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# **Austria**

# **Country Report**

## **Work Package 2**

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Undocumented Worker Transitions

EU Sixth Framework Programme

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## 1. Introduction

Austria has never officially defined itself as a country of immigration – though in practice 10 per cent of the population does not have an Austrian passport. The dominant migration policy has been oriented, on the one hand on a ‘guest worker regime’ based on the principle of the recruitment and rotation of migrant workers.<sup>1</sup> A key feature of this model is the linkage between labour contract and residence permit and the orientation of migration policies according to the demands of the (Austrian) labour market. On the other hand the principle of *jus sanguinis* applies to citizenship requirements in Austria. Children with Austrian parents automatically receive Austrian citizenship - even if born outside of the country. On the contrary, however, when children are born in Austria to migrant parents who do not (yet) possess Austrian citizenship, they do not have the right to citizenship (Waldrauch/Cinar, 2003: 261)

Since the 1990s, access by migrants to the Austrian labour market, as well as to Austrian territory, has been very restrictive. The last decade was characterised by continuous amendments of Austrian laws regulating migration. Besides the *Asylum Act*, there are two other different laws, one concerning residence and the other concerning employment of migrants. The *Settlement and Residence Act* (for Aliens residing more than six months in Austria) as well as the *Aliens Police Act* (for Aliens residing less than six months in Austria) regulate the entry, residence and settlement of migrants, while the *Alien Employment Law* regulates their integration into the labour market. (IOMa, 2005: 30) The Federal Ministry of the Interior is responsible for the regulation of inflow and for the granting of resident status to migrants and to short-term movers; the Federal Ministry of Economic Affairs and Labour regulates access to the labour market. (Biffel, 2006: 9) The main tools for regulating the migration of third country nationals in Austria are migration quotas (general migration quota, sub-quota for family reunification, supplementary quota for temporary migration, employment quota system).

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<sup>1</sup> For a detailed classification of migration regimes see Kofmann et.al., 2000: 48pp.

In the EU context – and as well in Austria – there is a general tendency to promote a process of selective inclusion of migrants. The management of migration does not simply aim at keeping refugees and migrants out of Europe but at producing a selective and hierarchical model for the recruitment of migrants that ranges from the ‘highly-qualified’ migrants to the promotion of seasonal labour. In Austria, since 2002 labour migration has been confined to ‘key workers’ and temporary workers. The quota for labour migration beyond these two categories has been abolished.

Many of the recent developments in Austrian migration policy have been influenced by the evolution of the EU acquis on migration and asylum, with the effect that a series of EU Directives (long-term residence, family reunion, free movement of EU citizens, students, together with the fight against trafficking in humans, etc.) have been transposed into national law, especially with the new Austrian Aliens’ Act Package which entered into force on 1 January 2006. Migration experts conclude that ‘the tendency has been to implement the directives narrowly, leading to the most restrictive interpretation possible’. (König/Perchinig, 2005: 2)

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## 2. Summary of the migration and employment legislative system

### 2.1 Historical account of immigration policies

In Austria, post-war labour recruitment from abroad, in particular for the construction industry, commenced in the summer of 1961. Bilateral agreements with southern and south-eastern European countries (Turkey, Yugoslavia) designed to recruit temporary workers, were quickly followed by the establishment of recruitment offices in these countries, and over time led to the settlement of significant numbers of these workers in Austria. What began with about 1,800 workers in 1961 reached around 226,000, mostly male, workers in 1973.

Politicians and social partners intended to establish a “*guestworker*” regime attracting and removing foreign workers, depending on the demands of the Austrian labour market. (“Rotation principle”) Migration policy was exclusively regarded as labour policy. In 1974, external recruitment was ended completely and the number of migrants in Austria declined. This policy change supported preferred employment for Austrian workers (*Inländerprimat*); limited migrant labour only to those sectors deemed necessary for the Austrian economy (*Generalvorbehalt*); and excluded non-Austrians from specific social welfare benefits. These measures were all ratified under the 1975 Alien Employment Law (*Ausländerbeschäftigungsgesetz*), which regulated migrant labour permits and the right to work. (Münz/Zuser/Kytir, 2003:23; Bauböck, 2001) This law remains one of the primary control mechanisms of foreign employment. While active labour recruitment was stopped, other forms of migration - family reunification, spontaneous labour migration and, by the late 1980s, clandestine migration and asylum - became more important.

In the 1990s, the Austrian government initiated a series of legislative reforms. These covered all areas related to migration, including entry, residence, employment, and asylum. These reforms must be regarded as representing a substantial shift in the Austrian migration regime, moving from a system of flexible reaction towards the demands of the labour market to a strictly regulated and limited system of immigration. (König/Stadler: 2004)

In 1990, a quota for the employment of foreigners was introduced, defined as a maximum share of foreign workers in the total workforce (at present, 8 per cent of the total work force). The Residence Act, introduced in 1992, established yearly quotas for different categories of migrants (e.g. for seasonal workers) as well as qualitative requirements for applicants (e.g. sufficient financial means at their disposal, a certain level of education, and adequate accommodation). A new quota for family reunification (currently approximately 5,500) was introduced. Furthermore, initial residence permits had to be applied for from abroad. Status switching of foreigners within Austria e.g. from a tourist or asylum seekers to migrant was not permitted.

