

Elisabeth Holzleithner, Sabine Strasser

Troublesome Issues: Current Debates on Tensions between Gender Equality and Cultural Diversity in Austria¹

(Working paper node cmc, October 2006)

Abstract: This paper will first deal with the legal and social situation of Islam and Muslims in Austria and then turn to particular “troublesome issues” at the intersection of gender equality and ethnic/religious diversity. The public debate on Muslims particularly focuses on the notion “not willing to integrate” and in the assumption of “parallel societies”. Hierarchical gender relations and “harmful traditions” such as veiling, female genital cutting, forced marriage and honour based violence recently became the centre of attention. We will show that the Austrian debate on these issues is shaped by the idea of “dangerous cultural difference” as something coming from outside and being concentrated in segregated Muslim enclaves. Despite the public authorities’ rejection of the idea that Islam was responsible for “harmful traditions”, legal as well as political measures in Austria not only combat violence against women but also fuel “cultural anxieties” between different ethnic and religious groups.

A recent study commissioned by the Austrian Federal Ministry of Domestic affairs has stated that in the eyes of the Austrian public the “problem of foreigners” (“Ausländerproblem”) has become a “problem of Islam” (“Islamproblem”; Rohe 2006, 16). Referring to the results of a media analysis, the author of the study characterizes the debate as one of fear (“Angstdebatte”). The topic of integration has come to be debated less on its own right but in the context of world wide prevention of danger – with Muslim migrants being regarded generally and emotionally as a potential threat to public security (Rohe 2006, 16). The aim of the study was to detect troublesome issues in the relationship between Austrian majorities and Muslim minorities, the degree of integration and segregation and particularly the potential of terrorist attacks among this “group” (which was represented in the study by Turks and Bosnians only). Even before the study was accessible to the general public, then Secretary of State Liese Prokop announced as one of its troubling results that allegedly 45% of the Muslim population in Austria were “not willing to integrate”. Tellingly, she had to relativise this claim a few days later since it could not be based on the study’s findings.

The public debate raised by the study was particularly focused on the notion “not willing to integrate” and in the assumption of “parallel societies” (Meinhart 2006). Hierarchical gender relations and “harmful traditions” such as forced marriage and honour based violence became the centre of attention of media reports (Falter 21 and 22/06, profil 21/06). The Austrian debate on gender equality and cultural diversity is shaped by the idea of “dangerous cultural difference” as something coming from outside by way of immigration and being concentrated in segregated Muslim enclaves. Accordingly, we are first going to deal with the legal and social situation of Islam in Austria and then turn to particular “troublesome issues” at the intersection of gender equality and cultural/religious diversity.

A religion-friendly secularism

From the perspective of religious affiliation, Austria is a prevalently Christian country. The large majority of people still have a catholic background (Rosenberger 2005, 65-68). The Austrian legal framework can be characterized as religion-friendly secularism, based on a pluralist acceptance of diverse religious communities and the idea of cooperation between state institutions and religious congregations. State institutions are expected to be neutral concerning religion, but have a historical leaning towards privileging the Roman Catholic Church as expressed in the concordat of 1934.²

Fundamental for the Austrian concept of neutrality is a differentiation of two spheres: that of state sovereignty and that of state action in a broader sense. Where the state acts as a sovereign, it has, at least in theory, to transcend religion and realize state neutrality as *exclusion* of religion. State and religious institutions are separated. All citizens should be treated equally irrespective of religion or belief when it comes to fundamental rights, democratic participation and the elementary guarantees of welfare. Accordingly, conflicts with the constitutional freedom of religion on this level usually concern issues of *negative* freedom, freedom *from* religious interference.

The second foundational element of this system consists in the constitution of a legal framework for the pluralist inclusion of religion into civil society. The amount of state respect for the autonomy of religious life and religiously qualified cultural phenomena remains open and may have a different impact from sphere to sphere. According to the leading publication in the field, the modern state has to respect the autonomy of religious life in spheres such as education, school and the social-charitable field.

Here, neutrality is realized as an *inclusion* of religions and beliefs (Kalb/Potz/Schinkele 2003, 16, 43).

Under the Austrian model of religious pluralism, churches are subject to the Law of the Recognition of Churches of 1874. Congregations can gain official recognition as "corporations of public law" if they fulfil certain conditions. Currently twelve congregations have gained this status, the second largest of which is the Islamische Glaubensgemeinschaft in Österreich/*Islamic Religious Community in Austria* (IRCA). According to newest data, the Austrian Census of 2001, about 339.000 Muslims live in Austria, 4,2 % of the general population. Their main countries of origin are Serbia/Montenegro (18,7 %), Turkey (17,9 %) and Bosnia/Herzegovina (15,2 %). The recognition of Islam dates back to the Hapsburg Empire 1912 (Islamgesetz/Act of Islam); the IRCA was established as a corporation under public law in 1979. The IRCA mediates between state institutions, civil society and Muslims of all religious schools and nationalities in Austria.

