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Racism Report 2007

Case Report on Racist
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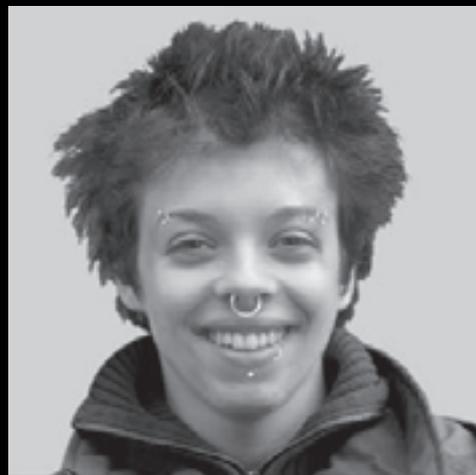
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FASCHING IN VIENNA

At this Season, Everyone can be a Queen (or King) of the Night

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SLAVERY NOW

The Tragedy of Human Trafficking is the Subject of a UN Forum in Vienna Feb. 13-15

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'CARMELITES' RESTAGED

In Francis Poulenc's Only Opera, Choister and Revolution Cast a Light on the Nature of Fear

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EVENTS CALENDAR

What's on in Vienna in the Deep of Winter: Four Pages of Theatre, Music, Film & Balls

Pages 13-16

For the First Time in History, Americans Living Overseas Can Vote Locally, as a Block

US Democratic Global Primary

by Stacy Stutz

Americans are sick of being global pariahs. Europeans roll their eyes, treating American accents like nails running down a chalk board. What ever happened to the Land of Opportunity?

It seems that the past eight years of George W. Bush's presidency have profoundly damaged the international reputation of Americans and the brief sense of solidarity that existed after 9/11.

Katie Solon, chair of Democrats Abroad Austria (DAA), is familiar with burling the fractured image Americans have internationally. A 30-year-old woman with a ponytail, Solon is excited that – for the first time – Democrats living abroad have a say in picking the next presidential candidate.

If it wasn't hard enough to get to their local polling station in the United States, they are now being asked to vote in an inconspicuous coffee house on the Vienna's first district.

This is exactly what Solon is planning to accomplish at Pickwick's Café this February 5 and 12 in the first ever Democratic Global Primary. U.S. Democrats living abroad will have the option to vote in person at substitute polling places like Pickwick's in 34 countries, as well as by Internet, fax, and mail.

Fresh from a Democrat's Nevada crisis – something to do with communicating instructions to voters in time for Super Tuesday – Solon whisked into the Djungel Wien Café in the Museum Quarter. Placing her leather satchel on the table



Attempting to make a difference: 160 Austrian troops on their way to Chad for a controversial 12-month European Union peacekeeping mission were given a farewell ceremony at the Rossmare Kaserne on Jan. 28. SEE MISSION TO AFRICA, BY CHRISTIAN CEMMENS, PAGE 5

Russia Risks its International Reputation

door and was quitting the staff about their work for the for-

Trichet Can Relax; As Growth Slows, So Will Inflation

Wake Up At the ECB

By Melva Krains

Federal Reserve Chairman Ben Bernanke has allowed global stock markets to railroad him into a whopping 75-basis-point cut in interest rates just one week before the regularly scheduled meeting of the Fed's decision-making Open Market Committee. European Central Bank President Jean-Claude Trichet would never allow this to happen to the ECB – he manipulates markets; markets don't manipulate him.

Indeed, with America's economy in apparent freefall, Trichet is threatening economic trade unions with preemptive interest-rate hikes

these threats may be counter-productive. The movement of price in the euro-zone. Continued on Page 22

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The Vienna Review
Reinholdsgasse 1
1220 Vienna, Austria
Tel: +43 1 269 92 93 - 26
Fax: +43 1 269 92 93 - 12
viennareview@gmail.com
www.viennareview.net
Letters: editor@viennareview.net



U.S. army deserter Agustín Aguayo in Vienna in December. Photo: Christine Eibinger

Former Army Medic - an Immigrant - Says No to Redeployment in Iraq

The Quiet American

by Christian Czemina

"Left, right, left, right-kill!" It was the year 2003 and marching along in his early drills, the first army medic recruit Agustín Aguayo knew he was to go to struggle with US military life.

"Left, right, left, right - you know I will!"

The blood-cherry chants stick in Agustín's throat. He's a thinker in a system that demands blind obedience. But something good would come of this experience, he told

character assassination were the most obvious consequences. Agustín Aguayo is a convicted deserter from the US military, reviled by many as a coward who had abandoned his comrades. Nearly five years on, the only way the self-spoken immigrant from Mexico can now find to stave any positives from his time in the military is to talk about it, to occupy a media limelight that you sense he would have instinctively avoided. Agustín Aguayo has become a figurehead of the anti-war movement and is now travelling the world relating his experiences as a critical insider from the Iraq war.

And that's why he had come to Vienna.

In person, Aguayo, the man who challenged the US military authorities, doesn't quite fit the dramatic bill that his decision to desert has guaranteed him. He's small and looks much younger than his 35 years. His open features are softened further by a pair of thin-framed spectacles and a layer of almost adolescent puppy fat.

Behind his glasses his earnest dark eyes water slightly

Fischer, Scharzenberg, Slaughter and Soros: The makers and Interpreters of Europe's Recent Past, on Stage in Vienna

Europa Forum

By David McNamara

It was a remarkable gathering of minds that came together at the Burgtheater in Vienna on Jan. 20 to discuss the future of Europe, people who themselves were makers and interpreters of this history.

There was George Soros, the Hungarian born financier who dedicates his time and his fortune to the reintegration of Europe; Joschka Fischer, former German foreign minister and vice chancellor and for nearly 30 years head of the German Green Party; Ann Marie Slaughter, the respected director of the Woodrow Wilson School of Government at Princeton University; daughter

of a Belgian mother and "praised to be half European," and perhaps most European of all, Karl Schwarzzenberg, The Czech foreign minister, a descendant of Austrian nobility – who grew up in Prague and lived most of his life under Communism – and in Vienna is still called "Prince".

"A lot of Austrians still wonder if you are not an Austrian citizen," teased moderator Alexandra Fiedler-Schmidt, editor in chief of the Austrian daily Der Standard, turning to Schwarzzenberg.

It was perhaps not surprising that the voice of optimism came from Slaughter, for whom

Continued on Page 22



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- Damit rassistische Benachteiligungen & Strukturen nicht unwidersprochene Normalität bleiben.
- Damit Rassismus nicht das Problem der Opfer ist, sondern die Aufmerksamkeit der gesamten Gesellschaft bekommt.
- Damit in einem Land, in dem sich der Staat unzureichend für die Bekämpfung von Rassismus einsetzt, die Zivilgesellschaft aktiv werden kann.
- Damit Opfer & ZeugInnen von Rassismus weiterhin eine Informations- und Beratungsstelle haben.
- Damit es auch im nächsten Jahr einen Rassismus Report gibt.

Bitte werden Sie förderndes Mitglied von ZARA

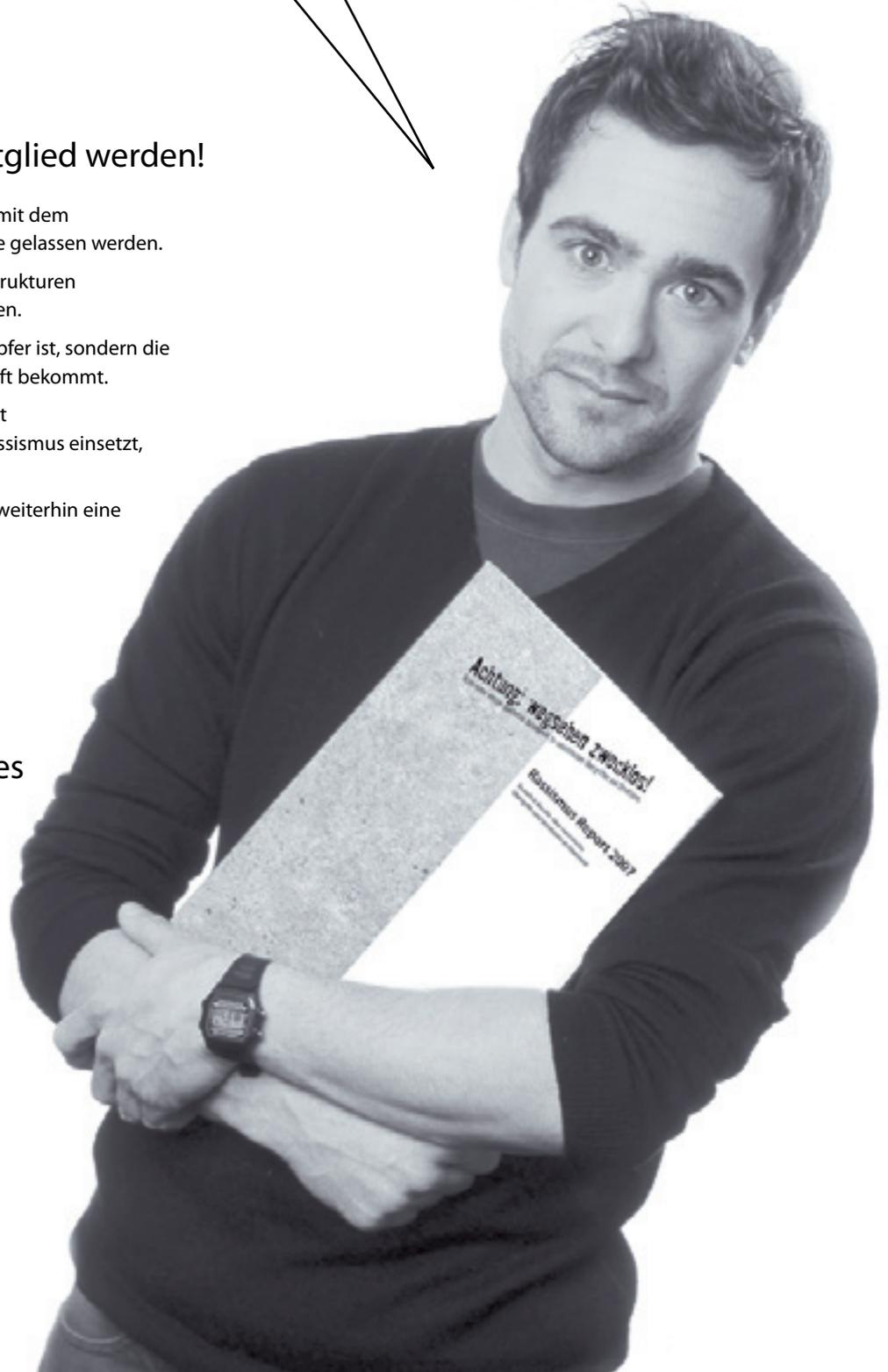
oder spenden Sie, damit sich auch
das nächste Opfer von Rassismus
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Achtung Anti-RassistInnen treten als ReporterInnen auf!

Skandal: Rassismus Report lässt nichts aus. www.zara.or.at/materialien

Banner zum downloaden unter: <http://www.zara.or.at>

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Editor in chief: Karin Bischof
Operative project leader: Barbara Liegl
Editorial Team: Marta Hodasz, Xiane Kangela, Hikmet Kayahan, Barbara Liegl, Stefan Radinger, Dieter Schindlauer, Alexander Steffek, Cornelia Schweiner, Martin Werner, Katrin Wladasch, Patrick Zesar, Wolfgang Zimmer
Proof reading: Irene Lohwasser, Ariana Pullano
English translation: Katharina Köhler
Advertising management: Jamal Hachem
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Editorial policy: The Racism Report appears annually and is distributed free of charge. It contains a selection of racist incidents reported to ZARA during the year 2007. The Racism Report thus presents the work of the ZARA Counselling Centre for Victims and Witnesses of racism to the public in an understandable and transparent manner. The Racism Report provides information about racist structures in Austria. The Racism Report is supplemented by relevant background information and expert commentaries.

The ZARA Counselling Centre for Victims and Witnesses of Racism team is available at the following times (please call in advance to schedule an appointment):
Mon – Wed 10:00–18:00, Thurs 11:00–19:00
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How Much Racism Would You Like?

In 2007, the ZARA Counselling Centre dealt with and documented 831 racist incidents. Compared to the numbers from previous years, there have been fewer cases reported to ZARA. Based on this decrease it is easy to jump to the conclusion that the total number of racist incidents in Austria was lower in 2007. That sounds too good to be true, but it is not. Or rather: ZARA is not in the position to make such a statement at this time.

ZARA will publish the Racism Report for the eighth time. The Racism Report gives “visibility” to the many areas of life and forms in which people are affected by racism in their daily lives. *By racist discrimination we refer to any form of disadvantage experienced because of skin colour, language, outward appearance, religious beliefs, nationality or origin.*¹ The Report presents the work of the ZARA Counselling Centre for Victims and Witnesses of Racism in a clear and understandable manner: It describes each incident in full, and goes on to detail what measures were taken, with the client, in order to overcome the incident and help the client claim their rights.

Quality over Quantity?

The Racism Report does not permit conclusions about the total extent of racist incidents in Austria. ZARA does not engage in active monitoring, but works to resolve racist incidents reported to the Counselling Centre. All the events reported to ZARA are the tip of the iceberg made visible. It takes a lot of (moral) courage to report racism experienced or witnessed personally. A multitude of factors determines whether reporting racist discrimination is promoted or blocked. Does the incident I have experienced or witnessed constitute discrimination after all? Should I fear sanctions if I report the incident? Are there a sufficient number of people around me who will support me? What is the general attitude towards racism in society? How much of a chance do I have to claim my rights? What do I expect from a report to ZARA?

Campaigns to Raise Awareness

If one should decide to conduct a quantitative comparison after all and compares the data of this year’s Racism Report with that of last year, the following picture emerges: It is primarily the number of reports on racism in public space – more specifically racist smearings – that has significantly decreased in 2007. This decline in reports to ZARA cannot be linked to an actual decrease of racist smearings; however, it shows the enormous importance of awareness raising campaigns against racism.

In 2007 no such campaigns, with wide spread publicity occurred, unlike the “painting over racism²” or “smearings ambulance³” campaigns of 2006. Many people became aware of the problem of racist smearings in connection with these activities, which had an enormous effect on ZARA’s documentation. This sensitisation seems to have ebbed a bit. On the other hand, there seems to be more attention directed to racism on the internet. In this area, the number of reports has gone up from that of the previous year. In the other areas, like work, access to goods and services, public authorities and institutions, the extent of cases reported of ZARA remains more or less the same.

How Racist is Austria?

It is hardly possible to quantify the actual extent of racism in Austria. This problem resurfaces when debating Austrian racist violence and crime statistics comparability on a European level. France and England are roughly comparable in terms of their population size. In 2005, **979** incidents were reported in France, in England [and Wales, translator’s note] the number was **57,902** – whereas in Austria **406** incidents were reported to the police⁴. These figures cannot be compared at a quantitative level. The conclusion that England was the most racist country in Europe would be completely incorrect. Rather, it shows that the individual countries have different legal provisions and monitoring mechanisms of

¹ ZARA Mission Statement: <http://www.zara.or.at/materialien/leitbild/>

² Campaign against racist smearings: <http://www.rassismusstreichen.at/>

³ Initiative for the removal of racist smearings: <http://www.derbaumann.at/index.php?id=70> and http://www.zara.or.at/_doc/Informationsblatt_Beschmierungsambulanz.pdf

⁴ European Union Agency for Fundamental Rights (2007) *Report on Racism and Xenophobia in the Member States of the EU*, http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf

⁵ Helping Hands Graz (2007) *Jahresbericht 2006*, <http://helpinghands.htu.tugraz.at/2006.pdf>

⁶ Forum gegen Antisemitismus, Newsletter, http://www.fga-wien.at/index.php?option=com_docman&task=catview&gid=15&Itemid=34

⁷ ENAR (2007) *Shadow Report 2006: Racism in Austria*, http://www.enar.eu.org/en/national/austria/Austria_2006.pdf

⁸ Bundesministerium für Inneres, Bundesamt für Verfassungsschutz und Terrorismusbekämpfung (2007) *Verfassungsschutzbericht 2007*, <http://www.bmi.gv.at/downloadarea/staatsschutz/BVT%20VSB%202007%2020070724%20Onlineversion.pdf>

⁹ RAXEN Focal Point für Österreich: <http://www.univie.ac.at/bim/focal-point/>

¹⁰ ÖNORM Diversity Management: <http://www.on-norm.at/publish/diversitymanagement.html>

¹¹ Netzwerk Soziale Verantwortung: <http://www.sozialeverantwortung.at/>

different quality in the fight against racism. Whether or not racist incidents are publicly registered at all and how many incidents are entered into statistics in the end depends on a number of factors: Who is keeping the statistics? What is the training of those who have to collect the data? How highly developed is public awareness of racism in a given society? How easily accessible are the bodies that register reports, etc.? For instance, police officers in England are very well trained and sensitised for recognising and registering racist motives in a criminal offence.

What is Monitoring Racism Good for?

The numerical comparison between different countries is essential in so far as it makes evident different approaches to racism related data collection and varying degrees of efficiency of data collection systems. The Annual Reports of the European Union Monitoring Centre on Racism and Xenophobia – now a part of the European Union Agency for Fundamental Rights – have presented exactly these differences. Despite efforts by the European Union, which adopted two directives in the year 2000 in order to lift the fight against discrimination in the individual member states to a unified level, differences remain – and thus also the difficulties in data comparability persist. However, it would be possible to overcome the differences in the area of monitoring systems. This would require an exchange among the member states about their experiences with different legal traditions and data collection systems. Such an exchange is indeed taking place; however, it currently focuses on the so called new member states.

In this context, what is important is not the quantitative comparison between different countries – for example, asking whether the French are less racist than the English but more so than the Austrians. Rather, what matters, and should be taken seriously, is the recognition that racism is a structural phenomenon that concerns society as a whole. Although it may be assumed that the potential for racism probably is evenly distributed across all the countries of the European Union, there are relevant differences in the actual forms taken, in the political use made of the racist potential, regarding who is concerned by and about racism, and who possess the means to point out and fight racist discrimination.

Therefore, the type of qualitative analysis of racist discrimination that is enabled by Zara's Racism Report makes sense after all: Which forms of racism occur in which areas of life? What connections are there between structural forms of racist discrimination and racism in daily life? Which ethnic or religious minorities are particularly affected by discrimina-

tion? Which of the measures taken by ZARA show an effect in which areas? Which forms of discrimination cannot be tackled by the existing legal and other means in a sufficient way? The answers to all these questions provide information regarding the gaps in anti-discrimination law, the need to fight against discriminatory laws and structures as well as the need for effective preventive measures.

NGOs like Helping Hands Graz⁵, the Forum against Antisemitism⁶ or the ENARA⁷ network also draft shadow reports on racism in Austria. Like the ZARA Racism Report, they are far more informative about the quality of racist assaults than, for example, the Report on the Protection of the Constitution (Verfassungsschutzbericht) by the Federal Office for the Protection of the Constitution and the Fight Against Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung), which reports **28** xenophobic and **8** antisemitic offences for the year 2006⁸. These deeds include verbal offences, smearings, damage to property, and political agitation distributed by e-mail, text messages or by mail. The Report does not give information about the persons affected by the offences. Above that, xenophobic and antisemitic acts are treated under the heading of right-wing extremism, leaving the impression of such incidents solely being caused by members of this political spectrum.

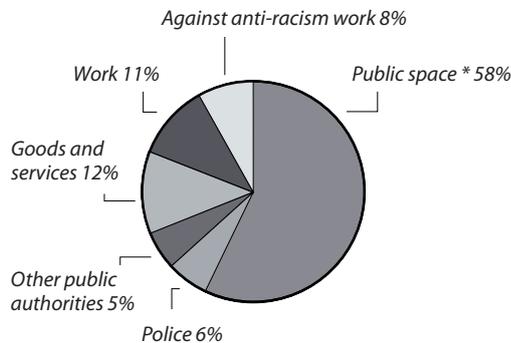
Zara's Racism Report makes it clear that racism is a phenomenon that concerns society as a whole. It contains racist incidents that can be the subject of legal action under penal law, administrative law and civil law, as well as deeds that currently cannot be tackled by legal action. Still, they must be classified as racist in the opinion of ZARA. The ZARA Racism Report is thus an important resource for everybody wishing to know more about the qualitative extent of racism in Austria as a basis for necessary (political) action, in order to fight racism more effectively, and to further equality between everyone living in Austria regardless of their skin colour, ethnicity or religious beliefs.

Barbara Liegl

ZARA-CEO, director of the RAXEN Focal Point for Austria at the Ludwig Boltzmann Institute of Human Rights⁹, expert at the Austrian Standards Institute (Österreichisches Normungsinstitut) for the development of the Austrian norm for Diversity Management¹⁰, vice-chairperson of the Social Responsibility Network (Netzwerk Soziale Verantwortung)¹¹, political scientist with a focus on (anti-)racism/discrimination, monitoring and migration.

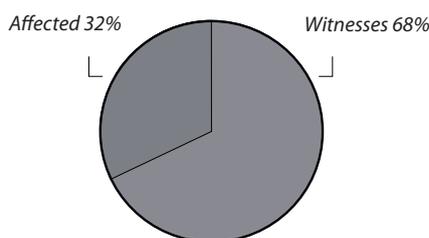
Statistics 2007

In 2007, the ZARA team documented a total of 831 racist incidents.

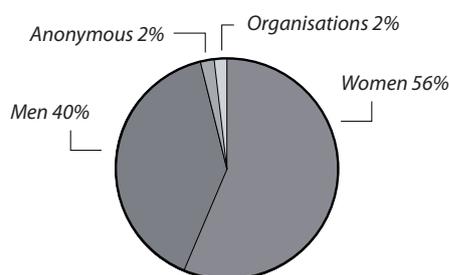


* Among the 476 cases recorded in this category, 251 were racist smearings.

The percentage of witnesses among the persons reporting to ZARA was 68% in 2007. 32% of the ZARA clients were directly affected.



56% of the ZARA clients were women, 40% men, 2% of the cases were reported anonymously and 2% by organisations.



Information on the individual categories and their definitions

• **Public space** refers to all incidents which occur in places open to the general public without restriction to a clearly defined group of people. For example, this includes streets, public transport, shops, bars and restaurants, the media, and the political arena. Racist smearings are also included in this category.

• **Police** encompasses all reports which are in any way related to the administration of public security and its officials.

• **Other public authorities and institutions** refers to all incidents taking place between private individuals and public authorities, institutions or their representatives (with the exception of the police). For example, this includes government offices, prisons, schools, etc.

• **Goods and services** (featured under the heading of "Housing" in previous years) refers to, on the one hand, incidents in the field of housing – from flat hunting to neighbourhood conflicts. On the other hand, this area includes all events regarding the access to bars and restaurants, shops and service providers (unless they fall into the category "Work").

• **Work** includes reports on incidents that are "work"-related in a broad sense, i.e. the labour market, looking for a job, colleagues at work, job adverts, etc.

• **Racism as a reaction to anti-racism work** refers to letters, e-mails, phone calls and threats directed against ZARA, ZARA's work or individual staff members.

Remarks

The tasks of ZARA counsellors includes checking the truth of statements of fact given to them as well as coming in for the perspective of the "opponent" or a third party. However, counsellors cannot guarantee that all information they receive – from various sides – corresponds exactly with "the truth". The interests of the individuals turning to the Counselling Centre have top priority. Therefore, their statements are met with trust and understanding. Their position must be heard with earnest, although not adopted uncritically.

Furthermore, ZARA is aware of the fact that by depicting racist acts, one reproduces racism, racist epithets and prejudice, the "in principle needless" emphasis on ethnic or religious origin and other features of persons, which lead to discrimination. ZARA strives for linguistic sensibility. The forms of racism that are reproduced stand in a clear context with the aim of making racism in Austria visible. If ZARA abstained from this in order to avoid the reproduction of racism, this would only work towards further denial of the existence of racism. For more on anti-racist language use, see Racism Report 2006, <http://www.zara.or.at/materialien/rassismus-report/racism-report-2006.pdf>

Public Space

¹² Appiah, Kwame Anthony (2007) *Cosmopolitanism: ethics in a world of strangers*, New York and London: W.W. Norton

“The foreignness of foreigners, the strangeness of strangers: these things are real enough. It’s just that we’ve been encouraged, not least by well-meaning intellectuals, to exaggerate their significance by an order of magnitude.”¹²

derives from, and why they apparently expect to get away unpunished.

ZARA cannot provide final answers to these questions. However, the reported incidents point in the direction that the long-term rhetoric of the “imminent downfall of the West” or of “Austrian culture” or the “genuine Austrian” has led to a “defensive reflex” which furnishes people with a justification for their inhuman acts. Whoever acts in necessary self-defence does not have to pay any respect to the opponent, is not obliged to play fair and may kick and scratch and bite wildly.

Apparently the continued rhetorical construction of an enemy has led to some people really feeling surrounded and threatened by enemies. They find these enemies in the street, in public transport or at public events. People stirred up to hatred in this way threaten the safety and dignity of others. Dark skin, a headscarf or a foreign accent are completely sufficient as triggers for them to freak out. And they are not even ashamed of that. Any feeling of wrongdoing is suffocated by the rhetoric of self-defence and the myth of being a victim.

ZARA has been trying for years to point out that words are actions, and language inciting hatred leads to people getting hurt. Therefore, it is important to ZARA not just to pick out and present those cases involving physical assault, but also to highlight such cases that “only” consisted in verbal attacks. The synopsis of reported incidents clearly shows how close these two forms of racist discrimination are to each other.

¹³ Sen, Amartya (2006) *Identity and violence: the illusion of destiny*, New York and London: W.W. Norton

“Our shared humanity gets savagely challenged when our differences are narrowed into one devised system of uniquely powerful categorization.”¹³

Public space is a place of encounter. In Austria, encounters in the street or in public transport, even at public events, are mostly anonymous and impassive.

The feeling of security in public space seems to depend on two reassuring factors: For one thing, on “being left alone” – moving in public space uneventfully and uncommunicatively as a matter of course. The other factor seems to be the feeling of being able to rely on support by others in situations that require them to act or interfere.

This form of security often does not seem to work for people with a background in migration, in particular when this background is “obvious” in the perception of others. They are not left alone, and only rarely can they rely on support. The incidents given below substantiate the force and brutality or even sheer violence people are met with – by people with whom they have never before been in personal contact.

Reading through these racist assaults inevitably raises the question how on earth perpetrators arrive at their inhuman haughtiness, what their rage

**Unser Rap, ein Schwarzer.
Unser Joint, ein Inder.
Unser Sex, französisch.
Unser Teppich, ein Perser.
Unser Kollege, ein Türke.**

**WIR SIND INTERNATIONAL
UND NICHT AUSLÄNDERFEINDLICH.**

Street, Public Transport etc.

1 Ms R. reports the following incident to ZARA for documentation: On a Friday afternoon in June, she gets on a bus at Vienna's Mariahilfer Straße. A man holding two large dogs on a leash is seated in the bus. The dogs are not wearing muzzles; the man is dragging them around in a way that harasses other passengers and scolding the dogs. When two men of African origins sit down in front of him, he starts directing his abuse at them and harassing them with racist statements. At last, one of the men turns around in bewilderment and asks in English what the problem is. Subsequently, the man continues but even louder. Ms R., who has watched the situation, interferes and asks the man to restrain himself. The man does not stop his verbal assaults, rather, his dogs start attacking the two African men. One of them jumps up, whereupon the trouble maker hits him. Now Ms R. interferes verbally in a vehement way and insists that the man should stop his behaviour and leave the bus. Thereupon he directs his anger against her, abuses her in a sexist way and threatens her. At the next stop he spits in her face and finally gets off the bus. Ms R. is disappointed about the fact that neither the driver nor the other passengers speak out for her or the two men that had been subject to the racist attack. When she addresses the driver to talk about the incident, he says that the attacker has gotten off the bus anyway, and even if he had kicked him out, another one would have followed soon enough.

ZARA suggests Ms R. should address a complaint to the transport company, but she does not wish to. She only wants to see the case documented.

2 Ms K., who was born in Iran, wants to go to the movies with her daughter one November evening in Vienna. Outside the movie theatre, the vendor of a Christmas market stall accuses her of theft. The reproach soon turns out to be unfounded. Ms K. is outraged about being groundlessly accused of a criminal offence. An elderly man stops near her and says that she, as a "dirty foreigner", should simply "hold her tongue". In anger about this slander, Ms K. calls the police, who record the man's personal data.

Ms K. considers filing a complaint against the man for the criminal offence of insult, and ZARA offers to support her in that. However, given the wording used, the insult does not count as "racist" insult in the sense of the Criminal Code. Therefore, Ms K. would have to bring private charges against the man and risk that she might have to carry the cost of the proceedings. Ms K. is disappointed that she can take no effective steps against the insult and only report it to ZARA for documentation.

3 Ms A., a young exchange student from Greece, reports the following case to ZARA for documentation: After an appointment with the dentist in Maria Enzersdorf in June, she walks to the urban railway station of Brunn am Gebirge on the sidewalk. A car driver is pulling out of the driveway of a nursery school backward just when Ms. A is crossing the driveway. She takes a step to the side in order to avoid contact with the car. The driver leaves the driveway and opens the window, driving along next to her. He asks her why she is looking at him like that and whether anything is the matter. Ms A. replies that he ought to pay a little more attention. Upon that, he starts vehemently abusing her, calling her a "slut". He calls her a foreigner, and when asked why is doing that, he just says that he is going to call the police. He stops the car, gets off and hits Ms A. lightly on the back of her head, continuing his abuse. Then he kicks her against the car's right front tire with his foot, however, the car is not damaged. As another woman is approaching at that moment, the man waits until she is out of sight and then attacks Ms A. once again, grabs her by the throat with one hand and presses her against a tree. Ms A. calls on another passer-by for help and manages to wriggle herself out of the man's grip. She informs the police via telephone, and after her personal details have been recorded, she goes to see a doctor, who finds her throat reddened. To the present day, Ms A is suffering from swallowing disorders. ZARA documents the case. Ms A. promises to keep ZARA informed about this matter, but has not called again.

4 Mr K. is from Nigeria and lives in Vienna with his Austrian wife. One afternoon, he is on his way home in a Viennese tramway. He is tired and glad to find a free seat. The car gets very crowded when a lot of people get on at the next stop. Suddenly, a man of about 60 years of age bawls out: "Enough is enough. The foreigner takes the last free seat on the tramway from us! Bugger off out of the car! And out of Austria as well! We do not want the likes of you here!" The other passengers do not react to this racist outburst. Mr K. leaves the car at the next stop and walks the rest of his way home. His wife reports the case to ZARA and wants to see it documented.

5 Mr O. is working at the United Nations in Vienna and comes from Zimbabwe. In April, he is driving his car on the Vienna Burgring, when a rear-end collision (between a Taxi cab and a car of the brand Kia) occurs right ahead of his vehicle. Mr O. cannot react in time and in spite of putting on the breaks bumps into the second car involved in the accident (the Kia). All three drivers get out of their cars, and although none of the involved persons show any injuries, the taxi driver calls the police. Then he abuses Mr O.: "You stupid African! Go back home!" Other similar racist statements are also made. As Mr O. is used to such remarks after several years of stay in Austria, he does not react to them and disregards them. However, to be on the safe side, he informs a good friend, who promises that she will drop by to support Mr O. in conflicts with the other participants of the accident. The police arrive, but leave again soon after without having accomplished anything, as there are no injuries to record. The involved parties start completing accident report forms. A discussion develops between Mr O. and the Kia driver, as Mr O. does not want to hand him the carbon copy, but not the original of the accident report. Mr O.'s friend who has meanwhile arrived to support him, is watching while Mr O. is turning around to walk back to his car and the Kia driver suddenly hits him in the right half of his face from behind with the palm of his hand. Mr O. turns towards the man, who gives him a push. Mr O. returns the push, which leads to the man falling to the ground and suffering a wound on his nose due to the impact of the sharp edge of his eyeglasses. The taxi driver once more calls the police. When the officers arrive, the two drivers involved in the accident both state that it had been only Mr O. who hit anybody. Mr O. and his witness report what actually went on. As Mr O. had been slightly injured by the blows, he goes to see his general practitioner the following day. The GP diagnoses light injuries to the face.

When Mr O. reports the case to ZARA, he receives legal counselling and the recommendation to get a lawyer to represent him in case of criminal proceedings or civil law suit against him. Mr O. wants to wait with mandating a lawyer. He is accompanied to the police by a ZARA staff member, where he is interviewed because he is being reproached with having injured the other party involved in the accident. Now Mr O. also makes a statement about himself being injured which is recorded by the police officer. At the time of this publication, criminal proceedings have not yet been instigated.

6 Ms F., an Austrian citizen, informs ZARA about one Sunday in April when she walked her dog – as always, on a leash – on Vienna's Lerchenfelder Street. A man of about 45 years of age came walking towards her from the opposite direction with an

unleashed bull dog. The bull dog behaved aggressively towards Ms F.'s dog. Ms F. asks the man to leash his dog, whereupon he replies: "The way you look, you belong in a gas chamber!" Ms F. is shocked, refers the man to psychiatric treatment, and walks off. She tells ZARA that her outward appearance has made her the subject of racist attacks several times before and asks ZARA to document the incident.