In 1998, an amendment to the Aliens Act differentiated between migrant rights to temporary stay and settlement. A system of consolidation of residence (*Aufenthaltsverfestigung*) was established, resulting in an incremental improvement of living conditions and residence for long-term migrant residents in Austria. Residence permits for humanitarian reasons were introduced in 1998 as well, offering one of the few ways for undocumented residents to attain a legal status.

Recent reforms have followed the restrictive line of earlier immigration legislation. Labour migration has been restricted, mainly to key workers (for details see below). On the other hand, the employment of seasonal and temporal workers is permitted, however for these categories all legal paths to consolidate residency are closed. Furthermore, all new migrants from non-EU third countries are required to attend "integration courses", consisting mainly of language instruction and of an introduction to fundamental legal, historical, and political aspects of Austria. Non-participation leads to sanctions, both financial and legal, e.g., the denial of more secure residence titles or even expulsion from Austria. Migrants from EU Member States, which joined the EU in 2004, have the right to reside legally in Austria. However, they are not allowed to work in paid employment other than under the quota system, for a maximum period of seven years.

## 2.2 Overview of current migration legal framework

Austrian law constructs different classes of migrants, as certain groups have different legal rights and duties in Austria. The main 'categories' of migrants are: EU citizens, Convention refugees who have been granted asylum, migrants from countries with bilateral or association agreements with Austria, refugees, and other third-country citizens. In this hierarchically structured system, the opportunity to attain gainful employment for third-country citizens is dually regulated: through the Alien Employment Law (see below) and the laws and regulations on residence. General prerequisites for residence in Austria are a health care insurance, proof of living and accommodation as well as the required papers. Austrian legislation differentiates between different kinds of residence permits for third country nationals:

- The *(temporary) residence permit* entitles a third country national to a limited stay for a certain purpose (e.g. education, vocational training, internship, temporary work, business, self-employment, employment in the social services and international job rotation).
- A *settlement permit* is issued to persons who wish to settle in Austria on a long-term basis for a certain purpose, e.g. settlement permits for key personnel. This residence title is subject to an annual quota for certain groups.
- "*Permanent residence – European Community*" may be granted to those settled in Austria without a break for at least five years and if the Integration Agreement has been complied with, granting them the unlimited right to residence and unrestricted access to the labour market.
- Furthermore, *Visas*, issued for less than six months, are granted to third country nationals working temporarily in Austria.

Another way that third-country citizens can secure legal status as a resident in Austria is to work as an *au pair* for an Austrian family. However, a residence permit for an *au pair* does not permit individuals to pursue gainful employment in Austria. 'Employment as an *au pair* is not considered part of the integration

process into the normal labour market. When persons no longer work as an *au pair*, both quota-bound residence and work permits are required.' (Ministry of Economy and Labour Press: April 1, 2001).<sup>2</sup>

## 2.3 Employment law framework for migrant workers

The employment of migrants in Austria is regulated under the Alien Employment Law. In principle an employer may only employ a foreigner if he/she has been granted an employment permit by the Austrian Employment Service or if the foreigner possesses an entitlement, according to the Alien employment law (e.g. work permit, certificate of exemption, confirmation of freedom of movement etc.) or the Residence and Settlement Act (e.g. unlimited settlement permit, "permanent residence – European Community" etc.).

The following work permits may be granted by the Austrian Employment Service or, according to the Alien employment law, to third country nationals:

- The temporary work permit (*Beschäftigungsbewilligung*) allows the employment for a certain company/workplace for a maximum period of one year. Furthermore, the Austrian Employment Service has to determine upon whether the job vacancy could be occupied by another suitable unemployed person resident in Austria.
- The work permit (*Arbeitserlaubnis*) is granted for a period of two years. Employment is only possible withincertain federal states.
- The certificate of exemption (*Befreiungsschein*) is valid for five years. Employment can be taken up throughout Austria provided certain preconditions have been fulfilled.
- Key persons (*Schlüsselkraft*) have to have had special training or special skills which are in particular demand in the labour market. Their monthly gross salary has to amount to at least € 2.304.- in 2007 (60 per cent of the

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<sup>2</sup> Since these new policies were introduced, the Austrian Employment Service (AMS) has reported 14.593 registered au-pairs, of whom approximately 80 per cent originate from Eastern Europe. (January 2007). Au-pairs from Ukraine dominate since the entry via the au-pair regulation remains one of the few possibilities for third country nationals to stay in Austria legally for a longer period.

ceiling on insurable earnings). The minimum salary for key workers, employed in the health care sector, has been reduced to approximately € 1.500,- (40 per cent of the ceiling on insurable earnings). Only potential workers from the new EU-member states can take advantage of this provision, it is not applicable for third country nationals.