Those twelve congregations, whose autonomy is guaranteed by the Constitution and which are recognized under the Law of Recognition of Churches, have certain specific rights, including the right to participate in the state-controlled religious taxation program, to religious education in public schools, to hire religious teachers also from abroad and to use religious symbols in public spaces. Crosses like headscarves thus are allowed in schools but not prescribed.

Legal recognition, however, does not mean that everyday living side-by-side is without frictions. Empirical data show an increasing aversion against Muslims (Heine 2005, 103). The disaster of 09/11 may partly play a role as does a political climate caused by populist right wing election campaigns where Islam is depicted as a threat for "Austrian culture" in slogans like "Daham statt Islam/Home instead of Islam" and has become the scapegoat for a range of problems such as the rising unemployment rate or the difficulties of financing the Austrian social system. The mingling of Islam and extremism and the confusion of religious prescriptions with local traditions concerning women and human rights issues cause continuous social pressure and make it necessary to defend Islam (Austrian Imam Conference in Vienna 2005).

In the past few years, Austria has become a frequent meeting place for Muslims from all over the world to discuss their position in actual debates. In 2003, 120 Muslim intellectuals gathered in the City of Graz in order to debate Muslim Identity in Europe and the negative effects of the "global war against terror". In their final statement the participants, among them about 20 % women, aimed at a theologically based

acknowledgement of pluralism, democracy and human rights, including equality of opportunities for women and men. (Declaration of the European Imam Conference in Graz 2003)

The Austrian Imam Conference in 2005 raised similar issues and included the following strong statement to its final declaration: "It is not sufficient to condemn discrimination as to be inconsistent with Islam. Social phenomena such as inappropriate access to education or forced marriage, even if they were only marginal phenomena, need Islamic concepts in order to combat them. The participation of women in all social and political spheres has to be promoted." (Resolution of the Austrian Imame Conference in Vienna 2005)

An Austrian journalist reported enthusiastically about the conference and the open-mindedness of Islamic scholars. In her comments she criticized the abuse of Islamophobia by policy makers as dangerous, but finished her article by stating: „Of course: lip service declarations are not enough, especially because forced marriage, the oppression of women as well as radicalism are also a part of reality of Muslim life in Austria.“ (Der Standard April 25, 2005) Obviously, even though the attitudes displayed at such conferences are recognized as genuine, everyday Muslim life is not trusted to correspond to them.

The IRCA itself rejects FGM, forced marriage, honour based violence and also forcing girls to veil in public lectures, conferences and events, and it stresses the difference between religion and tradition. The Community demands equal opportunities for women and men, especially concerning the entrance to the labour market and female professional careers.

Finally it is worth noticing that media debates in Austria on headscarves, FGM and honour based violence are often triggered by events outside the country (e.g. the case of Fereshta Ludin, the assassination of Theo van Gogh, the Madrid and London bombings, publications and statements by Necla Kelek, Ayaan Hirsi Ali). On the whole, Austria is known for its restrictive immigration regulations, its slow reduction of integration barriers, but its liberal policies concerning religious minorities.³ As an example we want to turn to the issue of the headscarf.

The Austrian headscarf debate

The attitude of pluralist recognition of religious convictions and practices is reflected in the Austrian legal system's treatment of the headscarf. Due to the lack of "hard cases", no legal debate has been conducted in Austria so far. It is widely regarded as

self-evident that female children at school and their female teachers may wear the headscarf without restriction.

Arguing in favour of this position, specialist on law and religion Brigitte Schinkele (2004) holds that a teacher is asked to perform his or her tasks and duties with his or her whole personality. Accordingly, a "depersonalization" should not take place, which would force the teacher to take off and distance him- or herself from important signs of belonging to a religious community. School is regarded as a sphere of personality constitution in a comprehensive way, where the diversity of religions and beliefs should be reflected. Muslim women wearing headscarves as a part of social reality should not be excluded and blinded out from school. Such a standpoint is compatible with the state's duty of neutrality, if this concept is understood as pluralistic inclusion of religion furthering societal integration in a comprehensive sense (Schinkele 2004, 32).

