is not applicable in Austria, as the Austrian debates on equal pay and gender pay gap have not been discussed under the aspect of Non-Employment in the sense that they have not made reference to (il-)legitimacy of reasons not to be employed. For this reason, there are only four categories of sub-issues prominent for Austria in debates on Non-Employment:

- Reconciliation of work and family life  
**Right to part-time work for parents**  
**Childcare benefits and childcare leave**
- Care work and informal work  
**Distribution of care and household work**  
**Care for the elderly**  
**Voluntary work**
- Tax-Benefit policies  
**Pension system/Retirement age for men and women**
- Access to the labour market  
**Anti-discrimination of disabled persons**

These sub-issues have been selected as the policy debates around them contain ideas about what legitimately justifies non-employment. The most salient sub-issues in Austria seem to be

grouped around the following reasons that legitimate (temporary) absence from or non-involvement in the labour market: care, both for children and for the elderly, age, disability or illness, and voluntary work. Even though there were some debates on 'life-long learning' and 'educational leave' (Bildungskarenz), they were not very rich and did not lead to any decisions, which is why they were not found to be salient sub-issues.

Debates on reconciliation of work and family life construct care work within families as a reason for (temporary) absence from the labour market. The **right to part-time work for parents** is discussed as enabling both a way of remaining integrated into the labour market, while at the same time allowing for temporary and part-time absence from gainful employment in order to care for a child. Care for children as a legitimate reason not to be in the labour market is debated in several aspects.

Debates on care and informal work focus on the sub-issues of **distribution of care and household work, care for the elderly and voluntary work**. Performing informal household and care work within families is considered as one legitimate reason for not participating in the labour market. **Care for the elderly** is mainly discussed around the conditions and shortages of the official labour market, and the informal or illegal forms of work that provide care but are not part of the official labour market. **Voluntary work** has been discussed as one form of informal work, usually connected to caring. Debates are about what kind of work is/should be done without payment, and that serves both as a reason for (temporary) absence from the gainfully employed labour market as well as an instrument for gaining more abilities to be used on the labour market.

**Pension system/retirement age** debates are mainly about determining age and health circumstances under which absence from the labour market becomes the acceptable norm and should be compensated by state benefits, especially regarding age limits and grades of disability or illness. The sub-issue of **childcare benefits and childcare leave** is mainly about what consequences state benefit policy has for those who care for a child, for the child cared for, for society at large as well as for the labour market.

The sub-issue **anti-discrimination of disabled persons** is about social inclusion of disabled persons who cannot participate in the labour market because of their disability on the one hand and on conditions for access to or inclusion on the labour market on the other hand. Certain types and levels of disability are seen as legitimate reasons not to be gainfully employed.

### **Sub-issues summaries**

The sub-issue **distribution of care and domestic work** was discussed as an issue in its own right in the mid- and late 1990's, while later it became mostly linked to other issues, such as

the reconciliation of work and family life. A cornerstone was the campaign 'half/half'<sup>40</sup> initiated by the Minister for Women's Affairs in late 1996/early 1997.

**Reconciliation of work and family life** has been debated since the mid-1990s. Most of the respective debates are covered by the sub-issues **childcare benefits (including maintenance after divorce)** and **childcare leave** and **right to part-time work for parents**.

### **Childcare benefits and childcare leave**

The debate started with the corner stone of the adoption of a new child-care benefit law under the conservative and right-wing coalition government ÖVP-FPÖ, replacing the old regulations that made benefits dependent on gainful employment of the parent. It was debated very controversially, both before it was adopted in 2000 and during the election campaign for early federal elections in November 2002. Much of the debate focused on the arguments of the best interest of the child, of family obligations and obligations between generations, of 'free choice' between returning to gainful employment or caring for the child oneself versus the reconciliation of work and family life. Another prominently discussed aspect was the one of encouraging families to have more children in the light of demographic decline. The new law attracted harsh criticism due to fears it would strengthen traditional gender roles and increase women's economic dependence on the male breadwinner. Debates on father's involvement in childcare were present in the context of the amendment of the law regulating father's leave in 2004. This amendment was a consequence of non-implementation of the EU-directive on parental leave<sup>41</sup> and an infringement procedure against Austria.<sup>42</sup> Evaluations published in 2003 and 2006 confirmed that the introduction of the child-care benefit increases women's absence from the labour market. The issue was also present in the election campaign for federal elections in October 2006.

After a change in government in 2007, the issue of reforming the child-care benefit has been put on the governmental agenda again. This time, the debates focus on enabling a shorter period of absence from the labour market while receiving a higher amount of benefit. An interesting turn happens as representatives of economy, The Chamber of Industry (Industriellenvereinigung), now openly claim that more child-care facilities are necessary, a standpoint they did not voice until then. At the same time, the need for more publicly financed child-care facilities is put on the agenda again, but a decision is postponed until autumn 2007. Intersectionality is addressed mostly in the sense of poverty (costs for public child-care), and poverty and gender (single mothers).

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<sup>40</sup> 'Half/Half' ('Halbe/Halbe') refers to the equal distribution of household and care work between men and women.

<sup>41</sup> Council Directive 96/34/EC of 3 June 1996 on framework agreement on parental leave.

<sup>42</sup> With the new law, in force since January 1, 2005, father's and mother's right to parental leave is treated exactly the same. Before, father's right to parental leave was secondary to the mother's, as the law did not allow for simultaneous parental leave for both parents. An independent right of the father to father's leave was created in 2000 (BGBl. I Nr. 153/1999)

### **Right to part-time work for parents**

Debates about flexible working hours in order to enable parents to remain in the labour market while caring for their children have been present particularly since the mid-1990s. They intensified around the cornerstone of a new law establishing the right to part-time work for parents under certain conditions in 2004. Much of the debate in parliament and in the public was about the criteria under which such a right was established, and about who was excluded from this right. An interesting turn happened when the right to part-time work for parents was connected to demands to include the right of a father to one month leave after the birth of a child into such a law. Intersectionality is rarely present in the case of gender and poverty (class) (single mothers).

Regarding the sub-issue **care for the elderly**, the issue has been present now and again since the introduction of a care benefit in 1992, with an increase in debate since 2000. Two turning points were debates about care performed in families and obligations between generations during the parliamentary discussion on the child-care benefit in 2000, and the election campaign in summer 2006, which made care a very hotly debated issue in the public, during the election campaign and in the policy process ever since. The debate is usually gendered in the sense that women are discussed as the ones who are supposed to care for the elderly. The fact that women also make up the majority of elderly cared for is however mostly absent from policy debates.

Since around 2003, there was intensified debate in the media about the lack of people working in caring professions in the context of debates about the ageing of Austrian society, demographic decline and changing needs for extra-familial care due to increased women's employment. The wording used was the one of 'state of emergency regarding care' (Pflegernotstand). One aspect of the earlier debate was about strengthening the role of voluntary workers who provide informal care. The turn in 2006 mainly focused on the role of illegal, or semi-legal care-work temporarily performed by women from Eastern European countries, their working conditions, and questions around affordability of legal care in case of poverty and access to the labour market. Also, the gendered responsibility for care inside families was hotly debated. The debates are still ongoing (as of July 2007) within the policy process. Intersectionality is openly present in the aspects of gender and ethnic/national origin (female carers from former Eastern-European countries) and of class and age (poverty amongst people needing care).

Regarding the sub-issue **pension system/retirement age for men and women**, the debate has been taken up several times in the period studied for QUING, with major shifts during the debate. Turning points were the comprehensive reforms of the pension system in 1990, 1997, 2000 and 2005. The debate began in 1990 due to a ruling by the Constitutional Court that the lower retirement age limit for women was unconstitutional. The main argument was that the lower retirement age for women had been created in order to counterbalance the years women lost in employment when caring for children, and that the gender roles in society had

since changed. This decision met heavy feminist critique. During the mid-1990's, suggestions for a more women-friendly pension system were presented.

While the debate in the early 1990s centred around the question of equal treatment of women and men in the pension system and changed gender roles in society at large, the debates around the reform 1997 focused on arguments of cutting social spending in times of economic decline and budget restraints. The pension reform was discussed under the wording 'austerity package' (Sparpaket), at the same time, improvements for recognising time spent for child-care were stressed as a step towards greater gender equality. In 2000, the debate was mainly about reducing spending for social costs by preventing people in general from retiring earlier than the general age limits and preventing abuse of the possibilities for early retirement due to invalidity or illness. The 2004/2005 debate finally went deeper into what exactly constitutes 'heavy work' that entitles someone to retire earlier. In the beginning, 'heavy work' was entirely discussed as typically male work such as construction work and work requiring a higher average intake of daily calories due to physical effort. Due to heavy feminist critique of the male-biased concept of 'heavy work', persons working in caring professions were included under this category.

Intersectionality seems to be addressed mostly in the dimensions of gender and age, or age and disability. Poverty/class is addressed in debates about elderly women's security (widow's pensions).

Debates on **anti-discrimination of disabled persons** have been particularly intense during the turning points 2003 and 2005. Most policy debates on the definitions of types and levels of disabilities that constitute legitimate reasons for a disabled person not to participate in the labour market happened much earlier than the period relevant for QUING, but certain laws containing such definitions have been discussed and amended due to EU-directives.<sup>43</sup> In 2003, an amendment to the constitution refers to anti-discrimination and equal treatment of disabled persons. In 2005, a comprehensive equal treatment act for people with disabilities was adopted, granting equal treatment in access to goods and services and amendments to previous laws on employing disabled persons in federal service as implementation of the respective EU-directive 2000/78/EC. The debate seems to have shifted in focus from discussing the conditions under which disabled persons can be integrated into the labour market toward equal treatment in all spheres of life. Intersectionality seems to be rarely present in the form of discussing the special needs of disabled women due to pregnancy or age.

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<sup>43</sup> Federal law on employing people with disabilities (Behinderteneinstellungsgesetz (BEinstG) of 1970, which was amended by Directive 2000/78/EC (BGBl I Nr. 82/2005). Other laws relevant for definitions of types and levels of disabilities that legitimate non-participation in the labour market include: Disability Acts and Social Security Acts of the respective Länder, Federal law on compensating burdens for families (Familienlastenausgleichsgesetz) of 1967 (BGBl Nr 376 in the current version), Amendment to General Social Security Act (ASVG - BGBl I 145/2003), Federal Law on Nursing Care Allowance of 1993 (Bundespflegegeldgesetz, BGBl 110/1993).

**Voluntary work** debates focused on the re-privatisation of care work within a re-organisation of the welfare state. A society in which tasks formerly seen as state responsibility are delegated to the private and unpaid engagement of citizens in the form of 'voluntary work' is seen as desirable. Voluntary work was a hot topic in 1999, when Andreas Khol, a leading ÖVP politician, published a manifesto on voluntary work in civil society. Debates have increased since the UN-International Year of Voluntary Work in 2001. A cornerstone was the establishment of a National Council for Voluntary work following a governmental decision, the adoption of a national action plan in 2004 and the presentation of a draft definition of voluntary work in 2005. At the beginning of the debate in 2001, the issue of recognising the value of voluntary work to society was in the foreground. Recent debates on voluntary work are situated within discussions of acquiring broader abilities that can be used for gainful employment on the one hand, and within debates on care of the elderly and the lack of professional carers on the other hand. The debate seems to be rather degendered. Intersectionality is mostly present in relation to age intersecting with other inequalities (voluntary work for elderly retired people).

## **Actors in the Policy Area of Non-Employment**

### **Right to part-time work for parents**

Main actors include representatives of all parties, the SPÖ women, the Minister for Economics and Labour (Martin Bartenstein, ÖVP), the Minister for Health and Women (Maria Rauch-Kallat, ÖVP), the Minister of Finances (Karl-Heinz Grassler, FPÖ), the social partners (such as trade union organisations and representatives of the economic sector, the Chamber of Labour), the Student's Union, and organisations associated with the ÖVP (Familienbund) and the SPÖ (Kinderfreunde).

### **Childcare benefits and childcare leave**

Main actors include the Minister for Social Security and Generations (Herbert Haupt, FPÖ), the Minister for Health and Women (Maria Rauch-Kallat, ÖVP), the Minister for Economics and Labour (Martin Bartenstein, ÖVP), representatives of all parties, representatives of SPÖ and Green party women organisations, trade unions and the Chamber of Labour, representatives of the Catholic Church, various feminist NGOs, and a range of research institutes.

### **Distribution of care and household work**

Main actors were the Minister for Women's Affairs (Helga Konrad, SPÖ), representatives of the conservative party ÖVP and FPÖ, and trade union representatives associated with the SPÖ. The main opponents include ÖVP worker's representation organisation (ÖAAB Bundestag), and FPÖ Women's organisation leader (Ursula Haubner).

### **Care for the elderly**

Main actors in the debate are representatives of all parties, Chancellor Wolfgang Schüssel (ÖVP), the Ministers for Social Affairs (Ursula Haubner, BZÖ; since 2007: Erwin Buchinger, SPÖ), the Minister for Economics and Labour (Martin Bartenstein, ÖVP), the Minister of the Interior (Liese Prokop, ÖVP; since 2007 Günter Platter, ÖVP), organisations active in the field of caring (Volkshilfe, Caritas), and feminist and anti-racist NGOs.

### **Voluntary work**

Main actors in the debate are the Minister for Social Security and Generations (Ursula Haubner, BZÖ), members of the National Council on Voluntary Work, representatives of all parties, particularly of ÖVP (Andreas Khol) and FPÖ, and representatives of senior citizens' associations.

### **Pension system/Retirement age for men and women**

The main actors involved are the Ministers for Social Affairs, Ministers for Women's Affairs, Minister for Economics and Labour, representatives of all parties, and the social partners (such as the Chamber of Labour and the trade unions).

### **Anti-discrimination of disabled persons**

Main actors in the debate are representatives of all parties, the Minister for Social Affairs (Herbert Haupt, FPÖ), the Minister for Health and Women's Affairs (Maria Rauch-Kallat, ÖVP), NGOs working in the field of disability (Lebenshilfe, Verein Selbstbestimmt Leben Österreich).

## **Timeline**

### **Pre-1995**

#### **1990 Pension system/retirement age**

Influential decision by the Constitutional Court in 1990 ('Pensionsalter-Erkenntnis, VfSlg. 12568/1990) ruling that the lower retirement age for women was unconstitutional. Consequently, pension laws were generally amended in a step-by-step approach, with a view to achieving the same retirement age of 65 years for women and men by the year 2033. The decision was hotly debated and criticised widely by feminist activists and lawyers.

#### **1993 Pension system/retirement age**

The age limit for receiving early retirement pension in the case of reduced capacity to work was set to 55 years for women and men alike<sup>44</sup>.

#### **1993 Care of the elderly: introduction of the care benefit**

For the first time, a benefit was introduced for people who are in need of care. The benefit is paid in seven grades independent of income according to the categories of need of care, which has to be determined by a doctor. It was debated as a mile-stone for the needs of elderly people in need of care, especially since care that used to be entirely performed within

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<sup>44</sup> Amendment to Social law (Sozialrechts-Änderungsgesetz 1993, BGBl. Nr. 335/1993)

families is more and more performed outside families, due to the increased labour-market participation of women.

