

The emergence of new minorities in Austria and current issues concerning their legal protection

HARALD CHRISTIAN SCHEU

Introduction

Statistics show that in the past decades Austria has become a country of immigration. Indeed, Austria has one of the highest percentages of immigrants in the EU. With regard to the number of foreign citizens on its territory Austria occupies the sixth rank among EU member states (with 10.7% of the population). As far as the number of first generation immigrants (i.e. immigrants born abroad) is concerned, Austria is in the fifth place (with 15.2% of Austria's population). If we add to this statistic immigrants of the second generation (i.e. persons born in Austria, both parents foreign born), migrants, in 2010, constituted already 18.6% of the population, more than 1.5 million people.¹ By 2014 the proportion of immigrants of first and second generation² further increased up to 20.4% of the population, i.e. more than 1.7 million people.³

These figures show a dramatic change with regard to the presence of migrants in Austrian society. We have to consider that in 1961 there were only 100.000 foreigners living in Austria, amounting to only 1.4% of Austria's total population. Due to the organized recruitment of workers mainly from Turkey and former Yugoslavia the number of foreign nationals in Austria increased to 311.700 by 1974 (4% of the Austrian population). Whereas immigration remained stable until the end of the Cold War, since the early 1990s there has been a new significant influx of migrants. The proportion of foreigners rose to over 10% in 2007.⁴

Under these circumstances it is natural that the situation of new immigrant minorities has become a very important issue in Austria. The legal status of new minorities is a very complex problem which includes different social and political aspects like e.g. integration in the labor market and access to social benefits, cultural differences and

-
- 1 Biffl, G., Faustmann, A.: Österreichische Integrationspolitik im EU-Vergleich. Zur Aussagekraft von MIPEX, Studie im Auftrag des BMI, Donau-Universität Krems, Juni 2013 (http://www.donau-uni.ac.at/imperia/md/content/department/migrationglobalisierung/forschung/mipex_biffl_endbericht.pdf), p. 31.
 - 2 The United Nations Economic Commission for Europe (UNECE) recommends the use of the term "persons with foreign background" (http://www.unece.org/fileadmin/DAM/stats/publications/CES_2010_Census_Recommendations_English.pdf).
 - 3 Statistik Austria: Bevölkerung in Privathaushalten nach Migrationshintergrund (http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/index.html).
 - 4 Statistik Austria (Kommission für Migrations- und Integrationsforschung). Migration & Integration, Wien, 2013 (http://www.statistik.at/web_de/services/publikationen/2/index.html?id=2&list-id=2&detail=579).

religious freedom. In the past decades Austrian legislation and legal practice had to deal with questions that form part of a new law of cultural conflicts. In this contribution we want to highlight some crucial issues which have been debated very recently.

In order to understand the situation of traditional and new minorities in Austria, we first have to briefly consider the set of historical circumstances after WWI and WWII. In a second step we will focus on the emergence of new minorities in Austria. Finally, we will analyze some questions concerning the status of new Muslim minorities.

1. The Austrian minority policy after WWI

After the fall of the multinational Habsburg Empire, the small state of Austria was searching for a new identity. Some old legal provisions on Austrian citizenship and on the protection of national minorities from the time of the monarchy had to be adapted to the new political and demographic reality. In general, the new Republic stressed its German identity. Therefore Austria, for example, adopted legal norms preventing Jewish immigrants from different, mostly eastern parts of the Empire from gaining Austrian citizenship through naturalization. The right to option, which had been codified in Article 80 of the Treaty of St. Germain, was interpreted and applied by Austrian courts in a racist manner.⁵

The minority protection clauses of the Treaty of St. Germain became part of the new Austrian constitutional order. The treaty contained rules concerning the use of minority languages, the establishment of private minority schools and public primary education in the minority language. However, those obligations rather built a general framework than a set of directly applicable minority rights. As regards the Czech minority in Vienna, which at that time was considered a migrant minority, the Treaty of Brno of 1920 concluded between Austria and Czechoslovakia guaranteed a higher standard of protection in the field of minority schooling.⁶