7 Mr G. witnesses the following incident: One day at noon in April, he is on the same car of the underground as, among others, a man of African origin and an Austrian man of about 65 years of age. Without any reason, that man suddenly turns to the man of African origin and says: "I hate N...s!" The man of African origin is startled and asks: "Why?" – "Because all N...s are drug dealers! And I know you!" [The dialogue so far is English in the original, translator's remark]. As he does not accept the hostilities he starts to insult the older man along the lines of him being an "old idiot with only two more years to live anyhow". Thereupon, the man pulls out a knife and challenges the man of African origin to come closer so that he might show him. Some of the passengers threaten to call the police. Mr G. is shocked and interferes with a comment against the aggressor. Yet, he has to get off at the next stop. He believes that the aggressor is leaving the train as well, but he loses sight of him.

Mr G. wants ZARA to document the case and leaves his phone number in case the man concerned should turn to ZARA, which, however, does not happen.

8 Ms L. gets on a tramway at the Hietzing station in January. At the very last moment before the train leaves the station, three Afro-Austrian youngsters try to get on the train, thereby briefly blocking the door – which hinders the driver from leaving the station. First, he addresses the youngsters in an unfriendly manner and calls on them to abstain from that behaviour. Then, while the train is going, he abuses them with, among others, such expressions as "shit foreigners' riff-raff" and, alluding to their skin colour, says "We do not need n...s here!" When Ms L. addresses the driver about his racist statements, she gets abused, too. When she asks him for his name and official ID number, he refuses to give them. As she does not want to continue her ride with that driver, Ms L. leaves the train under protest a couple of stops before her destination.

Still on the same day, she tries to report the incident to the public transport company's customer service, but is told that the persons responsible for handling such incidents are no longer present.

After Ms L. has turned to ZARA, a ZARA counsellor turns to the customer service with a complaint. Four

weeks later, an e-mail reply informs ZARA that the driver was asked to make a statement and he confirmed having said those things. As such, there would be consequences for him under service regulations. The company apologizes to Ms L. for the behaviour of their staff.

Ms L. is satisfied with the way her complaint was treated and thanks ZARA for intervening.

9 Mr B. is of Turkish origin. In January, he participates in an indoors football tournament in Lower Austria together with friends. In the semi-final, Mr B.'s team is in the lead. Suddenly, the mood in the arena turns against Mr B. and his team. Under the influence of alcohol, the audience as well as substitutes of the opposing team start singing the German national anthem and radical right-wing songs. The style of play of the opponent becomes increasingly brutal. Foul play is committed against one of Mr B.'s teammates, who then confronts the offending opponent regarding his action. Three players from the other team rush up to the player that has been fouled in the midst of the agitation. Mr B. interferes and asks "Do you want a brawl? What is this supposed to be?" A player from the opposing team jostles him, and B. returns the push. The situation gets out of hand and members of the audience get on the pitch. Mr B.'s brother in law, who is in the audience, gets hit on the head with a plastic bottle. Mr B. wants to run to his aid, but slips on the spilled liquid. When he wants to get up again, another member of the audience kicks him in the face. Mr B. starts bleeding strongly from his nose, his brother in law is injured as well. Finally, the attacks stop.

An orderly gets on the pitch and has a look at Mr B.'s injuries. He finds him to have "only a nosebleed". The game is cancelled. One of the organisers tells Mr B. that he and his team mates should get changed and be quiet. Mr B. wants to inform the police. One of the members of the audience declares to be a policeman and says that in case of a complaint being filed, he and the entire arena would make statements against Mr B. and his team. Thus intimidated, Mr B. resolves not to inform the police. The organiser informs Mr B. that the back door is open for him and his colleagues, as the audience would expect them at the front.

Later on Mr B. learns that his team has been disqualified. Thereupon, Mr B. wants to demand from one of the organisers the return of the start fee of 150 Euro because of the unfair decision. However, the organiser only replies that Mr B. and his team damaged the sports hall and the money would therefore be retained.

Mr B. goes to the hospital with one of his relatives, where he is diagnosed with a broken jaw and zygomatic bone. He is referred for further treatment to

another hospital because of the complicated fractures. There, metal plates are inserted to treat the fractures. He spends the following days in hospital, and, intimidated by the threats, tells a plain clothes policeman that he had suffered the injuries during the game without third party fault.

When Mr B. tells ZARA about the incident, he asks for the actual facts to be reported to the authorities. A counsellor drafts a statement of fact directed to the Korneuburg office of the Public Prosecution and also forwards it to the federal province's competent Office for the Protection of the Constitution and the Fight Against Terrorism (see "Glossary"), as a Neo-Nazi background cannot be excluded. Investigations and interviews are carried on until September, apparently by the local police officers. However, the results are extremely poor. No specific perpetrators can be identified. Several players from both teams are indicted for participating in a brawl.

In September, a hearing before the Schwechat district court takes place, where Mr B. is neither summoned as a witness nor as a private party to the proceedings. Still, ZARA accompanies Mr B. to the hearing. There he is told that the proceedings now will have to be held before the Korneuburg regional court, as the perpetrator had turned himself in to the police in writing the previous day. ZARA arranges for Mr B. to be accompanied through the proceedings by the Weiße Ring (see "Glossary") and will be accompanying him through the criminal proceedings as well.

10 Ms I. grew up in Vienna, her parents are from Asia. One afternoon in April she takes the tramway in the 10th Viennese district. Four male youths, all of about 15 years of age, start to insult her in racist ways and pull her hair. Ms I. tries to defend herself, but the youngsters become more and more aggressive and threaten her with a "home visit by skinheads". The other passengers do not interfere. Ms I. decides to turn to the tramway driver. The youngsters follow suit and hassle her. One of them demands that the driver should call the police because the woman had threatened him. Then Ms I. turns to the driver and asks for the police to be informed. The driver is irritated, states he does not know for whom to call the police, and remains inactive. Mr B., also of Asian origin, walks up and stands between Ms I. and the aggressors. Another man, of African origin, addresses her, saying "I believe it would be better if you got off now."

Ms I. gets off at the Quellenplatz tram stop accompanied by Mr B. and calls the police. The officer on the phone says that he could either send over a patrol if she would prefer to wait, or she might come to the Keplerplatz police station. As she is being closely followed by the youngsters, Ms I. does not want to wait and enters the underground station. On the

underground train, the youngsters take photographs of Ms I. with their mobile phones and announce that they are still “going to get her”. They also make throat-cutting gestures. Finally, Ms I. gets off at Stephansplatz. The youngsters also leave the train and watch where she is going, but do not follow her any longer. Mr B. accompanies her some more and gives her his mobile phone number in case she should want to get back to him as a witness.

When Ms I. reports the case to ZARA, ZARA suggests she forward the case to the office of the public prosecutor and the Federal Office for the Protection of the Constitution and the Fight against Terrorism (see: “Glossary”). However, Ms I. does not get in touch with ZARA again.

11 Mr A., a 16 year old asylum seeker of African origin, gets off an underground train at the Philadelphiabrücke station in Vienna. Five youngsters ask him whether he has a cigarette, which he denies. However, the youngsters see a pack of cigarettes in his pocket and mention that to him. He says that he has only one cigarette left and does not want to give it to them. Still, the group do not leave him alone. In English, he asks: “What’s your problem?” One of the youngsters replies: “You are going to see right away what the problem is! And learn proper German!” They start pushing him and a brawl develops. Mr A. is beaten, starts bleeding from his lip and suffers a black eye. He tries to defend himself, finally, the attackers run away. He manages to hold one of them back by force and calls for the police, who are informed by an uninvolved passer-by, but the police never arrive. The youngster that Mr A. had held finally manages to escape.

After the incident, Mr A. turns to his guardian, who takes him to hospital. She also reports the incident to ZARA and receives legal counselling. She does not get in touch with ZARA again.

12 Ms S. notifies ZARA of the following incident: She is riding on the tramway in Linz in May, standing near a woman with dark skin colour. Suddenly, a retired man starts ranting “That scum, that brat”. Ms S. initially believes that the man has a group of about 15 year old girls in mind. She asks him whether he means the girls or the woman. He says that he means the “N...” and that all the “N...s ever do is steal, one can read it in the newspaper all the time”. Ms S. tries to explain to him that one cannot make across-the-board judgements about all Africans, and that the reporting of some big dailies is not very objective. The man gets up and takes another seat at some distance from her.

Ms S. only wants to see the incident documented by ZARA.

13 In February, Ms K. and her friend go to the sauna at a Vienna swimming pool for the first time. In the mixed sauna, they overhear a man talking on the phone, who repeatedly uses the “N...” word and says “A black guy has no value, they are just like animals!” The conversation ends with the sentence: “We will meet our Aryan brothers later. Sieg Heil!” Ms K. turns to the man and tells him that his utterances constitute a punishable offence and revitalisation of National Socialism. The man only replies that he is “in a free country”. She asks for his name in vain.

Ms K. informs the pool attendants about the incident, but they neither intervene nor have information whether or not the man is a regular visitor. The other guests of the sauna try to calm her down when she complains about the man’s utterances. Immediately after the visit to the sauna, Ms K. informs ZARA about the events via telephone. With Ms K.’s consent, ZARA forwards her telephone number to the Federal Office for the Protection of the Constitution and the Fight against Terrorism (see “Glossary”). Investigations against the perpetrator begin and a complaint is filed with the Office of the Public Prosecutor. ZARA does not get information about whether or not criminal proceedings are initiated.

14 Ms R., who is a journalist and, as an Afro-Austrian woman, also active in Austria’s black community, is riding on a Vienna tramway in early April. A young man gets on at the back of the car, which is full of passengers, and starts abusing Ms R., obviously because of her outward appearance. He also spits at her and attacks her physically. At the Südbahnhof stop, he hits her repeatedly in the face and on the collar bone with his fists, which leads to severe bruises and a posttraumatic stress reaction. Neither the other passengers nor the driver react to the violence, although Ms R. repeatedly asks for attention and help loudly and clearly. Ms R. has to run after the fleeing perpetrator in pain and calls the police herself. However, when the police arrive, the perpetrator has already disappeared in the crowd. In spite of clear information about the time and place, the public transport company’s complaints office was not able to determine the driver in question. Ms R. is informed that this driver had not noticed anything of the assault against her. This information is not understandable for Ms R. and annoys her further. She points out several similar cases that have been reported by members of the black community and once again asks for a statement and demands measures to be taken that aim at training public transport staff to interfere in such situations and protect customers from attacks.

The customers’ service of the public transport company informs Ms R. that all the drivers that come

into question have been talked to, but due to the lack of a car identification number, the actual driver cannot be found out. The entire staff has been instructed once again to immediately inform the police in case of assaults. The company regrets the despicable racist attack against Ms R. and the lack of moral courage on the part of the other passengers. Yet, the company cannot oblige the staff to endanger themselves, the smooth running of the transport and the other passengers by personally interfering in such situations. Ms R. wants to see the case documented by ZARA.

15 Mr H. has spent an evening out with a group of friends, including a woman of Angolan origin and a man of Philippine origin. On their way home, they encounter three drunken men wearing T-Shirts with writing like "Waffen-SS" on them and making racist comments. The group's attempt to get out of their way fails. They are followed and attacked. One of the perpetrators spits in the Angolan woman's and beats her. When she defends herself with words, she and the rest of the group are subjected to further verbal racist abuse as well as beating. When they three drunks desist and flee, the group inform the police, who search for the perpetrators.

Mr H. notifies ZARA of the incident and wants to see it documented.

16 In June, Ms I. attends the Vienna Donauinselnfest, a huge outdoor festival, together with her friend who is from Nigeria. In the dense crowd at the festival, a brief and harmless discussion with some youngsters of Austrian origin develops as Ms I. and her friend try to make their way through the masses of the festival audience. In the course of the brief argument, one of the young men verbally abuses Ms I.'s friend using the racial slur "shit N..."

Ms I. wants to see this case of every-day racism documented by ZARA.

17 Ms C., a young Muslim woman, is using public transport at noon in June in Vienna and gets off at the Ottakring stop. Suddenly someone grabs her headscarf and tries to pull it off her head. When she turns around, she sees a man of about 30 years of age running away.

In order to avoid another confrontation, she does not run after him. Yet, she reports the case to ZARA for documentation.

18 Mr O., a native Austrian, reports the following incident to ZARA: In May, he is at the underground station Philadelphiabrücke. He notices two men, obviously under the influence of alcohol, engaged in a loud conversation. These two men get on the same lift as Mr O. They make racial slurs, with statements like "Fridays are free from foreigners". These statements are made in the presence of several people with dark skin. Mr O. wants to see this case of everyday racism documented by ZARA.

19 Ms A.'s husband is Nigerian, they have two children. One evening in July, as Ms A. is on her way home with her children, a man of about 60 years of age gets on the train at the Hietzing station. He takes a seat next to Ms A. and murmurs something, of which Ms A. only understands the word "scum". When she tries to find out what the man means, a violent outburst of abuse follows, including such elements as "Bugger off to where you belong!" "You social parasites" and "You are going to see what you get from that!" Ms A. and her children get off at the next stop bidding the man goodbye with the remark: "Hold your peace, you shit-Nazi!" The other passengers do not react to the incident.

Ms A. asks ZARA to document the case.

20 Ms U., a Turkish woman who is wearing a headscarf, has an appointment at a health centre on Vienna's Mariahilfer Straße together with her daughter in August. Afterwards, she is standing in the entrance area, smoking a cigarette, when suddenly a woman jostles her and walks on without an apology. A little later the woman returns, grabs Ms U. by the hands and tries to tear off her headscarf. At the same time, she abuses Ms U. in a way that is both racist and hostile towards Islam. Due to her imperfect knowledge of German, Ms U. does not understand every single word. Her daughter starts crying, as she is pressed against the wall and lightly injured in the scuffle during the attack. The security man present at the health centre intervenes and demands to see the attacker's identity card. He takes down the woman's name and forwards it to the police, who he already informed previously. Ms U. has the opportunity to have a statement about the incident recorded by the police and joins possible criminal proceedings as a private party (see Glossary).

ZARA facilitates legal and psychosocial counselling for the proceedings for Ms U. and her daughter by the Weiße Ring (see "Glossary"). At the time of this report, the public prosecutor was dealing with the incident.



Republikanischer Club – Neues Österreich

**Rockhgasse 1
1010 Wien
www.repclub.at**

Der *Republikanische Club – Neues Österreich* existiert seit 20 Jahren. Das drängende Bewusstsein, mit der Vergangenheit aufrichtig und gewissenhaft umzugehen, machte die Gründung des RC notwendig. Im Zuge der Auseinandersetzung um Waldheims Vergangenheit entstanden, beschäftigt sich der RC seither mit den gesellschaftlichen Phänomenen: Antisemitismus, Rassismus und Fremdenfeindlichkeit aber auch mit der kritischen Auseinandersetzung mit sozialen Verhältnissen.

Der *Republikanische Club – Neues Österreich* organisiert regelmäßig Diskussionsveranstaltungen in den eigenen Räumlichkeiten in der Rockhgasse 1, 1010, Eingang Cafe Hebenstreit. Das Programm steht auf der Homepage: www.repclub.at. Falls Sie/Du regelmäßige Programmzusendungen erhalten wollen, bitte ein Email an repclub@repclub.at senden.



www.gajwien.at

Marcus Omofuma - Informationsbroschüre

In dieser Broschüre findest du Informationen zu Marcus Omofuma, dem rassistischen Alltag in Österreich und in der EU und zur Asylgesetzgebung. Weiters: Eine Dokumentation der rassistischen Beschmierungen des Marcus Omofuma Gedenksteins. Kostenlos zu bestellen per Email an shop@gajwien.at

Suspect

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Jeden Dienstag ab 18:30 GAJ Wien Plenum in der Lindengasse 40, 1070 Wien, Tel.: 01/52125242, info@gajwien.at



WUK

Der Demokratisierungsprozess ist nicht durch Wahlen und Abstimmungen allein gewährleistet, sondern bedarf einer produktiven Ergänzung durch offene Formen von Diskussion und Meinungsbildung: Betroffene ermächtigen sich selbst, für sie wichtige Fragen zum Thema der öffentlichen Diskussion zu machen und mitzuentcheiden.

aus dem WUK Leitbild, 1994

21 Mr C. reports an incident to ZARA via e-mail in September: In Bad Vöslau in Lower Austria, three youngsters of Austrian origin are abused by a group of Bosnian youngsters as “shit Austrian smoothies”. When the three Austrian youngsters decide to walk away in order to avoid a hassle, they are beaten up by the aggressors. One of the three youngsters subsequently needs an operation because of a broken nasal bone. The other two suffer scratches, bruises and concussion.

Mr C. concludes: “According to your mission statement, which can be read at <http://www.zara.or.at/materialien/leitbild/>, I assume that also a racist assault against Austrians will be documented.” ZARA confirms to Mr C. that this is correct and recommends to him, in case he should know the victims, that he refer them to the crime victim support of the association Weißer Ring (see “Glossary”) for counselling and support. If criminal proceedings should ensue, they will be documented by ZARA. Mr C. does not contact ZARA again.

22 One morning in May, Ms S. from Vienna wants to see her Afro-Austrian son to kindergarten. When they walk past the city hall, three persons of about 25 years of age come their way. One of them murmurs the racist slur “bimbo” in the direction of her son. Ms S. immediately replies to him that she would not accept such a labelling of her son. He bellows at her: “Shut up, slut!”

Ms S. turns to ZARA and asks for the incident to be documented.

23 One Sunday in September, Ms A., a native Austrian, takes a walk in the Vienna Augarten together with her husband, who is of African origin. Holding hands, they are heading towards a bench, when they pass by a family consisting of a couple, grandmother and five children of about 6 to 16 years of age. One of the children points at Ms A. and her husband and says “black and white, what a shite!” The family laughs at the child’s utterance, who then repeats it loudly. Ms A. decides to disregard the remark, but her husband turns around and says to the child’s mother: “Why would you say such a thing? This is not funny. We have not done anything to you!” The mother ignores him, and continues to do so when he asks again. Mr and Ms A. decide to walk on. Suddenly, the father of the family shouts after them: “Bugger off back to where you come from, you idiot!” Ms A. and her husband conclude that an argument makes no sense and continue their Sunday’s walk.

Ms A. asks ZARA to document the incident.

24 Mr F. reports: His former partner and mother of his son, Ms U., came to Austria from the Republic of Congo about 20 years ago. One September afternoon, she is driving her car to the Linz school that their son attends in order to pick him up. She has to overtake a cyclist who is riding in the middle of the road. When she looks in the rear mirror after having overtaken him, the cyclist angrily gives her the middle finger. She does not understand why, as she has kept the necessary safe distance. When she turns into the next cross-road and parks her car, the cyclist follows her, suddenly pulls open the driver’s door and abuses her: “N..., shit foreigner! See to it that you get home, you whore!” Ms U. tries to make a reply, but the man does not allow her to. Finally, he turns to physical abuse and tries to hit her in the face, but she is able to fend him off. When she gets out of the car, he boxes her in the belly. Ms U. defends herself and pushes the man off. However, he attacks her anew and kicks against her right thigh. Another cyclist comes by and interferes: “One does not hit women, go to the police quick!” Yet, the man continues to pummel her. Ms U. flees to the nearest police station, the attacker follows her. They each file a complaint – Ms. U. against the man for bodily harm, and the attacking cyclist against her for her alleged traffic violation. Ms U. subsequently goes to the hospital, where minor injuries inflicted by the beatings are diagnosed.

ZARA gives legal counselling to Mr F. and Ms U. and recommends that they turn to the Weiße Ring (see “Glossary”) in Linz. Possible criminal proceedings against the perpetrator – which have not taken place as of yet – will be observed and documented by ZARA.

25 One day in October, Mr K., who is from Iraq, is verbally abused by two men in Matzleinsdorfer Square in Vienna. When he wants to leave, they beat him, and he falls down to the floor. Subsequently, they mistreat him by kicking him with their feet for several minutes. Then the police arrive, apparently having been called by a passer-by. They record the two men’s personal information and call an ambulance for Mr K. Mr K. files a complaint for bodily harm.

ZARA counsels Mr K. and recommends that he turn to the Weiße Ring (see “Glossary”). Furthermore, ZARA will continue to observe and document the criminal proceedings.

26 Ms O., an Austrian, lives in Vienna with her family. She and her husband, who is of African origin, have two children. In August, she takes a walk with her two sons in the Vienna Donaupark. At a playground, her children play on animal shaped rockers. One son is sitting on a gorilla, the other on a tiger. Both are rocking with their mother watching over them. An elderly couple and their adult daughter walk by. The latter points at the twins and says to her mother: "Look, the little n... He fits in that place, it is right for him to sit there!" Assuming that the woman is simply not sufficiently sensitised and just made an unfortunate choice of word, Ms O. replies: "That word has long been out of use" The old man intervenes and says to Ms O.: "Well, than it just slipped out: N...!" Ms O. returns: "Well, then one should be careful about what slips out of one's mouth..." After that, the two women have to stop the man from becoming violent towards Ms O. The women drag the man away. He is completely outraged and several times shouts in Ms O.'s direction: "Look, there is a N...-cunt! Look...!"

Ms O. wants ZARA to document this every-day racist assault.

27 Mr A., a member of the ZARA staff, is travelling in the direction of Vienna's Simmering district in December when he notices an obviously inebriated man accosting a Turkish family. Among other things, he says that "all Turks ought to be shot dead anyway." About a minute later, Mr A. sees how another passenger distracts that drunk from his torrent of hatred and involves him in a conversation on another topic. The drunken man suddenly calms down and vividly discusses the advantages of various alcoholic beverages with the man, thus no longer abusing other passengers because of their origin. ZARA documents the incident.

28 Mr J. describes the following incident to ZARA: In October, he witnessed several youngsters, who he supposed to be either Arabic or Turkish, abusing a man in "Jewish clothing" as "dirty Jew" and "Jewish pig". Other exclamation are audible, but in a language that Mr J. does not understand.

Mr J. asks ZARA: "Is something like this also included under your concept of racism? Or can racism only come from white people?" ZARA confirms that the incident is a case of racism and documents the events.

29 In October, Ms L. is on her way to the doctor's office in Vienna's 7th district with her sons, whose father is of African origin. A man passing them at first looks at them and then turns to the other passers-by in the surroundings, exclaiming: "Well, this one did not manage to get a white man!"

Ms L. wants to see this humiliation of every-day racism documented by ZARA.

Show moral courage!

Successful movie maker Jochen Graf shot three brief advertising clips for ZARA under the title *3times45 seconds of moral courage*. The spots, which received several awards, encourage viewers to interfere actively against everyday racism in uneasy situations – altogether without pointing fingers at anybody!

To be viewed at: <http://filmproduktion.org/zaraspots/>

30 In May, Mr Z., who was born in Nigeria, is prompted by a young woman carrying a dog in the Vienna tramway to leave his seat to her. When Mr Z. refuses, she abuses him as "Shit N...".

Mr Z. wants to see the incident documented by ZARA.

Know Your Rights

Ms R., an Austrian citizen of Turkish origin, is abused in the street as "Turks sow" by two men who tell her in rude words to "go home", otherwise they will "slap her face", or so they tell her while laughing out loud. Several other passers-by notice this verbal assault but do not react. Ms R. is shocked and walks to the nearest police station in order to report the incident to the police. At the police station an officer tells her that the police are not equipped to deal with insults among private parties and that she should turn to the local district court.

Regarding insult in public space, sec 115 Criminal Code provides that someone who publicly (meaning in the presence of at least three people, victims and perpetrators not included) "verbally abuses, ridicules, physically abuses or threatens with physical abuse" another person, shall be punished with imprisonment of up to three months or with a fine of up to 180 daily rates (calculated on the basis of income).

Essentially the meaning of sec 115 Criminal Code is an insult, because it treats insults in public space as an offence for private prosecution (Privatanklagedelikt). This means the perpetrator is only prosecuted upon

demand from the victim. The private charges must be filed with the corresponding district court within six weeks. Filing private charges has the disadvantage that the private prosecutor has to cover the costs of the proceedings in case the defendant is acquitted. However, if the insult has racist motives, for example if it makes reference to the insulted person's ethnic belonging or religion beliefs, the offence is no longer subject to private prosecution but becomes an offence for public prosecution with entitlement on behalf of the victim (Ermächtigungsdelikt, sec 117 para 3 Criminal Code). This means that the public prosecutor must – with the consent of the insulted person – start prosecution ex officio and open criminal proceedings against the insulter. In this type of proceedings the victim does not run the risk of legal costs.

In the case of Ms R. the police would have been obligated to record the report of the incident and to forward the information to the public prosecutor. The public prosecutor would then have been obligated to seek the entitlement from Ms R.'s for the public prosecutor to proceed against the alleged perpetrator of racist insult. A law enforcement officer refusing to record an offence subject to public prosecution violates her/his public duties and might therefore be brought before the Independent Administrative Tribunal (see "Glossary").

One of the men threatening Ms R. with "slapping her face" might also be regarded as uttering a "serious threat" under sec 107 Criminal Code, which is penalized with up to one year of imprisonment. For this provision to apply, it would be necessary for Ms R. to have experienced serious fears and worries concerning her physical wellbeing. As the man insulting her laughed when this statement was made, it would presumably have to be considered a "statement of resentment made due to social milieu" which is included under the offence of insult under sec 115 Criminal Code.

What can Ms R. do?

If the police refuse to record a report, Ms R. can send a statement of fact to the public prosecutor. If Ms R. turns to ZARA, ZARA would take this step for her and accompany her through criminal proceedings.

Usually the problem with such assaults in public space is that the perpetrators remain anonymous. In cases of insults the police are generally not informed and the particulars of the persons involved are not taken. Therefore, filing a report against anonymous perpetrators with the public prosecutor serves only a statistical purpose.

Some days later Ms R. accidentally encounters the two men who insulted her again. It is the middle of the night, and the two are obviously drunk. One of them recognizes Ms R. and says: "Didn't we tell you to get lost?" The two men attack Ms R, hitting and kicking her and causing bruises on her upper body and in her face. A passer-by informs the police and calls for an ambulance. The officers arrive quickly and are able to arrest the two perpetrators. Ms R. has to undergo hospital treatment.

The bruises inflicted on Ms R. by the two men constitute the criminal offence of bodily harm under sec 83 Criminal Code, which is an offence for public prosecution (Offizialdelikt). The police are obligated to forward the facts to the office of the public prosecutor. The office of the public prosecutor is obligated to initiate criminal proceedings or to induce the perpetrators to make reparations for their deeds by some means outside of court (in German: "Diversion", see "Glossary"). In case of criminal procedures, Ms R. has no influence whatsoever on the sentence passed and the fine imposed. Ms R. has the opportunity to join the criminal proceedings as a private party. As a private party participating in the criminal proceedings, in case of a conviction, Ms R. may be awarded damages for the injuries she suffered without having to turn to a civil court in separate proceedings. Yet, the criminal court is not obligated to do so but may also refer her to a civil court procedure in order to claim damages. In such a case, or in case the damages awarded by the criminal court should be too low, ZARA can represent Ms R. before a civil court to request claims amounting to a maximum of 4,000 Euro. For higher amounts, representation by an attorney at law is required. In case of damages in this range being claimed, or if the case is legally too complicated, ZARA arranges for a lawyer to represent Ms R. before court.

Sec 33 no 5 Criminal Code foresees that in the case of a conviction of the perpetrators that the court, in deciding the extent of the fine (within the legally defined limits, which means up to one year imprisonment or up to 360 daily rates determined on the basis of the perpetrator's usual income), can impose an increased fine for the perpetrators having acted based on "racist and xenophobic" motives, which constitutes an aggravating circumstance.

Internet

31 Ms S. enjoys participating in discussions in various internet fora. In June, she witnesses a number of particularly repulsive and base attacks against minorities on a major Austrian internet platform forum, like for example "Stop the n...isation and Muslimisation of Europe! Social parasites out! Birthing tourists out!" People of black skin colour and Muslims are attacked and rudely abused most often. But also antisemitism and Neo-Nazism are present: "Re-open Mauthausen!" Ms S. reports these comments to ZARA. A member of the ZARA staff monitors the forum for some time and discovers more racist postings himself. Thereupon, ZARA informs the website service provider. Soon after, the forum goes offline for maintenance and remains in that state at the time of writing this report.

32 In August, several people inform ZARA about a chain e-mail that claims women wearing a headscarf will attempt to get a hold of other shoppers' groceries using deceitful tricks in the parking lot of an Innsbruck supermarket.

ZARA gets in touch with Innsbruck police and enquires about the truth of this story. The police reply immediately, informing ZARA that no such cases at all were known to them or have been reported. ZARA forwards this information to everyone who reported the e-mail.

33 Mr P. receives a chain e-mail, which claims that pupils in schools in Linz were being taught that the traditional greeting "Grüß Gott" (literally: [may] God greet [you]) was discriminatory against Muslim citizens. In order not to insult them, pupils were allegedly taught, one should refrain from using this greeting formula. The e-mail further called on readers not to exercise "false tolerance". Several other people, who were disconcerted by this e-mail, reported it to ZARA as well.

ZARA gets in touch with the Linz District School Councillor for Education and finds out that the claims are invalid. Further witnesses turn to ZARA about this e-mail. They are informed about the claims having

no foundation and asked to pass this information on to senders and recipients of the chain mail. ZARA sees such mails as a problem, as they are easy to distribute and little can be done against the spreading of false reports.

34 The Documentation Centre Against Islamophobia DAI (see "Glossary") forwards an e-mail to ZARA. The attachment entitled "ring tone of the month" contains a sound recording of a Muslim at prayer, which is suddenly interrupted by shots. Obviously, this promotes the killing of Muslims. However, as the author of the file is impossible to find, there are no legal steps that can be taken. Neither is it possible to prevent further spreading of this supposed e-mail "joke" by legal or technical means. ZARA can only document it.

35 Mr T. notifies ZARA of the following posting on an internet forum: "The Jew as such of principle is never satisfied with others ... but only with himself. Thus, the Jew is high-handedly riding on his high horse, spitting out demands like marching orders to the lower classes, as which he regards the rest of the world."

ZARA forwards this posting to the Documentation Centre of Austrian Resistance (see "Glossary") and to the Forum Against Antisemitism (see "Glossary") by e-mail for the purpose of documentation. The reported posting is no longer accessible on the forum.

36 On the day of Austria's victory in the football game against the Ivory Coast, ZARA is informed of the following posting on an internet forum: "You are all children of whores and you do not deserve our team! Austria has rightly won against the wogs and the players are also going to strike again. Austria will be European champion!!!"

ZARA had asked the provider of the forum to remove the racist posting. So far, there has been no reaction to this request.

Know Your Rights

Mr P. regularly participates in discussion on different topics at an Austrian, publicly accessible, website. On one such forum, registered users give their opinion on Austrian aliens' law. One of them, a certain "Adolf 88", closes his postings with the words "Heil Hitler" and is of the opinion that "Turkish and Balkans' scum needs to be driven out of Austria". Mr P. immediately turns to the provider of the forum and asks for the posting to be deleted and the user "Adolf 88" to be barred from the forum. He receives the reply that no deletions or exclusions are carried out on the ground of the freedom of opinion.

As the website is located on an Austrian server and the user "Adolf 88" is launching his postings from a computer located in Austria, too, the legal assessment of the facts is based on Austrian law. In cases where websites are located on a server outside of Austria, and the users are not creating their postings on computers located in Austria, the situation is more complicated and penalization under Austrian law is not possible by principle.

In contrast to the website providers' opinion, the utterances of user "Adolf 88" fall under Austrian criminal law, which foresees exceptions from the principle of the freedom of opinion in case of the statement in question not constituting a statement of opinion but rather incitement to hatred (sec 283 Criminal Code) or violations of the Prohibition Statute.

The Supreme Court (Oberster Gerichtshof) has ruled several times that chanted slogans like "Heil Hitler" or "Sieg Heil" and also the gesture of the so-called Hitler salute are characteristic symbols of National-Socialism. Thus, making demonstrative use of these slogans and gestures in public is tied to intentional National-Socialist activity and therefore falls under the Prohibition Statute. It is thus indeed a criminal offence. See the decision of the Supreme Court of 13.09.2000 available (in German) at: <http://ris2.bka.gv.at>, numbers of the decisions: 13 OS 45/00 and 13 OS 47/00.

The providers are obligated to delete a posting after being informed that it is in conflict with criminal law. If the texts constituting incitements of hatred or violations against the Prohibition Statute remain online in the forum, the forum providers can be charged with a criminal offence.

For further detail on the Prohibition Statute and the criminal offence "incitement to hatred" under sec 283 Criminal Code, see the extensive discussion in the section "Know Your Rights", chapter "Public Space / Racist Smearings".

What can Mr P. do?

Mr P. can turn to the contact point for reporting revitalisation of National Socialism (Meldestelle für NS-Wiederbetätigung) of the Federal Ministry of the Interior. It is located within the Federal Office for the Protection of the Constitution and the Fight against Terrorism (also see "Glossary") and accepts reports on websites and postings with neo-Nazi, racist and antisemitic content at ns-wiederbetaetigung@mail.bmi.gv.at. ZARA can file the report on behalf of Mr P. and forward the facts to the Forum against Antisemitism and the Documentation Centre of Austrian Resistance (for both institutions, see "Glossary").

INACH

Since 2007, ZARA is the official partner for Austria in the International Network Against Cyber Hate (INACH). INACH is a network of 15 member organisations from 15 states, and it is still growing. The internet being a comparatively free space, it provides a platform for many extremist groups and forces to spread their message and preach hatred. INACH recognises messages of hatred spread by the new media as a decisive factor for racist and discriminatory acts and crime in real life. National borders play no role for accessibility in "cyber-space". In order to be able to take steps against the global phenomenon of "cyber hate", international cooperation is necessary.