## **1995-2007**

### **1995 Distribution of care and domestic work**

Presentation of the publication 'Report on the Situation of Women in Austria 1995' by the minister for women's affairs, Helga Konrad (SPÖ). The first report of this kind was produced by the Austrian government in 1975, at the occasion of the UN-proclaimed 'International Women's Year'. Each subsequent report covers a reporting period of ten years. For the area of care and domestic work, the 1995 report states that they are unequally distributed between women and men. Also, the women's section of the trade union association (Bundesfrauenkonferenz der ÖGB) brought the issue of the double workload of working women with children on the agenda and combined it with the substantial gendered salary difference per occupational sector and month.

Referring to these results, and taking further the initiative by her predecessor Johanna Dohnal, the women's minister suggested comprehensive amendments of the civil code regulations (§ 90, 91 and 95 ABGB) governing marital duties. These amendments should legally oblige spouses to share care (for both children and sick and elderly relatives) and domestic work equally. A lack of equal contribution to household and care work should become a reason for divorce. Both the presentation of the 'Report on Women' and the suggestions for legal amendments establishing equal sharing of care and domestic work gained a lot of media attention, mostly comprising critical newspaper articles and comments about a 'senseless' strategy to attempt to redistribute care and household work between spouses by legal norms. Another argument referred to the need for a sphere of privacy free from state intervention.

#### *Primary Source*

(Draft for amendment of civil code governing marital duties, not available in the parliamentary online archive)

#### *Secondary source*

Report on Women 1995. Section 'Time-Budget and distribution of work in family'  
13 pages, E-text

### **1996 Pension system/retirement age**

The age limit for receiving early retirement pension in case of reduced capacity to work was raised to 57 years for men, but remained 55 years for women.<sup>45</sup>

#### *Primary Source*

Extracts of Parliamentary debate on different age limits for early pension retirements: Minutes of the 16. Session of the National Council, April 16, 1996. Statements on early retirement age limits: around 10 pages. E-text.

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<sup>45</sup> Law on structural adjustment (Struktur-Anpassungsgesetz 1996, BGBl. Nr. 201/1996)

### **1996/1997 Distribution of care and domestic work**

Public debate on equal sharing of household and child-care work. The advertising campaign: Half/Half 'Halbe/Halbe', from December 1996 to January 1997, was initiated and elaborated by the minister for women's affairs in 1996, Helga Konrad (SPÖ). The intention of the campaign was to raise the issue of the unequal sharing of household and care work between men and women, and to enhance awareness of a more equal distribution. It resonated widely in the public and the media, attracting harsh criticism from the very start, and was estimated to be one of the most successful advertising campaigns in terms of being remembered by people. During the course of the campaign and in the months afterwards, the arguments remained relatively stable and there were no major changes over the course of time. Several newspaper articles and commentaries were written on the issue, and the campaign was referred to, mostly negatively, by some members of parliament in parliamentary debates.

The campaign read 'Real men practise half/half' (Ganze Männer machen Halbe Halbe), hinting at the unequal distribution of household and care work in relationships. The campaign, that was launched all over Austria by posters and on television, was criticized widely from representatives of the conservative party ÖVP and FPÖ, but also from trade union representatives associated with the SPÖ. The main opponents from the conservative party were leaders of the ÖVP workers' organisation (ÖAAB Bundestag). From the right-wing FPÖ, it was the FPÖ Women's organisation leader Ursula Haubner who criticized the campaign. Also, a regional representative of the SPÖ worker's representative organisation (ÖGB) joined in the critique. The main argument against the campaign was that law should not interfere in private arrangements such as household work and that the financial resources going into the campaign would be better spent fighting poverty in families.

Helga Konrad succeeded Johanna Dohnal as Minister for Women's Affairs in April 1995. She resigned from office on April 28, 1997. Her resignation was publically perceived to be due to party internal critique regarding her contested campaign. She was followed by Barbara Prammer (SPÖ). Two years after the campaign, in July 1999, the marital law was amended and came into force in January 2000. The 1999 amendment speaks of a 'balance of contributions' within marriage, but does not explicitly regulate that household and care work must be distributed equally between spouses (see below).

### **1997 Reform of pension law**

Reform of the pension law. If a woman had been gainfully employed and interrupted or gave up that employment in order to care for a child, then this 'time for caring for children' was recognised as creating pension entitlements. The maximum period of time recognised for such entitlement was 36 months.

#### *Primary Sources*

Draft law on pension reform 1997 (Regierungsvorlage 885 d.B.). 193 pages. E-text.

Minutes of parliamentary debate on pension reform 1997. 99th session of the National Council, November 7, 1997. Section on pension reform: 143 pages. E-text.

### **1997 Anti-discrimination of people with disabilities**

In July 1997, the parliament approves an amendment to the constitution adding that 'No one shall be discriminated against because of his disability. The Republic (Federation, Länder and municipalities) commits itself to ensuring equal treatment of disabled and non-disabled persons in all aspects of every-day life'. The amendment had been initiated by a self-help NGO for people with disabilities (Selbstbestimmt-Leben Initiative Österreich) and by the support of Green party members, who made the first motion for an anti-discrimination regulation. The draft amendment was worked out in a consensual way by the parliamentary constitutional committee. The parliamentary debate focuses on the integration of people with disabilities in their every-day lives. The debate is not gendered.

#### *Primary Source*

Minutes of the parliamentary debate on amendment to constitution regarding anti-discrimination of people with disabilities. 81<sup>st</sup> Session of National Council, July 9, 1997. Section on the debate: 22 pages. E-text.

### **1999 Divorce, distribution of household and care work**

Major amendment of the marital law (BGBl. I Nr. 125/1999, Eherechts-Änderungsgesetz 1999, in force since 01 January 2000), regarding maintenance in cases of divorce and the distribution of household and care work. The amendment explicitly establishes that spouses 'regulate their marital partnership conjointly, especially house-keeping, gainful employment, assistance and care, with consideration for each other and for the best interest of the children with a view to full balance of their contributions'. § 91 ABGB. At the same time, regulations for divorce were changed. Prior to this amendment, in cases of divorce, maintenance for a spouse after divorce was only due if that spouse was not the guilty party. With the amendment, it was established that maintenance after a divorce must be paid if it cannot reasonably be expected that the divorced spouse can make a living of her or his own because of caring for the joint child. In this case, the duty to pay maintenance is limited until the 8<sup>th</sup> birthday of the child but may continue in case the child needs special care. A duty to pay maintenance after divorce irrespective of whether or not the divorced spouse in need for maintenance was found to be the guilty party is also established for the case that a divorced spouse cannot reasonably be expected to make a living of her or his own because of lacking employment options due to having cared for a child or relative during marriage. The lack of employment options are specified as resulting from a lack of education or further education, the duration of the marriage, advanced age, and health reasons. The duty to pay maintenance can however be reduced or cancelled at discretion of the court in cases where the divorced spouse needing maintenance has unilaterally committed especially serious forms of misdemeanour in marriage or has caused her or his need for maintenance by fault. Maintenance can also be reduced or cancelled if the marriage only lasted for a short time.

Another amendment in cases of divorce concerns the distribution of the legal estate. Previously, only assets that were accumulated during the course of the marriage could be distributed upon divorce. With the amendment, the marital apartment and household assets that were, for instance, accumulated before marriage could be distributed, if the divorced spouse had reasonable need to live in that apartment and use the household goods.

The issue of sharing household and care responsibilities was publicly put on the agenda by the campaign 'Half/Half', initiated by the Minister for Women's Affairs in December 1996 and January 1997. The reform of the marital and divorce law in 1999 was prepared by an inter-ministerial working group, and the responsibility to submit a draft bill to parliament lay with the Minister of Justice. The Minister of Justice at the time was Nikolaus Michalek (no party affiliation). The content of the reform was controversially discussed in media articles starting in March 1998.

#### *Primary Sources*

Marriage law amendment 1999 (Eherechts-Änderungsgesetz 1999, BGBl. I Nr. 125/1999)  
5 pages, E-text

Minutes of parliamentary debate on marriage law amendment 1999. 174th session of the National Council, June 16 and 17, 1999. 40 pages on marriage law amendment. E-text.

#### *Secondary Sources*

Dackweiler, Regina. 2003. *Wohlfahrtsstaatliche Geschlechterpolitik am Beispiel Österreichs. Arena eines widersprüchlich modernisierten Geschlechter-Diskurses*. [Welfare state gender policies: the Austrian example. Arena of an ambiguously modernised discourse on gender]. Opladen: Leske & Budrich.

#### **2000 Pension system: retirement age**

In May 2000, the European Court of Justice considered the differences in Austrian pension law age limits for women and men for early retirement due to reduced capacity to work as breaching European Union law.<sup>46</sup> The adoption of the Social security law Amendment 2000 (Sozialversicherungs-Änderungsgesetz 2000) led to heavily disputed changes in the retirement system. The age limit for early retirement was generally raised and unequal age limits for women and men abolished. The definition of inability to work due to disability or illness was restricted. The deductions were increased for people who retire earlier than the general age limit (65 for men and 60 for women). Special pension benefits, such as pension due to invalidity or inability to work, and widow's/widower's pensions were reduced.

#### *Primary Source*

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<sup>46</sup> Decision of the European Court of Justice of May 23, 2000 (C-104/98, Buchner). The age limits for early retirement due to reduced capacity or inability to work were 55 for women and 57 for men. This regulation was found to be contrary to European Union law, especially Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Amendment to Social Security Law (Sozialversicherungsänderungsgesetz 2000, BGBl. 43/2000)

10 pages, E-text

Minutes of parliamentary debate

Parliamentary debate on social security law amendment 2000: Minutes of the 30. Session of the National Council, June 7 and 8, 2000.

41 pages on social security law amendment. E-text.

### **2001 Childcare: adoption of child-care benefit law**

Introduction of the child-care benefit law (Kinderbetreuungsgeldgesetz), after intense debates in the media, at public events and in the election campaign for federal elections 2000. The new law replaced the old regulations that made benefits dependent on the gainful employment of the parent. It was debated very controversially, both before it was adopted and in the election campaign for early federal elections in November 2002. Much of the debate focused on the arguments of the best interest of the child, of family obligations and obligations between generations, of 'free choice' between returning to gainful employment or caring for the child oneself versus the reconciliation of work and family life. Another prominently discussed aspect was the one of encouraging families to have more children in the light of demographic decline. The new law attracted harsh criticism from various women's NGOs, as they feared it would strengthen traditional gender roles and increase women's economic dependence on the male breadwinner.

#### *Primary Source*

Child-care benefit law (Kinderbetreuungsgeldgesetz, BGBl. I Nr. 103/2001)

Comments on the draft child-care benefit law by various institutions and NGOs, such as

- Österreichische Kinderfreunde/Austrian Friends of Children
- Institut für Ehe und Familie/Institute for Marriage and Family
- Katholischer Familienbund/Catholic family association
- Österreichische Caritas/Austrian Caritas
- Beratungszentrum für MigrantInnen/Counselling centre for migrants
- Arbeitskreis für Gleichbehandlungsfragen der Universität Innsbruck/Equal treatment council at Innsbruck university

Minutes of parliamentary debate on child-care benefit law, Session 74 of National Council, July 7, 2001. Extract on debate on child-care benefit law, 68 pages. E-text.

### **2003 Voluntary work**

Establishment of the 'Austrian Council for Voluntary Work' (Österreichischer Rat für Freiwilligenarbeit), following a decision of the Council of Ministers that originates in the UN-International Year of Voluntary Work in 2001. The Council is situated within the Ministry for Social Security and Generations and the Ministry for Health and Women. It has advisory functions as well as networking and coordinating functions. The council works on a draft

definition for voluntary work. In the petition for its establishment, reference is made to unpaid work in the field of social, care and health work, to solidarity between generations and the necessity of voluntary unpaid work for the high standard of living in Austria.

#### *Primary Source*

Petition by Minister for Social Security and Generations to the Council of Ministers of July 10, 2003, on establishing an Austrian Council for Voluntary Work. E-text, 7 pages.

#### **2004 Right to part-time work for parents**

A new law establishing the right to part-time work<sup>47</sup> for parents under certain conditions is accepted in parliament. The conditions for taking this right are quite restricted: only if a person has been employed for more than three years in the same company and only if the company had at least twenty employees is such a right granted. The right ends with the 7<sup>th</sup> birthday of the child. The draft for the law was worked out in the Ministry for Economics and Labour, run by the conservative minister Martin Bartenstein (ÖVP).

The first draft was sent out in October 2003, and several organisations and institutions made official statements to the draft until January 2004, suggesting changes. These include the Ministry for Health and Women, the Ministry of Finances, the Ministry of Agriculture, the social partners (such as trade union organisations and representatives of the economic sector), the student's union, and organisations associated with the ÖVP (Familienbund) and the SPÖ (Kinderfreunde).

Regarding trade union criticism, the Federal Chamber of Labour (Bundesarbeiterkammer), argued that it should not be restricted to companies with more than twenty employees. The comment referred to the gendered aspect of this restriction, as 44 % of all gainfully employed women and 33 % of gainfully employed men worked for companies that had less than 20 employees in total. The comment further referred to the feminisation of poverty and to increasingly precarious working conditions especially for young people. SPÖ deputies suggested in February 2004 that such a law should include the right of a male employee to one month leave from work ('fathers' protection month'), and that the employee should be protected from dismissal from the moment that he expressed his wish to take this leave. The suggestion was not accepted in the relevant parliamentary committee (Familienausschuss). The report of that committee does not give any reasons for why it was not supported. The proposal to introduce one month father's leave was subsequently rejected in the national council plenary session by ÖVP and FPÖ deputies, whereas the minority of SPÖ and Green party deputies voted in favour of it.

The extensive debate on the part-time work for parents law involved 23 deputies from all parties. The governing parties mostly argued that the law is a milestone for families and enabled true freedom of choice for parents. The opposition parties, SPÖ and Green party, criticized that only a small percentage of all parents would have such a right. The Green party

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<sup>47</sup> The EU regulations relevant for part-time work: Council Directive 98/23/EC of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work

in particular criticized that such a right to part-time work is excluded if the other parent is on child-care leave. The law was adopted with the support of government party deputies (ÖVP and FPÖ) and SPÖ deputies. In the parliamentary debate, no reference is made to EU requirements.

*Primary Source*

Law on part-time work for parents (Elternteilzeitgesetz, BGBl. I Nr. 64/2004)  
21 pages, E-text

Debate on law establishing right to part-time work for parents: Minutes of the plenary session of the National Council on May 26, 2004

Section of debate of the law: 53 pages, E-text

*Secondary Source*

Proposal Fathers' Protection Month (Entschließungsantrag Väterschutzmonat 347/A(E) XXII. GP of February 18, 2004)

Statement on draft law on part-time work by federal chamber of workers on December 17, 2003 (E-text, 9 pages)

Parliamentary Press Release 26 May 2004: 'National Council votes for parents' possibility to work part time' (Nationalrat beschliesst Möglichkeit der Teilzeitarbeit für Eltern', Parlamentskorrespondenz/01/26.05.2004/Nr. 385)

**2004 Childcare leave**

Amendment to the law on father's leave, establishing equal treatment of father's and mother's right to parental leave, and the impossibility to take parental leave at the same time for both. Both parents have to agree on who takes parental leave for how long. The law was worked out by the Ministry of Economics and Labour and was commented on by several ministries and social partners. The comment by the Ministry for Health and Women merely contained requests for gender-neutral language but no reference to content. In the parliamentary debate reference to EU-requirements (directive on parental leave of 1996) is frequently made, the best interest of the child is invoked, the need to enable fathers to be more active fathers as well as effects on gender relations and the demographic development. The amendment did not resonate very strongly in the media.