Internal conflicts which culminated in a civil war in the 1930s and the seizure of power by Nazi Germany in 1938 prevented the consolidation of the First Austrian Republic and its minority policy. In the short period of the so-called Corporate State ("Ständestaat") between 1934 and 1938 several positive and negative measures were adopted with respect to the protection of national minorities. At a general level, the Austrian regime distanced itself from the racial-biological approach which had been adopted and enforced by Nazi Germany.⁷

5 Scheu, Harald Christian: Die Stellung von Minderheiten und Volksgruppen in Wien zwischen 1918 und 1934. In: Soukupová, B., Hroch, M., Scheu, H. C., Jurková, Z. (eds.): *Mýtus - „realita“ - identita : státní a národní metropole po první světové válce*. Praha: Fakulta humanitních studií Univerzity Karlovy v Praze, 2012, p. 33-53.

6 Reiter, Ilse: Die autochthonen Volksgruppen Österreichs. Ein Überblick über die Rechtslage von 1848 bis in die Gegenwart, *Forum Historiae Iuris*, 2001 (<http://forhistiur.de/zitat/0108reiter.htm>).

7 Scheu, Harald Christian: Die Stellung der Minderheiten in Wien von 1934 bis 1945. In: Soukupová, B., Godula-Węclawowicz, R. (eds.): *Mýtus – „realita“ – identita, Národní metropole v čase vyvlastnění, kolaborace a odporu*, Praha 2013, p. 65–84.

However, after the annexation of Austria by Germany in March 1938 minority protection turned into minority persecution. The measures taken by the Nazis in Austria leave no doubt that the new government strove for a fundamental change of the ethnic structure of the population and a radical restriction of cultural and linguistic diversity. Although the period of the Nazi regime in Austria was relatively short, it had devastating consequences for the fate of minorities and their members, especially the Jewish and the Roma minorities, but also e.g. the Slovene minority in Carinthia and the Czech minority in Vienna. After 1945 many elements of Austria's cultural diversity had been irretrievably lost.

2. The situation after WWII

The period of Nazi occupation had significantly changed the attitude of the Austrian population towards the German nation. Whereas after WWI German-speaking Austrians had felt as a part of the German nation and had stressed their German identity and even the Corporate State had tried to present Austria as the better non-racist Germany, after the end of WWII there was a revival of a specific Austrian national consciousness.

A thorough analysis of this development goes far beyond the scope of this study. But we may point out some crucial facts. First of all, the return to an Austrian identity may be partly the result of opportunism. But it is also clear that during German occupation many Austrians had felt a natural distance towards German everyday culture. Historical myths were also an important factor in maintaining distance from German identity.⁸

Concrete constitutional measures supported the new perception of Austria as an independent political and cultural unity after 1945. The Austrian Declaration of Independence which was adopted in April 1945 by the representatives of the three major political parties (the Austrian Socialist Party – SPÖ, the Austrian People's Party – ÖVP and the Communist Party of Austria – KPÖ) made reference to the “Austrian people” and restored the democratic Republic of Austria. The new Austrian provisional government issued a dramatic appeal to rebuild the country and to co-operate with the Soviet Red Army.

On May 1, 1945, the provisional government adopted the so-called Constitutional Transition Act⁹ by which the Austrian constitutional system as it was in March 1933 was again put into effect, including the minority provisions of the State Treaty of St. Germain. By this measure not only all constitutional acts of Nazi occupiers, but also the constitutional laws and regulations of the Corporate State were repealed.¹⁰

8 Scheu, H. C.: Die Stellung der Minderheiten in Wien von 1945 bis 1989. In: Soukupová, B., Luther, D., Salner, P. (eds.) *Mýtus - „realita” - identita. Socialistické metropole v zápasech o novou přítomnost a vizi šťastné budoucnosti*, Praha: Fakulta humanitních studií Univerzity Karlovy v Praze, 2014, p. 159-182.

9 StGBL. 4/1945.

10 Reiter, op. cit.

2.1 *The status of traditional national minorities and ethnic groups*

As far as the legal protection of traditional minorities is concerned, the Austrian State Treaty of 1955 included in its Article 7 an extensive provision for the protection of minority rights, however solely with respect to the Slovene and Croat minorities in Carinthia, Burgenland and Styria. Other national minorities in Austria, like e.g. the Czech and Slovak minorities in Vienna and the Roma minority, were not protected by Article 7 of the State Treaty.

