

**United Nations Convention on the Elimination of All Forms  
of Discrimination against Women**

**NGO Shadow Report**

Complementing the Seventh and Eighth Country Report  
of the Austrian Government  
to the CEDAW Committee

Frauen:Rechte jetzt! NGO Forum for the implementation of CEDAW in  
Austria (Ed.)  
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Contact information: [info@frauenrechte-jetzt.at](mailto:info@frauenrechte-jetzt.at)

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## Introduction

This shadow report on the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a joint initiative of Austrian NGOs and individual experts complementing the Seventh and Eighth Periodic Austrian Country Report to the CEDAW Committee. The report covers the period from 2006 to 2011. The report has been written in German; the English version is a translation of the original report.

Contributions have been initiated and collected by *Frauen:Rechte jetzt!* NGO-Forum CEDAW in Österreich (engl. Women's:Rights now! NGO Forum for the implementation of CEDAW in Austria). The following organisations are part of *Frauen:Rechte jetzt!* (listed in alphabetical order): Austrian Platform for Single Parents; Austrian Women Lawyers Association; Austrian Women's Shelter Network; Domestic Abuse Intervention Centre Vienna; European Women's Union; International Alliance of Women; LEFÖ – Counselling, Education and Support for Migrant Women; Ludwig-Boltzmann Institute of Human Rights; Training project "Violence against women – the significance of the health care sector"; WIDE – Network for Women's Rights and Feminist Perspectives in Development. In addition to these organisations, a number of individual experts actively participate in *Frauen:Rechte jetzt!*.

The opinions and recommendations presented in this report solely reflect the views of the respective authors. For a list of contributors, please refer to Annex 1. This report should not be regarded as exhaustive.

The report is structured according to the CEDAW articles. The contributions on lesbian, bisexual and trans\* women and on women with disabilities make reference to various articles of CEDAW as they touch several aspects. The following articles are not covered in this report as despite intensive efforts, no experts were available to contribute: Article 7 (Participation in Political and Public Life), Article 8 (Representation of States on International Level and Participation in International Organisations) and Article 13 (Other Economic and Social Benefits).

*Frauen:Rechte jetzt!* would like to express its gratitude and recognition to all those who have worked on this report. Without their work, most of it unpaid, this shadow report would not have been possible. The translation of the report into English has been made possible by financial support from the Federal Chancellery – Austrian Federal Minister for Women and the Civil Service.

## Executive Summary

Attentive reading of CEDAW Committee's Concluding Comments of June 2000 and February 2007 is most instructive as they shed light on some of the most deep-rooted aspects of the political reality of women in Austria. Even the most innovative initiatives of the chronically underfunded<sup>1</sup> Austrian Ministry for Women within the Federal Chancellery cannot fight these aspects effectively.

These aspects include:

- lack of comprehensive National Action Plans for equality of women and men and against violence against women

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<sup>1</sup> The budget of the Austrian Ministry for Women equals only 0.000129 % of total revenues of 2009.

- lack of coherent and well-organised policies for implementing women’s human rights, including the rights of migrant women, female refugees and asylum-seeking women
- “familiarisation” of women’s policies, resulting in on-going traditional attitudes and prejudices concerning female and male roles in society (catchword: freedom of choice)
- continuing discrimination of women on the labour market, resulting in an increase in poverty among women
- Ineffectiveness of efforts to reconcile family life and employment (an exception is the new income-linked option of childcare allowance).

The situation of Austrian women has not improved significantly during the reporting period. As stated in the shadow report of 2000, this can be attributed to the fact that legal incentives as well as sanctions are hardly ever made use of and that systematic monitoring and evaluation measures to promote equality remain the exception rather than the rule. On the contrary, measures continue to be taken selectively and are highly dependent on the political orientation and strategies of the ministries or provinces in question. For example, gender mainstreaming was established by law in 2005; since the reform of budget laws, every department has to define specific equality objectives. Despite the apparent lack of overall planning it remains unclear if and to what extent laws are examined with a view to possible negative consequences for women before they are passed and if experts of civil society are involved in the monitoring and evaluation processes. Compulsory analyses of equality in major budget proposals continue to be non-existent; the existence of many women’s organisations in civil society remains precarious as they are largely dependent on public funding.

In the light of Europe’s recent economic developments it has to be feared that women’s and human rights – especially social and economic rights – will be increasingly side-lined by financial requirements. It must also be feared that highly vulnerable groups of women might be primarily affected by this development. This tendency is already observed in development cooperation, where severe cutbacks on aid are threatening international efforts to reach the women-related objectives of the Millennium Development Goals.

## **Article 2 CEDAW - Policy measures for the elimination of discrimination**

### **a. General policy measures**

*Author: Austrian Women Lawyers Association*

*Abstract:* It can be noted that a comprehensive general approach of policy measures on all levels is still missing. These continue to be taken selectively and depend on the respective department. Despite the establishment of gender mainstreaming it remains unclear if laws are examined with a view to possible negative consequences for women before they are legislated and if experts on women’s and human rights are asked for their opinion.<sup>2</sup> The establishment of the office of a Minister for Women within the Austrian government is

<sup>2</sup> Women’s interest groups in civil society (for example the umbrella organisation of women’s associations and organisations in Austria) are not formally involved in the legislative process. The possibility of women’s rights experts to comment on bills is de facto often undermined by a very short review period and the long texts of the bills. For criticism concerning the lack of an analysis of the “consolidation package” for 2012 from a woman’s perspective also see: Schratzenstaller, Margit (2012): “Gendergerechtes Sparbudget”, Newspaper Der Standard, 17 March, 2012

endowed with a budget which equals only 0.000129 % of total revenues of 2009.<sup>3</sup> The situation is similar on provincial and municipal levels. Work related to women's policies and women's human rights is in many cases done without remuneration, which is also due to the precarious financial situation. Many women's organisations depend substantially on public funding and are thus threatened in their very existence by current developments in public procurement legislation and possible budget cuts in funding.<sup>4</sup> This shadow report has been written mostly without remuneration.

One of the many policy measures that have been taken in the last few years deserves special attention because of current developments and the far-reaching consequences it might entail: the regulation of public procurement procedures.<sup>5</sup> If services that up to now have been rendered by non-profit women's associations (for example in the areas of counselling for girls and women, protection against violence, psycho-social and legal support of victims) are subject to the same regulations that govern the rendering of services by for-profit companies, this means that in public calls for tender the cheapest supplier will be awarded the contract. In such a procedure, non-profit associations are clearly at a disadvantage because they lack financial reserves. These non-profit (women's) associations are highly dependent on public funding and thus the procurement process threatens their very existence and reduces feminist work and work related to women's human rights to the strict logic of a competitive market. For the quality of the services this means that in particular in sensitive areas (for example: protection against violence or counselling) the costs of the cheapest supplier can only be minimised in terms of personnel. This results in low-quality services, higher "pressure for efficiency" and precarious working conditions (fixed-term contracts, low pay). This issue affects an area that employs a disproportionately high percentage of women and is central to progress in equality and women's rights in society. Municipal initiatives that link public procurement to the advancement of women are indeed important, but they cannot alleviate the problems arising from public procurement in the service sector, especially for women's associations.

### **Recommendations:**

- Allocation of appropriate funding for the Minister for Women and the respective departments on provincial and municipal level
- Adequate funding of women's and human rights associations.
- Systematic drafting of bills with timely involvement of renowned experts in the field of women's and human rights.
- Exclusion of social services from public procurement legislation.
- Austria as a member state of the European Union must be committed to advocate the compulsory observation of applicable human rights obligations of the states, especially under CEDAW, in EU legislation. In particular, social services and general interest services must stay exempt from the application of EU public procurement legislation.

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<sup>3</sup> Cf. the budget of the Ministry for Women in comparison with the whole Austrian budget in 2009: The budget allotted to matters of the Minister for Women in 2009 and 2010 amounted to about € 10 million per year. In 2009, the expenditures for the general budget were estimated at about € 77.44 billion and revenues at € 63.88 billion (Budget Report 2009/2010)

<sup>4</sup> Cf.: Positionspapier der Arbeitsgemeinschaft des Österreichischen Frauenrings zur Absicherung von Fraueneinrichtungen, Vienna 2008

<sup>5</sup> Within the framework of the revision of the Austrian Public Procurement Act of 2006.

## **b. Gender Budgeting**

*Authors: Luise Gubitzer, Elisabeth Klatzer, Katharina Mader*

*Abstract:* The implementation of the principle of real equality between women and men through gender-related allocation of budgetary means (gender budgeting) is insufficient in its current form. Important prerequisites such as transparency, consistent standards and the involvement of feminist civil society are still lacking. The reactions to the financial crisis have clearly shown that gender-related budget policies are not sufficiently anchored in political and administrative practice.

Relating to the implementation of Article 2 CEDAW, three legal provisions for gender budgeting can be mentioned positively within the framework of budget law reform: (1) Under Article 13 (3) of the Austrian Federal Constitutional Law, in effect since 1 January, 2009, federal, provincial and municipal authorities must aim at real equality between women and men in budget management (gender budgeting); (2) under Article 51 (8) of the Federal Constitutional Law, the Budget Act and other decrees, the systematic consideration of real equality between women and men must be applied as part of effective budget management by 1 January, 2013; (3) Article 17 of the Federal Budget Act, introduces, from 2013, the obligation to conduct an impact assessment of laws, taking into special consideration the real equality between women and men.

Although the implementation of gender budgeting started seven years ago, so far it has not been implemented effectively. As was already mentioned in the shadow report in 2006, specific action is still limited to isolated pilot projects that mostly lack analytic depth. The publicly available documentation of such actions in so-called “interpretation aids” for the budget or information from the annual “Strategic Report” do not show progress in this field. The reform of budget law obliges every department to define equality objectives. It is worrying, however, that analyses of important budget proposals concerning equality are not compulsory or not done at all. Such analyses would be urgently required in particular in the context of the CEDAW provisions’ implementation, for example Articles 3, 6, 10 and 14, in order to effectively implement gender budgeting.

Furthermore, quality standards for processes, content analyses as well as for monitoring of and reporting on internal administrative actions for gender budgeting are still missing. The same applies to implementing and controlling such actions. So far no explicit effects or changes relating to gender equality policy have been observed. Gender budgeting has been ineffective so far. The new instrument of gender budgeting has not lead to progress on any of the CEDAW provisions.

The measures that have been taken in order to face the financial crisis have clearly shown that gender-related budget policies are not sufficiently anchored in political and administrative practice. For example, such policies are not taken into account when it comes to economic stimulus packages.

Relating to Article 7 CEDAW, a major shortcoming must be noted: the legal basis for the participation of women and women’s NGOs in budget processes has not been created. The implementation of gender budgeting on a federal level is only done internally and lacks transparency. Involving feminist civil society and promoting transparency would be important prerequisites to make effective and substantial progress in implementing gender budgeting.

On provincial and municipal levels, in particular the provinces of Vienna, Upper Austria and Salzburg as well as various local authorities have taken actions concerning gender budgeting. All these measures have to be advanced in order to be effective. Most provinces and local authorities do not seem to be involved in any actions concerning gender budgeting, despite the existence of constitutional obligations.

### Recommendations:

- An advisory board should be established, consisting of experts and members of feminist civil society. The board should support and monitor the implementation of gender budgeting in administrative practice, monitor compliance with quality standards and evaluate progress.
- Periodic reports should be submitted by federal, provincial and local authorities about gender budgeting analyses and about progress made in the field of de-facto equality between women and men through budget-related measures. Such reports must contain thorough analyses of the initial situation and of the effects of budget policies on girls, boys, women and men. Specific measures to reduce disadvantages must also be discussed.
- Funding of an independent Institute for Gender Budgeting aiming at researching, monitoring, counselling and supporting gender budgeting initiatives in civil society.

## Article 3 CEDAW - Guarantee of Basic Human Rights and Fundamental Freedoms of Women

### a. Domestic violence against women

*Author: Maja Sticker*

(Cf. the contributions on Article 9 (violence and migrant women) and Article 12 (violence and the health care system))

*Abstract:* The Austrian Protection against Violence Act was revised in 2009. This revision brought improvements in some areas. However, some areas still urgently require further measures. A comprehensive strategy against violence, including the allocation of sufficient resources to implement measures, still does not exist; the collection of gender-sensitive data and sensitisation programmes for those working within the judicial system are lacking as well.

#### *Legal and political framework*

The last few years saw important improvements in the area of legislation, for example the so-called Second Protection against Violence Act (2009) or the revision of the Code of Criminal Procedure (2006), introducing an anti-stalking law. These provisions for example enhanced protection through the possibility of banishing offenders (for 14 days instead of 10 days or, in case of a restraining order, for four weeks instead of 20 days). They also introduced the new offence of “continued use of violence” and the right of victims to free psycho-social counselling during civil proceedings.<sup>6</sup>

The recommendations of the CEDAW Committee concerning two Austrian complaints under the Optional Protocol, in the opinion of various experts, have not been fully complied with.<sup>7</sup> The complaints referred to two women who had been murdered by their husbands. The CEDAW Committee noted in its communications that, in both cases, Austria had violated the women’s rights to life and to physical and mental integrity and holds the authorities

<sup>6</sup> Source: Second Protection against Violence Act - 2. GeSchG: [http://www.interventionsstelle-wien.at/images/doku/gewaltschutzgesetz\\_2009.pdf](http://www.interventionsstelle-wien.at/images/doku/gewaltschutzgesetz_2009.pdf)

<sup>7</sup> UN Committee on the Elimination of Discrimination against Women, United Nations (2007): Views of the CEDAW Committee under article 7, para 3, of the Optional Protocol to the CEDAW Convention (39<sup>th</sup> session), Communication No. 5/2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/495/43/PDF/N0749543.pdf?OpenElement>; Communication No. 6/2005, [http://www.wave-network.org/images/doku/un\\_cedaw\\_view\\_yildirimvsaustria\\_2007.pdf](http://www.wave-network.org/images/doku/un_cedaw_view_yildirimvsaustria_2007.pdf)

accountable for the lack of diligence in protecting the women.<sup>8</sup> In both cases the Committee declared that, even though it must be determined in every single case if detention disproportionately violates the perpetrator's basic and human rights, the rights of perpetrators must not be given priority over the women's rights to life and to physical and mental integrity.<sup>9</sup> The experiences of the Domestic Abuse Intervention Centre Vienna show that in many cases of domestic violence, highly endangered victims are not sufficiently protected as too few offenders are detained. In Austria the infringement of restraining orders is not seen as a criminal offence, as is the case in other countries. Thus offenders can (repeatedly) violate restraining orders without consequences. In addition to that, court verdicts and explanations show that there still exists a major lack of knowledge and sensitivity when it comes to violence against women. Intensive training programmes in this area would thus be important and desirable.

A major demand that non-governmental organisations as well as the CEDAW Committee have voiced repeatedly concerns the preparation of a comprehensive National Action Plan (NAP) against violence against women. Such a plan is still missing.<sup>10</sup> In order to effectively implement such a NAP, an institution is needed which is equipped with sufficient resources and competences to coordinate a strategy to fight violence against women and to monitor its implementation.

Another recommendation of the CEDAW Committee from 2007 also remains unfulfilled: The statistical data regarding violence against women is not sufficient; too few statistics exist and those available are very often flawed or deficient. As there are many gaps in administrative data, legal and policy measures regarding violence against women and domestic violence cannot be evaluated and monitored adequately. A continuous and systematic collection of data would also be necessary to effectively plan measures to prevent violence against women; such data should be published periodically.

#### *Facilities for women affected by violence*

Currently about 30 women's shelters exist in Austria, accommodating 750 women and their children. The Violence Protection Centres and the Domestic Abuse Intervention Centre have been able to widen their support services in the last few years. Furthermore, various other counselling centres offer support for women affected by violence. In order to guarantee that all these organisations, which draw on decades of professional experience, can continue to support women and children affected by violence, it must be ensured that the state (on federal and provincial level) provides sufficient and continuous funding.

#### **Recommendations:**

- Preparation of a National Action Plan (NAP) against violence against women. Such a plan should define measures necessary to fight and prevent violence in all relevant fields (such as police and judicial authorities, health, education, social services, etc.) and create and adequately fund an institution charged with coordinating and monitoring the plan's implementation.

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<sup>8</sup> Having known about the danger the two men posed, the authorities should have detained them. The Committee also stressed the necessity of rigorous and immediate persecution of perpetrators and that all possibilities to prosecute them before criminal and civil courts must be used if victims are endangered.

<sup>9</sup> „(...) the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity”, CEDAW Communication No. 6/2005, S. 19. On this topic also see: Logar, Rosa (2009): Die UNO-Frauenrechtskonvention CEDAW als Instrument zur Bekämpfung der Gewalt an Frauen: Zwei Beispiele aus Österreich, in: Frauenfragen 1/2009, [http://www.interventionsstelle-wien.at/images/doku/die\\_uno-frauenrechtskonvention\\_zwei\\_beispiele\\_aus\\_oesterreich.pdf](http://www.interventionsstelle-wien.at/images/doku/die_uno-frauenrechtskonvention_zwei_beispiele_aus_oesterreich.pdf)

<sup>10</sup> United Nations, Convention on the Elimination of All Forms of Discrimination against Women: Sixth Austrian Report - Concluding Comments of the Committee on the Elimination of Discrimination against Women, points 23 and 24 <http://www.frauen.bka.gv.at/DocView.axd?CobId=24130> | <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/44/PDF/N0724344.pdf?OpenElement>

- Guarantee to fund organisations supporting women affected by violence and their children.
- Intensification of training programmes to raise awareness for violence against women in the judiciary.
- Guarantee to continuously collect data through the authorities (“administrative data”), complying with international standards. At least the following data should be collected: sex of victim and perpetrator, age, relationship and form of violence; it should be possible to link these categories. Furthermore, the data should be published periodically.
- To protect women against serious and deadly violence more efforts have to be made in the legal area. Also, the implementation of existing laws has to be enhanced.
- Cooperation between state and non-state actors should be widened and improved, in particular if highly vulnerable victims are involved.
- After signing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in 2011, the Austrian government is urged to ratify the convention and take the necessary steps to implement it.

## **b. Development cooperation**

*Authors: Brita Neuhold und Claudia Thallmayer*

*Abstract:* Women’s and human rights are highly valued goals of Austrian Development Cooperation. However, efforts in this field to overcome poverty are undermined by Austria’s economic policies which are not sufficiently oriented towards the achievement of development goals (catchword: lack of policy coherence). Women in developing countries are negatively affected by Austrian and EU policies in the following fields: high emissions of hydrocarbon (impact on climate change); targets for the use of agro fuels; EU trade agreements; the promotion of export; banking and financial market policies.

The Convention itself lacks a clear reference to development cooperation. Nevertheless, member states are usually referring to this issue within the framework of Article 3.

As is emphasised in the General Recommendation No. 28 on the “Core Obligations of States Parties under Article 2” (paragraph 12) that “States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.” An obligation to policy coherence can be derived from this statement.

Women’s rights and human rights are highly valued goals of Austrian Development Cooperation.<sup>11</sup> However, efforts in this field to overcome poverty are undermined by Austria’s economic policies which are not sufficiently oriented towards the implementation of development goals and human rights objectives. The lack of political coherence is obvious. Women in developing countries are particularly affected by the following Austrian and EU policies:

- Climate policy (increase of CO<sub>2</sub> emissions by 10,9% from 1990 to 2008): Climate change particularly affects poor countries and in this respect especially (subsistence) agriculture where many rural women are working and which represents the basis for food security of the population. Due to their (discriminated) position in society, women dispose of fewer resources for adaption to climate change.<sup>12</sup>

<sup>11</sup> Federal Ministry for European and International Affairs: Entwicklungszusammenarbeitsgesetz inklusive EZA-Gesetz-Novelle 2003, [http://www.entwicklung.at/uploads/media/EZA\\_Gesetz.pdf](http://www.entwicklung.at/uploads/media/EZA_Gesetz.pdf) (accessed on: 7 July, 2011)

<sup>12</sup> CARE International (2010): Climate Change Brief. Adaptation, gender and women’s empowerment, [http://www.careclimatechange.org/files/adaptation/CARE\\_Gender\\_Brief\\_Oct2010.pdf](http://www.careclimatechange.org/files/adaptation/CARE_Gender_Brief_Oct2010.pdf).

- To focus on the use of agro fuel substances as an alternative to the use of fossil energy contributes to competition among agricultural areas, leads to “land grabbing” and finally to the expulsion of female subsistence farmers in developing countries from areas traditionally used and cultivated by them.<sup>13</sup>
- Within the EU, Austria participates in negotiations on a number of bilateral and regional free-trade agreements. Predictable negative effects on women in developing and emerging countries are neither assessed nor taken into consideration. Negotiations are executed without any involvement of civil society or women’s organisations.<sup>14</sup>
- In this area there is a lack of clear, binding standards regarding environmental protection, human rights in general and women’s rights in particular. Transparency is lacking throughout this field.<sup>15</sup>
- Austria does not take part in the automatic cross-border information system as required by the European Union Savings Directive. Thus Austria indirectly supports tax flight and contributes to the loss of public resources which are needed all over the world for projects and programmes to support the implementation of women’s human rights.
- Financial market policies: In accordance with the EU and the IFIs, Austria is (co-)accountable for the deregulation of financial markets and the volatility of financial flows resulting from this policy. In this way, financial crises are promoted which - as a rule – are overcome at the cost of the majority of the population. Women - and in particular women in developing countries - are disproportionately affected by adjustment measures and shortages in public services due to their low level of income and their higher dependence from functioning public services and furthermore because of the ensuing drastic increase of their workload in and outside the household.<sup>16</sup>

### Recommendations:

- The Austrian Government should by all means create policy coherence between the instruments for women’s and human rights and the goals of development cooperation on the one and economic and trade policies on the other hand, in order to avoid negative consequences for women in developing countries and to prevent restrictions of the capabilities of development countries’ governments in implementing women’s rights.

### c. UN Security Council Resolution 1325 on Women and Peace and Security

*Authors: Barbara Kühhas, Angelika Gerstacker*

**Abstract:** The Austrian commitment to the Security Council Resolution 1325 can be evaluated positively, especially at the international level and with respect to the National Action Plan to implement the Resolution. However, in some areas there is room for improvement.