- To meet additional and temporary workforce requirements, the Federal Ministry of Economics and Labour may permit the short-term employment of third country nationals (maximum six months) by means of a decree. For this type of employment there are no restrictions with regard to profession, industrial sector, income or qualification, however, economic sectors as tourism, agriculture and forestry predominate. Temporary workers are excluded from permanent residence and cannot graduation from an employment permit to a work permit or to a certificate of exemption.
- Students from third countries may work in minor employment<sup>3</sup>.

### **2.3.1 Social benefits related/not-related to employment**

In Austria, social insurance law covers risks, such as unemployment, sickness, work-related accidents and pensions. Social security contributions and entitlements are linked to regularity in terms of residence and work.

Unemployed migrants are eligible for unemployment benefits if they have the right to be employed in Austria – Third country nationals working temporarily in Austria up to six months do not have the right to receive unemployment benefits though they pay contributions to the Austrian Social Security Funds. In Austria, most social security system benefits are only granted after five years of regular residence. Social assistance and housing-specific services are regulated by the provinces (Länder) which apply different regulations concerning social assistance. (König, 2003: 244)

In addition, family subsidies and childcare subsidies (Kinderbetreuungsgeld) are linked to legal residence status. Third country nationals are eligible for

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<sup>3</sup> Defined as: working less than 12 hours a month or with a monthly salary below 333,16 Euro (2006); it only covers workers' accident insurance (compulsory)

these subsidies, if they are employed for at least three months and if they can derive claims from the health insurance, based on their employment, as well as persons who have settled in Austria for at least 60 months (5 years) (König/Stadler, 2003).

Prior to 2005 migrant workers (third country nationals) were not entitled to act as representatives on workers' committees.

### **2.3.2 Support from institutions**

As mentioned above the principal policy makers, in the area of migration, are the Ministry of the Interior and the Ministry of Economics and Labour. The provincial governments mainly execute their powers through administrative acts. Within the Austrian context, the system of Social Partnership, comprising of the Austrian Chamber of Labour, the Austrian Federal Trade Union, the Austrian Federal Economic Chamber/Association of Industrialists are key. The social partners are strongly involved in policy-making at parliamentary and governmental levels, principally due to their specific bonds with the two traditionally strong Austrian political parties (the Social Democratic Party and the People's party). Social partners are invited to comment on draft bills dealing with migration issues. The institutions themselves also provide studies and expertise in the field of labour migration. (e.g. Chamber of Labour: 'Ein Jahr EU-Erweiterung: Trends und Fakten') The Chamber of Labour, as well as the trade unions, also provide counselling in workers' rights. However, undocumented migrants are not covered by this consultation since they are not and cannot become members of the above institutions.

International Organisations like ICMPD (International Centre for Migration Policy Development) and IOM – International Organisation of Migration/ EMN – European Migration Network are important think-tanks and migration policy advisors for the Federal Ministry of the Interior. IOM Austria serves as the National Contact Point for Austria, within the framework of the 'European Migration Network'. IOM Austria published a pilot-study on the *Impact of Immigration on Austrian Society* in 2004 and 2005 (IOMb, 2005) as well as a pilot study on illegal migration in Austria. (IOMa, 2005) It is also leading in the development of repatriation programmes. (IOM, 2006)

Public institutions that provide support and advice for refugees and migrants in Austria are the Austrian Integration Fund (Fund for the Integration of Refugees and Migrants as well as the 'Vienna Integration Conference' ([www.wik-vernetzungsbuero.at](http://www.wik-vernetzungsbuero.at)), a platform comprised of more than 100 migrants' and consulting organisations which aims to further political participation and represent and lobby for migrants' rights and interests and serves as a link to the municipal authorities. The 'Information Centre for Asylum and Integration', and at a federal level, the Viennese Municipal department for Integration and Diversity Affairs (MA 17) e.g. at municipal level, provides legal support for migrants coming to Austria. In fact, the most commonly used advice centres are run by NGOs, providing anonymous support. The most prominent NGOs providing counselling, as well as legal and social support for refugees and migrants, are 'Beratungszentrum für MigrantInnen' ([www.migrant.at](http://www.migrant.at)), several migrant women's consultation centres, like LEFÖ, MAIZ, Peregrina, the 'Deserteurs- und Flüchtlingsberatung' ([www.deserterursberatung.at](http://www.deserterursberatung.at)), as well as charitable organisations (for example, Caritas, Diakonie). Besides these counselling centres that are also engaged in campaigns for migrants' rights, explicitly political platforms like the 'Noborder Network' ([www.no-racism.net](http://www.no-racism.net)), 'Ehe ohne Grenzen', an initiative aiming at the recognition of bi-national marriages, or 'Initiative Minderheiten', organising the exhibition 'Gastarbeiterij, 40 years of labour migration in Austria' (Gürses/Kogoj/Mattl, 2004) are important (but often unheard) voices of demand for migrants' rights.