This argument is based on a fundamental distinction: The teacher does not embody the state in the way a judge or any other person acting as representative of state sovereignty would. Accordingly a *judge* would be obliged not to wear a headscarf in order not to violate state neutrality. This conclusion, however, seems to be a bit sleight of hand once the argument is dissected. The author offers no argumentation whatsoever, and the question remains how – under the regime of antidiscrimination law, which outlaws discrimination on the ground of religion – this differentiation would be legitimized.

Two possible argumentations can be invoked: One, the neutrality of the law must be seen to be done, so nobody who performs the duties of a judge should wear religious signs. In this case, any religious sign would have to be outlawed (which is not the case). Two, suspicion has it that somebody who wears the hijab signals that she is not loyal to the state and cannot be trusted as a judge. This insinuation is obviously not defensible. Besides, there are other ways to control the adequacy and soundness of jurisdiction: disciplinary law is one method; another is the existence of courts of appeal.

Notwithstanding the principles approving of veiling in schools, there are debates. Of all people, then Secretary of State for Domestic Affairs, Liese Prokop, questioned the Austrian common sense in an interview with the Viennese City Newspaper "Falter" (10/2005, 09.03.2005). On the one hand, she declared her commitment to the utmost personal liberty as far as wearing a headscarf was part of religious practice. On the other hand, however, she proclaimed that she had "a problem with teachers

who wear a headscarf in public schools. I believe that this is offensive ('anstößig'), since it does not go together with the values of our society. There tolerance goes too far. I have not yet examined whether a ban of the headscarf would legally be possible, but in substance I am in favour of such a ban. We also have to fight against excesses such as forced marriages or so-called 'honour crimes' within the Muslim community." In the course of the interview Ms. Prokop also asserted that women had "no rights in the Islamic society" and that "we have to teach Muslim women who get themselves beaten that this is different with us."

A short sharp public debate followed. A speaker of the social democrats pointed out that to choose one's garments was a human right. The woman's representative of the green party criticized the Minister's insinuation that Muslim women would get themselves beaten by choice. Of course, also several anti-racism NGOs protested this simplistic and rigorous account. The President of IRCA, Mr. Schakfeh voiced anger and disappointment, and not only because of the idea of banning the headscarf. He articulated even more frustration about Ms. Prokop's statements concerning forced marriages and "honour" killings. Those phenomena, Mr. Schakfeh emphasized, had nothing at all to do with Islam. After a thorough exchange, Ms. Prokop stated in a joint press conference with Mr. Schakfeh that she was "absolutely not in favour of a ban of the headscarf" (Der Standard, March 10, 2005).

Despite publicly voiced resentment against increasing numbers of Muslim women wearing headscarves, debates concerning the possible restriction of forced versus self-determined veiling and on the different (political versus religious or symbolic) meanings of headscarves, there actually was only one case that caused at least a brief call for legislation. In 2004 a secondary school in the City of Linz decided to ban all kinds of head-covering. The father of a thirteen year old Muslim girl reported the event to the authorities and was supported by the President of the regional school inspectorate. According to the school authorities a ban on headscarves does not comply with the Constitutional law's requirements of religious freedom. The IRCA demanded a decree that would guarantee the freedom of veiling, but the responsible Secretary of State for Education, Elisabeth Gehrler, rejected the publication of any explicit legal document (Münz 2004). The Ministry did, however, disseminate a written statement declaring that any restriction of wearing the headscarf would be contrary to the constitutional guarantee of religious freedom.⁴

The question of whether *teachers* were allowed to wear headscarves never came up except in an inverse version. According to media reports three Muslim fathers

demanded the headscarf to be mandatory for all teachers in a primary school in Linz. Since manifold reports on this event caused anger and debates in the public, the IRCA intervened. Its president, Mr. Schakfeh contacted the school officials and conducted negotiations, which finally led to the settlement of the conflict. Furthermore, he warned the press not to unnecessarily stir up conflicts by selectively reporting incidents.⁵

Representatives of the IRCA hold that in the public debate, the meaning and importance of the headscarf is distorted and exaggerated. They point out that veiling is a religious duty that should not lead to discrimination in any context yet must be based on the autonomous decision of a Muslim woman and must not be forced. "The headscarf is not the overall symbol for Islam! We claim the right of self-determination for women. Force is not acceptable. Yes, we women want to continue to stand up for our legitimate interests. This aim needs solidarity and a divide between Muslim women is the least desirable situation."⁶

"Traditional harmful practices": Austrian action against FGM, forced marriage and honour based crimes

The ICRA also took part in an initiative launched in 2005 by then Secretary of State for Health and Women, Maria Rauch-Kallat, in order to combat "traditional harmful practices" focusing on forced marriage, FGM and honour based violence. Ms. Rauch-Kallat particularly stressed the urgent need for an extended cooperation between state institutions and NGOs working with "potential victims of tradition-based violence". Legal, soft law and political measures were discussed in consultations with NGOs such as *Orient Express*, the only Consulting Center in Austria specialized on forced marriage and FGM, *Interventionsstelle gegen Gewalt in der Familie* (Intervention Center against Domestic Violence), IRCA, Caritas, UNHCR and feminist association *Frauenhertz*, and with representatives of the ministries involved as well as *The Children's and Youth Advocacy*.