Through our international cooperation within the INACH-network, we are now in a position to deal with almost every case of racism on the Internet that is reported to us quickly and effectively. For example, we were informed about a website with utterly discriminatory content that was hosted in Germany. After getting in touch with the German partner organisation Jugendschutz.net, there was a cooperative intervention and the website was put offline. Further information available at: <http://www.inach.net/>



Politics and the Media

¹⁴ Sen, Amartya (2006) *Identity and violence. The illusion of destiny*, New York / London: W. W. Norton

“The art of constructing hatred takes the form of invoking the magical power of some allegedly predominant identity that drowns other affiliations, and in a conveniently bellicose form can also overpower any human sympathy or natural kindness that we may normally have.”¹⁴

The discourse about racism in the media and in politics seems to have been stuck for a long time. On the one hand, the protagonists of incitement to racist hatred stylize themselves as fighters for the freedom of opinion and poor victims of persecution by the “terror of virtue” (always regards as leftist). They defend the basest incitement to hatred with statements like “one must still be allowed to say that” or even believe to be in the possession of truths the other side “simply cannot bear”. On the other hand, taboos built up and fostered within the ideological community of “political correctness” also often hinder substantial discussions of questions regarding racism. It seems that one has contented oneself for too long with just waiting for racist statements and exhausting one’s anti-racist potential in the always quick reaction of outraged rejection.

ZARA has always made it clear that the human right to the freedom of expression is one of the key pillars of democracy and the rule of law. ZARA underlines that this right is not simply an invitation to the misuse of language as a means of agitation and the incitement to hatred, but rather a right that is tied to responsibility. This responsibility increases as the number of recipients of the message increases. Therefore, politicians and journalists are particularly called upon in this regard. It is also clear that statements which are stupid and wrong, narrow-minded and grotesque, shocking and emotionally stirring, must be protected against restrictions under the freedom of opinion. However, on the other hand it also holds that there is a basic inventory of values of democracy and human rights, of which the freedom of opinion is a part, which must be defended against attacks appropriately and effectively. A democratic state committed to human rights therefore cannot permit – not even with reference to the freedom of

opinion – the human dignity of persons to be grossly violated because they are counted into an ethnic group or belong to a religious community. Neither is it permissible that social participation be hindered or restricted by racist agitation. Thus, whoever invokes the freedom of opinion, must always take into account that it can only prevail in the framework of a larger basic consensus on democracy and human rights. The rejection of racism must be an indivisible component of the basis in our society.

37 The “Tangente” is the magazine of the youth organisation of the Freedom Party (Ring Freiheitlicher Jugend, RFJ). In a 2007 issue, a commentary by Michael Winter, the chairman of RFJ Styria, titled “Sodomy is still preferable to rape” demands to “install” a herd of sheep in the Graz city park as “emergency measure against Muslim-Turkish rape”. He got the idea from in-depth analysis of two articles in the daily “Kronenzeitung” of 8.4.2007, reporting on the case of a German-Turkish man who allegedly sexually abused a herd of sheep several times, and in a case of a 17-year old young woman from Graz who was raped and described the perpetrator as a man of Turkish origin.

ZARA only documented the article, as letters of complaint written in similar situations in the past never received a reaction.

Dr. Susanne Winter, Freedom Party front runner for the Graz municipal elections and mother of the article’s author, said to the weekly “Falter” when asked about her son’s article in an interview (Falter 47/07): “There are animal brothels in Muslim countries, and we will bring proof of that. The article was meant to be a suggestion, and many laughed about it a lot and found it funny. I will not comment on my son’s statement any further.” When asked where these “animal brothels” were to be found, she said: “At the moment, I cannot give examples.”

Based on the article in question and on other “questionable and in part inhuman and racist statements in press releases and on flyers”, youth organisation subsidies by the province for the RFJ are cancelled upon the initiative of counsellor Bettina

Vollath of the Social democrats, who relied on the recommendations of an expert committee for this decision. The RFJ will only receive subsidies again if it distances itself from such statements in a serious and credible way.



38 Ms R., who lives in the commune Ottensheim in Upper Austria, reports to ZARA in June that the local Freedom Party councillor intends to forbid persons with a background in migration to grill in the local city park. It was his intention that only "Ottensheim locals", and in particular, no Turkish families, would be able to use the park in their spare time. At the beginning of July, the Freedom Party councillor wants to file a pertinent motion in the local council. Ms R. is concerned and discusses the matter with the mayor of Ottensheim, who reassures her and informs her that such a motion would hardly stand a chance of approval in the local council. Ms R. wants to keep ZARA informed about further developments, but does not get in touch again.

39 ZARA-Media Monitoring: On 27.8.2007, the Carinthian branch of the Future Alliance Austria (Bündnis Zukunft Österreich, BZÖ) under the provincial governor Dr Jörg Haider announces in a press release that "increased requirements" in the Carinthian Act on Care for the Appearance of Municipalities (Ortsbildpflegegesetz) as well as in the Local Planning Act (Gemeindeplanungsgesetz) were planned in order to be able to declare mosques and minarets as a disturbance of the appearance of a municipality and to prevent their erection. In an interview with the Austrian Broadcasting Corporation (<http://kaernten.orf.at/stories/217207/>), Haider confirms: "We do not want a war of cultures and no radical Islamist tendencies, but rather we want to protect and conserve the leading culture in Carinthia."

The Islamic Faith Community reacted with outrage and declared the plans as well as Haider's statements to be a scandal. The Social Democrats and the Green Party refuse to support Haider's plans. According to further press releases from the Carinthian BZÖ of 25.10.2007 (e.g.: <http://www.ots.at/>

[presseaussendung.php?schluessel=OTS_20071025_OTS02&ch=politik](http://www.ots.at/presseaussendung.php?schluessel=OTS_20071025_OTS02&ch=politik)) the prohibition against such buildings was already adopted by the provincial parliament with the support of the People's Party. According to another press release of 27.8.2007, this one by the Carinthian People's Party (Willi Koch, city councillor in Spittal an der Drau) claims to have prohibited a mosque being built in the municipality by a negative amendment to a building order in the second instance. Provincial councillor Josef Martinz gave the following statement on this: "The People's Party has been able to [...] reverse this decision in the interest of the neighbours. [...] In Islamic countries, Christians still have to remain in the dark and may not publicly exercise their faith. Therefore, one cannot give unrestrained approval to building a mosque in Carinthia" On 18.9.2007, the mayor of Spittal an der Drau, Gerhard Köfer of the Social Democrats, announced in an article in the daily "Kleine Zeitung" (<http://www.kleinezeitung.at/regionen/kaernten/oberkaernten/569620/index.do>) jointly with Imam Hasudin Atanovic, spokesman of the Muslims of the region of Upper Carinthia, that there had never been plans or applications for erecting a mosque, minaret or a domed roof in Spittal an der Drau. There had only been a building application for the conversion of a Muslim house of prayer that had been dragged into a current Austrian-wide discussion about mosques, minarets and cupolas. The Imam underlines in the interview that one had adapted to the culture in Carinthia and therefore exercised one's religion in prayer rooms. On 27.1.2007 the Kleine Zeitung (<http://www.kleinezeitung.at/nachrichten/politik/724048/index.do>) reports that the Carinthian BZÖ had filed a motion for amending the Building Regulations (Bauordnung) and the Act on Care for the Appearance of Municipalities for discussion in the provincial government, with the aim of being able to forbid "projects significantly deviating from local building traditions because of their unusual architecture or size (height)". ZARA will continue to monitor the developments.

40 On 3.9.2007 ZARA learns from the media that the Carinthian provincial governor Jörg Haider (BZÖ) is planning a "headscarf-ban" modelled on the Dutch example. However, the ban should only hold in case the headscarf was worn as a religious symbol. In an interview with the daily "Der Standard", Mr Haider made the following statement: "I do not want to see veiled women in our streets. [...] This is a step backwards into the middle ages." When asked what the situation was with grandmothers still occasionally to be seen wearing headscarves in Southern Carinthia or the traditional women's dress of the Gailtal that also was worn with a headscarf, Mr Haider said: "I have nothing against that."

The headscarf ban should only apply if the headscarf was not worn for “folklore”. In an interview available at <http://kaernten.orf.at/stories/219167/> the governor confirms going for “cultural assimilation instead of integration”. ZARA documented this.

41 Dr G., an Austrian married to an African woman, informs ZARA in February that the TV show “Narrisch Guat” broadcast by ORF 2, which shows the “funniest” carnival sketches by a number of carnival guilds, the following “joke” was presented: “Everyone has already wondered why there is white chocolate. – Why, it is clear: this is so that n... brats also stain themselves.” Dr G. finds this joke tasteless and racist. ZARA joins his view. ZARA sends a letter of complaint to the Austrian Broadcasting Corporation (ORF) and the carnival council of the Carinthian municipality responsible for the sketch. The viewer’s council (Publikumsrat) of the ORF transmits a statement by the programme director to ZARA who regrets that the footage in question had not been eliminated, as it was not in conformity with the company’s attitude or the binding guidelines of the ORF. In order to improve prevention against such errors of judgement in the future, the case would also be put on the agenda as an example in the editors’ meetings. The carnival council apologized in a return letter for having used the “n...” word. One had no intention to insult or racially discriminate anyone.

42 In late 2007, ZARA monitors the election campaign for municipal elections in the city of Graz:

Dr. Susanne Winter, front runner of the Freedom Party in the municipal elections, has no problem with the “n...” word. In a press release titled “N... is no abusive name”, she communicates the following. [Editor’s remark: in the press release, the “n...” word is fully spelled out]:

“The word ‘n...’ is no abusive name for me. I will never submit to the yoke of ‘political correctness’, just because I get to see the ‘red traffic light’ from the part of the pseudo-guardians of virtue of the Graz election campaign monitoring committee of the Wolfgang Benedek style fairness-agreement. I will continue to use the word ‘n...’ in public, declared Freedom Party front woman Dr. Susanne Winter. ‘The term ‘n...’ has been in common use in large parts of Europe since the 18th century. It gained a wide distribution with the rise of European imperialism, in learned usage as well as in everyday language use. Thus the word ‘n...’ can be called a historically established word of the German lexicon and therefore simultaneously a – if small – part of our German and European culture’, declared the boss of the Graz Freedom Party, Ms Winter. ‘Similarly, I will read my future

grandchildren the story of the ‘ten little n...’, just like this story was read to me by my parents, Susanne Winter of the Freedom Party finally points out.”

A report in the Styrian edition of the weekly “Falter” (<http://www.falter.at/web/print/detail.php?id=595>) reproduces a discussion between Dr Winter and the Nigerian born teacher Fred Ohenhen of the integration association ISOP, who lives in Graz. Dr Winter also addresses Mr Ohenhen as “N...”. When Mr Ohenhen describes an incident during which he was thrown out of a bar and abused as “n...”, she says: “I am giving you a provocative reply: There is something in your genes that you are not able to deal with yet. It is not your fault, because only the tradition of millennia has the effect that one can deal with one’s tradition. I think that this cannot be the reproach, your being thrown out of a bar. [...] You know that tradition, everything that occurred to a certain stratum of people in history, is passed on as a genetic transformation. You therefore automatically have too little self assurance and too much superior-mindedness in relation to the other colour of skin, that is why you see it that way. Nobody has anything against another skin colour. I am a lawyer and unfortunately I cannot say anything about the case of you being kicked out of a bar because I have not heard the other side.”

Reactions to this interview correctly point out that Dr Winter’s statement not only conforms to long outdated “race theory” but also constitutes “deeply rooted brown [i.e. National Socialist, translator’s remark] thinking”. (Quote: historian Helmut Konrad in an ORF interview).

Also the election campaign by the BZÖ Graz with front runner Gerald Grosz is characterized by racist overtones. Under the heading of “We are cleaning Graz” (<http://www.sauberesgraz.at>), a broom is used on posters against “asylum abuse”, “the disgraceful begging trade” and “foreigners’ criminality”. The series of (electronic) postcards going with these slogans is clearly racist. Among others, the following motifs of partly anonymized “foreign evil doers”, against whom the cleansing campaign is directed, are available: The “drug dealer postcard” shows a young black man smoking a cigarette, together with the lines: “Please do NOT vote for the BZÖ, so that I can continue to do my business.’ Amir Z., asylum seeker and drug dealer.” The “car thief postcard” shows a car thief carrying out his deed, made unidentifiable by a skiing cap. It is accompanied by the same lines: “Please do NOT vote for the BZÖ, so that I can continue to do my business.’ Wojciech K., serial car thief.” This, according to the BZÖ, crime seems to be an evil solely caused by “foreigners”. People of non-Austrian origin are on par with dirt, of which Graz needs to be cleaned.

Also, an appeal ZARA launched in the framework of the “Clean Politics Campaign” (<http://www.zara.or.at/cleanpolitic>) was directed against the statements of FPÖ front running candidate Dr. Winter and

the racist and inhuman campaign of BZÖ Graz. The statement called on all the political parties of Graz to distance themselves from the racist excesses and to see to the election proceeding in a fair and non-discriminatory manner. This request received a positive reaction and in fact any reply at all only from the Greens, the other parties did not speak out on it.

Know Your Rights

Ms L. has a subscription with a big Austrian daily newspaper. She values information in a compact format. However, she is often upset about drug related crime being almost exclusively discussed in connection with the mention of “black African criminal gangs” and “Nigerian pseudo asylum seekers”. One day, she is shocked to read in the daily’s narrow politics section about a campaign by a party counted in the right-wing camp directed against a Muslim prayer house under the title of “With pork loin against the mosque.”

One sided, racist reporting in the media can hardly be stopped by law. Newspapers are free to decide for themselves which news items and which (licit) opinions they publish. As long as the coverage does not infringe upon the rights of individuals (as for example in case of libel or violation of the presumption of innocence), or unless opinions are reproduced which violate the Prohibition Statute or the section on incitement to hatred of the Criminal Code (sec 283 Criminal Code), all that is left for private parties to do is the possibility to protest against racist reporting with the media proprietor, and to boycott the media in question. It would be desirable for the Austrian media to organise once again in an institution like the Austrian Press Council, which was dissolved in 2001. A “press code of honour” might provide for at least a minimum amount of self-control and admonish media that use racist reporting.

Racist slogans in an election campaign transgressing the boundaries of “good taste” have become a regular phenomenon all over Austria, from the Graz City Council elections to those of the National Council. With deep concern, many people turn to ZARA and ask that measures against these “hate campaigns” be taken, if possible, in the form of a report filed with the office of the public prosecutor. However, the strategic campaigners working for the political parties are very well aware of the limits imposed on party programs, beer tent speeches, and campaign slogans by Austrian criminal law. The two provisions that are relevant in this context are, sec 283 Criminal Code (incitement to hatred) and, in the case of incitement to hatred directed against Islam – the offence of decrying religious teachings under sec 188 Criminal Code.

Because of the restrictive interpretation of the offence of incitement to hatred by the Austrian criminal courts (see more extensive discussion in the section

“Know Your Rights” in the chapter “Public Space/Racist Smearings”), it is improbable that a politician will be sentenced for a racist election speech or a slogan that is hostile towards Islam. The above mentioned slogan is directed against an institution of a protected “religious society”, however, not in a way that permits to talk unequivocally of a “call for a hostile act” against Islam or an “incitement to hatred” in the meaning of this offence.

Sec 188 of the Criminal Code reads as follows: “Whoever publicly decries or derides a person or an object, which is an object of worship of a church or religious society established in the country, or a religious teaching, a legally permissible custom or a legally permissible institution of such a church or religious society, under circumstances under which her/his behaviour is liable to cause justified outrage, is to be punished with up to six months arrest or a fine amounting to up to 360 daily rates.” The wording of the campaign slogan against the Muslim prayer house, contrasted to pork, which counts as impure, although unequivocally Islamophobic, is not covered by the wording of this criminal offence.

What can Ms L. do?

As the reporting by the newspaper remains within the limits of what is legally permitted, ZARA can only write a letter of complaint to the daily paper on behalf of Ms L. In the case of the Islamophobic, but presumably not punishable Islamophobic party slogan, Ms L. is left with no other possibility than protest.

ZARA’s demand

Expansion of the protection against the incitement to hatred under sec 283 Criminal Code

Public incitement to hatred, arousing hatred against certain groups of the population, is one of the most revolting forms of racism. ZARA therefore demands an enhancement of the protection against the incitement to hatred in so far as it should not be solely “public order” that counts as worthy of protection, but that criminal law should primarily safeguard human dignity. The offence must be simplified and additional forms of generalised degradation of humans must be penalised, in order to enable the courts to prosecute hate speech and hate smearings. In particular, the section must be adapted to the reality of Austrian discourse, where it is often the case that hatred is stirred up against “migrants”, “aliens” or “asylum seekers” as a group. (See also “Know Your Rights” in the chapter “Public Space/Racist Smearings”).

Racist Smearings

ZARA has been documenting racist smearings in public space for seven years now making efforts for their removal. In comparison to the previous year (2006: 739 racist smearings reported to ZARA) a decrease of reported cases has been observed. In spite of that, public space is not free from racist and hatred inciting slogans. Why?

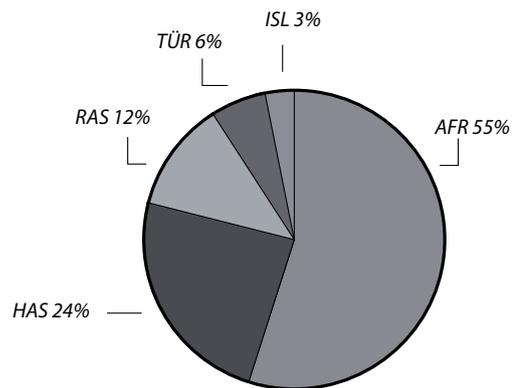
The comparison of the two numbers proves the successful effect of media supported and broadly working sensitisation campaigns. Both ZARA's co-operations with the campaign "Strike out racism" initiated by SOS-Mitmensch (<http://www.rassismus-streichen.at>) and the initiative of master builder Ing. Alexander Baumann (<http://www.beschmierungsambulanz.at>) have led to an increased watchfulness regarding racist smearings in 2006. Consequently, the number of reports to ZARA went up. Instead of being indifferent, many people became aware of the fact that smearings are not to be equalled with the various forms of expression by graffiti-sprayers. Rather, racist slogans on walls or in public transport actually are a kind of threat against people and a secure way of living together. No one remains untouched by the negative symbolic power of racist smearings. Prejudice is reinforced, and enemy concepts are created. Not removing them legitimises racism.

There remains a need for many critical people who report racist smearings to ZARA, or, in case of the wall of a house bearing racist smearings, to immediately make use of the emergency measure of the smearings ambulance: For details, see: <http://www.beschmierungsambulanz.at>.



Statistics

In 2007, a total number of 251 racist smearings were reported to ZARA. 59 racist smearings were sighted on public transport. Only 8 smearings were reported from outside of Vienna.



AFR	"Anti-African"
HAS	"Swastikas and Antisemitic"
RAS	"Racist"
TÜR	"Anti-Turkish"
ISL	"Anti-Muslim"

Know Your Rights

Ms Z. is angry about racist smearings in the streets of Vienna. Every day she passes by dozens of graffiti saying "n...s out", "kill n...s" [English in the original], "shit Turks", and other such remarks.

What is the legal situation with such smearings?

According to sec 125 Criminal Code, damage to property is committed by someone who destroys, damages or disfigures an object that is not his/her own, or makes it impossible to use. Smearings usually constitute a disfiguration, meaning a considerable change in the outward appearance of an object. This change has to have an extent that makes a certain effort necessary in order to undo it. If the limit of "minor" change is not surpassed, like in case of a small scale drawing on a glass surface with non-permanent ink soluble in water, this does not amount to damage to property.

For a simple case of damage to property, fines range up to six months of imprisonment or a payment of up to 360 daily rates (based on the income of the perpetrator).

In case the damage exceeds the amount of 3,000 Euro, or if the smearing disfigures e.g. a church, a grave, or an object under monument protection, the fine can range from up to two years imprisonment or 360 daily rates. If the damage exceeds 50,000 Euro, it is penalised with imprisonment between 5 months and 6 years.

In addition to damage to property, a racist smearing may also violate the Prohibition Statute (prohibiting the re-vitalisation of National-Socialist ideology, NS-Verbotsgesetz), article IX para 1 no 4 of the Introductory Act to the Administrative Procedure Acts (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG), or it may violate sec 283 of the Criminal Code, constituting incitement to hatred.

Smearings that call for killing, like “kill n...s”, may also be punishable under sec 282 Criminal Code (calling for punishable acts or approving of a punishable act).

• **Prohibition Statute**

Sec 3g. Whoever is active in a National-Socialist sense, shall, unless the act is not subject to higher punishment under another provision, be punished with imprisonment between one and ten years, in case of the perpetrator or the committed act being particularly dangerous, up to 20 years.

Sec 3h. ...Whoever denies, seriously downplays, approves of or seeks to justify the National-Socialist genocide or other National-Socialist crimes, in a printed work, in public broadcasting, or in other media or in any other public manner such that it will be accessible to many people, will also be punished under Sec 3g.

• **Article IX para 1 no 4 of the Introductory Act to the Administrative Procedure Acts**

Placing swastikas, SS-runes or similar signs may fall under this penal provision if the person responsible for the smearing creates such a smearing with National-Socialist intentions or as an act of approval of National-Socialist crimes. Lacking such an intention, the perpetrator may still be punished under article IX para 1 no 4 of the Introductory Act to the Administrative Procedure Acts, which foresees an administrative fine of up to 2,180 Euro for persons **“spreading National-Socialist thought in the sense of the Prohibition Statute (...).”**

• **Incitement to hatred (Sec 283 Criminal Code)**

Sec 283 (1) Whoever publicly in a manner liable to endanger public order calls for or incites the commission of a hostile act against a church or religious community existing inside the country or against a group defined by their belonging to such a church or religious community, a race, a people,

an ethnic group or a state, shall be punished with up to two years imprisonment.

(2) Similar punishment shall be imposed on whoever publicly stirs up hatred against one of the groups defined in para 1 or in a manner violating human dignity abuses them or seeks to decry them.

According to the wording of this provision, a broad application of this law to racist smearings should be expected. A smearing like “kill n...s” or “N...s out” should without a doubt fall under para 1, as such a slogan clearly calls for a “hostile act” against one of the groups defined in this paragraph. The “public” required by the provision is certainly given for any smearing that can be widely seen. Yet, para 1 does not protect the affected groups in the first line, but rather protects public order, which must be endangered by such appeals to violence. This argument does not always hold for an individual smearing. More general hateful slogans like “foreigners out” do not fall under sec 283, as the generalizing term “foreigners” does not correspond to a protected group. Courts applying the provision interpret it very narrowly, therefore convictions under para 1 are very rare.

The area of application for para 2 should be sufficient to pursue written racist abuse like “shit Turks” or “fuck n...s”. However, only such smearings are covered where certain groups are denied “a general right to life as such” or are depicted as “inferior beings”. Case law is very restrictive in considering this provision, too.

• **Incitement (Sec 282 Criminal Code)**

Whoever incites a broad public to a punishable act or approves of such an act is punishable under Sec 282 Criminal Code. All appeals to kill directed against a certain group or individuals fall under this penal provision. However, it has to be investigated in every case whether the “broad public” is actually reached by the smearing.

What can Ms Z. do against the smearings?

Smearings, no matter whether they additionally violate the Prohibition Statute or secs 282, 283 Criminal Code, constitute offences for public prosecution (Offizialdelikte). This implies that members of the police force have to report them when becoming aware of them. As this rarely happens, it is also possible for members of the general public to send a statement of facts to the office of the public prosecutor. As the perpetrators are unknown in most cases, such a report will often only serve statistical purposes. Ms Z. can inform ZARA about the smearing, giving as accurate as possible a description of the content and place (address, public transport line and number of the car, ...). ZARA volunteers Monika

Muhr and Johanna Katzinger go to great lengths to get the smearings removed. They document the content, place and characteristics of the smearing, and whenever possible, organise photographic documentation. Depending on where the smearing was placed, they get in touch with the property management, local offices of the City of Vienna competent in the area (Gebietsbetreuung), or Vienna public transport.

One day, Ms Z. decides to paint over a smearing on a house that is not her own. She strikes out the words "kill n...s" with a piece of chalk. A policeman observes her doing this.

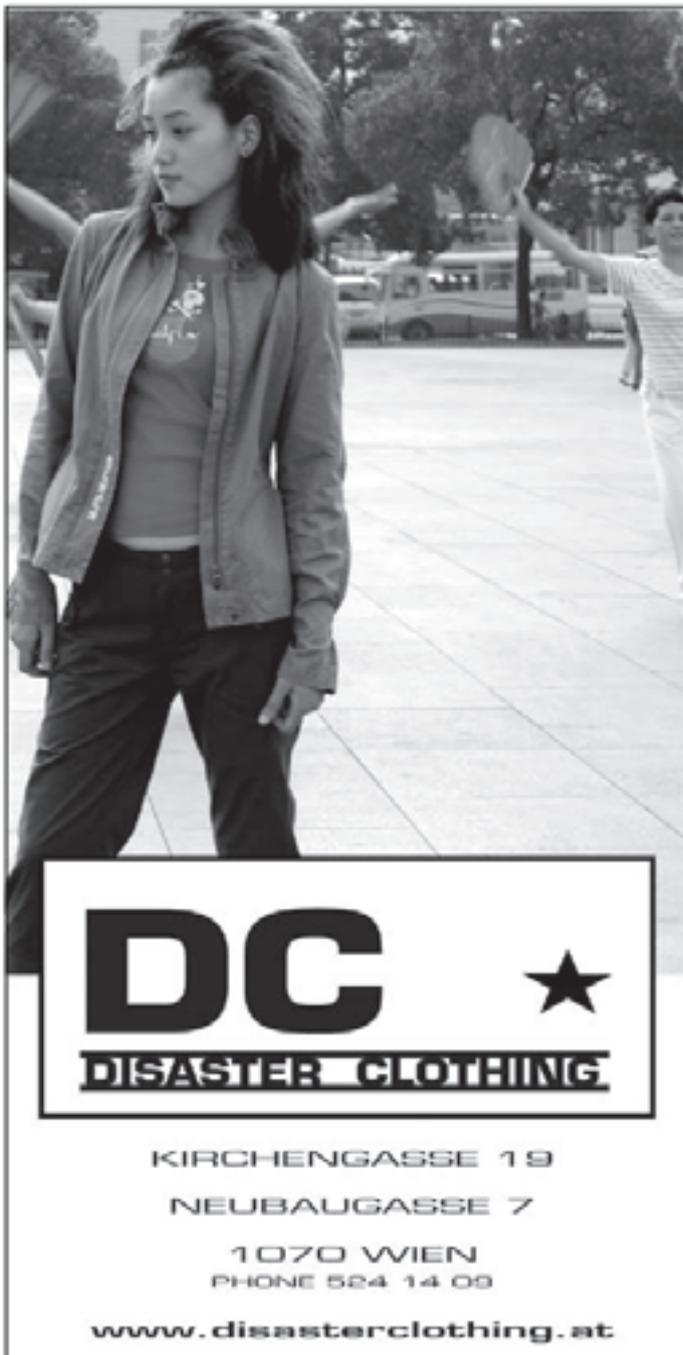
He addresses her, notes her particulars and says that she is going to be reported for damage to property.

If an existing smearing is painted over and additional damage is done, e.g. if it becomes more difficult to remove a smearing made with chalk that is sprayed over with permanent lacquer, the one painting it over also commits damage to property. If, for example, the original smearing constituted a case of incitement to hatred, one may argue that the person painting it over thus rendered a forbidden slogan or sign illegible and therefore restored a legal situation, providing a licit justification. Yet, it is uncertain that a court would share this view. The owner of the property can consent to the disfiguring and thus save the damaging person from persecution. This concerns only simple damage to property, like painting over a racist slogan, but not the criminal offences like incitement to hatred. Everyone can permit the damage to an object in his/her property in advance or after the act. This would in turn constitute a justification and exclude punishment of the perpetrator.

ZARA's demand

Expansion of the protection against the incitement to hatred under sec 283 Criminal Code

Public incitement to hatred, and stirring up hatred against certain groups of the population is one of the most revolting forms of racism. ZARA therefore demands an enhancement of the protection against the incitement to hatred in so far as it should not be solely "public order" that counts as worthy of protection, but that criminal law should primarily safeguard human dignity. The offence must be simplified and additional forms of generalised degradation of humans must be penalised, in order to enable the courts to prosecute hate speech and hate smearings. In particular, the section must be adapted to the reality of Austrian discourse, where it is often the case that hatred is stirred up against "migrants", "aliens" or "asylum seekers" as a group.



Police

Members of the police force are familiar with prejudice from their own experience. Often enough they hear themselves and all their colleagues, for example, being labelled as stupid, brutal and racist. The large number of police operations that are carried out professionally and effectively, the successful mediation activities, and their preventive work, are easily disregarded in such a context. The police are carrying out a highly demanding and challenging job, often under unpleasant and basically unacceptable conditions. They are rarely thanked for it.

Maybe these framework conditions are the main reason for a police culture of “*esprit de corps*” having developed, which has highly negative effects on the potential of the police as an organisation. Because, next to all the positive achievements of police officers, mistakes also occur repeatedly, which often have serious, negative consequences for the people affected.

ZARA continues to frequently receive horrifying reports about incidents in the course of the actions of security police officers. The police still have difficulties in eradicating such mistakes and thereby becoming more professional and successful. In particular, the reproach of racist discrimination being involved is all too often rejected in a blunt manner. Unfortunately, the police force still seems to pursue a strategy of denial of officers’ misconduct – presumably with the aim of not damaging the institution’s image. ZARA is convinced that this strategy is wrong and that in the long run the reputation of “the police” can only be strengthened by the organisation learning to consistently tackle misconduct and to clearly communicate, within and outside of the police force, that there is absolutely no room for racist behaviour in the Austrian police force. It is necessary to raise the awareness, inside and outside the law force, that preventing, fending off and solving cases of racist assault are important tasks of the police.

Fortunately, approaches towards a change in the understanding of the security executive as an organisation are showing. ZARA welcomes the installation of a suitable human rights coordinator with the Vienna police, as this would strengthen the possibility for further, consistent development of the dia-

logue and change that has already begun. On the whole, one must credit the police force with being probably the largest organisation in Austria that seriously approaches the problems of racism and discrimination.

43 Mr R., a born Hungarian, drives his car to his home in the third district of Vienna one evening in January. When he wants to turn a corner, a woman of about thirty years of age almost causes an accident due to her reckless driving. At a red traffic light, both drivers come to a stop, one behind the other. Mr R. flashes his cars lights in order to alert the driver to her reckless driving behaviour. She opens the door and verbally abuses Mr R. He tries to communicate to her with gestures that she almost crashed into him when he was taking the turn. When she reacts to that by abusing him as “shit foreigner”, he gets out of the car, gets to her driver’s door and opens it in order to reprimand her for her racist insult. Suddenly she starts crying for help. Upon that, he immediately returns to his car. He drives on, the woman follows him. Soon after, he is stopped by several police cars, and asked to pull over. The police officers approach his car with weapons in their hands. Mr R. is dragged out of the car without being given a reason. The officers handcuff him. When he says that he is suffering pain from the fixation, a young police woman causes him additional pain by twisting his arm. He asks the police officers why they were doing this, as he had not done anything. The police officers justify their brutal course of action with him having previously threatened a female driver, announcing his intention to kill her. Mr R. contradicts this. He is asked whether he is drunk, which he also denies. One policeman expresses his opinion that Mr R. is more than likely “completely drunk”. A female officer asks him: “Are you Muslim?”

Finally, he is brought to the district police station in Vienna’s first district, where he is searched and interrogated. At 11 pm he is allowed to leave the station.

Mr R. asks ZARA for legal support. ZARA drafts a complaint against the female driver for libel, as

she lied to the police by telling them that Mr R. had threatened to kill her. The public prosecutor dismisses the action against the woman without having Mr R. questioned about it.

Furthermore, ZARA files a guidelines complaint with the Independent Administrative Tribunal (see "Glossary") for the questionable remarks made by the officers during the arrest. For their being biased against Mr R., as they did not give Mr R. the opportunity for justifying himself and treated him as a perpetrator from the very beginning, and for using the familiar form of address ("Du", you-Singular). In the course of the proceedings, the police official responsible for work in the first district of Vienna gets in touch with ZARA and Mr R. A meeting is arranged, where the official communicates his colleagues' reactions to the complaint. They deny the allegations throughout and say that Mr R. behaved most aggressively towards them. No further meeting aiming at a friendly settlement takes place. (see "Know Your Rights"). Because of the financial risk attached to a clarification of the facts before the Independent Administrative Tribunal and because of little chance of success due to the lack of independent witnesses, Mr R. does not pursue the complaint any further.

A couple of months later, Mr R. receives an order to appear in court. He is accused of having frightened the female driver with his words and deeds, thus committing the offence of "dangerous threat". At the trial it turns out that the driver is a police woman herself, off duty at the time of the incident. Thus, there is an explanation for the quick and determined intervention by her colleagues. She wants to claim compensation for pain and suffering, alleging that Mr R. grabbed her hard, and compensation for material damages, alleging that Mr R. scratched the door of her car when opening it. In her statement she says that Mr R. tried to drag her out of her car, although her seat belt was still fastened. She claims that she is not racist, as she "has also worked in the asylum field and is now working in a unit investigating against people smugglers", thus being active "for" foreigners. Never, in her entire time in police service, had something like this happened to her. The judge follows the woman's description and sentences Mr R. to three months imprisonment on probation and to pay 50 Euro in damages as compensation for pain. Mr R. appeals the decision. The appellate proceedings take place in January 2007 before the Vienna Regional Court of Appeal. The senate of judges follows the appeal and gives more credit to the statements by Mr R. As it had not been Mr R.'s intention to threaten the woman, but only to draw her attention to her risky driving manoeuvre, and to reprimand her for her racist insult, the Court acquits Mr R. from the allegation of dangerous threat.