## **2.4 Details of registration and control processes**

The Aliens Police is in charge of the execution of the Aliens Act, including measures of termination of residence and the verification/examination of the requirements for a residence title or the prohibition to stay. The provincial governments ('Laender') are responsible for residence, settlement permits and for the granting of citizenship. A person's illegal residence status is irrelevant for residence registration, which takes place at the Civil Registry offices, that are also in charge of marriages, the issue of birth certificates etc.: The general registration system at municipal level and the alien system at federal level (Aliens Police) belong to different authorities and there is no

formal exchange of data between the two. Civil Registry offices do not automatically forward any information on illegal residence to the Aliens police, although they are obliged to if asked. However, since January 2006 information concerning marriages between third country nationals and Austrians has to be passed on to the Aliens Police if there is any doubt about a marriage or adoption, in accordance with the intentions of the Aliens Act.

The Austrian Employment Service supervises the access of migrants to the Austrian labour market and is in charge of the issue of work permits. Besides controlling the quota requirements for migrant workers, the AES also monitors the performance of the Austrian labour market and evaluates its requirements for migrant labour. Additionally, AES is responsible for the administration of unemployment benefits and unemployment assistance.

Asylum policies fall solely within the realm of the Ministry of the Interior. The Federal Asylum Office (*'Bundesasylamt'*), as well as the Independent Federal Asylum Review Board (*'Unabhängiger Bundesasylsenat'*), is a specialised entity within the Federal Ministry of the Interior, directly responsible to the Minister.

Migrants without residence permits are not allowed to register for health, accident or pension insurance with the Main Association of Austrian Social Security Institutions (HVSV). Any illegal residence status is reported to the Alien police.

## 3. Statistical data on migration

### 3.1 Migration data from statistical reports

#### 3.1.1 Resident Population

At the date of the most recent census, in 2001, Austria had almost eight million inhabitants, out of which almost one million were born abroad. By 2006, the population was approaching 8.3 million, including a non-citizen population of about 814,000 and a naturalized population of around 770,000, both together constituting about 19.2 per cent of the resident population. In Vienna, that with 1.6 million inhabitants is by far and away Austria's largest city, this share exceeds 30 per cent (Gächter, 2006: 1).

In 2006, about 37 per cent of the population without Austrian citizenship had origins in one or other of the countries that made up the former Yugoslavia. Fourteen per cent were Turkish citizens; 12.8 per cent were German citizens; 5.8 per cent were other EU 15 citizens; and 9.5 per cent were citizens of the A10 EU states. Of the population without Austrian citizenship, 6.5 per cent were citizens of Asian countries and 2.6 per cent of African countries. This distribution has represented a considerable change since 1994, when nearly 44 per cent of non-Austrian citizens were from the former Yugoslavia. Reasons for this change can be found, not only the significant increase of German labour migration to Austria, due to the difficult economic situation especially in Eastern Germany, and of labour migration from the new EU member states, but also as a consequence of the rising number of naturalisations of long-term residents from the former Yugoslavia and Turkey.

More than half of the 814,000 non-citizen population is in possession of a settlement or residence title. Most of the third country nationals are eligible for a permanent residence title or a settlement permit, both of which establish the possibility of a permanent stay in Austria. Only 20,000 third country nationals have a residence permit of limited duration.

### **3.1.2 The participation of migrants in the Austrian labour market**

There are 432,886 non-nationals in the labour force (12.8 per cent of the total workforce), of whom 320,000 are employees from non-EEA countries, and of these 171,619 (53.6 per cent) are women. In total 215,000 workers are third country nationals with a right to work.

Migrants' rights to labour market access ameliorates the longer they remain in Austria: cumulatively, restrictions in regard to sectors of employment, geographical region and the limitations on the length of the work permit cease to apply. Migrants are more likely to be affected by unemployment (9.7 per cent in 2006, compared to 6.8 per cent for Austrian citizens) and also experience discrimination, in terms of both of career opportunities and remuneration. This is due to the fact that migrant workers are concentrated in small scale enterprises; low wage sectors; employed in sectors that are highly seasonal; and are also subject to institutional discriminatory practices as in the in the Alien Employment law which has institutionalised the preferred employment of Austrian citizens ('Inländerprimat'). Migrant workers levels of qualification are also relevant. Migrants from Turkey and the former Yugoslavia have high proportion with just minimum compulsory education, whereas migrants from Central and Eastern Europe have a higher level of educational qualifications than Austrian citizens. Due to difficulties in obtaining recognition of qualifications, highly qualified migrants have had to accept employment at below their levels of qualification. Biffl (2002: 262) reported that between 1989 and 1999 migrant employees earned approximately 23 per cent less than Austrian citizens. Migrants are concentrated within labour-intensive export-oriented sectors, like the textile and leather industry, as well as in sectors responding to domestic demand like construction, hotels and restaurant, private households, and agriculture.