Furthermore, the Minister aimed at joint action of the six female Federal Ministers⁷ and launched this initiative not only at a national but also, during the Austrian presidency of the European Council in 2006, at a transnational level. In October 2005, Ms. Rauch-Kallat invited Austrian Secretaries of State involved, MEPs and female representatives of the European Christian Democrats for the preparation of the EU equality conference. Waris Dirie, UN special ambassador and former super model now living in Vienna, was invited to present her perception of FGM as an

activist and victim. In November 2005 two further expert meetings focused on forced marriage and FGM. Austrian experts and NGO representatives also participated in the conference "Joint Action of Member States against Harmful Traditional Practices" in Brussels (January 2006), organised by Ms. Rauch-Kallat as an informal meeting of the Ministers for Equal Opportunities. Visual outcome of this initiative was the publication of a brochure on "Measures to combat harmful traditional practices affecting women in Austria" (2005)⁸.

Measures developed in the Austrian context were introduced to the EU member states' Ministers as NAHT (Network Against Harmful Traditions). The network wants to establish an international platform for NGOs and CBOs (community based organisations), collect statistics to learn more about the occurrence of these specific forms of violence in order to define the scope of strategies to be developed, to cooperate closely with NGOs and offer trainings for groups that are likely to have contact with people concerned.⁹

At first glance, these national and European initiatives seem utterly reasonable. However, a few points of critique remain. First, policy makers, women's organisation and educational institutions alike stress the fact that such violent practices directed against women are not confined to a certain religion or national background but are "harmful *traditional* practices" that may occur in many different religions and ethnic groups. In turn, however, it is emphasized that the respective problems particularly occur in Africa and Southeast Asia. Among others, the Middle East is not mentioned at all. Obviously, this is a rather selective way of focusing on the issues.

Another point is the question how promising the foreseen policies really are. NGOs rightly insist that they have to be complemented by other measures. Critical remarks focus on the problematic fact that the initiative completely ignores the impact of immigration law, especially of Austria's restrictive stance concerning residence regulations in the field of family reunification. The six Secretaries of State did not mention problems of residence legislation obviously interrelated with violence against women in their joint action. This does not come as a surprise, since they will not want to counteract their own parties' immigration policies. The latest "Alien Law Package" (2006), which was designed in order to meet obligations of EU Law, has introduced some improvements for immigrants, among them the status of "long term residence" for third country nationals (TCN; § 56 FPG), which is to be granted after 5 years of legal stay and provides free access to the labour market as well as certain improvements concerning social and residence security.

People entitled to reside in Austria as family members of TCN are granted free access to the labour market after one year of residence and for the duration granted to the reunifying person (§ 46 Abs. 5 AuslBG). Austria restricts family reunion by quotas with a maximum waiting period of three years (§ 12 Abs. 7 NAG).¹⁰ Migrants entering Austria under the title of family reunion, who are predominantly women, are only granted an *independent* residence permit after five years' stay (§ 27 Abs. 1 NAG). Exceptions to this time frame exist in case of the spouse's or relative's death or of a divorce, if the spouse with the residence permit is found to be predominantly guilty of the marriage's failure. Under such circumstances, the migrant staying on a dependent permit does not lose the right to remain in Austria (§ 27 Abs. 3 NAG). Accordingly, if a marriage is divorced *on friendly terms*, the dependent permit expires.

These provisions give rise to serious discontent and demands for change. The *Interventionsstelle gegen Gewalt* and the *Plattform against Forced Marriage* insist that residence regulations need to provide an independent status and immediate access to the labour market for women entering by way of family reunification in order to guarantee the option of divorce without the threat of expulsion.

Nonetheless, the foreseen legal and soft law provisions, joint political action and transnational activities constitute a comprehensive package of measures to fight violence against women. A few contested issues have come up time and again, and they have often been introduced by NGO representatives: What kinds of effects can be expected from changes of the criminal code? How can law be framed in order to target problematic behaviour, not "cultural groups"? In how far should the mass media be involved? Would not minority campaigning be more effective? Another demand was to keep the issue of violence against women from election campaigns in order not to raise the resentment of the general public against minority groups. In the following chapters, we are going to focus on three issues relevant in this context and show how institutionalized politics and NGO's have interacted.