*Primary sources*

Amendment to law on father's leave (Änderung des Väter-Karenzgesetzes, BGBl. 124/2004)  
1 page, E-text.

Minutes of the plenary session of the National Council, October 13, 2004

Section on debate on the amendment to law on father's leave.

10 pages. E-text

### **2004/2005 Pension system – retirement age**

A reform of the pension law (entering into force in January 2005) is debated around changes in retirement age limits for those who are legally considered as 'heavy workers'. One important aspect of the debate focused on the classification used to determine whether someone is a 'heavy worker'. The debate was criticized for being entirely gender-blind, since it only counted traditionally male work (e.g. construction work) which involved a high intake of daily calories as 'heavy'. Due to the critique, persons working in caring professions were included within this category if they fulfil certain criteria. In the same reform, the time women spend caring for and raising children is taken into account when determining pension entitlement, with a higher amount than previously (1350 € per month, which is the same amount as the one taken for time served at the army or in social service).

#### *Primary Sources*

Explanations to the draft law on pension reform 2005. E-text, 58 pages.

Minutes of parliamentary debate on pension reform 2005. 87<sup>th</sup> session of National Council, November 18, 2004. Section of the debate on pension reform: 165 pages. E-text.

### **2005 Anti-discrimination of disabled persons**

In July 2005, a comprehensive legal package is adopted in Parliament regarding anti-discrimination and equal treatment of people with disabilities (Federal Act on Equal Treatment of People with Disabilities). It provides anti-discrimination obligations regarding access to goods and services and establishes an equal treatment lawyer for disabled persons in the ministry for social affairs. The law governing anti-discrimination of disabled persons in employment (Behinderten-Einstellungsgesetz), dating back to 1970, is amended. The law was worked out within the Ministry for Social Affairs. NGOs for people with disabilities had continuously been demanding comprehensive anti-discrimination legislation, especially since the 2003 UN-International Year for People with Disabilities.

#### *Primary Source*

Federal Act on Equal Treatment of People with Disabilities (Bundes-Behindertengleichstellungsgesetz, BGBl. I Nr. 82/2005) E-text, 19 pages.

Minutes of parliamentary debate on Federal Act on Equal Treatment of People with Disabilities. 117<sup>th</sup> session of National Council, July 6, 2005. Section on debate: 52 pages. E-text.

#### *Secondary Source*

Report of the constitutional parliamentary committee on draft equal treatment law (Bericht des Verfassungsausschusses über Regierungsvorlage). E-text, 6 pages.

### **2005 Voluntary work**

A draft definition of voluntary work is presented by the Austrian Council for Voluntary work, adopted on 3 November 2005. The Ministry for Social Security and Generations publishes a

'Special Guideline for the promotion of a year of voluntary social service 2006/2007'. The guideline outlines the conditions under which federal funds may be distributed to organisations in the social welfare sector (especially care for the elderly) in order to compensate young people's financial loss of family benefits in cases where they volunteer for a year of voluntary social work.

#### *Primary Sources*

Draft definition of voluntary work by the Austrian Council for Voluntary work, adopted 3 November 2005

E-text,

'Special Guideline for the promotion of a year of voluntary social service 2006/2007' by Ministry of Social Security

E-text, 4 pages.

#### **2006 Care of elderly**

During the election campaign for national elections in **October 2006**, a hot media debate evolved around the issue of the lack of people working in elder care and around the issue of semi-legal or illegal care work performed by migrant women in Austria. Media reports about a migrant woman who had performed care-work for the mother-in-law of Chancellor Wolfgang Schüssel (ÖVP) for a very low salary intensified the debate about the costs for legal care on the one hand, and the precarious working conditions under which many migrant women perform care work in Austria on the other. Given the lack of facilities in state-run nursing homes, people with lower incomes are faced with the dilemma that state benefits for people in need of care (Pflegegeld – care allowance) are much lower than the average cost of legal caring services. Alternative arrangements are offered by private associations who arrange for women from neighbouring Eastern European countries to live and work in Austrian households as carers. Their status is similar to Au-pairs, and the payment of their services is much lower than a salary for an official caring person would be. People who 'employ' migrant women on that basis may face high administrative fines.

The issue of care was also highly prominent in the lengthy negotiations for governmental coalition between the Social Democrats and the Conservative Party following the national elections in October 2006. One of the first agreements reached during these negotiations was the agreement on a temporary amnesty for persons performing care illegally and for their clients, the families employing them. The parties also agreed on drafting a law enabling carers from the new Eastern European member states to work legally in Austria.

As an immediate result of the debate during the election campaign, a temporary amnesty for employing carers illegally was announced by the Minister for Economics and Labour, Martin Bartenstein (ÖVP): This amnesty was intended to end on June 30, 2007. The respective draft was initiated by members of the ÖVP. The draft law applies to care work performed in households and also includes carers with Austrian citizenship. Restrictions in applicability are that the employer must be either the person cared for or a relative, and that the person cared

for must receive care allowance (level 3 of a maximum of 6 levels). The draft law was accepted in November 2006 with the majority of votes of the governing parties SPÖ and ÖVP. Green party, FPÖ and BZÖ voted against it.

#### *Primary Sources*

Law on amnesty for illegal carers (Pflege-Übergangsgesetz, BGBl. I. Nr. 164/2006)

1 page, E-text

Minutes of the parliamentary debate on Law on amnesty for illegal carers, 26 November 2006.  
20 pages, E-text

#### *Secondary source*

Article in daily 'Der Standard' of 25 October 2006. 'Agreement on care breaking the ice at coalition negotiations' (Einigung zur Pflege bricht das Eis bei Koalitionsverhandlungen).

### **2006 Child-care benefit**

In December 2006, several media reports about the precarious situation of non-Austrian nationals who do not receive child-care benefits due to overly formal interpretations of alien law regulations result in an amendment to the child-care benefit law. The amendment was initiated by SPÖ and ÖVP. Green party members suggested a wider range of persons benefiting, including children who are threatened by torture in the country of origin in case of deportation. There was a two-day period between the initiative and the actual adoption in Parliament, which means that there was very little time for NGOs to comment. Parents who legally reside in Austria (including those who were granted asylum) may now also obtain child-care benefit for those months during which their child could not fulfil the requirements for a legal residence. The amendment will be in force from June 1, 2007, retrospectively.

#### *Primary sources*

Law amending the family burden compensation law and the child-care benefit law (Änderung des Familienlastenausgleichsgesetzes 1967 und des Kinderbetreuungsgeldgesetzes, BGBl. 168/2006) of December 28, 2006.

E-text, 2 pages

Minutes of the parliamentary debate on Law amending the family burden compensation law and the child-care benefit law, of December 15, 2006. 40 pages, E-text

#### *Secondary source*

Parliamentary press release of December 15, 2006.

(Parlamentskorrespondenz/03/15.12.2006/Nr. 932)

E-text, one page.

### **2007 Pension system – retirement age**

On January 1, 2007, a directive defining 'heavy work' entered into force. It was intensely discussed in the context of pension reform and with efforts to decrease the number of persons

retiring earlier than the general retirement age. Only people who had been performing 'heavy work' were seen as having a legitimate reason to retire earlier.

#### *Primary source*

Heavy work directive, issued by the Ministry for Social Security and Generations, in force on January 1, 2007. (Verordnung der Bundesministerin für soziale Sicherheit, Generationen und Konsumentenschutz über besonders belastende Berufstätigkeiten. BGBl. II 104/2006). E-text, 3 pages.

#### **2007 Care of the elderly**

In **April 2007** a new draft law was proposed and worked out in the Ministry for Social Affairs (Minister Erwin Buchinger, SPÖ), extending the period of amnesty until December 2007. Comments on the law were given by the Chamber of Labour and by Hilfswerk Austria, one of the main organisations providing professional care work. The main critique was that the draft law would only apply to legally registered carers, and that more time was needed to work on a comprehensive strategy.

In **July 2007**, a draft law on extending the period of amnesty for illegal carers was debated and accepted in the parliamentary session on July 4, 2007. Petitions for amendments regarding higher funds for care by the FPÖ and BZÖ were rejected. Another draft law was worked out by the Minister for Economics and Labour concerning care performed in private households (Hausbetreuungsgesetz – Law governing care at home). It was extensively commented on by various ministries, the social partners, care work organisations, and some NGOs for people with disabilities. It entered into force in July 2007.

#### *Primary Sources*

Draft law on extending the period of amnesty of 24 May 2007 (Ministerialentwurf betreffend ein Bundesgesetz, mit dem das Pflege-Übergangsgesetz geändert wird. 60/ME (XXIII. GP)  
9 pages including preliminary remarks, E-text

Minutes of the parliamentary debate on extending the law on amnesty for illegal carers until end of 2007, of July 4 2007 (available online in September/October 2007)

Law on care performed at home (Hausbetreuungsgesetz, BGBl. I Nr. 33/2007)  
E-text, 4 pages

Comments on draft law on care performed at home

- Lebenshilfe (NGO for people with disabilities), E-text, 4 pages
- Austrian Red Cross, E-text, 3 pages
- Dachverband der Altenfachbetreuerinnen (Association of professional carers for elderly people), E-text, 4 pages.
- Österreichischer Gewerkschaftsbund (Trade Union). E-text, 3 pages.

#### *Secondary sources*

Parliamentary press release May 23, 2007: Parlamentskorrespondenz/02/23.05.2007/Nr. 397, E-text, 3 pages

Parliamentary press release July 4, 2007: Parlamentskorrespondenz/01/04.07.2007/Nr. 551 E-text, 3 pages

### **2007 Child-care benefit**

**June 2007** Ongoing debates about changing the child-care benefit law of 2001. An amendment to the child-care benefit law of 2001 is worked out by the Ministry for Families and Youth and results in a draft law which is open to comments until the end of July 2007. The draft law enables receipt of the benefit for a shorter period with a higher amount of money, and it raises the limit of income that may be earned in addition to receiving the child-care benefit.

At the same time, the question whether or not reclaims should be made when the limit of additional income was exceeded is hotly debated between SPÖ and ÖVP. The issue is particularly difficult since the former government (ÖVP-BZÖ) openly announced that reclaims would not be made. The need for more public child-care facilities is also put on the agenda again. A decision about the financing of more child-care facilities is postponed until autumn 2007. Relevant actors are the Minister for Women's Affairs (Doris Bures, SPÖ), the Minister for Family and Health (Andrea Kdolsky, ÖVP), the Chamber of Industry, and the Chamber of Labour.

#### *Primary source*

Draft law amending the law on child-care benefits, open for comments, of June 2007  
E-text, 19 pages

#### *Secondary source*

Report of the parliamentary committee on families on flexibilizing the child-care benefit of March 21. 2007  
E-text, one page

## **b) Issue History for Intimate Citizenship**

### **Introduction to the Sub-Issue and Topics**

Intimate Citizenship has been debated in a number of sub-issues within the period studied for QUING (1995-2007). The following sub-issues are prominent for Austria within the categories selected for Intimate Citizenship:

- Divorce, separation, marriage:
  - Names of spouses/children**
  - Shared custody after divorce**
  - Family reunion, bi-national couples, 'fake marriage'**
- Civil partnerships and gay marriage, discrimination on the basis of sexual orientation:

## **Anti-discrimination and same-sex partnerships**

- Reproductive rights, including abortion, reproductive assistance:

### **Abortion**

### **Reproductive medicine techniques (IVF)**

Apart from these sub-issues, two other sub-issues were debated that could be seen as Intimate Citizenship sub-issues: penal code changes on **coerced or forced marriage** in 2004 (see Latcheva et al. 2007, Strasser et al. 2007), and the debate around the **introduction of the child-care benefit** in 1999 (see Riesenfelder et al., 2006). These sub-issues were not included as intimate citizenship sub-issues, since the focus of the debate was elsewhere. For coerced or forced marriage, this sub-issue was clearly debated with a focus on gender-based violence (of minorities) and is discussed under this section. The debate around the introduction of the child-care benefit in 1999 is more complex. The issue of partnership was present, in debates around how the introduction of the benefit would influence partners' distribution of care and household obligations. However, we chose to describe it as a sub-issue of non-employment, as a focus of the debate was about the issue of choice between a job and caring for a child or about reconciling employment and caring for children.

The issue of **abortion** has been taken up off-and-on in public debates the period from around 1997 until 2007. The focus of the debates was the question of restricted access to abortion at public hospitals in western federal states of Austria as well as on protective zoning at abortion clinics due to the harassment of women by anti-abortion activists. The second aspect of the debate, the harassment of women in the vicinity of abortion clinics, can be seen as having a close link with the issue of gender-based violence. The first aspect, accessibility of abortion in public hospitals, has mostly been debated in terms of rights of women to have a legal abortion within the first twelve weeks of pregnancy and restricted access to abortion in some Austrian regions versus the argument that women should be protected from making the wrong choice of abortion. In the western federal states Vorarlberg, Salzburg and Tyrol, abortions used to be performed only in private, and much more expensive, clinics. Thus, the arguments were very much along the lines of accessibility of abortion along class divisions, for those who can afford expensive private clinics versus those who cannot. However, the debate has not involved a strong focus on partnership. It was included into the issue histories, however, since it is strongly linked to questions of women's citizenship as a result of sexual activity with a male partner. Another aspect of the debate was the right to abortion in cases of severe disability of the embryo up until the 9<sup>th</sup> month of pregnancy, but discussions did not result in any change of law.

Regarding the sub-issue of **names of spouses/children** (see Aichhorn 2003), the debate focused on the amendment of the marital name law in 1995, introducing the principle that each spouse can keep his or her original name and add it to the chosen common family name. The chosen common family name will also be the name of children, if no common family name is chosen, it is automatically the father's name. Much of the debate focused on women's autonomy and on the argument that partners who wish to marry should be able to decide on a

common name, on the perceived impossibility to give a child two family names, and on the symbolic importance of one common family name for the meaning of a family.

Regarding the sub-issue **reproductive medicine techniques (IVF)** (see Knoll 2006, Hadolt 2005), much of the debate happened as early as 1992 when artificial insemination was legalised. In 1999, a fund was established with the setting of criteria under which the high costs for artificial insemination are paid by the state. An amendment to this law in 2004 further specified the criteria, also in relation to non-Austrian citizens. Much of the debate centred around the issue of high costs of artificial insemination, of demographic decline and of providing support for Austrian couples who wish to get children. The issue of supporting Austrians to have children was a major topic in the election campaign 1999.

Regarding **anti-discrimination of sexual orientation and same-sex partnerships**, (see Graupner 2004), both issues are deeply connected in the public debate, a debate that has been going on since the mid-1990's and recently gained new momentum due to implementation of EU-directives. The provisions regulating marriage and partnership in the Austrian Civil Law Code limit institutional arrangements for marriage and partnership up until the present to heterosexual couples. Both marriage and partnership (Lebensgemeinschaft – life partnership) as civil law institutions are only accessible for heterosexual persons.

