



Anlaufstelle zur
gewerkschaftlichen
Unterstützung
UNDOKumentiert
Arbeitender

POLITICAL DEMANDS

Vienna, 07.09.2015

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Preamble: Equal rights for all employees

Migration and employment laws deny or restrict migrants' access to the labor market. There are currently 28 different residence permits in Austria, most of which are associated with limited or no access to the labor market. The counseling practice of the drop-in center for trade union support for undocumented workers (UNDOK) shows that migrants are consequently forced into the informal sectors of the labor market and bogus self-employment, and are therefore dependent on undocumented work.

Undocumented workers are cheated out of their wages by employers. They are not paid minimum wages in accordance with collective agreements, they have to put up with excessive working hours, employers do not comply with working time or employee protection standards, and sexual and other physical assaults also occur. Companies and employers engage in wage and social dumping by undermining collective labor agreements and gradually undermining the welfare system.



1. Anyone living legally in Austria should have access to the labor market

Discrimination in access to the labor market leads to the over-exploitation of undocumented workers, which consequently weakens the position of all workers. It is one of the main reasons for the expansion of bogus self-employment and the unequal treatment of migrants in the labor market. The counseling practice of the UN DOK drop-in center underscores the need for comprehensive simplification.

Hence our demands:

- The granting of a residence permit for Austria must automatically be accompanied by unrestricted access to the labor market;
- Immediate repeal of the Bartenstein Decree;*
- Unrestricted access to the labor market for asylum seekers after a maximum waiting period of 3 months;
- The aim must be to create decent forms of employment regardless of residence status.

2. Facilitating the verifiability of employment relationships – Reversal of the burden of proof

In the absence of written employment contracts and proper payroll documents, employees need handwritten records of working hours, information about the company or employer in question, evidence such as photos, text messages with work instructions and names of witnesses in order to be able to provide proof of an existing employment relationship. It is often much more difficult for undocumented colleagues to provide this evidence because they are under additional pressure due to their high exploitability and particular vulnerability to blackmail. Based on the experience of our counseling practice, we know that it is therefore doubly difficult for undocumented employees in particular to prove their employment relationship.

We are therefore calling for a reversal of the burden of proof, analogous to anti-discrimination law and the right to appeal dismissal. This means that if employees can credibly demonstrate that they have worked for a specific employer, this employer must prove the opposite, otherwise the employment relationship is deemed to be assumed.

*** Note:** In 2021, the Constitutional Court declared the Bartenstein Decree (2004) and the Hartinger-Klein Decree (2018) to be unlawful and repealed them. Labor Minister Kocher (ÖVP) reacted again in the same year with a decree that continued to limit job access for asylum seekers. The biggest hurdle here is obtaining an employment permit (Beschäftigungsbewilligung). The procedure is very high-threshold, especially for asylum seekers, as the AMS (Arbeitsmarktservice), the Austrian Public Employment Service, strictly carries out a so-called substitute labor procedure (as at autumn 2024).



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3. Equalization of expiry periods under labor law – extension of the expiry period for claims under labor law to three years

Many industries that make use of undocumented labor have very short expiry periods. Claims under labor law often expire after just three months and before those affected can assert them. Particularly during an ongoing employment relationship, asserting outstanding claims is often unreasonable and entails high risks, especially for undocumented workers. Short expiry periods affect employees regardless of whether they work with or without papers. Our counseling practice has shown short expiry periods to be a major problem, especially in low-wage sectors, as employees lose a lot of money that they are actually entitled to.

In line with the demands of the Chambers of Labor, we are calling for the abolition of expiry periods of less than three years. This would mean that the three-year limitation period stipulated in the Austrian Civil Code (ABGB) would apply. In addition, the period should begin at the earliest after termination of the employment relationship.

4. Secured residence during labor law proceedings

In order to be able to assert claims under labor and social law, undocumented workers must make a personal statement to the Austrian health insurance fund (transcript) or before the courts. However, due to the particular vulnerability of these workers to blackmail in view of their uncertain residence situation, this represents an immense hurdle for many undocumented workers. According to the EU Sanctions Directive, third-country nationals who are exploited by employers must be given the opportunity to claim their labor rights.

However, our counseling practice shows that this obligation has still not been implemented in Austria. We therefore demand a residence permit for those affected and their relatives at least for the duration of labor and/or social law proceedings.



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5. Implementation of the right to party status for employees for whom an employment permit (Beschäftigungsbewilligung) is applied for

An employee whose employer has to submit an application for an employment permit (Beschäftigungsbewilligung) for them has no party status in the procedure for issuing the employment permit according to the Act Governing the Employment of Foreign Nationals (AuslBG).

Our counseling practice shows that this repeatedly leads to problems. For affected employees, this often means a lack of knowledge about their legal status on the labor market. As a result, employees may work undocumented without realizing it or, in extreme cases, may even assume that an employment permit (Beschäftigungsbewilligung) has been issued on the basis of false pretences by employers.

We therefore call for the implementation of the right to party status in accordance with the case law of the European Court of Human Rights (ECHR).

6. Abolition of the penalization of undocumented workers for the failure of employers to comply with legal obligations

Employees must not be penalized for non-compliance with their employer's legal obligations. The AMS (Arbeitsmarktservice), the Austrian Public Employment Service, does not issue employment permits (Beschäftigungsbewilligung) to employees whose previous employers have failed to obtain one, as a result of which the employees concerned have worked undocumented several times. For example, in the case of multiple registrations and deregistrations with the Austrian health insurance fund if the employer has not applied for an employment permit (Beschäftigungsbewilligung) for the employee. Employees often do not know about this themselves. There is an urgent need to remedy this situation.

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