Article 7 of the State Treaty confirms the right of members of the Slovene and Croat minorities to have their own organizations, assemblies and press in their own language. It further covers the right to elementary instruction in Slovene and Croatian language (in Burgenland and Carinthia, but not in Styria) and the use of Slovene and Croatian as official languages in Carinthia, Burgenland and Styria.

As the implementation of Article 7 of the State Treaty had caused significant political problems in Carinthia and some topographical indications in Slovene language had been destroyed by German-speaking activists, the Austrian government prepared a new Minority Act (“Volksgruppengesetz”) in order to harmonize the standard of protection in favor of all national minorities and ethnic groups in Austria.¹¹ The new Minority Act which was adopted in 1976 was a synthesis of the minority provisions contained in the Treaty of St. Germain and in the State Treaty of Vienna. Under Section 1 para. 2 of the Minorities Act, national minorities (“Volksgruppen”) are defined as “groups of Austrian nationals living and residing in parts of the federal territory whose mother tongue is not German and who have their own traditions and folklore”.

This concept of national minority has to be understood in a narrow way. In the light of Article 8 para. 2 of the Austrian Federal Constitution, the Republic is committed to its linguistic and cultural variety which is expressed in the autochthonous ethnic groups. Only six national minorities have been officially recognized, so far. Besides the two minorities protected by the 1955 State Treaty (Slovenes and Croats), four ethnic groups have been recognized under the Minority Act of 1976: the Hungarian minority, the Czech minority, the Slovak minority and the Roma minority. In 2001 the Austrian government refused to grant the minority status under the Minority Act to the Polish minority in Vienna. The government argued that the Polish minority did not have a long-standing and firmly rooted presence in Austria.¹²

2.2 *The political and ideological background*

The migratory movements of the 1960s and 70s, of course, have had an important impact not only on Austria and its capital Vienna but also on other European countries and their major cities. In many parts of Europe immigrant communities very often

11 Scheu (2014), op. cit.

12 This approach has been criticized by the Advisory Committee under the Framework Convention on the Protection of National Minorities (ACFC/OP/II(2007)005).

form the strongest ethnic minorities.¹³ As soon as in 1987, the Viennese political scientist Rainer Bauböck wrote in an unpublished commentary on an amendment to the Austrian Aliens Employment Act that the Yugoslav and Turkish labor force and their families, with all their national, cultural and linguistic differences, had become part of Austrian society.¹⁴

Many authors and politicians welcomed immigration to Austria, and in particular the most visible migration to the capital Vienna, as fundamental to a new type of multi-culturalism. On the other hand, counter-movements were formed which regarded the new migration wave as a threat not only to national or ethnic identity, but also to social standards. The first political culmination of those counter-movements was a referendum¹⁵ which was initiated by the Austrian Freedom Party (FPÖ) in 1992. Under the slogan “Austria first” the FPÖ and its supporters demanded a new constitutional provision, according to which Austria shall not be a country of immigration.¹⁶

Both the partially racist and aggressive undertone of the FPÖ campaign, as well as an increasing missionary spirit of the politically leftist elite led to a standstill. Complex questions of immigration and integration were discussed in academic publications and especially in the mass media almost exclusively in black and white. There was no profound debate on what the term “country of immigration” should mean and which models of immigration countries, e.g. the USA, Canada or Australia, could offer concrete solutions with regard to the political strategies in Austria. In the political debate voices critical towards immigration were discredited as nationalist and xenophobic.¹⁷

3. The emergence of new minorities

Two major migration movements to Austria determined the reality of immigration in the second half of the 20th century: on the one hand refugees, on the other labor migration. It is well understood that these two forms of migration differ significantly from each other with respect to their causes and effects. In view of the cultural identity of the host country, however, we may identify some common characteristics.