However, there are a number of legal arrangements in areas such as tenancy law, family hospice law and various care leave regulations that cover partnerships regardless of whether partners are heterosexual or homosexual. These arrangements, however, were decidedly influenced by European Union law and by court rulings. Thus, the role of court decisions is particularly relevant for the issue of intimate citizenship. These courts are the highest Austrian courts (Highest Court OGH, Constitutional Court VfGH and Administrative Court VwGH)<sup>48</sup>, the European Court of Human Rights and the European Court of Justice. There have been a number of court decisions which clarified the meaning of partnership and who is seen as a partner to whom in the case of homosexual partnership. This is largely because Austrian legislation has been very hesitant in implementing equality principles on the grounds of sexual orientation. Recently, the issue of anti-discrimination of homosexual couples, particularly connected to the issue of recognition of homosexual marriage, has been intensely discussed in the media, the election campaign for federal elections in October 2006, and it has led to frictions within the Conservative Party ÖVP.

Regarding **parenthood: shared custody after divorce** (see: Aichhorn 2003), this sub-issue came on the agenda in 2001 with a change in family law, along with the introduction of the new childcare benefit. Shared custody after divorce was debated as a partnership issue, with

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<sup>48</sup> While these three Courts have different competencies, all of them issued decisions and rulings on issues of sexual orientation that have been extremely relevant to this sub-issue. The **Constitutional Court** decides whether or not a particular legal provision is in accordance with Austrian Constitution (and the international instruments that are part of the Austrian Constitution). A second competency is to decide whether a person's constitutionally guaranteed rights have been infringed upon. The **Highest Court** decides on civil law matters. The **Administrative Court** decides on legitimacy of administrative decisions.

the central argument of the well-being of the child and of parental duties towards the child. Prior to this legal change, custody after divorce was usually given to one parent only, and usually to the mother. A central argument was that the introduction of this new principle would strengthen paternal responsibility towards children, and would lead to a more gender-balanced distribution of care for children after the divorce. The law met severe criticism from women's NGOs, who feared that this principle would serve as a pressure tool in cases of male violence.

Regarding the sub-issue of **family reunion, bi-national couples** and 'fake marriage', (see Ivezić et al. 2003, Macho 2003), legal changes in 1997 and 2005 and following Constitutional Court decisions have had considerable influence on the question of who has the right to residency or domicile because of marriage or family relation to an Austrian citizen or a citizen of the EU residing in Austria. Austria has had a very restricted approach to immigration and asylum, in particular since the big changes in Alien and Asylum law in 1997 and 2005 (see Loos et al. 2006). For this issue, the 2005 Alien Law package is the turning point in the debate. This change restricted asylum, residency and domicile permits severely, and placed new duties, such as passing language courses within a certain period of time, upon migrants in order to receive such permits and ultimately, citizenship. The whole legal package has been heavily debated in the public sphere, within parties (especially the SPÖ, who voted in favour of the law despite heavy inner-party conflict) and during its adoption in parliament.

Key issues in the debate have been: the 'integration' of migrants (often in terms of the duties to be fulfilled by migrants in order to be 'integrated'), the question of access to residency in Austria by means of getting asylum and the perceived abuse of the right to asylum, the question of access to residency and working permits and ultimately citizenship by means of marriage, and security of borders. While the parliamentary debate at the time of the adoption of the law in 2005 revolved mainly around the issue of public security, the interest of the public or public good, abuse of the right to asylum, the public debate in the media also revolved heavily around the issue of access through marriage (bi-national couples and fake marriages) from 2005 till 2007.

While family reunion is usually exclusively debated for non-Austrian citizens, bi-national couples and 'fake marriage' are usually seen as involving one partner with Austrian citizenship and are frequently discussed under the aspect of access to Austrian citizenship and its legitimacy by means of marriage (see Strasser et al. 2007). The debate involved harsh criticism from NGOs working in the field as well as from representatives of the Roman Catholic Church. Openly racist and xenophobic debates on migrants and religious minorities, on the question of 'integration' and of 'deportation' of migrants were especially visible amongst representatives of the right-wing BZÖ and FPÖ during the election campaign for national elections in October 2006. A turning point here was the presentation of a study commissioned by the Ministry of the Interior on integration of Muslims in Austria, which generated a huge debate on the 'unwillingness' of Muslims to integrate in Austria. Recent shifts in the debate in 2007 include criticism from the Advisory Board on Human Rights, claiming that the Alien Law contradicts the European Convention of Human Rights, as well as several findings by the Constitutional Court claiming that certain parts of the Alien Law breach the right to family life.

The right to family life has also been at the centre of lively civil society protests such as local communities' petitions against the Alien Law.

### **Actors in the Policy Area of Intimate Citizenship**

**Abortion:** The main actors involved are the Governor of Salzburg (Gabi Burgstaller, SPÖ) Social Democratic women (Sonja Wehsely, SPÖ), Green Party Women (Sigrid Pilz), the Minister for Women's Affairs (Maria Rauch-Kallat, ÖVP), medical experts, Conservative party members, representatives of the Roman Catholic Church and feminist NGOs (such as Frauengesundheitszentrum Graz), anti-abortion activists (Human Life International, an anti-abortion NGO with a strong religious background) and NGOs counselling pregnant women (Aktion Leben).

**Names of spouses/children:** The main actors involved are representatives of all parties.

**Reproductive medicine techniques:** The main actors were ÖVP and FPÖ government representatives, the main opponents were Green party representatives as well as gay and lesbian NGOs such as HOSI (Homosexuellen-Initiative), arguing that reproductive medicine techniques are open to heterosexual partners or heterosexual married spouses only, but not to single persons or same-sex partners.

**Anti-discrimination of sexual orientation and same-sex partnerships:** Major actors in this debate are the highest Austrian courts (Highest Court OGH, Constitutional Court VfGH and Administrative Court VwGH),<sup>49</sup> the European Court of Human Rights, Minister of Justice Karin Gastinger (BZÖ), the Green party, Social Democratic party representatives, Human Rights activists and NGOs such as Homosexuellen Initiative Vienna and its regional branches, Rechtskomitee Lambda (NGO focussing on legal issues of sexual orientation), and Rosalila Pantherinnen (gay and lesbian regional NGOs) on the pro-side. Actors arguing against same-sex marriage and against a further extension of anti-discrimination measures are the Conservative Party ÖVP as well as representatives of the Roman-Catholic Church, and the FPÖ.

**Shared custody after divorce:** Central actors were the Minister for Social Security and Generations, representatives of all parties, women's NGOs, and fathers' rights initiatives. The law met severe criticism from women's NGOs, who feared that this principle would serve as a pressure tool in case of male violence.

### **Family reunion, bi-national couples and 'fake marriage':**

Important actors in this debate include representatives of all parties, especially right-wing BZÖ and FPÖ parties, the Minister for the Interior, Green party representatives, SPÖ representatives such as Sandra Frauenberger (Head of the Department for Women and

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<sup>49</sup> See above under footnote 48 for competences of the three highest courts.

Integration of the City of Vienna) and regional parliaments of six federal states, anti-racism NGOs such as ZARA (Zivilcourage und Antirassismusbearbeitung), SOS-Mitmensch (Human rights NGO), the initiative Ehe ohne Grenzen ('Marriage without borders'), Helping Hands (NGO advising on Alien Law), Fibel (Fraueninitiative Bikulturelle Ehen und Lebensgemeinschaften, Women's NGO for bicultural marriages and partnerships), as well as human rights organisations and institutions such as UNHCR Office Vienna and the Advisory Board on Human Rights (Menschenrechtsbeirat), Ludwig-Bolzmann Institute for Human Rights (Research Institute on Human Rights at the University of Vienna), and Amnesty International Austria. The debate involved harsh criticism from NGOs working in the field as well as from representatives of the Roman Catholic Church.

## **Timeline**

### **Period before 1995**

#### **1971 Homosexual partnership**

Homosexual acts 'sodomy or fornication' between two men or between two women were generally decriminalized by a penal code reform in 1971. One case however remained criminalized: male homosexual acts when one man is younger than 18 and the other older than 18. (§ 209 StGB). The sentence for this crime ranged between 6 months and five years imprisonment.

#### **1975 Principle of equal partnership in marriage**

Austrian marriage law before 1975 was based on the patriarchal marriage model in which the husband had a vast range of power over wife and children. The civil code reform in 1975 establishing a model of equal partnership between husband and wife in marriage was one important milestone in the issue history of intimate citizenship that occurred before 1995, and that was also influential on later policy debates. However, the general principle of equal partnership still maintained some male privileges that were only abolished much later or even exist today.

#### **1990 Paternity leave law**

In January 1990, a law entered into force that gave fathers the right to take paternity leave<sup>50</sup> and gave parents the right to divide parental leave between the mother and the father.

#### **1992 Law on reproductive medicine – artificial insemination**

Introduction of a law on reproductive medicine<sup>51</sup> regulating the conditions under which artificial insemination and in-vitro-fertilisation can legally take place. The law allows the use of reproductive medicine techniques for married couples and heterosexual couples living in partnership, but is not applicable to homosexual couples or single women.

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<sup>50</sup> Eltern-Karenzurlaubsgesetz, BGBl. 275/1992

<sup>51</sup> Fortpflanzungsmedizingesetz, BGBl Nr. 652/1989

## **Period 1995-2007**

### **1995 Names of spouses/children**

Major reform of the law on names<sup>52</sup>. After intense debates, also in the public, the 1995 reform was implemented. In principle, a 'shared family name' is to be chosen for both spouses. This can be either the last name of the man or the women. The person who would lose her or his last name is entitled to set this name before or after the shared family name by using a conjunction. In case there is no agreement between spouses on the common family name and neither of the spouses declares before or upon marriage that she or he wants to keep her or his original name, the name of the man is automatically taken as the common family name. This regulation is also valid for children, who cannot carry a double name but must carry the common family name. If no choice is made, the name of the man automatically becomes the shared family name for children born in wedlock.

#### *Primary Source*

Amendment to law of names (Namensrechtsänderungsgesetz, BGBl.Nr. 25/1995)

E-Text, 11 pages

### **1999 Reproductive medicine**

A new law is adopted establishing a fund for paying the costs of artificial insemination and IVF under the reproductive medicine act of 1992. In 2004, the law was again amended, further specifying conditions under which artificial insemination is paid.

#### *Primary sources*

Law establishing a fund for financing in-vitro-fertilisation (IVF-Fonds-Gesetz BGBl. I Nr. 180/1999), E-text, 4 pages.

Minutes of parliamentary debate on law establishing a fund for in vitro fertilisation. 182<sup>nd</sup> session of the National Council, July 16, 1999. Section of the debate on law: 13 pages.

### **2000 Shared custody after divorce**

In November 2000, the principle of shared custody in cases of divorce is adopted in parliament, after intense debates. The law entered into force on July 1, 2001. Shared custody is only possible if both parents agree who will be the parent with whom the child will primarily stay. If there is no agreement in cases of divorce, the court will give custody to one of the parents. The law was extensively commented on by the various ministries (including critically by the Ministry for Women's Affairs) and various NGOs, mostly in the field of child care. Petitions to change the draft came from the Green party and the SPÖ.

#### *Primary sources*

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<sup>52</sup> Namensrechtsänderungsgesetz, BGBl Nr. 25/1995

Amendment to law governing child-parent relations (Kindschaftsrechtsänderungsgesetz 2001, BGBl. 135/2000), E-text, 21 pages

Comments to draft law, such as

- Ministry for Women's Affairs, E-text, 28 pages.

Minutes of the 44<sup>th</sup> session of the National Council of 22 November 2000: parliamentary debate on amendment to law governing child-parent relations (Kindschaftsrechtsänderungsgesetz 2001). E-text. Section on the debate of the law, 22 pages.

### **2001 Child-care benefit law**

Introduction of the child-care benefit law<sup>53</sup>, after intense debates in the media, the public and in the election campaign for federal elections 2000. The new law replaced the old regulations that made benefits dependent on gainful employment of the parent. [This is discussed under the sub-issue Non-Employment]

### **2002 Same-sex partnership**

In August 2002, the §209 Penal Code provision criminalizing sexual acts of homosexual men if one person is 19 years of age and the other person is older than 14, but younger than the age of 18 was abolished. This was the result of a Constitutional Court decision declaring this regulation to be against constitutional principles.<sup>54</sup> The sentence for such sexual acts ranged from 6 months to 5 years in prison. A new provision, § 207b was introduced into the Penal Code, regulating sexual abuse of minors under 16, regardless of their sex and sexual orientation. In the relevant session of the National Council on July 10, 2002, this provision was controversially debated. It was heavily criticised on the grounds that the opinions of experts on youth sexuality had not been taken into account. Protection of the sexual development of young people was at the centre of the debate. The equal treatment speaker of the SPÖ criticised that no youth organisations were consulted in the process of shaping the law. Several petitions for amendment were proposed. Petitions for amendment by the Green and Social democratic parties were rejected, one petition for amendment by ÖVP and FPÖ was approved. The amendment of the Penal Code was finally agreed on by the majority of FPÖ (right-wing party) and ÖVP (conservative party) members. Social democrats and Green party members voted against it.

#### *Primary Sources*

Penal Code Amendment 2002 (Strafrechtsänderungsgesetz 2002 BGBl. I Nr. 134/2002)

Page 1 of 16, E-text.

Petition for amendment (by ÖVP and FPÖ) as presented to Parliament on July 10, 2002 (Abänderungsantrag)

8 Pages, E-text

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<sup>53</sup> Kinderbetreuungsgeldgesetz, BGBl. I Nr. 103/2001

<sup>54</sup> VfGH 21.06.2002, G 6/02

Minutes of the parliamentary debate on penal code amendment. Parliamentary session on July 10, 2002. Extract of the debate: 40 pages. E-text.

Parliamentary Press Release 11 July 2002 (Parlamentskorrespondenz/01/11.07.2002/Nr. 560), 5 Pages, E-text

### **2003 Same-sex partnership**

In July 2003, the European Court of Human Rights takes a decision on the case 'Karner vs. Austria'. With this decision, the ECHR decided that partnerships, regardless of whether they are homosexual or heterosexual, must be treated equally. The case was brought before the Court by a homosexual man who wanted to continue to be a tenant in the joint apartment after the death of his partner. The regulation in Tenancy Law (§ 14 section 3 MRG) speaks of 'surviving partner' but the Austrian Highest Court denied in 1996 that this was applicable to homosexual partnerships. The ECHR stated that the unequal treatment of homosexual and heterosexual partnerships principally constitutes a breach of the European Convention of Human Rights, unless the national legislator can give 'particularly serious reasons by way of justification' for such unequal treatment. The decision was very influential for Austrian legislation in general, since for the first time the principle of equal treatment of homosexual and heterosexual partnerships was established for Austrian law in a legally binding way. Homosexuellen Initiative Wien (HOSI Wien), a gay and lesbian NGO, actively supported the case Karner vs. Austria and made several statements after the decision in the media demanding equality for homosexual partnerships in all legal areas and criticizing legal arguments denying equal rights for gay and lesbian people.