During the reporting period 2007-2011, the Austrian government has been committed to the area of “women, peace and security”, especially to implementing SCR 1325.

<sup>13</sup> WIDE (2011): Agrofuel Production. The World Food Situation, the Right to Food and the Impact on Women, <http://www.oneworld.at/wide/dokumente/WIDE-Agrofuel-Production-English-2011.pdf>

<sup>14</sup> WIDE (2010): [EU-India Free Trade Agreement – People’s at Threat. Lives and Livelihoods at Threat.](http://62.149.193.10/wide/download/WIDE%20paper/20on%20EU-India%20FTA.pdf?id=1337)

<sup>15</sup> ECA-Watch: ECA Reform Kampagne, <http://www.eca-watch.at/reform/index.html>

<sup>16</sup> WIDE (2010): Taking Stock. The financial crisis and development from a feminist perspective, <http://www.oneworld.at/wide/2010/WIDE-Position.TakingStock-2010.pdf>

In 2006/2007, an inter-ministerial working group was created, headed by the Federal Ministry for European and International Affairs. Its task was to develop a National Action Plan for the implementation of SCR 1325, including civil society. The Plan was passed on 8 August, 2007.<sup>17</sup> The Ministry for European and International Affairs submits an annual implementation report to the Council of Ministers. Representatives of civil society comment on this report.

From a civil society perspective, the Austrian commitment to SCR 1325 is very positive, in particular at the international level. For example, Austria actively supported the process of indicator development to monitor SCR 1325<sup>18</sup> and used its non-permanent membership of the Security Council in 2009 and 2010 to promote initiatives relating to “Women, Peace and Security” and “Protection of Civilians”. Austria was actively involved in celebrating the 10th anniversary of SCR 1325 in autumn of 2010. Amongst other things, an international 1325 conference was organised in Vienna and public commitments for better implementation of 1325 were published, including the revision of the NAP in 2011.

The Austrian Development Cooperation supports the participation of women in post-war zones according to SCR 1325 with various programmes, for example in Burundi, Nepal, Uganda and the South Caucasus.

Substantial progress was also made at the national level during the reporting period, in particular regarding better training of foreign operation forces.<sup>19</sup> The involvement of civil society, scarcely existent at the beginning of the National Action Plans’ implementation, was improved significantly and put on an institutional basis.

However, in some areas substantial progress is still lacking:

As early as 2009, civil society recommended to fix a women’s quota with process-oriented benchmarks (gradual increase of the proportion of women) with regard to “further target-oriented measures to increase the proportion of women participating in peace support operations” mentioned in the NAP. During the reporting period, the proportion of women on foreign assignments has increased only marginally in the Ministry of Defence; in the Ministry for European and International Affairs and the Ministry of Justice the number did not change significantly either. In the Ministry of the Interior the proportion of women has declined since 2007.<sup>20</sup> In this matter, civil society refers to the comprehensive study “Foreign assignments of the police” and urges the implementation of its recommendations to increase the proportion of despatched women. It is also pointed out that the “European Parliament resolution on participation of women in peaceful conflict“(2000/2025(INI)) requires a women’s quota of 40% for foreign assignments.

Civil society has also repeatedly recommended the allocation of an own budget for the implementation of the National Action Plan. This has not happened so far. It can be doubted to what extent the Austrian foreign missions have established contacts with women’s organisations — in particular at grass-roots level — and to what extent government delegations address the issue of the frequently inadequate participation of women in peace and reconstruction processes.

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<sup>17</sup> In order to further develop the Action Plan, an interministerial working group with members of all resorts involved and the Austrian Development Agency was created.

<sup>18</sup> As a member of an informal working group “Friends of 1325”; presessions to 54th CSW, close cooperation with UNIFEM

<sup>19</sup> Ministry of Defence

<sup>20</sup> Ministry of the Interior: 1 July, 2007: 30 persons, including 4 policewomen (= 13,3), despatched to peacekeeping operations; 31 July, 2008: 29 persons, including 3 policewomen (= 10,34%) despatched; 1 October, 2009: 23 persons, including 3 women (= 11,5%) despatched; November 2010: 27 persons, including 3 policewomen (= 11,1%) despatched

## Recommendations:

- Gradual increase of the proportion of women participating in foreign peace support operations
- Allocation of an own budget for the implementation of the NAP for SCR 1325
- Systematic involvement of women's organisations (in particular at grass-roots level) on the part of the Austrian foreign missions
- Systematic demand of adequate participation of women in peace and reconstruction processes on the part of Austrian government delegations

## Article 4 CEDAW - Temporary special measures

Author: Ulrike Weish

### a. Quota debates and appointment procedures

*Abstract:* The implementation of female quotas in civil service has, compared against the private sector, a legal basis, but is executed only tentatively because of persistent structural mechanisms that exclude women (in particular from leadership). No binding or enforceable quotas have been established for the private sector. Mainstream media contribute to reinforce unequal gender-related power and distribution structures through non-sensitive coverage.

Gender-related disadvantages in the field of appointment procedures cannot be attributed to differences in formal qualifications or work experience, but are based on traditional images of gender inequality as well as on hegemonic and informal male networks active particularly at the higher levels of professional life. Current developments make the phased plan negotiated between the Ministry for Women and the Ministry of Economy in 2011 seem tentative and cautious: According to the plan, 25% of leading positions in state-sponsored companies should be held by women by 2013, increasing to 35% by 2018. Self-commitment should become the principle guiding the private sector in this area. The argument brought forth against further legislative action focused on the belief that new forms to avoid formal requirements would develop and be used to exclude female applicants using ever more subtle means. Thus, newly created rules would always be way behind informal exclusion practices.

## Recommendations:

- No hiring of men for leading positions in state-sponsored companies until the proportion of men decreases from currently 96% to 65% in order to implement the phased plan as fast as possible.
- The private sector should commission watch-groups to promote gender mainstreaming. Such groups should support and monitor the change towards gender-democratic conditions (use and implementation of the "4R" method).
- Self-commitment needs a structure that private companies can adhere to.

### b. Media coverage and gender equality policies

*Abstract:* The media coverage of the public debate about the introduction of female quotas for the private sector by the Minister for Women was biased and characterised by an attitude of rejection. The most frequent arguments included: "Only the best should be hired, regardless of the sex of a person!" "I did not need female quotas to advance in professional life. It only damages the professional reputation of qualified women who are then said to have been hired as 'alibi' or 'quota' women." What was and is still left out in media debates is

that the promotion of women on the federal level aims at persons with the same qualifications and that female applicants can only be preferred<sup>21</sup> if the proportion of women is under 50%. Such ignorance reinforces the public opinion that “being a woman is a programme”. Especially conservative right-wing actors try to sell this as a de facto privileging of women, even though quantitative data show a different reality.

The communications sector, including areas like for example journalism, public relations and advertisement, is responsible for the dissemination of opinions and the creation of public images and thus plays a key role in this process of disinformation. Most media, also those who call themselves quality or alternative media, fail to cover the marginalisation of heterogeneous positions and experiences of women in leading positions. Such positions and experiences include the resistance against stereotypes as well as conservative political attitudes on quota debates, for example discrimination in everyday life and the exclusion from information. As an exception, marginalised feminist media with low circulation can be named. We think that such media have to face structural disadvantages. We are of the opinion that this makes it impossible for public opinion to become more aware of such issues and to develop a sense of justice. Especially against the backdrop of high-ranking economic crime (tax evasion, bribery, illegal agreements, etc.) and in the field of corruption linking politics to economic interest, the argument of key player’s qualifications seems cynical and subjective to us. We assume that a significant increase of women in leading positions will be a productive contribution to develop more objective points of view and lead to an increase in quality and more democratic economic structures. Thus we welcome ambitious initiatives such as the “Quotenschoten”<sup>22</sup> in Vienna and the network initiative “fiftitu” in Linz. Both want to promote the involvement of civil society and critical media discourse through public actions and debates.

#### **Recommendations:**

- Raise public awareness for gender inequality by promoting civil society initiatives and by getting involved in male-dominated mainstream media coverage.
- Take measures to promote the distribution of feminist media; evaluation of press subsidies and inclusion of content-related gender criteria (who says what etc.) and criteria related to leading positions in media companies following an internal phased plan to promote women in leading positions.

#### **c. Name designation and equal treatment objectives**

*Abstract:* The structural embedding of gender representatives on all levels of public administration has been and remains precarious; most persons working as representatives do so without remuneration and in addition to their normal work. The change of the designation ‘women’s representative’ to ‘gender representative’ caused confusion about its scope of work amongst many actors: Whose interests are promoted if the term gender includes both sexes? How does the appointment of staff work when gender equality representatives are involved (honorary office vs. gainful employment as a monitoring instance)? Appointment policies aiming at promoting women developed only tentatively because the goals remained unclear and the position of gender representatives is highly dependent on the management. Examples would be the universities and federal authorities.

#### **Recommendations:**

- Re-introduction of the designation “women’s representative” for a limited period of time until equal conditions are reached in leading positions - the goal is 50% since 1 January, 2012. From that point on, the designation “gender representative” should be

<sup>21</sup> Also see Article 11 Federal Equal Treatment Act (Federal Law Gazette I Nr. 140/2), which entered into force on 1 January, 2012.

<sup>22</sup> See [www.quotenschoten.at](http://www.quotenschoten.at)

used exclusively, in order to meet the requirements of the complex conditions of intersectionality.

## **Article 5 CEDAW - Stereotypes<sup>23</sup>**

*Author: Austrian Women Lawyers Association*

### **a. Sexist depiction of women in advertisement and the media**

*Abstract:* Gender stereotypes and other forms of sexism, in particular depictions that degrade, sexualise and stereotype women, are still prolific in Austrian advertisement and media. Self-regulatory mechanisms are not fully developed in the areas of advertisement and the press, they are not comprehensive and do not seem to have palpable effects.

The latest improvement of the self-regulatory mechanism against sexist advertising cannot be effective due to various exceptions and the lack of sanctions. The creation of expert groups to assess sexist advertising on municipal level must be welcomed, but a federal legal regulation including sanctions is still necessary.

The Austrian media landscape is characterised by a disproportionately high degree of concentration, in particular in the area of print media (daily newspapers). Furthermore, many popular print and online media show an unusually high degree of xenophobic, racist and islamophobic discourse. This results in discrimination on various levels, especially against (Muslim) migrant women. Sexist depictions and reports can be observed when it comes to violence against women. Even state-sponsored media are not exempt - violence against women is often reported about as “drama in the family” or “domestic fight”. Background information, structural reasons for gender-related violence and support facilities are rarely mentioned and violence is only depicted as an individual problem.

The self-regulatory system of the “Austrian Press Council” has not taken a single decision related to sexist media coverage. Furthermore, the code of ethics for journalist work does not contain explicit provisions against gender-related discrimination.

Gender-based discrimination and other forms of discrimination in audio-visual media are prohibited and sanctioned by an EU directive since 2010, it remains unclear, however, how the competent authority implements these provisions. So far no relevant decisions have been taken.

### **Recommendations:**

- Creation of a uniform ban on of discriminating advertising practices on the federal level, including appropriate sanctions and resources for its implementation by an expert group.
- Anchoring of the prohibition of discriminating depiction in print media, including appropriate sanctions and resources for its implementation by an expert group.
- Such expert groups must be representative for the areas of women’s rights and gender studies in their composition and qualifications.

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<sup>23</sup> Tertinegg, Karin (2009): Sexist advertisement, study conducted for the Women’s Department within the Austrian Federal Chancellery, Vienna.

## Article 6 CEDAW - Trafficking in women and sex work

Authors: Maria Cristina Boidi and Evelyn Probst

*Abstract:* The safety, protection and support of trafficked women are not deemed important within state measures against trafficking in women. Rather these women are very often criminalised and their rights are conditional on their statements in the criminal proceedings. Furthermore, social rights, such as health insurance, are often linked to residence permits, which in practice are very hard to obtain.

Sex workers continue to have to work under the most precarious working conditions as prostitution is considered a violation of bonos mores under civil law. For migrant sex workers the situation is exacerbated by the requirements of alien law.

### a. Trafficking in women

With regard to the recommendations of the CEDAW Committee we would like to stress that special emphasis must be put on the protection, support and guarantee of the rights of affected women.

#### *Support and rehabilitation measures for affected women*

Trafficked women and girls need safety, protection and support. They must be recognised as victims of a criminal offence and of human rights violations. In practice, however, trafficked women and girls are often criminalised. They are prosecuted for crimes related to trafficking in women, such as illegal prostitution, settlement without a residence permit or falsification of documents. There is no regulated mechanism that exempts women who are recognised as victims from prosecution related to such offences. Rather it depends on the authority's goodwill and willingness to cooperate.

International indicators to identify cases of trafficking in women and human beings are scarcely used. The authority's decisions are almost exclusively based on the statements given by trafficked women to the police. In order to take such decisions, external experts should be involved and decide on the basis of human rights. After recognition, a residence permit should be issued automatically, including access to regular health care and the labour market. This guarantees protection and stability for the women and gives them the opportunity to take an informed decision as to whether to give a witness statement.

The Austrian legal system does not offer trafficked women a stabilisation period. While they wait for their residence permit these women have no health insurance and no access to the regular health care system.

Article 69a of the Austrian Settlement and Residence Act stipulates that victims of trafficking in human beings and women shall be entitled to a residence permit for special protection to ensure that the perpetrators are prosecuted. The focus of such residence, however, should be the right of affected women to protection, safety and access to their rights - only such an approach could guarantee a solid basis for a victim protection programme.

Many women have to wait several months before a residence permit is issued, even though they have filed charges with the competent authorities. If the prosecutor then decides not to pursue the charges, the application for a residence permit is rejected.

### *Compensation:*

The observance of victim's rights in criminal proceedings has improved after psycho-social and legal counselling for criminal proceedings was introduced for all victims of criminal offences. However, in most cases no measures are taken to compensate the affected women. The results of a study looking into compensation show that women affected by trafficking hardly ever receive any compensation.<sup>24</sup> Persons affected by trafficking in human beings hardly ever have access to advance payments on compensation from the state.

### *Prevention measures - training:*

Training sessions for authorities rarely take place even though they are foreseen in the National Action Plans. The knowledge of how to recognise and treat victims is still limited to a small circle of persons.

### *Measures to effectively prosecute and punish perpetrators*

The offence of "trafficking in human beings" (Article 104a, Austrian Criminal Code) was introduced in 2004, but so far has not been implemented effectively.

## **Recommendations:**

- Even though Article 104 of the Austrian Criminal Code defines the trafficking in human being as "trafficking into all forms of exploitative employment", this point of view still lacks acceptance. All forms of trafficking in women have to be recognised and prosecuted.
- Trafficked persons /women should not be criminalised, expelled, deported and/or put under an exclusion order. Rather they should be recognised as victims of an international crime and may not be prosecuted for illegal prostitution or other criminal offences related to trafficking in human beings.
- All trafficked women should be awarded a residence permit including a work permit or access to social welfare benefits as well as access to health insurance, no matter whether criminal proceedings are opened. At the same time victims must be awarded compensation for personal suffering and other loss suffered in the criminal proceedings without the need to go through civil proceedings as well. As an alternative, in civil proceedings a reversal of the burden of proof should be introduced: Not the victims themselves, but for example their employers should have to prove their "innocence". In line with recommendations of the Council of Europe, a compensation fund for victims of trafficking in human beings should be set up in order to ensure their appropriate compensation.

## **b. Sex work**

A clear line must be drawn between trafficking in women and violence in every form on the one hand and voluntary sex work on the other hand. "It is trafficking in women if women migrate because of false promises and deceits and in the target country find themselves in such a plight and without rights that they are forced to render services, and if they are deprived of their dignity or their personal or sexual integrity by husbands or employers."<sup>25</sup> "There is no such thing as forced prostitution. Sex work/prostitution is a sexual service rendered voluntarily on the basis of a consensual contract between adult partners. If there is

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<sup>24</sup> Also see Planitzer, Julia; Probst, Evelyn; Steiner, Barbara; Unterlerchner, Barbara (2011): Entschädigungsmöglichkeiten für Betroffene des Menschenhandels. Unterstützt von LEFÖ, Ludwig Boltzmann Institut für Menschenrechte und Weißer Ring Österreich. Vienna

<sup>25</sup> See Boidi, Maria Cristina; Wistril, Siegrid et al. (1996): Frauenhandel. Frauenpolitische Perspektiven nach der Weltfrauenkonferenz '95, Bundesministerin für Frauenangelegenheiten. Vienna (*own translation*)

no consensus it is not prostitution, but forced sexuality and as such a form of sexual violence.”<sup>26</sup>

In Austria sex work is organised within the framework of a regulatory regime. A complex system of federal and provincial legislation defines this framework of sex work. Since the reform of the Criminal Code in 1974, prostitution as such does not constitute an offence, but is subject to numerous controlling measures. These measures include the individual provinces' (*Länder*) prostitution legislation as well as alien laws, criminal law, tax law and legal provisions concerning health care.

Sex workers have to register with the authorities, they have to undergo regular health examinations (in most cases by a medical officer) and they have to pay taxes. At the same time sex work is seen as a violation of *bonos mores*. This means that sex workers cannot claim not-paid remuneration for rendered sexual services in court. Thus a double standard has developed that on the one side accepts sex work as an economic sector, but on the other side criminalises and illegalises its actors - the sex workers. Sex workers continue to be subject to precarious working conditions as sex work is seen as a violation of *bonos mores* under civil law. For migrant sex workers, the situation is exacerbated by the requirements of alien law.

#### **Recommendations:**

- Prostitution (sex work) should no longer be regarded as a violation of *bonos mores*; legalisation of sex work as a gainful activity, including equal treatment before the law and equality of sex workers with other working women as well as registering with the trade licensing office instead of the police.
- Creation of the possibility of residence for migrant sex workers
- Abolition of obligatory health examinations for sex workers

### **Article 9 CEDAW – Rights of migrant women**

(See also contribution on Article 11 on migrant women's situation in the labour market)

*Abstract:* In the Austrian migration policy of the last 10 to 15 years, unfortunately increasingly restrictive provisions regarding residence and citizenship laws were introduced. As a result, particularly low-income and educationally disadvantaged migrants are permanently excluded from security of residence and, as a consequence, from social protection. This leads to an increase in poverty and poverty risk, which are structural in nature and affect a disproportionately high percentage of women. Women are also particularly disadvantaged due to high entry barriers to education measures. Moreover, shortcomings in the Austrian health care policy have led to migrant women still receiving insufficient or inappropriate health care.

Disadvantageous aliens law and barriers for migrant and asylum-seeking women have seriously aggravated the situation of those women who have experienced violence (through their partner or family members). Public authorities' subsidy conditions increasingly exclude asylum-seeking women from resorting to women's shelters. The organisations offering protection to abused women do not have sufficient resources to provide services in their clients' various mother tongues. Due to very high legally imposed financial barriers, many migrant women are not able to attain an independent residence permit. Stricter requirements

<sup>26</sup> AG Recht/Prostitution (2005): Das Menschenhandelskomplott: Kleine Aufklärungsschrift der bundesweiten Arbeitsgemeinschaft Recht/ Prostitution. Nürnberg (*own translation*)

concerning German language skills constitute another major problem for migrant women affected by violence.

### **a. Migrant women, residence and social affairs**

*Authors: Katharina Echsel, Sandra Schmidjell, Sigrid Awart*

The Austrian migration policy has been characterised for years by numerous amendments regarding the residence and citizenship laws. The concomitant tightening of eligibility criteria for residence permits and citizenship has a direct negative effect on the living situation of migrant women. This particularly affects migrant women with multiple burdens, especially single mothers, as well as migrant women employed in low-pay sectors whose income usually does not reach the required indicative rates.

According to the Settlement and Residence Act (SRA), in order to obtain and renew a residence permit, a net minimum income of € 793.40 per month for singles and € 1,189.56 for couples has to be proven, with rent, child support and possible credits or lease instalments being added to that.

However, many collective-agreement minimum wages in low-pay sectors – where the percentage of migrant women is above average – are below these income limits so that even with full employment, no security of residence exists. Another serious problem in this respect is that unpaid work like child rearing is not mentioned in the law and claims for support are only added to the income in case of actual payment of support. If the ex-husband or child's father fails to pay child support, this is directly to the detriment of the dependent who may lose her right of residence due to too little income, as the case may be.

An additional factor that aggravates the situation is that, for being granted the right of permanent residence (as well as citizenship), additional to meeting the income criteria, increasingly high requirements are made concerning German language skills. Accordingly, up to now language skills on level A2 had to be proven. By the new laws, which came into effect on 1 July, 2011, pertaining to aliens, the level was raised to B1.<sup>27</sup> This corresponds to language skills on the level of high-school exit exams and can therefore not be achieved in particular by educationally disadvantaged migrant women.

The fact that essential social benefits, above all the means-tested minimum income scheme ("Bedarfsorientierte Mindestsicherung; previously: social assistance), are linked to the right of permanent residence and/or the Austrian citizenship, has particularly disastrous consequences. Due to the criteria having been raised as outlined above, an increasing number of migrants – particularly women – are excluded from receiving social benefits and social transfers. As a consequence, the risk of poverty<sup>28</sup> that is already high will continue to increase within this group.

### **b. Migrant women and health**

*Authors: Katharina Echsel, Sandra Schmidjell, Sigrid Awart*

Migrant women regularly residing in Austria and asylum-seeking women receiving basic social services ("Grundversorgung") are usually medically insured. Thus they have, at least in theory, the same entitlement to health services as Austrian citizens.

<sup>27</sup> Federal Law Gazette (BGBl.) I No. 38/2011

<sup>28</sup> According to EU SILC 2007, in Austria 26 % of women with foreign nationality are at risk of poverty, 14 % are in fact manifestly poor.

Equal opportunities as regards access to health care is only given if all have equal opportunities of being and remaining healthy. In Austria equality of opportunities unfortunately does not exist in this regard.

