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## **From Gastarbeitersystem to Integration: Legal Aspects of Austrian Migration Policy**

**Abstract:** The purpose of this article is to present the most important legal regulations in the field of Austrian migration policy, taking into account the changes in this field, the nature of these changes and their conditions. The research question is whether the successive legal regulations were the result of clearly defined goals (and if so, whether these goals were achieved) or rather a result of passive adaptation to changing conditions. In the context of the slogan of integration advocated in recent years, it also seems essential to ask whether the legal solutions adopted in Austria strengthen integration or constitute an assimilationist tool. The article discusses such issues as the development of the system for the recruitment of foreign workers, changes in the perception of the phenomenon of migration and the reform of legislation in the field of migration policy in Austria. Moreover, attention is drawn to the most important determinants underlying this reform.

**Keywords:** Austria, *Gastarbeiter*, integration, migration, migration policy

### **Introduction**

Over the last few decades in Austria, there have been dynamic demographic changes that can be observed. One of the reasons for this situation is the phenomenon of immigration. Since the 1960s there has been a steady influx of immigrants, and this trend is increasing. A date which may be regarded as symbolic is 1961; it was then that the first agreement on the recruitment of foreign workers was concluded, which gave rise to the system referred to as the *Gastarbeitersystem*. Since then, economic, political and social conditions have changed, and these have had a significant impact on the shape of Austrian legislation.

The purpose of this article is to present the most important legal regulations in the field of Austrian migration policy, taking into account the changes in this field, the nature of these changes and their conditions. The research question is whether the successive legal regulations were the result of clearly defined goals (and if so, whether these goals were achieved) or rather a result of passive adaptation to the changing conditions. A hypothesis was formulated that the legal regulations in Austria in the field of migration policy were for a long time the effect of passive adaptation to changing conditions, not system solutions. In the context of the slogan of integration advocated in recent years, it also seems essential to ask whether the legal solutions adopted in Austria strengthen integration or constitute an assimilationist tool.

The article discusses such issues as the development of the system for the recruitment of foreign workers, changes in the perception of the phenomenon of migration and the reform of legislation in the field of migration policy in Austria. Moreover, attention is drawn to the most important determinants underlying this reform. The institutional and legal methods, as well as the decision-making method, have mainly been used. The first two of these were particularly useful when analysing legal norms in Austria. For this reason, these methods were used primarily in the first subsection and partly also in the second. Thanks to the decision-making method, it was possible to indicate the main conditions, causes and effects of legislative processes, as well as to show changes in Austria's immigration policy.

## 1. The beginnings of the temporary agency worker recruitment system

After World War II, the influx of people into Austrian territory was largely affected by economic factors. The main tool for migration processes at the time was labour-market regulation. The Foreign Workers Ordinance of 1933 (*Deutsche Reichsverordnung über ausländische Arbeitnehmer*) was reinstated; it had already been adopted by the German authorities. Subsequently, in 1941 – a few years after the incorporation of Austria into the German Reich – it was incorporated into the Austrian legal system, replacing the Inland Workers Protection Act (*Inlandarbeiterschutzgesetz*). What is interesting is that it remained in force until 1975.<sup>1</sup> The Passport Act (*Passgesetz*) of 1945 introduced visa requirements for travellers and applicants for residence in Austria.<sup>2</sup>

The subsequent regulations were the result of a dynamically changing situation on the labour market in the late 1950s and early 1960s. Unsatisfied demand for labour increased pressure for liberalisation of labour law towards greater freedom for recruiting foreigners. In 1961, the crucial Raab–Olah Agreement (*Raab–Olah–Ab-*

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1 A. Gächter, Von Inlandarbeiterschutzgesetz bis EURODAC-Abkommen, (in:) H. Gürses, C. Kogoj, S. Mattl (eds.), *Gastarbeiter. 40 Jahre Arbeitsmigration*, Vienna 2004, pp. 31–32.

2 *Ibidem*, p. 32; Gesetz vom 12. September 1945, betreffend das Passwesen, StGBI. No. 180/1945.