#### *Primary source*

Decision by Highest Court of December 1996 (OGH-Entscheidung 6Ob2325/96x)  
5 pages, E-text.

### **2004 Reproductive medicine**

The 2004 amendment of the 1999 act on establishing a fund for in-vitro-fertilisation further specifies the conditions under which 70% of the costs of in-vitro-fertilisation measures are covered by public funding, for a maximum of four trials. Certain medical conditions must be proven, age limits for women and men who seek in-vitro-fertilisation must not exceed 40 and 50 years, and non-Austrian citizens have to fulfil additional criteria (proof of employment for longer than three months) in order to be eligible. In the parliamentary debate, much of the debate focused on helping individual couples to fulfil their wish for a child in the light of a declining birth rate. The age limits for women were discussed, as well as the exclusion of same-sex partners and the health risks for women.

#### *Primary source*

Amendment to law on in-vitro-fertilisation (In-vitro-Fertilisationsgesetznovelle, BGBl. I Nr. 42/2004) E-text, 4 pages.

Comment on draft amendment to law on in-vitro-fertilisation

- Verein Wunschkind-Kinderwunsch/Association Desired Child (E-text, 2 pages)
- Verein AIDS-Hilfe Tirol/Association AIDS-Relief Tyrol (E-text, 2 pages)

Minutes of the parliamentary debate on amendment to law on in-vitro-fertilisation.  
Parliamentary session on March 25, 2004. Extract of the debate: 15 pages. E-text.

### **2004 Same-sex partnership**

In October 2004, Austria is condemned by the European Court of Human Rights for discriminating against homosexual people (§ 209 StGB-Penal Code, criminalizing sexual acts between homosexual persons if one person is over 18 and one person under 18 years of age). A decision is made by the Constitutional Court on the denial of the right to residency because of family reunion of homosexuals. A male American citizen who married a male Austrian citizen under Dutch law demanded the right to residency due to family reunion with his Austrian partner, whom he had married according to Dutch law. Austrian authorities had not recognised this marriage and did not grant the applicant the right to residency. The Constitutional Court decided that denial of the recognition of the marriage by Austrian authorities did not breach constitutional rights as the lawmaker is not obliged to grant homosexual partnerships the same rights as marriages ('that are principally directed toward 'parenthood') and asked the Administrative Court to decide whether or not the applicant could be considered as 'spouse' under Austrian law.

#### *Primary Source*

Decision by Constitutional Court on 14 October 2004 (B 1512/03)

'Is a homosexual marriage performed under Dutch law valid?'

7 pages, E-text

### **2005 Abortion**

In **April 2005**, after intense debates, Gabi Burgstaller (SPÖ), federal state governor in Salzburg, established the possibility to have an abortion in a public hospital in the federal state of Salzburg. Prior to this date, women in western Austria (Federal states Vorarlberg, Tyrol, Salzburg) wanting an abortion could only do so in private clinics, which involved a higher price, or had to travel to another federal state where they could have an abortion at a public hospital. In **July 2005**, following long and intense debates, protective measures in the City of Vienna were taken enabling the police to send away persons harassing women near an abortion clinic. The focus of the debate in the Viennese Regional Council (April 29, 2005) was on the protection of the freedom of speech and freedom of assembly versus the protection of women from harassment. Major actors were the head of the Viennese women's department, Sonja Wehsely and representatives of SPÖ and Green parties, medical experts from clinics offering abortion, as well as anti-abortion activists (HLI - Human Life International Austria) and NGOs counselling pregnant women (Aktion Leben).

#### *Primary Sources*

Draft amendment to Viennese Security law (Änderung des Wiener Landessicherheitsgesetzes, LGBl Nr. 15/2005), including explanations. E-text, 6 pages.

Minutes of the debate on amendment to Viennese security law, 29<sup>th</sup> session of Viennese Regional Council, April 24, 2005. E-text, section on debate: 21 pages.

### **2005 Family reunion, bi-national couples**

Adoption of the new comprehensive alien law package 2005 in the National Council on July 7. The new law entered into force in January 2006 and was extensively commented on by a vast range of institutions and NGOs. Much of the parliamentary debate at the time of adoption focused on access to residency in Austria by means of getting asylum and the need to restrict abuse of the right to asylum. Debate also centred on the legitimacy of deportation measures such as forced nutrition for persons in deportation detainment (i.e. persons who do not have a legal residency status who have been arrested and who await deportation) on the one hand and on human rights obligations on the other hand.

Alien and asylum law regulations were changed and tightened considerably, resulting in ongoing debates about difficulties in cases of family reunification, and for bi-national couples where one partner has a third-country citizenship. Debates are also ongoing (up until the present, July 2007) around the aspect of 'fake marriages' as a means to gain Austrian citizenship, involving the media, the public and all political parties. During the election campaign for federal elections in October 2006, alien law was an issue taken up in xenophobic and Islamophobic posters by the right-wing FPÖ and BZÖ. Criticism in the debate frequently refers to the European Convention on Human Rights, especially the right to family life, as well as EU-directives such as Council directives 2003/86/EC<sup>55</sup> and 2004/38/EC<sup>56</sup>.

#### *Primary Sources*

Alien Law Package 2005 (Fremdenrechtspaket 2005, BGBl. 100/2005)

E-text, 118 pages

Comments on draft Alien Law Package by various institutions and NGOs such as

- UNHCR (E-text, 57 pages)
- Helping hands/Association for Alien law counselling (E-text, 19 pages)
- Fibel/counselling for bi-national couples (E-text, 2 pages)
- Asylkoordination Österreich (E-text)
- Amnesty International (E-text)
- Menschenrechtsbeirat/Advisory Board on Human Rights (E-text)
- Ludwig-Boltzmann Institute for Human Rights (E-text)
- as well as various ministries and government related institutions (E-text).

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<sup>55</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

<sup>56</sup> Council Directive [2004/38/EC](#) of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

Minutes of the Session of the National Council of July 7, 2005: parliamentary debate on Alien law package, E-text, 53 pages

### **2005 Same-sex partnership**

In November 2005, the Constitutional Court rules that different treatment of non-married same-sex partners in the public social security system is unconstitutional. The case referred to co-insurance in the health insurance of non-married partners who are not covered by their own social health security.

### **2006 Family reunion**

In **May 2006**, four months before federal elections, right-wing BZÖ leader Peter Westenthaler demands that the number of foreigners in Austria should be decreased by a third, and that some 400.000 foreigners, especially those unwilling to integrate and the long-term unemployed, should be deported. The right to family reunion should only be granted after eight years of residency. In **June 2006**, the Minister of the Interior (Liese Prokop, ÖVP), presents a study on the issue of integration of Muslim migrants in Austria. The study gained immediate public attention as the Minister claimed that one of its major findings was that 45% of Muslim migrants in Austria are 'unwilling to integrate'. She states that migrants who are unwilling to integrate are in the wrong place in Austria. The Minister as well as the research design of the study was heavily criticised by anti-racist NGOs (ZARA) and researchers such as migration researcher Barbara Herzog-Punzenberger from the Austrian Academy of Sciences, the Austrian Society of Sociologists and SPÖ and Green party members. A major point of critique was equating religious belief with an unwillingness to integrate.

#### *Primary Source*

'Integration of Muslim fellow citizens: perspectives and challenges' (Perspektiven und Herausforderungen in der Integration muslimischer MitbürgerInnen in Österreich.) Study commissioned by the Ministry of the Interior, May 2006. 228 pages. Section of actual study: 53 pages. E-text

'Scandalous prejudices on the lowest level' (Skandalöse Stammtischvorurteile). Interview with Hikmet Kayahan from anti-racist NGO ZARA on study on the integration of muslims. Article in daily Der Standard, May 23, 2006. 1 page, E-text.

#### *Secondary Sources*

'Compilation with most serious flaws' (Konvolut mit größten Mängeln). Article in daily Der Standard, May 27, 2006. E-text, 1 page.

'400.000 foreigner should leave' (400.000 Ausländer raus). Article in daily Der Standard, May 31, 2006. 1 page, E-text.

'Experts' criticize integration study on Muslims' (Expertenkritik and Integrationsstudie über Muslime). ). Article in daily Der Standard, May 15, 2006. E-text, 1 page.

### **2006 Same-sex partnership**

Decision by the Administrative Court of June 2006 on the right to residency for relatives of EU-nationals in Austria. The case concerned a male American citizen who had married a male German citizen under Dutch law requiring right to residency in Austria for the purposes of family reunification, which had been handed over by the Constitutional Court. The Administrative Court declared the decision by the lower authority to not grant the right to residency as void due to formal reasons. In its decision, the Court referred to the EU directive 2004/38/EU on the right of EU citizens and their family members to reside within the territory of the member states, but did not answer the question whether the Austrian term 'marriage' applies to a same-sex marriage performed under Dutch law.

#### *Primary source*

Decision by Administrative Court (Verwaltungsgerichtshof Erkenntnis 2004/21/0259 of 22 June 2006), 6 Pages, E-text

### **2006 Same-sex partnership**

In November 2006, the Austrian country report on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/AUT 4) is submitted. Article 23 deals with marriage and family, Article 26 with equality in general. A draft proposal regarding legal recognition of same-sex partnerships is submitted to parliament on 30 October 2006 by the Green party. This proposal suggests far-reaching changes of the civil law, including the right to adoption for same-sex partners. It focuses on the legal recognition of same-sex partnerships and heterosexual partnerships via 'civil partnership agreement' (Zivilpakt). The draft law is discussed in parliament on November 29, 2006. It is transferred to the relevant parliamentary committee, the legal committee (Justizausschuss). The legal committee postponed dealing with the draft law three times. The minister of justice, Maria Berger (SPÖ) announces that the draft law will be discussed. At the session of the legal committee on May 30, 2007, the issue was postponed yet again.

#### *Primary Sources*

Draft proposal on a civil covenant law (Antrag betreffend der Schaffung eines Bundesgesetzes über einen Zivilpakt, 3/A XXIIIIGP

20 pages, E-text

Debate on same-sex partnership: Minutes of plenary session of the National Council, 29 November 2006

9 pages, E-text

#### *Secondary Source*

Parliamentary Press Release of 28 March 2007, on work of the parliamentary legal committee. 2 pages, E-text

International Covenant on Civil and Political Rights: Fourth report Austria, November 2006

2 pages relevant to same-sex partnerships, 9 pages to anti-discrimination (123 pages total), E-text

### **2007 - (ongoing) Same-sex partnership, civil partnership**

Ongoing discussions about a major reform of the family law, introducing a legal definition of civil partnerships that is no longer restricted to heterosexual couples, amongst other issues. Reference is made to the influence of court decisions of the European Court of Human Rights regarding same-sex partnerships. The Minister of Justice is active in the debate. The aim of the reform is to take into account new forms of living together aside from traditional nuclear families. While SPÖ and Green party are in favour of far-reaching changes, ÖVP party members continuously refer to the need for anti-discrimination for same-sex partners on the one hand, and the need for the special treatment of marriage that should be reserved for heterosexual couples on the other hand. In **March 2007**, a ruling by Highest Court (OGH) established that homosexual couples are to be considered equal to marriages regarding the question of maintenance for a former spouse after divorce. Generally, if maintenance has to be paid after a divorce, the duty to pay maintenance ceases in cases where the ex-spouse receiving it enters a new marriage or partnership. Whereas there is a legal duty to maintain one's married spouse, there is no legal duty to maintain one's partner in a partnership. Thus, divorced spouses entering a new partnership 'similar to marriage' lose their maintenance and have no legal right to be maintained in a new partnership.

Before this ruling of April 2007, this principle applied only to heterosexual partnerships. The reasoning of the Highest Court says that same-sex partnerships should not be privileged. Thus, maintenance for a divorced spouse living in a same-sex partnership no longer has to be paid. The ruling gains high media attention and is commented on by the NGO for homosexual and lesbians (HOSI) as well as by Green party MP Ulrike Lunacek. As of **July 2007**, the matter of family law reform and civil partnerships has been delegated to discussion within several parliamentary committees and no decision has been taken. NGOs such as HOSI have an active status in the discussions of the reform of the family law with the Ministry of Justice, and relevant groups of the ÖVP and the Ministry for Economics and Labour.

#### *Primary sources*

Draft amendment on family law (Entwurf Familienrechts-Änderungsgesetz 2006). E-text, 7 pages.

Material/explanations for draft amendment on family law (Erläuterungen zum Entwurf Familienrechts-Änderungsgesetz) E-text, 13 pages.

'We want to marry'. Positions and demands of HOSI Vienna on legal equality of same-sex partnerships' E-text, 12 pages.

#### *Secondary source*

Ruling by Highest Court (OGH) on maintenance for a former spouse living in same-sex partnership, of March 13, 2007  
10 pages, E-text

## **2007 Abortion**

From January till May 2007, renewed public debates around abortion are initiated by anti-abortion statements by representatives of the Roman-Catholic church. Both the governor of Salzburg, Gabi Burgstaller, and a Viennese shopping-mall-owner are heavily attacked by anti-abortion activists and representatives of the Roman-Catholic church. The former for allowing abortion to be performed in public hospitals in Salzburg, and the latter for renting out shopping-mall rooms to a private medical centre offering abortion.

## **2007 Family reunion, bi-national couples**

In **April 2007**, the Constitutional Court releases a ruling on bi-national marriages and asylum law. A male asylum seeker from Gambia had married a female Austrian citizen during his asylum procedure and demanded the right to permanent residency under the Domicile and Residence Law. In the first instance, his petition for asylum had been denied and his deportation had been ordered. He appealed and the appeal is still pending. The decision by the Constitutional court states that the Domicile and Residence Law (Niederlassungs- und Aufenthaltsgesetz) is not applicable for asylum seekers during the process of seeking asylum, and that this does not infringe upon constitutionally guaranteed rights. Thus, the asylum seeker only has a right to residence during his asylum procedure. If that procedure ends negatively, he has no right to legally stay in Austria, despite being married to an Austrian. The decision was criticised by the group 'Marriage without borders' (Ehe ohne Grenzen), which had formed since the coming into force of the new alien law package regulating asylum law, residency and domicile law and permissions to work, on January 1, 2005. The group consists of persons concerned by the new restrictions for bi-national couples and it has consistently voiced critique and raised attention to individual cases.

In **July 2007**, the Green Party proposes a bill in Parliament that would create a 'right to stay' in Austria for asylum seekers and aliens under certain circumstances. Asylum-seekers could apply for such a right to stay in case they have been waiting for three years for a decision on their application for asylum. Other aliens who have lived in Austria for five years or whose right to family life under Article 8 European Convention of Human Rights would be breached could also apply for a right to stay. In both cases, a right to residence would be connected with the permission to work.

The Constitutional Court rules that the implementation of the Alien Law package regarding deportation of Non-Austrian nationals is unconstitutional and breaching the right to family life. Two cases were made public: the Court stops the deportation of an 80-year old woman with Turkish nationality suffering from a stroke. In another case, the deportation of a non-Austrian national of the second generation who had been convicted for robbery is found as breaching the right to family life. The Constitutional Court has also started a procedure to determine whether certain aspects of the Asylum law regarding deportation of traumatised asylum seekers is constitutional.