Although Mr R. is disappointed that his complaint against the officers was not successful, he is how-

ever relieved that the Criminal Courts found in the last instance that the reproaches made against him were not true. He thanks ZARA for the support and for accompanying him through the proceedings.

44 In February, Ms L. observes two officers addressing a man of African origin at the Vienna tram stop Westbahnhof. The police officers stand next to the man, talking at him from either side and ask him what he is doing there. A passer-by remarks: "What is he doing, of course he is selling drugs!" This amuses the police officers. Ms L. sees how the man starts complaining about the police treatment. She tries to calm him and recommends he get on a tramway. The man complains to her about the officers already having checked him before, one hour ago. Ms L. suggests he turn to ZARA in order for the exact details of the police checks to be registered. However, the man does not turn to ZARA. ZARA documents the incident.

45 Mr A., a man of African origin and father of a family with his Austrian wife, describes the following incident, which took place at the Vienna Reumannplatz one April afternoon. Mr A. is waiting for the tramway when two police officers approach him. One of them immediately takes him by the throat. Mr A. asks the two, in German, what they want. One of the officers replies, in English, "You swallowed drugs!" Thus the officers immediately accuse him of having swallowed drugs, which he wanted to sell, upon sighting them. Mr A. disclaims the reproach. He tells the officers that he recently had a number of operations performed on his gastrointestinal tract and for that alone would not even be able to swallow drugs. He shows the officers the wounds stemming from his operations, one of which is still not healed and therefore bandaged. However, one of the officers repeats, again in English: "Yes, you swallowed drugs!" Without asking him for his ID, they take Mr A. with them to their car. He is told to undress in public, which he refuses to do. Mr A. calls on the officers to call a doctor in order to assess that he had not swallowed drugs. If the officers would insist on further checks, they would have to take him to the nearest police station. Mr A. wants to phone his wife but is not permitted to do so. A passer-by, who identifies herself as a lawyer, interferes and points out that he has the right to inform his wife. After this intervention, the police officers permit him to inform his wife, who, however, does not answer the phone. Finally, the officers drive him to the police station Van-der-Nüll-Gasse. There, Mr A. has to strip naked, his clothes and body are searched. He has several wounds near the navel because of his belly operations. The police officers tell him to take off the bandage. After

Mr A. has once again asked in vain for a doctor to be present, and the police officers repeating: "Remove everything on your body!", he finally follows this order and takes off the bandage. Upon that, the wound from the operation starts to bleed slightly. It is only then that one of the officers takes a look at Mr A.'s papers and checks on the computer whether anything is on file against him. They see that he has a clear record and want to let him go. Now, Mr A. for the third time asks for a doctor, who should have a look at his bleeding wound. However, he is only given two band aids. The police officers offer to see him back to the tramway stop. Mr A. accepts this offer, because he is highly embarrassed about the incident necessarily having been witnessed by a lot of people and he wants passers-by to see now that he is brought back and nothing is held against him.

ZARA informs Mr A. about the legal possibilities of a guidelines complaint (see "Know Your Rights"). Mr A. asks ZARA to contact the competent complaints officer of the Favoriten police station directly and to ask him for a statement and a clarifying meeting. ZARA gets in touch with the complaints officer. He turns out to be one of the officers involved in the action in question. As there is a protocol of the action and the officer is highly interested in transparency of police activities, he communicates his perspective on the incident to ZARA. On the whole, he agrees with Mr A.'s description of the incidents. However, he has different views on a number of details: The police action was directed against drug abuse and drug dealing in the Reumannplatz area. The police had information on drug dealing going on in the tramways leaving from that station. He had observed Mr A. standing at the station and letting several trains pass without getting on, therefore the officers had been suspicious of him. By the way, Mr A. had been the only African to be checked by the police that day. Otherwise, only "Austrians" and persons of "Turkish/ex-Yugoslavian" origin had been checked. The complaints officer had approached Mr A. from the side, his colleague from the front. Mr A. had been asked for his passport. Upon sight of the officers, Mr A. had begun to make swallowing movements. That was why one of the officers had touched him by the throat where he allegedly noticed a round object that Mr A. wanted to swallow. Mr A. had claimed later on that this had been chewing gum. The officers had intended to continue the check out on the street, but Mr A. had not cooperated and had been shouting loudly in order to draw attention to the police action. Therefore, the action had to be continued at the police station. From the moment onward when Mr A. had been alone with the officers, the mood had been "cooperative". However, according to the complaints officer, it was not true that the officers had urged him to tear off his bandage. Rather, at that

moment, Mr A., who was held by the police, had directed his aggressions against himself. Concluding his remarks, the complaint officer said that such situations already had led to indictments for resistance to state authority, and he was content that this case had after all evolved in an "orderly" way. ZARA forwards this information to Mr A., who does not share the officer's point of view and is angered by it. As it is case of conflicting statements, he decides to take no further steps. The description of the incident by the officer renders a further meeting for Mr A. undesirable. ZARA sees no possibility to bring the case to a solution that would be satisfactory for Mr A.

46 One evening in May at about 9 pm, two women witness the driver of a police car calling an African taxi driver "shit n..." at the Vienna Schwarzenbergplatz. The two, who have just stepped out of a café, are not in a position to see the reason for this. They overhear the taxi driver say, "You may not talk to me like that". Then the two cars manoeuvre into the moving traffic.

With the consent of the two witnesses, ZARA forwards the case to the human rights coordinator of the Vienna police, Lieutenant Colonel Friedrich Kovar. From him, ZARA learns that the taxi driver in question already has complained about the incident at a police station himself. Unfortunately, he can subsequently not be contacted at the address he gave to the police for the record. The case is forwarded to the appropriate police station for further action. The police officers, who were on duty in Schwarzenbergplatz at the time of the incident, laid down for the record that the term used as an insult was not part of their usual vocabulary. The police officers' superior also questions the witnesses and their statements are filed with the complaint file. During the final writing period of this Racism Report, the result of the complaint is still to be expected.

47 Mr A., an Iraqi refugee, wants to enter a bar in the Vienna nightlife-area "Bermuda-triangle" together with a friend one night in April at around 3am. A doorman denies him access to the bar. When Mr A asks for the reason, another man, presumably also a doorman, steps out of the bar and slaps his face. Mr A. is very upset and, together with the friend in his company, starts a discussion with the two doormen. Mr A. notices police officers on duty nearby. He walks up to them and asks them for their help because of the aggressive doorman. However, the officers refuse to intervene because they are currently completing another task. Mr A. dials the police emergency number. Meanwhile, two more male and two more female police officers arrive as reinforcement for the other police action, where they are,

however, no longer required. As the officers become aware of the quarrel between Mr A. and the doorman, which now manifests itself in mutual abuse, and Mr A. turns to them searching help, they decide to intervene. They try to calm Mr A. However, as the doorman keeps intervening in the conversation between Mr A. and a policewoman, and uttering threats, Mr A. is hard to calm. Finally, carried away by his anger, Mr A. verbally abuses the bouncer right over the police officer's shoulder. Suddenly, one of the officers walks up to him and pushes Mr A. in the chest with such force that he stumbles backward and falls down. In this fall, his knee bends the wrong way and Mr A. immediately feels strong pain. The officer asks Mr A. why he abused "his colleague". Mr A. does not understand the question, because his abuse had been directed against the aggression from the doorman. After having got up again, one of the police women asks him for his ID and finally arrests him. At the police station, Mr A. is searched and examined by an official female medical officer. She is not very friendly towards Mr A. and only completes a partial record of his injuries, as she obviously does not have the patience to follow Mr A.'s description of the events delivered in broken German. When Mr A. does not immediately accept an offered pain killer, she throws the pill away with the remark "leave it then". Mr A. spends the night at the police station Innere Stadt. The next day, a police lawyer interviews him, because he has been given administrative fines for aggressive behaviour towards police officers, noisiness and indecent behaviour. Finally Mr A. arranges to be brought to hospital, where he is diagnosed with a knee injury. Some months later, he needs to undergo an operation because of this knee injury. Until the present day, he is suffering pain and is dependent on crutches to move around.

ZARA files a complaint against the police officer who injured him through his shove. After investigations by the Office for Special Investigations (see "Glossary") and following preliminary proceedings before the Vienna Regional Criminal Court, the action against the officer is dismissed. The statements by Mr A. and his witness contradict the statements of four police officers, who all testify that no shoving took place during the police action.

A procedure before the Independent Administrative Tribunal for a complaint against measures taken by law enforcement officials (see "Glossary") ends in the complaint being turned down, as the four officers deny the reproaches there as well. The medical officer, who examined Mr A. after his arrest, states that Mr A. had told her that his knee pain had existed for a longer period of time and that Mr A. had not mentioned being pushed by one of the officers to her. Mr A. now must cover the costs of the proceedings, around 500 Euros, as well as the cost for his interpreter amounting to about 130 Euros.

ZARA appeals against the administrative fines amounting to a total of 257 Euros, thus bringing them before the Independent Administrative Tribunal. At the time of finalising this report, proceedings are still pending.

The letter of complaint directed to the management of the bar where the doorman refused Mr A. entry and slapped him receives a reply. The bar's manager denies the events. In order to spare Mr A. another legal procedure with insecure and unsatisfactory outcomes, he is counselled not to file a complaint under the Introductory Act to the Administrative Procedure Acts (EGVG, see "Know Your Rights" in the area "Goods and Services").

48 Mr R. is of Polish origin and has possessed Austrian citizenship for more than 20 years. One night in June, he attends the Vienna Donauinsel-festival. At about 4 o'clock in the morning, he encounters a group of about 10 people who are mostly talking to each other in Polish. The group is engaged in a verbal fight with two other persons. As he speaks Polish himself he tries to mediate between the two groups in order to prevent further escalation. Yet, his efforts are not very successful and both groups start beating each other. In the course of the fight, also Mr R. is attacked and pushed to the ground. When the attackers from the Polish speaking group realise that Mr R. also speaks Polish, they let go off him. He tries to calm the group down and to put them off their plan of beating up the other two men. Finally, the Polish speaking group moves away from the men. Shortly afterwards, the police arrive on the scene and turns to the wounded persons. As Mr R. lost his pocket knife when he fell to the ground, he starts looking for it and scans the area with the help of the torch light. One of the officers observes this and alleges that he intends to steal one of the backpacks lying on the ground. When Mr R. points out he is missing his pocket knife, it is presented to him by the officer, who apparently has found it. One of the wounded accuses Mr R. of having been involved in causing his injury. Mr R. replies that he only wanted to mediate because of his knowledge of the Polish language. However, the officer believes the wounded man's statement and starts abusing Mr R.: "You Polish idiot, mind your words!" As Mr R. does not want to accept the racist remark, he advises the officer to refrain from making any more. In the meantime, a young man's statement as a witness confirms Mr R.'s statement. Subsequently, the police officer says "You stupid Polish guy, piss off to your friends". Mr R. replies that he does not know the people in question and that he just wants to have his knife back and leave. Without giving a reason, the officer refuses to give him the knife. As the officer continues to make racist remarks, Mr R. asks for his official ID

number. The officer refuses to give his ID number as well and demands to see Mr R.'s ID. While recording the data, the officer says that Mr R. certainly wanted to steal a backpack, because he is Polish. When Mr R. once more admonishes the officer to stop his racist remarks, he replies "that's enough", punches him in the belly with his fist and throws him to the ground, which tears Mr R.'s T-Shirt apart. Mr R. suffers abrasions on his neck. When he is lying on the ground, the officer kicks him with his foot. Mr R. tries to call the police emergency line with his mobile, but the connection is lost. Mr R. gets on his feet and dials the police number again. He describes to the officer on the phone what has just happened. When the accused officer realises that, he hits the mobile phone from Mr R.'s hand, makes him fall to the ground again and handcuffs him. Mr R. makes no attempt to defend himself or resist until the officer presses his knee in his back, whereupon he tries to evade the painful grip, moving sideways. The officer pulls R. to his legs and brings him to the police car. He is brutally pushed onto the backseat. During this act, he is also repeatedly beaten in his face and on his body by the officer. In the background, Mr R. hears a female voice calling on the officer to calm down and to desist from attacking Mr R., which the officer actually does.

Mr R. is questioned by the police and he describes the ill treatment for the record. Mr R. is accused of, among other things, resistance against state authority and grievous bodily harm. After his release, he goes to a hospital, where bruises and blood in his urine are attested. Because of his injuries, Mr R. has difficulty continuing work on his business (he is self-employed) without restrictions.

ZARA drafts a statement of facts for the Vienna office of the public prosecutor and forwards the case to the human rights coordinator of the police, Lieutenant Colonel Friedrich Kovar. Mr Kovar informs ZARA that the incident is being investigated and that the officer in question has been identified. However, criminal proceedings against the officer are closed in August.

Mr R. turns to the Independent Administrative Tribunal with a complaint against measures taken by law enforcement official (see "Glossary"). Based on an analysis of the telephone protocols of the emergency call centre, which lend very high credibility to Mr R.'s description of the incidents in the eyes of the authority, his complaint is investigated further in December and the measure is found unlawful. The judge of the Independent Administrative Tribunal forwards the results of the proceedings to the Vienna office of the public prosecutor for renewed assessment in terms of criminal law, so that the office can take up the proceeding once again on the basis of new evidence. Criminal proceedings against Mr R. are closed by the Vienna office

of the public prosecution shortly before the end of the year, as the telephone protocol shows that the allegations against Mr R. by the police officer had been made with libellous intent and were not true to the facts.

Anruf 1:
 Notrufbeamter: Polizei
 Anrufer: Ja, guten Tag! Ich wurde gerade von einem von ihren Exekutivbeamten angegriffen.
 Anruf 2:
 Notrufbeamter: Polizei – Notruf
 Anrufer: Ja, guten Tag! Mein Name ist [REDACTED] Ich wurde gerade von einem von ihren Beamten angegriffen. Ich habe gerade ...
 Mann 1 (Anrufer?): Aaaa! ... hör' auf ... lass' mich in Ruh'
 Notrufbeamter: Hallo – Hallo.
 Mann 2: ... kleines Gaschloch ...
 Mann 1: Nein ... Au! ... hör' auf ... Ich hab' nichts getan. Ich hab' nichts getan.
 Mann 3 (2?): Schleich di, depperle Sau ...
 Mann 1: Ich hab' nichts getan. Ich hab' nichts getan.
 Mann 2: Du wüsst mia ... Du kleines Gaschloch. Du unnediges ... Geschlagen ... von der Polizei. Wäst: was d' jetzt g'mocht host? An Widerstaund gegen die Stotsgewot. Ok?
 Mann 1: Ok!
 Mann 2: ... schwere Körperverletzung ... versuchter Widerstaund gegen die Stotsgewot. Du gehst a Joa in Haf'n ... Du Unternehmer mit Deine drei Unternehmen ...
 Mann 1: Ja ...
 Mann 2: ... Wofnbesitzkorn ... a Nocht im Haf'n
 Mann 1: ...
 Notrufbeamter: Hallo

49 Ms G., foreign correspondent of the German news magazine "Der Spiegel" and a German citizen, is riding her bicycle a the Venediger Au in Vienna in June. After having traversed a crossroad, she is stopped by the police who reproach her with having crossed the street when the traffic light was red, and with driving on the pavement. Ms G. replies that she had not been aware of the latter being forbidden. One of the officers replies: "If you do not know how things work here with us, then you have to stay at home." A verbal conflict follows. As Ms G. does not have the money on her to immediately pay the fine and can only document her identity with a business card, the officers announce her arrest. Ms G. describes that the officers first throw her against the police car and then bring her down to the ground. One officer presses his knee against her back and additionally pulls her arms up, causing her pain. Ms G. struggles to free herself and wriggles out of the officer's grip, apparently hitting one of the officers with her arm.

After release from custody, Ms G. goes to hospital, where she is diagnosed with hematoma and bruises. Police internal investigations against the officers are initiated. However, they are closed without Ms G. having been questioned. She receives a penal order to pay a total fine of 281 Euro for several administrative offences. She asks ZARA to document the incident.

50 One afternoon in August, Mr Z., a Turkish citizen, father of a family and plumber in Vienna, is drinking alcohol with a friend, Mr B., at a bar in Vienna's 10th district. When he and his already more strongly intoxicated friend leave the place, Mr B. accidentally hits the door so hard that it rebounds. Mr B. smashes through the door glass with his hand, thus injuring himself. He runs out onto the street bleeding strongly, stumbles and falls on the road, blocking the traffic. Passers-by inform the ambulance and the police. Mr Z runs after his friend and helps him to get up. He wants to bring him to hospital. However, Mr Z.'s friend is in a state of shock and wants to return home in spite of his injuries. Soon after, an ambulance and three policemen arrive. Mr Z. is still supporting Mr. B. and therefore covered in blood. One police officer approaches them with a pepper spray ready to use in his hand. Mr Z. explains that he has not hurt his friend and only wants to help him. The police man orders him to let go of Mr B. Mr Z. replies that he first needs to calm his friend and later wants to help him get on the ambulance. The officer accepts the offer of help and lets Mr Z. lay his friend on the stretcher that the orderlies have meanwhile provided. When Mr Z. tries to secure his friend's body on the stretcher, Mr B. struggles against Mr Z.'s attempt to fasten him, suddenly the police officer who initially had accepted Mr Z.'s offer to help pushes him aside with his shoulder, almost making Mr Z. fall down. As a reflex, Mr Z. returns the push with his shoulder. He finally manages to fix his friend on the stretcher. Suddenly and without warning, the police officer he had pushed away runs up to Mr Z., uses his arm to grab Mr Z. around the neck (placing him in a headlock) and brings him down to the floor. Two other officers fix Mr Z. and handcuff him, while the first officer is still making it difficult for Mr Z. to breathe because of the grip around his throat. Mr Z. almost faints. It is only when a passer-by calls "I know that man, he is suffering from heart trouble, let go of him!" that the grip is released. After Mr Z. catches his breath, the officers take him to the police car and drive him to a police station. When he asks for the reasons for his arrest, an officer replies: "Hold your tongue, you will see!" During the ride, the driver of the police car abruptly puts on the brakes several times, such that Mr Z. bumps into the front seat. Fortunately, he is not injured by that, and he asks the officers "Why are you so careless? What good would it do you if something happened to me?" The officers reply "Shut up!" and: "Still cheeky?". At the police station, Mr Z. has to get out of the car and is led towards the staircase. Shortly before they reach the stairs, the officer who had headlocked Mr Z. at the

arrest, shouts: "Go!" and abruptly pulls Mr Z's still handcuffed arms upwards, making him fall to the ground. Mr Z. feels strong pain in both his arms and suspects that the left arm is even broken. Due to the fall, he suffers abrasions on both his knee and shin. The officer presses Mr Z.'s head against the lowest stair, thereby inflicting abrasions to his right ear. Furthermore, he steps on his right ankle. An older policeman opens the door at the top of the staircase. He sees Mr Z., but does not comment on the situation. The three officers who brought Mr Z. to the police station now stop mistreating him. The officer who brought him to the ground now orders him to get up. Mr Z. replies that he is in too much pain to get up and supposes his left arm to be broken. The officer only says: "Not at all, it is not broken!" and once again drags Mr Z. by his tied arms in order to bring him to his feet. This causes Mr Z. more violent pain. Finally, the officers lead Mr Z. inside the police building, where the handcuffs are removed. Mr Z. is brought to a cell. After repeated demanding medical attention, a medical officer is fetched, who records the injuries and has them photographed by another officer. Mr Z. demands to be taken to a hospital, which he is refused. First he has to record a statement with a police lawyer. Complaints for causing noise, aggressive behaviour and indecent behaviour follow. At last he can leave and goes straight to hospital, where his injuries are treated.

Mr Z. reports the incident to ZARA. Because of the allegations of ill-treatment made at the first interview with the Office for Special Investigations, he is summoned there for another interview. ZARA accompanies him. Furthermore, ZARA arranges for the Weiße Ring (see "Glossary") to accompany Mr Z. through the legal proceedings. Mr Z. does not want to file a complaint with the Independent Administrative Tribunal (UVS, see "Glossary") because of the high financial risk. At the time this report is being finalised, criminal procedures against the involved police officers have not yet been initiated.

51 Ms G. describes an incident to ZARA that occurred on the Vienna underground in October: A black man of about 40 years of age is standing in front of her. Suddenly, four police officers approach him and ask for his ID in a provocative tone. The man asks the officers why this should be necessary. Thereupon, the tone of voice of one of the officers becomes even more unfriendly: "Then show me your ticket!" In German, the man points out that he is the only passenger that has been asked to present ID. The police officers do not give a justification.

At the stop Schweglerstraße he is forced to get off. Therefore, Ms G. can no longer observe the remainder of the interaction and asks ZARA to find out what happened.

ZARA gets in touch with the human rights coordinator of the Vienna police, Lieutenant Colonel Friedrich Kovar, who forwards the incident to the complaints office of the Federal Police Directorate. In December, the Office for Information Service, Public Relations and Media Work transmits a statement to ZARA: "The measure by the officials in question was part of a special action for increasing security on the underground. [...] The acting officers reported that the complainant initially was not checked. However, when he stretched out his middle finger to the officers with obvious insulting intentions, he was checked, and therefore it was demanded of him to identify himself. He refused to produce a document and it was therefore demanded that he get off at the next station together with the officers. He did not however follow this demand and was therefore gripped by his upper arms in order to underline the demand. He subsequently complied with the demand and got off without further protest. The man subjected to the control and was ready to produce his passport only after a lengthy explanation given on the platform. The action was thus finished and the officers bid him farewell. In all cases of acts of official duties involving black Africans, and in particular in the case of so called underground patrols, the acting officers are aware of the fact that they attract the special attention of the public, and therefore they always remain aware of their actions and handle the situation as sensitively as possible."

ZARA forwards the statement to Ms G., who as of the time of this report has not replied.

Know Your Rights

1. Nigerian citizen, Mr G. is stopped in the street by two policemen shortly after leaving his home. "ID check!" Mr G. explains that unfortunately he does not have his ID on him, but that he can quickly get it from home. One of the officers replies: "I am not interested in that. You have to come to the police station". [He uses the familiar form of address "Du", which is not appropriate among adults without mutual consent – remark by the translator.] Mr G. asks the officer what crime he might have committed and requests that the officer does not address him with "Du". The officer returns: "So you are going to be impertinent, now we are taking you with us". Mr G. is

first searched on the spot, and then he has to follow the officers to the nearest police station. There, Mr G. is photographed. One of the officers checks his data on the computer. As it turns out that he does not have a criminal record, he is released, but without anyone apologizing to him for the unwarranted arrest. He asks for the officials' identification numbers, whereupon they tell him that their identification numbers are none of his business.

2. A few days later, Mr G. is involved in another ID check. This time, Mr G. carries his ID on him. As this is the second time such a check is performed within a short period of time, he complains to the officers: "It is always the same. You are only checking on me because I am African!" The officers see his reaction as an assault and threaten to arrest him unless he calms down. Mr G. replies: "I have not done anything, why do you want to arrest me." One of the officers says: "You black guys are always up to something, we are sure to find something!" He steps towards Mr G. and twists his arm to his back. Mr G. is thrown to the ground and handcuffed. An officer hits him on the head, shouting: "Now you see where that leads you, you stupid nigger!" Mr G. does not resist arrest in any way. One of the officers informs colleagues, who arrive by a police car after a short while. Two witnesses observe the incident and manage to slip Mr G. a business card in a moment of calm. When asked whether one of the witnesses might accompany Mr G. as trusted person, one of the officers declares this not to be possible. Finally, Mr G. is brought to the police station. There he is interrogated by a police lawyer. He has to sign his statement. At last, he is released and it is announced that a complaint will be filed against him. Some days later, Mr G. receives an order to pay a fine for "aggressive behaviour towards a law enforcement officer" under sec 82 Security Police Act (Sicherheitspolizeigesetz) amounting to 72 Euro. One week later the Vienna office of the public prosecutor informs him that procedures for resisting state authority have been initiated against him under sec 269 Criminal Code.

On the general permissibility of identity checks and arrests

Sec 35 Security Police Act (Sicherheitspolizeigesetz, SPG) and sec 118 of the Code of Criminal Procedure (Strafprozessordnung) in the edition valid since 1.1. 2008 define the limits for permissible identification checks. When it has to be assumed on the grounds of certain facts that somebody is in some connection with a criminal offence, or may be in a position to give information on such an offence, he/she is obliged to cooperate in identification. Thus both alleged/potential perpetrators and witnesses of a punishable act are under the obligation of cooperating in determining their identity, which, under sec 118 para 4 Code of Criminal Procedure may include a search of the person. The police officers have to determine their name, date of birth and address of residence.

A person suspected of a criminal offence may be arrested under sec 175 of the Code of Criminal Procedure for instance if they are "caught in the act". Under sec 172 of the same act, the suspect must be brought to the jail belonging to the competent court within 48 hours following the arrest. Within the following 48 hrs, the court must decide whether the suspect is to be detained while awaiting trial or released from custody (sec 174 Code of Criminal Procedure).

The Aliens' Police Act 2005 (Fremdenpolizeigesetz, FPG) stipulates that non-Austrian citizens have to carry a travel document on them in order to demonstrate their legal stay in the country, or to keep the document in a place from where it can be fetched without disproportionate delay (inside an hour) (sec 32 Aliens' Police Act). "Aliens" in the sense of the Aliens' Police Act also have to undergo identification for example in case of a suspicion that their presence in the country might be illegal (Sec 34 Aliens' Police Act). If an "alien" should not abide by the obligation of carrying a travel document on him/her, an arrest may be pronounced. In such a case, detention must not exceed 24 hours (sec 39 Aliens' Police Act).

It results from sec 35 Administrative Penal Act (Verwaltungsstrafgesetz, VStG) that persons "caught in the act" of an administrative offence have to undergo identification. If the person is not immediately identifiable, an arrest can be pronounced. The detention by the authorities must not exceed 24 hours (sec 36 para 1 VStG). In any case, the detained person must be informed of the charges. The arrest must be explicitly pronounced.

Sec 29 Security Police Act defines the so-called Principle of Proportionality. The Principle of Proportionality states that the law enforcement authorities should choose the most effective of the means that they are entitled to use and presumably causes the least amount of harm to the person concerned. They must take into account the protection of the rights and the interests of the person concerned. The pursued aim must be justifiable in relation to the expected damage and danger.

Rights and obligations of persons subjected to an act of official duty or arrest

Any person subject to an official act (Amtshandlung) must, on demand, be informed of the reason and ultimate purpose of said action, and may involve a trusted person (sec 30 Security Police Act). However, this does not hold if this step would endanger the fulfilment of the task of the intervening law enforcement officers.

The Federal Minister of the Interior has passed a decree concerning actions of officials of the public security service under sec 31 Security Police Act (Guidelines Decree, Richtlinienverordnung – RLV). Sec 5 of the Guidelines Decree says, among other things, that law enforcement officers have to refrain from any action liable to give the impression of their being biased or that might be perceived as discrimination on the grounds of gender, national or ethnic origin, religion or sexual orientation. Furthermore, law enforcement officers are obliged to use the polite form of address "Sie" (in contrast to the familiar second person singular you, "Du") with all persons where this is customary or who demand to be thus addressed. The officer should then also be addressed as such. According to sec 6 of the Guideline Decree, the persons affected by the act of official duty must be informed of their rights and regarding the aim of the act by the acting law enforcement officer, unless this is obvious or would endanger the success of the act. Sec 7 Guidelines Decree stipulates that persons entitled to informing or involving a trusted person or legal advisor must be informed of their respective rights. According to sec 9 Guidelines Decree, law enforcement officers have to inform persons affected by an act carried out in official duty about their official identification numbers (Dienstnummern) upon request. Whenever possible, this number should be handed over on a small card.

Arrested persons, persons suspected of a criminal offence and possibly supposed of carrying a potentially dangerous object may be searched under Sec 40 Security Police Act.

Taking photographs is part of recording characteristics for identification. The person concerned, who is suspected of having committed a criminal offence, is entitled to be informed as to why he/she is subjected to the treatment for assessing personal characteristics, and, under specific circumstances, is entitled to have the data deleted from the record.

Any arrested person has the right to inform a trusted person or a legal advisor. However, during an interrogation for a criminal offence that is to be pursued by court, neither a trusted person nor a legal advisor may attend.

What can Mr G. do in the first case?

As Mr G. is not an Austrian citizen, police officers are entitled to check whether he has a legal right to stay in Austria. Although Mr G. does not carry his documents on him, the police officers would have to permit him to fetch them from his flat in the immediate vicinity of where the act of official duty was carried out. The demand to come to the police station is to be considered as an arrest which was, however, lacking the required legal basis. Thus, the subsequent personal search and the taking of photographs are unlawful. By addressing him with the informal "Du" and by refusing to give their official identification numbers, the officers violated the Guidelines Decree.

If Mr G. turns to ZARA, ZARA can file a complaint against measures taken by law enforcement officials (Maßnahmenbeschwerde) with the Independent Administrative Tribunal (Unabhängiger Verwaltungssenat, UVS – see "Glossary") for unlawful arrest, person search and the taking of photographs, as Mr G.'s subjective rights have been violated in the course of the exercise of direct authority and coercion. In this case, ZARA can also represent Mr G. before the Independent Administrative Tribunal. Such a complaint against measures can be lodged not only against violations of provisions of the Security Police Act, but also against violations of constitutional rights (e.g., the prohibition of torture and inhuman or degrading treatment according to article 3 of the European Convention on Human Rights, the right to private life and family life according to article 8 of the European Convention on Human Rights, the Federal Constitutional Act on the Protection of Personal Freedom (Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit) or other rights guaranteed in simple law provisions that have to be observed by law enforcement officials in performing their duties. The procedure before the Independent Administrative Tribunal is similar to that before a court. Independent judges of the Independent Administrative Tribunal decide whether the acts of the law enforcement officers were unlawful. Awarding damages to the victim is not provided for by the law. The opponents in this procedure are the offices of public authorities superior to the law enforcement officials in question, like e.g. the Federal Police Directorate Vienna (Bundespolizeidirektion Wien, BPD Wien). The individual officers appear as informants in the procedure, but are not directly affected by the finding of the Independent Administrative Tribunal. Subsequent disciplinary measures in individual cases are possible. The complainant in the procedures before the Independent Administrative Tribunal has no influence on the disciplinary procedures that are internal to the law enforcement authorities. In case the Independent Administrative Tribunal finds that the actions taken by the law enforcement officers have not been unlawful, the complainant is liable to cover the cost of the procedures, which usually amount to about 500-700 Euro.

Furthermore, Mr G. could also turn to the Independent Administrative Tribunal with the help of ZARA because of violations against the Guidelines for Actions by Officials of Public Security (Richtlinien für das Einschreiten der Organe des öffentlichen Sicherheitsdienstes, short: Richtlinienverordnung / Guidelines Decree) under sec 89 Security Police Act within six weeks. The first step the Independent Administrative Tribunal has to take, with a so-called "guidelines complaint" (Richtlinienbeschwerde) is to forward it to the competent authority that is in charge of supervising the acting officials in question. In the case of Mr G., that is the Police Directorate Vienna (BPD). After the BPD has investigated the facts on their part by questioning the involved officials or through their reports, the BPD has to inform the complainant in writing as to whether or not the situation constitutes a violation of the Guidelines Decree. The BPD also has the possibility to arrange a meeting between the involved officials and the complainant where they can discuss the incident, with the aim of the complaint being settled and no charges being brought ("Klaglosstellungsgespräch"). If the person concerned is satisfied with the meeting and its outcome, the guidelines complaints procedure is closed with a written declaration by the complainant of no longer holding a complaint. The BPD no longer has to comment on the incident. If however the complainant is not satisfied with the encounter and its outcome, e.g. because the officers do not recognise any wrongdoing, then the procedure continues. The BPD has to draft a written statement regarding their opinion on the alleged violation of the Guidelines Decree and to deliver it. If the statement denies a violation, or if no statement is delivered inside three months after the complaint has been filed, the complainant may demand a decision by the Independent Administrative Tribunal within a fortnight. In procedures similar to those under a "measures complaint" the Independent Administrative Tribunal then has to determine whether the Guidelines Decree has been violated. Regarding consequences for the officers, the situation is the same as in case of the "measures complaint" described above.

In the case of Mr G. one might expect that no attempt would be made to reach a settlement with a direct encounter, as it involves three charges, the impolite form of address, racist discrimination, and of not disclosing the official identification number. If the BPD should not find a violation of the Guidelines Decree, the Independent Administrative Tribunal will treat both complaints jointly. Regarding the photographs taken by the police officers, Mr G. can apply for the deletion of this identification data under sec 74 Security Police Act in case they have not yet already been deleted ex officio as foreseen by sec 73 Security Police Act for lack of a legal basis.

What can Mr G. do in the second case?