*kommen*) was concluded.<sup>3</sup> Its main provision was to define and specify the number of jobs for foreign workers that were necessary to meet market demand. Initially, it was decided to accept 47,000 foreigners. The most important thing, however, was that the foreigners were to be temporary workers, employed on a rotational basis for a period of 12 months. They could be sent back to their home countries in the event of an economic downturn.<sup>4</sup> The agreement made it possible to conclude contracts on the recruitment of temporary workers; the first was signed with Spain in 1962. However, it did not have the desired effect, since in the first year of recruitment only 25% of the planned immigration limit was used. This was due to better pay conditions in other recruiting countries, such as Germany, Switzerland and the Benelux countries. Only the agreements signed in the following years with Turkey and Yugoslavia enjoyed greater interest. The former was concluded in 1964 and was accompanied by the opening of a recruitment office in Istanbul. In 1966, an agreement was signed with Yugoslavia; in this case it was also decided to set up a special institution whose officials were responsible for the recruitment process. Its main office was in Belgrade.<sup>5</sup>

In the 1960s, the administrative practice played a huge role. The authorities tried to meet the expectations of employers and support grassroots initiatives, and the measures taken were adjusted solely to the needs of the market. The social partners had a strong position, and legal regulations in the field of migration policy remained scarce. This was largely due to the basic assumption of the temporary nature of the phenomenon taking place. The system of employee recruitment assumed rotation and short-term activity in the Austrian labour market. Permanent immigration was not taken into consideration, nor was the need to integrate foreigners. The system of recruiting foreign workers survived in a slightly modified form until 1975, and every year the employment limits were raised. Nevertheless, in many periods it was not possible to fill all the vacancies, and the whole system turned out to be inefficient. This fact had a large impact on the practice of informal recruitment.

Of the few legal regulations from this period, the 1968 Asylum Act (*Asylgesetz*) is worth mentioning.<sup>6</sup> However, its enactment was not a consequence of economic conditions but political ones. It should be noted that the system of recruiting foreign workers was accompanied by an influx of refugees from the Communist countries. The Hungarian crisis of 1956 and then the events in Czechoslovakia in 1968 contributed to the massive influx. The 1968 Act was an attempt to adjust and clarify proce-

3 The agreement is named after the then chancellor Julius Raab and the president of the Austrian Trade Union Federation Franz Olah.

4 H. Fassmann, U. Reeger, *From Guest Worker Migration to a Country of Immigration*, Vienna 2008, p. 23.

5 A. Gächter, *Von Inlandarbeiterschutzgesetz...*, *op. cit.*, pp. 34–35; E. Godlewska, *Polityka etniczna Republiki Austrii*, Lublin 2021, pp. 238–239.

6 Bundesgesetz vom 7. März 1968 über die Aufenthaltsberechtigung von Flüchtlingen im Sinne der Konvention über die Rechtsstellung der Flüchtlinge, BGBl. No. 126/1968.

dures in compliance with the UN Convention relating to the status of refugees of 28 July 1951. A new passport law (*Passgesetz*) also came into force in 1969.<sup>7</sup> Under its provisions, however, no significant changes were made to the previous regulations of 1945.

In the 1960s and early 1970s, the main stress was put on two areas. The first was the phenomenon of political refugees, and the second the system of employing foreigners as a workforce. It is worth noting that the law of that time referred exclusively to the former. The second area was based on administrative activities and the activities of social partners (trade unions, chambers of commerce, employers' organisations, etc.). During that period, a clear distinction was made between the concepts of refugees and economic migrants. In subsequent years – with further legal regulations – this distinction was blurred.

## **2. Changes in the perception of immigration in Austria – new legal regulations**

In the second decade of the 1970s, there was a re-evaluation in Austria regarding migration. The determinants included the economic crisis and the resulting lower demand for labour, the ineffectiveness of the quota system, the increase in the proportion of foreigners, the diversification of countries of origin and the change in the nature of public debate and public attitudes. All these phenomena forced the authorities to change their previous practice. Administrative decisions were becoming ineffective. Detailed legal regulations were to become a part of managing migration processes. In response to the phenomena taking place, the legislators' intention was to limit the inflow of foreigners and put even more emphasis on the 'economic usefulness' of immigrants.