The Advisory Board on Human Rights (Menschenrechtsbeirat), an independent institution advising the Ministry of the Interior, issues a report that evaluates the implementation of the Alien Law as breaching fundamental human rights, in particular of Article 8 ECHR (right to family life). The Minister of the Interior, Günther Platter (ÖVP), claims the law to be a big success because of declining applications for asylum and denies that the Alien law is breaching fundamental human rights. He announces that it will not be evaluated before 2009. Sandra Frauenberger (SPÖ, Head of Department for Women and Integration of the City of Vienna) criticises the law as inhumane and detrimental to integration.

*Primary Source*

Decision by Constitutional Court B 1019/06-7 of 3 March 2007

6 pages, E-text

Proposal on Amendment to Alien Law 2005 (Bleiberechtsgesetz 2007 - 'Right to stay' law 2007) by Green Party, discussed in National Council Session on July 3, 2007. 2 pages, E-text

'Alien and asylum law: Statement and recommendations by the Advisory Board on Human Rights' (Fremden- und Asylrecht: Stellungnahmen und Empfehlungen des Menschenrechtsbeirats) of July 2007. E-text, 6 pages.

*Secondary Sources*

Press Release by Constitutional Court of 20 April 2007

2 pages, E-text

'Highest Judges reject bi-national couple' (Höchststrichter weisen binationales Paar ab')  
Article in daily 'Der Standard' of 20 April 2007, 1 page, E-text

'Constitutional Court initiates evaluation of the Asylum Law' (Verfassungsgerichtshof prüft Asylrecht von sich aus). Article in daily 'Der Standard', July 11, 2007. E-text, 1 page.

'Viennese Integration Councillor criticises Platter sharply' (Wiener Integrationsstadträtin kritisiert Platter scharf). Article in daily 'Der Standard', July 11, 2007. E-text, 1 page.

## c) Issue History for Gender-based Violence

### Introduction to the Sub-Issue and Topics

Gender-based violence has been debated in various sub-issues in Austria in the period studied for QUING (1995-2007). For Gender-based Violence, five categories for sub-issues have been chosen for the QUING research guidelines: **domestic violence and violence in partnerships (marital rape), sexual assault and rape, trafficking and prostitution, sexual harassment and stalking, forced marriage, honour crimes, FGM**. The following sub-issues are prominent for Austria within the categories selected for Gender-based Violence:

- domestic violence and violence in partnerships (marital rape)  
**Domestic violence/violence in the family**
- sexual assault and rape  
**Sexual violence crimes in relationships**
- trafficking and prostitution  
**Trafficking in women and (forced) prostitution**
- sexual harassment and stalking  
**Sexual harassment**  
**Stalking**
- forced marriage, honour crimes, FGM.  
**Forced marriage, honour crimes, FGM**

Some of these sub-issues, such as stalking, have been debated almost exclusively in terms of violence and gender-based violence, whereas other sub-issues, such as forced prostitution or 'traditional violence', have been messier and the gender-based violence aspect is but one of a number of issues addressed. The richness and periods in which these sub-issues have been debated varies widely, as does the way in which intersectionality has been addressed or not addressed in the debates. Turning points in debates on gender-based violence are the criminalization of rape and sexual coercion within marriage and partnership in 1989, the Vienna Conference on Human Rights in 1993, prohibition of sexual harassment in the workplace in 1993, the adoption of the first law on violence in the family in 1996, the 2004 reform of the penal code regarding sexual violence in relationships, sexual harassment and trafficking, the 2006 anti-stalking law, and Austrian EU-presidency activities focusing on 'traditional violence' such as forced marriage, honour crimes and FGM and related legislation in Austria.

Intersectionality is mostly addressed in the issue of domestic violence/violence in the family regarding elderly women's and migrant women's vulnerability to violence. The debates on trafficking in women and forced prostitution focus on migrant women and rarely on questions of class or poverty in the countries of origin. Intersectionality seems to be hardly addressed in the debates on sexual harassment at the workplace, stalking and sexual violence crimes in relationships. Recent debates on 'traditional violence' seem to be exclusively debating these forms of violence in relation to ethnic or religious minorities, such as the Muslim minority. Disability is addressed in some debates on violence against women. Sexual orientation is generally absent from debates on gender-based violence, apart from a few recent media reports on one violent homophobic attack.

Regarding the sub-issue of **domestic violence/violence in the family**, the debate had a very intense peak around the adoption of the law on violence in the family in 1996. The debate centred mainly on the protection of women from violence, versus concerns about infringements upon the right to privacy and property, and about the lack of support for violent men. While women's NGOs, women's sections of all parties, the SPÖ and the Green Party argued in favour of the new law, the FPÖ and some ÖVP representatives argued against it, claiming that violent men would become homeless and that the right to privacy and property was to be respected under all circumstances. The issue reoccurs in the media annually in November, with the international day against violence against women.

However, most media reports on the issue are typically not about gender-based violence but about the pathological emotional reactions of individuals. The typical wordings for media reports on domestic violence have been family tragedy, drama of jealousy, or divorce drama. In the last two governmental periods of the ÖVP-FPÖ/BZÖ coalition (2000-February 2007), the issues most frequently arising concerned the lack of financial resources for intervention centres in the context of an enormously increased caseload, versus the argument that increased funding and state intervention cannot prevent violence if women don't want to leave the violent partner. An individual complaints procedure under the CEDAW Optional Protocol was initiated against Austria in 2005, awaiting a decision in June 2007.

For the new government coalition SPÖ-ÖVP since January 2007, preventing violence against women is one focal point of the activity of the Women's Minister Doris Bures (SPÖ). As a first result, the funding of intervention centres was significantly increased. Recently, the issue has frequently been related to alien law regulations with the argument that migrant women are especially vulnerable to violence since usually their residency permit depends upon the one of their husband, and they lack the means to be economically independent due to the heavily restricted access to the labour market for migrants. Another recent turn in the debate includes attention to violence against elderly women, both in the sense of elderly women who are cared for by family members, and in the sense of poverty of elderly women and the consequent vulnerability to violence within a relationship.

Regarding the complex sub-issues of **trafficking in women** and **(forced) prostitution**, forced prostitution has increasingly been linked to debates on trafficking and organised crime since

mid-1995. A turning point here is the UN Palermo Protocol and its definition of trafficking, which was translated into Austrian law in 2005. Thus, the whole issue of prostitution has been referred to mostly as a sub-issue of gender-based violence in the context of international and organised crime, as forced prostitution in the context of trafficking and illegal migration. Despite this strong focus, prostitution has also been discussed in terms of labour and social rights (mostly in the mid-1990's and reappearing in very recent debates in 2007), in terms of avoiding harassment of strangers by the criminalization of clients (turning point: amendment to Viennese prostitution law in 2004), and in terms of the health of clients and the public. Very recently (since December 2006), prostitution has also been debated in terms of structural violence against sex-workers.

The possibility to obtain a temporary residency permit on humanitarian grounds, created in 1997, was one important cornerstone in the debate. The debate about granting residency to victims of trafficking since then frequently made a link to the willingness of the victim to testify in court against the suspected trafficker. Granting residency in this sense was seen as a means to combat crime successfully, not so much as a right granted to a victim of a crime or a human rights violation.

The expanded definition of trafficking (not only into prostitution, but also into other forms of exploitation, not necessarily crossing borders) in the penal code amendment in 2004 was one major legal step in the area that did, however, not reflect in debates about forced prostitution and trafficking. A turning point for the issue was the entering into force of the Alien Law package in January 2006, which restricted conditions for obtaining temporary residency and working permits for third-country nationals wanting to work in Austria. In recent debates, alien-law aspects are more frequently addressed, such as in the debates around a list of women asylum seekers suspected of working as prostitutes and demands for a general opening of work permits for asylum seekers. Recent debates also revolve around the question of recognizing prostitution as a valid legal contract in order to improve working conditions of prostitutes and reduce vulnerability for forced prostitution. An interesting turn here is that ÖVP party representatives recently referred to this argument, whereas previously the issue was mostly discussed as a problem of illegal migration. Another recent aspect is discussing measures against trafficking in women and forced prostitution in the context of the UEFA – Euro 2008 Football Championship to be held in 2008 in Austria and Switzerland.

Regarding the sub-issue of **sexual harassment**, the most intense debates occurred before the period relevant for QUING with the introduction of sexual harassment in the equal treatment law and the law on equal treatment in federal service in 1993. The 2004 amendment of both laws due to EU-requirements<sup>57</sup> extended the definition of harassment, and sexual harassment was criminalized in the penal code reform in the same year. The inclusion into the

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<sup>57</sup> **Council Directive 2000/43/EC** implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive), **Council Directive 78/2000/EC** for Establishing a General Framework for Equal Treatment in Employment and Occupation (Framework Directive), **Council Directive 76/207/EEC** on the Implementation of the Principle of Equal Treatment for Men and Women as regards Access to Employment, Vocational Training and Promotions, and Working Conditions (Equal Treatment Directive)

penal code did not get huge public attention, and was discussed controversially mainly among lawyers. The discussion at the adoption of the penal code reform in parliament was not controversial regarding sexual harassment. A main shift can be seen in the change from sexual harassment discussed as a form of discrimination, which was very visible during the first discussions around 1993, towards sexual harassment as an offence against sexual integrity and autonomy, as underlined in the penal code change in 2004.

Regarding the sub-issue of **sexual violence crimes in relationships**, the main debate also focused on the general criminalisation of rape and sexual coercion inside marriage and partnership in 1989. The penal code amendment in 2004 abolished the remaining differences in prosecuting and punishing these crimes inside marriage or partnership.

The main arguments in the parliamentary debate focused on the changes in perceptions about appropriate and inappropriate sexual behaviour, and about protection of sexual integrity and autonomy of the person.

Regarding the sub-issue of **stalking**, it came on the agenda in 2005 and resulted in a penal code amendment criminalizing stalking in 2006, along with other penal code amendments. The change gained a lot of media attention and was publicly debated. The debate centred around the issue of protection against behaviour that did not constitute any other crime but resulted in an unacceptable restriction of a victim's life (psychological terror), also with a link to new forms of violence with communication tools such as mobile phones or the internet. The counter-arguments revolved around the right to privacy and the freedom to engage in harmless activities such as sending flowers without state intervention. There were no particular shifts in the debate.

Regarding the sub-issue of **traditional violence**, this sub-issue focuses on **forced marriage**, **honour killings** and **FGM**. We chose to include these aspects under the sub-issue 'traditional violence', because of the respective debate initiated before and during the Austrian EU-presidency in the first half of 2006 focusing on 'harmful traditional practices'. These 'harmful traditional practices' focus on FGM, forced marriage and honour killings and are thus rooted in issues of migration, regulation of migration and integration.

Cornerstones of the debate were the EU-conference on measures against 'harmful traditional practices' in January 2006 in Brussels and the 2006 amendment of the Austrian penal code establishing easier prosecution of coerced marriage and female genital mutilation. One interesting aspect of the debate is that the Austrian EU-presidency focus at the level of the EU includes honour killings, whereas the debate on 'violence based on tradition' (traditionsbedingte Gewalt) within Austria only referred to forced marriage and FGM, but not to honour killings. At no time during the debate has, for instance, domestic violence been referred to as 'harmful traditional practice'. The main arguments in the public debate are the ones of protection of migrant women from these forms of violence, of raising awareness within migrant communities and of stricter punishment. Representatives of migrant women's NGOs and counselling centres also draw attention to the context of alien law regulations and Austrian and EU migration legislation as well as globalisation as connected to these forms of violence.

Within the election campaign for national elections in October 2006, the issue of forced marriage in the context of Muslim immigrants was referred to in the openly racist and xenophobic campaign by right-wing FPÖ.

## **Actors in the Policy Area of Gender-based Violence**

### **Domestic violence/violence in the family**

Major actors in the debate have been the Minister for Women's Affairs, Minister of the Interior, representatives of all parties, women's sections of all parties, SPÖ and Green party women, experts on gender-based violence from feminist NGOs, violence intervention centres and women's shelters.

### **Sexual violence crimes in relationships**

Main actors in the debate include the Minister for Justice (Karin Gastinger, BZÖ) and representatives of all parties and NGOs active in same-sex advocacy activities such as Rechtskomitee Lambda.

### **Trafficking in women and (forced) prostitution**

Major actors in the debate include the Interministerial Task Force against Trafficking, the Minister for Women's Affairs, the Minister of the Interior, the Minister of Justice, the Minister of European and International Affairs, SPÖ women representatives, Green party representatives, NGOs working with victims of trafficking and at counselling centres for prostitutes, such as LEFÖ-IBF, MAIZ, Sophie and organisations such as Volkshilfe.

### **Sexual harassment**

Main actors in the debate include the EU, the Minister for Justice, representatives of all parties and NGOs active in same-sex advocacy activities such as Rechtskomitee Lambda.

### **Stalking**

The main actors in the debate were the Minister for Justice (Karin Gastinger), the Ministry for Health and Women, representatives of all parties, the SPÖ women, the Green party women, representatives of intervention centres, and representatives of women's shelters.

### **Traditional violence: forced marriage, honour crimes, FGM**

The main actors in the debate are the Minister for Health and Women, representatives of migrant women's NGOs and counselling centres (Tamar, Peregrina), representatives of women's shelters, and representatives of human rights NGOs (Amnesty International).

## Timeline

### Period before 1995

#### **Mid-1970s Partnership between spouses**

Reform of the family and marriage law, establishing a principle of partnership between spouses.

#### **1989 Criminalisation of rape in marriage or partnership**

The penal code amendment **criminalizing sexual violence such as rape inside marriage and partnership** in 1989 was one important milestone in the issue history of gender-based violence that occurred before 1995, and that was influential in later policy debates. The penal code regulations on sexual violence, rape and sexual coercion were amended.<sup>58</sup> Before this amendment, rape and sexual coercion inside marriage or partnership<sup>59</sup> could not be brought before court unless they constituted other crimes, such as coercion, deprivation of liberty or bodily harm.

However, rape inside marriage or partnership remained more difficult to prosecute because court proceedings depended on the initiative and explicit consent of the victim. The offence could also be punished less severely if the victim declared that they wanted to continue living together with the perpetrator. This provision was abolished in an amendment to the penal code in 2004 (see below).

#### **1993 Sexual harassment, violence against women**

**World conference on human rights in Vienna.** Violence against women is defined as a human rights violation in the final document (Vienna Declaration).

**Sexual harassment** in the workplace is prohibited by an **amendment to the Equal Treatment Act**<sup>60</sup>, which applies for all employment contracts in the private sector and prohibits discrimination by the employer on grounds of sex. Sexual harassment is defined as such discrimination. Sexual harassment is prohibited if it is done by the employer or if the employer fails to take appropriate action in case of sexual harassment by another person or third party.

The **Federal Equal Treatment Act**<sup>61</sup> is adopted, demanding equal treatment in federal public service. Sexual harassment is prohibited if done by a representative of the employer or by a third party.

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<sup>58</sup> Strafgesetznovelle 1989 BGBl 242/1989. The provisions figure under the heading 'Crimes against Decency' (Delikte gegen die Sittlichkeit).