Migration may not be disease-causing per se, yet migrant women constitute a particularly vulnerable social group:

*"Migrant women are at higher psychological and physical health risk, which is due to a triple burden:*

- *Legal and social discrimination as members of a minority group*
- *Occupational disadvantage: due to lacking professional training, they are dependent on unattractive and insecure jobs*
- *Gender-specific inequalities regarding family and job.*<sup>29</sup>

Although there is very limited data concerning the health of migrant women in Austria, the few studies and experience reports that do exist show that migrant women assess their quality of life, vitality and psychological health more negatively than Austrian women. They are more likely to suffer from certain chronic diseases. Accordingly, migrant women's risk of getting diabetes is three times higher compared to Austrian women. Migrant women have a 2.6-fold risk of hypertension, depressions and anxiety states and a 1.5-fold risk of migraine and headaches, joint and spinal problems.<sup>30</sup>

The Austrian health care system has not been adapted to the needs of migrant women. The main challenge, verbal communication, remains an unsolved problem. Only few hospitals provide professional interpreters, and very often family members or auxiliary personnel serve as interpreters. This entails the danger of deficient translations, and thus impedes the diagnosis and treatment.

The Austrian "National Action Plan for Integration" indeed lists goals like the "strengthening of intercultural competence in the health system and social sector", the "protection of migrant women's health by specific offers and measures" and the "improvement of migrants' career prospects in the health sector". However, the issues of responsibilities for and financing of the implementation of these measures remain unclear.

In contrast to other European countries, in Austria there is still a lot left to the initiative of NGOs or players at a local level.

### **c. Migrant women, education and work**

*Authors: Katharina Echsel, Sandra Schmidjell, Sigrid Awart*

Regarding access to education and education measures, migrant women are disadvantaged as well. In 2006, out of the population aged 14 to 29, nearly three quarters of all women with Austrian citizenship, but only about one quarter of women without Austrian citizenship attended an educational institution. The divergence becomes evident right after the end of compulsory schooling. Accordingly, among women aged 16, more than 90 % of Austrians, but only about 70 % of migrant women originating from another EU country or the former Yugoslavia and only a little more than half of the Turkish women attended an educational institution.<sup>31</sup>

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<sup>29</sup> Quoted from: <http://www.frauengesundheit-wien.at/frauengesundheit/migrantinnen.html> (own translation)

<sup>30</sup> Cf. Österreichischer Frauengesundheitsbericht 2010/ 2011, Austrian Federal Ministry of Health

<sup>31</sup> Cf. Frauenbericht 2010 (2010): report regarding the situation of women in Austria between 1998 and 2008. Austrian Federal Chancellery

In adult education, access is rendered difficult by financial barriers, e.g. by the fact that third-country nationals have to pay higher tuition fees. The German classes, which are mandatory by the legislation regarding aliens (see above), constitute great financial challenges as well, especially for low-income migrant women. Only in case of successful completion of the course within 18 months, the costs will be partially reimbursed by the state.

Only on a regional level there have been positive developments in this regard: For example, in recent years, the City of Vienna has invested more money in financing affordable German classes with child care, offering vouchers to newly arrived migrants.

#### **d. Migrant women and poverty**

*Author: Margit Appel*

Migrant women are far more affected by unemployment<sup>32</sup> and low pay<sup>33</sup>. In 2007, foreign women earned only 68.2 % of the gross annual income of Austrian women.

Despite a number of projects in this field, it can still be said that for migrant women, the labour market is only accessible in specific fields: Very often they are in “typical” women’s jobs like cleaning and are highly affected by brain waste and/or unequal opportunities regarding access to qualification offers. Third-country nationals’ and naturalised migrants’ education is significantly less recognised in the labour market than that of Austrians by origin and EEA nationals: Based on the education level, the average annual income should be about 30 % higher with third-country nationals and about 20 % higher with naturalised migrants.<sup>34</sup>

Migrant women permanently residing in Austria have the same entitlement to the means-tested minimum income as Austrian women. Due to the complex situation with third-country nationals, women migrating to Austria on the grounds of family reunification are often disadvantaged. It should be ensured that obtaining the means-tested minimum income does not endanger the residence status and that within the means-tested minimum income scheme, a time period is specified after which a residence permit is deemed permanent (e.g. after four months’ legal residence).<sup>35</sup>

#### **e. Migrant women and violence**

*Authors: Maja Sticker, Cansel Demirdelen*

(See also the contribution on Article 3 CEDAW, violence against women)

As the CEDAW committee observed in 2007, migrant women as well as female asylum-seekers and refugees in Austria belong to the groups particularly vulnerable to violence and poverty<sup>36</sup>. Due to the legal and social conditions, these women have, in several cases, enormous difficulties escaping from violent relationships. Violence protection centres have come to the same finding. Accordingly, the percentage of migrant women seeking protection

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<sup>32</sup> In 2010, the annual average unemployment rate of Austrian women was 4.1 %, as opposed to 7.9 % with foreign women; source: Frauenmonitor of the Chamber of Labour Upper Austria 2011

<sup>33</sup> In 2008, the employment rate was 57 %, which is 11 % below that of women born in Austria.

<sup>34</sup> Gächter, August (2009): Handbuch Armut in Österreich

<sup>35</sup> Pirklbauer, Sybille (2011): Bedarfsorientierte Mindestsicherung. Gesetze und Kommentare

<sup>36</sup> UN Committee on the Elimination of Discrimination against Women (2007): Concluding comments of the Committee on the Elimination of Discrimination against Women: Austria, Point 29 (37<sup>th</sup> session, 2007).

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b0dfc453344be501c12572a400337731/\\$FILE/N0724344.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b0dfc453344be501c12572a400337731/$FILE/N0724344.pdf)

in women's shelters is above average.<sup>37</sup> The reasons for this are lacking economic and social security, language barriers, lack of knowledge about legal options as well as fear towards the security authorities. About 1-2 % of the inhabitants of women's shelters are asylum seekers. For the most part, asylum seekers are accepted in women's shelters. However, this is getting increasingly difficult since contracts with funding organisations partly forbid or restrict accommodating asylum-seeking women in women's shelters, which constitutes a major problem. Moreover, there is a lack of institutions concentrated on the specific situation of these women. The creation of an emergency apartment for women affected by forced marriage, which was already announced in the government programme 2007-2010<sup>38</sup>, has not been established so far. Furthermore, in order to sufficiently protect girls and women who are threatened or affected by forced marriages, an exception provision regarding the Child and Youth Welfare Act is required so that the whereabouts of affected minor girls can be kept a secret from their parents. Currently the victims are partly sent back to their parents, with fatal consequences.<sup>39</sup>

The majority of women's shelters, intervention centres and violence protection centres as well as other women's and migrant women's counselling centres indeed offers support in various languages, but an extensive offer in the required mother tongues could not be implemented so far due to lacking financial resources.<sup>40</sup>

As outlined above, the legal situation of migrant and asylum-seeking women in Austria is difficult, the criteria for family reunification and naturalisation being among the strictest and most expensive in an international comparison.<sup>41</sup> Nevertheless, in the period under review, some legislative changes that had been claimed for years were achieved for women affected by violence: In the Settlement and Residence Act (SRA), there is now an exception provision enabling, among others, victims of domestic violence to receive an independent right of residence (Article 27, Section 3 SRA).<sup>42</sup> This provision may be applicable if a family court issued a restraining order against the reunifying person (offender) pursuant to Articles 382b or 382e of the Enforcement Code. Restraining orders are imposed in particular if the police earlier imposed an eviction and/or barring order. As migrant women or women with uncertain residence status are partly afraid to call the police on incidents of violence, the chances at a restraining order and therefore the possibility of obtaining an independent residence permit according to that Article decrease. Moreover many women only learn about their rights at a counselling centre, since there is a lack of information about this new exception provision for

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<sup>37</sup> Activity report of the Autonomous Austrian Women's Shelters (AOEF), [http://www.aeof.at/cms/index.php?page=shop.product\\_details&flypage=flypage.tpl&product\\_id=31&category\\_id=4&option=com\\_virtuemart&Itemid=65&lang=de](http://www.aeof.at/cms/index.php?page=shop.product_details&flypage=flypage.tpl&product_id=31&category_id=4&option=com_virtuemart&Itemid=65&lang=de)

<sup>38</sup> Federal Chancellery of Austria: government programme for the 23rd legislation period, p. 128, <http://www.austria.gv.at/DocView.axd?CobId=19542> (accessed on: 11 August, 2011)

<sup>39</sup> AOEf press release: Expert women demand an Austria-wide protection institution for girls and young women affected by forced marriages. Arbeitsgruppe Migrantinnen & Gewalt (Work Group Migrant Women & Violence), 4 May, 2011, [http://www.aeof.at/cms/index.php?option=com\\_content&view=article&id=1923&Itemid=105&lang=de](http://www.aeof.at/cms/index.php?option=com_content&view=article&id=1923&Itemid=105&lang=de) (accessed on: 11 August, 2011)

<sup>40</sup> Women against Violence Europe (WAVE) (2010): Country Report 2010: Austria. Vienna [http://www.wave-network.org/images/doku/wave\\_countryreport\\_austria\\_190611\\_finalfinal.pdf](http://www.wave-network.org/images/doku/wave_countryreport_austria_190611_finalfinal.pdf); see also: Statistics of the Network of the Austrian Autonomous Women's Shelters, [http://www.aeof.at/cms/index.php?page=shop.product\\_details&flypage=flypage.tpl&product\\_id=18&category\\_id=4&option=com\\_virtuemart&Itemid=65&lang=de](http://www.aeof.at/cms/index.php?page=shop.product_details&flypage=flypage.tpl&product_id=18&category_id=4&option=com_virtuemart&Itemid=65&lang=de) (accessed on: 4 August, 2011)

<sup>41</sup> Huddleston, Thomas et al. (2011): Migrant Integration Policy Index III. Brussels: British Council and Migration Policy Group, February 2011. p. 27, [http://www.politiquessociales.net/IMG/pdf/migrant\\_integration\\_policy\\_index\\_mipexiii\\_2011.pdf](http://www.politiquessociales.net/IMG/pdf/migrant_integration_policy_index_mipexiii_2011.pdf) (accessed on: 2. August, 2011)

<sup>42</sup> Pursuant to Article 27, Section 3 SRA, "cases particularly deserving consideration", where residence shall be granted even in case of non-fulfilment of the eligibility criteria, apply if a person is victim of a forced marriage (Article 30a SRA) or has been victim of violence, with a restraining order having been issued against the reunifying person pursuant to Articles 382b or 382e of the Enforcement Code. See: Federal Act concerning settlement and residence in Austria (Settlement and Residence Act – SRA), Complete legislation for the Settlement and Residence Act, in effect since 1 July, 2011, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004242>

victims of domestic violence. Still women are extorted by their partners with the fact that they are dependent from them due to residence law and therefore cannot break up with them.

A shortcoming in the current Article 27 Section 3 SRA consists in the fact that in this provision, the restraining order due to stalking (the so-called “stalking restraining order”, Article 382g of the Enforcement Code) is not included. This would be important, though, since firstly, stalking is very often committed by (ex-) partners and secondly, the “stalking restraining order” includes further forms of protection like the prohibition for third parties to contact the affected woman. The fact that this residence permit is valid for only one year constitutes another difficulty. After this period, certain criteria must be met (integration agreement, German course and/or exam, job etc.). These are very high and burdensome requirements for women who have not been residing in Austria for a long time may have to look after young children and are in the process of abandoning a violent relationship.

Since the amendment to the SRA, Article 69a (“special protection“) also enables third-country nationals, e.g. victims of domestic violence, to obtain a residence permit despite non-fulfilment of the general eligibility criteria.

The raise of the minimum age of spouses who are brought to Austria in the context of family reunifications from 18 to 21 years, which was implemented by the government in order to prevent forced marriages, is not an effective means to actually prevent them, as has been shown in practice. Forced marriages with persons under the age of 21 can still be contracted, with the entry into Austria being delayed until the legal age is reached. This only perpetuates the dependence of women who have been married against their will.

As described above, the possibility of an independent residence status was created through the amendment to the SRA. However, the (financial) eligibility criteria are too high for many women to actually fulfil them. The stricter requirements regarding German language skills (proof of a higher level and shorter deadlines for proofing the language skills) are another major problem for migrant women affected by violence and increase the pressure on these women significantly.

## **Recommendations:**

### *Migrant women in general:*

- Lowering of the income threshold for obtaining and renewing residence permits, permanent residence permits and citizenship to the level of the lowest collective-agreement wages fixed in Austria. Inclusion of claims for child support and adequate estimation and consideration of unpaid work like child rearing when calculating the income
- Implementation of the objectives regarding the health sector stated in the National Action Plan for Integration
- Elimination of the legal obligation to complete German courses, creation of extensive offers of free or low-cost German courses that may be attended on a voluntary basis.

### *Migrant women and poverty:*

- Creation of an own residence status for women
- Easy labour market access for migrant women as well as asylum-seeking women
- Facilitated recognition of educational qualifications from the country of origin
- High-quality, affordable German courses with appropriate child care and at an appropriate time of day
- Measures regarding the means-tested minimum income scheme (e.g. guaranteeing immediate aid to migrant women affected by domestic violence, even before completion of a procedure for granting residence)

### *Migrant women and violence:*

- In accordance with the General Recommendations Nos. 26 and 19 of the CEDAW committee, all women, regardless of their legal status or citizenship, should be protected equally from domestic violence.<sup>43</sup> This requires an unrestricted and free recourse to victim protection centres for all women, which means that e.g. funding contracts for institutions like women's shelters must not contain any conditions by which asylum-seeking women or women with an uncertain legal residence status are excluded from the protection offered by these institutions.
- It is essential that measures and institutions able to address the specific circumstances and emergency situations of migrant women affected by violence be implemented and promoted. To this end, the offers of independent women's organisations, like counselling in the mother tongues, need to be further promoted.
- The application of Article 27, Section 3 SRA and Article 30a SRA (independent right of residence for family members in case of domestic violence) should be extended to stalking cases (Article 382g Enforcement Code). Moreover, eviction and barring orders issued by the police should be added to the grounds "particularly deserving consideration" in case of domestic violence pursuant to Article 38a Security Police Act.<sup>44</sup>
- In order to sufficiently protect girls and young women threatened or affected by forced marriages, an exception provision in the Child and Youth Welfare Act is necessary in addition to specific emergency shelters so that the whereabouts of affected minor girls can be kept a secret from their parents.

### **Article 10 CEDAW - Education**

*Abstract:* Gender-stereotyped educational paths in general (in the school sector as well as in the apprenticeship sector) are still very distinct. In the natural sciences in particular, girls still perform worse in standardised school exams. In the universities, gender segregation according to fields of study (the humanities are female-dominated, technical studies are male-dominated) still exists. Women's career opportunities are still impaired by prevailing unequal informal support conditions for male and female young academics at Austrian universities. The sector of adult education is marked by high gender segregation as well.

<sup>43</sup> UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 26: Women Migrant Workers (Forty-second session, 2008): "26.(i) Access to services: States parties should ensure that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available, including language and skills training programmes, emergency shelters, health-care services, police services, recreational programmes and programmes designed especially for isolated women migrant workers, such as domestic workers and others secluded in the home, in addition to victims of domestic violence. Victims of abuse must be provided with relevant emergency and social services, regardless of their immigration status (articles 3, 5 and 12)"; <http://www.iwraw-ap.org/convention/details26.htm>; UN, Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against women (11th session, 1992), <http://www.iwraw-ap.org/convention/details19.htm>

<sup>44</sup> Reform proposals by the Austrian Violence Protection Centres/Domestic Abuse Intervention Centres and the Intervention Center for Trafficked Women, May 2011, p. 37, [http://www.ifs.at/fileadmin/user\\_upload/Dokumente/Interventionsstelle/Reformvorschlaege\\_2010.pdf](http://www.ifs.at/fileadmin/user_upload/Dokumente/Interventionsstelle/Reformvorschlaege_2010.pdf) (accessed on: 4 August, 2011)

## **a. Gender stereotypes in education**<sup>45</sup>

*Author: Claudia Schneider*

The formal equality of girls and boys has not led to a stronger gender-balance in the traditionally gender-specific educational paths. The percentage of girls in secondary schools in 2007/08 was indeed 54 %<sup>46</sup>, but the more a type of school is vocational, the higher the gender segregation. As to vocational secondary schools, the gender distribution is very traditional in vocational schools for social or kindergarten pedagogy, the proportion of boys there being 4.6 %. In the secondary engineering and commercial schools, however, the proportion of girls has risen to 24.8 %, which is almost one quarter of all pupils.<sup>47</sup> Detailed results for the school year 2008/09 regarding the choice between the subjects textile and technical handicrafts show that, throughout Austria, 3-11 % of pupils in textile handicrafts were boys, whereas 9-15 % of pupils in technical handicrafts were girls, depending on the type of school.<sup>48</sup>

As at 31 December, 2010, almost half of all girl apprentices have chosen vocational training in the following vocations: retail trade (24.8 %), office administrator (12.4 %) and hairdresser and wigmaker (10.8 %). By contrast, only one quarter of all boys are among the top three apprenticeship vocations of boys, electrical engineering (10.6 %), automobile technology (9.1 %) and installation and building technology (6.1 %).<sup>49</sup>

International comparative studies from a gender perspective also call for enhanced efforts regarding gender-sensitive school education: The PISA test once again produced clear results for Austria with regard to knowledge in the natural sciences: For Austria, the most alarming gender-specific result from PISA 2006 pertains to the subject physics: "In most countries, boys are clearly superior to their female peers with regard to knowledge about Physical Systems. On OECD average, the boys reach a mean value 26 points above that of the girls. In Austria, the boys are 45 points above the girls. This is the largest gender gap with respect to Physical Systems."<sup>50</sup>

## **b. Adult education and women**

*Author: Julia Planitzer*

Gender segregation in the Austrian labour market also has effects on continuing education of men and women, particularly in continuing vocational training. A large number of women participate in continuing education in the health and social sector or in foreign languages. More men than women can be found in training on informatics or the building sector. In 2004, 26.2 % of women against 24.4 % of men stated having completed a continuing vocational training in the previous year. However, when taking into consideration the lower number of

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<sup>45</sup> Former Federal Ministry for Education, Science and Culture (Ed.) (2003): Leitfaden zur Darstellung von Frauen und Männern in Unterrichtsmitteln (Guideline on the portrayal of women and men in teaching materials); Federal Chancellery – Federal Minister for Women, Media and Civil Service (Ed.) (2007): Convention on the Elimination of All Forms of Discrimination against Women. Concluding Comments of the Committee on the Elimination of Discrimination against Women Austria. Vienna; Matkovits, Susanne (2010): Statistische Auswertungen zur Textilen und Technischen Werkerziehung in Österreich im Auftrag des BMUKK. Vienna. Unpublished report. Provided by Dr.in Guggenberger, Federal Ministry for Education, Arts and Culture/ Section Gender Mainstreaming/Gender and school; Schreiner, Claudia (Ed.) (2007): PISA 2006. Internationaler Vergleich von Schülerleistungen. Erste Ergebnisse. Graz: Leykam; available at [http://www.bifie.at/sites/default/files/publikationen/2007-12-04\\_pisa-2006-ersteergebnisse.pdf](http://www.bifie.at/sites/default/files/publikationen/2007-12-04_pisa-2006-ersteergebnisse.pdf); Statistics Austria (Ed.) (2010a): Statistical Yearbook Austria 2010.; Austrian Economic Chambers (2011): Lehrlingsstatistik 2010

<sup>46</sup> Statistics Austria 2010. Own calculations

<sup>47</sup> Statistics Austria. Statistical Yearbook 2009. Own calculations. Figures refer to the school year 2006/07.

<sup>48</sup> Cf. Matkovits 2010

<sup>49</sup> Cf. Austrian Economic Chambers (2011): Apprenticeship Statistics 2010

<sup>50</sup> Schreiner 2007, p. 27

employed women, there is a plus of almost 85,000 men.<sup>51</sup> There are significantly more prime-age (25 to 64 years) women than men not attending any education events over longer periods of time, though. This may be due to the high economic inactivity rate of prime-age women. Three out of four economically inactive prime-age persons are women, with the participation rate of inactive persons being significantly lower than that of employed or unemployed persons.<sup>52</sup> Moreover, part-time work is not involved in in-company continuing education and career paths. Since a large proportion of part-time employees are women, their career opportunities within the company are significantly lower than those of men.<sup>53</sup>

### **c. The situation of women at Austrian universities<sup>54</sup>**

*Authors: Margit Hartel, Johanna Hofbauer, Katharina Kreissl, Sophie Nix*

A number of changes as regards gender equality conditions in Austrian universities that occurred since the last CEDAW report in 2007 is due to the amendment to the Universities Act (Universities Act 2009) and the new Collective Agreement Act.

#### *40 % women's quota for all university committees*

By the Universities Act 2009, the demand for women's advancement laid down in the former Universities Act 2002 was made binding. The collegial bodies of universities need to have a women's quota of 40 %. The Working Group on Equal Treatment has the right to plea (but no more than that) if the quota is not met in the committees' composition.

Given the demand for increasing the proportion of women in decision-making and steering committees of universities, the quota regulation is deemed positive in general. However, currently women are still under-represented. This is only partially due to the fact that the quota regulation only applies to committees that were constituted after 1 October, 2009. In the history of Austrian universities, there has never been more than one female rector (in 22 universities). It is only on the level of vice rectors that a noticeable increase of the percentage of women can be observed. In 2010, the 40 % quota was almost met. The changes on the

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<sup>51</sup> Gutknecht-Gmeiner, Maria (2008): Hohe Weiterbildungsbeteiligung von Frauen und Männern – und alles wird gut? Gender als Kategorie in der Weiterbildungsforschung: Ansätze zur geschlechts-spezifischen Analyse empirischer Befunde, Magazin erwachsenenbildung.at, Nr. 3/2008, 04-5 – 04-7.

<sup>52</sup> Statistics Austria, Bildung in Zahlen (Education in Figures), 2008/2009, Schlüsselindikatoren und Analysen, p. 64.

<sup>53</sup> Biffel, Gudrun; Leoni, Thomas (2006): Handlungsoptionen für eine Erhöhung der Einkommensgerechtigkeit und Chancengleichheit für Frauen in Oberösterreich. p. 88.