The first legal changes were the enactment of the Aliens Employment Act of 1975 (*Ausländerbeschäftigungsgesetz* 1975) and the amendment of the Citizenship Act of 1983 (*Staatsbürgerschaftsgesetz-Novelle* 1983).<sup>8</sup> The 1975 Act strengthened the role of the Federal Ministry of Social Affairs (*Bundesministerium für Soziales*). Pursuant to § 1(4), the minister (having learnt the opinion of the Aliens Commission) was empowered by the decree to regulate in detail the provisions of the Act. According to the definition adopted by the Act, any persons without Austrian citizenship were considered to be foreigners. However, certain categories of foreigners were not covered by the Act; it excluded refugees subject to the Geneva Conventions, persons employed

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7 Bundesgesetz vom 22. Oktober 1969, betreffend das Passwesen, BGBl. No. 422/1969.

8 Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird (*Ausländerbeschäftigungsgesetz – AuslBG*) – BGBl. No. 218/1975; Bundesgesetz vom 3. März 1983, mit dem das Staatsbürgerschaftsgesetz 1965 (*Staatsbürgerschaftsgesetz-Novelle* 1983) und das Gebührengesetz 1957 geändert werden, BGBl. No. 170/1983.

(e.g. in scientific institutions) on the basis of interstate cultural cooperation agreements, persons employed in the diplomatic service and clergy in legally recognised churches and religious communities. On the grounds of the Act, the rules relating to the establishment of an employment relationship with a foreigner were clearly defined. An employer could only offer employment if the candidate had an official permit to take up work on the Austrian territory. Trainees or volunteers could conduct such an activity legally only for three months. The legislators also imposed an obligation on the employer to notify the competent employment office of the employment of a foreign worker. Work permits for foreigners depended primarily on the situation in the labour market and the employment rate. The legislators also introduced the criterion of 'important public and economic interest'. At the same time, a number of conditions were stipulated that had to be fulfilled in order for a work permit to be issued. The Act further regulated the issue of job quotas for foreigners: only the competent minister could grant permission for employment beyond the stipulated quota. However, there had to be important reasons for doing so, e.g. the need to increase employment in failing enterprises (in order to protect workplaces). Such decisions could be taken by the minister individually for particular occupational groups and only in exceptional cases. According to the provisions of the Act, a work permit was issued for a specific employer; if a foreigner changed their place of employment, it was necessary to go through the procedure again. This only did not apply in the case of a short-term change not exceeding a week. Consent was granted for one year, or if employment was to be taken up in enterprises operating seasonally, the permit was issued only for the duration of such work. It was possible to apply for an extension of the permit on condition that an application was made no later than four weeks before the expiry of the previous contract. After eight years of employment in Austria, a foreigner was exempt from the obligation to renew the work permit each time; such a person then obtained a so-called security certificate.<sup>9</sup> The aforementioned amendment to the Citizenship Act, was, in turn, a response to the increasingly common family reunification processes. In this case, it was primarily a matter of extending the provisions of the Act also to family members of immigrants.

The above-mentioned legal regulations, including above all the Act of 1975, were the first attempts to introduce more comprehensive measures towards immigrants. Nevertheless, they were limited only to the control of access to the labour market. No other mechanisms were introduced. In the long term, this strategy proved to be a failure. The influx of new immigrants was not stopped and the claim that immigration was temporary became unfounded.

In the last two decades of the 20th century, some dynamic demographic changes occurred in Austria. This was influenced by a further influx of economic migrants, political refugees and family reunification policies. However, the dynamism of the

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9 E. Godlewska, *Polityka etniczna...*, *op. cit.*, pp. 242–244.

1980s and 1990s should not only be seen in quantitative but also in qualitative terms. This is because deficiencies in attempts to integrate foreigners became clearly visible. It should be recalled that no legislative work has been undertaken in this field so far. The conviction that immigration is a temporary phenomenon was still strong and popular. The reform of Austria's immigration policy, initiated at the end of the 20th century, was a somewhat delayed response to the changes.

The legislative work of this period was based on several new principles – comprehensiveness, coordination and shifting the focus to government entities at the expense of the social partners. Albert Kraler describes those activities as a period of seeking coherence.<sup>10</sup> The first principle implied actions taken on many levels; regulating and 'sealing' the labour market was not enough. With the increase in the number of foreigners and the failure of the basic principle of temporary labour immigration, it became necessary to introduce integration measures. According to the authorities, it also became necessary to introduce greater control over migration processes, which consequently meant strengthening government entities.