In addition in this case, the officers violated Mr G.'s subjective rights through the unjustified brutal manner of the arrest, the verbal abuse, and by handcuffing him. The officers are obviously biased and discriminated against Mr G. because of his origin, which is obvious from what they said. Furthermore, they addressed him with the informal "Du". These acts constitute clear violations of the Guidelines Decree (Richtlinienverordnung). Mr G. can lodge another complaint with the Independent Administrative Tribunal with the support of ZARA. However, in this case ZARA will represent Mr G. before the Independent Administrative Tribunal. Regarding the administrative fine for "aggressive behaviour towards a law enforcement officer" it is possible to file an appeal to the Independent Administrative Tribunal that makes decisions regarding the lawfulness and appropriate measure of the fines. As Mr G. did not behave aggressively and thus did not impede the officials in carrying out their duties, which additionally is certified by two witnesses' testimony, the odds that the fine would be lifted and the procedures would be closed are good. Furthermore, sec 85 Security Police Act foresees that, persons who have to stand for trial under sec 85 may not be additionally tried or punished under sec 83 Security Police Act. Regarding the complaint against Mr G. for the criminal offence of "resistance to state authority" under sec 269 Criminal Code, Mr G. will have to appear in court. The (regional) criminal court may impose a fine of up to three years imprisonment. The allegation against Mr G. is that he "actively", meaning e.g. by targeted hitting and kicking, resisted an act of official duty (Amtshandlung) or his arrest. Simple "passive" resistance making the arrest more difficult, like e.g. stiffening one's muscles which makes handcuffing more difficult, or trying to wrangle out of the officers' grip is not sufficient for a conviction under sec 269 Criminal Code. If Mr G. cannot afford a lawyer to represent him in court, ZARA assists in the application for free legal aid in the procedure. The lawyer will be chosen by the Chamber of Lawyers (Rechtsanwaltskammer). If Mr G. can afford to pay for a lawyer of his choice, he will be advised to do so and will be represented by a lawyer of his confidence. In case of Mr G. being acquitted, he will receive a reimbursement for part of the costs for the lawyer. During criminal procedures, Mr G., his two witnesses and the officers involved will be questioned by the court. It is often the case that the court does not believe the statement of the defendant to be true because of similar testimonies, which are contrary to the defendant's, made by a high number of police officers. The statements of officials are considered more reliable and more credible than that of the victim of the transgressions because of the official oath sworn by the officers. This argument

often even induces court officials to gloss over inconsistencies in their statements. However, as Mr G. can present two independent witnesses, his chances of being acquitted are good even in the criminal procedure. If he is pronounced guilty, a sentence of three to six months imprisonment on remand is likely. "On remand" means that Mr G. does not have to serve the sentence if he does not commit a similar criminal offence inside a probation period of at least three years. Mr G. furthermore has the possibility to appeal the conviction. In this case, the Regional Court of Appeal (Oberlandesgericht, OLG) makes a final decision about whether or not Mr G. actually committed the crime or should have been acquitted. In case the public prosecutor appeals the decision of the court of first instance, the penalty may also be altered. If it should turn out in the course of the procedure, that the statements by the law enforcement officers which led to the prosecution of Mr G. have not been true, the public prosecutor may start criminal proceedings against the officers, for giving false information certainly constitutes the criminal offence "giving false evidence in court" (sec 288 Criminal Code), that of "libel" under sec 297 Criminal Code, and possibly also that of "abuse of state authority" under sec 302 Criminal Code.

ZARA's demand**Introduction of a human rights procedure**

Current situation: Victims of racist police misconduct who want to complain to the competent Independent Administrative Tribunal (see "Glossary") incur a considerable financial risk. They cannot expect more from the proceedings than finding of whether or not laws or a guideline have been infringed upon. Compensation for material or immaterial damages can only be claimed within very narrow limits, and only in separate official liability procedures, which implies another cost risk. Whoever decides to take upon her- or himself the inconveniences of such procedures should be taken seriously and also get a fair chance of making his/her claim. In reality, it is very difficult to argue one's case even when infringements are objectively documented. The complainant carries the full burden of proof (alleviation / reversal of the burden of proof, see "Glossary"). This leads to the impression of the procedure being conducted like a criminal procedure against individual acting officials, for whom the presumption of innocence is of course valid. However, this is exactly the opposite of what procedures before the Independent Administrative Tribunal are about. They are not about individual responsibility, but about the responsibility of the state for acts of official duty carried out in its name.

Suggestions for improvement

- Conducting the procedure before the Independent Administrative Tribunal (UVS, see "Glossary") as a human rights procedure with the responsibility of the state for the acts of its representatives as the issue, independent from the individual responsibility of the officials. This enables a reversal of the burden of proof (see "Glossary") in the proceedings and thus encourages improved and more objective documentation of acts of official duty.
- Guidelines and measures complaints serve the enforcement of elementary human rights claims and should therefore be conducted free of charge.
- Tying a finding by the Independent Administrative Tribunal about a violation of the Guidelines Decree (Richtlinienverordnung), the Security Police Act and/ or the European Convention on Human Rights to consequences in the law governing damage compensation claims.

A repeated cause for escalation: Asking for the official ID number

Considering the frequent conflicts in relation to obtaining the ID numbers of acting officials, or rather the impossibility of obtaining these numbers, ZARA demands that police officers wear their ID numbers on their uniforms in a way that they are clearly visible by all. Visibly wearing official ID numbers on

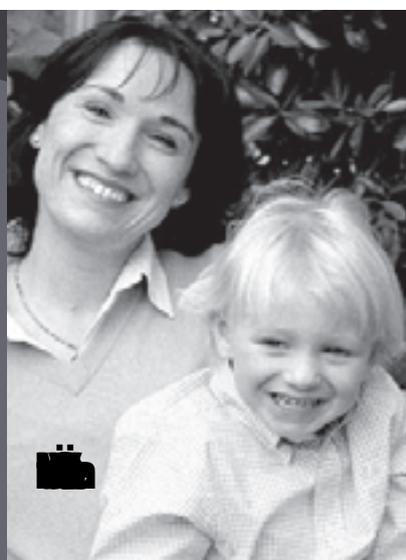
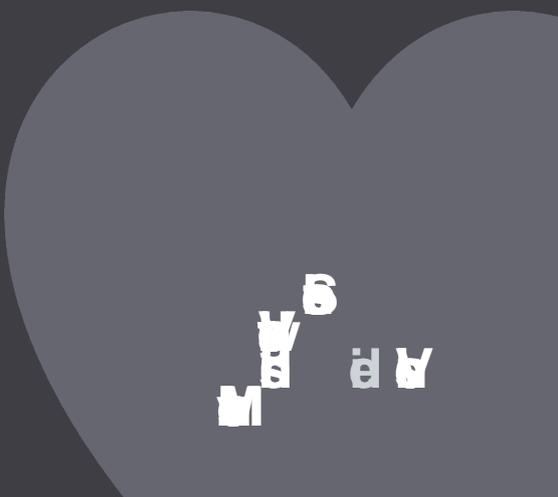
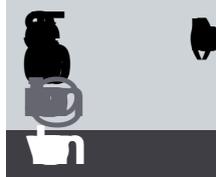
uniforms is the established custom for example in the USA, Poland or Slovenia.

Diversity in the police force

Currently, the composition of the police force does not mirror the multiethnic composition of Austrian society. This circumstance furthers the distance between police officers and the population and maintains the mutual lack of understanding for each other. In order to do justice to an open society, we demand an increased opening up of the police service to everyone. The success of this opening up will be measurable by the degree to which diversity can be found among police officers. What does not seem appropriate is a tensely, unnatural ethnicisation of recruitment policies.

Psychological supervision equals prevention

The profession of police officer involves a psychological strain. Law enforcement officers often have to interfere and mediate situations where contrary positions meet head to head and other possible solutions have already failed. We demand improved police training in applied and applicable conflict resolution and a stepping up of psychological support for officials. However, these measures should not only be taken once the effects of the strain on the officers start to show.



Other public authorities and public institutions

"Forms, nothing but forms, from the cradle to the grave!"

A state under the rule of law needs administration. A great and varied number of authorities ensure that written law is put to practice. It is most popular to criticize bureaucracy as a whole. ZARA does not want to join in this lament, but to point out that public administration comes with a high degree of responsibility. As the legal language has already demonstrated there is an enormous power difference in such encounters. But power is always tied to responsibility. Only those able and ready to accept responsibility should have power. In a democratic state under the rule of law, it is an essential responsibility of the administration to remain impartial and to guarantee fairness and legal certainty. There must not be any room for discrimination in this context. Going beyond this, the administration is called upon to avoid any semblance of bias.

In this context, it has been a positive experience for ZARA that many public institutions do indeed react to charges of discriminatory conduct and at least try to avoid similar incidents in the future.

52 In July, Ms P., an Austrian, informs ZARA via telephone of the following incident: Her boyfriend is of African origin. Currently, he is performing his military service with the Austrian army. He is frequently subject to racist harassment by his fellow recruits. Among other things, he is labelled "N..." by one of his comrades, and there are allusions to the practices of the Ku-Klux-Klan, for example when some comrades put on white hoods with eye slits. The army official responsible for complaints at the local barracks tells him that the abuse is not so grave and does nothing about it. Even when one of the re-

cruits draws attention to himself by carrying out the Hitler salute, no countering measures are taken. The said recruit furthermore tries to raise suspicions of a criminal offence having been committed by the recruit of African origin in libellous intention by claiming that there is a smell of hashish in his room.

ZARA gives Ms P. legal information and urgently suggests that she recommend her boyfriend to direct his complaint directly to the Ministry of Defence, and to file a complaint for re-enactment of National-Socialist ideology with the Federal Office for the Protection of the Constitution and the Fight Against Terrorism (see "Glossary"). When Ms P. calls again, she informs ZARA that her boyfriend does not want to make any more complaints, but to suffer through his time of basic military service including all discriminatory acts by his comrades. He fears that his situation might worsen further because of a complaint. His initial complaints with superiors led to the extremities described above. Finally, Ms P. anonymously turns to the Federal Army's complaints committee and subsequently does not get in touch with ZARA again.

53 Mr K. is from the former Yugoslavia and lives in Vienna with his family. He reports the following incident to ZARA: In March, he parks his car in a parking toll zone in Vienna's Enkplatz in order to quickly shop for groceries. His wife and his children remain in the car, and he forgets to fill in a parking ticket. While he is in the shop, and his wife takes care of the child in the back seat, an official monitoring parking toll regulations issues a penal order. Mr K. sees this when he steps out of the shop onto the street. He tries to intervene with the officer to make her take the parking ticket back. He politely asks her whether it might be possible for her to make an

exception. The officer reacts shouting: "If there is something you don't like about this place here, then you can go back to your home country!" Mr K. is distressed. There are about 15 people standing nearby who also witnessed the outburst. Sometime later he complains to the corresponding City department on the telephone and is put through to a lady who assures him that the officer in question will be talked to in order to stop her from behaving that way in the future. However, Mr K. does not receive an apology.

54 One morning in April, a 26-year old Lower Austrian woman is the victim of a brutal rape in the parking lot of a night café in St. Pölten. She describes the perpetrators as "two men of African origin". In early May, Mr A. (26) and Mr E. (48), both from Nigeria, are taken into remand custody. The men deny the deed. However, the young woman recognises the two in a confrontation. The two men indeed were guests of the said night café a couple of hours before the deed. However, a DNA-analysis confirms the statements of the two Nigerians – the traces on the crime scene, in particular traces of secretion, are not theirs. In spite of the lack of objective evidence, the public prosecution insists on the two Nigerians having been involved in the act and remaining in custody. In a radio broadcast, experts of the Federal Criminal Office (Bundeskriminalamt) state that a rapist does not necessarily leave DNA-traces on the crime scene. However, DNA-traces should not only be adduced to prove guilt but also innocence. The DNA-analysis provides objective evidence, at least more objective than witness statements. One of the officials from the Federal Criminal Office comments on the fact that the victim of the violent act recognised the two Nigerians as perpetrators with the following: "This is no malevolence on the part of victims, there often is a great resemblance with perpetrators." At the beginning of July, one of the suspects is released from custody, because the young woman is no longer certain that Mr A. carried out the deed. An additional expert statement and an alibi by a roommate further exonerate him. Finally, after 76 days, also Mr E. is released from remand custody.

ZARA documents the events surrounding the arrest of the two Nigerians based on community-protests and a variety of media reports.

Know Your Rights

Mr B. was born in Austria, but his father is from Samoa. He is an Austrian citizen and the father of two children of primary school age. One day he receives a letter from the Ministry of Finance. In order to continue receiving family allowance, he is required to bring proof that his two children are living in Austria. As this way of proceeding seems strange to him, he calls the revenue office on the phone the following day. The competent official tells Mr B. that he demands the proof because "foreigners constantly perform tricks in order to receive any type of social support for all their relations". He will now carry out sample checks on persons whose names "appear strange" to him. When Mr B. points out to the official that he has held Austrian citizenship since birth, the official says, "I don't give a damn, you are still a dirty foreigner!"

Part 3 of the Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*) provides that persons who are discriminated against in regard to social protection (which includes, for example, social security payments, unemployment benefits or payments under the Act for Compensating the Strain resting on Families (*Familienlastenausgleichsgesetz*) on the grounds of ethnic belonging can turn to the Equal Treatment Commission or claim compensation for damages before civil courts. Also harassment (see "Glossary") is a form of discrimination under the Equal Treatment Act.

With his statements, the official makes it absolutely clear to Mr B. that he is predisposed to find fault with Mr B. as compared to a person of Austrian origin, for whom he would not imply "social fraud", because of his name and his ethnic belonging. This clearly constitutes direct discrimination on the grounds of Mr B.'s ethnic origins within the boundaries of the Equal Treatment Act. Furthermore, the offensive racist statements of the official qualify as harassment on the grounds of ethnic belonging, as they violate Mr B.'s dignity and create an intimidating, offensive and humiliating environment.

What can Mr B. do?

Mr B. is entitled to compensation for the actual material damage suffered, e.g., in case of family allowance being unlawfully withheld from him because of the verification. In addition, he is entitled to compensation for the personal damage suffered by the treatment. For the harassing remarks made by the official Mr B. is entitled

to a minimum compensation payment of 400 Euro. Mr B. can either claim compensation at the competent civil court, which comes with a considerable financial risk, or turn to the Equal Treatment Commission (see "Glossary") first. There, a procedure may be carried out to determine whether or not the individual case is one of discrimination and a legally, non-binding recommendation for measures of compensation and the prevention of future discrimination. Mr B. can allow NGOs like ZARA or the Ombud for Equal Treatment (see "Glossary") to counsel and support him with filing a complaint with the Equal Treatment Commission.

As the discriminating person was an official of the tax revenue office, Mr B. can file a complaint with the superior unit and suggest disciplinary proceedings against the discriminating person. Mr B. has no legal right to initiate such procedures.

The information folder "Equal rights in daily life. Basic information on the protection against discrimination in everyday situations"

can be downloaded or ordered in the languages German, English, French, Croatian, Serbian and Turkish at: <http://www.univie.ac.at/bim/gleichbehandlung/>

ZARA's demand

Ratification of Protocol No. 12 to the ECHR

Protocol No. 12 to the European Convention on Human Rights has only been signed but not ratified by Austria. In Art 1, the protocol lays down the prohibition against discrimination with respect to the enjoyment of all rights set forth by law. Discrimination is forbidden in particular on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The Protocol expands the competences of the European Court of Human Rights and specifies the human rights obligations regarding the protection against discrimination.

ZARA demands that the Protocol be ratified.

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Work

The racist discourse regarding the relationship between people of a migrant background and work is dominated by two stereotypes.

First: "They ("the others") do not work and exploit the ("our") social system."

Second: "They ("the others") take the Austrians' ("our") jobs away."

There is no escape from this dilemma for the people affected. Even counter arguments based on good intentions, like the one about "foreigners" working in areas "Austrians are not interested in anyhow", because of the work being strenuous, ill paid, unsteady and dirty, basically only confirm the claim of the imagined "majority society" to the "good jobs" and accept dequalification, ethnic niches on the labour market and devaluation together with contingent exploitation as seemingly natural.

Inside such a mainstream-discourse, a legal prohibition against discrimination that is adopted largely without comment "in transposition of European law" remains incomprehensible and exotic. Many people, entrepreneurs and human resource managers confronted with the prohibition against racist discrimination by ZARA, react harshly and without understanding. As though primed by some key word, the same old phrase is reproduced: "One may well choose who one wants to hire/promote/lay off!" Instead of tackling their own discriminatory attitude, they see themselves as victims of a restriction of freedom that deprives them of their economic leeway in a scandalous way. Even persons possessing extensive knowledge of the law often find an illegitimate restriction of the autonomy of private parties. However, this line of argument does not stand up to even a very superficial closer inspection. The prohibition against discrimination in employment further strengthens the autonomy of private parties, because it aims at stopping generalised rejections for irrational, discriminatory reasons. The induced "arguments" against a prohibition of discrimination try to reinterpret it as a "discrimination requirement" by pretending that one is forced to treat the members of those groups one basically wanted to discriminate against more

favourably. However, this is exactly what a prohibition against discrimination does not want. It attempts to make people eliminate unobjective elements from the selection process. Thus, it does not lead to an ethnicisation of the process, but to a neutralisation in regard to criteria that are irrelevant anyway. Thereby nobody loses anything. Not being discriminated against does not constitute more favourable treatment. The fact that often this still is not the case is illustrated by the incidents described here.

55 Ms B. is Austrian. In July she reports to ZARA that her husband, who is of African origin has been abused as "shit-n..." by colleagues at his workplace. The reason being that as foreman, her husband was diligently controlling his colleagues' work and offering a significant amount of criticism.

Ms B. asks ZARA for legal information. A ZARA counsellor tells her about the legal possibilities available under the Equal Treatment Act, in particular with regard to the "harassment" (see "Glossary") that has apparently taken place on the grounds of ethnic origin (see "Know Your Rights"). Ms B. thanks ZARA for the information in the name of her husband. However, she does not contact ZARA for personal counselling later on.

56 In July, ZARA receives an anonymous tip regarding a job advertisement published in a large Austrian newspaper on the same day: "Waiters/waitresses wanted for restaurant garden with strong business. First class salary, mother tongue German, experience required". As the requirement of a mother tongue clearly is also related to a person's ethnic belonging, the advert constitutes an infringement of the Equal Treatment Act.

In August, another anonymous report about an advert in the same newspaper reaches ZARA: "Reliable waitress, Austrian, 25 to 35 years old, wanted!!! [...]" A corresponding administrative penal provision in the law forbids such adverts, however, its restric-

tive wording does not permit a pertinent complaint to be filed by non-governmental organisations like ZARA (see “Know Your Rights” and p.66 in the Racism Report). Therefore, ZARA is not in the position to take steps against the advertisement and only documents the facts. So far, attempted interventions with the paper have not received a reply.

57 Ms M. reports the following to ZARA: As an adult education trainer, Ms M. according to her own definition teaches only “middle-class, modern and educated” women. Nevertheless, she often encounters various racist statements and opinions in class. According to media reports, a Chechen mother drowned in the river Mur in Styria together with her baby. When this terrible incident was brought up in her class, one of the participants, a mother of three herself, said: “After all, why must they come to Austria, have one child after the other in order to cash in on the child allowance and have a good life at our expense. If they had stayed where they came from, this would not have happened!” When Ms M. tries to explain the background and to counter the racist position of the woman with arguments, she is abused as a “foreigner friend”.

Ms M. asks ZARA for tips on how to handle such situations. ZARA documents the incident and counsels Ms M. on further education offered for adult education trainers on constructive ways of dealing with racist remarks by course participants.

58 In September, Ms M. reports the following incident to ZARA: Mr D., an asylum seeker from Senegal who has been in Austria for five years, is distributing leaflets to car drivers at a Vienna cross-road on behalf of a big transport company. Suddenly a driver stops, shouts “shit-n...” and throws a lighted piece of firework at his feet, which explodes under him. Fortunately, Mr D. remains unharmed. The police called in by his colleagues can only record a complaint against the unknown perpetrator, as the driver had immediately taken flight. Due to the suffered shock, Mr D. cannot recall the car’s license number. ZARA documents the incident.

59 Ms E. is a teacher at a Vienna academic secondary school. In the framework of job orientation, fourth grade pupils can “taste working life” for three days in February. Ms E. arranges interviews at a clothes shop on Mariahilfer Strasse for three girls from her class. A couple of days before the scheduled start of the short-term work placement, an employee of the company calls Ms E. on the phone, telling her that there is a problem because one of the girls is wearing a headscarf. She asks the teacher

whether it would be all right for the girl to be placed in the storeroom, whereas the two others would work in sales and have direct contact with customers. Ms E. is shocked and cancels the work-placement for the three girls. She complains to the management by e-mail, and receives an indifferent reply, but nothing along the lines of an apology or an announcement that the company would rethink its attitude towards employees wearing headscarves. The management justifies the “no-headscarves-policy” by pointing out that employees of the company have to follow certain guidelines on clothing. The pupil in question is in tears when she learns the reason for the cancellation of the work placement, as she does not understand why she is treated differently than her classmates because of her headscarf.

ZARA informs Ms E. about the legal situation under the Equal Treatment Act (see “Know Your Rights”), which forbids unequal treatment based on religion in employment. As only a brief work placement was concerned, and the girl’s parents were not interested in legal action, ZARA only documents the case.

60 Passing by a house in Vienna’s 7th district in June, Ms G. notices the following job advert attached to a house door and reports it to ZARA: “Austrian cleaning woman wanted. [...] Doctor’s surgery Dr. med. Y.” (Name of the doctor anonymised). ZARA writes a letter of complaint to Dr. Y., pointing out the present legal situation regarding antidiscrimination. There is no reaction from the doctor.

61 Mr P. is an employee of a big Austrian infrastructure company. After his return from a sick leave of several months necessary because of an operation and other health problems, numerous problems arise. He is subjected to racist abuse by colleagues at the work place because of his Iranian origin. Mr P. asks his superior to do something about the abuse. As his superiors do not interfere, he turns to ZARA.

ZARA informs Mr P. of his rights and offers him support in enforcing these rights. But Mr P. just wants to see the case documented.

62 Early one morning in August, at about 2 am, Mr Z. is delivering newspapers together with a colleague. Suddenly, they are attacked by two young men. They are abused as “Shit-Indians” and beaten. The situation escalates, one of the perpetrators pulls out a knife and stabs Mr Z. several times. When the perpetrators stop and disappear, Mr Z. calls the police emergency line. The police officer cannot understand where Mr Z. is, and the perpetrators return. Mr Z. puts his mobile into his

pocket but holds the line. Once more, he is repeatedly beaten and attacked with the knife. When the perpetrators realise he is already bleeding very strongly, they disappear for good. Mr Z. and his colleague pursue them. Mr Z takes his mobile phone again, the connection is still working. He can inform the official on the telephone on his whereabouts. However, the officers subsequently arriving on the scene talk only to the perpetrators, not to the victims. They are all brought to the police station. The perpetrators are offered a glass of water right away, Mr Z. and his colleague are not even offered a seat. Finally, the ambulance is called and Mr Z. is brought to hospital, where his wounds are treated.

Complaints for bodily harm are filed against the perpetrators. ZARA recommends Mr Z. turn to the Weiße Ring (see "Glossary") to accompany him through the proceedings. At this time, no additional information is available.

63 In October, Ms S. applies for a position as a dentist's aid. The dentist makes it clear to her that he will only hire her if she removes her headscarf.

ZARA informs Ms S. that such behaviour is against the Equal Treatment Act (see "Know Your Rights") and offers her support in enforcing her rights. However, Ms S. does not get in touch with ZARA again.

64 Mr P. alerts ZARA to an online-job advertisement by an internet-auctioneer that is explicitly looking for staff whose mother tongue is German. ZARA informs the company that this is discriminating against applicants on the grounds of their ethnic origin and therefore forbidden under the Equal Treatment Act (see "Know Your Rights") and punishable by an administrative fine. A staff member of the auction house's human resources department assures ZARA in a quick reply that there was no intention to discriminate against anyone on the basis of his or her origin. In fact, the company intended to clarify that what was needed for the open position was an "excellent command of German". This had erroneously been expressed through the terminus "German mother tongue". The wording of the advertisement is changed without delay. ZARA is assured that in the future, model texts for job adverts will correctly ask for "excellent command of German" when this is actually a prerequisite for the position in question.

65 Mr U. is a computer scientist born in Tunisia. In August, he reports the following facts to ZARA: When he was laid off by his prior employer, an internationally active enterprise, due to job cuts, he immediately began to look for a new job. However,

he receives less favourable treatment because of his Tunisian origin in the course of several applications.

ZARA informs him of his rights and offers to support him in claiming these rights. However, Mr U. does not get in touch with ZARA again.

Know Your Rights

Mr P., a faithful Muslim, works at a haulage company. There is a canteen offering a selection of "choice-of-the-day" plates for lunch at a very low price. When Mr P. approached the management with the request to always include one offer without pork, his superior told him: "Where would that lead us if we always satisfy you guys?" When Mr P. spreads his prayer-rug on the ground during breaks, he has to listen to jokes from his colleagues as well as abuse like "camel driver". Finally, Mr P. is fired and the reason given is that he, as a foreigner and Muslim, just caused too many problems.

The right not to be disadvantaged at the work place does not only include the right to equal pay, promotion etc., but also the right to equally benefit from social care (including voluntary social measures) of the company. If no special price lunch offer without pork is available in the canteen of the haulage company, Mr P. is excluded from this social benefit as a faithful Muslim who may not eat pork because of his religion. Thus he is indirectly discriminated against (see "Glossary"). The insults made by his colleagues qualify as harassment, which constitutes discrimination in the meaning of the Equal Treatment Act because they make reference both to his ethnic origin and to his religious beliefs, and because they violate his personal dignity through their intensity.

Sec 21 (2) Equal Treatment Act (Gleichbehandlungsgesetz)

Harassment is taking place in case of unwanted conduct related to one of the [forbidden] grounds [of discrimination] that

- 1. violates the dignity of the affected person,**
- 2. is unwanted by the affected person, inappropriate or indecent,**
- 3. creates an intimidating, hostile, degrading, insulting or humiliating environment for the affected person.**

Under the provisions of the Equal Treatment Act, a superior is obliged to act as soon as he/she learns about an employee being harassed, and to take immediate action to ensure the discrimination stops. Otherwise, he/she also becomes liable to pay damages for the harassment by his/her employees. The termination of employment of Mr P. in reaction to his complaint constitutes victimisation (see "Glossary") which amounts to a clear violation of legal provisions.

Sec 27 Equal Treatment Act Prohibition against adverse treatment

An employee must not be dismissed or subjected to other adverse treatment in reaction to a complaint within the company or to initiating proceedings aimed at enforcing compliance with the principle of equal treatment. Also, other employees acting as witnesses or informants in proceedings or supporting the complaint of another employee must not be dismissed or subjected to other adverse treatment in reaction to a complaint within the company or to initiating legal proceedings aimed at enforcing compliance with the principle of equal treatment.

What can Mr P. do?

Mr P. would be well advised to turn to ZARA or the Ombud for Equal Treatment with his case and to bring it before the Equal Treatment Commission. In cases of discrimination regarding the access to voluntary social benefits, measures of vocational education and training or re-training or other working conditions, the victim has the right to be awarded the benefits in question, (training measures, equal working conditions being established, etc.), or to receive compensation payments for a pecuniary damage or possible immaterial damages. Based on a pertinent opinion of the Equal Treatment Commission, Mr P. can enforce the introduction of a daily offer without pork at the canteen. In the case of harassment in the context of an employment relationship in the sense of the law, the affected individual has a right to compensation payments. In case of harassment, payments for material damage – if any financial damage has been done – and immaterial damage – serving as compensation for the personal damage suffered – are awarded. The financial amount of compensation payments must be adequate and amounts to at least 400 Euro. The claim holds in relation to the harassing person(s), be it the employer, a third party involved in an employment relationship, or a third party outside a specific employment relationship as well. In addition, there is a claim to compensation payments from the part of the employer in case he/she does not take appropriate measures in order to end the harassment. Additionally, the instruction to harass an individual makes the instructing party liable to damage claims. Finally, also dismissals that are unjustified and motivated by discrimination can be challenged by taking legal action with the competent labour court. This also holds in cases of victimisation, adverse treatment or dismissal of an individual in reaction to a complaint or the initiation of legal proceedings aimed at enforcing compliance with the principle of equal treatment.

The example of discriminatory job advertisements

The following job advertisement is posted by an office: “Wanted: cleaner, Austrian citizen with excellent knowledge of German.” Ms R., an Aus-

trian citizen of Turkish origin, presents herself at the office for a job interview. The human resources manager says to her: “Haven’t you read our ad? We do not hire foreigners!”

At first sight, one might assume that this constitutes a case of direct discrimination which is, however, not covered by the Equal Treatment Act (Gleichbehandlungsgesetz), as nationality is exempted from the scope of the Equal Treatment Act. The office is looking for a cleaner and does not want to employ a “foreigner”. Yet, such an advertisement is indeed unlawful, as it discriminates against workers or employees from other EU member states and violates their right to free movement of workers. Third country nationals (see “Glossary”) are also unlawfully excluded by the advert. Simply taking a person’s nationality as criteria, without also taking into account their legal position on the labour market, constitutes a prohibited form of discrimination. The so called “nationality exception” only permits the legislator to regulate labour market access for third country nationals. Once this access is granted (e.g. by a permanent permit), it is forbidden for employers to exclude potential employees on the basis of their nationality. The wording of the advert and the statement of the human resources manager, make it clear that persons of non-Austrian origin should be prevented from applying. This type of discrimination on the grounds of ethnic origin – camouflaged as being based on nationality – and obviously in use like in the “Austrians only” advertisements documented in the Racism Report, is thus subject to the Equal Treatment Act.

Ms R. is, after all, an Austrian citizen. Yet, she is not considered “sufficiently Austrian” and is not hired on the grounds of her origin, an act of direct discrimination in the sense of Sec 19 (1) Equal Treatment Act (see “Glossary”).

Sec 19 (1) Equal Treatment Act

Direct discrimination occurs where one person, on any of the grounds referred to in Sec 17, is treated less favourably than another is, has been or would be treated in a comparable situation.

The advertisement as such violates the requirement of non-discriminatory job advertisements. The only exception from this requirement concerns occupational activities for which a certain characteristic constitutes a genuine and determining occupational requirement. In this regard, it is not the restriction of Austrian citizenship that is relevant, but the requirement of “excellent command of German”. This constitutes so called indirect discrimination (see “Glossary”), where an apparently neutral requirement puts a certain part of the population at a disadvantage on the grounds of their origin without a justification in a specific and appropriate occupational requirement.

Sec 19 (2) Equal Treatment Act

Indirect discrimination occurs where an apparently neutral provision, criterion or practice can put persons belonging to an ethnic group, or persons with a certain religion or belief, having a certain age or a certain sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Excellent command of German as a requirement for a cleaning job is neither objectively justified nor appropriate or necessary for achieving the aim.

What can Ms R. do?

Ms R. can turn to ZARA or the Litigation Association (see "Glossary") with her case, or directly approach the Office of the Ombud for Equal Treatment (see "Glossary") that may bring the case before the Equal Treatment Commission (see "Glossary"). The competent Senate II of the Equal Treatment Commission would then draft a decision for the specific case after obtaining a statement of the respondent party and hearing both parties. The decision assesses whether or not discrimination has occurred. In the framework of the proceedings, the alleviation of the burden of proof (see "Glossary") is guaranteed to the complainant. Furthermore, the Equal Treatment Commission can call on the respondent to end the discriminatory behaviour and to take appropriate measures to prevent the discriminatory behaviour, found by the Commission, from being repeated. The proceedings before the Commission cannot lead to damages being awarded; however, the opinion of the Equal Treatment Commission is a good basis for subsequent proceedings before a civil court. Yet, in court there is no possibility for Ms R. to claim employment of the job in question. In the case under discussion, she would only be entitled to compensation, in the form of a payment amounting to a minimum of one month's wage – unless the respondent can demonstrate only having refused to consider the application (i.e. that Ms R. had been excluded from the further application process on the grounds of ethnic belonging, but would not have been eligible for the job anyway because of lack of qualifications). In this case, Ms R. would be entitled to a maximum amount of 500 Euro in compensation payment. Thus, if an employment relationship is not established on the grounds of discrimination in the sense of the Equal Treatment Act (Non-establishment of an employment relationship), the affected individual is entitled to compensation of pecuniary damages as well as to compensation payments for the personal damage suffered (compensation for material and immaterial damages). The compensation payment amounts to at least one monthly salary in case the applicant would have been chosen for the position in a non-discriminatory selection pro-

cedure, and compensation is limited to 500 Euro if the employer can demonstrate that it was "only" refused to consider the application. The position as such cannot be claimed.

Regarding the discriminatory job advertisement, Ms R. can also draft an application for punishment (Bestrafungsantrag) directed to the district administration authority (Bezirksverwaltungsbehörde, see "Glossary"). The district administration authority can issue a warning to the employer and impose a fine of up to 360 Euro in case of repetition of the offence. The main problems with complaints lodged with the district administration authority are that Ms R. is not party to the proceedings, such that she has no right to be informed of whether or not her potential employer gets fined. In case there is no penalty, she cannot appeal the decision. If however, Ms R. turns to the Office of the Ombud for Equal Treatment, the Ombud not only can lodge the application for punishment for her, but also is a party in administrative proceedings, including the right to appeal. The Ombud for Equal Treatment can also initiate such proceedings without a specific individual who is affected by the advertisement.

ZARA's demand

ZARA demands a comprehensive legal antidiscrimination package!

In order to achieve this, there are still several issues that need to be addressed, e.g.:

- A genuine reversal of the burden of proof (see "Glossary")
- Detering sanctions and damage compensation payment regulations
- A strong, independent Ombud institution
- A possibility for friendly, out-of-court settlement involving a facilitator
- The possibility of action by an association (see "Glossary")
- Free of charge possibilities for victims of discrimination to file complaints and damage claims in court (no financial risk for victims of discrimination)
- Effective protection against victimisation (see "Glossary") by concrete formulation of legal consequences in the law

Goods and Services

¹⁵ Appiah, Kwame Anthony (2006) *Cosmopolitanism. Ethics in a world of strangers*, Penguin, xvi.