<sup>54</sup> Angel, Stefan; Dünser, Lukas; Unger, Martin (2010a): Umstieg von Bachelor- auf das Masterstudium – Studierende im konsekutiven Masterstudium; <http://ww2.sozialerhebung.at/Ergebnisse/> (accessed on: 28 May, 2011); Angel, Stefan; Dünser, Lukas; Gottwald, Regina; Unger, Martin (2010b): Studierende im Doktorat – Soziale Situation von Doktoratsstudierenden 2009; <http://ww2.sozialerhebung.at/Ergebnisse/> (accessed on: 28 May, 2011); Löschnigg, Günther; Rainer, Claudia (2010): Aneinanderreihung von (befristeten) Arbeitsverträgen nach Universitätsgesetz 2002. In: Unilex. Informationen zu universitätsrechtlicher Theorie und Praxis(1-2): 3-17. Gärtner, Kathrin; Himpel, Klemens (2010): Der Übergang von einem Bachelorstudium in ein Masterstudium – begutachteter Beitrag. In: Statistics Austria (Ed.): Statistische Nachrichten 9/2010, Ed. Statistics Austria, 744–751. Vienna; Collective agreement for persons employed at universities. 2009. [http://www.uni-graz.at/perswww/www/cms\\_uploads/file/Allgemein/KV\\_Fassung\\_052009.pdf](http://www.uni-graz.at/perswww/www/cms_uploads/file/Allgemein/KV_Fassung_052009.pdf); Pfeil, Walter (Ed.) (2010): Personalrecht der Universitäten. Vienna, Manz; Statistics Austria (Ed.), (2010): Bildung in Zahlen (Education in Figures) 2009/10 – Schlüsselindikatoren und Analysen. Vienna; Universities Act 2002 (UG 02). Ed. in 2003 by Gerald Bast. Vienna, Manz Verlag; Universities Act 2009 (UG 09) (Ed.) (2009) Federal Law Gazette 2009, part I, 18 August, 2009; University of Vienna. 2010. Wissensbilanz. Wien, [http://www.univie.ac.at/mtbl02/2009\\_2010/2009\\_2010\\_234.pdf](http://www.univie.ac.at/mtbl02/2009_2010/2009_2010_234.pdf) (accessed on: 26 May, 2011); Data sources: website of Statistics Austria: university statistics, [http://www.statistik.at/web\\_de/statistiken/bildung\\_und\\_kultur/formales\\_bildungswesen/lehrpersonen/index.html](http://www.statistik.at/web_de/statistiken/bildung_und_kultur/formales_bildungswesen/lehrpersonen/index.html) (accessed on: 12 May, 2011), uni:data – the university-statistical information system of the Federal Ministry for Science and Research: [http://portal.bmbwk.gv.at/portal/page?\\_pageid=93.95229&\\_dad=portal&\\_schema=PORTAL&](http://portal.bmbwk.gv.at/portal/page?_pageid=93.95229&_dad=portal&_schema=PORTAL&) (accessed on: 27 June, 2011)

level of senate chairpersons are negligible, although currently the proportion of women is already 28 % (6 women among 21 senate chairpersons).

In order to assess the quota regulation and its viability, one has to consider the problem of the female university teaching staff being over-burdened. In Austria science is still a male profession (which was also stated in the Universities Act 2002, Article 41). Women are underrepresented particularly on higher levels of the university hierarchy, but yet they should now be present in the committees at 40 %. It is becoming apparent that in many universities, it will hardly be possible to meet the quota, and if so, only by excessively increasing the workload of female teaching staff.

#### *Collective Agreement 2009 and discontinuation of careers*

The second change concerns the introduction of private employment law at Austrian universities. Instead of periodical performance and qualification reviews, which could result in a lifetime post (tenure-track position), today there is a shift to employment contracts for a definite period. An employment contract for an indefinite period can only be reached by several employment contracts for a definite period and is bound to a specific performance review procedure.<sup>55</sup> This opens up new career prospects for women if the procedures are transparent and are conducted within a formalised performance assessment scheme. However, these prospects are compromised by the fact that unequal informal support conditions for male and female young academics prevail at Austrian universities. Not only do women have difficult access to networks relevant for career advancement, but their scientific achievements also still find comparatively little recognition, which is due to traditional gender concepts in science. Moreover, the increasing pressure to perform in academic life results in time flexibility (excessive working hours) and geographical mobility becoming a decisive resource in competition. According to scientific-sociological studies, it is in particular these resources that are unequally distributed between the two sexes. In university competition, mobility on an international scale is required as well, depending on the discipline. Due to the traditional familial division of labour in Austria, family-oriented young female academics remain structurally disadvantaged for the time being.

For now, the impact of the new collective-agreement provisions can only be observed rudimentarily. It is already becoming distinctly clear, however, that life planning and career management is becoming increasingly difficult for young academics. There is an increasing feeling of insecurity, with the requirements for scientific careers rising at the same time. The danger is that women, in expectation of future family responsibilities or aware of the unequal support conditions, do not intend to pursue an academic career in the first place or prematurely end their careers due to lacking recognition and support – irrespective of their abilities and talents.

#### *Evolution of the proportions of women in teaching staff at public universities*

Since 2006, the proportions of women in assistant and professor positions have steadily increased. The figure “Teaching staff in public universities from 1975/76 to 2009/10” shows that from the mid-1970s to the late 1990s, the proportions of women grew, but after that period stagnated until the mid-2000s.<sup>56</sup>

The glass ceiling index illustrates that the chances of advancement of the female teaching staff are still significantly lower than those of the male teaching staff, with a slight improvement of chances since 2008.<sup>57</sup>

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<sup>55</sup> Cf. Löschnigg et al. 2010: p. 3

<sup>56</sup> See annex 2, figure 1

<sup>57</sup> See annex 2, figure 2

The increasing proportions of women throughout all public universities are opposed to the highly unequal situation at some universities.

In 2009, the University of Veterinary Medicine had the highest percentage of women (58 %), followed by the Academy of Fine Arts, the University of Art and Design Linz as well as the Medical Universities and the Universities of Graz, Vienna and Klagenfurt. The Universities of Technology and the University of Mining in Leoben show extremely low proportions of women. Thus field-specific differences can be observed, with women having comparatively more chances of participation in veterinary medicine as well as in human medicine. In artistic disciplines women have higher chances at an employment as well.<sup>58</sup>

The heterogeneity between the universities does not only become apparent by the proportions of women, but also by their evolution. From 2006 to 2009, the University of Art and Design Linz had the highest rate of increase (2 percentage points per year). Next on the list are the University of Krems and the Academy of Fine Arts, both having a rate of increase of almost 1 percentage point. But also the Medical University of Innsbruck, the University of Applied Arts, the University of Natural Resources and Life Sciences and the University of Leoben increased their proportion of women by 1 percentage point per year in this period of time. In the artistic and medical university field, the proportion of women is not only comparatively high, but it has also continued to grow in recent years. Rather male-dominated universities like the University of Natural Resources and Life Sciences or the University of Leoben recorded a slight growth in female teaching staff, as opposed to their traditionally low proportions of women.

A look at the average growth rates of the proportions of female professors reveals that the proportion of female professors has risen in the Academy of Fine Arts, the University of Veterinary Medicine and the University of Klagenfurt. Arts universities in particular show a smaller difference between the proportions of female professors and female assistants, which is why in these universities better chances of advancement into the highest levels exist.<sup>59</sup>

#### *Gender gap on the level of students*

Since the late 1990s, more female than male students have enrolled in Austrian Universities. Out of the 255,561 regular students in the winter semester 2009/10, 53.7 % were women and 46.3 % were men. In 2000/01, the universities registered a general drop of student numbers by 20 % in total, which is due to the introduction of tuition fees<sup>60</sup>. Gender segregation according to fields of study still exists: Whereas in 2009/10, the proportion of men in the humanities was 29.48 %, men constituted a clear majority in technical studies (78.14 %)<sup>61</sup>. Due to the implementation of the Bachelor and Master programmes in the course of the Bologna process, the tendencies in the gender distribution were as follows: Upon finishing their Bachelor programme in 2007/08, men continued more often with a Master programme than women (88.5 % vs. 79.2 %). This is due in part to the fact that in the natural sciences, the switch to the three-tier system was put into effect earlier than in the humanities.<sup>62</sup> However, the gender difference within the individual branches of study is significant as well, amounting e.g. to 8 % in branches of the natural sciences and 11 % in branches of the social sciences and economics. Furthermore, the gender gap to the detriment of women continues to grow.<sup>63</sup> When asked about their plans of study, male Bachelor students stated more often than female ones that they intended to do a Master

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<sup>58</sup> See annex 2, figure 3

<sup>59</sup> See annex 2, figure 4

<sup>60</sup> Cf. Statistics Austria 2010

<sup>61</sup> Cf. Statistics Austria 2010

<sup>62</sup> Cf. Angel et al. 2010a

<sup>63</sup> Cf. Angel et al. 2010a; Gärtner & Himpele 2010

programme, the gender gap being 15 %. In general it can be said that the lower the social class of origin, the larger the gender gap.<sup>64</sup>

The proportion of women gaining a doctorate at Austrian universities has increased from 43 % in early 2000 to 47 % in the winter semester 2009/10.<sup>65</sup>

### **Recommendations:**

*Diversification of educational choices and reduction of persistent gender disparities in the education system:*

- Mandatory inclusion of the category “gender” into the training and continuing training of teachers of all grades (with the following contents: theoretical knowledge about gender relations, reflection on one’s own gender image, implementation in the pedagogical practices – teaching contents, teaching materials, gender-sensitive methods and didactics)
- Implementation of all-day schools (homework supervision and studying included) at least for compulsory schools
- In order to break down the gender-segregated labour market and enable men to take over (private) care work, enhanced efforts from the kindergarten to primary school to secondary school are required.
- The “Guideline on the portrayal of women and men in teaching materials” (former Federal Ministry for Education, Science and Culture 2003) needs to serve, in a potentially revised and updated version, as a compulsory basis for the approval of schoolbooks. This requires the appointment of trained expert committee members.
- For the implementation of gender mainstreaming in the school and education sector, adequate resources need to be provided, in particular (external) expert gender knowledge, money and time.
- As part of selection procedures regarding leadership functions in the school system, the gender and diversity competences demanded in the job profile need to be inquired and verified in actual fact. This requires the appointment of trained assessment-centre appointees.
- For promoting the diversification of educational choices in fields of science and work with strong gender connotations like the STEM fields (science, technology, engineering, mathematics) or the social sciences and the humanities, enhanced measures and efforts are required.
- In fields of science and work with strong gender connotations like physics, the contents and methods of gender-sensitive pedagogy need to be introduced.

*Adult education:*

- Gender analysis of data regarding continuing education in order to identify structural disadvantages of women
- Enabling both part-time and full-time employees to take part in in-company continuing education

*Universities:*

Teaching staff at public universities:

- Support women in leading functions through offering education and supervision. Promote women’s representation in committees and boards e.g. by reducing their teaching duties proportionally. Institutionalise gender-sensitivity trainings for committee members and/or persons in leading functions.

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<sup>64</sup> Cf. Angel et al. 2010a

<sup>65</sup> Cf. Angel et al. 2010b

- Instruct universities to implement the promotion of women and gender mainstreaming as part of “active personnel development”<sup>66</sup> – with the aim of supporting women with their career plans and making career positions available to them.
- Take measures for the compatibility of academic gainful work and private care work, e.g. by enhancing child care facilities.
- Further enhance the promotion of women and increase the understanding of informal career barriers, e.g. through the analysis of gender bias when assessing scientific performance in appointment procedures or in the course of Peer Reviews.

Students:

- The choice of study fields is still structured in great measure according to gender. The representation of women in technical fields of study needs to be enhanced by adequate measures that begin already in the secondary education sector.
- The gender gap regarding the transition from a Bachelor’s to a Master’s degree evolves to the detriment of women. This evolution needs to be further observed and influenced in time.

## Article 11 CEDAW - Labour Market

*Abstract:* Despite considerable progress in the labour market, there are still persistent problems regarding the equality of women and men. Good education and an increasing employment rate of women are opposed to a strong occupational segregation, a marked increase of part time, a high share of employment in the low-pay sector, lacking chances of advancement for women and a continuing high gender wage gap of almost 40 % (not working-time adjusted).

With the adoption of the National Action Plan for Gender Equality in the Labour Market, an important programme for fighting disadvantages of women in this respect was developed. Implementing the extensive measures provided therein is necessary and desirable. The following are particularly important:

### Recommendations:

- Expansion of all-day child care offers (from toddler age), of all-day schools and/or all-day care at schools and of offers regarding care and assistance for adults
- Measures regarding atypical occupational choices of girls and boys in schools and companies as well as options of reorientation for adult women
- As part of the implementation of gender budgeting, obligatory gender analyses should be undertaken and a strategic overall concept should be developed, integrating the know-how of independent experts

### a. Right to work and to the same employment opportunities (Article 11 (1) letters a and b CEDAW)

*Author: Sybille Pirklbauer*

The creation of a National Action Plan for Gender Equality in the Labour Market has marked a political milestone in combating disadvantages of women in the employment field. It contains a broad range of measures necessary to tackle the various problems still existing in the labour market.

<sup>66</sup> Pfeil 2010, p. 288

Accordingly, the employment rate in Austria increases, but converted into full time, the women's employment rate stagnates, being just under 53 % in 2009. This is due to the strong increase of part time work. With a rate of 43 %, Austria is well above the EU average of 32 %. A particularly precarious form of part time, minor employment ("geringfügige Beschäftigung" with a maximum monthly income of € 374 (2011), has risen significantly as well: In 2005, there was an average of about 230,000 minor employment relationships, whereas in 2010, this number increased to an average of about 296,000. In 2010, the percentage of women was about 65 %. The vast majority of these women (57 %) state family obligations, in particular care responsibilities, as reasons for working part-time.<sup>67</sup>

In the low-pay sector (two thirds of the median wage = € 7.65 gross per hour), women are clearly overrepresented as well. 24.2 % of women, but only 7.4 % of men are among the low-pay employees.<sup>68</sup> Thus many women do not earn a living wage due to part-time and/or low hourly wages.

The negative impacts of the financial and economic crisis on the labour market first became apparent in the male-dominated industrial sector. The female-dominated service sector was only affected later and to a lesser extent. Accordingly, from 2008 to 2010, the unemployment rate of men increased by 27 % (from 143,000 to 182,000). With the women seeking employment (those attending trainings included), the increase was strong as well (18 %), but significantly lower (120,000 to 142,000) than with men.

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

### **Recommendations:**

- Expansion of all-day child care offers (from toddler age), of all-day schools and/or all-day care at schools and of offers regarding care and assistance for adults
- Ensure that collective agreements and pay schemes are not discriminating against women
- Equal opportunities for part-time employees regarding in-company continuing education and career advancement and effective sanctions in cases of discrimination
- Counselling offers for companies in order to promote the return to the labour market (management of parental leave by companies, making use of the Public Employment Service's flexibility counselling)
- Introduction of an unpaid parental leave of four weeks for fathers and entitlement to parental (part) time for all employees (also in small companies and with a short employment duration), so that part time work due to child care responsibilities is divided more equitably among women and men
- Minimum living wage which is distinctly above the poverty risk threshold on full time
- Binding gender quota for the appointment of boards of directors in large corporations and companies with limited liability
- Implementing gender mainstreaming in the public allocation of contracts and subsidies
- Enhanced implementation of the law on equal treatment (option of class action, higher indemnities)

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<sup>67</sup> Cf. Statistics Austria, Arbeitskräfteerhebung - AKE 2008

<sup>68</sup> Cf. Statistics Austria, VESTE 2006, analysis from 2010

## **b. Right to free choice of profession and employment (Article 11 (1) letter c CEDAW)**

*Author: Sybille Pirklbauer*

With respect to education, young women have fully caught up with young men. In 1995 the proportion of young women with a graduation beyond compulsory school (upper secondary level) was 10 % below that of men, whereas in 2009 both sexes were at 86 %.<sup>69</sup> Regarding university degrees, young women are already ahead of men. However, there is still severe segregation concerning the choice of education: throughout all education levels, girls and young women are underrepresented in the fields of technology and natural sciences. This applies in particular to apprenticeship professions. Half of the women learn one of the three most common apprenticeship professions, but with men only one fifth does. Altogether, only one third of apprenticeships are occupied by women; in male-dominated fields, girls have hardly any chances.<sup>70</sup>

### **Recommendations:**

- Incentives for companies to admit women to “professions of the future“
- Focus on extended choice of profession in the Job Information Centres of the Public Employment Service (AMS)
- Area-covering expansion and core funding of women’s counselling centres, offers to facilitate labour market access for women with migration background
- Gender-sensitive mandatory vocational and educational orientation in all schools as a proper subject from secondary level 3; ensuring adequate training for the subject “gender-sensitive vocational orientation“
- Pooling of textile and technical handicrafts on secondary level 1
- Strengthening the cooperation between companies and schools
- Gender-sensitive orientation of all kindergartens and gender sensitivity as a basic principle of all pedagogues. For the transition period until the implementation of these points: streamlining and spreading existing individual initiatives for gender-sensitive kindergarten pedagogy and vocational orientation
- Enhancement of offers regarding the improvement of vocational qualifications of unemployed and employed women<sup>71</sup>

## **c. Right to equal remuneration (Article 11 (1) letter d CEDAW)**

*Author: Sybille Pirklbauer*

In Austria, the gender wage gap to the detriment of women amounts to 39.4 %<sup>72</sup> (not working-time adjusted), which is still as high as in 1998. The higher education level of women is counterbalanced in particular by increasing part-time employment. But even working-time adjusted, women have a disadvantage of 25.5 %<sup>73</sup>. With this difference regarding the gross hourly wages, Austria ranks second to last among the EU27.

Moreover, equal education does not translate into equal wages for women and men. A higher level of education entails a higher hourly wage for women – but at the same time a

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<sup>69</sup> Cf. Arbeitskräfteerhebung 2009

<sup>70</sup> Data: Austrian Economic Chambers 2009.

<sup>71</sup> There are very good individual projects for working women like „FRECH – Frauen ergreifen Chancen“ ([http://www.waif.at/uploads/tx\\_waifboxes/Fo\\_Frech.pdf](http://www.waif.at/uploads/tx_waifboxes/Fo_Frech.pdf)); FIT – Frauen in die Technik (<http://www.fitwien.at/>) or “Learn forever” for uneducated women (<http://www.learnforever.at/>); Offers of that kind have to be expanded nationwide.

<sup>72</sup> Cf. Lohnsteuerstatistik 2009

<sup>73</sup> Cf. Eurostat 2009

disadvantage compared to men. While female compulsory school graduates earn € 2 per hour less than men with the same education level (-20 %), the difference with university graduates is € 5.90 (-27 %).<sup>74</sup> 19 % of the income disparity cannot be explained by objective factors like working time, education, occupation etc.

The introduction of obligations of employers to prepare income reports (for large companies only) in 2011 and of the obligation to state the minimum remuneration in job advertisements constituted an important step towards more transparency. In practice, However, only few companies comply with stating the salaries in job advertisements. As far as the income reports are concerned, it remains to be seen if and how they will effectively be implemented.

#### **Recommendations:**

- Earliest possible evaluation of the income reports' implementation, in particular for companies without works council
- Based on the evaluation, undertaking a review of the reporting obligation and making necessary amendments (e.g. obligatory action plan if there are unjustifiable income disparities, access to the information for all employees, elimination of the confidentiality obligation, sanctions in case of non-compliance for companies)

#### **d. Social measures and child care (Article 11 (2) letter c CEDAW)**

Author: *Sybille Pirklbauer*

Compared to other EU countries, in Austria above-average sums of money are spent on family benefits. Most of the money is used for cash benefits, whereas comparatively limited funds are available for benefits in kind. From a women's policy point of view, a number of problems arise due to this structure, despite high benefits: The employment rate of women, but also the gender pay gap is above average. Austria is far from its objective of a fair division between paid and unpaid work, particularly of care work. It is the women who still perform a large share of unpaid care work.

##### *Tax breaks for families*

Due to the family policy measures introduced as part of the tax reform 2009, the imbalance between cash benefits and benefits in kind was exacerbated. The so-called "family package" costs in total € 510 million per year. In contrast the state's additional expenses for the expansion of child care infrastructure turned out to be minor (€ 15 million per year). In recent years, there have indeed been distinct improvements with respect to child care, but in order for Austria to be able to reach the EU-wide Barcelona objectives (33 % of children under the age of 3 in child care), 35,000 additional child care places for toddlers are required. Furthermore, better opening hours of at least 70,000 places for children between the ages of three and six are necessary (afternoon care, school holidays).

##### *Free preschool year*

Since 1 September 2009, the provinces have been obliged to ensure, as from the kindergarten year 2009/10, free half-day attendance of institutional child care facilities of 20 hours per week in the last year before starting school. The costs for the elimination of the parents' contributions are borne by the state, which provides a grant of € 70 million per year. This obligatory free "preschool year" was a vital step for the support and equal opportunities of all children, irrespective of their socio-economic background.

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<sup>74</sup> Cf. VESTE 2006

### *Federal funding for the expansion*

In general, a sufficient number of high-quality child care places would constitute an important requirement for the reconciliation of work and children of both parents and contribute significantly to equal opportunities of children – irrespective of their social background. In order to accelerate the expansion, the state annually provided € 15 million for the expansion from 2010 to 2012. These funds had to be co-financed by the provinces at a ratio of 4:3 (province: state). The data show that the federal grant was highly effective for the expansion of child care. Whereas from 2005 to 2007 the number of care places for children aged 0 to 6 rose by 9,370, it rose by 17,100 in the years of the grant. The number of nursery places, which were at the focus of the expansion, nearly quadrupled (from 1,000 to 3,750).

In 2011, the federal grant is € 10 million, in the following three years it will again be € 15 million. This is to be welcomed, but in order to fill the gap, an annual € 60 million would be required by the state for the next four years. This expenditure would not only benefit the children, but it would also have considerable employment effects: More than 10,000 jobs are created directly in child care, and furthermore more than 27,000 parents – in particular mothers – are able to work, who previously were prevented from doing so by their care obligations.