In the background of the reform were changes on the Austrian political scene associated with the strengthening of the position of the populist Freedom Party of Austria (*Freiheitliche Partei Österreichs*), whose programme principles were largely based on anti-immigrant slogans. This was fertile ground, as there was already a clear tendency for public opinion to change. Until then, immigrants had enjoyed a relative degree of acceptance and were viewed positively by Austrian employers. Political refugees from behind the Iron Curtain were also looked upon with understanding. However, the situation was to change after the fall of Communism. The abuse of the right to asylum was one of the reasons for the emergence of a trend towards securitisation of immigration phenomena. This mainly concerned economic immigration; however, it was possible to observe that the negative views were transferred to other persons seeking protection.<sup>11</sup>

The legislative work proceeded in several stages. In 1991, a project of the so-called Foreigners Package (*Fremdenpaket*) was announced. It put great emphasis on asylum policy, which the immigration policy of those times started to be associated with. The first law was the new Asylum Act (*Asylgesetz*) passed in 1991.<sup>12</sup> The law established the Federal Asylum Office (*Bundesasylamt*), which was directly subordinate to the Federal Ministry of the Interior. The minister could also appoint a refugee consultant (*Flüchtlingsberater*). For those who were granted asylum in Austria, the state

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10 A. Kraler, The Case of Austria, (in:) G. Zincone, R. Penninx, M. Borkert (eds.), *Migration Policy-making in Europe: The Dynamics of Actors and Contexts in Past and Present*, Amsterdam 2011, p. 30.

11 A. Kraler, K. Sohler, Austria, (in:) R. Gropas, A. Triandafyllidou (eds.), *European Immigration: A Sourcebook*, Basingstoke 2007, pp. 20, 28.

12 Bundesgesetz über die Gewährung von Asyl (*Asylgesetz* 1991), BGBl. No. 8/1992.



could organise assistance in the form of various courses, including language courses. On the other hand, the law clarified the notion of a safe third country and a safe country of origin. Furthermore, the principle of annually fixed quotas of residence permits for different categories of immigrants was introduced. A possibility of taking fingerprints from asylum seekers was one of the procedural changes introduced. The intention of the legislators was to speed up procedures in clearly unfounded cases and to limit the number of asylum seekers. Detailed procedural issues were specified in the Act on the Residence of Foreigners and the Aliens Act.<sup>13</sup>

The next stage of the reform took place in the second half of the 1990s. The new Aliens Act came into force in 1998 and merged the laws previously adopted as part of the Foreigners Package into a single legal act.<sup>14</sup> Many of the existing solutions were retained, but a greater emphasis was put on the need for integration. The Act regulated issues related to the granting of entry permits and residence permits, including work permits, and procedural measures in the event of deportation and expulsion.

The Act was adopted due to the fact that Austria joined the European Communities on 1 January 1995 and in connection with the need to adapt internal law to EU asylum regulations. Over the next few years, EU regulations would have an impact on Austrian legislation. It should be emphasised, however, that thinking about migration policy as a Community problem was then a relatively new phenomenon for the European Union. For many years, it remained in the sphere of intergovernmental decisions left to sovereign states. It began to take on a Community character only after the signing of the Schengen Agreement in 1985 on the abolition of controls at the internal borders of the Benelux countries, Germany and France and the tightening of controls at external borders.<sup>15</sup> In 1995, Austria joined the Schengen area. The Schengen rules were then incorporated into the Community legal order under the Amsterdam Treaty.

When the law came into force, the increasingly popular slogan ‘integration instead of new immigration’ (*Integration anstelle von neuer Zuwanderung*) really became meaningful. In reality, it meant a mobilisation of forces to create better and more effective adaptation opportunities for previously settled immigrants and their descendants, while at the same time trying to limit the influx of newcomers. By virtue of the Act of 1998, the federal government, by agreement with the National Council and after consultation with the social partners, was empowered to set annual quotas relating to the number of residence permits for newly arrived immigrants. The gov-

13 Bundesgesetz, mit dem der Aufenthalt von Fremden in Österreich geregelt wird (Aufenthaltsgesetz), BGBl. No. 466/1992; Bundesgesetz: Erlassung des Fremdengesetzes und Änderung des Asylgesetzes 1991 sowie des Aufenthaltsgesetzes, BGBl. No. 838/1992.