### **3.1.3 Asylum**

In response to increasing numbers of asylum seekers at the beginning of the 90s (the opening of the Eastern borders, war in the former Yugoslavia, as well as the applications from Iran, Bangladesh, Pakistan), the government initiated a series of reforms, introducing more restrictive regulation, to expedite the

adjudication procedures and to reduce the number of ‘unfounded’ asylum applications. As a consequence, the number of asylum applications dropped steeply in 1993. However, towards the end of the 1990s, the number of new asylum applicants - increasingly from Asian and African countries – began to rise again. In 2002, a record number of 36,990 asylum applications were lodged.

The acceptance rate for asylum seekers was at 40 per cent in 2006, varying across countries: 84 per cent of applications from Russian nationals (Chechens) were accepted whereas, in 2006, those from India and Nigeria had an acceptance rate of 3 per cent. Unfortunately no official data on the number of individuals granted asylum and living in Austria is available.

## **3.2. Estimates of undocumented migration**

### **3.2.1 Data of the Aliens Police**

In 2006 63,971 instances of undocumented migrant presence were noted by the Austrian Alien Police and 17,100 cases of organised human smuggling were registered. The highest numbers of trafficked persons were from Serbia-Montenegro (2,636), Russia (1,506), Moldova (1,250), and the Ukraine (724). Some 39,408 persons trying to enter or stay without authority were apprehended, where the highest numbers were from Romania (21,293), Bulgaria (1,373), Serbia-Montenegro (451), the Ukraine (275), Moldova (196), and Russia (189).

### **3.2.2 Estimates of informal economic activity and migrant employment**

According to Friedrich Schneider (2003) the size of the informal sector in Austria has grown from 2.04 per cent of GDP (1975) to more than 20 per cent of GDP in 2003, some 22.5 billion Euro since the 1970s. The number of “full-time illegal workers” in 1995 was – according to Schneider – 575,000 Austrians and 75,000 migrants, and, by 2004 had grown to 789,000 and 114,000 respectively. Furthermore, there have been attempts to develop models for estimations of undocumented migrants and to account for the statistical differences and for the lack of statistical information on the shadow economy (Kaßberger/Schwarzl, 2000). The calculation of the statistical

differences and conceptual adaptations in relation to the GDP in 2003 was 17.35 billion Euros or 8.3 per cent of GDP (including statistical supplements and adaptations). In contrast, based on Friedrich Schneider's calculations, the amount is much lower (22.5 billion Euro)(Statistics Austria, 2004). Based on the above-mentioned figure of the shadow economy's macroeconomic revenue, Biffi has concluded that approx. 50,000 to 70,000 migrants are engaged in informal employment in Austria (Biffi, 2002: 363). Biffi has also adopted other methods of calculating the migrant workforce in the informal economy.

One indicator for the distribution of work in the informal sector is the number of employees working minimum hours (Biffi, 2003: 363). For example, approximately one half of all migrant women in 'minor' (informal) employment are domestic workers (in cleaning, as nurses, or other care providers for children or elderly); therefore, undeclared employment is probably rather extensive in this sector. Migrant men are often also in 'minor' [informal] employment in the construction industry, as well as in the hotels and restaurant industry.

In all, between 10 and 20 per cent (or 10,000 workers) in the informal sector work additional hours; about 11,000 students from third countries work part-time in the informal sector (Biffi, 2002: 114-117); approximately 15,000 persons legally resident in Austria work in the informal sector due to the great difficulties involved in obtaining a work permit. In addition, 10,000 persons without a residence permit and without permission to work, particularly persons from neighbouring Eastern European countries, work in Austria's informal sector (Biffi, 2002: 363). Using these methods of calculation and by bringing together the different data on forms of migrants' informal employment, an estimate of around 47,000 persons can be arrived at.

The calculations made by Biffi seem to be minimum amounts only, since other calculations, based on consumer surveys, estimate that it is ONLY in the informal domestic service sector, with somewhere between 60,000 and 170,000 persons, mostly female that undocumented work is undertaken. (Haidinger, 2005)

### 3.2.3 Pupil registration

Biffi (2002: 102-127) compared registration data at schools ('*Schulstatistik*') with demographic data, provided yearly by Statistics Austria ('*Bevölkerungsfortschreibung*'). She found that more children (aged between six and 15 years) are registered at their school than are registered by demographic surveys. The difference is around up 5,000 to 7,000 children. Since the residence status of children is not controlled, when enrolling in schools, Biffi assumes that this number is as a result of minors, particularly from Turkey and Yugoslavia migrating outside of the quota for family reunion and staying illegally in Austria.