*“Thoroughgoing ignorance about the ways of others is largely a privilege of the powerful”.*¹⁵

This year, this chapter has two sections, relating to the areas of “housing” and to “bars and restaurants, shops, and service providers”. In the first section we see that racist barriers continue to restrict access to housing and that there is still no guarantee that housing space can be used undisturbed. The second part makes it clear how often people are refused, openly or with half-hearted cover-ups, access to shops, and most of all, bars, discotheques and restaurants, because of an ascribed ethnic identity. Only a few seem to be seriously bothered by the fact that

this form of discrimination is forbidden. These areas make it most clear that increased efforts are necessary in order to achieve perceptible progress. It takes information, i.e. making the prohibitions known, sensitisation, i.e. understanding for the prohibition against discrimination, and deterrence, i.e. serious consequences in case of a violation of the prohibitions. It is in particular the latter that needs massive improvement because of the weak legal leverage against clauses of discriminatory exclusion and classified ads. The cases of discrimination described here constitute massive restrictions of the freedoms and choices of the affected persons and furthermore are a constant assault on their human dignity.

Housing

66 Ms E. is an Austrian citizen living in Vienna together with her husband of African origin and their son. When the following incident takes place, the couple with their only 12 week old son are busy refurbishing their flat in the 20th district: They are loading the elevator with wooden boards in order to transport them to the ground floor. As Ms E. is holding her son in her arms, they are limited on the amount of wood they can carry at a time and it takes them a little longer to load the elevator. When they arrive at the ground floor and want to step off the elevator, a woman meets them aggressively, claiming that she had already been waiting for the elevator “for half an hour”. Ms E. and her husband hurry to get the planks out of the elevator. However, some of the wood remains in the elevator. The unfriendly woman shoves them aside and gets on the elevator. At the same time, she starts swearing: “We do not need any n... in this house! Shit n...! N... have no business around here. I own a flat here. Piss off with your shit n...brat!” Ms E. remains calm and tells the woman that she is now going to call the police and that these abusive words are punishable. In order to be able to continue talking to the woman, she blocks the elevator door with her foot. The aggressor tries to shove Ms E. away and wants to beat her, however, she hits the baby. Upon that, Mr E. loses his temper and shouts at the woman. The woman, now afraid, gets out of the elevator and starts running up the staircase.

As Ms E. has not seen that woman again since the incident, she does not file a complaint for racist insult (see “Know Your Rights” in the Chapter “Public

Space”) and the mistreatment of her child for the time being and reports the case to ZARA for documentation.

67 Ms P. runs an “Afro shop” in Vienna. As her lease will soon expire, she has to find a new place for her shop. When she finds a suitable property on Thaliastrasse in October and wants to rent it, the house owners take a look at her present shop. Soon after, Ms P. receives a refusal. The reason given is that the owners do not want a shop in their house where the clientele are predominantly people of “dark” skin colour.

ZARA offers to draft a letter of complaint to the house owners, on behalf of Ms P.; however, Ms P. does not get in touch with ZARA again.

68 In September, Ms L., who was born in Iran, tells ZARA about problems with her neighbours in a Vienna Council Housing flat she has been living in for the past two years. During the previous year, water came down into the flat below hers through a broken pipe – for which Ms L. was not responsible. Since then, there have been problems with that neighbour, resulting in racist abuse and unwarranted complaints at Wiener Wohnen, the Housing Administration Service. For example, Ms L. is reproached with constantly throwing cigarette ends from the balcony, which is not true. No one else living in the house complains about Ms L.’s behaviour.

ZARA drafts a statement to Wiener Wohnen

setting the facts straight on behalf of Ms L. Since then, no more complaints against Ms L. have reached Wiener Wohnen.

69 In April, Mr U. moves into a Vienna Council Housing flat with his family. Shortly after their moving in, the neighbour, Mr I., starts constantly harassing Mr U. and his family with xenophobic slogans and threatening them with violence. Among other things, he keeps swearing: "Shit Turks!" The woman who previously rented the flat reports that Mr I. has twice been convicted of criminal offences of aggression towards an African man living in the house at that time, once for bodily harm, once for damage to property.

ZARA recommends Mr U. turn to the competent district service centre (Gebietsbetreuung), and informs him of the legal possibilities. ZARA also suggests that he informs the police in case of further incidents. Furthermore ZARA offers support in case he should want to take legal steps, however, Mr U. first wants to wait and see how things develop.

70 In March, Ms A. is flat hunting and goes to take a look at a flat on Wohlmutstrasse in the 2nd district of Vienna together with her friend, who was born in Africa. She wants to rent the flat and maybe let her friend live with her. However, the care-taker of the house immediately lets her know that the management does not want to have black people in the house and that she will therefore not get the flat.

ZARA informs Ms A. about the legal possibilities; however, she does not get in touch with ZARA any more.

71 Ms J. is living in the 21st district in Vienna in a cooperative building society flat together with her husband and their two children. For more than a year, a young neighbour with two children has been living one floor below, who has never once greeted her since and is in general very unfriendly towards her. Ms J.'s balcony is right above the neighbour's garden. This neighbour spends a great deal of time outside when the weather is warm, and there are sometimes quarrels, for example once when a workman accidentally dropped an ashtray from Ms J.'s balcony into the neighbours garden, or when noise produced by her children is audible outside the flat, in other words, the neighbour is very easily annoyed. The neighbour often tells Ms J. in a rude tone that her children should behave themselves, that she should not sit on the balcony at all, and the like. In May, a quarrel about the children escalates, and there are remarks like "piss off, children!"

"You shit-foreigner, go home!" "You only came to Austria for cleaning!" At first, Ms J. had thought that the neighbour only had a problem with her children and the noise, but since that incident she believes that hostility towards foreigners is the real reason why her neighbour is giving her such a hard time.

So far, complaint e-mails directed to the cooperative building society remain unanswered. Ms J. highly values living together, peacefully and in a quiet atmosphere, therefore she wants to end the conflict with her neighbour. Since the incident, things have been mostly quiet and Mr J carefully sees to it that there is no cause for trouble with the neighbour.

ZARA documents the incident and offers Ms J. to intervene in case of further trouble.

72 In the course of flat hunting on the internet, Mr U. comes across an advert offering a semi in the 22nd district of Vienna for rent only to "Austrians" and reports this to ZARA.

A ZARA-counsellor drafts a letter of complaint to the real-estate agency, pointing out the relevant legal situation. Happily, ZARA receives a reply to the effect that the discriminatory wording was an accident that happened when updating an old advert and the agency distancing itself from any form of less favourable treatment of foreigners looking for housing. Furthermore, the property owner had already been informed accordingly by the real-estate agency. ZARA can see on the website that the racist passage is gone.

73 Ms M. seeks counselling from ZARA in July because of a conflict with another person living in the same house as she does. She was born in Iran and lives in a cooperative building society development in Vienna's 19th district. One summer, she is using the common swimming pool on the rooftop with a friend and her children, when another man living there tells her to curb the level of noise produced by the children. When she replies that the children are playing at normal volume, the man tells her not to be so cheeky and to "piss off" back to the Bosphorus.

ZARA drafts a letter to the man, who has however moved to a new address in the meantime and never received the letter.

74 Ms O., whose parents are from Turkey, moves into a new flat in Vienna in July. When she transports her furniture to the new flat, she realises she forgot the house door key. In order to be able to bring her furniture inside, she rings the bell of a neighbour, gives a brief explanation and politely asks her to open the door. The neighbour

opens her window right away and abuses Ms O. as “dirty foreigner”.

Ms O. just wants to see the incident documented by ZARA.

75 In March, Ms Y. writes ZARA an e-mail describing the following discrimination in the course of flat hunting: Mr O., who was born in Palestine, finds a suitable flat for his family in a real-estate magazine and calls the competent housing agency in order to make an appointment for a viewing. Mr O. is informed that someone else is already interested in the flat and that he can call again at the end of the week. He does not receive information regarding the flat, and the flat is still announced as available on the housing agent’s website. Mr O. finds this strange and asks Ms Y., who speaks German without any accent, to call the agent. Ms Y. also asks whether the flat is still available, and receives detailed information on the place, price and condition of the flat together with the information that it is still on the market. Ms Y. wants to make an appointment and says that a friend wants to rent the flat. Upon that, the woman at the housing agent’s office asks whether the person in question is Austrian. Ms Y. replies that Mr O. is Austrian, but born in Palestine. The agent also asks whether Mr O. has children, which is answered in the affirmative. She promises to get in touch with Ms Y., which, however, never happens.

Ms Y. and Mr O. just want to see the incident documented by ZARA.

76 In November, ZARA is informed about a discriminatory newspaper advert offering a flat for rent to “Austrians only”. ZARA drafts a letter to the newspaper, asking the editors to publish no more discriminatory ads in the future. A member of the staff responsible for complaints gets in touch with ZARA, assuring that the advert unfortunately had been overlooked and that the newspaper in principle does not publish discriminatory adverts.

77 In October, Ms L. sends ZARA a housing advertisement that was published on the website of a big daily newspaper. This ad requires “German mother tongue” from future tenants, which clearly amounts to discrimination on the grounds of ethnic origin under the Equal Treatment Act (see “Know Your Rights”).

ZARA forwards the case to the Ombud for Equal Treatment, as this is a “new” wording for a discriminatory housing advert so far only known from the area of job adverts. Furthermore, ZARA drafts a letter to the website editors, in order to prevent such discriminatory advert being published in the future. There has been no reply as of yet.

78 Ms G. is an Austrian citizen of Iranian origin. When she intends to rent a studio, the housing agent informs her that the house owner decided against her as a tenant because of her “foreign” sounding name.

ZARA documents the incident and Ms G. considers taking legal steps against the house owner with her lawyer. She promises to get in touch with ZARA again if she should do so.

Know Your Rights

Mr Y. is from Brazil. He is looking for a flat and reads the following advertisement in a newspaper: “Flat, 50 sqm, for rent at 600 € / month, only to trustworthy Austrians, inspection on 19.2. at 6 pm at the following address: (...)”. Mr Y. decides to have a look at the flat. When he arrives at the place at the indicated time and tries to address the housing agent, the agent immediately says: “Haven’t you read the ad? The flat is not let to foreigners, you shit n...!” Mr Y. leaves the scene in a state of shock.

What can Mr Y. do?

Both the discriminatory advertisement directed at “Austrians only” and the discriminatory behaviour of the housing agent open the possibility for Mr Y. to file a complaint under Art IX para 1 no 3 Introductory Act to the Administrative Procedure Acts (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG) (see “Know Your Rights” in chapter “Bars and Restaurants, Shops and Service Providers”). In addition, Mr Y. is entitled to claims under the Equal Treatment Act, part three, which regulates discrimination regarding access to housing and the provision of goods and services. If Mr Y. turns to ZARA, the Litigation Association or the Office of the Ombud for Equal Treatment (see “Glossary”), they will support him in submitting an application to the Equal Treatment Commission (see “Glossary”) in order for the Commission to pass a decision in this specific case assessing whether direct discrimination and harassment (“shit n...”) on the grounds of ethnic belonging have occurred. Subsequently, Mr Y. is free to initiate civil procedures to claim compensation (compensation for pecuniary damages and for the personal damage suffered).

Bars and Restaurants, Shops and Service Providers

79 Mr A., an Austrian citizen of Iranian origin, wants to go to a Vienna discotheque one night in April. When he tries to get in at 11 pm, the doorman tells him that the place is currently too crowded, but that he should try again after midnight, then he could get in. Around midnight, Mr A. tries to explain to another doorman this information given by his colleague. His unfriendly reply: "What do you need?" Mr A. is once more refused entry. When he asks for a chance to talk to the other colleague he met earlier, he is threatened with a beating. Mr A. asks for a reason for this aggression and says that he is suffering from a serious illness of the spine. The doorman walks up to Mr A. and pushes his chest with both hands. Mr A. stumbles back, but does not fall. Upon that, Mr A. calls the police emergency line a couple of times. The officer at the emergency call centre only advises him to go away from the discotheque's entrance. Mr A. sees no other chance to get the police to interfere so he lays down in the middle of the road in an attempt to get their attention. Some moments later, some police officers stop. The officers ask Mr A. why he has laid himself down in the road. He points to the doorman and tells the officers that he was hit by him. The officers walk up to the doorman. There is a brief conversation held in dialect, such that Mr A. cannot understand what is being said. Mr A. is asked by the officers whether he is Persian, to which he answers in the affirmative. Upon that, one of them says: "Do you want to make another revolution?" Mr A. is told that the entrance area is private and the doorman can therefore do whatever he wants. Mr A. points out to the officer that the physical attack took place outside the entrance area. The officers ask Mr A. whether he is injured. When he says no, he is sent away.

Finally, Mr A. walks away. When he turns and looks back to the discotheque, he sees the doorman trying to provoke him with a stretched out middle finger and carrying out boxing-like movements. Mr A. returns the offense by gestures as well, upon which the doorman starts running up to him. Mr A. tries to escape across the street, but because of his back condition he can walk only slowly. The doorman catches up with him in the middle of the zebra crossing, grips

him and throws him to the floor. More colleagues of the doorman come up and fix Mr A. to the ground. The first doorman hits Mr A. on the head with his fist. Mr A. suffers a temporary paralysis. The doorman drags him off the street and leaves him lying on the streetcar track. Some passer-bys now see Mr A. lying on the road. A man and a girl come up to him and ask what happened. Mr A. replies with difficulty that he was beaten up by the doormen. The girl confirms that she has seen that. The doorman walks up and says that this is not true. The girl insists on having seen the attack and calls the ambulance. Mr A. is brought to hospital, where he is treated for paralysis and pain. A doctor informs the police, who sends by officers who take a record.

After he has reported the case, ZARA accompanies Mr A. to the police interviews and arranges for the Weiße Ring (see "Glossary") to accompany him through court proceedings. The investigation identifies the perpetrator. At this time criminal proceedings have not yet begun.

80 Mr E. reports an occurrence to ZARA that happened to his friend, Ms H., and her family, on an evening out in Vöcklabruck. Ms H. and her sister were born in Austria; their parents are from Turkey. Their husbands are also both from Turkey. At the beginning of the year the two couples wanted to go to a discotheque in Vöcklabruck in Upper Austria. Ms H.'s sister and her husband are talking to each other in Turkish when they approach the entrance of the discotheque. When the doorman hears that, he ask for Ms H.'s brother in law's ID. After having checked the ID, the doorman says that he cannot let him in, but Ms H.'s sister may go in. Subsequently, a discussion develops. The doorman tells them that he has to stick to the rules. The two couples are disappointed and angry about being discriminated against because of their origin. This is the first time they experience an incident like this.

ZARA informs Ms H. of her rights under the Equal Treatment Act (see "Know Your Rights") and offers to support her and her husband in enforcing his rights. Ms H. does not contact ZARA again.

81 In October, Mr V. informs ZARA about a discotheque in Ilz in Styria not letting Turks in. ZARA writes a letter of complaint to the management, informing them of the legislation that is in force. The management reacts promptly and assures ZARA that the existing law is respected. They suspect that some misunderstanding may have occurred. Mr V. does not want to take legal steps because he is not affected. He announces that he will turn to ZARA again in case of new incidents.

82 In January, Ms P. reports that she had wanted to attend a birthday party at a pub together with her friend, who was born in Africa. Her friend is refused entry, and the manager says that next time she should want to bring a black man, she should inform him in advance. The party moves on to another restaurant in the vicinity, however, the manager of that place also says that he does not want black people in his restaurant.

ZARA filed complaints against the owners of both places under the Introductory Act to the Administrative Procedure Acts (see "Know Your Rights"), and procedures are pending before the Equal Treatment Commission (see "Glossary"). At the present time, no decisions have been passed.

83 Mr S., who is South American, wants to go to a Latin American discotheque in Vienna in January. Outside the club, Mr S. meets some acquaintances. When he wants to pass by the doormen, one of them says that he cannot enter the place because he is not a regular and does not have an invitation to the club either. Mr S. enquires where such invitations might be obtained. He gets the information that only regulars receive invitations. When he criticizes this practice, he is told that it could not possibly be racist discrimination, as one of the doormen present "is black, too." Soon after Mr S. sees several persons, of light skin colour being permitted to enter the club without being stopped or asked for an invitation. When two more men with dark skin colour come to the club, one of them is let in, whereas the other one is refused for the same reasons as Mr S. was earlier. No "white" guest is asked for an invitation. Meanwhile, some acquaintances of Mr S. arrive. Mr S. wants to talk to one of the doormen again, but he is sent away and told "not to cause trouble". One of his acquaintances tries to talk to the doormen and is told that Mr S. is not let in because of problems that he caused. Besides, the club is a private place that is free to pick its guests. And, the doorman added, there are a sufficient number of other clubs in Vienna.

ZARA drafts a letter of complaint to the manager, who calls the ZARA counselling centre on the

phone a couple of weeks later. First of all he underlines being "dark" himself. The reproaches in his opinion do not conform to the truth. On a Saturday it is indeed so that regulars are preferentially let in because of the high number of guests. Because of the many "dark skinned" guests, he cannot imagine that even "a black doorman" should have turned Mr S. away for racist reasons. He would also be ready to meet with the client and talk to him. However, Mr S. is not interested in this any more.

84 Mr A. is of Turkish origin and a customer of an Austrian mobile phone service provider. In January, he orders a joke from a text message info-service. The joke that is then sent to him is racist and makes fun of Turkish mothers in a derogatory way. Mr A. complains about this at one of the phone company's shops in Vorarlberg, expecting an apology and a refund of the money he paid for the text message. However, the shop assistant considers his agitation irrelevant and argues that there are also jokes about blondes, tall or short, fat or slim people, which are sent out in a random fashion. After a lengthy discussion, he is handed an address for complaints.

Mr A. turns to ZARA. A ZARA counsellor drafts a complaint to the phone company. Soon after, ZARA receives a reply. As a partner company is appointed to send out the jokes, it is not possible to check them on a daily basis. However, there is deep regret for the distribution of discriminatory content, and the cooperation partner has been instructed to stop more such jokes being sent out.

Mr A. is content with the way the complaint was handled by the phone company and is pleased not only with the promise that such incidents will not repeat in the future, but also with a credit note on his next phone bill.

85 In July, a witness reports the following incident that took place at a public swimming pool in Vienna and affected a family from Iran that she knows: Mr Z. is of Persian origin, and a guest at the mentioned swimming pool. When he wants to get into the water with two of his children, he joins them by jumping into the pool from the side. The guard immediately sounds his whistle, which, however, Mr Z. does not hear. The pool attendant then runs up to him and scolds him, using the – among strangers – impolite form of address "Du" (you-Singular). Mr Z. climbs out of the pool, while the pool attendant keeps abusing him. Mr Z. tells the man that they are not on "Du" terms. Then the situation escalates completely, and the pool attendant tries to provoke Mr Z. and pushes him repeatedly. Finally, the pool attendant "orders" Mr Z. to leave the swimming

pool in spite of his valid one-month ticket. When Mr Z. refuses to do so, the police are called in. Finally, Mr Z. is brought to the vice-director of the swimming pool upon his demand. Together with a witness, he explains the incident, however, he receives the reply that as a superior he trusts his pool attendant and that Mr Z. and his family should leave immediately.

ZARA forwards the matter to the office of the Independent Commissioner for the Protection of Public Servants (Unabhängiger Bedienstetenschutzbeauftragter) of the City of Vienna (see "Glossary"), which files a complaint with the management of public swimming pools. The management replies by the end of September. However, they can no longer offer a clarifying meeting with the pool attendant, as his season's contract has already expired.

86 In March, Ms L. wants to go to a discotheque in Oberwart in the Burgenland together with her friend, who belongs to the ethnic group of the Roma. At the door, her friend is turned away by the manager without an explanation. He only says that he does not have to give a reason for the rejection. In the following days, a variety of media report on a general prohibition against entry for Roma at that discotheque are given. In the reports, the owner describes, as his reason, that Roma had threatened him on the discotheque's opening night and that he would not have his business "ruined by the gipsies". The Oberwart Roma Association files a complaint under the Introductory Act to the Administrative Procedures Act (see "Know Your Rights") with the Oberwart district authorities.

ZARA informs Ms L. of her friend's rights. As the Roma Association has already filed a complaint against the discotheque's management with ZARA's support, Ms L.'s friend sees no need for filing another one.

87 Mr J. is of Austrian origin and works in a company that is active internationally. In March, Mr J. and several of his colleagues from work, among them a Canadian academic of Indian origin, want to go to a bar at the Salzburg airport. However, the Canadian colleague is refused entry at the door. His skin colour is given as the reason why. The group want to enter the next bar right next door. Yet, this is made impossible because the doorman of the first place instructs the neighbouring doorman not to let them in.

Mr J. reports the incident to ZARA. A ZARA-counsellor offers to draft a letter of complaint to those bars on behalf of his Canadian colleague; however, he only wants to see the case documented.

88 In April, Mr X., who was born in the former Yugoslavia, wants to go to a discotheque in Seefeld in the Tyrol. But the doorman refuses him entry because he does not have a "club membership card". Interventions by his friends also have not effect.

Mr X. wants to see the case documented by ZARA and published in the Racism Report.

89 On Austria's national holiday, Ms L. and some friends, whose parents are migrants from the former Yugoslavia or Turkey, want to go to a discotheque at the Salzburg airport. When their IDs are checked, they all meet the age limit, nonetheless they are not let in. When asked for the reason, the doorman explains that only "thoroughbred" Austrians and Germans would be let in, because there has already been more than enough trouble with "Yugos" and Turks.

Ms L. wants to see the incident documented by ZARA and published in the Racism Report.

90 In August, Mr Q., who was born in Turkey, wants to go to a dancing bar in Vienna. At the door, he is refused entry, because only regulars are let in on that day. When remaining thereabouts a bit longer, he can observe the "regulars only" rule obviously only being applied when "dark haired, Southern-looking" persons want to enter the place.

ZARA offers to draft a letter of complaint to the bar on Mr Q.'s behalf; however, he just wants to see the case documented.

91 Mr Z., born in Nigeria, now lives in Vienna and has arranged to meet some friends at a bar on Vienna's Gürtel in January. When he arrives, his friends are already inside. He thus attempts to enter the bar, but the doorman gets in his way and gives him a shove that sends him to the floor. He gets up and asks for the reason for this attack. Before he receives an answer, two guests come out of the bar and start beating him without a word. One of the men has an iron bar in his hand. The doorman does not defend Mr Z. Mr Z. falls to the ground again, the men keep hitting him. When they finally desist from him, Mr Z. calls the police. They arrive on the scene only after quite a while, although he had urgently asked for help on the phone. The police record the case. However, the men have already disappeared into the bar. Two uninvolved witnesses give the police officers their personal details and inform them of their observations for the record, thus confirming Mr Z.'s description of the events. As Mr Z. is injured, the police call the ambulance and he is brought to hospital. After having reported the incident, Mr Z. does not get in touch with ZARA again. The incident is documented.

92 On a Sunday in June, Mr S. goes to a bar in Vienna's 6th district with an African friend. They decide to move on to another bar. When they want to enter it, a waitress comes out onto the street and says to Mr. S.'s friend: "You won't get in!" Mr S. wants to clarify the matter and enters the bar in order to ask for the reason his friend is denied access. The waitress answers that her boss has instructed her not to let any "n..." into the bar. The bar's owner, when asked directly, confirms that he really does not permit Africans in his bar, the reason being that in the past "black" drug dealers have frequented the place. Mr S. points out that this is not a sufficient reason for banning Africans and announces that a complaint will be filed. The owner says that he does not care. Meanwhile, a guest has started interfering with the conversation in an aggressive way, therefore Mr S. and his friend leave the place.

ZARA sends a letter of complaint to the bar, which receives no reply. As Mr S. wants to remain anonymous, ZARA cannot file a complaint for lack of possibilities to provide evidence.

93 Mr E. informs ZARA in August about "many foreigner's bars", which discriminate against Austrians with signs saying "no Austrians". He complains that ZARA would not report about this and asks whether ZARA would not consider that a racist act. Mr E. gets the reply that this is indeed forbidden discrimination and is asked to provide concrete data about such bars. However, ZARA receives no further information from Mr E.

94 Mr C. is of Indian origin and rents a car at a car rental center at the Vienna airport in August. He enters an agreement to return the car three days later at 6:40 pm. On that day, he enquires on the phone whether somebody will be there to accept the car. He is told that he should arrive at about six. Mr C. explains that he had originally agreed to return the car at 6:40 and turns up at the airport at 6:25. There, he meets a very grumpy employee, who examines the car for potential damage for almost 45 minutes. During that time, the employee addresses Mr C. with "Du" ("you" – Singular), which is an impolite form of address among strangers. He also disparagingly enquires about his origin. Then he is charged with 500 Euro for no apparent reason. The amount is exactly that of the deposit Mr C. had made. Mr C. feels harassed.

Mr C. wants ZARA to document the case and publish it in the Racism Report.

95 In August, Ms U. reports to ZARA that at her son's kindergarten, a CD with the song "Ten little n..." is frequently played. Her son is of dark skin colour and cannot understand why in this song children that look like him have to die all the time. ZARA offers Ms U. to draft a letter of complaint to the kindergarten, however, she does not get in touch with ZARA again.

96 Ms B. from Eisenstadt in Burgenland is married to an Egyptian and has converted to Islam, out of conviction, a couple of years ago. She has been wearing a headscarf ever since. When she registers her two-year-old daughter for day care with a child minder, at first there seems to be no problem and she receives a confirmation. Shortly before the agreed starting day in September, she goes to view the place together with her daughter. The next day, she receives a phone call from the child minder telling her that she cannot take her daughter after all, as Ms B. had been seen by other parents during her visit, who did not want their own children to be taken care of together with a Muslim child. The child minder tells Ms B. that she would have to understand, because otherwise the other mothers would take their children out of the group. Besides, she could enrol her daughter with another childcare group in Eisenstadt, where there are also a group of Muslim children. When Ms B. complains to the organising association, she is told that it would not have been a problem if she had dressed "normally", i.e. without a headscarf, at the viewing.

As desired by Ms B., ZARA has filed an application for a finding of discrimination in access to a service by the child minder with the Equal Treatment Commission (see "Glossary"). At the time of the Report going to press, the outcome of the procedure was still unresolved.

Know Your Rights

Mr D. is a Nigerian asylum seeker. One evening, he wants to go to a discotheque together with his girlfriend. The doorman refuses him entry with the following remark: "You cannot come in today, but we will let in your girlfriend." When asked for the reason why, the doorman replies: "Tonight, only regulars with a club membership card can come in." Mr D. sees that no such card is demanded from other guests who look like they are of Austrian origin, whereas another man with darker skin colour also is not let in for the lack of a club membership card. He and Mr D. exchange

phone numbers. Then Mr D. calls the police. Two police officers arrive a little later but declare themselves not to be competent in case of such a denial of access. The following day Mr. D. wants to buy a suit in a shop. The shop owner says that he does not sell to "shit drug n...s" and expels him from the shop. When Mr D. says to him that he cannot be serious, the shop owner pushes him out of the shop and gives him a kick, resulting in a visible bruise on Mr D.'s thigh, which he also has diagnosed in hospital.

What can Mr D. do?

In both cases, he can proceed against the doorman, the person running the discotheque, and the shop owner under Art IX para 1 no 3 Introductory Act to the Administrative Procedure Acts (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG) and under the third part of the Equal Treatment Act. **Article IX para 1 no 3 Introductory Act to the Administrative Procedure Acts** is an administrative provision ruling that **persons who subject persons to unjustified discrimination for example because of their skin colour, their ethnic origin or their religious denomination or prevent them from entering premises or from obtaining services commit an administrative offence punishable by a fine of up to 1,090 Euro.**

The district administration authorities (in Vienna: municipal district offices / Magistratische Bezirksämter) are responsible for dealing with these complaints. ZARA can file a written complaint with the authority on behalf of Mr D. The procedures are free of charge for the complainant, but have the disadvantage that the complainant is not party to the proceedings and thus cannot influence the proceedings and also has no right to information about their outcome. Similarly, no payments for the person discriminated against are foreseen. The trade licence authority can withdraw the trade licence from a person repeatedly violating Art IX para 1 no 3 EGVG. ZARA is not aware of any case demonstrating that this has ever happened.

Part 3 of the Equal Treatment Act foresees that persons who are discriminated against in access to goods and services on the grounds of their ethnic belonging can turn to the Equal Treatment Commission for an assessment of discrimination or claim compensation payments before the civil courts. In both cases Mr D. is entitled to compensation for the pecuniary damage suffered and in addition to compensation for the personal damage suffered by the refusal of entry and the refusal to sell him a suit. In the case of the discotheque Mr D. was not explicitly told that he was not let in because of his origin, yet the law foresees that Mr D. is only obliged to render it plausible that there was such a discrimina-

tory reason for the refusal of access. He should succeed in this through a statement by the African man who also was not admitted, with whom he exchanged telephone numbers. It is up to the operator of the discotheque to prove that other grounds were behind the refusal of access. In the case of the aggressive shop owner, we are dealing with a case of harassment in addition to the discrimination in access to the shop. By abusing Mr D. as "shit drug nigger", and by physically attacking, Mr D.'s dignity is additionally violated and an intimidating, offensive and humiliating environment is created for him. In addition to compensation for pain to which he is entitled for the bodily harm, Mr D. can therefore claim compensation for the personal damage he suffered because of the harassment. The law foresees a minimum amount of 400 Euro for this.

How is the behaviour of the police to be evaluated?

Art IX para 1 no 3 EGVG constitutes an offence for public prosecution. This means that the police officers must record an incident that they become aware of and that might fall under this provision. They must then forward it to the competent public authority (the district administration authority, in Vienna to the municipal district office). Or, if such an incident is reported to them, they must record the complaint and forward it in the same way.

ZARA's demand

ZARA demands an effective legal remedy against such cases of discrimination!

This requires:

- A genuine reversal of the burden of proof
- Deterrent sanctions and regulations for damage compensation covering all forms of discrimination as regards access to public goods and services
- The possibility of legal action taken by an association (Verbandsklage) (see "Glossary")
- The unequivocal legal clarification of the police competence to record and forward such incidents

ZARA initiated an investigation by the Austrian Ombudsman Board regarding the enforcement of existing laws against discriminatory denial of service (regarding "Austrians only" adverts in the area of employment and housing or denial of service in bars and restaurants and shops). The resulting finding of grievance by the Ombudsman Board revealed a downright frightening practice of ignorance on the part of the competent public authorities and insufficient protection afforded by law. For background information, see the chapter "What has become of..."; extensive information and the finding of grievance are available at: <http://www.volk-sanw.gv.at/missstaende/W-536-LAD-06.pdf>.

Racism as a Reaction to Anti-Racism-Work

At ZARA we are used to regular benign disregard, being smiled upon, abused, ridiculed and threatened. In particular the team of the counselling centre has meanwhile acquired a "thick skin". Abuse is documented, for any potential criminal offence (in particular, threats), a complaint is filed with the police. Among people abusing ZARA, there are some well established "regular customers", who regularly abuse the staff on the telephone or via e-mail, or screaming out their hatred to the answering machine, depending on tabloid press reporting.

Every year again, it is a delicate affair to choose a selection of such "material" for publication in the Racism Report. On the one hand, we basically do not want to provide a public forum for stupid hate mongers. It is painful to reproduce and multiply these outbursts flowing over with hatred, envy, and ignorance. On the other hand, it is not ZARA's task to hide or cover-up this ugly part of reality. The readers of the Racism Report shall have the opportunity form their own opinion about what deeply rooted racism makes some people do. This outpour from a part of the population, among whom hatred has been stirred-up, makes it evident that racism is not only trying to undermine the dignity of those against whom it is directed, but that it is primarily the perpetrators who deprive themselves of a large part of their own dignity and even their humanity.

97 In February, ZARA receives the following anonymous e-mail: *"it is interesting that only foreigners ever get any consideration, but it is not mentioned those oh so poor immigrants do not WANT to speak our language – or cannot – and do not try to improve it. some examples from every day life: you walk on the street, and what do you hear? you do NOT here the country's language, [...] also i have never heard the young (18 yrs onward) foreigner children sit in their cars and listen to ö3 or maybe german hits only foreign music, and that is not racism? we austrians always have to accept or even adopt other cultures but the immigrants want to live only their own culture (mostly) and that is not racism? do you have any idea how unpleasant it is to use public transport and all around you nobody speaks german? do the foreigners have something to hide! [...] and i might give you MANY more examples. the reali-*

ty is that many immigrants do not want to integrate, no matter whether they have been living in austria for 20,30,40,50 years already. this is racism on the part of foreigners against austrians, until the next time"

98 Shortly after the publication of the Racism Report 2006 in March, ZARA receives the following e-mail from an anonymous sender: *"good that there are photos of you because that way everybody can at last see what such perverted multi-cultural assholes look like [...] YOU MAKE ME SICK."*

99 The UNHCR (United Nations High Commissioner on Refugees) forwards ZARA an e-mail, that was sent to them in June in reaction to the presentation of the UNHCR paper on integration: *"Here in Austria, there are a sufficient number of ,native Austrians' who have learned a trade and are good workers, have lost their jobs for no fault of their own, and unfortunately are disregarded on the labour market. Besides, no matter in which branch of the economy, there already are a sufficient number of foreigners employed. It is a mistaken belief and stupidity that, as it is often claimed, we Austrians are too good for some jobs. Then it would also be interesting to know who pays the procedures of the 40,000 asylum applicants. They also worry a great deal because 21 percent of the asylum seekers are over-qualified for the jobs they do in Austria. It is discrimination against us Austrians to say that it is a damage for the economy not to hire highly qualified asylum seekers. That is the greatest scandal anyway. But an Austrian, with high qualifications, should do the meanest jobs on the labour market, if any job at all. Where is the justice that we Austrians deserve? How many more foreigners do we want to take in into Austria? Large parts of Vienna already are contaminated, you do not hear a word of German there any more. You would consider yourself in the Balkans there. They must all be gathered and stuffed onto a train and off you go to your homeland. Who cares that most foreigners are bloody stupid peoples and knock each other dead in their own country. All of you at the unhcr and the caritas need to get brainwashed to put you to reason."*

ZARA documents this fact.