14 Bundesgesetz über die Einreise, den Aufenthalt und die Niederlassung von Fremden (Fremdengesetz 1997), BGBl. I No. 75/1997.

15 M. Pacek, M. Bonikowska, Unijna droga do wspólnej polityki migracyjnej w kontekście debaty o przyszłości Wspólnot, ‘Studia Europejskie’ 2007, no. 1, p. 50.

ernment did this through a special regulation (*Niederlassungsverordnung*). The quota system also covered the process of family reunification.

The quota system, although restrictive, was not perfect. The employees of foreign news media, among others, were excluded from the quota obligation, provided that their income was covered by the income they received as employees of these media and they did not engage in other paid employment in Austria. A similar situation applied to persons excluded from the material scope of the Aliens Employment Act (so-called key personnel), as well as their spouses and minor children (provided, however, that they did not engage in any paid employment).

In the field of integration policy, the offer of courses for immigrants was expanded once again. Apart from basic language courses and courses on Austrian history and culture, the offer also included courses on democratic principles and integration in Europe. Moreover, in 1998, the Citizenship Act was amended.<sup>16</sup> It made the issues related to naturalisation more precise, and what is more, for the first time, immigration policy was linked to this process. The law introduced the principle which proclaimed the motto 'integration before citizenship' (*Integration vor Staatsbürgerschaft*). Granting of citizenship was thus to be the culmination of the integration process. For this purpose, the applicant had to prove that he or she had 'personally and professionally' submitted to the integration process.<sup>17</sup>

The so-called integration agreement, introduced in 2002, was a new solution to the situation. All those who arrived in Austria after 1998 from any third countries were required to sign a special agreement. The document imposed several key obligations on the immigrants. First of all, they were obliged to attend language courses. Compulsory reading and writing courses were introduced for illiterate immigrants. A refusal to attend courses intended for immigrants could result in a refusal to issue or renew the relevant documents authorising their residence in the country. Some changes were also introduced that led to the full harmonisation of immigration and employment policies. After five years of residence, an immigrant received a special certificate which, on the one hand, constituted a 'certificate of residence' and, on the other, entitled him or her to unrestricted access to the Austrian labour market.<sup>18</sup>

Another act, customarily referred to as the Aliens Police Act, was adopted in 2005.<sup>19</sup> However, the Act regulated not only the powers of the titular units, but also issues related to entry and residence permits for foreigners. The Aliens Police were in fact state administrative units, subordinate to the Federal Ministry of the Interior,

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16 Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985 geändert wird (Staatsbürgerschaftsgesetznovelle 1998), BGBl. I, No. 124/1998.

17 A. Kraler, *The Case of...*, *op. cit.*, p. 45.

18 *Ibidem*, pp. 35–36, A. Kraler, K. Sohler, *Austria...*, *op. cit.*, p. 21.

19 Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel (Fremdenpolizeigesetz 2005), BGBl. I No. 100/2005.



responsible for preventing illegal border crossings, monitoring the stay of foreigners on Austrian territory, supervising deportation procedures and preventing crime. The passing of the law was a confirmation that immigration processes were more and more often perceived in terms of threats to state security. The law was also a reflection of the growing pressure to increase control over these processes. In 2005, an amendment to the Law on Citizenship was also passed.<sup>20</sup> The conditions for obtaining citizenship were defined very precisely and in detail. They included, among others, employment, no criminal record, a high level of language skills and knowledge of Austrian history, geography and the political system.

In recent years, the so-called migration crisis in Europe has been a factor that has largely determined the immigration policy of Austria. From the very beginning of the crisis, the Austrian authorities were interested in solving it as quickly as possible. The territory of the state became one of the main transit routes for refugees and immigrants to Germany. The Austrian government responded positively to the proposal to create a system of forced relocation of migrants in the European Commission communication of 13 May 2015, the Council Decision of 14 September 2015 and the Council Decision of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.<sup>21</sup> All Member States (except Denmark, Ireland and the United Kingdom), including Austria, made a commitment to relocate migrants. Soon, however, Austria joined the group of countries known as the so-called 'reluctant coalition'. The common denominator of the coalition partners was the perception of the migration crisis primarily in terms of threats and the lack of acceptance of the solutions proposed by the European Commission.