<sup>59</sup> Marriage and partnership as civil law institutions under Austrian law have only been accessible for heterosexual partners up until the present (June 2007).

<sup>60</sup> Arbeitsrechtliches Begleitgesetz – ArbBG, BGBl 833/1992

<sup>61</sup> Bundes-Gleichbehandlungsgesetz, BGBl. 100/1993

## **Period 1995 onwards**

### **1995**

Austria becomes a member of the European Union.

### **1996 Domestic violence**

The Federal Law on Protection against Violence in the Family entered into force in May 1997, following intense debates in parliament in July 1996. The law enabled the police for the first time to send perpetrators of violence away from their homes, with victims able to obtain restraining orders to keep perpetrators away. The debate centred on the question whether, and under what circumstances, it could be justified that the State infringes upon the right to privacy and property while at the same time trying to protect victims of domestic violence. While women's NGOs, women's sections of all parties, the SPÖ and the Green Party argued in favour of the new law, the FPÖ and some ÖVP representatives argued against it, claiming that violent men would become homeless and that the right to privacy and property was to be respected under all circumstances.

#### *Primary sources*

Law on protection against violence in the family (Bundesgesetz zum Schutz vor Gewalt in der Familie, BGBl 759/1996) E-text, 4 pages.

Draft law including explanations on law on protection against violence in the family (Regierungsvorlage) of July 25, 1996. E-text, 15 pages.

Minutes of the parliamentary debate on law on protection against violence in the family of 47th session of the National Council, November 27, 1996. E-text. Section on the debate: 20 pages.

### **1997 Trafficking in women**

The new Alien Law 1997<sup>62</sup> (§ 10 Abs 4), regulating conditions for entering and residing in Austria, introduced a new residency status 'on humanitarian grounds'. For the first time, victims of trafficking could obtain a limited residency permit due to this regulation. However, the regulation does not constitute a right, but leaves it to the discretion of the authorities whether or not victims of trafficking are granted residence. Humanitarian grounds are defined as being connected to a danger for the person in case residence is not granted. The Committee on Internal Affairs discusses humanitarian grounds as a means to enhance the prosecution of traffickers and to enable victims to go to court for civil compensation. The Alien law was extensively debated in Parliament and the public, mainly along the lines of restricting unregulated immigration, controlling access to the labour market and combating organised crime. Opponents of the law, such as Green party members, refer to European Union requirements, the European Charter of Fundamental Rights (especially Article 8) and the Geneva Convention.

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<sup>62</sup> Fremdengesetz BGBl. I Nr. 75/1997

### *Primary Sources*

Draft law including explanations on Alien Law 1997 (Regierungsvorlage) of July 25, 1996. E-text, 231 pages. Explanatory section on humanitarian residency: 2 pages. E-text.

Minutes of the parliamentary debate on Alien Law 1997 of 47th session of the National Council, June 11, 1997. E-text. Section on the debate: 155 pages.

Report of the Parliamentary Committee on Internal Affairs on draft Alien Law 1997 of June 5, 1997. (Bericht des Ausschusses für Innere Angelegenheiten). E-text, 85 pages. Section on humanitarian residency: 1 page.

### **1998 Sexual harassment**

Sexual harassment by third parties is included into the Equal Treatment Act

### **2000 Trafficking in women and (forced) prostitution**

Austria ratifies the UN-Convention Against Transnational Organised Crime.

### **2001 FGM**

A reform of the penal code makes female genital mutilation a crime regardless of the consent of the woman concerned. Although the draft law was commented on by various institutions, very few NGOs commented on it, and none working in the field of FGM.

### *Primary Sources*

Amendment to Penal law 2001 (Strafrechtsänderungsgesetz 2001, BGBl. I Nr. 130/2001)

E-text, 10 pages

Minutes of the parliamentary debate on amendment to penal law 2001. Session on October 24, 2001. Extract on penal law amendment 51 pages. E-text.

### **2004 Trafficking in women and (forced) prostitution**

In **April 2004**, the Council directive on protection of victims of trafficking<sup>63</sup> and the Directive on compensation for crime victims<sup>64</sup> entered into force. Debates on the new **prostitution law** for the City of Vienna led to an amendment that went into force in April 2004.<sup>65</sup> Clients may be fined in cases when people passing by feel harassed by obtrusive initiation of sexual acts. Zoning regulations prohibiting prostitution in certain areas were extended. Debates on

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<sup>63</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

<sup>64</sup> Council Directive 2004/80/EC of 29 April 2004, relating to compensation of crime victims.

<sup>65</sup> Viennese Prostitution law (Wiener Prostitutionsgesetz, geändert durch LGBl. Nr. 17/2004)

prostitution in general frequently refer to forced prostitution and trafficking in women. It was adopted by the SPÖ, FPÖ and ÖVP, rejected by the Green Party. Green Party members proposed to abolish the duty of prostitutes to register with the police, which was rejected.

#### *Primary Sources*

Amendment to Viennese Prostitution Law (LGBl. Nr. 17/2004) of 26 April 2004, E-text, 4 pages.

Draft amendment to Viennese Prostitution law and explanations. E-text. 38 pages.

Statement to draft amendment to Viennese Prostitution law by NGO LEFÖ. E-text.

Minutes of the 19th Session of the Viennese Parliament of January 29, 2004 (Landtag, 19. Sitzung vom 29.1.2004). Section on debate of prostitution law: 22 pages. E-text.

In **June 2004**, a major penal code reform<sup>66</sup> went into force. It introduced several amendments to offences and crimes regarding gender-based violence. Also, the rights of victims in criminal court procedure were improved. The first one is an expanded definition of trafficking. The new definition extended the previous definition – exploitation for sexual purposes – to other grounds, such as exploitation of labour and removal of organs, regardless of whether or not borders are crossed. These definitions are in accordance with the UN Palermo Protocol (that came into force in Austria in 2005, see below). In **November 2004**, a decision by the Council of Ministers establishes an inter-ministerial Task Force against trafficking within the Ministry of Foreign Affairs. One of the tasks is to intensify and structure measures against trafficking.

#### *Primary Sources*

Penal code reform law 2004 (Strafrechtsänderungsgesetz 2004, BGBl I Nr. 15/2004)

E-text, 13 pages

Minutes of parliamentary debate on adoption of penal code reform law, 46. Session of the National Council, 29 January 2004. 32 pages, E-text.

### **2004 Sexual violence inside marriage or partnership, sexual harassment**

With the same penal code reform of June 2004, the heading of sexual violence offences was changed from 'offences against decency' to 'offences against sexual integrity and autonomy'. The range of punishments was increased for some offences. **Sexual violence offences inside marriage or partnership** – rape and sexual coercion – were made legally equal to sexual violence offences outside marriage or partnership. Before this amendment, they could only be prosecuted if the victim consented to the prosecution. **Sexual harassment** was

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<sup>66</sup> Strafrechtsänderungsgesetz 2004, BGBl I Nr. 15/2004 (§ 104a, § 207 StGB)

introduced as a penal code offence in itself.<sup>67</sup> Prior to this, sexual harassment only constituted a penal offence if it was performed in public ('öffentliche unzüchtige Handlungen').

#### *Primary Sources*

Penal code reform law 2004 (Strafrechtsänderungsgesetz 2004, BGBl I Nr. 15/2004)

E-text, 13 pages

Minutes of parliamentary debate on adoption of penal code reform law, 46. Session of the National Council, 29 January 2004. 32 pages, E-text.

A major reform of the equal treatment law and the law on equal treatment in federal service<sup>68</sup> was implemented in June 2004, following obligations to implement the European Union Anti-discrimination directives. The Directive 2002/73/EC defines two forms of harassment: **harassment related to the sex of a person** and **sexual harassment**. The first form, harassment related to the sex of a person, is harassing conduct that does not relate to the sexual sphere. The second form, sexual harassment, according to the Directive is unwanted conduct related to the sex of a person occurring with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In the parliamentary debate, reference to EU-requirements is made. In the new equal treatment law, a new offence was introduced because of the Directive, harassment related to the sex of a person ('geschlechtsbezogene Belästigung, § 7 GIBG). The definition of **sexual harassment** was not changed compared to old version originating in 1993, and by some lawyers is seen to be stricter than the one of Directive 2002/73/EC. The reason for this is that in the Equal Treatment law provision (§ 6 Abs 2), unwanted conduct must simultaneously create an intimidating or hostile environment in order to constitute sexual harassment.

#### *Primary Sources*

Amendment to federal law on equal treatment (Änderung des Bundes-Gleichbehandlungsgesetzes 2004, BGBl. I Nr. 65/2004) E-text, 23 pages.

Minutes of parliamentary debate on amendment to federal law on equal treatment. 61. session of the National Council, 26. May 2004. E-text. Section of the debate on equal treatment law: 40 pages. Section on harassment: 29 pages.

#### *Secondary Source*

Report of the parliamentary committee on equal treatment on draft amendment to federal law on equal treatment of 19. May 2004 (Bericht des Gleichbehandlungsausschusses über die

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<sup>67</sup> Strafrechtsänderungsgesetz 2004, BGBl I Nr. 15/2004 (§ 218 StGB, Sexuelle Belästigung und öffentliche geschlechtliche Handlungen)

<sup>68</sup> BGBl I Nr. 66/2004 Bundesgesetz, mit dem ein Bundesgesetz über die Gleichbehandlung (Gleichbehandlungsgesetz - GIBG) erlassen und das Bundesgesetz über die Gleichbehandlung von Frau und Mann im Arbeitsleben (Gleichbehandlungsgesetz) geändert werden

Regierungsvorlage (285 d.B.): Bundesgesetz, mit dem das Bundes-Gleichbehandlungsgesetz geändert wird ) E-text, 3 pages.

### **2005 Trafficking in women and (forced) prostitution**

At the session on June 8, 2005, the ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol<sup>69</sup>) is adopted. The definition of trafficking contained in the Palermo Protocol was translated into Austrian law by the creation of a new penal code provision, & 104 a StGB 'trafficking' during the 2004 reform of the sexual penal law. The parliamentary debate centres around issues of trafficking into forced prostitution in the context of organised crime. Women from Eastern Europe are mentioned as victims of trafficking into forced prostitution. The demand for prostitution within Western Europe is discussed, as is the legitimacy of victim support in the case of unwillingness to testify against traffickers. Reference to UN standards is frequently made.

#### *Primary source*

Minutes of the parliamentary debate on ratification of Palermo Protocol. 112th Session of the National Council, June 8, 2005. Section of the debate: 16 pages.

#### *Secondary source*

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (BGBl. III 220/2005).

### **2005 Domestic violence**

In July 2005, the Viennese intervention centre against violence in the family and the Association Women's Legal Aid (Verein Frauenrechtsschutz) make two communications against Austria under the CEDAW Optional Protocol individual complaints procedure. They claim the violence against women is not taken seriously enough by Austrian state authorities. Two women were killed by their husbands despite the fact that authorities knew that these men had been violent before. The decision is expected to be taken in Summer 2007. [Policy documents - decision by CEDAW containing statement by Austrian Government, to be published upon release of decision]

#### *Secondary Source*

'UN examines murder of women' (UNO prüft Frauenmorde). Article in daily Der Standard, June 30, 2005. E-text, 1 page.

### **2006 Forced marriages, FGM, honour killings**

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<sup>69</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (BGBl. III 220/2005). The United Nations Convention Against Transnational Organised Crime was ratified by Austria in 2004 and adopted in parliament in June 2005 (BGBl. III 84/2005).

The Austrian EU-Presidency in the first half of 2006 initiated debates on 'traditional harmful practices', defined as honour killings, forced marriages and female genital mutilation. The German wording used is 'violence caused by traditions' (traditionsbedingte Gewalt). Since other forms of violence are not discussed under this wording, the debate links 'traditional harmful practices' with migrant communities and their 'culture' on the one hand and leaves out the role of 'tradition' in defining other types of violence, such as domestic violence or sexual violence in relationships on the other hand. Reference to UN-human rights standards is made in the debate. In January 2006, a report on measures to combat harmful traditional practices is presented. The Minister for Health and Women, Maria Rauch-Kallat (ÖVP) and Benita Ferrero Waldner (EU-Commissioner) present NAHT (network against harmful traditional practices) as a common European strategy to combat harmful traditional practices. The aim of the platform involving state representatives and NGOs is to improve legal measures within the EU and to increase awareness.

#### *Primary Source*

Report 'Measures to combat harmful traditional practices affecting women in Austria'. An initiative of the Austrian Federal Government, coordinated by the Federal Ministry of Health and Women. January 2006. E-text, 23 pages.

### **2006 Stalking, violence in relationships, forced marriage, FGM**

#### **Stalking**

In **July 2006**, a law prohibiting **stalking**<sup>70</sup> – persistent pursuing of a person resulting in serious impairment of quality of life – came into force. Stalking was introduced as a new penal offence. For the first time, this enabled victims of stalking to get immediate protection from stalkers. The draft law, worked out by the Ministry of Justice, was extensively commented on by various governmental institutions, but only a few NGOs, such as the Association of intervention centres. Discussions were mainly about the question of what is to be considered as 'persistent pursuit' and what is a serious impairment to one's quality of life. A second aspect discussed whether or not the prosecution of the crime should be made dependent on the victim's consent to prosecute. The draft was generally discussed as being a big step towards protecting women against violence in or after the end of a relationship. [Primary sources see below]

#### **Violence in relationships**

In **July 2006**, a comprehensive amendment of the criminal code<sup>71</sup> comes into force, comprising **easier prosecution of dangerous threats against close relatives**. Previously, if someone threatened a close relative living in the same place, the perpetrator could only be prosecuted if the victim gave her or his consent to prosecution. This regulation was abolished, and from this point on it is legally irrelevant if the dangerous threat is directed against a stranger or a person living in the same place, and is prosecuted automatically. [Primary sources see below]

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<sup>70</sup> Strafrechtsänderungsgesetz 2006, Anti-Stalking-Gesetz (BGBl. I Nr. 56/2006)

<sup>71</sup> Strafrechtsänderungsgesetz 2006, BGBl. I Nr. 56/2006, Änderung des § 107 StGB (Gefährliche Drohung)

## **Forced marriage, FGM**

In **July 2006**, a comprehensive amendment of the criminal code<sup>72</sup> comes into force, comprising **easier prosecution of coerced marriage**.

The penal code regulation regarding the prosecution of coerced marriage (§ 106 StGB): previously, if a person was coerced into marriage, the offence could only be prosecuted if the victim demanded this and if the marriage had been legally declared as invalid. This regulation was abolished. However, it remains difficult to prosecute coerced marriages if the victim does not want to testify, for example due to pressure of family members.

Coerced marriage has been debated in the context of traditional violence (traditional harmful practices), a focus that was taken up by the Austrian EU-presidency from January 1 until June 30, 2006.

Comprehensive amendment of the criminal code<sup>73</sup>, comprising **easier prosecution of genital mutilation**. The period for starting a legal procedure is extended: from now on it is only after reaching the age of consent (18) that lapse of time for this crime is possible.

*Primary sources (for July 2006 stalking, violence in relationships, forced marriage and FGM)*  
Amendment to penal code 2006/Anti-stalking law (Strafrechtsänderungsgesetz 2006, Anti-Stalking-Gesetz BGBl. I Nr. 56/2006) E-text, 6 pages.