Female Genital Cutting/Mutilation

The issue of Female Genital Cutting/Mutilation has been on the agenda of Austrian politics for years. The activities increased in 2000, when representatives of the Social Democrat Party (SPO) addressed the government with a parliamentary interpellation concerning the fight against FGM (Nr. 1012/J, 05.07.2001). In his response, the Secretary of State pointed out that Austria had already and successfully insisted on

including the issue of FGM in the Resolution “Elimination of violence against women” that was then being prepared by the Human Rights Commission and the General Assembly of the UN. He also referred to the UN’s demand that national legislation should outlaw FGM (996/AB XXI.GP). At first no necessity was seen to adapt Austria’s penal code (StGB) because it already implicitly included the punishability of FGM, as the Secretary of State for Justice had held in a statement already in 1996. He had come to the conclusion that FGM constituted such a severe interference with physical integrity that it was hence punishable as “physical injury with grievous lasting consequences” (§ 85 StGB).

Yet due to ongoing debate and after more parliamentary interpellations the time seemed to be ripe for an own provision. The penal code was amended by a provision that rendered legally insignificant any kind of consent to “a mutilation or other injury of the genitals which is apt to lead to a lasting impairment of sexual sensitivity” (§ 90 Abs. 3 StGB). The impetus was to make plain the criminal relevance of FGM, not by enacting an own provision outlawing it but by strictly declaring as irrelevant (“unbeachtlich”) any kind of consent of the respective person, no matter what the motive (754 StProt Beilagen XXI GP).

The government in its explanatory remarks to the amendment explains different kinds of FGM and their categorization according to the Austrian penal code. It refers to several provisions outlawing physical injury with different qualifications that may be perpetrated by FGM, such as losing the ability to procreate (§ 85 Z 1 StGB; this may be a side effect of FGM) and/or “grave mutilation” or “striking disfigurement” (§ 85 Z 2 StGB). The materials point out that often even the crime of intentional grievous physical injury with its qualified fine (1 to 10 years of prison) will be committed, since it is exactly the “success” (in the form of grievous lasting consequences) which is intended. The explanatory remarks suggest that FGM is probably not often undertaken in Austria; inquiries indicate that families take their daughters to their countries of origin where FGM is practiced in accordance not with religious demands but because of “certain social traditions”.

The remarks then go on to explain that even though the provision is formulated in a gender neutral way, the legal situation concerning *male circumcision* remains unchanged. This “wide-spread” practice is assumed to be only a “minor physical injury” which is moreover not apt to interfere with sexual sensitivity. Male circumcision is not the only practice the provision shall *not* comprise. The explanatory remarks mention “genital piercing”, which may constitute an injury of

the genitals but which is not apt to lead to a “lasting impairment of sexual sensitivity”.

Two other differentiations are made. The first concerns sex change operations in cases of transsexuality. Transsexuality (as distinct from transgenderism) is a *medical* condition, and such interventions are justified as state of the art therapeutic treatment, which by definition cannot legally be categorized cases of injury and mutilation. The same is said to hold for intersexuality: “Interventions treating somatic intersexuality [...] are in any case to be categorized as ‘therapeutic treatment.’”¹¹ This is a very sweeping statement. It blinds out that the surgical treatment of intersexuality in many cases amounts to nothing more than an adaptation of “unfitting” genitals to cultural norms. These norms, however, are “ours”, and that they are “cultural” cannot easily be seen. Intersex activists often point out that surgical modifications of “unfitting” genitals do constitute a *mutilation* and should not be legitimized as medical treatment, at least not as long as the person concerned cannot give her informed consent. The issue of intersexuality is very complex and an adequate analysis is not possible here. May it suffice to say that the questions posed are not as far off the limits of the provision against FGM as its proponents would like to have it.

The proponents of the fight against FGM have, of course, realized that it is not enough to change the penal code. NGOs and state as well as municipal institutions need *resources* reaching out into the respective communities, providing information and help and sensitizing certain populations such as government officials, doctors and nurses. Accordingly, the focus of policy makers today concerns measures in these contexts, including adequate care for concerned refugees. Turning to the issue of asylum law, the recognition as refugees of women threatened by FGM has been settled jurisdiction in Austria since 2002 (UBAS Rulings 220.268/0-XI/33/00, 21.03.2002; 227.327/0-V/14/02, 05.06.2002; 221.009/2-III/12/02, 02.04.2003). Women were recognized as a social group already by the Asylum Act of 1991; as a group, women can be specifically targeted e.g. by the threat of FGM and accordingly demand and be given asylum.