The increasingly tense atmosphere around the proposals for solving the migration crisis in Europe became the background for another legislative initiative in Austria. On 8 June 2017, a new law on integration was passed<sup>22</sup>. The solutions it encompassed reflected some characteristic trends in Austria's immigration policy in recent years. The Act was intended to facilitate the integration into society of persons without Austrian citizenship and was addressed to legally residing persons using asylum, subsidiary protection and third-country nationals subject to the Residence of

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20 Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985, das Tilgungsgesetz 1972 und das Gebührengesetz 1957 geändert werden (Staatsbürgerschaftsrechts-Novelle 2005), BGBl. I No. 37/2006.

21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration (2015a) (COM (2015) 240 final, 13.05.2015); Council Decision 2015/1523 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, 2015 (O.J. L 239 146, 15.09.2015); Council Decision 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, 2015 (O.J. L 248 80, 24.09.2015).

22 Bundesgesetz zur Integration rechtmäßig in Österreich aufhältiger Personen ohne österreichische Staatsbürgerschaft, IntG, BGBl. I Nr. 68/2017.

Foreigners Act. The legislators emphasised the promotion of integration on the one hand and its mandatory nature on the other.

The law regulated the scope of courses, which were obligatory for every foreigner over 15 years of age. Supervision of their implementation was entrusted to the Federal Ministry for Europe, Integration and Foreign Affairs. A monitoring centre for integration processes was also established within the structures of the Ministry. The information collected and processed by the centre was to concern, for instance, such issues as the number of asylum applications, the number of positively verified and rejected asylum applications, the number of residence permits issued, the number of immigrant children attending compulsory education, the number of persons attending compulsory integration courses and the number of (registered) persons working and looking for a job. The law also set out a system of penalties for failure to comply with legal obligations (fines and imprisonment).

## Conclusions

Presently in Austria there is extensive legislation in the field of migration policy. This article points out the most important legal regulations in this area. It is worth noting that the key period was the 1990s. The legislative work was then carried out at an unprecedented speed and, more importantly, concerned areas that had previously been mostly ignored. Since the 1960s, a system for the recruitment of temporary workers had been applied in Austria, and administrative decisions on the labour market were the primary tool for regulating the movement of people. Initially, such measures were sufficient, and there was no pressure to take initiatives in other areas. Moreover, it was assumed that immigration was temporary, which in the authorities' opinion justified the lack of activity with respect to the integration of foreigners. This approach proved to be a mistake. A further constant influx of immigrants meant increased efforts to limit the arrival of people while at the same time rejecting the definition of Austria in terms of an immigrant state. In the first phase, the main tool was even more restrictive labour market regulation; later it became asylum policy, with asylum restrictions generally being a consequence of the inability to stop labour immigration. As a result of the measures taken, the number of foreign workers, mainly people from the former Yugoslavia, decreased significantly. It was, however, significant that the decline was much smaller than expected. The increasing number of asylum seekers was also a challenge. These phenomena gave rise to an extensive legal reform. The turn of the 21st century brought a new way of managing the migratory phenomenon; the most characteristic feature was the introduction of even greater restrictions in order to limit the influx of people. The reforms of this period also increased the powers of the state bodies.

On the grounds of the solutions adopted in Austria, it is possible to indicate a model of residual (assimilationist) immigration policy. Its main assumption is that a residence permit depends on certain essential conditions. These mainly concern the assessment of immigrants' suitability for the Austrian labour market, but also their ability to adapt to the norms applicable in society. States using this model represent the doctrine of limiting immigration, particularly from regions that differ significantly in terms of cultural and social norms. At the same time, they reserve the right to deport immigrants who fail to fulfil their commitments. Such a model is in fact intended to contribute to the assimilation of the newcomers.<sup>23</sup>