In the medium term, the budgetary revenues exceed these expenditures. After four years already, these expenditures pay off and there is a budget plus of € 78 million, thanks to the taxes from employment and the savings of unemployment benefits.

### **Recommendations:**

- The competence for the regulation of child care as educational institution should be assigned to the state. Introduction of nationwide quality standards and a right to child care – also outside of the children’s school days
- Specific expansion plan, including funding to reach the Barcelona objectives in child care (33 % care rate with children until their third birthday)
- Extensive offer of high-quality, professional and needs-based (primarily with respect to opening hours) child care for all age groups
- Enhancement of the occupational image of kindergarten pedagogues by training at the university and creation of a university chair of infant pedagogy
- Elimination of the cost barriers in child care, which hinder women’s employment and early support of children; in the medium term, child care as an education offer should become free
- Extension of the preschool year: all-day and free during holidays as well; continuation of language training, assessment of extension to a second year

### **e. Migrant women’s labour market situation and social inclusion**

*Author: Bettina Haidinger*

*Abstract:* Migrant women, in particular those from third countries, experience structural as well as individual disadvantages and discrimination in the labour market. They are not only confronted with disadvantages with respect to their employment and remuneration, but also with respect to social benefits resulting from employment. Compared to Austrian citizens, their access to welfare security is regulated more strictly and the amount of social benefits is usually lower. This form of structural discrimination implies lower incomes for migrant women as well as worse or no protection at all of their rights as employees and in the health and social security fields. This entails a higher risk of poverty.

On a structural level, horizontal as well as vertical labour market segregation and the unequal legal access criteria to the Austrian labour market impact on migrant women's position in the labour market. What kinds of jobs are available to migrant women largely depends on their legal status. Employment possibilities vary depending on whether or not they have status, and if so, the nature of their residence and settlement permit as well as the length of time they have legally resided in Austria is decisive. Persons immigrating to Austria as "family dependents" have access to the Austrian labour market after one year of legal residence.

Women from non-EEA countries are slightly overrepresented (51.8 %)<sup>75</sup> in residence permits granted to family dependents. Asylum-seeking women have only extremely restricted access to the Austrian labour market. With the recent amendment to the Alien Employment Act following an EU directive, some improvements have been made concerning the employment situation of students from third countries. With the same act the so-called Red-White-Red Card was introduced, creating the possibility for third-country nationals to work in Austria as key or highly skilled workers according to a point system. Which gender impact this new regulation will have is yet to be seen.

Due to these legal restrictions and experiences with discrimination elaborated below, migrants are obliged to seek employment within specific professions often characterised by irregular working time, low wages and high risk of accidents, and/or in the informal sector. In this case they lack the social insurance benefits linked to formal employment such as unemployment and other welfare benefits. Another important problem is that migrant women in informal employment de facto cannot enforce labour law-related rights and the minimum wages negotiated by the social partners for specific branches. If they try to do so, they risk losing their residence permit and being deported. Another important point is the issue of brain waste: Highly qualified migrant women often have to accept work far below their level of qualification, either because of the difficulties they experience in getting their diplomas recognised, or because the jobs that fit their qualifications have been given to Austrians, who receive preferential treatment on the labour market.

The Ombud for Equal Treatment periodically reports on cases of discrimination, including multiple discrimination. Female employees in particular are being confronted with derogatory comments and disadvantages because of wearing a headscarf and the size of their families. A request for care leave, which is established by law in Austria, was commented by referring to the "unusual family size compared to Austrian families" resulting in above-average consumption of care leave. A request for care leave, which is established by law in Austria, was commented by referring to the "unusual family size compared to Austrian families" resulting in above-average consumption of care leave. The Ombud reports that discrimination cases on the ground of ethnic origin, particularly insults and discrimination, occur when beginning or ending an employment relation.<sup>76</sup>

Horizontal labour market segregation appears as branch-specific concentration: In 2008, 17 % of all women born abroad were employed in the trade sector as well as in the health, veterinary and social care sector; 16 % in real estate/ business services (cleaning) and 14 % in the hotel and catering sector.<sup>77</sup> In this context, the presence of migrant women from third countries and the EU's Eastern neighbouring states in highly precarious employment in domestic and personal services (sex, domestic and care work) needs to be pointed out. The domestic sector as a working field is marked by specific employment conditions. The physical and partly emotional closeness between employee and employer, frequently within informal working conditions, imply a higher risk of insufficient remuneration and social

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<sup>75</sup> Frauenbericht, p. 333, data refer to 2008

<sup>76</sup> Ombud for Equal Treatment (2010): Joint report 2008/2009, Pursuant to Article 24 of the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment, Vienna

<sup>77</sup> Frauenbericht, p. 338

security; in extreme cases, the employee's physical integrity is violated. By the "legalisation" of 24-hours care in Austria, about 30,000 persons, particularly women from East Central Europe, were enabled to legalise their occupation as carer in Austria. However, this legalisation does not necessarily entail better working conditions. Most of the "legalised" care activities are carried out by self-employed so-called "house caretakers", whose occupations are neither subject to a minimum remuneration nor to regular work hours.

With respect to vertical labour market segregation, data show that particularly women from Turkey (72.3 %) and former Yugoslavia (64 %) are employed more often as workers (than as employees), compared to Austrian women.<sup>78</sup> In addition, more migrant women were employed in atypical employment relationships (shift work, provisional and temporary employment, fixed-term contracts) than women born in Austria.<sup>79</sup>

The labour market segregation also has an impact on the income of migrant women compared to Austrian women: In 2007, women with foreign nationality earned € 12,360, which is only 68.2 % of the gross annual income of Austrian women.<sup>80</sup> Taking into account only fully employed women, there is a striking imbalance according to the country of origin. In 2007, female EU citizens earned more than fully employed Austrian women, however, the intra-gender wage gap between women with Turkish nationality and Austrian women was one third, that between women from former Yugoslavia and Austrian women 28 %. Given the more precarious income situation of migrant women, they are also at higher risk of poverty than Austrian women (26 % vs. 14 %).<sup>81</sup>

Migrant women are more often affected by unemployment than native women. In 2010, 9.2 % of migrant women, but only 5.9 % of Austrian women were registered as unemployed.<sup>82</sup>

Unemployment hits migrant women from non-EEA countries harder than Austrian women since access to welfare payments has been drastically reduced, particularly for those not yet in possession of a long-term residence and settlement permit. Moreover, applying for and receiving welfare payments can work to the disadvantage of migrants' legal situation, as it can serve as proof of loss of income, which can be a reason for withdrawing their residence rights. Besides these structural barriers, allegedly deficient language skills and prejudices play a major role in their disadvantaged position on the Austrian labour market.

Despite their greater social vulnerability, third-country nationals have limited access to the means-tested minimum income scheme. To obtain a residence and settlement permit, they are obliged to prove being able to provide a livelihood for themselves and their families in order not to financially burden public funds. Family allowances and child care allowances are only considered in this calculation if the child has already obtained a regular residence permit in Austria, therefore only on applications for renewal of a residence permit.

Some groups of persons (students, artists) who do not have to prove their ability to provide a livelihood, but need a declaration of liability from a third person, may not apply for social assistance either. Migrants with a long-term residence and settlement permit may apply for means-tested social benefits; however their chances to obtain the Austrian citizenship diminish since they have to prove having been able to maintain their living on their own for the last three years before (potential) naturalisation.<sup>83</sup>

Elderly migrants face additional structural barriers in accessing specific social benefits: the entitlement to the federal care allowance depends on pension payments and the duration of

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<sup>78</sup> Frauenbericht, p. 339

<sup>79</sup> Frauenbericht, p. 342

<sup>80</sup> Frauenbericht, p. 344

<sup>81</sup> Frauenbericht, p. 346

<sup>82</sup> See <http://iambweb.ams.or.at/ambweb/AmbwebServlet?trn=start>

<sup>83</sup> See <http://deserteursberatung.at/recht/article/1038/597/>

stay in Austria. To receive an old-age pension you have to have worked in Austria for 15 years within the last 30 years. Many migrants – and in particular female migrants – can only produce this amount of years of contribution when adding their working experiences abroad, but these years are not always recognized. Another barrier results from the fact that in some municipalities, e.g. in Vienna, persons without Austrian citizenship are not entitled to subsidiary social assistance, which is paid by provincial authorities. If they cannot afford a place in a nursing home by their own means, the difference is not covered by the subsidiary social assistance – as is the case with Austrian citizens.<sup>84</sup>

With respect to the pension system, a gradual “reform”<sup>85</sup> resulted in the tightening of the implementation of an existing rule that people applying for “means-tested equalisation supplement” (“Ausgleichszulage”) within pension insurance must have a “regular residence permit” in Austria. This means that by law, the equalisation supplement is not regarded as part of an insurance benefit, although several court decisions follow the interpretation of this supplement as an insurance benefit in a wider sense. This has two implications: Firstly, family reunification becomes more difficult for persons who, due to their precarious employment biographies – this primarily affects persons with migration background – are dependent on (but in fact also entitled to) the equalisation supplement to raise their small pensions. This is due to the fact that family reunification is only granted if the applicant can prove that his/her income is sufficient for him/herself as well as the partner. In the event that an equalisation supplement for pensions is granted, it is not counted as own income. Therefore, family reunification is “prevented” and made impossible for those persons already most jeopardised by social exclusion. However, these persons often have to stay in Austria due to health problems and cannot move to their country of origin. Secondly, this means that persons who decided not to stay in Austria on reaching their retirement age are not entitled to the equalisation supplement as part of a kind of minimum pension.<sup>86</sup>

### **Recommendations:**

- Recognition of educational qualifications acquired abroad and of informal qualifications
- Social (minimum) security and social rights irrespective of residence and family status as well as ensuring the assertion of labour-law related entitlements
- Elimination of the linkage between long-term residence prospects (citizenship included) and income as well as the independence from the social security system

### **f. Right to social security (Art. 11 (1) letter e CEDAW)**

*Author: Margit Appel*

*Abstract:* Benefits of the social welfare system are strongly linked to labour market entitlements. Furthermore, the calculation of social security benefits (unemployment assistance) and transfer payments (social welfare, means-tested minimum income scheme) is closely related to the way of life/household income. These factors provide for the continuation of existing inequalities in the labour market. The orientation of the social security system towards regular employment leads to the establishment and perpetuation of a higher poverty risk for women. “Women’s biographies need to be accepted and considered the norm, with social individual and derived rights taking effect, in order to reduce the higher than average poverty risk of women.”<sup>87</sup>

<sup>84</sup> City of Vienna 2006, Wiener Frauengesundheitsbericht, Vienna, p. 390

<sup>85</sup> Introduced in November 2009 as part of the 4th Sozialrechts-Änderungsgesetz (amending law on social legislation) 2009 - 4. SRÄG 2009; Federal Law Gazette 147/2009

<sup>86</sup> See <http://www.migrant.at/homepage-2006/stellungnahmen/stell-nag-nov-2010.pdf>

<sup>87</sup> Schlager, Christa (2009): Handbuch Armut in Österreich (*own translation*)

The at-risk-of-poverty-rate for women remains constant at 13 % in 2008 (men: 11 %), whereas differing profoundly in age and way of life. 196,000 of these women (6 %) live in consistent poverty. It should be noted that these numbers most possibly do not represent the actual extent of the gender-specific poverty risk. As is also stated in the 2009 – 2010 Social Report by the Federal Ministry of Labour, Social Affairs and Consumer Protection, surveys that are commonly based on household income assume that such an income benefits everyone in a household equally which might not correspond to reality.

The current gender-hierarchic division of labour (on the gainful labour market as well as between paid and unpaid work) still compromises women's chances to a secure livelihood and self-determined lifestyle. Both the primary distribution level and the transfer payment level (state redistribution function) failed to address this topic in a sensitive manner or to take measures in order to overcome inherent inequalities that discriminate women.

Access to employment that provides social security benefits and secures a person's livelihood can still be considered the best way to prevent the risk of poverty. However, gender-specific income differences have further exacerbated in recent years. This reveals that in many cases, market incomes alone cannot secure the livelihood of women.

Women account for the majority of social assistance recipients (53 %). For this reason, the design of the means-tested minimum income scheme is of particular significance for women. The grant of statutory health insurance benefits to all female recipients of a means-tested minimum income can be evaluated positively, because women carry a higher risk of illness due to their double burden and high (sole) responsibility. To mention another positive aspect, women who bring up their children alone are weighted equally to other adults as opposed to past provisions. However, this provision in no way does justice to the special financial burden of such households. The weighting factor needs to be set to a higher standard. A balance between the access to child care benefits and care services for female recipients of a means-tested minimum income and the extent of availability on the labour market demanded of them should be taken into further consideration. The current requirements of reasonableness concerning placement in the labour market are in great need of improvement. Currently, no restrictions on previous employment and earned income are being planned. Persons who have not yet acquired entitlements to the labour market may also be placed regardless of their education. In view of an already inherent dynamics of brain waste of women facing the risk of poverty, these requirements are to be objected.

## **Recommendations**

- Collection of data on the distribution of household income
- Support of a "50/50" division of labour between spouses
- Increase of the net-replacement rate for unemployment benefits and unemployment assistance ("Notstandshilfe"), possibly depending on the income level: higher percentage for low income
- Abolition of spousal income crediting upon the calculation of unemployment assistance ("Notstandshilfe"), which is an insurance benefit
- Public infrastructure improvements in terms of quantity and quality for child care and long-term care
- Considerations on legal entitlements for child care facilities or nursing care benefits for recipients of the means-tested minimum income scheme
- Higher weighting factor (e.g. 1.2) under the means-tested minimum income scheme for single parents
- Requirements of reasonableness which do not lead to a process of brain waste
- Implementation of a basic social security framework for children

## Article 12 CEDAW – Health

### a. Female health situation in Austria<sup>88</sup>

*Authors: Sylvia Groth, Christine Hirtl*

*Abstract:* Gender has a great influence on how healthy women and men of any age cope with certain stages of life, how often they fall ill, which kind of support and early detection, diagnoses and treatments (medical, psychotherapeutic, nursing, physiotherapeutic, rehabilitative, palliative and many more) they receive. However, the Austrian health care system still takes the male norm as the main indicator for health research and facilities. For this reason, the lives of women as well as their experiences with health and illness are not sufficiently represented in health care services.<sup>89</sup>

#### *Determinants of female health*

Socio-economic determinants, such as education, income, social prestige, urban/rural areas, culture, migration, social interaction and social networks influence both women's and men's health significantly.<sup>90</sup> Women do not enjoy equal status with men in socio-economic affairs plus they face a higher risk of poverty. They find themselves unemployed or in precarious employment situations more frequently than men. Women from migrant backgrounds in particular encounter difficulties in accessing education, employment, social networks and social prestige.<sup>91</sup> To improve the female health situation, it is necessary to incorporate health as a cross-cutting matter into all political spheres and to eliminate disadvantages for women.<sup>92</sup>

#### *Women as providers of the lay health care system and reproduction work*

Besides their gainful employment, women are responsible for the reproduction work in their family and networks. Women are providers of the lay health care system which treats approximately 80 % of all complaints and health problems. In these cases, professional health care is not made use of. In their role as multipliers and advisors, women and their physical condition affect their children's and family's health. These factors are hardly taken into account in the Austrian health care system.<sup>93</sup>

#### *Women as active participants of the health care system*

The Austrian health care system lacks women's participation and involvement – as insured persons, users or patients in the treatment process and as planning and decision experts. The participation of women could solve interface problems in the health care system and close gaps between health promotion, information, treatment, counselling and follow-up care.

<sup>88</sup> Federal Ministry of Health (2011): Frauengesundheitsbericht 2010/2011. Vienna [http://www.bmg.gv.at/cms/home/attachments/0/1/3/CH1004/CMS1299496168458/frauengesundheitsbericht\\_kurzfassung.pdf](http://www.bmg.gv.at/cms/home/attachments/0/1/3/CH1004/CMS1299496168458/frauengesundheitsbericht_kurzfassung.pdf) (accessed on June 1, 2011); Federal Minister for Women and Civil Service at the Austrian Federal Chancellery (2010): Frauenbericht 2010. Wien, <http://www.bka.gv.at/site/7207/default.aspx> (abgerufen am: 1.6.2011); Fachbeirat Frauengesundheit der Gesundheitsplattform Steiermark (2010): Verminderungen der Finanzmittel im Gesundheitsbereich: Auswirkungen auf die Gesundheit von Frauen. Positionspapier des Fachbeirats für Frauengesundheit. Graz, [http://www.verwaltung.steiermark.at/cms/dokumente/11150043\\_45359081/8bca9737/Positionspapier\\_Fachbeirat%20f%C3%BCr%20Frauengesundheit\\_J%C3%A4hner%202010.pdf](http://www.verwaltung.steiermark.at/cms/dokumente/11150043_45359081/8bca9737/Positionspapier_Fachbeirat%20f%C3%BCr%20Frauengesundheit_J%C3%A4hner%202010.pdf) (accessed on June 1, 2011); WHO (2010): Adelaide Statement on Health in all Policies – moving towards a shared governance of health and wellbeing. Geneva: WHO Press; WHO (2008): Closing the Gap in a generation. Health equity through action on the social determinants of health. Geneva: WHO Press;

<sup>89</sup> Cf. Federal Ministry of Health 2010

<sup>90</sup> Cf. WHO 2008

<sup>91</sup> Cf. Federal Minister for Women and Civil Service at the Austrian Federal Chancellery 2010

<sup>92</sup> Cf. WHO 2010

<sup>93</sup> Cf. Fachbeirat Frauengesundheit der Gesundheitsplattform Steiermark 2010

## Recommendations:

- Systematic gathering, recording and analysis of gender-specific health data and scientific studies (including women into study populations)
- Implementation of measures concerning mother and child's health (early childhood intervention)<sup>94</sup>
- Mandatory women's quota for health planning and decision-making bodies on the municipal, provincial and federal level

### b. Violence against women and the health care system<sup>95</sup>

Author: Anneliese Erdemgil-Brandstätter

*Abstract:* Violence against women and its consequences still mostly go unrecognised in the Austrian health care system despite the implementation of various measures. There is a lack of country-wide standards, consistent legal implementation, sufficient resources and consistent sensitisation measures for all occupational and professional groups concerned (including all relevant actors). Data collection and interdisciplinary research on this topic can also be considered insufficient.

#### *Insufficient knowledge in the health care system<sup>96</sup>*

In many cases, female victims of violence in need of help turn to health care institutions only. The fact that women who turn to the police do not overlap with those turning to health care institutions reveals that in many cases health care employees serve as first contact persons – in many cases however they fail to identify effects of violence. The reason for this deficiency can be found in a lack of information or day-to-day work stress, but also in the fact that women do not talk about the causes of injuries and/or psychosomatic illnesses (due to shame and guilt feelings, for fear of further violence or that people would not believe them). If (post-traumatic) consequences of violence, which can even occur years later, are not

<sup>94</sup> Cf. National Centre on Early Prevention (ed.) (2009): Materialien zu frühen Hilfen. Expertise - Interventions- und Präventionsmaßnahmen im Bereich frühe Hilfen. Cologne, Germany

<sup>95</sup> Federal Ministry of Economy, Family and Youth (2008): Gewalt gegen Kinder – Leitfaden für die Kinderschutzarbeit in Gesundheitsberufen. Vienna; Federal Ministry of Economy, Family and Youth, Schleicher B (2010): Gesundheitliche Versorgung gewaltbetroffener Frauen. Gesundheitliche Versorgung gewaltbetroffener Frauen. Vienna; Brzank P, Hahn D, Hellbernd (2006): Gesundheitliche Folgen häuslicher und sexueller Gewalt erkennen. Federal Health Bulletin 49 (8); Erdemgil-Brandstätter, A (2010): Häusliche Gewalt - Schwerpunkt Frauen und Kinder. Berufsgruppenspezifische Schulungskonzepte für medizinische Berufe.; Erdemgil-Brandstätter, A: Häusliche Gewalt – Schwerpunkt Frauen. Implementierung von Interventionsprojekten. Grundlagen für die Bildung von interdisziplinären Arbeits- bzw. Opferschutzgruppen in Kliniken. 00-11; Glammeier S, Müller U, Schröttle M (2004): Unterstützungs- und Hilfsbedarf aus der Sicht gewaltbetroffener Frauen. Berlin; Gloor D, Meier H (2004): Frauen, Gesundheit und Gewalt im sozialen Nahraum. Repräsentativbefragung bei Patientinnen der Maternité Inselhof Triemli, Klinik für Geburtshilfe & Gynäkologie. Bern; Hagemann-White C, Bohne S (2003): Versorgungsbedarf und Anforderungen im Gesundheitswesen im Problembereich Gewalt gegen Frauen. Düsseldorf; Haller B, Dawid E, u.a. (2006): Kosten häuslicher Gewalt in Österreich. Wien; Hellbernd H, Brzanzk P, Wieners K et al (2004): Häusliche Gewalt gegen Frauen. Gesundheitliche Versorgung. Das S.I.G.N.A.L.-Interventionsprogramm. Berlin; NÖ Landesregierung – Frauenreferat, NÖ Landesakademie, NÖ Gesundheitsressort, Erdemgil-Brandstätter, A., u.a. (2011): Leitfaden Ihre Hilfe entscheidet - Die effiziente Intervention im Gesundheitswesen, Aktuelle Version.; Schröttle M, Martinez M. Condon S. et al (2006): Comparative reanalysis of prevalence of violence against women and health impact data in Europe – obstacles and possible solutions. CAHRV-Report 2006/07; Schröttle M, Müller U (2004): Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland. Berlin; BM für Jugend, Familie, Senioren & Frauen (1999): Verbundprojekt zur gesundheitlichen Situation von Frauen in Deutschland. Eine Bestandsaufnahme unter Berücksichtigung der unterschiedlichen Entwicklung in West- und Ostdeutschland. Berlin; WHO (2002): World report on violence and health. Genf; WHO (2003): Weltbericht Gewalt und Gesundheit. Regionalbüro Europa. Kopenhagen; WHO (2007): Experts meeting on the primary prevention of intimate partner violence and sexual violence. Geneva

<sup>96</sup> Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (1999): Verbundprojekt zur gesundheitlichen Situation von Frauen in Deutschland. Eine Bestandsaufnahme unter Berücksichtigung der unterschiedlichen Entwicklung in West- & Ostdeutschland. Berlin

identified, this might lead to misdiagnoses. Furthermore, the fact that adult women might have been victims of mental, physical or sexual violence or witnesses of violence in their childhood/youth should also be taken into consideration.