### 3.2.4 Control of illegally employed migrants by Central Taskforce for the Prevention of Illegal Employment

The Central Taskforce for the Prevention of Illegal Employment (*Kontrolle illegaler Arbeitnehmerbeschäftigung* – KIAB) is responsible for the identification of workers employed without authority, as well as for tax and social insurance fraud. Especially in the construction sector, the problem of fictitious companies avoiding dues and social insurance contributions, as well as the problem of unpaid wages for undocumented foreign workers is crucial. The Chamber of Labour has been supporting victims in making claims for the remuneration of unpaid wages. In 2004, the Chamber of Labour represented 2,300 employees (including undocumented foreign workers) who had become victims of fictitious companies in the construction sector (IOM, 2005a: 88). Currently (April 2007), combating social fraud is top of the agenda of social partners: in an amendment of the General Social Insurance Act (ASVG) the seven-day confirmation of employment has fallen. In the future the registration of employees with the social insurance fund shall be obligatory from day one of employment (Der Standard, 2007-04-18).

Until 2002, the Inspectorate of Labour in Austria controlled work sites in relation to the employment of undocumented foreign workers and documented their number by employment sector and nationality. Since July 2002, however, KIAB no longer keeps data on the nationality of undocumented foreign workers (Jandl, 2004). Prior to 2002, most undocumented migrant workers (around 60 per cent) originated from central Europe (e.g. Poland and

Slovakia) and the successor states of the former Yugoslavia. Around 20 per cent originated from Turkey and a further 10 per cent from the Commonwealth of Independent States (CIS)(Jandl, 2004). Most migrants working without permission have been detected in Vienna and the surrounding province of Lower Austria (BMWA, 2002). In 2003, in the course of approximately 21,000 checks, almost 4,000 reports were made and fines amounting to more than €9 million were imposed (2006: 18,021 checks, 5,942 illegally employed persons). Catering (26 per cent), the building industry (21 per cent) and construction sub-contracting (17 per cent) are among the branches with the highest share of illicit labour. However, it must be borne in mind that the controls are only carried out in companies and not in individual households, where migrant workers are in jobs as domiciliary carers or houseworkers. ([http://www.parlament.gv.at/pls/portal/docs/page/PG/DE/XXIII/AB/AB\\_00028/FNAME\\_071657.PDF#search=%22kiab%22](http://www.parlament.gv.at/pls/portal/docs/page/PG/DE/XXIII/AB/AB_00028/FNAME_071657.PDF#search=%22kiab%22)).

## **4. The impact and experience of undocumented migration**

The International Organisation of Migration (IOM) has carried out a comprehensive country study of illegal migration in Austria. Contact point Austria, delivered a comparative study, conducted by the European Migration Network (EMN), representing the situation of illegal migration in 2005. (EMN, 2007; IOM, 2005) This report analysed existing research on the legal framework, the stocks and profiles of, and State approaches towards illegal migration, as well as the social, economic, educational and political situation of undocumented migrants. Beyond this, there is no significant body of literature on illegal migration in Austria. Empirical studies, exploring the situation of undocumented migrants, are unavailable. In recent years there have, however, been studies of migrant domestic and care workers, focusing on the position of women within the informal migrant labour market. (Cruz Roja, 2004; Haidinger, 2005; Rechling, 2004; Gendera, 2007)

### **4.1 Illegality and the absence of rights**

As explained above, in contrast to other EU States, Austria has tried to maintain a very strict migration regime, attracting and repulsing migrants, according to the needs of the domestic labour market. Political and social rights for migrants and the possibility and encouragement of them to participate in the Austrian society do not represent a priority within Austrian migration policies. Their primary aim is 'integration' via subordination and adaptation to the existing political and socio-cultural system in Austria. The principle of incremental consolidation of residence rights is typical of the Austrian migration regime: it proceeds step by step. Migrant rights extend, dependent on time and type of employment and on length of stay. At the start of their stay in Austria, their position and rights as 'citizens' is distant from those of Austrian citizens: some do not have the right to work; others lack the right to family reunification; they are not entitled to most of social benefits; and, until two years ago they did not have the right to vote or to be elected as workers' representatives. Therefore, illegality can have various dimensions and consequences: migrants can be economically active in the informal

economy, as employees or as entrepreneurs; and they may stay undocumented for a short or a long period. Their status may switch due to the possibility of moving back and forward between Austria and their country of origin. Undocumented status can also be a consequence of family reunification, which is not taken for granted in Austria.

With regard to labour market participation, migrants are often obliged to seek employment within specific professions and/or in the informal sector, due to a segregated labour market forcing migrants into specific branches and due to legal restrictions hindering migrants from participating fully in the Austrian labour market.

## **4.2 Who are the undocumented?**

Hintermann (2000:10p.) identified three important migration pathways of third country nationals to Austria in the last two decades. We can use this thesis to identify what the undocumented labour force consists of and what the consequences of their status is for their employment and residence in Austria.

Migration, which occurred originally through Guestworker migration from Turkey and Yugoslavia, today mainly consists of family unification.