Explanations/material on draft anti-stalking law (Erläuterungen zur Regierungsvorlage)  
E-text, 13 pages.

Comment on draft amendment to penal code

- Interventionsstellen Österreichs (Intervention Centres), E-text. 10 pages.
- Bund österreichischer Frauenvereine (National Council of Women Austria). E-text, 4 pages.
- Ministry for Health and Women. E-text, 15 pages.

Minutes of the parliamentary debate on amendment to penal code/anti-stalking law. 142th session of the National Council on March 29, 2006. Section of the debate on anti-stalking law: E-text, 23 pages.

## **2006 Trafficking in women and (forced) prostitution**

In July 2006, a report on intended measures to fight trafficking is made public. The report was compiled by an inter-ministerial task force against trafficking. Involved ministries were the Ministry for Health and Women, the Ministry of the Interior, the Ministry for Foreign Affairs, the Ministry of Social Security and Generations and the Ministry of the Interior. A National Action Plan against trafficking is part of the report.

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<sup>72</sup> Strafrechtsänderungsgesetz 2006, BGBl. I Nr. 56/2006, Änderung des § 106 StGB (Schwere Nötigung)

<sup>73</sup> Strafrechtsänderungsgesetz 2006, BGBl. I Nr. 56/2006, Änderung des § 106 StGB (Schwere Nötigung)

### *Primary Sources*

Report by inter-ministerial Task Force against trafficking (Bericht zur Entschliessung 203, 1616 der Beilagen XXII GP, Ausschussbericht NR, vom 12. Juni 2006)  
E-text, 20 pages.

### **2006 Trafficking in women and (forced) prostitution**

In May 2005, Austria is the first signatory state party to the European Council Convention on Action Against Trafficking in Human Beings.<sup>74</sup> It is debated and adopted in Parliament in July 2006 and ratified in December 2006. Speakers in the parliamentary debate connect the Convention to the successful fight against organised international crime on the one hand and to the rights of victims of trafficking on the other hand, especially relating to residency, psychological and material support. Victims of trafficking are seen as women who are forced into prostitution. Also discussed is the issue of what is defined as force, how the use of force can be proven, and the financial situation of victims' support institutions.

### *Primary Sources*

European Council Convention text to be adopted, including explanations (1565 dB XXII GP – Staatsvertrag, Vorblatt und Erläuterungen). E-text, 26 pages.

Minutes of the parliamentary debate on adoption of European Council Convention. 158th session of the National Council on July 12, 2006. Section of the debate on European Council Convention: 15 pages. E-text,

### **2006 (Forced) prostitution**

While the issue of prostitution has frequently been linked to issues of illegal migration, forced prostitution and trafficking, in December 2006 it was also debated connected to discrimination of prostitutes by the judicial treatment of gender-based violence. In December 2006, the speaker of the parliamentary committee on equal treatment announces that the legal situation of prostitution is unsatisfactory and that efforts will be made in the judicial committee to find a solution to discrimination of prostitutes. As one example, decisions by courts are mentioned that consider rape less severe if the woman raped is a prostitute. This announcement is made at a panel discussion initiated by the SPÖ within the campaign '16 days against violence'. The debate is mainly about structural violence against women working as sex-workers. Until July 2007, the judicial committee has not dealt with the issue of regulation of prostitution.

### *Secondary Source*

Press release 'Heinisch-Hosek: Improve living conditions of voluntary sex-workers' (Heinisch-Hosek: Lebensbedingungen freiwilliger Sexarbeiterinnen verbessern). December 5, 2006

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<sup>74</sup> Übereinkommen des Europarats gegen Menschenhandel, SEV-Nr. 197, 3.5.2005.

## **2007 (Forced) prostitution**

In the first half of 2007, the NGO LEFÖ raises a national campaign for the rights of prostitutes. Reference is made to the historical conception of prostitutes as victims of violence, to migration regulations, sex-workers' rights, women's rights and human rights. Demands include freedom from discrimination, violence, sexism, racism, forced labour and slavery. Green Party members debate prostitution in relation to the rights of women seeking asylum, after media reports about intentions to cut basic allowance for female asylum-seekers who were allegedly working as prostitutes. In May 2007, the Viennese regional governmental department for women's affairs led by Sandra Frauenberger (Social Democrats) discusses proposing a legal amendment towards better working conditions, social security and health protection standards for prostitutes. One part of the improvement focuses on preventing forced prostitution. In this context, a general working permit for asylum seekers is demanded in order to prevent asylum-seeking women from being forced to work as prostitutes, as current administration procedures gives asylum-seekers the legal right to work in prostitution, but not generally on the labour market.

### *Primary Sources*

'Sex Workers are keen on...their rights!' (Sexarbeiterinnen haben Lust...auf ihre Rechte!) National Campaign for the rights of prostitutes. E-text, 5 pages.

### *Secondary Sources*

'The oldest trade is no trade in Austria' (Das 'älteste Gewerbe' ist in Österreich keines). Article in daily Der Standard, 25. May 2007. E-text, 1 page.

'Excitement over list of prostitutes' (Aufregung um Prostituierten-Liste). Article in daily Der Standard, April 18, 2007. E-text, 1 page.

## **2007 Trafficking in women and (forced) prostitution**

In March 2007, the Minister for European and International Affairs (Ursula Plassnik, ÖVP) presents the National Action Plan against trafficking to the Council of Ministers and announces intensified measures to fight trafficking, also in the context of security measures fighting organised crime such as trafficking and forced prostitution within the context of the European football championship 2008 in Austria and Switzerland. The National Action Plan is a result of the inter-ministerial task force (including NGOs) against trafficking. Reference to the UN-definition of the Palermo Protocol is made.

### *Primary Source*

National Action Plan Against Trafficking  
11 pages, E-text.

### *Secondary Source*

Press release by Ministry for European and International Affairs, March 28, 2007.  
'Plassnik: Schonungslose Bekämpfung des Menschenhandels' E-text, 1 page.

### **2007 Domestic violence**

After the creation of a new government following national elections, financial resources for intervention centres were raised. In June 2007, celebrating the tenth anniversary of the law on protection against violence in the family, the Minister of Justice (Maria Berger, SPÖ) announces plans to create a new penal code provision on 'violence in the family' and demands an independent right to residency for migrant women in the context of government coalition plans to evaluate the Alien Law package 2005.

#### *Secondary Source*

'Minister of Justice Berger draws conclusions about ten years law against family violence' (Ministerin Berger bilanziert über zehn Jahre Gewaltschutzgesetz). Press Release by Ministry of Justice, June 4 2007. E-text, 1 page.

### 3. Conclusions

#### Relative importance of topics in the sub-issues and general gender + equality policies

##### General gender+ equality policies

Equality policies that are not discussed under the relevant sub-issues were most importantly discussed under the topic of equal treatment in employment (equal treatment for the private sector and the federal sector) and under gender mainstreaming efforts.

##### Non-Employment

The most important topics around the legitimacy of non-employment have been age and care. **Pension policy** (retirement age), **child care** (child-care benefits, right to part-time work for parents), and **care for the elderly** have been the key debates throughout the decade studied for non-Employment. Debates on the distribution of care and household work, voluntary work and social inclusion for people with disabilities were also present, but more limited in scope and time.

##### Intimate Citizenship

The most important topics on who is seen as a legitimate partner to whom have been debates around partnership involving non-Austrian nationality in the topic **family reunion/bi-national couples/fake marriage, anti-discrimination and same-sex partnerships, and reproductive medicine techniques**. Debates on topics related to marriage and divorce, such as names of spouses/children and shared custody after divorce were also important topics that led to legal changes. However, the debates on names of spouses/children were mainly before the period relevant for QUING, and shared custody was discussed only for a relatively short period of time.

##### Gender-based Violence

The most important topics for what constitutes gender-based violence are **domestic violence/violence in the family, sexual violence crimes in relationships, trafficking in women and (forced) prostitution, stalking, and forced marriage, honour crimes, FGM**. The topic sexual harassment was mainly discussed before the period relevant for QUING, although there were legal changes due to EU-requirements.

#### Major changes in general and for the three issues

##### General

Major changes in general equality policies occurred due to the accession to the EU in 1995 and implementation of European requirements. These changes were especially visible in the area of equal treatment in public service (quota regulations for female under-representation), gender mainstreaming efforts and general anti-discrimination legislation. A feminist initiative for greater gender equality in 1997, in addition to necessary international requirements under

CEDAW and EU requirements, led to an amendment of the Constitution establishing the formal commitment to de-facto equality and the constitutional legitimation for quota. In 2004, the revision of the equal treatment legislation (both for the private sector and the federal sector) was the result of a failure to implement EU-anti-discrimination-directives.

A turning point was the formation of a conservative/right-wing government in 2000. The government change in January 2007 to a grand coalition between SPÖ and ÖVP with a social-democratic chancellor has led to a restructuring of the machinery responsible for gender equality policy and renewed hot policy debates on gender+ equality, especially in the issues Non-Employment and Intimate Citizenship.

#### Non-Employment

For **pension policy** (retirement age), the most important legal changes occurring in the QUING period were the pension reforms in 1997, 2000 and 2005, regulating age and health conditions as well as the recognition of child-care for pension entitlements. The major legal change in **child care benefits** occurred in 2000, following controversial debates on whether or not it would reinforce traditional gender roles or enable a choice and better reconciliation of work and family life (another amendment is expected for fall 2007). The **right to part-time work for parents** was adopted in 2004, mainly under the aspect of better reconciliation. **Care for the elderly** saw rich and controversial policy debates. The major legal changes were the increase of a care benefit in 2000, recent policy change around amnesty for illegal migrant carers and a new law establishing the conditions under which care at home is financially supported (summer 2007). **Anti-discrimination of disabled persons** saw major changes in 1997 and 2005. **Voluntary work** saw legal changes in 2004 and 2005.

#### Intimate Citizenship

Major changes in Intimate Citizenship relating to marriage and separation were the introduction of the principle that each spouse can keep his or her name upon marriage in 1995 and the adoption of a law establishing shared custody in cases of divorce in 2001. For **abortion**, the 2005 establishment of a protective zone in front of abortion clinics in Vienna was a major change, as well as creation of access to abortion in public hospitals in the federal state of Salzburg. For **reproductive medicine techniques**, the establishment of a fund paying costs for artificial insemination in 1999 and an amendment in 2004 were key legal outcomes. For **anti-discrimination of sexual orientation and same-sex marriage**, in the absence of legislation, court decisions by the ECHR in 2003 and 2004 were major turning points. Also, the 2004 equal treatment legislation amendments due to EU-requirements, which are valid for employment, were influential on the debate regarding anti-discrimination due to sexual orientation and partnership. **Family reunion/bi-national couples and fake marriage** saw major changes with the Alien law packages in 1997 and 2005 and recent court decisions by the Constitutional Court in 2007.

#### Gender-based Violence

For **domestic violence**, a major change and milestone was the adoption of a law on the protection against violence in the family and the establishing of intervention centres in 1997.

**Sexual violence crimes in relationships** were made equally as punishable as those committed outside relationships in 2004. **Trafficking** and **(forced) prostitution** saw major legal changes with the 1997 creation of temporary residency permits on humanitarian grounds, the new Viennese Prostitution Law in 2004 criminalizing obtrusive initiation of prostitution, and the implementation of the UN-Palermo Protocol definition of trafficking into Austrian legislation in 2005. Policy debate changes on these issues are very complex and described in detail in the chapter on Gender-based violence. **Stalking** came onto the agenda shortly before the adoption of an anti-stalking law in 2006, there have been no major changes in the policy debate since then. **Forced marriage, honour killings and FGM** came on the agenda in 2005 shortly before the Austrian EU-presidency in 2006. It resulted in a 2006 amendment of the penal code making prosecution of coerced marriage and FGM easier. In the election campaign for federal elections in 2006, the issue was referred to in an openly racist and xenophobic way and continues to be an issue in 2007.

### **The role of civil society and other political actors**

Civil society actors in Austria have been successful in agenda-setting in some cases. It is evident that international and European obligations are influential as a point of reference for most civil society actors. **Feminist** actors had the most impact when they found allies in party women, such as the SPÖ party women. But entirely independent groups, such as the feminist initiative starting the Women's referendum in 1997, have managed to have some impact in the sense of shaping the discourse and obtaining legal outcomes, such as the amendment to the Constitution on de-facto equality for women and men.

**Gay and lesbian NGO actors** have continuously been referring to European and international requirements in order to demand equality policy implementation. They have also been very active in bringing cases before the European Court of Human Rights and demanding changes of Austrian law in accordance with these Court decisions. **Disability NGO actors** have been active and successful in demanding an amendment to the Constitution in 1997. They have also been active in the debates around the adoption of the new anti-discrimination law in 2003. **Anti-racism and human rights NGO actors** have been very active in debates regarding alien law, migration and integration. Their influence in shaping concrete policy outcomes has however been very limited. **Local community initiatives** have been a rather recent phenomenon and are limited to debates on alien law since 2005. In many Austrian communities, local groups of citizens have formed in order to protest against pending deportation of foreign nationals and to demand legal changes in the alien law.

Other influential political actors are **religious actors**. Representatives of the Roman Catholic Church are very active and influential in policy debates, with a focus on issues of abortion, same-sex partnership, marriage, reproductive medicine techniques, and alien law. Representatives of Protestant Churches are less influential in policy debates. Finally, representatives of the Islamic denomination have been active in debates around the alien law and forced marriage. Other denominations are not active in policy debates. Political actors

such as **trade unions** and **representatives of various social partners** are situated within the corporatist social-partnership model of the Austrian welfare state and as such are institutionally and continuously integrated in negotiations and policy debates to a very large extent.

### **The impact of the EU and other international bodies**

As mentioned in the chapter on general gender equality policies, equality policies in Austria have been mostly initiated by respective obligations under international and European law, especially if sanctions for failure to comply were pending. **EU impact** is quite important for general **gender equality policies and anti-discrimination policies with regard to other inequalities**, especially in the area of equal treatment in employment, and access to goods and services. This is true for both the federal and federal state equality policies, and characterises the period relevant for QUING (1995-2007), but was also visible in the pre-accession years in the beginning of the 1990s. EU impact is also highly visible in policies regarding anti-discrimination due to sexual orientation and same-sex partnership, pension system/retirement age, and sexual harassment. To a lesser extent, EU impact can be detected in the law to part-time work for parents, legislation and debates on family reunion and bi-national couples, forced marriage, honour crimes and FGM. **The European Court of Human Rights** impact is highly visible in policies regarding anti-discrimination due to sexual orientation and same-sex partnership and on legislation in the area family reunion.

The **UN** has had impact on general equality policies by the influence of **CEDAW**, though to a limited extent. Regarding domestic violence, the adoption of the law on protection against family violence in 1996 was closely connected to previous developments at the UN level which clarified that violence against women constitutes a human rights violation and breach of respective international obligations such as CEDAW. Temporary special measures for ending women's under-representation were legitimated with reference to CEDAW. Legislation on trafficking, and on family reunion have also been impacted by UN instruments such as the Palermo Protocol and the Geneva Convention.

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