“Honour” Crimes

“Honour” crimes are often mentioned as an excess of “imported” violence against women, and politicians of all shades regularly pay lip service to condemning them as unacceptable in a decent society. One would be glad to hear so many condemnations

of “regular”, culturally unmarked violence in “Austrian” families, a far wider spread and just as deadly phenomenon as that of “honour” killings.

In 2004, a case of an “honour” crime was reported in Austria. A young man of Lebanese descent, aged 17, killed his 19 year old sister. The young man argued that his sister had had male acquaintances and had time and again “buzzed off”; her last wish had been to marry a man from Iraq. According to his own statement he had beaten her in her room with his fist, pressed her against a pillow until she was unconscious, then carried her to his car, driven to a side road, strangled and finally killed her with his knife. He claimed that he had often heard of murders of women who had brought shame over their family when he was a child in Lebanon, from where he had fled to Austria as an asylum seeker. He told the court that he wanted to have a strict penalty. According to media reports, the judge from the court of first instance declared it necessary to put a halt to such “attitudes from other cultures”, where one wanted to avert “shame” with crime (Salzburger Nachrichten, 03.02.2005). In Austrian law such an attitude is not perceived as “understandable”. Accordingly the young man was sentenced for murder (§ 75 StGB) and not manslaughter (“Totschlag”; § 76 StGB), a crime of passion, where somebody is carried away by a “generally understandable, fierce emotion”.

It is remarkable that in one short article dealing with the case, the crime committed by the young Lebanese man is put into the context of “family tragedies”: “In Innsbruck a court of appeals also dealt with a family tragedy: A 17 year old Lebanese killed his 19 year old sister for bringing ‘shame’ over her family. The judgement of the court of first instance, 14 years of prison, was reduced to 12 years and 9 months due to mitigating circumstances.” (Salzburger Nachrichten, 03.02.2005) No “othering” took place here, quite on the contrary. It may also be regarded as remarkable that this incident of an “honour” crime was not sensationalized. Not even all Austrian newspapers reported and those that covered the incident did so in a rather “low level” fashion.

Forced Marriage – Family Violence

Austrian feminist experts have been fighting domestic violence for years, but public interest on forced marriage has increased only recently. In spring 2005 the Austrian Broadcasting Company (ORF) aired a documentary featuring forced marriage as a continuous threat for young women with Turkish, Kurdish and/or Muslim background living in Austria (ORF, April 18, 2005). Two cases were reported: teenagers travelling

to Eastern Turkey for holidays were made to marry an unknown or at any rate unloved person chosen by the respective families. They were obliged to stay with their husbands in the name of honour and could flee to Austria only after several years of detention.

The cases were presented on TV by the women themselves and contextualised by feminists of *Orient Express*, an NGO working predominantly with women from Turkey and the Arab region. Experts on gender and migration explained the background of violence against migrant women to the Austrian public, obviously in a move to “ensure” anti-racism. *Orient Express* is known because of its support of victims in cases of domestic violence, forced marriage and FGM. Furthermore it is a partner project in an EU sponsored network that combats family violence against young women and girls of the *Islamischen Kulturkreis* (Islamic Culture Area).

The women of *Orient Express* are trying to use “windows of opportunity” to promote women’s and human rights. They not only co-operate transnationally, but have gained opinion leadership in the national debate recently. Several reports and interviews about their work were published in mainstream newspapers and broadcast on radio and TV (Kurier, May 17, 2005; Presse April, 2005; Standard, April 24, 2005; APA April 25, 2005 to mention just a few.). But forced marriage has been topical especially since Maria Rauch-Kallat, Secretary of State for Women’s Affairs, announced that she would put “forced marriage” on the agenda during the Austrian presidency of the EU in 2006 (APA, April 25, 2005).