It should be noted that, with the exception of the first years of the *Gastarbeitersystem*, a noticeable feature has been the consistent effort to limit the influx of immigrants. At the same time, some changes in the perception of the migratory phenomenon can be observed. The notion of immigration evolved towards integration and the 'foreigners package' towards an integration package. With the acceptance of immigration as a permanent phenomenon, more emphasis has been put on the need to integrate foreigners. Austrian legislation assumed a more coordinated and comprehensive nature. On the other hand, with reference to one of the questions posed in the introduction, it should be noted that in the last few years some assimilationist pressures could also be observed. The former 'integration offer' has been replaced by an 'integration obligation', and the law has instead become a tool for increased surveillance of migrants. The distinction between integration and assimilation has become blurred. In the time of the so-called migration crisis in Europe, the Austrian authorities increasingly emphasise the enforced nature of integration, the need for greater control over immigration processes and the introduction of elements of forced solutions (e.g. in deportation procedures) and greater restrictions for non-compliance with the law.

The changing attitude towards the influx of immigrants has resulted in an evolution towards an increasingly closed state. This can be illustrated by Austria's activities within the European Union. At the beginning of the migration crisis, the Austrian authorities were optimistic about the EU's plans for the forced solidarity-based relocation of migrants, while criticising the states that opposed these proposals. As the crisis escalated, Austria's position evolved. Finally it joined the so-called reluctant coalition. This attitude was clearly shown when it abandoned the EU forced relocation programme during Austria's presidency of the EU Council in the second half of 2018. The efforts made by the Austrian government in this direction were a confirmation of its scepticism about the possibility of resolving the crisis in the European forum.

The most important determinants of the legal reform in the field of migration policy include the economic situation, the failure of assumptions about the tempo-

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23 P. Kaczmarczyk, M. Okólski (eds.), *Polityka migracyjna jako instrument promocji zatrudnienia i ograniczania bezrobocia*, Warsaw 2008, p. 16.

rary nature of the migration phenomenon, the further influx of foreigners and related demographic changes, but also the radicalisation of the Austrian political scene. In recent years, however, the migration crisis in Europe and the disputes surrounding the EU's migrant relocation programme have remained the main determining factors. The Austrian government has called for a fight against illegal immigration and the smuggling of people to Europe, guaranteeing the safety of EU citizens and increasing support for countries at the external borders.

What remains characteristic for the legal solutions in Austria is the correlation between the asylum policy and actions towards economic migrants. This mostly results from the broad connotations of the term 'immigrant'. In the simplest terms, it can refer to groups other than recognised national minorities. In Austria, the term 'population with a migrant background' (*Bevölkerung mit Migrationshintergrund*) is also used in this context. It refers to persons whose parents were born outside of Austria; therefore it is a very broad concept. It applies to economic migrants but also to refugees and asylum seekers. It should also be mentioned that the separation between the terms 'asylum seeker' and 'refugee' is hardly used in Austria. The former term is rather used in the context of 'asylum seekers' (*Asylwerberinnen / Asylwerber*) meaning persons seeking admission and protection from persecution whose asylum procedure has not yet been completed.<sup>24</sup> Once the procedure has been successfully completed, they are recognised as refugees (*anerkannter Flüchtling*, or the explicit term *Asylberechtigter* is used). Thus the other term refers to the legal status the individual has obtained.<sup>25</sup>

Referring to the hypothesis and research questions posed, it seems reasonable to state that the legal regulations in the field of migration policy in Austria were for a long time the result of passive adaptation to changing conditions. If any purposefulness of actions could be taken into account, it was only the restriction on the influx of new immigrants. However, the effects in particular periods were far from expectations. The lack of clearly defined objectives for migration policy and the failure to take any action with respect to integration resulted from the denial of immigration as a permanent phenomenon. A change of attitude was visible only at the turn of the 21st century. This process was initiated by a large-scale legal reform. On the grounds of the analysis of Austria's contemporary migration policy, it may be concluded that the authorities are now choosing an attitude of active participants rather than passive observers.

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24 Such an interpretation is consistent with § 2(14) of the Asylum Act. Comp. Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005), BGBl. I No. 100/2005.

25 Migration und Integration. Zahlen, Daten, Indikatoren 2018, Vienna 2018, pp. 116–117; Österreichischer Integrationsfonds / Flüchtlingshochkommissariat der Vereinten Nationen, Flüchtlinge und Integration. Begriffe einfach erklärt, Vienna 2016, p. 22.

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