13 John, M., Lichtblau, A.: Assimilation und Integration der Arbeitsmigranten in Wien. Eine Skizze politischer, sozialer und kultureller Faktoren: Rückblick, Bestandsaufnahme und Prognose, In: Bauböck, R., Perchinig, B., Pinter, K. (eds.), *Und raus bist Du. Über den Umgang mit Minderheiten*, Wien 1988, p. 247–248.

14 Cited by John and Lichtblau (1988), *op. cit.*, S. 248.

15 Under Austrian constitutional law a referendum (“Volksbegehren”) is an instrument of direct democracy. According to Art. 41 para. 2 of the Federal Constitution, the referendum needs to relate to a matter regulated by a federal law and can be formulated in terms of a legislative proposal. The referendum must be signed by at least 100,000 voters within one week. In case the referendum succeeds, the issue has to be debated by the National Council.

16 The referendum „Austria First” was supported by 416,513 voters and had, objectively speaking, moderate success. It was the 16th referendum which was carried out in Austria after 1945. Five referenda had reached a higher number of supporters, ten referenda had had fewer supporters. In the media coverage „Austria First” was presented as a clear failure of the FPÖ and its party leader Jörg Haider.

17 Scheu (2014), *op. cit.*

By the end of World War II there were approximately 1,600,000 foreign forced laborers, prisoners of war and concentration camp inmates on Austrian territory. However, they left the country very soon. For the period from 1945 to 1950 we have to include about 1 million Eastern European refugees. Of those only 540,000 people remained in Austria, including 530,000 ethnic German (so-called "Volksdeutsche") from Czechoslovakia, Hungary and Yugoslavia.¹⁸

Statistical models further demonstrate the clear effects of the subsequent waves of refugees to Austria. In the years 1956 and 1957 about 180,000 refugees from Hungary fled to Austria. While the majority of those refugees ended up migrating to the USA and Canada, 18,000 Hungarians remained in Austria.¹⁹ In 1968, more than 160,000 Czechoslovak citizens fled to Austria and again only about 12,000 people permanently remained in the country.²⁰ In the early 1980s a considerable wave of refugees from Poland reached Austria. Statistics recorded up to 150,000 Polish citizens, of which over 30,000 applied for asylum in Austria.²¹ After 1972, in addition to the flow of Hungarian, Czech and Polish refugees, Austria accepted a restricted number of refugees from Latin America, Uganda, Iran and Afghanistan on the basis of a quota system.²²

In general, refugees from the time of the "Cold War" integrated very well in Austria. Victims of political persecution were granted the asylum status, which guaranteed for them legal equality with Austrian nationals in many areas. Over time, many of those refugees were naturalized, and more than half of them lived in Vienna.²³ Most Eastern European refugees integrated into the "middle class" and an above-average number of them worked in higher management positions as officers or employees.²⁴

Labor migration to Austria was quantitatively more important than the temporary movements of refugees from Eastern Europe. Whereas still in the 1950s Austrians in search of employment mainly moved to Switzerland and Germany, in 1961 a new stage of labor immigration to Austria began. At that time, the social partners²⁵ agreed on the opening of the Austrian labor market. In December 1961, the then President of the Austrian Trade Union Federation Franz Olah and the President of the Chamber of Commerce Julius Raab concluded an agreement, which replaced the former system

18 Fassmann, H., Münz, R.: *Österreich - Einwanderungsland wider Willen*, In: Fassmann, H., Münz, R. (eds.): *Migration in Europa. Historische Entwicklung, aktuelle Trends, politische Reaktionen*, Frankfurt/Main-New York, 1996, p. 211-212.

19 Official figures are provided by the United Nations High Commissioner on Refugees (<http://www.unhcr.at/unhcr/in-oesterreich/fluechtlingsland-oesterreich.html>).

20 Ibidem.

21 Waldrauch, H., Sohler, K.: *Migrantenorganisationen in der Großstadt. Entstehung, Strukturen und Aktivitäten am Beispiel Wien*, Frankfurt/Main, 2004, p. 338.

22 Fassmann, Münz (2004), op. cit., S. 212.

23 Wenty, A.: *Multikulturalismus in Wien und London. Eine vergleichende Analyse der historischen Entwicklungen und ihre Auswirkungen auf die gegenwärtige Situation*. Wien, 2002, p. 94.