Orient Express reports *increasing* numbers of cases of domestic violence and forced marriage. Experts, youth and social workers call for awareness raising, specialized centres and shelters and intercultural competence of staff members, mother-tongue counselling in the national Women’s Help Line and in information campaigns, and again for an independent residence status for reunified women.¹²

Representatives of *Peregrina*, another women’s association which has cooperated with *Orient Express* for more than 20 years, have pointed out the entanglement of private and state violence. They stress that women coming to their centre for help are often concerned that reporting domestic violence might lead to problems with immigration authorities. They stress the fact that nobody, neither NGOs nor multiculturalists nor members of minority communities claim that violence should be accepted as a tradition in Austria or anywhere else. Experts from *Peregrina* also reject the assumption that violence against women among minorities is on the rise. Violence was always there; it was reported but not adequately combated. Sometimes

the issue of violence among migrant communities is even belittled, e.g. when migrants with a Turkish background are involved. In one horrifying case of spouse beating, the presiding judge called the husband's violence a case of "Turkish embrace" and acquitted the perpetrator (Klenk 2005).

Responding to the need for specialized knowledge, police of Vienna have established an expert, Harald Hofmayer, for the issue of violence among migrant families. He has analysed all the prohibitions of entering ("Betretungsverbote") according to the Law against Violence ("Gewaltschutzgesetz") that were enacted against members of migrant families. Mr. Hofmayer states that in the course of his work in nine districts of Vienna he was time and again confronted with "import brides" who were victims of family violence. In his own words, "the problem is that the police deal with these cases according to 08/15 scheme: Man beats woman, man is expelled (from the family residence). But as soon as he is gone, another family member takes over violence. This is no help to the victim of forced marriage." (quoted in Ortner/Weissensteiner 2006)

What kind of help can be imagined? In the case of forced marriage as such, politicians have again turned to an instrument of high symbolism but usually little effect: the criminal law. The new criminal provision against forced marriage is part of "generic" and not of "culture-specific" legislation. According to the new provision, forcing somebody to marry is a case of grievous compulsion ("schwere Nötigung"; § 106 Abs. 3 StGB) punishable with prison from six months to five years. Contrary to the old provision, which outlawed forced marriage as a misdemeanour against marriage and family, this new act renders forced marriage a crime against personal liberty, which is to be prosecuted by the state and not only by request of the victim. And of course, policies cannot stop short on the level of criminal law. Much more will have to be done, e.g. by training officers, providing shelters, counselling for victims of violence and providing real exit options when returning to the family of origin seems to be unacceptable and too dangerous.

Concluding remarks: culture, violence and agency

Manifold policies and measures to combat forced marriage, FGM and honour based violence on different levels have been, as we have shown, established in Austria. The issue of "traditional harmful practices" has come to be debated widely in the general public. This debate certainly contributes "to lifting taboos" and to unveiling violence against women among different immigrant groups. Despite repeated public

statements by political actors and activists that violence is not restricted to certain religions and in particular not tolerated by Islam, certain “harmful traditions” are nonetheless associated with Muslim immigrants and *their* traditions.

On the whole, as we have indicated throughout this paper, the debate seems to suffer from four major problems:

1. “Tradition-based” violence is constructed as a non-European “import”.
2. Cultures of minorities are seen to have problematic traditions that are regarded as “unchangeable” except “we” help or even force “them” to change.
3. In many cases it is the *agency* of young women that brings the issues of violence against them to the public. This agency, however, is in turn ignored when politicians claim that *they* are finally breaking the “collective silence” surrounding the issue of violence against women.
4. The entanglement of immigrant women’s subordinated status and immigration law was systematically ignored by those politicians who drafted the recent legal measures.

On the whole, the way in which “traditional harmful practices” are disputed in Austria seems to be the expression of “cultural anxiety” (Grillo 2003) or essentialist versions of culture that aim at the protection of “our” culture among both minorities and majorities and thus contribute to the establishment of differences *between* groups and ignore the differences *within*. We suggest that the debate would be tremendously enriched if these shortcomings were overcome and notions such as tradition or honour were adequately understood not as static givens but as ongoing processes of interaction. Moreover, focusing on the *agency* of the women concerned instead would enable to perceive contestation and contradictions. It supports a more complex approach and helps to avoid resistance against proposed state measures from even those women with migrant background who fight violence themselves. Their voices should not remain unheard between the noises of cultural protectionists, radical modernizers and well-meaning but myopic politicians, who all claim that they know better what these women need.

¹ This article was first presented in an international workshop at the Vrije Universiteit Amsterdam on Gender equality, cultural diversity: European comparisons and lessons organised by Anne Phillips and Sawitri Saharso in June 2006. We are grateful to the participants of this workshop for their helpful comments.

² The Konkordat was ratified in 1934 and was meant to be an instrument of "Rekatholisierung" by the Austrian "Ständestaat"; Kalb/Potz/Schinkele 2003, 451. On the details of the Konkordat see Kalb/Potz/Schinkele 2003, 455-491.