### **4.2.1 Guestworker migration from Turkey and Yugoslavia**

Most migrants from Yugoslavia and Turkey who entered Austria in the 1970s and 1980s did have a long-term settlement permit or had even acquired Austrian citizenship. Within this group, the absence of a right of family reunification can lead to the non-authorised residence of migrants' spouses and dependents. With regard to informal economic activities, the main characteristic is not that they work completely in the informal sector, but rather that there is a tendency to work informally. Another aspect of this is the existence of unregistered employment in family business.

### **4.2.2 East-West migration since the 1980s – EU 25 and beyond**

East-West Migration in the 1980s was comprised mainly of refugees from the former soviet countries and they mostly had secure residence status. In the 90s this likelihood of being accepted as a refugee declined for this group. So an important strategy to ensure their pathway to Austria was tourism. Some

commuted due to the near distance between Austria and their countries of origin. Some overstayed. Their employment was (and is due to the transition period) informal. In recent years, migrants from the Ukraine and Russia have become more important.

#### **4.2.3 Asia/Africa since mid 1980s**

Since the late 1980s, in response to a lack of nurses in Austria, women from the Philippines and the Indian Sub-Continent have been recruited for the care sector. However, the majority of migration from Asia and Africa has been as a consequence of requests for asylum. Here the risk of becoming undocumented is directly related to the outcome of the application for asylum. According to PICUM, rejected asylum seekers represent by far the largest category of undocumented but resident migrants to whom organisations in Austria provide assistance (2003: 62).

Another important group of informal migrant workers are students from third countries who hold a residence permit but are just allowed to work in 'minor' employment, beyond which their working hours are not registered.

### **4.3 What are the main sectors where undocumented migrants' work?**

Undocumented migrants *appear* to make up only a small percentage of the larger category of illegally employed workers (see Schneider; Biffl, 2002). Many documented residents are illegally employed, due to difficulties associated with entering the official labour market. For undocumented migrants, however, there are no alternatives other than working under illegal conditions. According to a DELPHI-study conducted by ICMPD (MIGIWE) in 2006, where numerous experts in the field of migration studies and migration policies were interviewed about the illegal employment of migrants in Austria, the main branches of migrant informal economic activity are construction, the hotels and restaurant sector, cleaning/childcare/domestic work, the health care sector, agriculture and 'entertainment', as well as trade, the latter mainly in relation to minority ethnic businesses. There is noticeable gender segregation within the informal labour market. Women are mostly engaged in health care and cleaning in private households as well as in 'entertainment'.

Men's employment is primarily in the construction sector and in agriculture. Both men and women appear to work within the hotels and restaurant sector. In terms of numbers, it seems that women are 'catching up' as there is increased demand for services regarded as within the sphere of "female labour". While employment in most sectors with jobs for migrants is highly associated with seasonal demand, the predominantly female sectors (health care, domestic work and 'entertainment') are subject to less fluctuation.

With regard to the impact of migrants' undocumented work on the Austrian economy, the evaluations of the Delphi-experts were varied. Some experts regarded migrant undocumented as complementary to activities in the formal economy; some argued that, in particular, other migrants – already settled in Austria – compete with undocumented migrants who are ready to accept far worse working conditions than 'settled' migrants or even Austrian citizens. Wage dumping and substitution processes from 'more expensive to cheaper' labour occurs also with regard to migration groups themselves.

The most important differences between migrant workers' employment in the informal economy, compared to formal working arrangements, are – lower wages together with possible tax evasion and evasion of payments for the workers' social security, experienced as cost advantages for employers. The fact that migrant workers need to engage in the informal economy and accept far worse working conditions, than their 'legal' colleagues results primarily from employment prohibitions based on nationality, but also: due to language difficulties; as a consequence of the non-recognition of foreign qualifications; and due to migrants' weak negotiating position. The latter is especially true in Austria where no lobbying organisation for undocumented migrants exists, other than a few NGOs which, compared to other pressure groups (like the trade unions), are quite weak players in civil society and have little political influence.

In some sectors of the economy, such as construction and cleaning, citizens from the EU-27 have used the existence of rights to free movement of services to bypass the transition regulations imposed by the Austrian government, by registering a trade and working self-employed, for example,

as a single person company for undertaking simple construction work. According to a press release from the Austrian Federal Economic Chamber 'only 65 per cent of new firms were founded by Austrian citizens, for the rest Polish, Slovakian and German entrepreneurs are dominating.' The same press release states there has been a boom especially in Polish 'bogus' companies in 2005. Due to 'activities' of the Austrian Federal Economic Chamber, in cooperation with the tax authorities, the press release went on to note that the number of these companies could be reduced by 30 per cent. (Die Presse, 12.4.2007, p.14)

#### **4.4 Migration status transitions**

Undocumented migrants are a particularly vulnerable group, lacking legal and social support from the authorities. Entering Austria illegally – that is, without an Austrian permit – seldom leads to a 'consolidation of residence'. In Austria there are only a few ways for those without legal residency to become documented: undocumented migrants can apply for humanitarian residence, under certain circumstances, where they are:

- exposed to danger in their country of origin;
- victims of an armed conflict or of human trafficking;
- long-term resident paperless adolescents;
- have severe health problems etc.