24 Fassmann, Münz (2004), op. cit., p. 225.

25 The Austrian model of social partnership, which is based upon certain organizations representing the interests of employers and employees, is generally regarded as a prime example of balancing of social interests. On the other hand, however, it was partly rightly criticized that such structures weaken or even replace the traditional mechanisms of democratic decision-making.

of complicated individual tests for foreign workers by a general quota system. Based on this political agreement, Austria entered several intergovernmental treaties for the recruitment of workers from specific countries. The first contingent of 47,000 jobs for foreigners in 1962 was not exhausted and the first contract which had been signed with Spain in 1962 had no significant effect on labor migration.²⁶

However, the two subsequent treaties for the recruitment of foreign workers, which were signed with Turkey in 1964 and with Yugoslavia in 1966, showed noticeable success. Most immigrants came from Yugoslavia. The number of Yugoslav immigrants rose from 34,000 for 1966 to 51,000 for 1968. In 1969 Austria recorded 65,000 immigrants from Yugoslavia, in 1970 even 83,000. The climax of the migration wave from Yugoslavia was reached in 1973 with over 178,000 people. After that date, the number decreased in the 1970s gradually to about 115,000 in 1980.²⁷ The number of Turkish workers in Austria rose in a similar manner, from about 6,000 workers in 1965 to 30,000 workers in 1974. Later the number of Turkish workers slightly dropped to 28,000 in 1980. From no other countries did Austria record such high numbers of migrant workers as from Yugoslavia and Turkey. For example, only 984 workers from Spain moved to Austria in 1963, when the bilateral treaty entered into force, and there were less than 300 Spanish workers in Austria at the beginning of the 1970s.²⁸

The recruitment of foreign workers was based upon the so-called rotation principle according to which foreign workers were expected to come to Austria only for a certain period of economic boom and then return to their home country. However, in practice it turned out that the immigration of foreign workers was much easier to handle than their return. On the one hand, foreign workers extended their stay in Austria for personal and economic reasons. On the other hand, employers were not interested in a rotation of workers, since such rotation was associated with additional costs, e.g. concerning enrollment, and adjustment problems.²⁹

In the 1970s, family reunification developed as a new paradigm of migration to Austria. After the economic crisis of 1973, the number of hired workers dropped significantly.³⁰ In 1975 a new Aliens Employment Act was adopted which provided that Austrian citizens generally had priority on the domestic labor market. Foreign workers were granted unrestricted access to the labor market only after they had been legally working in the country for 8 years. As a result there was a decline in the number of foreign workers of up to 40%. However, the return of foreign workers to their countries of origin was almost entirely compensated by the reunification of spouses

26 Wenty (2002), *op. cit.*, p. 95.

27 See the statistics presented by Heinz Fassmann and Rainer Münz (2004, *op. cit.*, p. 218).

28 Fassmann, Münz (2004), *op. cit.*, p. 218.

29 Wenty (2002), *op. cit.*, p. 96–97.

30 In the period between 1973 and 1981 the total number of foreign workers fell from 227,000 to 172,000 people. During the 1980s, the total number fell further to about 150,000 people in 1988. (Fassmann, Münz, 2004, *op. cit.*, p. 218).

and children.³¹ This means that although the structure of migration changed fundamentally, the proportion of foreign residents in Austria remained approximately the same. From 1971 to 1981 the proportion of women migrants increased from 39.4% to 44.4% and the proportion of children from 14.8% to 22.5%.³²

These changes were reflected not only demographically, socially and politically, but also led to a slow shift away from the original concept of “guest workers” (“Gastarbeiter”). Migrant workers and their families, mainly from Turkey and Yugoslavia, remained permanently in Austria and have become part of the Austrian society.³³ The use of the term “guest workers” would seem clearly anachronistic today.