³ After the the ban of headscarves in Turkish universities several hundred female students were supported by transnational Islamic organisations in order to be able to finish their studies abroad. About 400 students came to Vienna in this context and among them is Leyla Sahin, well known because of her legal action against the Turkish state (Sahin v. Turkey) at the European Court of Human Rights. Leyla Sahin brought the case in 1998 after being excluded from class at Istanbul University. The court backed Turkey in compliance with the constitution (Medda-Windischer 2003).

⁴ Schreiben an alle Landesschulräte/Stadschulrat für Wien, alle Zentrallehranstalten, alle Übungsvolks- und – hauptschulen, alle Höheren Land- und Forstwirtschaftlichen Lehranstalten, „Tragen von Kopftüchern von Schülerinnen mit islamischem Glaubensbekenntnis, Zl. 20.251/3-III/3/2004, 23.04.2004.

⁵ IGGiO: <http://www.derislam.at/haber.php?sid=78&mode=flat&order=1>

⁶ Amina Baghajati, Media Consultant and Andrea Salih, Women's representative of the IGGiO; <http://www.derislam.at/islam.php?name=Themen&pa=showpage&pid=115>.

⁷ Representatives of the Federal Ministries of Domestic Affairs, Foreign Affairs, of Social Affairs, Generation and Consumption, of Justice, of Education, Science and Culture and of Health and Women participated in these talks.

⁸ http://www.bmgf.gv.at/cms/site/attachments/1/1/1/CH0370/CMS1135072485918/measures_to_combat_harmful_traditional_practices_affecting_women_in_austria.pdf.

⁹ Austrian Federal Ministry for Health and Women
(<http://bmgf.cms.apa.at/cms/site/detail.htm?thema=CH0370&doc=CMS113863052563>)

¹⁰ This provision is based on Article 8 Family Reunification Directive, 2003/86/EC, derogating the provision of the first paragraph that "Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her." Article 8 additionally holds that "By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may

provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.”

¹¹ Burgstaller, Wiener Kommentar zum StGB, Rn 142 zu § 90.

¹² See Campaign against Forced Marriage (www.gegen-zwangsheirat.at), Annual report of the Interventionsstelle 2004, 40-45), Plattform gegen Zwangsheirat.

References:

Bischof, Günter, Anton Pelinka and Hermann Denz (2005) 'Religion in Austria', *Contemporary Austrian Studies* 13, New Brunswick/London: Transaction Publishers.

Böckenförde, Ernst-Wolfgang (2001) „Kopftuchstreit“ auf dem richtigen Weg?, *Neue Juristische Wochenschrift* 10.

Grillo, Ralph (2003) 'Cultural essentialism and cultural anxiety' *Anthropological Theory* 3(2): 157-173.

Heine, Susanne (2002) 'Islam in Austria' pp. 27-48 in W.A.R. Shadid and P.S. van Koningsveld (eds) *Intercultural Relations and Religious Authorities: Muslims in the European Union*, Leuven, Paris, Dudley: Peeters.

Kalb, Herbert, Richard Potz and Brigitte Schinkele (2003) *Religionsrecht*. Wien: Universitätsverlag.

Klenk, Florian (2005) 'Wenn der Staat versagt', *Falter: Stadtzeitung Wien* 26.

Medda-Windischer, Roberta (2003) 'The european court of human rights and minority right', *Journal of European Integration* 25(3): 249-271.

Meinhart, Edith (2006) 'Integration: Die bösen Moslems. Religiöse Fanatiker, entmündigte Frauen & Töchter?', *Profil* 21.

Münz, Rainer (2004) 'Österreich: Kopftuchstreit beigelegt' *Migration und Bevölkerung* 4: 3.

http://www.migration-info.de/migration_und_bevoelkerung/archiv/ausgaben/ausgabe0404.pdf. (download date Oct. 18, 2006).

Dachs et al. (eds) *Handbuch des politischen Systems Österreich. Die zweite Republik*. Wien: Manz Verlag.

Ortner, Julia/Weissensteiner, Nina (2006) 'Das System der Gewalt. Eltern, Ehe & Ehre', *Falter. Stadtzeitung Wien* 22.

Rohe, Mathias (2006) *Perspektiven und Herausforderungen in der Integration muslimischer MitbürgerInnen in Österreich*, Executive Summary, unpublished report, Erlangen, Mai 2006

Rosenberger, Sieglinde K. (2005) 'Political Parties and Religion' pp 63-80 in G. Bischof et al. (eds) 'Religion in Austria'..

Schinkele, Brigitte (2004) 'Der „Streit“ um das islamische Kopftuch', *Recht der Wirtschaft* 1: 30-36.