Acute and long-term effects of violence on the mental, physical, sexual and reproductive health as well as on the social life are manifold. If violence and its impact on the development of health disorders/illnesses remain unrecognised, this results in high costs. An overall lack of research in the public health sector stresses the topic's actuality and the need for interdisciplinary research.

*Follow-up costs for society – Austrian data*<sup>97</sup>

An international study conducted by the World Bank revealed that health care necessary for the treatment of violent actions creates high costs for outpatient/hospitalised treatment, medication, rehabilitation measures, sickness benefits, therapies and cures among others.

The Institute of Conflict Research (*Institut für Konfliktforschung IKF*) conducted a study on the costs of domestic violence in Austria.<sup>98</sup> Costs are calculated on the basis of empirical data in different sectors (executive branch, health care system, support structures, work stoppage). The study calculates a total amount of € 78 million per year caused by domestic violence, with both authors concluding that the actual costs lie above that amount due to the small number of available empirical data and their assumption that quite a number of cases are unknown or go unreported.

Follow-up costs of domestic violence in Austria per year (IKF 2006):

Total costs per year	€ 78 M
Costs in the health/medicine sector	€ 14 M

Even though quite a number of positive measures concerning public health have been implemented in Austria between 1995 and 2011<sup>99</sup> the following recommendations remain valid:

**Recommendations:**

- Creation of Austrian-wide standards<sup>100</sup>
- Legal provision on the provincial and federal level (e.g. hospital law, education laws)
- Commission on behalf of the cooperative hospital directory to make available personnel, chronological and financial resources for protection groups for victims of domestic violence

<sup>97</sup> Platform against domestic violence, Federal Ministry of Social Security and Generations, Dept. V/7, Edition 1, Vienna 2001

<sup>98</sup> Haller/Dawid et al. 2006

<sup>99</sup> Production of information material and guidelines for all health professions (e.g. standardised injury documentation, sets for preservation of evidence); interdisciplinary further education and training (doctors, nurses and other health care workers, midwives and others) in several provinces; effort of implementation in initial and further education and training sectors of health professions; legal establishment of hospital "victim protection groups" for child and youth victims of violence; legal obligation to form nationwide hospital "victim protection groups for adult victims of domestic violence (2009/2011); establishment of specific outpatient departments for forensics or female victims of sexual violence; enhanced public relations work; inclusion of chambers/professional groups; on-going policy advice, e.g. by female employees of victim protection facilities; increased research on particularly vulnerable groups of women (e.g. older women)

<sup>100</sup> Hellbernd, H (2004): Erfahrungen zur S.I.G.N.A.L - Projektimplantation. Vortrag Mai 2004. Berlin; Erdemgil-Brandstätter, A (2011): Häusliche Gewalt – Schwerpunkt Frauen. Implementation of intervention projects and the basic framework for the creation of interdisciplinary working and victim protection groups in hospitals

- Implementation of the topic of “violence against women – impacts of the health care system” into initial and further education and training sectors of medical, nursing and therapeutic professions
- Continuous further education for new employees and support of the internal communication flow
- Standardisation of applied training concepts <sup>101</sup>
- Creation of Austrian-wide standards for the recording/preservation of evidence (e.g. sets for preservation of evidence)
- Internal and external networking/cooperation within and between “child protection groups”, resident doctors, law enforcement, victim protection facilities and others
- Inclusion of this topic into “Austria’s structural healthcare plan” (*Strukturplan Gesundheit Österreich*)
- Involvement of medical boards, expert groups on nursing, midwives, psychotherapists and others
- Compilation of multilingual information material for women to promote health actions
- Interdisciplinary research and data preparation on the impact and importance of the health care system, closing of data gaps by means of health surveys<sup>102</sup> patient interviews in hospitals (extent of personal violence experiences, effects on the health), interinstitutional analysis of recorded police and hospital data<sup>103</sup>
- Integration of all activities into a national “Action Plan to reduce violence against women” and public relations work

## Article 14 CEDAW – Rural women

### a. Agriculture and rural development<sup>104</sup>

*Author: Maria Vogt*

*Abstract:* The EU agricultural policy is directed towards liberalisation, thus causing numerous negative effects, particularly on small farm holdings and women small farmers. Many young women migrate from rural areas with weak infrastructures and mostly (gender-) conservative orientations. Various regional development strategies and programmes still fall back on female gender role stereotypes. So far, the absence of gender-disaggregated regional databases and a combination of expert knowledge on gender equality and gender mainstreaming with the regional and rural development policy can be criticised. In most cases, male political and administrative agents decide on the further orientation of rural development as well as on access to resources in rural areas.

#### *The situation of agriculture*

Structural change has been further advanced in recent years due to an unchanged orientation of the European agricultural policy towards liberalisation and a global market. 14 % of all Austrian agricultural holdings closed down in the past ten years. The main cause for this development is to be found in an unfair distribution of public funding (subsidies), to be

<sup>101</sup> Cf. among others: Guideline “Gesundheitliche Versorgung gewaltbetroffener Frauen” (Federal Ministry of Economy, Family and Youth 2009)

<sup>102</sup> Health Survey 2015

<sup>103</sup> Schleicher (2010) p. 11

<sup>104</sup> Green Report 2010 Federal Ministry of Agriculture, Forestry, Environment and Water Management; Fact & Features 48, Federal Institute for Less Favoured and Mountainous Areas: Theresia Oedl-Wieser (2011): Umsetzung der Gleichstellung von Frauen und Männern in den Ländlichen Entwicklungsprogrammen in Österreich; discussion paper of the Austrian Mountain Farmers Association “via campesina austria” on the CAP from 2014

disbursed according to hectares and livestock. Subsidies account for 50 – 75 % of agricultural income, this leaves small agricultural holdings only little chance of survival. Income figures of agricultural holdings have been declining continuously, dropping by 28 % in 2009 in a year-on-year comparison. The reasons are manifold, such as poor harvests and the financial crisis, but they can also be found in the current agricultural policy, agricultural multinationals and speculations. On-going negotiations on the European Common Agricultural Policy CAP 2012 – 2020 do not seem to bring about a change towards the promotion of small farm holdings and organic farms. Many countries, including Austria, fight against changes. Thus, small farmers will have to keep on worrying about the future of their holdings.

The number of female managers in agricultural holdings has increased in recent years, amounting to 40 % in 2010. It should be noticed that women mainly lead small holdings, organic and mountain farms. On most small farms, one partner receives an external income. Many women start managing the agricultural holding when their husbands retire, which means that they act as female managers for a few years before their own retirement. Whether this shift can change the balance of power on farms might be questioned.

In recent years, fewer young women tend to decide to become farmers. Many farms are managed by men only or with the aid of their old parents. More than 60 % of men, but only 15 % of women apply for establishment bonuses. Young women from rural areas who enjoyed good vocational training usually leave those structurally weak areas. These areas seem less appealing to young women due to inadequate public transportation networks, an inadequate employment situation, conservative and traditional attitudes and only little openness towards alternative ways of life.

In spite of all that, the population highly respects the work of female farmers because they provide healthy food from the region. In many cases, they bear the sole responsibility for their family – children, food, caring for older relatives – and participate actively in church and association activities. Agricultural policy as well as related institutions and associations (Austrian Dairy Association, Austrian Raiffeisen Association, Austrian Farmers' Association, etc.) are still mostly dominated by men. Representation taking account of women's specific needs is strongly attached to political parties.<sup>105</sup>

#### *Programme for the Development of Rural Areas*

Many rural development programmes and measures appear to be “gender-neutral” – any person is allowed access to these measures. Political reality however reveals (re)produced and continued inequality of all kinds between women and men. A gender-specific analysis of problems and needs on the regional level is required in order to implement appropriate instruments to achieve the abolition of inequality.

Numerous strategies and programmes on rural development still fall back on women stereotypes. Educational and up-skilling measures consider them “workers with deficits” or “automatically participating parties”.

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<sup>105</sup> There are several female farmer organisations in Austria, such as: the Austrian Female Farmer Association, a female farmer organisation established by chamber law that counts a great number of members. Declares itself as independent from political parties, however stays close to the Austrian People's Party (ÖVP). The topics they cover include social affairs, farm and family, further training (subject-specific, personality, health, wellness and nutrition issues). Female farmer members of the Social Democratic Party (SPÖ) of Austria are currently establishing an organisation. The Austrian Green Female Farmers Association represents its political party's core values – environmental, solidary, direct democratic, non-violent, feminist. Topics: Protection of small farm holdings, preservation of jobs in rural areas and ecological sustainability of agriculture. The Austrian Mountain Farmers Association (OEVB) “Via Campesina Austria” and their working group on farm women set their basis on basis-oriented educational work. They cover topics such as agricultural and environmental policy, social law, development of personality, networking with other women's associations, encounter trips, female farmer cabaret.

So far, the absence of gender-disaggregated regional databases and a combination of expert knowledge on gender equality and gender mainstreaming with the regional and rural development policy can be criticised.

In most cases, male political and administrative agents decide on the further orientation of rural development as well as on gender-specific access to resources in rural areas. The European Union initiative LEADER+ is based on a bottom-up approach which demands the participation of the local population as well as autonomy in the decision-making process for so-called LAGs (Leader Action Groups) about local development strategies. The initiative primarily involves agents from tourism industries, cultural associations, social partners, politicians and regional associations. The participation of the local population is rather low in this area. An analysis of the promotion of equal opportunities for women and men on a personnel level shows that the proportion of female LAG managers was 38 % in 2010, whereas the number of board directors in LAGs amounted to only 5.8 %. The share of women in LAGs is 20 – 30 %, although it should amount to one third at the minimum. So far, only few initiatives and projects have been aiming at enhancing equal opportunities for women and men in rural areas. The reasons can be found in political-institutional structures and an orientation of measures towards function and content.

### **Recommendations:**

- Realignment of the European Common Agricultural Policy (CAP) from 2014 based on the concept of food sovereignty which claims the right of the European citizens to define their own agricultural and food policies. Its aim is to turn away from the WTO, genetic engineering, liberalisation, cut-throat competition and dumping prices and instead towards ecological regional food supply. This requires the aid of male and female farmers. This way, other regions' agricultural economies are not negatively affected; furthermore, great importance is attached to fair trade instead of cheap animal feed and agricultural fuel from overseas.
- Measures to support the establishment of new rural estates and access to land in order to make the occupation of a farmer attractive to many young people.
- Establishment of courses on "gender equality on farms" in agricultural schools
- Enhanced promotion of gender equality from the EU level to the regional level in order to reduce structural inequalities between women and men. Knowledge gained from previous studies throughout the EU is supposed to lead to a process of reflection in order to achieve equality of women and men in the development of rural areas in future programmes and measures.
- Implementation of a gender impact assessment for all measures based on the implementation of the future Programme for the Development of Rural Areas.
- Increase of gender competence among responsible authorities in politics and administration to enable the systematic implementation of gender equality and gender mainstreaming
- Communication needs to be intensified and public awareness for these topics must be raised.
- Preferential treatment of specific women's measures and projects – positive discrimination
- It is important to work towards the introduction of a women's quota for the composition of rural development bodies.
- Organisation of future programme measures so as to support the formation of women's networks in rural areas

## b. Development cooperation

*Authors: Brita Neuhold und Claudia Thallmayer*

*Abstract:* Development cooperation plays a crucial role in overcoming poverty which affects women all over the world disproportionately high. Austria has not yet fulfilled its obligation – incurred in 1970 and reaffirmed several times ever since – to provide 0.7 % of its gross national income (GNI) for Official Development Assistance (ODA). In 2009, Austria's respective contribution was 0.3 %. *Abstract: Abstract:* The endowment of funds for Austria's project- and programme oriented development cooperation organised by the Austrian Development Agency (ADA) remains low. Thus, Austria by far fails to provide an adequate contribution to the achievement of the women-specific Millennium Development Goals (MDG).

Article 14 requires that women be enabled to participate in the elaboration and implementation process of development plans on all levels. This principle is thoroughly disregarded by the Austrian government, as the Three-Year Programmes on Austrian Development Policy are developed without any involvement of women's organisations. Thus it was decided to abandon support for former focal countries in Central America and Africa and to establish instead a new focus on countries within the region of the Black Sea. This new focus of Austria's development cooperation shows a clear orientation towards economic interests and was agreed on without any consultation of Austrian women's NGOs.

The Concluding Comments of the CEDAW Committee on Austria's 6th State Report (2007)<sup>106</sup> requested the integration of a gender perspective and the reflection of CEDAW in all efforts to achieve the MDGs. This recommendation, however, has only partially been implemented by Austria.

As far as programmes organised by the Austrian Development Agency (ADA) are concerned, the target "gender equality and women's empowerment" can be found in 72 % of all new commitments as either a primary (5%) or a significant secondary (67%) goal.<sup>107</sup> In principle, the implementation of a gender perspective is observed by the ADA, but the primary focus on "gender equality and women's empowerment" should be strengthened, since the volume of financial resources dedicated to this target in 2009 – amounting to € 5 million and corresponding to 5% of ADA funds – is very low indeed.

Moreover, it must be considered, that ADA's resources only account for 11% of all financial flows of official development cooperation, administrative costs included.<sup>108</sup> The lion's share of Austria's Official Development Assistance (ODA) is directed towards areas of minor importance for the achievement of the MDGs and the strengthening of women's positions in general, such as expenditures for asylum seekers living in Austria, imputed costs for students from developing countries, debt-relief, export promotion or contributions to international financial institutions.

As decided in 2010, ADA's budget is supposed to be massively reduced by one third by 2014, thus raising little hope for any improvements in the advancement of women in the framework of development cooperation.

Austria has also drastically reduced its voluntary contributions to UN institutions and does not provide any recognisable support to the Offensive on the Health of Women and Children

<sup>106</sup> United Nations, Convention on the Elimination of all Forms of Discrimination against Women: Austria's 6th Periodical Report – Concluding Comments by the Committee on the Elimination of All Forms of Discrimination against Women, item 34, <http://www.frauen.bka.gv.at/DocView.axd?CobId=24130>

<sup>107</sup> Federal Ministry for European and International Affairs (2010): Report 2009 – Austria's Official Development Assistance (ODA), [http://www.entwicklung.at/uploads/media/ODA-Bericht\\_2009\\_Web\\_02.pdf](http://www.entwicklung.at/uploads/media/ODA-Bericht_2009_Web_02.pdf)

<sup>108</sup> Austrian Research Foundation for International Development (2010): Krisen und Entwicklung, p.76

which was announced by UN Secretary-General Ban Ki-moon in September 2010 during the review of progress of the implementation of MDGs, an effort which aims for a \$ 40 milliard raise over a five-year period.<sup>109</sup> On the other hand, Austria has not reduced means for international financial institutions, although the advancement of women in this area is much lower if existent at all.

Thus, Austria does not comply with its obligations to adequately contribute to MDG achievement and to fulfil their aims in promoting gender equality and women's empowerment (goal 3), improving maternal health (goal 5) and combating HIV/AIDS, malaria and other diseases (goal 6)<sup>110</sup>. The intermediate target – to provide 0.51 % of GNI for development cooperation by 2010 – has failed (in 2009, Austria's contribution amounted to 0.3 %; EU average: 0.44 %). Given the decision on budgetary cuts for the next years, an increase of flows for development cooperation to 0.7 % by 2015 cannot be expected.

### Recommendations:

- Austria must undertake all efforts to achieve the target of assigning 0.7 % of GNI to development cooperation by 2015 and in this context increase its financial support for programmes and projects on gender equality and women's empowerment.
- The Austrian Federal Government must involve women's NGOs in Austria and in partner countries in the process of developing geographic and thematic foci within the framework of ODA. Moreover, Austrian Development Cooperation should be directed mainly towards least developed countries, it should be participatory and include the promotion of women and civil society. Emphasis should be put on the strengthening of women's and human rights and the promotion of ecologically sustainable economic activities.

## Article 15 CEDAW – Equality before the law

Author: Marion Guerrero

*Abstract:* De facto access to law in Austria increasingly depends on financial resources, thus discriminating low-income earners – particularly single mothers, migrant women and female pensioners. Migrant women whose residence permit is dependent on their husband de facto possess only restricted access to the right to divorce due to rigid regulations on the obtainment of a residence permit because a possible divorce causes the loss of their residence permit.

### a. Civil proceedings

First of all, it should be welcomed that the Austrian Family Law Amendment Act 2009 (*Familienrechtsänderungsgesetz FamRÄG*)<sup>111</sup> provided for a few changes in maintenance proceedings, such as advances on maintenance payments. This change brought along the abolition of the requirement of the unsuccessful efforts to execute a claim to maintenance payments in order to obtain advances on maintenance payment.<sup>112</sup> These amendments among others have improved women's access to this law sector, particularly for mothers. Furthermore, victim protection in civil proceedings and alternative dispute resolution was improved by the adoption of the Second Protection Against Violence Act. At the same time, the Austrian Budget Implementation Act 2009 as well as the Austrian Family Law Amendment Act 2009 introduced some massive increases in costs regarding procedural

<sup>109</sup> UN (2010): UN secures \$40 billion for women's and children's health, <http://www.un.org/en/mdg/summit2010/>

<sup>110</sup> WIDE (2010): HIV/AIDS und Frauen – Herausforderungen für die Entwicklungspolitik, <http://www.oneworld.at/wide/2010/WIDE-Position-HIV-AIDS-und-Frauen-2010.pdf>

<sup>111</sup> Family Law Amendment Act 2009, Federal Law Gazette I 75/2009

<sup>112</sup> Neumayr (2010): Unterhaltsvorschuss neu. Änderungen des UVG mit dem FamRÄG 2009, ÖJZ 2010/20

law.<sup>113</sup> Claim filings, settlement agreements and the right of appeal in alternative dispute law have thus become more cost-intensive. This might be relevant to divorces and visitation rights proceedings. Mandatory costs for appeal procedures in regard to injunction orders have also been introduced recently.

Another important amendment pertains to the parties' statement of costs. This statement lists the costs of the proceeding of each party. To date, the court had to examine and amend the statement of costs if necessary, for example in cases where the costs listed were disproportionately high. Under the new regulation, this corrective does not apply if both parties have a legal representative available. If no party raises any objections against the opposing party's statement of costs within a fortnight, these statements serve as a basis for cost determination without undergoing any further examination.<sup>114</sup> It can be doubted whether this regulation provides adequate legal protection.<sup>115</sup>

Further amendments on court charges were implemented in early 2011. The Budget Implementation Act 2011 revised down the amount in controversy for civil proceedings: This brings along higher flat rate payments for lower amounts in controversy.<sup>116</sup> Despite the fact that the costs themselves have not been changed, these amendments will de facto lead to noticeable increases in court costs in a number of areas.<sup>117</sup>

Costs for court file copies have been raised to one euro per page.<sup>118</sup> This might cause substantial additional costs due to the fact that court records on proceedings often amounts to more than 100 pages.

In summary it can be said that recent amendments have led to a significant rise in civil proceedings costs. This entails severe financial burdens, particularly for low-income parties.<sup>119</sup>

According to the *Frauenbericht* 2010, women in Austria earn on average one quarter less than men.<sup>120</sup> Moreover, their risk of poverty is higher; this is particularly true for single women and women from migrant backgrounds.<sup>121</sup> In general, women possess lower asset amounts than men. Therefore, an increase of court costs will most likely pose a higher burden on women. The aforementioned amendments restrict access to proceedings for women to a large extent; this applies to proceedings such as divorces, visitation rights proceedings and other family law proceedings.

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<sup>113</sup> Budget Implementation Act 2009, Federal Law Gazette 52/2009; Family Law Amendment Act 2009, Federal Law Gazette I 75/2009

<sup>114</sup> The Budget Implementation Act 2011, Federal Law Gazette I No. 111/2010, clarifies once again that the opposing statement must indeed be adopted unexamined if no objections are raised.

<sup>115</sup> cf. Mayr (2009): Zivilverfahrensrechtliche Neuerungen des Budgetbegleitgesetzes 2009, *ecolex* 2009, pp. 562, 564

<sup>116</sup> Budget Implementation Act 2011, Federal Law Gazette I No. 111/2010. The so-called amount in controversy provides information about the monetary value of a lawsuit in civil proceedings. It indicates the monetary value of claims one party asserts towards the other. This makes it an important basis for procedural cost calculations. Flat rates for civil proceedings which are payable by the parties are calculated on basis of the amount in controversy.

<sup>117</sup> An example: To date, a flat rate amount of € 2,518 incurred from an amount in controversy of € 72,670; below this value, an amount of € 1,258 was payable. This limit was revised downwards; the higher level of costs now applies to € 70,000. Cf.: Novotny (2011): Verfahrensrechtliche Neuerungen im ASGG und ZPO, *inf* 2011, p. 33

<sup>118</sup> Budget Implementation Act 2011, Federal Law Gazette I No. 111/2010

<sup>119</sup> Some experts are of the opinion that higher costs might substantially affect access to law; Michael Auer, President of the Vienna Bar Association, expressed concern on the increase of costs during the Austrian Lawyers Conference 2009 in Vienna, describing the increase as "severe and unacceptable limitation of freedom".

Hruschka Bakk (2010): *Anwaltstag 2009 in Wien – Das Maß der Freiheit*, *AnwBl* 2010, p. 8

<sup>120</sup> Geisberger: *Geschlechtsspezifische Lohn- und Gehaltsunterschiede im europäischen Vergleich*, in: *Frauenbericht 2010* by the Austrian Federal Minister for Women and Civil Service within the Austrian Federal Chancellery, p. 193

<sup>121</sup> *ib.*

A divorce in particular might bring along substantial reduction of a woman's living standard; additional economic costs resulting from increased court fees might give rise to disproportional burdens on the financially weaker party, usually the woman.<sup>122</sup> In many family law proceedings, there is a high degree emotionality among parties, and informal power structures play a major role; In this context, financial obstacles might be misused as means of pressure or they might keep women from exercising their rights.