4. The integration of immigrant minorities as a social problem

Since the majority of the migrants moved to Vienna, social problems emerged there in concentrated form. Whereas domestic migration from Austrian provinces to Vienna and the limited immigration from Western Europe did not cause problems with the integration of migrants to the society, the situation was different with regard to migrants from Yugoslavia and Turkey.³⁴ There is no doubt that the negative perception of certain immigrant groups is reflected in stereotypes and prejudices. John and Lichtblau point to an empirical study on the quality of living which was conducted in the Floridsdorf district of Vienna in 1982. According to this study “harassment by guest workers” was in third place on the list of negative aspects, closely behind “poor structural condition of the house” and “traffic nuisance and noise”.³⁵

With regard to the social structure of the above mentioned immigration minorities it can be deduced that stereotypes reflect concrete social experience, notwithstanding the fact that such generalizations lead to unjust judgments. Especially in the 1960s and 1970s, immigrants from Yugoslavia and Turkey were mainly laborers (44%) and semi-skilled workers (37%), i.e. that they were employed in subordinate positions. Only 1% of all working people from those groups were higher officials, and less than 3% were self-employed.³⁶

These figures differ dramatically from figures established for the refugees from Eastern Europe. An above-average number of Czechoslovakian, Hungarian and Polish refugees who remained in Austria belonged to the middle class.

31 Bauer, Werner, T.: *Zuwanderung nach Österreich*, 2008. (The study is available on the website of the Austrian Society for Policy Advice and Policy Development http://www.forschungsnetzwerk.at/downloadpub/zuwanderung_nach_oesterreich_studie2008_oegpp.pdf).

32 Bauer (2008), op. cit.

33 A very interesting analysis of the change of meaning of the term migrant worker (“Gastarbeiter”) has been provided by the expert of Slavic studies Wladimir Fischer in his publication “Vom Gastarbeiter zum Ausländer. Die Entstehung und Entwicklung des Diskurses über ArbeitsmigrantInnen in Österreich“. The study has been published in the academic journal “*Österreich in Geschichte und Literatur*” (53, 2009, p. 248-266).

34 Fassmann, H.: *Die Zuwanderung nach Wien in der zweiten Hälfte des 20. Jahrhunderts*, Beiträge zur historischen Sozialkunde, 1991, p. 55.

35 John, Lichtblau (1988), op. cit., p. 246.

36 Fassmann, Münz (2004), op. cit., p. 223.

A major reason for this difference was the fact that during the 1960s and early 1970s the recruiters did not consider the education and social affiliation of “guest workers”. With respect to the rotation principle the possibility of a long-term integration of the recruited workers was not part of the strategy.

For those social reasons, an ethnic perspective on the lack of social integration of certain immigrant minorities is probably not appropriate. On the other hand, however, it is certainly not correct to discredit justified criticism of various negative social phenomena associated with immigration automatically as an expression of xenophobia. In practice, social and ethnic factors may be closely interrelated. Although the problem of integration of some new minorities is in the first place caused by social factors, at a later stage it turns into an ethnic or other cultural conflict between the majority and the minority.

5. The integration of new religious minorities in Austria

The situation of new religious minorities in Austria has been regulated in a relatively complex way. The general legal basis for the worship of Muslims in Austria dates back to 1912, when the so-called Islam Law (“Islamgesetz”) was adopted.³⁷ However, during the monarchy and the interwar period, no independent Islamic religious community was established. It was only the immigration of foreign workers from Turkey and Yugoslavia (Bosnia) and, to a smaller degree, of students and refugees from Muslim countries which, since the late 1960s, caused the need for a political and legal solution of the relationship between Muslim communities and the state.

In the 1950s the number of Muslims in Austria was estimated at a few thousand, of which only 500 were permanently living in Austria.³⁸ In 1962, the Muslim organization “Muslim Social Service” (MSS) was established, originally as an initiative of Bosnian intellectuals in Vienna. After the number of Muslims in Austria had risen to more than 20,000 in the early 1970s, the MSS organized the creation of prayer rooms and took care of socially deprived Muslims. The first mosque was established close to the United Nations headquarters in 1979. As this institution was closely affiliated with Saudi Arabia, it was practically not visited by Turkish and Bosnian workers and their families. On the initiative of the MSS an organization named the Islamic community was officially recognized by Austria in 1979 and started its activities as the “Islamic Religious Community in Austria” (“Islamische Glaubensgemeinschaft in Österreich” – IGGiÖ).

