

Discrimination in the access to the labour market: a project to protect refugees from discriminatory practices of employers

Dr. María Fernanda PÉREZ SOLLA*

Discrimination in the Austrian labour market is a very serious problem. Apart from those workers that are brought to Austria as „guest workers“ and those who work in multinational companies or international organizations, those foreigners that find themselves in Austria for other reasons (for instance, as family-members of Austrian citizens) have many difficulties in their job search: their qualifications are often not recognized, to speak German „with accent“ is considered „a problem“, and many prejudices about their countries of origin derive frequently in a hidden policy of „Austrians are preferred“ that is reflected in some job ads that expressly recognize it. „Only nationals“ (*Nur Inländer*) can often be read in some newspapers, that allow the publication of this “national origin” restriction as „qualification“ in a job description. This “only nationals” does not only mean that you are required to have Austrian passport, but a hidden policy of “Austrian origin required”: the citizenship is not enough, as foreigners who have obtained the Austrian citizenship are considered not to be “real Austrians” by important sectors of the society.

The Committee on the Elimination of Racial Discrimination (CERD), the monitoring body of the treaty with the same name, has clearly expressed its concern about “the lack of legal protection for residents of foreign origin against discrimination committed by Austrian citizens” and “the absence of sanctions against racial discrimination in the private sector”¹

In this general framework, there is a more serious situation. An important sector of the media links „criminality“ to a particular sector of the immigrants: the asylum seekers are normally related by some mass media with drug trafficking. Concrete police proceedings in individual cases are depicted with full pages and bold titles with pictures of the persons concerned. These mass media present therefore the equation “Black people=Drug dealing” and unfortunately this media have a big share in the Austrian market.

The picture presented by these media companies affects especially certain groups of immigrants: those coming from Africa, who are related to cases of criminality. This generalization can have concrete negative influence in the job search once asylum seekers are granted status of refugees.

Our point of view about this problems is supported by monitoring activities of international bodies. We have cited the opinion of the CERD. In addition, almost four years ago, the European Commission against Racism and Intolerance (ECRI) has expressed similar views.

This monitoring body concluded in its Second Report on Austria² that it was worried about the negative climate surrounding non-EU citizens, notably immigrants, asylum-seekers and refugees. The ECRI stated that the widespread presence in public debate of stereotypes and misrepresentations regarding these categories of people has played a major role in creating that climate, what was also linked to the use of racist and xenophobic propaganda by some political parties. The foreigners were presented as a danger and a threat to “public order, economic stability and social peace”. Moreover, concerning employment, the Report underlined the existence of discriminatory practices, especially at the point of recruitment, against foreigners and Austrian nationals of immigrant background. This is aggravated for the inexistence at the moment of writing these lines of an adequate legal framework that protects persons from discrimination in employment issues.

In the international arena, the European Monitoring Centre on Racism and Xenophobia, EUMC, has also supported studies where this concern about the connection made by some media between Africans and drug trafficking has been reflected.³ This Centre has also asserted, in a recent Report, that in 2000/2001 unemployment rates of foreigners have risen faster than for nationals, due to the economic downturn.⁴ Moreover, foreigners are still overrepresented in blue-collar jobs in manufacturing, what affects these persons in case of technological change and industrial restructuring.⁵

We can add that Austria is in default concerning the obligation to implement international obligations in internal law. First Austria is State Party to the International Convention on the Elimination of All Forms of Racial Discrimination since more than thirty years,⁶ but the efforts in the implementation of this instrument have been very poor. The treaty asserts in Article 5 that “State parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...) e) economic, social and cultural rights, in particular: i) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration...” This provision should be read together with Article 6 of the treaty, that provides for the obligation of States Parties to ensure to “everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against acts of racial discrimination that violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and

adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

Moreover, Austria should have implemented under internal law the EC Council Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin before 19 July 2003. Until the moment of drafting these lines only a project is under discussion by the Austrian Parliament that would implement the Directive at a minimum level. Article 3 of the Directive asserts that the instrument should apply to “all persons, as regards both the public and private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (...)” Similarly to the previously analyzed Convention, Article 7 contains the obligation of Member States: to “ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.” As we have mentioned in previous lines, none of these measures has been adopted, and victims of discrimination in the labour market lack adequate protection. Though according to the jurisprudence of the European Court of Justice, the Directive could be, at this stage, alleged by any person affected directly before an Austrian tribunal (we mean that a person discriminated could ask for the direct application of the Directive without the need of legislation, given, in particular, that the deadline for implementation has not been respected by Austria),⁷ evidentiary issues could be at stake in such a case: the Directive 2000/43 contains a provision about burden of the proof that could be very useful, as victims of discrimination in the labour market find themselves in a very difficult situation as to prove their cases. Moreover, there is cost risk, as access to tribunals for victims of discrimination in the Austrian legal system is not free from legal costs.

For all these reasons, our organization has started a project denominated *Refugees and Labour Market*, where we are collecting interviews with persons that were granted refugee status in Austria, as to know how was their insertion in the labour market: was it easy? Have been the qualifications obtained in the country of origin recognized? Have they suffered discrimination? If they have a job, does it correspond to the qualifications acquired? We are intending to conduct the interview process in English, French, Spanish and German, and to publish the final result in German and English.

The underlying intention of our project is to give a voice to those that can be affected by such a discriminatory picture presented by the media, to empower potential or actual victims, to reproduce their voice, speech and problems. We want to show that persons that have obtained status of refugee are not criminals: they are victims of a problem that has brought them to look for refuge in Austria, that are again ‘victimised’ by structural discriminatory practices shared by several powerful actors in the Austrian society.

Our intention is to collect one hundred interviews and to produce a final report, with a systematization of the results. This report would be available to the relevant actors and, in particular, to employment agencies and mass media, as to present them a ‘counter-argument’ to that discriminatory panorama presented today to the general public. Moreover, our intention is to include recommendations concerning the current situation.

We have perhaps a very idealistic objective: to change the state of mind of many people, that consider these persons as a danger to their current welfare. We want, with our work, to empower those who are affected by stereotypes and to reproduce their discourse and concerns and to prove that they are not a danger. We want to produce a ‘counter-practice’ that facilitates and promotes the access of these persons to the labour market. We know that our task is not easy, but we consider that is worthy to work and to fight for it.

If you are interested in our project and you would like to contact us, please write to refugeesandlabour@international-protection.org

* Director, International Protection, Vienna, Austria, <http://www.international-protection.org> We thank your comments and questions to secretariat@international-protection.org

¹ A/54/18, Report of the Committee on the Elimination of Racial Discrimination : 29/09/99, §§32, 34

² CRI(2001)3, June 2000.

³ European Monitoring Centre on Racism and Xenophobia, *Racism and cultural diversity in the mass media – An overview of good practice in EU Member States 1995-2000*, 2002. See in particular the Report of Alexander Joskowicz, concerning Austria p. 311 and ss., in particular, p. 320 et ss., with relation to the praxis of Austrian media, specially affecting Nigerian asylum seekers.

⁴ European Monitoring Centre on Racism and Xenophobia, *Migrants, Minority and Employment – Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*, 2003, 35.

⁵ *Id.*, 36.

⁶ Austria deposited the instrument of ratification 8 June 1972. However, it only accepted the competence of the monitoring body, the CERD, in 2002.

⁷ ECJ, Judgement of the Court of 19 January 1982, Ursula Becker vs. Finanzamt Münster-Innenstadt, Case 8/81.