Such injustices cannot entirely be averted by legal aid. Even in cases where legal aid is granted, parties bear the litigation risk and have to reimburse legal fees to the winning party.<sup>123</sup> Furthermore, legal aid can be reclaimed within three years in case of a change in assets.<sup>124</sup>

### **Recommendations:**

- Increase of legal aid and/or – at least in sensitive cases – extension of legal aid insofar as to cover the opposing party's legal fees
- Reduction of costs in family law proceedings, especially when affecting women in precarious situations such as divorces, custody and visitation rights proceedings.

### **b. Access to divorce/separation for migrant women**

Access to the Austrian law poses particular obstacles for migrant women. In recent years, numerous amendments have been made to the Austrian Aliens' Act; only few non-experts are able to comprehend its contents.<sup>125</sup> The bureaucratic complexity might lead to serious problems for migrant women unfamiliar with the Austrian legal system.

Many women move to Austria to join their families ("Familiennachzug").<sup>126</sup> They are not entitled to a residence permit of their own. Rather, their right to reside in Austria is linked to their spouse's. Moreover, they are usually banned from employment. However, they have to meet the conditions of the Austrian Settlement and Residence Act, including economic requirements such as proof of accommodation, health insurance and fixed maintenance.<sup>127</sup> This further aggravated the economic dependence of married women on their husbands.<sup>128</sup>

If a person is no longer a member of the family, the right to a residence permit expires. This means that a divorce usually brings along the loss of the residence permit. Divorces caused by "predominant fault" on behalf of the spouse and/or domestic violence<sup>129</sup> (cf. also text on article 9 CEDAW – migrant women and violence) constitute an exception to the rule. If the woman concerned does not inform the authorities about these circumstances within one month, she might face an administrative penalty (albeit not the loss of her residence permit).<sup>130</sup> However, if a marriage without the existence of domestic violence is to be divorced pursuant to the legislation of a legal system unfamiliar with the concept of "divorce caused by predominant fault on behalf of the spouse", it is not possible to make an exception for female victims of violence regarding the loss of their residence permit.

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<sup>122</sup> Frauenbericht 2010, pp. 241ff. It states that "unexpected expenditures in the amount of € 900 could not be afforded by 29 % of women." Frauenbericht 2010, p. 244

<sup>123</sup> § 64 Code of Civil Procedure

<sup>124</sup> § 71 Code of Civil Procedure

<sup>125</sup> Cf.: Stern, Willkür (2010): Verrechtlichung, Erosion durch Hyperregulierung. Eine migrationsrechtliche Fieberkurve, in: Bakondy et al (ed.): Viel Glück! Migration heute, mandelbaum, Vienna, pp. 198-203

<sup>126</sup> Frauenbericht 2010, p. 321

<sup>127</sup> §§ 27, 41a ff, 46ff Residence and Settlement Act

<sup>128</sup> Fassmann/Reeger/Sari: Migrantinnenbericht 2007 by the Federal Chancellery and the Federal Minister for Women, Media and Civil Service, p. 38ff.

<sup>129</sup> § 27 Residence and Settlement Act

<sup>130</sup> This is clarified in material on the Austrian Aliens' Act 2011, Federal Law Gazette I 38/2011. Commentary to the gov't. bill 1078. Addenda to the stenographic minutes of the National Council 24. Legislative Period 15.

These regulations can be considered problematic in various respects. Many women do not seriously consider divorcing their violent husband for financial reasons or fear of residential consequences.<sup>131</sup> This de facto restricts migrant women's access to divorce.

### Recommendations:

- Separate residence permit for migrant women
- Grant of access to the labour market to all migrant women who have moved to Austria to join their families; implementation of measures to support women entering the labour market
- Reconsideration of administrative penalty in case of default, because such a case might further aggravate the sensitive situation of victims of violence
- For female recipients of legal aid: introduction of the opportunity to apply for a female lawyer

## Article 16 CEDAW – Marriage and family life

### a. Joint custody and child well-being

*Author: Erich Lehner*

*Abstract:* A father's presence has favourable effects on his children's development. However, such positive effects depend on how much time he spends with his children and on the quality of the relationship he manages to establish with his children and their mother. Joint custody has no bearing on this kind of quality. It might however have a negative impact in case of a contentious divorce. An "automatic joint custody" should hence be rejected.

A father's presence has favourable effects on his children's, sons' and daughters' development, "especially on the development of childish characteristics, such as empathy, social skills, school performance and problem coping skills".<sup>132</sup> However, these positive effects depend on various conditions. Children associate positive experiences with their father if he is able to communicate in a sensitive and caring way with his children, if he takes time for his children and if he looks after his children – based on a "50/50" division between partners. The quality of a father's relationship with his partner is also of great importance for a child's positive perception of the father.<sup>133</sup> For an appropriate understanding of these research results, it can be assumed that children generally spend quite a large amount of time with their mother. If the father plays an important and active role in his children's life, the child receives the opportunity of having two present parents. Thus, not the extent of fatherly presence is decisive, but the relationship quality he establishes with his children and their mother. The absence of the father for more than six months and during early childhood (first six years of age) can strain the further development of both girls and boys.<sup>134</sup> However, such burden is caused rather by difficult living conditions due to the parents' separation than by the father's absence itself.<sup>135</sup>

<sup>131</sup> Report on Migrant Women 2007, pp. 39ff.

<sup>132</sup> Fthenakis, Wassilios (1999): Engagierte Vaterschaft. Die sanfte Revolution in der Familie. Opladen, p. 122  
(own translation)

<sup>133</sup> Herlth, Alois (2002): Ressourcen der Vaterrolle. Familiäre Bedingungen der Vater-Kind-Beziehung, in: Walter, Heinz; Gießen, Heinz (ed.): Männer als Väter. Sozialwissenschaftliche Theorie und Empirie, p. 603

<sup>134</sup> Franz, Matthias et al. (1999): Wenn der Vater fehlt. Epidemiologische Befunde zur Bedeutung früher Abwesenheit des Vaters für die psychische Gesundheit im späteren Leben, in: Zeitschrift für psychosomatische Medizin. 45 (1999), pp. 260-278

<sup>135</sup> Lamb, Michael E. (1997): Fathers and Child Development: An Introductory Overview and Guide, in: Lamb, Michael E. (ed.): The Role of the Father in Child Development, New York, p. 11

### *Paternity and joint custody*

Based on the model of breadwinner and housewife/part-time worker model which substantially influences partnerships in Austria, joint custody (next to legal representation and administration of assets, care and rearing of children) is unequally distributed within marriages. According to this model, men are responsible for earning an income and women are in charge of family care. This implies that only few men have the chance to attain the aforementioned quality of fatherly presence in the family; at the same time, the mother becomes the most important person of reference for children in most cases. Individual cases notwithstanding, it is the right consequence for children to stay at their mother's after a divorce. Joint custody bestows upon men as a group the right of co-determination concerning certain areas they have not been present in before the divorce.

Joint custody is often said to positively affect the involvement of fathers after a separation. It has calming effects in conflict situations, raises the father's effort to stay in touch with his children and increases his payment performance. Evaluation studies that have been conducted after the introduction of joint custody in Germany<sup>136</sup>, Switzerland<sup>137</sup> and Austria<sup>138</sup> revealed that parties who chose joint custody experienced less conflicts, spent more time with their children and reported more regular payments. However, this raises the question if such effects are indeed direct results of joint custody, as the German and Austrian – but not the Swiss – study authors indicate. Both the German and the Austrian study might also support contrary conclusions based on their data.<sup>139</sup> Most important here is the fact that all present studies have been conducted shortly after the introduction of joint custody, thus making generalising statements seems unjustified. After thorough research on various US-American studies that have been conducted over a longer period, Kerima Kostka concludes that parents with joint custody arrangements do not necessarily cooperate better than others.<sup>140</sup> Judy Wallerstein and Joan Kelly, who at first preferred a minimum amount of time spent with the father over complete termination of contact, revised their assessment by the end of their long-term study and concluded that time spent with a parent not responsible for child care is of little importance to a child's mental development.<sup>141</sup> Further analyses revealed that it is not the amount of contact between father and child that is most important, but the quality of the father-child-relationship and the father's ability to communicate in a sensitive and gentle way. This quality however cannot be established by means of any form of child custody.<sup>142</sup>

Despite the fact that child care is unequally distributed in joint custody arrangements at the expense of women, it is the most common form in Austrian households. Joint custody amounts to 53.7 % of all divorced parents. Sole custody of mothers accounts for 38.4 %, sole custody of fathers for 3.5 %.<sup>143</sup> "Automatic joint custody" must be firmly rejected due to its negative effects in contentious divorces. After all, 23 % of all women with sole custody, but also 8.1 % of all women with joint custody file for divorce on grounds of violence.<sup>144</sup> A good

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<sup>136</sup> Proksch, Roland (2002): Begleitforschung zur Umsetzung der Neuregelungen zur Reform des Kindschaftsrechts. Schlussbericht. Cologne

<sup>137</sup> Büchler, Andrea; Simoni, Heidi (2009): Kinder und Scheidung. Der Einfluss der Rechtspraxis auf familiäre Übergänge. Zurich

<sup>138</sup> Figdor, Helmut; Barth-Richtarz, Judith (2004): Evaluationsstudie über die Auswirkungen der Neuregelungen des KindRÄG 2001, insbesondere der Obsorge beider Eltern zu BMJ-B4.440.6/0001-I 1/2004. Vienna

<sup>139</sup> Cf. Kostka, Kerima (2006): Die gemeinsame elterliche Sorge bei Trennung und Scheidung – ein Blick auf die Begleitforschung zur Kindschaftsrechtsreform, in: Deutscher Juristinnenbund, aktuelle Information, Heft 1, 2006; Lehner, Erich (2011): Kinder brauchen Väter! Brauchen Kinder Väter?, in: Zukunft 4/2011, pp. 6 - 9

<sup>140</sup> Kostka, Kerima (2008): Elterliche Sorge und Umgang bei Trennung und Scheidung unter besonderer Berücksichtigung der Perspektive des Kindes, in: Heiliger, Anita; Hack, Eva-K. (ed.): Vater um jeden Preis. Zur Kritik am Sorge- und Umgangsrecht. Munich, p. 331.

<sup>141</sup> Wallerstein, Judith et al. (2000): The Unexpected Legacy of Divorce. The 25 Year Landmark Study. New York, p. 215

<sup>142</sup> Kostka, Kerima (2008), p. 331

<sup>143</sup> Helmuth und Barth-Richtarz, Evaluationsstudie, p. 56

<sup>144</sup> *ib.*, p. 33

father-child-relationship is necessary and desirable for any child, but cannot be established by means of any particular form of child custody.

### **Recommendations:**

- Extension of extra-judicial settlement agreements instead of automatic joint custody
- Intensive political measures and activities to persuade men to assume their gender-specific obligations in household and family activities

## **Implementation of the rights of lesbian, bisexual and trans\* women**

*Author: Christine Klapeer*

*Abstract:* Lesbian, bisexual and trans\* women are particularly affected by on-going gender stereotypes concerning norms, expectations, attitudes and behaviour in Austria. They experience violence and discrimination on institutional, familial and individual levels due to their (alleged) deviation from such women stereotypes. Particular emphasis should be put on the on-going marginalisation, invisibility and pathologisation/ stigmatisation of homosexuality and trans\*identity in the Austrian education and health care system as well as on insufficient diversification and recognition of diverse gender-specific and sexual ways of expression and lifestyles in media and public. Lesbian, bisexual and trans\* women find only insufficient protection from discrimination, incitement to hatred and violence under the Austrian legal system.

### **a. Article 2 letter f CEDAW**

The Austrian Equal Treatment Act 2004 protects lesbian and bisexual women solely from discriminations in working life, but it does not cover discriminations in accessing goods and services. The ninth amendment to the Austrian Equal Treatment Act failed to extend discrimination protection “on basis of sexual discrimination” to goods and services, either. Specific cases of discrimination in the goods and services sector refer to housing<sup>145</sup> access to public houses<sup>146</sup> (cafés, restaurants) and other service establishments (such as hotels, public swimming pools and thermal baths) among others.

Lesbian, bisexual and trans\* women find only insufficient protection from incitement to hatred under the Austrian legal system. Pursuant to § 283 of the Austrian Criminal Code (*Strafgesetzbuch, StGB*), incitement to hatred as such is only chargeable if it is “apparent to a broad public” (irather than “public”). However, incitement to hatred and defamation of/towards lesbian, bisexual and trans\* women often occurs in semi-private spaces (such as public houses, events), which the Austrian law defines as public, but not in front of a broad public. This insufficient legal protection from incitement to hatred contradicts the Committee’s General Recommendation No. 19 (e).

Moreover, Austrian law fails to criminalise so-called hate crimes, including hatred and prejudice. Having such a criminal offence act might help to take into account the offender’s lesbophobic or transphobic motivation when assessing on criminal law sanctions, as well as to record such motivation. In Austria, violence against lesbian, bisexual and trans\* women in general receives only insufficient statistic awareness and analysis.<sup>147</sup> The CEDAW Committee has taken the occasion of its 2007 Concluding Comments to express concern

<sup>145</sup> Cf. the case of a lesbian couple that has become public because the couple was denied a rental flat in 2010. See also: Jus Amandi. Zeitschrift für gleichgeschlechtliche Liebe und Recht, No. 02/2010, p. 2.

<sup>146</sup> Cf. the discrimination of lesbian women in Innsbruck (Café Insieme) and Vienna public houses (Café Prückel, Discothek Tunnel) that has become public. See also: <http://www.queernews.at/archives/122>

<sup>147</sup> Also criticised by the European Union Agency for Fundamental Rights: European Union Agency for Fundamental Rights (FRA) (2009b): Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States. Part II The Social Situation. Brussels. p. 40

about “insufficient statistical data on violence against women” in Austria, a concern which particularly applies to acts of violence against lesbian, bisexual and trans\* women.<sup>148</sup>

Contrary to the Committee’s “General Recommendation No. 19”, no adequate measures have been taken to prevent violence against lesbian, bisexual and trans\* women in Austria to date. NGO and counselling centre representatives identified on-going domestic violence against young lesbian, bisexual and trans\* women as a high priority issue. Violence against lesbian, bisexual and trans\* women in Austria receives only insufficient recognition and counteracting due to its specific form of “gender-based violence”.

#### **b. Article 3 and Article 5 (1) letter a CEDAW**

Lesbian, bisexual and trans\* women are in particular affected by on-going gender stereotypes concerning norms, expectations, attitudes and behaviour the Convention aims to dismantle pursuant to Article 2 (f), Article 3 and Article 5.

The Committee reiterated its concern about the “continuation of deep-rooted traditional attitudes and stereotypes in regard to women’s and men’s roles and duties in family and society”<sup>149</sup> in its 2007 Concluding Comments, thus acknowledging the negative effects of this situation on both the scope of action and the implementation of human rights for lesbian, bisexual and trans\* women in Austria.

Contrary to the Committee’s Concluding Comments<sup>150</sup>, the Austrian government failed to take adequate awareness-raising measures to support the recognition of manifold sexual and gender-specific ways of expression, identity and lifestyle.

#### **c. Article 10 letter c CEDAW**

Sexual and gender-specific lifestyles departing from the heterosexual partnership model still experience marginalisation and stigmatisation in the Austrian education and training system, in syllabi and curricula.<sup>151</sup> Contrary to the Committee’s Concluding Comments from 2007<sup>152</sup>, only insufficient measures have been taken in order to de-pathologise, make visible and discuss the diversity of sexual and gender-wise ways of expression and lifestyles in the Austrian education and training system. Insufficient professional competence and knowledge of teachers about homosexuality might lead to insensitive behaviour towards lesbian, bisexual and trans\* female pupils’ experiences of discrimination and bullying in their everyday school life. Openly expressed homophobia and transphobia still can be said to proliferate in schools.

#### **d. Article 12 (1) CEDAW**

The general situation in Austria can be described as a situation of on-going discrimination, insufficient openness/sensitivity and a lack of specialised knowledge about lesbian, bisexual and trans\* lifestyles and their particular needs as well as about lesbian-/trans-specific health

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<sup>148</sup> United Nations (2007): Convention on the Elimination of all Forms of Discrimination against Women CEDAW. Concluding Comments of the Committee on the Elimination of all Forms of Discrimination against Women, Austria, Articles 23 and 24

<sup>149</sup> *ib.*, Article 17

<sup>150</sup> *ib.*, Article 18

<sup>151</sup> Cf. also with the ILGA Report “Social exclusion of young lesbian, gay, bisexual and transgender (LGBT) people in Europe”, documenting Austrian cases and experiences of pupils who experienced discrimination and stigmatisation in school. see: Takács, Judit/ ILGA Europe (2006): Social Exclusion of Young Lesbian, Gay, Bisexual and Transgender (LGBT) People in Europe. Brussels, pp. 30-58

<sup>152</sup> United Nations (2007): Convention on the Elimination of all Forms of Discrimination against Women CEDAW. Concluding Comments of the Committee on the Elimination of all Forms of Discrimination against Women, Austria, Article 18

issues<sup>153</sup>, thus leading to a partial shortage of medical care for this group.<sup>154</sup> Neither are any studies available on health behaviour and health risks of lesbian, bisexual and trans\* women in Austria, nor have any health policy measures been taken to enable non-discriminatory access to the health care system for this group.

An on-going pathologisation of lesbian, bisexual and trans\* lifestyles in the fields of psychological counselling and psychotherapy might as well be criticised.

#### **e. Article 16 (1) letter a CEDAW**

Same-sex couples in Austria are still refused access to civil marriage – pursuant to § 44 of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), there is an express marriage ban for same-sex couples in Austria. Couples of the same sex may merely enter into a so-called “Registered Partnership” – which however implies numerous examples of unequal treatment compared to civil marriage.<sup>155</sup>

#### **f. Article 16 (1) letters d and f CEDAW**

The lack of legal recognition of “Registered Partnerships” and of children living in such relationships as “family” (§ 92 Section 3 Civil Code of Austria; § 9 Section 4 Austrian Registered Partnership Act) are a clear indicator of discrimination of same-sex couples with children in Austria. Unlike spouses, Registered Partnerships are not considered “nuclear family”. According to Austrian law, the o partner’s children are legally defined as “strangers”, thus leading to serious disadvantages for those children. These disadvantages translate e.g. into the fact that those couples are not entitled to reducing working hours or taking parental leave for stepchild care (§§ 50b, 75 Austrian Public Service Act, § 29b Austrian Contract Staff Act, § 10 *Gehaltsgesetz* and others). Furthermore, they have limited access to care leave in order to take care of their stepchildren, compared to spouses (§ 16 Austrian Act on Paid Holidays; § 76 Austrian Public Service Act, § 29f Austrian Contract Staff Act and others) These disadvantages expressly contradict Article 16 (f) of the Convention.

Furthermore, the “adoption ban on other people’s children” (§ 179 Section 2 Civil Code of Austria; § 8 Section 4 Austrian Registered Partnership Act) and the absolute “stepchild adoption ban upon the respective parent’s entry into a Registered Partnership” contradict Article 16 (f) and Article 16 (g) of the Convention.

#### **g. Article 16 (1) letter g CEDAW**

Registered partners lose their family name and are marked by a new name category (“surname”). If partners wish to take the other’s name, this is only possible through building an unhyphenated double-barrelled name – in contrast to civil marriage (§ 2 Section 1 Z7a *Namensänderungsgesetz*). [Editor’s note: This regulation has been suspended by the Constitutional Court in November 2011 due to discriminatory reasons.]

#### **Recommendations:**

- Extensive orientation towards the Yogyakarta Principles in order to implement the CEDAW for lesbian, bisexual and trans\* women in Austria

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<sup>153</sup> This includes questions on the transmission of and the protection against HIV and other STD upon sexual contact with women

<sup>154</sup> Federal Ministry of Health (2011): *Österreichischer Frauengesundheitsbericht 2010/2011*, Vienna, p. 337

<sup>155</sup> Unequal treatment of Registered Partnership in comparison to matrimonial law, see: [http://www.rklambda.at/dokumente/publikationen/2009RKL\\_EPG\\_AbweichungenvomEherecht\\_PlenumNR\\_Final.pdf](http://www.rklambda.at/dokumente/publikationen/2009RKL_EPG_AbweichungenvomEherecht_PlenumNR_Final.pdf)

- Extension of the discrimination ban “on basis of sexual orientation” to the goods and services sector; amendment of the paragraph on incitement to hatred (§ 283 Austrian Criminal Code) and implementation<sup>156</sup> of an effective “hate crime” legislation
- Appropriate legal and administrative measures to collect statistics on violence against lesbian, bisexual and trans\* women; allocation of financial resources for analyses and prevention measures
- Public awareness-raising campaigns through media and in the general public in order to support diversification and legal recognition of various gender-specific and sexual ways of expression and lifestyles
- Awareness-raising training and sensitisation measures in schools and training/educational institutions
- Awareness-raising education, training and sensitisation measures for medical, psychological and psychotherapeutic professional
- Legal equality for heterosexual and same-sex partnerships, based on the introduction of a uniform legal institution to overcome problematic issues of civil marriage and Registered Partnerships
- Legal recognition of same-sex partnerships and their children as “families”
- Access to adoption and stepchild adoption as well as to medically assisted reproduction for lesbian and bisexual women (§ 2 Section 1 Austrian Reproductive Medicine Act)

## Implementation of the rights of women with disabilities<sup>157</sup>

*Authors: Austrian Women Lawyers Association and Teresa Lugstein*

Women with disabilities face various of discrimination in their every day lives.<sup>158</sup> Compared to men with disabilities, they cut back on education and gainful employment, face a higher risk of poverty and more often find themselves in precarious employment situations and dependency positions. Many disabled women have experienced denial of their womanhood which impedes their right to sexuality, sexual self-determination, partnerships, the start of a family and motherhood. They are affected by sexual violence more often than women without disabilities. Access to health care is more difficult for them as well.<sup>159</sup>

There are no women-specific groups representing the interests of women with disabilities in institutions and in the civil society.<sup>160</sup> Specific legal norms applicable to people with disabilities are not analysed with respect to gender aspects or possible ways of multiple discrimination and structural disadvantages of women.<sup>161</sup> Cuts in resources resulting from a budget consolidation for organisations and facilities supporting people with disabilities imply

<sup>156</sup> OSCE Guideline on the implementation of a “hate crime” legislation: <http://www.osce.org/de/odihr/36431>

<sup>157</sup> Cf. Tertinegg, Karin and Sauer, Birgit (2008): Context Study Austria, QUING Project, Vienna: Institute for Human Sciences (IWM), p. 63, [http://www.quing.eu/files/results/cs\\_austria](http://www.quing.eu/files/results/cs_austria)

<sup>157</sup> Cf. the 2009 draft of a regulation submitted by the Federal Ministry of Labour, Social Affairs, and Consumer Production on detailed criteria to assess the degree of disability (Assessment Ordinance).