For the first time, the number of Muslims in Austria was officially established as part of the 1981 census when a total of nearly 77,000 people declared themselves to be Muslims, including 53,000 Turks and 11,000 people from Yugoslavia. 10 years later the number of Muslims in Austria had risen to 159,000. In this period no other religion or ethnicity had a similar growth rate.³⁹

37 Gesetz vom 15. Juli 1912, betreffend die Anerkennung der Anhänger des Islams als Religionsgesellschaft (RGBl. Nr. 159/1912).

38 Strobl, A.: Islam in Österreich: eine religionssoziologische Untersuchung. Frankfurt 1997, p. 25–28.

39 Ibidem, p. 32–33.

After 1989 the relationship between Muslims and the majority population became an important social and political issue. Because of its religious dimension this question was, however, below the threshold of perception of social science researchers. In the academic debate of that period, religion was dealt with practically only with regard to the Catholic Church which, mostly in a distorting manner, was presented as a perpetrator of historical injustice. The presence and the growth of an Islamic element in Austria did not fit into the matrix of a left wing ideology.

As for the legal dimension of the status of new religious minorities, the principle of religious freedom has been repeatedly invoked before courts and administrative authorities. In legal literature the exercise of certain religious rights has been discussed as an example of cultural conflict. In the past, Austrian courts had to deal with cases concerning e.g. the slaughter of animals in accordance with Muslim rules, the wearing of the Islamic veil in the courtroom and the problem of so-called “honor crimes”.⁴⁰

After the old Islam Law of 1912 had partly proved insufficient in the current circumstances, Austria has tried to approach the status of Islamic communities with new legislation and in 2015 a new Islam Law (Islam Law 2015) has been adopted.⁴¹ According to § 1 of the Islam Law 2015, Islamic religious societies in Austria are public corporations which exercise religious freedoms in the light of Article 15 of the Basic Law on the general rights of citizens (“Staatsgrundgesetz”). Those corporations organize their internal affairs autonomously and enjoy the same legal protection as other legally recognized religious communities. Their doctrines, institutions and practices enjoy legal protection as long as they are not in conflict with secular law. According to § 2 para. 2 of the Islam Law 2015, religious societies, religious communities or other subdivisions and their members may not invoke religious rules and doctrines as an excuse for not complying with general legal obligations. Exceptions from these obligations have to be provided by secular law.

§ 3 of the Islam Law 2015 provides for a procedure concerning the recognition of Islamic religious societies. Legal personality shall be granted by an individual decision of the Federal Chancellor which shall contain the name of the religious society and the institutions authorized to represent it. § 4 of the Islam Law 2015 regulates the conditions for the acquisition of the status of an Islamic religious society. A community applying for such status has to accept that its income and assets shall be used only for religious purposes. It further has to express a positive attitude towards society and the State. According to the Explanatory Report of the government, the community shall accept the pluralist order of the State and the rule of law. § 4 of the Islam Law concerns the community’s capacity for economic self-preservation. In principle, donations from abroad are not prohibited, but ordinary activities have to be funded by the members of the community who permanently live in Austria.

40 Scheu, H. C. (ed.) *Migrace a kulturní konflikty*, Praha, 2011.

41 Bundesgesetz über die äußeren Rechtsverhältnisse islamischer Religionsgesellschaften – Islamgesetz 2015 (BGBl. I Nr. 39/2015).

The status of a recognized Islamic religious society shall be refused or cancelled if such step is necessary for the protection of public safety, public order, health or morals, or for protection of the rights and freedoms of others. The status may also be refused in case that the community does not sufficiently inform the authorities about its inner constitution and the major elements of its religious doctrine (including a German version of the Quran).⁴²

The new Islam Law strengthens the status of two Islamic communities in Austria, the above mentioned Islamic Religious Community in Austria (IGGiÖ) and the Alevi Islamic Religious Community in Austria (“Islamische Alevitische Glaubensgemeinschaft”) which was officially recognized as a religious community only in 2013.⁴³ Both communities are granted concrete religious rights, such as the right to communicate opinions and proposals concerning the affairs of legally recognized churches and religious communities to all branches of legislature and government (§§ 10 and 17 of the Islam Law 2015), the right to care in religious terms for its members who serve in the armed forces, who are in detention or prison or who find themselves in public hospitals and similar establishments. The granting of such spiritual assistance may be provided only by persons who have been educated and have their life center in Austria. This means in practice that such persons have to graduate from Islamic Theological studies at the University of Vienna (§§ 11 and 18 of the Islam Law 2015).