100 At the beginning of September, ZARA receives an e-mail regarding the "Racism report 2006": "*N...s and Turks, Balkan and Eastern things generally do not seem to be welcome in Austria. No surprise. It is made clearer to them year by year. Illegals, parasites and criminals are to be extradited immediately. After having worked off the damage they caused the tax payer (social, judiciary and deportation costs). Just keep on obsessively documenting!*" ZARA just documents this.

101 In May of this year, the website <http://afrikanet.info> receives the following e-mail by "Wolfgang Alles". It is forwarded to ZARA for documentation: "*YOU ARE NOT RESPONSIBLE FOR ECONOMIC GROWTH YOU ARE NOTHING BUT AFRICAN AND ASIAN PARASITES WHO ONLY WANT TO BE DANDIES AND HAVE ALL THE ADVANTAGES AND MOST PREFERABLY NOT MOVE A FINGER TO GET IT: IF A EUROPEAN WENT TO AFRICA AND DEMAND EVERYTHING THEY WOULD KILL HIM.*" ZARA documents this.

102 In September, someone anonymously enters the following into the contact form on the ZARA homepage: "*1. Is ZARA still supported with public (tax) money? 2. Does anyone believe that n...s, Muslims etc. really are that unwelcome and despised because of their looks, religion and the like? Or is it rather because of the countless bad experience that Austrians have had with that scum?*" ZARA documents this.

103 In December, Ms I., a member of the ZARA team, returns to the ZARA office at Luftbadgasse late in the evening in order to pick up her car keys. She leaves the office at about 11 pm and walks down Eggerthgasse in the direction of Wienzeile. Ms I. hears somebody walking behind her and spitting on the ground. When she briefly turns around, she sees two young men walking behind her at a close distance, whispering to each other. She makes out the word "ZARA". The men get louder and louder and clearly audibly abuse Ms I. and the rest of the ZARA-team as "*people's pest*". Ms I. slowly walks on and lets the two men overtake her. One of them raises his arm to the Hitler salute. They threaten to come and set the office on fire, preferably at a time of day when there are as many people in the office as possible. The term "*people's parasites*" and the Hitler salute are repeated. Furthermore, the two say that ZARA is part of a "Zionist organisation", which, however, Ms I. would not understand anyway. The two turn into Dürergasse, which runs parallel to Luftbadgasse. Ms I. at last gets into her car and drafts a statement of fact the same night, which is sent to the Office of the Public Prosecution and to the Federal Office for the Protection of the Constitution and the Fight Against Terrorism. Based on the description of the perpetrators, efforts are undertaken to find the two men and bring them to court for reviving National Socialist ideology in the meaning of the Prohibition Statute and for dangerous threat. The investigation is ongoing. Furthermore, the security provisions of the ZARA office are reassessed and expanded in order to counter potential aggression.



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Cases from 2006 – 2004

As shown in the sections under the heading of "Know Your Rights", there are a number of possibilities to defend oneself with the help of the law in Austria. However, legal procedures are slow. Therefore, ZARA often accompanies individual clients for more than a year. In this section, we report on the outcome or current situation of a selection of cases that we know about.

Case 19 of Racism Report 2006

Mr E. was born in Nigeria and lives in Vienna. In March he and two African friends take the Vienna suburban train. They talk and laugh, when suddenly a man of about fifty years of age hurls abuse at them and finally sprays pepper spray into Mr. E.'s face. The Viennese Office of the Public Prosecutor settles criminal proceedings against the perpetrator by obliging him to community service, he is not prosecuted beyond that under criminal law. ZARA supports Mr E. in filing a claim for collecting damages in the amount of 700 Euro with the competent district court.

What happened in 2007:

The assailant files an objection against the claim for payment, as he himself wants compensation from Mr E. for his eyeglasses that were broken by his own aggression. But as the attacker does not turn up to the first scheduled proceedings, the district magistrate passes a sentence against him for the failure to observe the order, which he does not fight. Finally, Mr E. fixes an agreement with the assailant for payment of the damages for suffered pain awarded in court in twelve instalments.

Case 36 of Racism Report 2006

Mr Y. is an Austrian citizen of Turkish origin, Austrian Army sports man, and two times representative of Austria at the Olympics. In November 2006 he turns to ZARA and files a report regarding police conduct in an action on a Sunday morning when he and his wife first sought protection at a police station in Vienna from a man who had pursued them when

looking for a parking space and finally threatened them with a baseball bat. During the questioning at the police station, Mr Y. and his wife were abused by the officers on duty as well as their commander as "shit ..." combined with racist slurs for migrants and told to "piss off and leave Austria". To their attacker, who was under the influence of alcohol, the officers say: "Why didn't you hit that guy three times on the head?"

Because of a complaint filed by Mr Y., the Office for Special Investigations (see "Glossary") launches police-internal investigations. It soon turns out that the officers, who in the meantime have been transferred to desk-jobs, did in fact verbally abuse Mr Y. and his wife as described. The facts are forwarded to the Vienna Office of the Public Prosecution.

ZARA files a complaint with the Independent Administrative Tribunal (see Glossary) on behalf of Mr Y.

What happened in 2007:

In the proceedings before the Independent Administrative Tribunal for Vienna, the Tribunal follows Mr Y. in all points and the entire action of the police is found unlawful. Based on the statements of Mr Y. and his wife in preliminary criminal proceedings, there also will be criminal proceedings against the involved officers for racist insult. At the time of going to print, no dates for court hearings had been fixed yet. ZARA has arranged for the Weiße Ring (see "Glossary") to accompany Mr Y. through these proceedings.

Case 50 of Racism Report 2006

Mr R., an Austrian of African origin, has a job interview with the owner of a renowned Vienna city restaurant for the open position of a chef de rang. They agree on a trial period. The restaurant is not completely satisfied with Mr R.'s performance as chef de rang and offers him another position under less favourable conditions. Mr R. does not want to accept that and only demands the agreed wages for the trial period be issued to him. When he turns up to settle the accounts for the hours he worked, the restaurant

owner is in a bad mood and refuses to pay Mr R. as agreed. There is a quarrel between the two, and the owner threatens Mr R. with violence and kicks him out of the restaurant, shouting the abuse "n...sow" after him. First, an intervention by the Chamber of Labour leads to the wages being paid and then ZARA files a complaint with the Equal Treatment Commission (see "Glossary") on behalf of Mr R.

Case 54 of Racism Report 2006

Ms Ö. was born in Turkey and lives in Carinthia. After successfully concluding her medical studies, she applies for a position at a general practitioner's surgery in June 2006. The GP's wife, a medical doctor herself, is also present at the job interview. When it turns out in the course of the conversation that Ms Ö. is Muslim, the wife says that she cannot accept Ms Ö. as a Muslim. She cannot tolerate Muslim women in Austria, because of women being suppressed in Islam. Ms Ö. tries to argue against that. The following day, the GP leaves a message on her answering machine, telling her that he could not give her the job. Ms Ö. turns to ZARA. After extensive counselling, ZARA drafts an application to the Equal Treatment Commission (see "Glossary") on the behalf of Ms Ö., calling for a finding of discrimination in the meaning of the Equal Treatment Act.

What happened in 2007:

More than eight months after the application, the hearing of Ms Ö. before the Equal Treatment Commission (ETC) takes place. Four months after, i.e. after a year in total, Ms Ö. receives the finding of the ETC. The ETC did not find discrimination and gives the following reason in the decision: The wife is not part of the GP's "business", therefore the conversation between Ms Ö. and the wife did not qualify as part of the job interview but as a private conversation. Furthermore, the eventually hired job applicant was "without doubt" better qualified. The latter assessment is made by the Commission although the members of the deciding Senate have never seen Ms Ö.'s application papers and never asked for them, either. A summary of the finding is available at: <http://www.frauen.bka.gv.at/DocView.axd?CobId=24556>.

This finding makes evident the problems inherent to the ETC-procedure: The very long duration of proceedings, the question of the burden of proof and the collection of evidence, and the lack of a superior instance in the case of faulty findings. These as well as other ETC findings were the cause for ZARA to bring a complaint before the Austrian Ombudsman Board together with the Litigation Association of NGOs against Discrimination (see "Glossary"). More information is available at: <http://www.klagsverband.at/archives/92>.

Case 62 of Racism Report 2006

Mr O., born in Turkey, is an Austrian citizen looking for a flat in Vienna in spring 2006. He finds a suitable advert on the internet and calls the number indicated there. The man who answers the phone enquires whether Mr O. is calling on behalf of another person, because: "Some Austrians call on behalf of foreigners. I do not want to rent the flat to foreigners and refugees." Mr O. is confused, but still continues the conversation. When Mr O. asks again whether the indicated rent is a gross or net figure, the man shouts at him "I already told you that I am reducing the rent. Haven't I told you already that I am reducing the rent?" and cuts the line. Mr O. attributes this reaction to his clearly audible accent. Mr O. decides to file an application with the Equal Treatment Commission (see "Glossary") with the support of ZARA and get an assessment whether this constitutes a case of discrimination.

What happened in 2007:

One year after filing the application, Mr O. and ZARA are summoned for the ETC hearing. One week before the appointed date, the employer of the opponent, a real-estate office, contacts the office and offers a meeting for a friendly settlement. Mr O. accepts this offer. Three days later, a meeting takes place at the ZARA office, with Mr O., the opponent and his employer as well as a member of the ZARA team present. After Mr O. has described his position how he experienced the conversation, the opponent apologises for his behaviour. The employer also apologises for the behaviour of his employee. Mr O. is content with the meeting and accepts the apology. Subsequently, the application to the ETC is withdrawn.

Case 69 of Racism Report 2006

Mr C. is an Austrian of Senegalese origin. After having been denied access to a bar in Wiener Neustadt by a doorman in July 2006 with the explanation "Austrians only", Mr C. complains to the competent administrative district authority and to the trade supervisory authority (Gewerbeamt). Furthermore, he files an application for a finding of discrimination with the Equal Treatment Commission (ETC, see "Glossary") with the support of ZARA. Beyond that, the incident is published in the newspaper "Niederösterreichische Nachrichten". In reaction to that, the owner of the place files suit for discontinuation of the spreading of false allegations. The claim is valued at 7,000 Euro. Mr C., who only wants to fight against the discrimination he experienced, thus becomes a victim once more. As there is an obligation to involve a lawyer in proceedings about controversies valued higher than 4,000 Euro ZARA helps to find a lawyer for the court procedure. Furthermore, Mr C. files an

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application with the ETC with the support of ZARA regarding a violation of the prohibition against victimisation.

What happened in 2007:

The court proceedings end in a friendly settlement: Mr C. withdraws his complaints with the district administration authority, the trade supervisory office and his applications to the ETC. In exchange for that, the bar's owner has to cover the financial costs for the proceedings including the costs for Mr. C.'s lawyer, amounting to more than 3,000 Euro. Beyond that, the bar's owner has to issue a written declaration of honour in which he apologises for the doorman's behaviour.

Case 74 of Racism Report 2006

Mr U. is Brazilian. For one year he lives in Vienna working as a guest professor. In June 2006, he wants to go to a Viennese discotheque; however, he is denied access by the doorman. Although he asks several times, he is not informed of the reason why. Two other stewards also come up, he asks them as well, and one of them tells him: "We don't want any drug dealers around here!" Mr U. turns to ZARA, and together they file an application with the Equal Treatment Commission for a finding of discrimination on the grounds of ethnic belonging in July 2006.

What happened in 2007

In December 2007, one and a half years after the application, the findings of the investigation are given. The Commission concludes that the denial of access to the discotheque constitutes direct discrimination of Mr U. on the grounds of his ethnic belonging in the meaning of the Equal Treatment Act. In the opinion of Senate III, the manager of the discotheque did not succeed in disproving the reproach of discrimination. In their findings, the Senate directs concrete recommendations to the manager of the discotheque: He should acquaint himself with the legal situation, in particular with the Equal Treatment Act. He should create structures inside his business for avoiding discriminatory door practices. In this context, it would seem first of all necessary to tell rejected persons the reason for the denial of access. Furthermore, the discotheque's website should publish an easy to detect hint to the existence of the Equal Treatment Act together with the information that people can turn to the Ombud for Equal Treatment for counselling. The existence of the Equal Treatment Act should also be included in house rules to be made clear to guests.

Case 85 of Racism Report 2006

Ms R. is a German citizen of Indian origin. In April 2006, she wants to go on a cycling tour at the Neusiedlersee in the Burgenland together with a friend. When she wants to rent a bicycle at a bicycle rental shop, the manager does not serve her because of her skin colour and abuses her in a racist manner. ZARA files an application with the Equal Treatment Commission (see "Glossary") on behalf of Ms R.

What happened in 2007:

In spring 2007, Ms R. receives the individual case decision of Senate III of the Equal Treatment Commission. It states that the denial of service and the abuse constitute direct discrimination and harassment of the applicant, Ms R., on the grounds of ethnic belonging. Ms R. is satisfied with the decision and does not want to take further legal steps against the bicycle rental keeper, as she has in meantime returned to Berlin.

The ETC-finding is available on the Internet: <http://www.frauen.bka.gv.at/DocView.axd?CobId=21446>

Case 22 of Racism Report 2005

Ms E., a Muslim woman who wears a headscarf, goes to clothes' shop in Vienna with her baby and a friend in March 2005. The shop assistant abuses her: "We don't sell to foreigners. We don't want money from foreigners!" and throws her out of the shop kicking her with his foot. Ms E. and her friend need hospital treatment for the injuries. They file a complaint with the police and turn to ZARA upset about the incident. In accordance with her wish, ZARA starts criminal proceedings. The public prosecutor suggests an out-of-court settlement (see "Glossary"), but the perpetrator shows no regrets. Ms E. is not well, the criminal procedure puts a great psychological strain on her. Therefore, her statements are not sufficiently clear, and the perpetrator is finally acquitted. Ms E. and ZARA, together with the Litigation Association of NGOs against Discrimination (see "Glossary") also filed a claim in civil court under the new Equal Treatment Act for direct discrimination and harassment. The court of first instance finds discrimination and harassment and awards damages amounting to 700 Euro to Ms E. The Litigation Association appeals the decision on behalf of Ms E., as she was awarded only a part of the claimed amount (4.000 Euro).

What happened in 2007:

The court in second instance, the Vienna Regional Civil Court of Appeal in Vienna, fixes the amount of the compensation for damages at 800 Euro. In determining the amount of the compensation, the court relies on the amount that is usually awarded for one

day of deprivation of liberty, which is constantly valued at 100 Euro in Austrian jurisprudence. The Regional Court decidedly rejects the argument of the shop assistant that "not an insignificant number of customers of the shop are foreigners" and that he himself is of Slovenian origin, such that Ms E.'s reproach would lack credibility. The Regional Court's decision is legally binding. After deduction of the cost of the proceedings, about 300 Euro in damages remain for Ms E.

Case 27 of Racism Report 2005

Together with his friend, Mr G. wants to go to a Cuban dance club in the Vienna city centre. They are both Austrian citizens of African origin. They want to enter the club, but are stopped by two doormen. They are not given a reason and pushed to the side. Finally they get the explanation that they cannot go in because of their origin. It is not the first time that Mr G. is racially discriminated against in that club. Therefore, he turns to ZARA. Jointly, a complaint is filed against the club's owner under the Introductory Act to the Administrative Procedures Act (see "Glossary"). Furthermore, ZARA files an application with the Equal Treatment Commission on behalf of Mr G. in order to find out whether this constitutes a case of discrimination on the grounds of ethnic belonging in access to a service. In the year 2006, administrative procedures against the manager are dropped because the authorities, after having questioned the involved parties, attributed higher credibility to the manager and the doormen than to Mr G. and his witness.

What happened in 2007:

In the middle of April, Senate III of the Equal Treatment Commission for the first time questions Mr G. about the occurrences of the year 2005. In the course of the questioning, Mr G. is able to identify several of the doormen on duty that night. The second applicant, Mr G.'s friend, should also have made a statement in Vienna in April. However, at the time of this publication, the Equal Treatment Commission has not yet been able to interview him, as he now works and lives in Scotland. A request for information via the Austrian Embassy in London is currently being processed. Therefore, no concluding finding has been passed by the Equal Treatment Commission in 2007, and Mr G. is still waiting.

Case 121 of Racism Report 2004

Mr E., a Jordanian citizen, was racially discriminated against for years at his workplace, a Vienna haulage company. Mr E. was less favourably positioned than his Austrian colleagues in terms of labour law, was abused with names like "camel driver" and "Arab ass", subjected to mobbing and finally so badly injured by a colleague during a quarrel in the year 2004 that he had to be sent to hospital. His colleague was convicted of bodily injury by a criminal court and obligated to make a compensation payment for pain suffered. The Equal Treatment Commission found, on the basis of an application filed by ZARA in the year 2005, that Mr E. was the victim of massive harassment at the workplace

(see: <http://www.frauen.bka.gv.at/DocView.axd?CobId=20623>). In 2006, Mr E. files damage claims amounting to 8,000 Euro against two of his colleagues and his former employer, who did nothing against the discrimination of a member of his staff. Mr E. is supported by ZARA, the Litigation Association of NGOs against Discrimination (see "Glossary") and the Vienna Chamber of Labour.

What happened in 2007:

There has been a change in ownership of the haulage company. The new owner wants to get rid of relics from the past and end open court procedures quickly. Therefore, Mr E. is offered a friendly settlement. He shall receive 5,000 Euro for the discrimination suffered in the course of his employment. The costs for his lawyer, amounting to about 3,000 Euro, shall also be covered. Mr E. thankfully accepts the offer and is glad to have received compensation for the discrimination after almost three years.

Campaign against “Austrians only” adverts unveiled structural irregularities



ZARA not only supports victims and witnesses of racism using all legal possibilities available, but also strongly advocates the assessment and improvement of existing laws and procedures – the aim being to unveil and do away with mechanisms of discrimination that are rooted in the structure.

So-called “Austrians only” adverts in newspapers and on the Internet exclude a large part of the population from the labour and housing market with little effort. Sec 24 of the Equal Treatment Act (ETA) and Art IX para 1 no 3 Introductory Act to the Administrative Procedure Acts (EGVG) (for more on these legal provisions, see “Know Your Rights” in the chapter “Goods and Services”) make it clear that the publication of such discriminatory adverts is forbidden. Imposing fines is foreseen under both provisions, and in ZARA’s view absolutely necessary for general preventive reasons, in order to make it generally clear that discrimination or the structural exclusion of potential competitors for jobs and housing space are not trivial offences.

Weak legal provisions

In the year 2005, ZARA systematically collected over 100 “Austrians only” adverts, which were forwarded to the competent district administration authorities in early 2006. ZARA asked the penal authorities to initiate administrative penal proceedings under sec 24 ETA and Art IX Abs 1 Z 3 EGVG. However, the reaction to the advert-campaign was quite sobering:

Regarding Sec 24 ETA, ZARA was told that, being an NGO and representing the interests of victims of racism, did not entitle ZARA to file complaints according to the wording of the penal provision. In regard to procedures under Art IX para 1 no 3 EGVG, ZARA was denied any information at all because ZARA was not party to the procedure.

The Ombudsman Board gets active

In August 2006, ZARA turned to Ombudsman, Dr. Peter Kostelka and asked for an assessment of the procedures conducted by the authorities. After intensive investigations of the authorities’ activities, the Ombudsman Board transmitted a finding of grievance in administration to ZARA on 30 August 2007 (available at: <http://www.volksanw.gv.at/misstaende/W-536-LAD-06.pdf>).

In detail, the Ombudsman Board arrived at the following conclusions:

The wording of sec 24 ETA in fact strictly only foresees “job applicants” and the Ombud for Equal Treatment (see “Glossary”) as parties entitled to filing applications. Groups representing the interests of victims of discrimination, like ZARA, cannot demand that discriminating employers, housing agencies and media companies be fined under the current formulation of sec 24 ETA. Therefore, it was lawful of the authorities to dismiss procedures under sec 24 ETA. However, in spite of the dismissal of procedures under sec 24 ETA, the authorities had to assess the job adverts referred to in the complaints also under Art IX para 1 no 3 EGVG, because the offence is of “official” nature, i.e. has to be pursued ex officio.

Authorities lack awareness of wrongdoing

Therefore, the Ombudsman Board decided for a comprehensive ex officio assessment of all the procedures under the EGVG conducted by the Vienna municipal district offices from January 2005 to mid September 2006. This examination clearly showed that the Vienna penal authorities of first instance interpret Art IX para 1 no 3 EGVG inconsistently and that procedures under the EGVG regarding discriminating job adverts, denial of entry and racist insult in shops or bars and restaurants lead to the most varied outcomes. A small number of mostly low financial fines being imposed are in contrast to numerous procedures being dismissed, for, among other reasons, time for prosecution having expired (as the authorities could not determine a concrete perpetrator inside the six months following the event in question), because of too high an effort being necessary in order to determine perpetrators, or because of perceived “minor nature of the fault and minor consequences of the infringement”.

Zusammenfassende Bewertung:

Mit dieser uneinheitlichen und teilweise ineffizienten Anwendung des Art. IX Abs. 1 Z. 3 EGVG können die internationalen, gemeinschaftsrechtlichen und nationalen Verpflichtungen zur Bekämpfung von Diskriminierung nicht erfüllt werden.

Fälle, wie jene vor dem MBA 10 (S 3397/05), in welchem **Menschen mit dunkler Hautfarbe die Bedienung in einem Lokal mit der Begründung verwehrt wurde, dass „an Schwarze keine Speisen und Getränke ausgeschenkt werden, weil es im Grätzel ein massives Drogenproblem gebe“** und diese von der Behörde als **„glaubhaft und entschuldigbar“ beurteilt und nicht bestraft wurde, dürfen sich in Zukunft nicht wiederholen.** (vgl. im Gegensatz dazu

Based on the results of the examination, the Ombudsman Board states:

Effective legal provisions for the fight against racist acts are in place. However, by themselves, they cannot cause a change of attitude or awareness, when and as long as even administrative authorities still regard violation of the prohibition against discrimination as “trivial offences” and persecute them in an accordingly inefficient manner or regard them as forgivable anyhow for reasons that are not clear to the Ombudsman Board.

Finding of grievance by the Ombudsman Board shows effects

Therefore, the Ombudsman Board urgently underlined the importance of the prohibition of discrimination in Art IX para 1 no 3 EGVG in its finding of grievance. The Board recommended that the Federal Government, which is responsible for the execution of the EGVG, ensures a uniform enforcement of the penal provision and drafts a “catalogue of criteria” for the effective fight against discrimination to be forwarded to all administrative penal authorities of first instance in a binding order.

In reply to the finding of grievance, the Constitutional Service of the Federal Chancellery provided the information that a newsletter was being prepared that would point out to all penal authorities that job and housing advertisements can fall under Art IX para 1 no 3 EGVG and that an infringement of this

penal provision is in no way a “petty offence” that would justify closing the proceedings early.

The City of Vienna wants to have EGVG procedures conducted in the future not by the 19 municipal district offices, but by four penal competence centres, in order to guarantee uniform and efficient enforcement of the prohibition against discrimination. In addition, a coordinator and contact person for the standardization of the penal procedures has been appointed.

ZARA is highly indebted and thankful to the Ombudsman Board for the comprehensive examination of the relevant administrative practice and the finding of grievance, the results of which will hopefully lead to enhancing the importance of the protection against discrimination under Art IX para 1 no 3 EGVG. The measures by the Federal Government and the City of Vienna give rise to further hope that the authorities will now in fact persecute violations of the prohibition against discrimination more often and will impose deterrent administrative fines. Based on the positive results of the complaint directed to the Ombudsman Board, one thing is clear: ZARA will approach the Ombudsman Board again at a later time and request a renewed assessment and evaluation of the changed administrative practice.

Wolfgang Zimmer
Head of the ZARA-Counselling Centre for Victims and Witnesses of Racism, Lawyer

Religion as the Enemy – Islam at the Centre of Current Debate

¹⁶ See: Markom, Christa/Weinhäupl, Heidi (2007) *Die anderen im Schulbuch – Rassismen, Exotismen, Sexismen und Antisemitismus in österreichischen Schulbüchern*, Wien: Braumüller

¹⁷ See: Guillaumin, Colette (2000) in: Aigner, Margot (2002) *Rassismus und Xenophobie – Ursachen und Entstehungszusammenhänge*, Diplomarbeit Salzburg 2002

¹⁸ See: Fetzer, Joel/Soper, Christopher (2004) *Muslims and the state in Germany, Britain and France*, Cambridge University Press

¹⁹ See: (<http://www.runnymedetrust.org/uploads/publications/pdfs/islamophobia.pdf>)

²⁰ See: Halliday, Fred (2002): *West encountering Islam – Islamophobia reconsidered*, in: Ali Muhammadi (Hg.): *Islam Encountering Globalization*, London: Routledge

²¹ See: IGGÖ: Stellungnahme zu islamfeindlichen Äußerungen Bischof Krenns, <http://www.derislam.at/islam.php?name=Themen&pa=showpage&pid=189> [26.05.2007] und Gegen Islamfeindlichkeit im Wahlkampf der FPÖ, <http://www.derislam.com/islam.php?name=Themen&pa=showpage&pid=203> [26.05.2007]

²² See: Augudtin, Christian/Wienand, Johannes/Winkler, Christiane (Hg.) (2006) *Religiöser Pluralismus und Toleranz in Europa*, Wiesbaden: VS Verlag für Sozialwissenschaften
See: Bunzl, Matti (2005) *Between anti-Semitism and Islamophobia: Some thoughts on the new Europe*, in: American Ethnologists – Volume 32
See: Gingrich, Andre (2005) *Anthropological Analyses of Islamophobia and anti-Semitism in Europe*, in: American Ethnologists – Volume 32

Discrimination on the ground of religious association has a long history in Europe through anti-Semitism, and probably the oldest form, antijudaism. Unlike with racism, the identifying feature for discrimination is not the colour of skin, not ethnic belonging nor nationality, but religion. There are parallels to racism, for instance in negative attributions to an entire group of people. They are viewed as a rigid, unchangeable unit, with individuals being reduced to group members. At the same time, this group is seen in contrast to the “Own”, as “the Other”, and condemned to inferiority¹⁶. The consequences of such rigid negative images show in psychological and physical attacks against members of such groups and in restrictions in the access to public institutions and services.

The phenomenon of discrimination on the ground of religious belonging may also be supplemented with racist sentiment. So, religious association is often ascribed to an ethnic or national origin. Religious views are seen together with world views, political attitudes and cultural patterns of behaviour¹⁷. The Holocaust, as tragic culmination of historically grown antisemitism, showed the world how dangerous such conclusions can be.

Enforced by global events like the Middle East conflict or 9/11 and international migration to European states, Muslims increasingly experienced discrimination on the ground of their religious belonging¹⁸. On the basis of these circumstances, discussions of this phenomenon developed. New concepts developed.

Islamophobia

*Islamophobia*¹⁹ has developed in recent years as a term designating untenable fears (phobia) in relation to followers of Islam and has an established place in public debate. This fear is based on stereotypical ascriptions like: alien, threatening, backward, unchangeable, rejecting democracy and human rights. The Muslim becomes the screen on which this prejudice is projected, and thus the target of psychological and verbal attacks.

The term Islamophobia is not only widely used – it is also widely criticized²⁰. The most serious point of criticism is that the person acting in an Islamophobic way is stigmatised as ill by the concept of phobia.

The Islamic Faith Community in Austria for example advocates using the term *hostility towards Islam*, as it expresses a consciously founded hostility²¹. However, the hostility is frequently based on lack of or simply wrong information.

Another point of criticism that applies to both terms is the idea that the focus on “Islam” takes the individual out of the picture. Therefore, many discussions employ the expression *anti-Muslimism*, which refers to the individual victim and her/his experience of discrimination. Taking this criticism further led to the coinage of the term *anti-Muslim racism*, which indicates the connections to racist discrimination mentioned above.

As none of these terms are totally comprehensive, it is important to distinguish in their application according to the respective circumstances and to point out the critical aspects.

In public discussions on the discrimination of Muslims, parallels are often made between Islamophobia and antisemitism. There are some commonalities, as both phenomena have developed from discrimination based on religious belonging and stereotypical prejudice. Upon closer inspection however, the comparison is not valid. The people affected are confronted with different prejudices that have taken various forms in their historical development²².

Current Developments

Muslims and “Islam” were at the centre of broad public attention once again in the year 2007. Most importantly, the debate on “building mosques” and on the arrest of alleged Islamists in the course of the “threat video” case.

Neither of the events received much media attention, but there were determined socio-political discussions, which lasted several days. The protest against a mosque-building project in Vienna Brigittenau culminated in a mass protest, where citizens, representatives of the Freedom Party and obvious

right-wing groups, together, advocated the prohibition against the mosque being built. Both events show the potential for conflict, which lies in dealing with the issue of "Islam in Austria". It also becomes clear what a central role the media play and in how far political parties shape such controversy.

Currently, about 340,000 Muslims are living in Austria. At 4.2% per cent of the total population, they are the biggest religious minority in Austria.²³ The majority of society has developed a picture of Islam, which is often based on clichés, stereotypes and prejudice. Action taken by radical Islamist groups, like the New York, Madrid and London attacks or the rioting in connection to the "cartoon controversy" are transferred onto all Muslims peoples and leads to a generalised negative perception of the Islamic faith.

This picture however does not do justice to Islam in Austria. The belief system covers a broad spectrum inside which Muslims hold widely different opinions and are absolutely willing to participate in the Austrian state, under the rule of law. Muslims are a part of society and should not be reduced to and condemned for their religion.

At the same time, the phenomenon of "Islamism" must be taken seriously, and at the same time, be distinguished from "Islam". "Islamism" is a political, totalitarian attitude and is rejected by the Islamic Faith Community in Austria.

Political parties make use of debates about the issue of "Islam in Austria" to mobilise voters²⁴. Based on one-sided media representations, fears of threat are being stirred up, that are a substantive impediment for the necessary religious as well as socio-political dialogue.

In order to counter such tendencies, events, discussions and talks were organised in 2007. This was an important step for demonstrating commonalities, spreading information, and bringing the dialogue to a constructive level²⁵. These events are aimed at communicating a picture of Islam, looking for dialogue, reflecting national difficulties and fiercely critical of any form of violence.

Bettina Fleischanderl, Verena Kozmann, Anna Neureiter, Alexander Steffek, Silvia Weitlaner; *the authors volunteer as working group "Science" of the Documentation Centre Against Islamophobia (Dokumentationsarchiv Islamophobie, DAI) and are, among others, students of cultural and social anthropology in Vienna.*

Documentation Centre Against Islamophobia (Dokumentationsarchiv Islamophobie, DAI)

The Documentation Centre Against Islamophobia (DAI) is a student initiative based on volunteering that was founded in spring 2006. In recent years, the debate on Muslims in Austria and in global relations has become increasingly heated and polemical. Prejudice, exclusion and discrimination often are the consequence of these developments for Muslims in Austria. In accordance with human rights and democracy, the DAI advocates the rights and dignity of everyone in Austria, especially the Muslim minority. Criticism of religion is of course permitted and also desired in a democracy. However, as soon as people are suffering under various forms of exclusion and discrimination, action is needed.

It is for exactly this reason that the DAI tries to make a meaningful and productive contribution to this debate. Accordingly, the DAI aims monitoring Islamophobia, making it an issue, informing and sensitising society regarding this issue. Thereby, the peaceful coexistence of all people in Austria shall be guaranteed. On this basis, a dialogue on differences and commonalities can take place, thereby creating a starting point for solutions to be found. Thus, the wind is taken out of the sails of extreme forces that cause trouble on both sides.

For this purpose, individual experiences of discrimination made by Muslims as well as socio-political developments are documented. Victims and witnesses of discrimination on the ground of religious belonging shall receive due support in cooperation with ZARA. These observations and a scientific approach to issues surrounding Islam permit drawing conclusions which support meeting the aims of DAI.

More information at: <http://www.dai.or.at>

²³ See: Population census 2001, http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen/Perspektiven_Herausforderungen.pdf

²⁴ See: Hafez, Farid (2007) *Avusturya Özgürlük Partisi FPÖ'nün sağcı popülizminin bir aracı olarak İslamofobi. "2006 Avusturya Millet Meclisi seçimlerinde FPÖ'nün yürüttüğü seçim kampanyasının analizi"* (z.D.: Islamophobie als Element des Rechtspopulismus der Freiheitlichen Partei Österreichs. Eine Analyse der FPÖ-Wahlkämpfe zu den Nationalratswahlen 2006), In: Kadir Canatan/Özcan Hıdır (2007) *İslamofobi ve Anti-İslamizm*. Ankara. Eski Yeni Yayınları.

²⁵ To give but one example, the conference "Muslim Youth and Women in the West" supported by the Federal Ministry of European and International Affairs shall be mentioned. More information: http://islamwest.org/pdfs_Islam_and_the_West/miw.pdf



“Participation” and “Mindfulness” instead of “Integration” and “Tolerance”

²⁶ Warm thanks to Karin Bischof for valuable advice and pointing out sources.

²⁷ Appiah, Kwame Anthony (2007) *Cosmopolitanism: ethics in a world of strangers*, New York and London: W.W. Norton

²⁸ However, not throughout. In particular the contribution by Hutter/Perchnig (2008) *Partizipation und Mehrheitsgesellschaft – Partizipation braucht Voraussetzungen*; <http://www.integration.at>, expertenbeiträge zur integration, BMI, contains much more modern approaches to the concept of integration.