<sup>158</sup> Cf. the representative survey on life situations and strains of impaired and disabled women in Germany commissioned just recently by the German Federal Ministry of Family Affairs, Senior Citizens Women and Youth [http://www.uni-bielefeld.de/IFF/for/zentrale\\_ergebnisse\\_kurzfassung.pdf](http://www.uni-bielefeld.de/IFF/for/zentrale_ergebnisse_kurzfassung.pdf)

<sup>159</sup> Cf. Austrian Women’s Health Report 2010/11, [http://www.bmg.gv.at/cms/home/attachments/5/3/5/CH1102/CMS1329822770089/frauengesundheitsbericht\\_kurzfassung.pdf](http://www.bmg.gv.at/cms/home/attachments/5/3/5/CH1102/CMS1329822770089/frauengesundheitsbericht_kurzfassung.pdf)

<sup>160</sup> Cf. Tertinegg, Karin and Sauer, Birgit (2008): Context Study Austria, QUING Project, Vienna: Institute for Human Sciences (IWM), p. 63, [http://www.quing.eu/files/results/cs\\_austria](http://www.quing.eu/files/results/cs_austria)

<sup>161</sup> Cf. 2009 draft of a regulation submitted by the Federal Ministry of Labour, Social Affairs, and Consumer Production on detailed criteria to assess the degree of disability (Assessment Ordinance).

great difficulties for women with disabilities due to structural multiple discrimination of women in the society.

Even though it is well-known that women with disabilities face a higher risk of becoming victims of violence, Austria has yet failed to conduct surveys on this topic. The sole comprehensive survey was conducted in 1996, commissioned by the Federal Ministry for Women.<sup>162</sup>

## **Recommendations:**<sup>163</sup>

### *General*

- Mandatory gender disability analyses of all legal norms involving people with disabilities, including relevant experts on women's rights and disabilities
- Allocation of resources in order to establish women-specific representation of interests in NGOs for women with disabilities
- Allocation of sufficient resources for organisations and facilities supporting people with disabilities; no further reduction of social benefits for people with disabilities
- Appointment of special commissioners for women's issues in institutions and facilities for persons with disabilities

### *Violence against women with disabilities*

- Preparation of scientific studies on violence against women with disabilities
- Allocation of sufficient resources for organisations and doctors' offices to provide barrier-free access to victim protection, support and counselling centres for women with disabilities as well as to establish barrier-free counselling and refuge centres
- Allocation of sufficient resources for organisations and facilities in order to design and provide barrier-free information – described in an easy-to-understand manner
- Right to same-sex nursing care
- Development of guidelines on violence prevention and intervention plans. Sponsors on the provincial level should stipulate in target and performance agreements the obligation of providers (especially providers of residential homes, workshops for disabled people, rehabilitation facilities etc.) to develop guidelines on violence prevention and intervention plans against violence for the purpose of quality assurance. The same applies to providers of hospitals, psychiatric hospitals etc.

### *Health promotion and family planning*

- Barrier-free access to health care facilities and surgeries; adjustment of medical equipment to the special needs of people with disabilities
- Sensitisation of health care employees on gender issues
- Provision of targeted support to parents and women with disabilities during pregnancy and motherhood
- Formation of a nationwide regulation on Personal Assistance and Parent Assistance as well as the development of needs-based long-term care insurance to enable a self-determined life

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<sup>162</sup> Zemp, Aiha/ Pircher, Erika (1996): Weil das alles weh tut mit Gewalt. Sexuelle Ausbeutung von Mädchen und Frauen mit Behinderung. Vienna

<sup>163</sup> These recommendations are based on the check list issued by the Weibernetz e.V. Politische Interessensvertretung behinderter Frauen [http://www.weibernetz.de/download/Checkliste\\_BRK\\_Frauen.pdf](http://www.weibernetz.de/download/Checkliste_BRK_Frauen.pdf) and on the measures of the Frauengesundheitsbericht 2010/2011

*Access to the labour market, gainful employment*

- Gender-specific evaluation of support programmes and social benefits for people with disabilities
- Implementation of gender and disability mainstreaming in existing employment and support programmes, inclusion and placement benefits including gender disability budgeting

## **Annex 1: List of authors and contact information**

Many authors have contributed to this shadow report, despite very limited resources and without receiving even a symbolic remuneration. In doing so, they have provided most useful information which is essential for an objective assessment of the implementation of CEDAW in Austria (see also the chapter on Article 2 CEDAW addressing on unpaid female work). Frauen:Rechte jetzt! would like to express its sincere gratitude and recognition to all those who have worked on this report.

### **Editorial team:**

#### **Coordination of contributions:**

Austrian Women Lawyers Association and Felice Drott (Frauen:Rechte jetzt!)

#### **Proofreading and layout**

Angelika Kartusch (Frauen:Rechte jetzt!) and Silvia Samhaber (Austrian Women's Shelter Network)

#### **Translation of the report from German to English:**

Katharina Aigner, Sophia Scherl and Valerie Weber

### **List of authors (by chapters):**

#### **Introduction and Executive Summary:**

Austrian Women Lawyers Association and Rosy Weiss

#### **Article 2**

Austrian Women Lawyers Association (chapter a)  
Luise Gubitzer, Elisabeth Klatzer, Katharina Mader (chapter b)

#### **Article 3**

Maja Sticker (chapter a)  
Brita Neuhold, Claudia Thallmayer (chapter b)  
Barbara Kühhas, Angelika Gerstacker (chapter c)

#### **Article 4**

Ulrike Weish

#### **Article 5**

Austrian Women Lawyers Association

#### **Article 6**

Maria Cristina Boidi and Evelyn Probst

#### **Article 9**

Katharina Echsel, Sandra Schmidjell, Sigrid Awart (chapters a-c)  
Margit Appel (chapter d)  
Maja Sticker, Cansel Demirdelen (chapter e)

#### **Article 10**

Claudia Schneider (chapter a)  
Julia Planitzer (chapter b)  
Margit Hartel, Johanna Hofbauer, Katharina Kreissl, Sophie Nix (chapter c)

#### **Article 11**

Sybille Pirklbauer (chapters a-d)  
Bettina Haidinger (chapter e)  
Margit Appel (chapter f)

**Article 12**

Sylvia Groth, Christine Hirtl (chapter a)  
Anneliese Erdemgil-Brandstätter (chapter b)

**Article 14**

Maria Vogt (chapter a)  
Brita Neuhold, Claudia Thallmayer (chapter b)

**Article 15**

Marion Guerrero

**Article 16**

Erich Lehner

**Implementation of the rights of lesbian, bisexual and trans\* women**

Christine Klapeer

**Implementation of the rights of women with disabilities**

Austrian Women Lawyers Association and Teresa Lugstein

**Contact information of the authors (in alphabetical order:**

**Awart, Sigrid**, Peregrina, Bildungs-, Beratungs- und Therapiezentrum für Immigrantinnen (Center for Education, Counselling and Therapy for Migrant Women), [www.peregrina.at](http://www.peregrina.at)

**Appel, Margit**, Chair of the Social Policy Department of KSOE (Catholic Social Academy of Austria), [www.ksoe.at/](http://www.ksoe.at/); member of the working group on female poverty of the Austrian Poverty Network "Armutskonferenz", <http://www.armutskonferenz.at/>

**Boidi, Maria Cristina**, Director at LEFÖ (Counselling, Education and Support for Migrant Women), [www.lefoe.at](http://www.lefoe.at)

**Demirdelen, Cansel**, Wiener Interventionsstelle gegen Gewalt in der Familie (Domestic Abuse Intervention Centre Vienna), [www.interventionsstelle-wien.at](http://www.interventionsstelle-wien.at)

**Echsel, Katharina**, Peregrina Bildungs-, Beratungs- und Therapiezentrum für Immigrantinnen (Center for Education, Counselling and Therapy for Migrant Women), [www.peregrina.at](http://www.peregrina.at)

**Erdemgil-Brandstätter, Anneliese**, Coordinator of Frauenberatungsstelle „Kassandra“ (Counselling for Women „Kassandra“) & Schulungsprojekt „Gewalt gegen Frauen – Die Bedeutung des Gesundheitswesens“ (Training project „Violence against Women – The relevance of the health sector“, [fortbildung\\_gewalt@gmx.at](mailto:fortbildung_gewalt@gmx.at), [www.gewaltgegenfrauen.at](http://www.gewaltgegenfrauen.at)

**Gerstacker, Angelika**, Officer for Press, Media & Advocacy at CARE Austria, [www.care.at](http://www.care.at)

**Groth, Sylvia**, Director of Frauengesundheitszentrum Graz (Women's Health Center Graz), [www.fgz.co.at](http://www.fgz.co.at)

**Gubitzer, Luise**, Head of the Institute for Institutional and Heterodox Economics at the Vienna University of Economics and Business, [www.wu.ac.at](http://www.wu.ac.at)

**Guerrero, Marion**, European University Institute, [www.eui.eu/](http://www.eui.eu/)

**Haidinger, Bettina**, FORBA - Forschungs- und Beratungsstelle Arbeitswelt (Working Life Research Centre, Vienna), [www.forba.at](http://www.forba.at)

**Hartel, Margit**, Quality Management & Program Delivery at the Vienna University of Economics and Business, [www.wu.ac.at](http://www.wu.ac.at)

**Hirtl, Christine**, Frauengesundheitszentrum Graz (Women's Health Center Graz), [www.fgz.co.at](http://www.fgz.co.at)

**Hofbauer, Johanna**, Institute for Sociology and Empirical Social Research at the Vienna University of Economics and Business, [www.wu.ac.at](http://www.wu.ac.at)

**Klapeer, Christine**, Lila Tipp Lesbenberatung (Lesbian Counselling Center), [www.villa.at/lilatip](http://www.villa.at/lilatip)

**Klatzer, Elisabeth**, Institute for Institutional and Heterodox Economics, Vienna University of Economics and Business, [www.wu.ac.at](http://www.wu.ac.at)

**Kreissl, Katharina**, Equality Politics and Political Human Resource Development, Renner Institute Vienna, <http://www.renner-institut.at/>

**Kühhas, Barbara**, Senior Gender Advisor, CARE Austria, [www.care.at](http://www.care.at)

**Lehner, Erich**, Psychoanalyst / Free practitioner, Research on men and gender and palliative care at the Alpen-Adria University, Faculty of Interdisciplinary Studies, Department of Palliative Care und Organisational Ethics, [www.erich-lehner.at](http://www.erich-lehner.at)

**Lugstein, Teresa**, Commissioner for Girls of the Land Salzburg, Sexual Pedagogue, Member of the Advisory Board on Disabled Persons, Salzburg, Rollifrau (wheel chair woman)

**Mader, Katharina**, Institute for Institutional and Heterodox Economics, Vienna University of Economics and Business, [www.wu.ac.at](http://www.wu.ac.at)

**Neuhold, Brita**, WIDE – Network for Women’s Rights and Feminist Perspectives in Development, / [www.wide-netzwerk.at](http://www.wide-netzwerk.at)

**Nix, Sophie**, Institute for Political Science, University Vienna, <http://politikwissenschaft.univie.ac.at/>

**Pirklbauer, Sybille**, Arbeiterkammer Wien, Abteilung Frauen – Familie (Chamber of Labour Vienna, Department Women – Family)

**Planitzer, Julia**, Ludwig Boltzmann Institute for Human Rights, <http://bim.lbg.ac.at/>

**Probst, Evelyn**, Director at LEFÖ (Counselling, Education and Support for Migrant Women), [www.lefoe.at](http://www.lefoe.at)

**Schmidjell, Sandra**, Peregrina (Center for Education, Counselling and Therapy for Migrant Women), [www.peregrina.at](http://www.peregrina.at)

**Schneider, Claudia**, Association Efeu, [www.efeu.or.at/](http://www.efeu.or.at/)

**Sticker, Maja**, Wiener Interventionsstelle gegen Gewalt in der Familie (Domestic Abuse Intervention Centre Vienna), [www.interventionsstelle-wien.at](http://www.interventionsstelle-wien.at)

**Thallmayer, Claudia**, WIDE – Network for Women’s Rights and Feminist Perspectives in Development, / [www.wide-netzwerk.at](http://www.wide-netzwerk.at)

**Verein österreichischer Juristinnen** (Austrian Women Lawyers’ Association), [www.juristinnen.at](http://www.juristinnen.at)

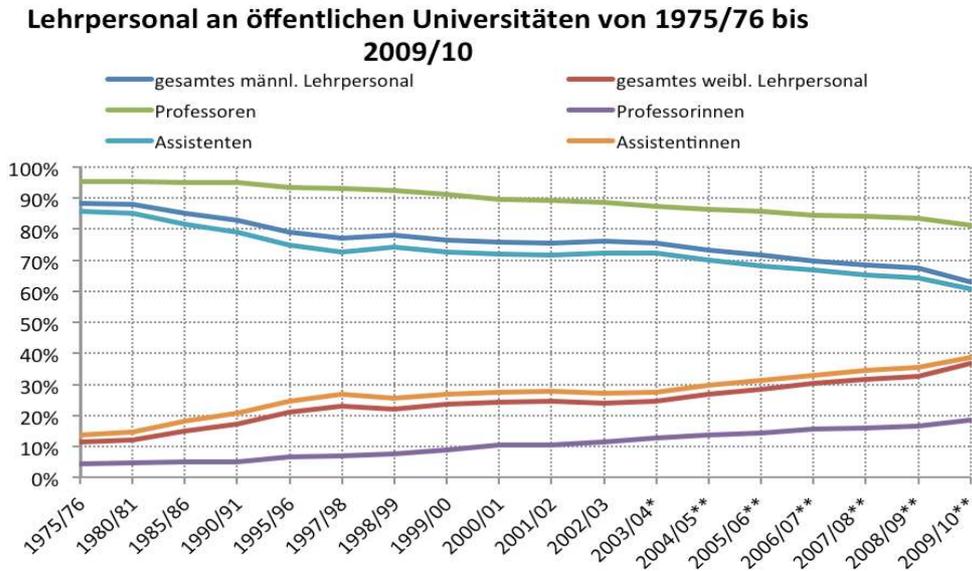
**Vogt, Maria**, Organic Farmer in Lower Austria, elected member of the District Council, cabaret artist, member of the women’s working group of Via Campesina Austria and of the women’s commission at La Via Campesina International, [www.viacampesina.at](http://www.viacampesina.at)

**Weish, Ulrike**, Media and Communications Scientist, University lecturer, adult educator and activist of the Austrian initiative 20.000 women, [www.20000frauen.at](http://www.20000frauen.at)

**Weiss, Rosy**, Hon. President of the International Alliance of Women

## Annex 2: Figures

Figure 1: Teaching staff at public universities (1975/1976 - 2009/2010)

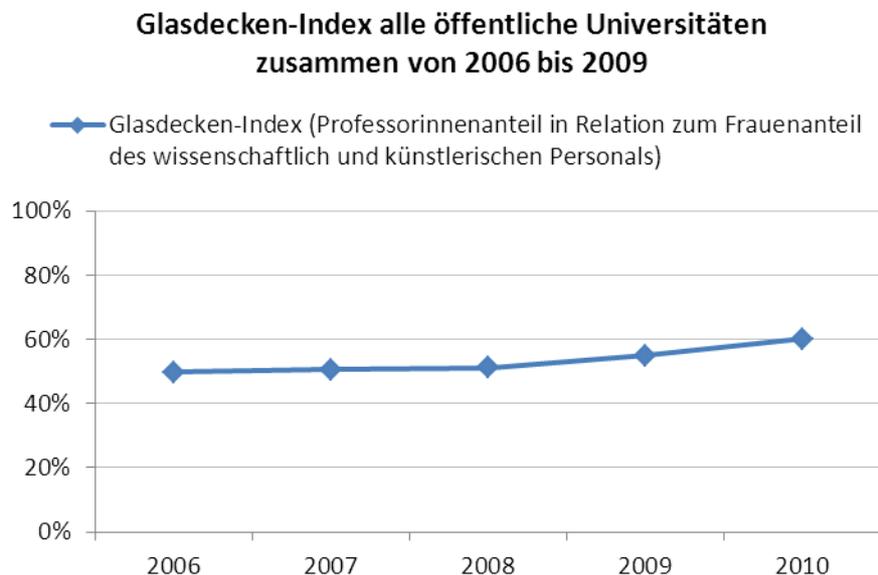


Source: Statistik Austria.

\*Vollzeitäquivalente, keine Personen. MitarbeiterInnen im Lehrbetrieb inkl. sonst Bedienstete. Quelle: BMBWK, Universitätsbericht 2005;

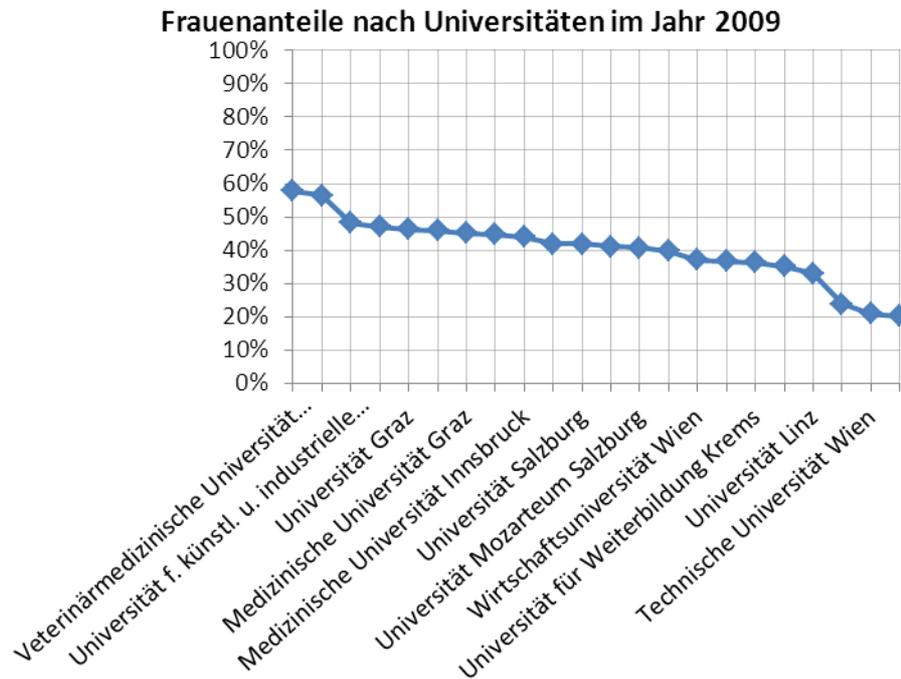
\*\*Vollzeitäquivalente, keine Personen. AssistentInnen inkl. sonst. Lehrpersonal. Quelle: Datawarehouse BMWF

Figure 2: Glass ceiling index at public universities (2006-2009)



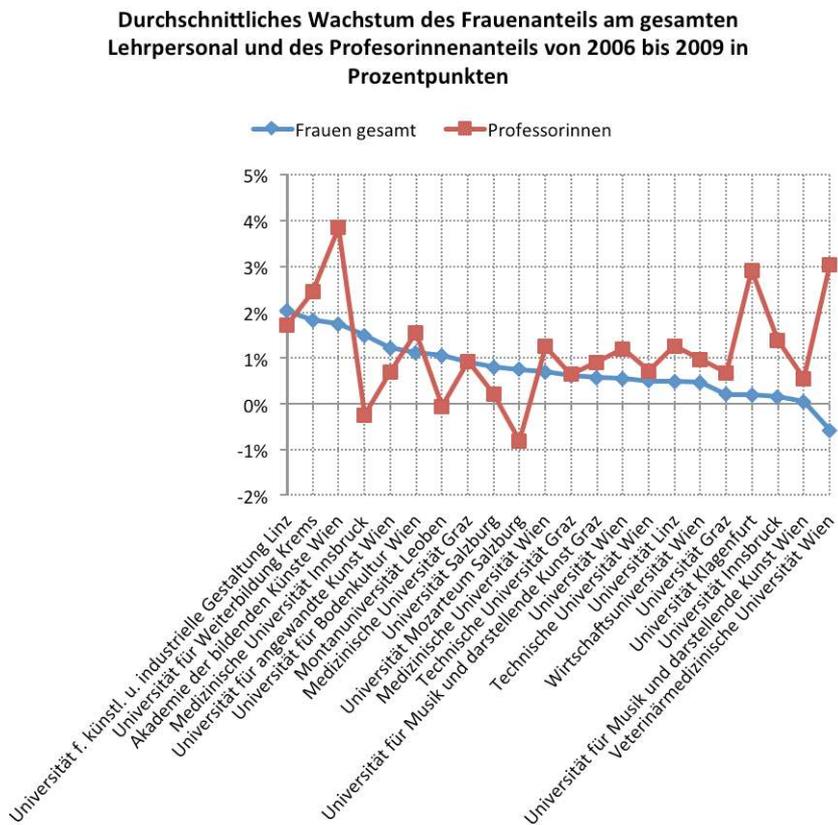
Source: uni:data of bmwf (Datenmeldungen der Universitäten auf Basis BidokVUni). Interpretation: Ein Wert von 1 bedeutet, dass die Aufstiegschancen von Frauen und Männern auf Professuren gleich sind; je niedriger der Wert, desto geringer sind die Aufstiegschancen bzw. desto "dicker" ist die Gläserne Decke.

Figure 3: Representation of women, by university (2009)



Quelle: Statistik Austria

Figure 4: Increase in the share of women among teaching staff at universities (2006-2009)



Source: Statistik Austria