There is no legal entitlement to residence. It is granted solely on the decision of the authority in charge. With the 2000 amendment to the Aliens Act, humanitarian settlement permits may also be granted.

Other ways that those without residency can obtain a regular status include: applying for citizenship after a certain number of years and adoption by or marriage with an EEA citizen. Under the amendment to the Aliens Law in 2006, the two last possibilities have been curtailed. Currently, to obtain a settlement and employment permit through the marriage with an Austrian citizen the individual has to have a valid residence permit before marriage. The law also foresees heavy penalties for Austrian citizens arranging and undertaking so called 'fictitious marriages'.

A third way of becoming documented - at least for the duration of the asylum procedure - is the acceptance of an applicant as an asylum seeker.

As mentioned above, citizens from the new EU member states cannot undertake paid work in Austria, although in practice they are working, specially in construction and in the health care sector. After long discussions about the shortage of health care personnel in domiciliary care and the need to legalise the estimated 20,000 migrant women mostly from Slovakia, Czech republic and Poland working in domiciliary care without working permit, the Austrian government launched an amnesty for those already in Austria, who are residing and informally working as domestic carers from the new EU-member states. It also introduced an amnesty for those employing families who could have been accused of social fraud.

There are more possibilities of becoming undocumented and being at risk by expulsion. These range from non-compliance with the integration agreement; lack of means of living; to failure to observe the time-limits for application or of being caught working in the informal sectors. Of course, the rejection of an asylum claim can also result in those who decide to remain in the UK being declared undocumented if they decide to remain in Austria, regardless of the negative decision of the authorities. Under current provisions, unemployment can also lead to expulsion from Austria: The residence permit is not renewable if a third country national is affected by unemployment for more than four months in the first year of the settlement or for a more or less uninterrupted period of one year, within the first five years.

With the 2006 amendment of the Aliens Act artists no longer are offered an unlimited residence permit. In addition, sex workers from third countries who could obtain an unlimited residence title as "dancers" before January 2006 are also detrimentally affected by this reform., which also downgrades the status of those migrants who have obtained residence permits as entertainers.. The illegalisation, especially of sex workers, does not only mean limitations on their rights, but also increases the risks of exploitation and dependency in the sex business.

The most frequently utilised State approaches for dealing with illegal migration are voluntary (repatriation) and forced return (deportation), combating trafficking, combating 'fictitious' marriages and adoptions, domestic control through stop and search and inter-departmental cooperation. The focus is on preventive measures, like controlling the border, anti-smuggling operations and restrictive visa politics. In terms of the integration of undocumented migrants – as mentioned above, residence on humanitarian grounds is the only State approach intending to legalise undocumented migrants.

Regularisations themselves are not subject to discussion.

#### **4.5 Individual experiences as migrants and migrant workers**

The vulnerability of undocumented migrants has different consequences: First and foremost the constant fear of being disclosed to the authorities and being deported is the most obvious and incisive factor of living without authority in Austria. In addition to domestic police control, the worksite is a place of potential disclosure, particularly when subject to labour inspection.

Scholars (Anderson 2000:39, Cruz Roja 2004) have argued that live-in domestic work (living space and workplace are one) can be a rational choice for recently arrived migrant women. This option not only provides her with a roof over her head, it also keeps her out of sight of the authorities, an important point of consideration for women without a residence permit. At the same time however, the live-in arrangement makes her very dependent on her employer, while the provision of room and board helps justify their extremely low wages. On the whole, this mode of employment is not very common in Austria, but the number of au-pairs working in Austrian households is rising. (Rechling, 2004; Haidinger, 2005)

These kinds of live-in arrangements do not only appear in domestic and care work. Everywhere where living costs are connected to wages – as happens in the agricultural sector, but also in hotels and restaurant sectors – employees lose control over their wages and tend to be worse off, than in labour arrangements where accommodation and wages are not linked to one other.

Other important housing arrangements include shared flats, 'mass accommodation' in whole apartment buildings, and commuting.

As an important source of information regarding housing but also for job vacancies,, members of the minority ethnic communities, as well as the churches, play a crucial role. Ethnic networks not only function as communication and information systems, but are also an important safety net providing social assistance.

#### **4.6 Consequences of undocumented worker status on access to services**

In Austria, illegally resident foreign nationals are not eligible to access the social security system and therefore do not enjoy any legal right to benefit from healthcare facilities. Legislation in Austria has no special provisions concerning access to healthcare for illegally resident immigrants (see PICUM 2003: 34). Social and medical care for illegally resident immigrants is in most cases limited to urgent medical aid, which has to be paid for privately. It is mainly private ambulances and surgeries, run by NGOs or religious orders, that are frequented by undocumented migrants.

With respect to education, it appears that there is a practice of schools not placing controls on the residence status of pupils. That also means that pupils illegally in Austria are able to attend school. It is also common practice that NGOs providing language training for migrants do not ask for the residence status of their clients.

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