With respect to Islamic dietary rules, §§ 12 and 19 of the Islam Law 2015 stipulate that the religious society has the right to organize the production of meat and other food in accordance with their religious norms. Institutions like the army, public hospitals, prisons and public schools have to consider those norms. Further rules concern Islamic holidays on which the authorities have to prohibit noise-causing actions and assemblies near places of worship (§§ 13 and 20 of the Islam Law 2015) and the right to maintain cemeteries (§§ 15 and 22 of the Islam Law 2015).

So far, no complex study on the legal impact of the Islam Law 2015 has been published. However, with regard to the political debate and media coverage⁴⁴, some issues can be highlighted. The new law can be seen as a reaction to the existence of many different Muslim organizations and mosques which are funded from different countries of origin. The Austrian government declared that the new Islam Law shall create a “European-style Islam” and promote the integration of Muslims in Austria.

Some religious scholars, lawyers, and political scientists have complained that the new law mixes religious issues with internal security aspects. According to those voices the major goal of the new legislation is not religious freedom but the control of Islam by state authorities. So, not all religious communities in Austria are treated

42 § 5 of the Islam Law 2015.

43 Verordnung der Bundesministerin für Unterricht, Kunst und Kultur betreffend die Anerkennung der Anhänger der Islamischen Alevitischen Glaubensgemeinschaft als Religionsgesellschaft (BGBl. II Nr. 133/2013).

44 A number of articles published in the German journal “Die Zeit” on April 24 and 25, 2015 provide a very good overview.

equally, as the Muslim minority seems to be under general suspicion. An organization of young Muslims in Austria (“Muslimische Jugend Österreichs”) even maintained that the Islam Law 2015 degraded Muslims to second-class citizens.

The Islamic Religious Community in Austria (IGGiÖ) has expressed more moderate criticism in criticizing the lack of equality in comparison to other legally recognized religious communities and the ban on foreign funding. In general, the IGGiÖ sees the law as an expression of a compromise which had been negotiated in dialogue with Muslim organizations. It called upon all Austrians to finally accept Muslims as part of Austria.

6. Conclusion

In the past hundred years, the character of Austria as a multiethnic country has been subject to significant changes. After the fall of the Habsburg Empire the new Republic of Austria defined itself as a mono-ethnic German state. However, the new state adopted a number of provisions in favor of national minorities traditionally living on Austrian territory. With regard to the Czech minority in Vienna, already in the period before WWI questions arose as to whether this minority shall be considered a traditional national minority or a new immigrant minority.

Since the 1960s the recruitment of so-called “guest workers” and, to a lesser degree, the reception of Eastern European refugees have led to the emergence of new minorities. The status of those immigrant minorities has mostly been analyzed from the perspective of social integration. However, with respect to the concept of cultural conflicts a number of relevant legal issues also may be identified.

Besides problems in the areas of school education, sufficient knowledge of German language and access to social benefits, one of the major topics for political and legal debate seems to be the status of new religious communities. So far, religious freedom of Muslim migrants has been regulated by the old Islam Act which was adopted in 1912. In the future the specific situation of Muslim communities shall be governed by the Islam Act 2015. This new piece of legislation, on one hand, strengthens the position of Islamic religious communities in Austria and confirms a number of important religious rights. But, simultaneously, it also expresses a latent distrust towards Muslim communities and mixes security issues with religious issues. Some Islamic organizations in Austria do not support the law and the future development, including concrete case law, will show whether the Islam Act 2015 may positively contribute to the integration of Muslim minorities in Austria.

The case of new minorities in Austria shows very clearly that religion matters in current minority protection law. Whereas traditional minority rights provisions in international treaties, the Austrian constitution and the Minority Act 1976 have been designed exclusively for national (linguistic) minorities, new immigrant minorities have different needs and demands which cannot be solved without reference to religious issues.