²⁹ Matscher/Vogl (2008) *Grundwerte und Rechte – Integration zwischen Assimilation und pluralistischer Multikultur*, <http://www.integration.at>, expertenbeiträge zur integration, BMI

³⁰ Regarding a critique of broadly generalising categorisation into cultures or even “Kulturkreise” in particular along the lines of big religions, see: Sen, Amartya (2006) *Identity and Violence. The Illusion of Destiny*, New York: Norton.

³¹ Appiah (2006)

³² Cf. the most exiting elaborations on this Sen (2006)

ZARA-Discussion paper on the “Integration report” of the Minister of the Interior by ZARA-chairman, Dieter Schindlauer²⁶

“The foreignness of foreigners, the strangeness of strangers: these things are real enough. It’s just that we’ve been encouraged, not least by well-meaning intellectuals, to exaggerate their significance by an order of magnitude.”²⁷

Integration as “tolerant assimilation”?

Public discourse on the issue of “integration” in Austria has remained almost unchanged for many years and is characterised by a number of dangerous misunderstandings ultimately preventing decisive progress. The concept of “integration” is therefore rich with wrong images ending in – in spite of profuse declarations to the contrary – the requirement of “tolerant assimilation”. The result of such an “integration” is a far reaching adaptation to an imaginary “majority society” meant to leave space for minor “cultural deviations”, which are “tolerated” or even celebrated as “colourful and culturally enriching” in the framework of often exoticistic “multi-cultural” events attractive to audiences. This focus on “multi-cultural added value” is likely to be put on folkloristic and culinary specialities.

This concept leads to real absurdities. Thus, there are people of African origin living in Austria who completed technical studies in their countries of origin, but teaching percussion work shops in Austria in spite of only having acquainted themselves with these instruments in Austria. They have learned to establish themselves in a niche that has been allocated to them because of their ethnic origin.

In the current “integration report” by the Minister of the Interior, such an understanding is again conveyed²⁸. Thus, the chapter on “Basic values and rights”²⁹ contains a highly contradictory attitude towards the issue of assimilation:

“Integration in any case does not mean assimilation, which would mean complete adaptation to what there is and simultaneously ascribe unchangeable characteristics and permanence to what there is.” (ibid. p. 2)

“A certain dissimilarity between those who immigra-

ted and the members of the majority society will persist for a long time. One must however not overstretch this difference if one wants to succeed in living together.” (ibid. p. 5)

These two propositions, read in conjunction result in an image of “integration” as a “luke warm melting pot”, in which differences should slowly dissolve. In the best case, this leads to a kind of “mutual assimilation”, which should in the end result in a new, but again homogenous population. Until this slow process of homogenization is finished, according to this definition, immigrated persons find themselves outside the majority society.

Also this example shows how much the Austrian discourse on “integration” focuses on immigrants, whereas the concept of the “receiving majority society” receives far to little attention. Apparently, it can only be imagined as a homogeneous group, where all the individuals inside of it “naturally” do not question their membership. A most natural “we-feeling” is evoked, which is taken for granted and made the starting point for further deliberations on “integration” without questioning it. The central question of this discourse is: What are “we” doing with the “others”, and what do the “others” have to do in order for integration to take place? “Integration” in this context always is something that is going on exclusively with the “others”. Even slogans that are valuable and meaningful in principle, like “Integration is not a one-way road” are then misinterpreted, namely as: “We” also have to do something in order for the “others” to be able to integrate.

In the following paragraph, this becomes even clearer and outright outrageous:

The following text will show that the problem of the integration of strangers is mostly constituted by members of the Islamic culture, in a numerically [sic!] smaller extent also by those of other (for instance African or Asian) cultures. Even the integration of members of other “European” cultures (for instance of Eastern Europe) can pose problems. (Matscher/Vogl (2008), p. 5f)

Here, the “understanding of integration” shows its true face: Members of certain cultures or religions³⁰ accordingly do not only have the problem of integration, they are the problem!

Participation in diversity presupposes a change of thought

Such a one-dimensional understanding can in no way lead to an improved means of living together. It is thus high time to contrast this outdated and mistaken concept of integration with a reasonable alternative.

In contrast to the static “we and the others”-concept described above, “participation” starts from the reality of the “receiving society” already being heterogeneous and dynamic. The process of taking in new members is primarily going on inside of it and with it. Participation does not at all require the homogenization of this community, but it does require a shared understanding of this participation.

What there is in common in this “participator society” is not an imaginary traditional ethnic-religious-cultural basis, but the shared responsibility to make life as pleasing, peaceful and successful as possible within the existing units of order and organisation (Federal state/federal provinces/municipalities/associations/companies/schools).

The concept of participation is crucial to the process of accepting “being different” as a reality and “a normality”, i.e., to break with the unrealistic prerequisite of society’s homogeneity. This is also the core of so-called “diversity” or the “diversity concept”. In this context, the priority should be to reduce the importance of identity traits that, so far draw borders for inclusion and exclusion, in this function and to enable a more comprehensive perception of the people living here.

In order for this perspective to be accessible, several barriers still need to be removed. As long as the population is imagining itself as, in its majority, as white, (male), German speaking, catholic, heterosexual, in between 18 and 60 years of age and without disabilities, all traits that do not conform to this ideal “norm person” are perceived as “deviant” and form the basis of discrimination and hostility.

Mindfulness does not mean toleration

The concept of mindfulness is in direct contrast to this idea. Mindfulness makes it possible to perceive the diversity in the Austrian resident population that has been the reality for a long time, and it makes it possible to deal with said diversity. Discrimination and barring off everything “non-Austrian” or “non-normal” is unbearable, it harms and restrains the social evolution into the direction of a society that is capable of keeping-up with the changing global realities.

Developing mindfulness for diversity is what the moment requires. Mindfulness in this context does not mean helplessly “tolerating” any kind of behaviour whatsoever, but it demands curiosity and respect from all parties involved. Indifferent laissez-faire that satisfied with just stating the existence of diversity or taking diversity as unchangeable and untouchable is not the aim. To the contrary, mindfulness also means valiant advocacy for self-determination and equal opportunities, for democracy and human rights, without accepting “cultural” or “traditional” excuses.

Kwame Anthony Appiah rightly perceives this opportunity as a lucky chance:

“Fortunately, we need take sides neither with the nationalist who abandons all foreigners nor with the hard-core cosmopolitan who regards her friends and fellow citizens with icy impartiality. The position worth defending might be called (in both senses) a partial cosmopolitanism³¹.”

This approach is furthermore made considerably easier if one lets go of the arrogant idea that the above mentioned ideas are purely “Western inventions”, that “members of other (non-Western) cultures” cannot be expected to understand and respect³².

Therefore, mindfulness necessarily is not demanded from the members of only one or more groups, but it must be expected from every member of the community.



A week for Respect and Tolerance in the district of Feldbach in the Styrian “Volcano Land” Region

Mindfulness in dealing with each other as basic prerequisite for successfully living together – this is the basic idea of the concept 8UNG FÜR ALLE – Respect for all, which I have developed in the framework of my training in intercultural counselling in Graz. Individual conversations and experiences in my work with migrant families in the district of Feldbach sensitised me to the issues of prejudice, discrimination and lack of equal opportunities. Being convinced of a modern diversity approach, not preaching a “multicultural side-by-side”, but regarding differences as a positive motor for our society, I finally had the idea that sparked off 8UNG FÜR ALLE – Respect for All at a ZARA sensitisation training.

8UNG FÜR ALLE – Respect for All involves EVERYONE

The idea was met with an open ear by district commissioner Dr. Wilhelm Plauder, ZARA provided thematic expertise, the “Styrian Volcano Land” was ready to cooperate – and the idea took-off. In numerous conversations, more and more people and organisations became enthusiastic about the idea for 8UNG FÜR ALLE – Respect for all, providing for a broad involvement of many in the project. The 35 cooperation partners – ranging from the Catholic Women’s Movement to the Muslim Youth and all political party youth organisations – crucially contributed to making the project a success by their active participation and support. The federal province of Styria, together with many regional sponsors, financially made the realisation of this week possible.

8UNG FÜR ALLE – Respect for All has an agenda

In 41 trainings, led by experienced ZARA-trainers, a broad range of target groups was reached – pupils and youth organisation representatives of all ages, pedagogues, priests and parish councillors, police officers, officials from the district authorities and political decision makers. It was all about not denying or “talking away” existing differences, but, to the contrary, about being able to address these differences, admit prejudice and subsequently attempting together to move away from a “we and the others” towards a common vision of “we”.

Another important component of 8UNG FÜR ALLE – Respect for All was a broad ranging framework programme, which addressed on the one hand, kindergartens and schools, and, on the other hand, the entire population of Feldbach. Here, all the people from Feldbach had the opportunity to approach the issues of “being a stranger, being different” in a variety of ways, through presentations, discussions, celebrations, or movie screenings.

8UNG FÜR ALLE – Respect for All moved many people

Altogether more than 10,000 residents of Feldbach actively participated in 82 events, i.e., almost one out of seven inhabitants of the district participated in the 8UNG FÜR ALLE-Respect-for-All-week in some form or another. The project week has pointed out challenges, unveiled potential, empowered those already active in various fields and enhanced networks among them.

I am convinced that the high quality of and the differentiated approach communicated in ZARA’s trainings crucially contributed to raising awareness. We all have set of a positive wave. Based on the experience and results of the project week, and the project team, ZARA continues to be active in the implementation of sustainable measures in the Styrian Volcano Land region.

8UNG FÜR ALLE – Respect for All receives award

On this year’s day of the rights of the child, I was awarded the Styrian children’s rights prize TrauD! 2007 for 8UNG FÜR ALLE – Respect for All. This year, the prize focused on the protection against discrimination under the motto “We are all children!”

This recognition strengthens the courage and confidence that 8UNG FÜR ALLE – Respect for All will continue to ensure a successful living together.

Cornelia Schweiner initiated and lead the project 8UNG FÜR ALLE. She is responsible for development policies education at the Welthaus Graz, pedagogue and trainer.

How can I use the Racism Report in Class?

Talking about racism is one thing. Understanding all the dimensions of racist discrimination is another.

A conscious confrontation with the social dimension of racist discrimination and its significance for the everyday lives of individual persons affected by it is the basis for countering racism. Therefore, this is the entry point for ZARA's pedagogical approach. In the framework of this approach, an examination of the reality of racism in Austria is a central issue.

The Racism Report annually lays open a collection of descriptions of cases of racism and therefore supplies an exemplary description of incidents of everyday racism in Austria – not in an abstract manner, but concretely, taken straight from daily life. Furthermore, the Report makes it clear that everyday racism is something that happens to a great many people just trying to lead their everyday lives in Austria.

Using this collection of cases in education and training helps prevent remaining on the topic of racism as a theory for an extended period of time, but rather making a connection to real life. In our workshops we always see that it is the individual cases that shake people up, that make the necessity of becoming active evident, that make it possible to grasp the various dimensions of discrimination and that serve as a basis for developing possible alternative ways of action.

ZARA-trainers access these cases with various aims and methods. Many teachers order copies of the report for an entire class in order to work with it. The following contributions describe a variety of possible uses of the racism report in education and motivate use of the Report. Why? Because: the more people know about racist discrimination, the daily threat emanating from it and the possible ways of countering racism, the more people will also actively fight it.

Defining Racism

In order to be able to talk about racism, it is, among other things, important to work out what racism actually is, to clarify the concept and the ideology behind it. There probably is no ultimate and universal definition. ZARA has committed itself to a working definition that is available at <http://www.zara.or.at/materialien/leitbild/>. It can be used in pedagogical work as well as other definitions to be found on *Wikipedia*,

and in all sorts of encyclopaedias or relevant publications. They all are a suitable basis for discussions. But the individual case descriptions of the Racism Report can play a role in the far more important second step of confronting the concept of racism: In the discussion process, establish the group's, class' etc., own definition.

Suggestion for facilitating a discussion:

"Equipped" with already existing definitions and the reality of racism, in the form of cases from the Racism Report, participants should arrive at their own definition depicting the state of the discussion process within the group and forming the basis for a further confrontation with the phenomenon of racism and, maybe, developing possible counter strategies.

Racism and language

Language creates reality. Racist abuse frequently happens. It creates a hostile and humiliating atmosphere for the abused. Therefore, it is important to raise awareness of the great power of language and its high discriminatory potential.

Suggestion for facilitating an exercise:

Give the group the task of collecting all abuse and other verbal acts of discrimination appearing in the Racism Report (or a chapter of it). Discuss the meanings of the employed (swear-)words and their discriminatory content.

If there is a tendency in the general mood of the group to believe that some swear words are not so terrible after all and no "real" discrimination, let the participants try out what it feels like to be "labelled" with these words as follows: Tell the participants to abuse each other in pairs, using the collected utterances. Take care that, afterwards, the participants manage to "leave their roles" again, in order not to risk permanent insults.

Continue by reflecting on the feelings aroused during the exercise.

Link tip: At <http://www.zara.or.at/materialien/gleiche-chancen/elearning/hb/index.htm> you will find background information on frequently used terms with discriminatory content and answers to the question why they should not be used even when "no offense is meant".

The role of witnesses

The majority of the cases to be found in the Racism Report have been brought to our attention by witnesses who observed racist discrimination, are upset by it and want the incidents to become public knowledge. Many restrict their intervention to reporting, because they could or would not interfere. Many also interfered in the situation and tried to stop the discriminatory act or to support the affected persons in fighting it.

Suggestion for facilitating an exercise:

Choose 2 to 3 cases from the Racism Report where witnesses have been involved. Distribute or present these cases and ask the following questions for discussion:

- *Would you have acted the same way?*
- *Have you ever experienced a similar situation as a witness?*
- *Did you do something, if yes, what, if no, why not?*
- *Have you ever experienced a comparable situation as a victim? What did or would have helped you?*
- *What other possibilities for action come to your mind?*

It is recommended to first let the participants/pupils think about the question on their own, then ask them to exchange their thoughts and experiences in small groups and then leave room for possible reflections about typical patterns of behaviour, needs, factors influencing choices, etc., in a plenary discussion.

Continue with collecting possible strategies for action; try to jointly work out which framework conditions make it easier to interfere, and which ones do not, and what really helps the person affected. It should become clear that there are many different possible forms of intervention, which are, however, dependent on the situation, personality, and what "shape" one is in on the particular day. Other, less spectacular possibilities of action are important and meaningful. For instance, making a report to ZARA is an important possibility to do something – it has an effect, it creates awareness and draws attention, and may be a cause for thinking about possible strategies for similar cases – and they are a signal for those affected by discrimination that not everybody is indifferent to their experience.

Link tip: At <http://www.filmproduktion.org/zaraspots/> you will find three video spots advertising moral courage, which show unusual forms of intervention.

Legal Framework Conditions

Discrimination on the grounds of ethnic origin, skin colour and/or religion is forbidden in Austria. Both for persons affected by discrimination and for witnesses of discrimination it is important to know in which cases it is in fact possible to fight the discrimination legally. The Racism Report contains "Know Your Rights" sections that give a step by step explanation of possible legal action using real individual case examples.

Suggestion for facilitating an exercise:

Form small groups of 4–5 persons each. Construct cases of discrimination or choose suitable ones from the Racism Report and give every group one case. Give your participants/pupils the task of analysing whether "their" case constitutes discrimination, if yes, which form, whether it is proscribed by law, and which concrete steps must/can be taken for legal action against it. The Racism Report can be used as a tool.

The group results are presented in the plenary and discussed there.

Ideally, using the Racism Report as teaching material is part of a comprehensive confrontation with the issues of racism, discrimination and moral courage. We also offer support in the form of workshops in the framework of pedagogical priorities or teaching projects. Information on what we have to offer is available at: <http://www.zara.or.at/trainings/module/>.

Link tip: At <http://www.zara.or.at/trainingsliteratur> you find a list of literature and materials that you might find helpful for support regarding contents and methods.

Katrin Wladasch

Jurist, political scientist, trainer and member of the board of ZARA

Glossary

Alleviation of the burden of proof / Reversal of the burden of proof

As in any other proceeding, ultimately it is a question of evidence and credibility which party will be pronounced to be in the right by a court or public authority. Yet, especially in the area of employment and all the more in the area of discrimination, the situation is often characterised by an uneven distribution of power. Typically, the employee is in a weaker position regarding economic strength as well as in the “closeness to the evidence”. This circumstance is taken into account in labour law as well as in the framework of equal treatment legislation. According to European guidelines there should be a clear shift in the burden of proof into the direction of the respondent/defendant, who should have to bring proof in order to free him-/herself from plausible reproaches raised against him/her. In Austria, this requirement has not been completely and fully met in every respect, such that a very complicated and not very practical solution is in place. Thus, procedures have to be instigated if the complainant/claimant plausibly presents the case for discrimination, procedures have to be closed if the defendant proves that “it is probable, considering all the circumstances, that it was another motif – made plausible by the defendant – that was decisive for the differential treatment.”

Direct discrimination

Direct discrimination is taken to occur where a person, on the grounds of a specific characteristic (e.g., skin colour, ethnic origin, a disability, or gender, etc.) is treated less favourably than another person is, has been or would be treated in a comparable situation.

District administration authority (Bezirksverwaltungsbehörde)

In general, the district administration authority is instantiated by the district commissions (Bezirkshauptmannschaften), or, the “Magistrat”. In statutory towns like Vienna, the individual municipal district offices (Magistratische Bezirksämter) carry out that task. Some functions of the district administration authorities are also exercised by the Federal Police Directorates (Bundespolizeidirektionen), insofar as the situation in question is within their regional scope. Generally, the district administration authorities are competent for pursuing administrative offences in the first instance.

Documentation Centre of Austrian Resistance

The Documentation Centre of Austrian Resistance (Dokumentationsarchiv des österreichischen Widerstandes, DÖW – <http://www.doew.at>) is a foundation of the Republic of Austria, the City of Vienna and the Association Verein Dokumentationsarchiv. It is an academic research institution concerned with, among others, the issues of resistance during the time of National-Socialism, NS-crime, the Holocaust, restitution and right-wing extremism after 1945. The staff of the DÖW collect current cases of right-wing extremist assault, analyse them and inform about the developments regarding right-wing extremist activities in Austria via various media and own publications.

Equal Treatment Commission (Gleichbehandlungskommission)

The Equal Treatment Commission is composed of three Senates with members representing Ministries and social partner organisations. They work on an honorary basis. The Commission is attached to the Federal Chancellery. The Senates of the Equal Treatment Commission have to deal with all questions related to discrimination within their area of competence. In particular, they are responsible for drafting opinions on general questions relating to discriminations, and they have to assess potential violations of the provision of equal treatment in specific cases upon demand by the Office of the Ombud for Equal Treatment or by interest groups. Both the Ombud for Equal Treatment and the victim are party to these procedures, which are free of charge. Victims can also choose to be represented by a trusted person, like for example representatives of non-governmental organisations like ZARA. The result of such proceedings before the Equal Treatment Commission is an opinion, which, in contrast to the judgement of a court, is not legally binding.

Federal Office for the Protection of the Constitution and the Fight Against Terrorism

The Federal Office for the Protection of the Constitution and the Fight Against Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT) is a security authority located within the Federal

Ministry of the Interior. Among other things, it is tasked with the fight against extremist and terrorist phenomena. The federal office, as well as the corresponding offices in the federal provinces under its authority, therefore monitor the activities of right-wing extremists in Austria and investigate violations of the Prohibition Statute through activities amounting to revitalisation of National-Socialist ideology.

Forum Against Antisemitism

The Forum Against Antisemitism (Forum gegen Antisemitismus, <http://www.fga-wien.at>) is an association based in Vienna. It documents antisemitic assault, offers counselling to victims of such assault, and informs about antisemitism in Austria.

Harassment

Harassment constitutes a form of discrimination whenever a person is harassed on the grounds of one or several specific characteristics of that person (like skin colour, religion, gender, or sexual orientation) and the harassment as such violates his/her dignity.

Independent Administrative Tribunal (Unabhängiger Verwaltungssenat, UVS)

The Independent Administrative Tribunals of the federal provinces are responsible, among other things, for appeals against penalties imposed for an administrative offence and for complaints against the exercise of direct administrative authority and coercion (like complaints against police officers). The Independent Administrative Tribunals are public authorities not subject to instructions (*weisungsfrei*), where independent judges of the Tribunal pass decisions. Their decisions are final and binding and not open to further appeals in the regular sequence of courts. Yet, it is possible to turn to the highest courts (Administrative Court / *Verwaltungsgerichtshof* and Constitutional Court / *Verfassungsgerichtshof*).

Independent Commissioner for the Protection of Public Servants (Unabhän- giger Bedienstetenschutzbeauftragter)

The Independent Commissioner for the Protection of Public Servants has been the head of the Office to Combat Discrimination (*Stelle zur Bekämpfung von Diskriminierung*) since the Vienna Anti-Discrimination Act went into force. It is meant for employees of the City of Vienna. Furthermore, anyone who is of the opinion that she/he has been discriminated against by a City employee exercising her/his official duties, can turn there as well.

Indirect discrimination

Indirect discrimination occurs where an apparently neutral provision, criterion or practice can put persons with specific characteristics (like e.g. skin colour, disabilities, ethnic or national origin, belief etc.) at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Legal action by an association

Legal action by an association (*Verbandsklage*) describes a claim filed by an organisation / interest representation association that fights the violation of the rights of individuals without those individuals themselves having to turn to court themselves in a cost intensive procedure. The court decision than is effective for all persons whose rights have been infringed by the respondent. Austrian law knows legal action by an association in the area of the law on consumer protection, but not in the area of equal treatment law.

Litigation Association (Klagsverband)

The Litigation Association of NGOs Against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern, KlaV* – <http://www.klagsverband.at>) was founded in 2004 as an umbrella organisation of NGOs already active in the fight against discrimination and in counselling victims of discrimination. Today, the Litigation Association has a number of members concerned with various areas of discrimination (like, e.g., ZARA, Bizeps, Helping Hands Graz, inter alia). The Litigation Association chiefly acts as a counselling body for its member-NGOs and their clients, and participate in procedures before the Equal Treatment Commission acting as an expert with an advisory vote. Sec 62 Equal Treatment Act gives the Litigation Association the right to participate in court proceedings as an intervener next to the plaintiff. Thus the Litigation Association accompanies victims of direct and indirect discrimination in court procedures.

Office for Special Investigations Vienna

The Office for Special Investigations (*Büro für besondere Ermittlungen, BBE*) is a unit within the Vienna police directly under the authority of the President of the Vienna Police. It is competent for investigating allegations of police ill treatment. It must examine suspected cases inside 24 hours and forward them to the Public Prosecution.

Office of the Ombud for Equal Treatment (Gleichbehandlungsanwaltschaft)

Since January 2005, the Office of the Ombud for Equal Treatment includes not only the Ombud for Equal Treatment of Men and Women in Employment, but also one for equal treatment of the other protected groups in employment and one for racist discrimination in other areas. The three ombudswomen acting in these areas are appointed by the Federal Minister for Women, the Media and Public Service. The Office of the Ombud for Equal Treatment is responsible for counselling people affected by discrimination, and in addition, studies into the situation in Austria regarding discrimination can be commissioned or carried out by the Office. Cases brought to the Office of the Ombud for Equal Treatment can be brought before the Equal Treatment Commission by the Ombud for assessment.

Out of court settlement (“Diversion” and “Außergerichtlicher Tatausgleich ATA”)

In German, “Diversion” describes the possibility to waive formal criminal court proceedings. After measures “of diversion” have been completed, which can only be done with the consent of the suspect(s), criminal procedures are closed for good and the person in question continues with the status of having no criminal record. “Diversion” involves out-of-court compensation for the act (Außergerichtlicher Tatausgleich), defining a time of probation, carrying out community service or the payment of a certain amount of money by the suspect. The out-of-court compensation (ATA) is carried out by the association Neustart, where social workers have the task of reaching a settlement between victim and perpetrator by mediating between them. This can also include making up for the damage that has been done and a written agreement on future relations (between victim and perpetrator). The person who suffered the damage also has to agree in writing to the out-of-court compensation.

Private parties in criminal proceedings

Usually, damage claims are filed with civil courts, whereby the person taking the legal action carries the financial risk of the procedure. However, a person who suffered damages through a criminal offence can already claim compensation for the damage from the perpetrator in criminal proceedings (for example, compensation for the pain suffered in the case of bodily injury) without having to incur a financial risk. The judge can (but need not) award damages, to the victim acting as a private party to the proceedings, in the course of sentencing the perpetrator. The victim first has to specify the amount of compensation that is claimed. The judge can award all of this amount or part of it. Ideally, the victim is saved from embarking on time- and cost-intensive civil procedures and quickly receives financial compensation.

Third country nationals

The term “third country nationals” refers to citizens of states not party to the Agreement creating the European Economic Area (EEA). The EEA includes all EU member states plus Iceland, Liechtenstein and Norway.

Victimisation

Victimisation refers to adverse treatment of persons involved in a case of discrimination, as victim or witness, insofar as they disclosed the case, filed a complaint, or spoke out in support of the victim.

Weißer Ring (literally: white ring)

The Weiße Ring (<http://www.weisser-ring.at>) a private non-partisan and non-profit organisation offering support to crime victims free of charge. This support primarily consists of legal support in court proceedings (in particular the representation of private parties in criminal proceedings against the perpetrator) and in psychosocial care for crime victims.



Bleiberecht jetzt!

Schluss mit der Abschiebung langjährig integrierter Menschen und Familien, mit dem Auseinanderreißen von Familien oder dem Zurückschieben von Kindern in eine “Heimat”, die sie noch nie gesehen haben.

Wer sich in Österreich integriert hat und seit Jahren hier lebt, soll auch hier bleiben dürfen!

www.dahamisdaham.at



www.gruene.at

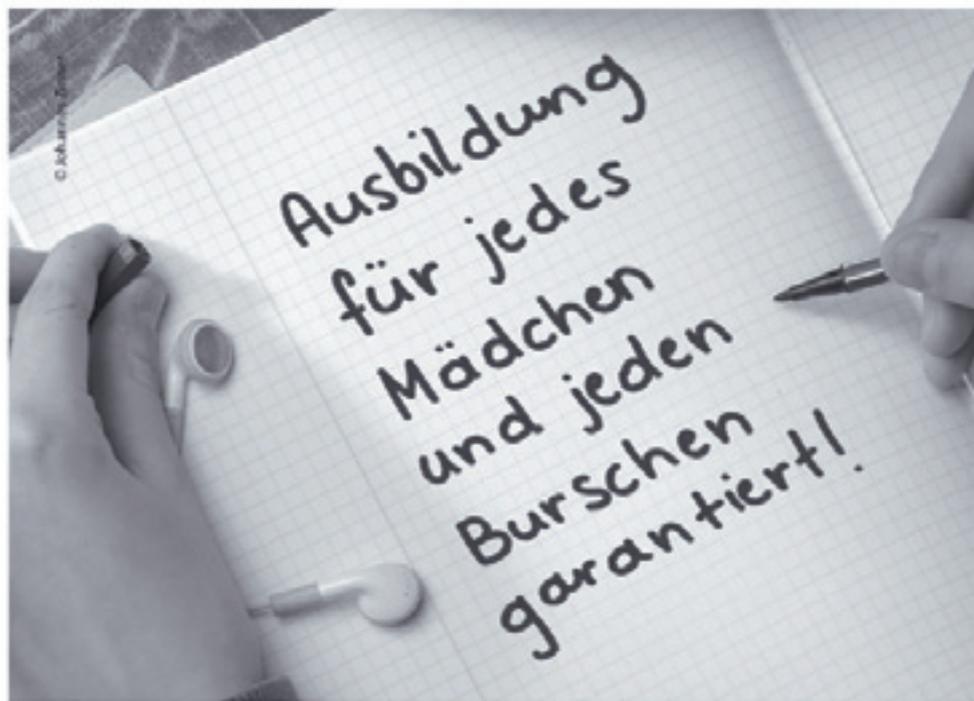
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gegen braunen Mief und rechte Rülpsler:

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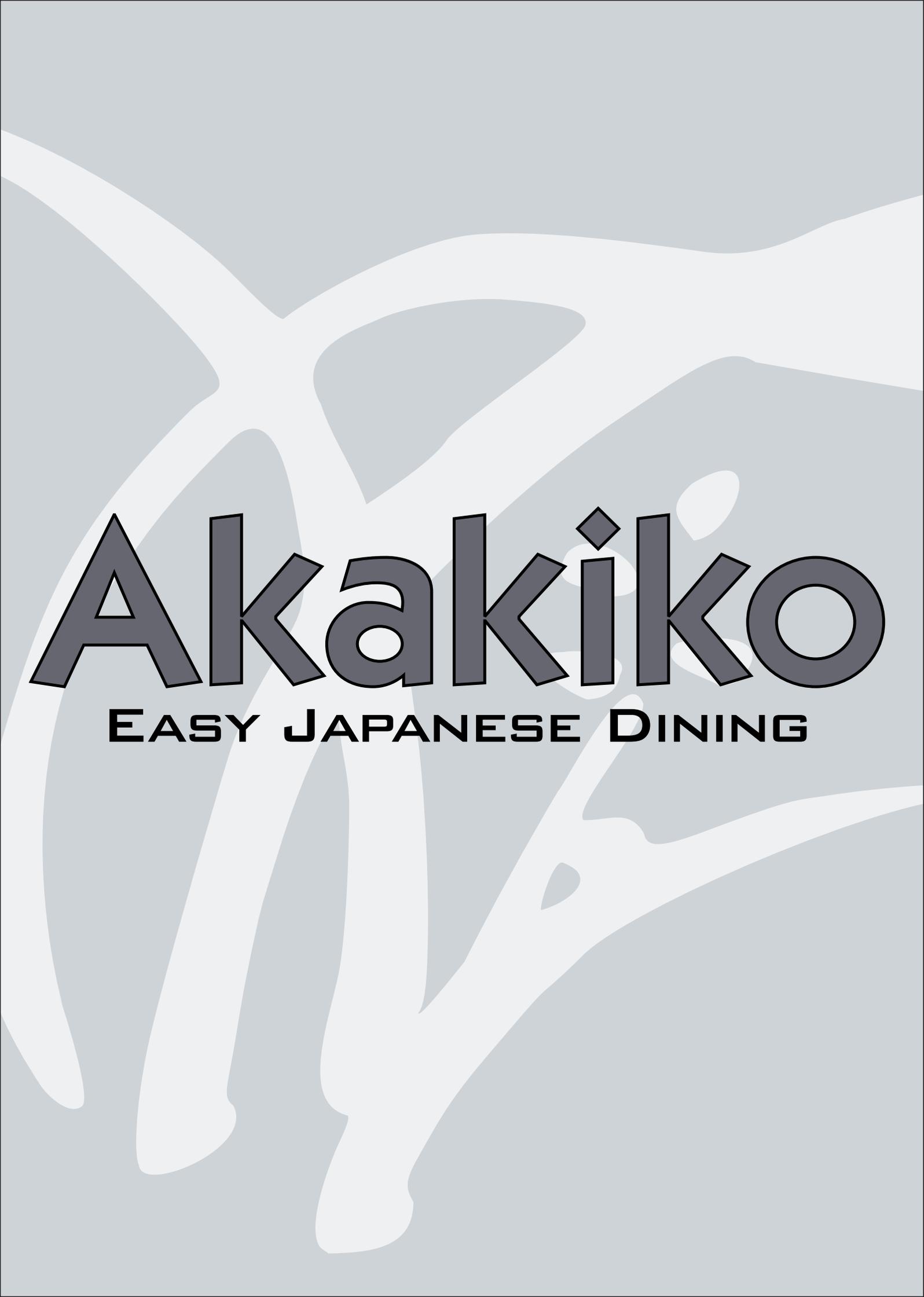
IHR DIREKTER DRAHT ZUR SPÖ:
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**Sie haben sich angepasst und sehen
fast so aus wie wir – nur schöner.**

WISE GUYS

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**Wie viel
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hat Ihre
Meinung?**



Akakiko

EASY JAPANESE DINING

rechtzeitig

Wien hat das Mehr. Und Tipps für ein gesundes Frühjahr



1. Iss dich g'sund!

Viele Kilos auf der Waage! Ich fühl' mich schlapp! Ab morgen auf dem Speiseplan: Obst, Gemüse, Vollkornbrot, Fisch!!! Ernährungspyramide! Rezepte: www.lebensmittel.wien.at

Da fang ich aber wirklich an!



Weg damit!!!
Jetzt wird's klappen!

2. Tschik ade!

Weg vom Glimmstängel! Wie oft habe ich das schon vorgehabt! Hypnose? Raucherpflaster? Akupunktur? Jetzt frag' ich mal bei der Raucherberatung nach! Telefon 081 08 10 013



3. Kostenlose Infos

Broschürenpaket mit sieben Info-Foldern bestellen: beim wien.at-Clubtelefon 01/277 55 22

Gesundheitsstadträtin Sonja Wehsely:

Wien hilft beim Gesundbleiben



Neue Broschüren tanken!!!



U3>Neubaugasse, U4>Kettenbrückengasse sowie 57A und 13A.

ZARA – Counselling Centre for Victims and Witnesses of Racism

The ZARA Counselling Centre for Victims and Witnesses
of Racism team is available at the following times (please
call in advance to schedule an appointment):

Mon – Wed 10:00–18:00, Thurs 11:00–19:00

Luftbadgasse 14–16
A-1060 Wien

T: (01) 929 13 99
F: (01) 929 13 99-99

office@zara.or.at
<http://www.zara.or.at>