



01/07/2021

## **EUROPEAN SOCIAL CHARTER**

Comments by the Amnesty International on  
Thematic groups 2: health, social security and social  
Protection related to Austria

Report registered by the Secretariat  
on 01 July 2021

**CYCLE 2021**



**“WE JUST WANT SOME  
RIGHTS!”**

MIGRANT CARE WORKERS DENIED RIGHTS IN AUSTRIA

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First published in 2021

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: EUR 13/4326/2021

Original language: English

**amnesty.org**



**Cover photo:** A carer holding hands of a resident in care home in Austria.

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# METHODOLOGY

This report is based on research carried out between November 2020 and May 2021. The research included initial desk research analysing Europe-wide trends and human rights concerns regarding the working conditions of care workers in the long-term care sector, which includes both residential care homes and care provided to older people in their homes.

Long-term care of older people in Austria comprises residential care homes and care provided to older people in their homes by professional health carers and live-in care workers. The decision by Amnesty International to specifically investigate the situation of live-in care workers in Austria and the protection of their human rights stemmed from the particular challenges that these workers have experienced in the context of the COVID-19 pandemic. Providing care to older people is a highly feminized profession and is frequently a precarious field of work. The people doing it are under-valued and under-compensated. Further, restrictions on international travel have had a particularly negative impact on live-in care workers in Austria, as more than 98% of them are circular migrants who alternate working periods in Austria with periods spent in their home countries in Central and Eastern Europe. Moreover, the pandemic brought to the fore human rights concerns associated with the self-employment status of these workers, specifically regarding their access to the rights to just and favourable conditions of work and to social security.

The initial desk research analysed Austrian domestic legislation, available statistics regarding live-in care workers as well as existing academic literature focusing on live-in care workers in Austria. Subsequently, Amnesty International researchers interviewed 32 people with either direct experience of care work, expertise in and/or roles relevant to the care work profession in Austria. The interviewees include six Slovak and seven Romanian women who were working or had worked in Austria as live-in carers. These were conducted as ten individual interviews and one group-interview.

As is the case for the majority of live-in care workers in Austria, the 13 live-in care workers who Amnesty International spoke to are all women and self-employed. Two interviews were conducted in person and the others over the phone or via a secure online communication platform. The interviews were conducted in Slovak or German without interpretation and in Romanian with interpretation into German. In compliance with informed consent given by interviewees and as is the norm in many Amnesty International investigations, we provide the date and record of when the interview took place, but have protected the identity of some of the people to whom we have spoken by using a pseudonym or other means to anonymise the individual, in accordance with their wishes.

In addition to live-in care workers, Amnesty International spoke with 17 representatives of trade unions and non-governmental organizations, with experts in the fields of migrant labour, labour law, and care as well as with two representatives of placement agencies. In particular, Amnesty International spoke with representatives of *Iniciatíva za zlepšenie podmienok v 24h opatrovaní (Initiative for improving conditions in 24h care)*, *DREPT pentru îngrijire (Right for care)*, the Austrian Chamber of Labour, Vidaflex, a trade union, the Austrian Chamber of Commerce, and the Austrian certification body ÖQZ24, the institution providing quality assurance for placement agencies in the live-in care sector.

Amnesty International requested a meeting with five placement agencies in Austria: these include three large business enterprises and two well-established placement agencies, including one not-for-profit organization. Two of the placement agencies contacted are certified by the ÖQZ24. Two placement agencies positively followed-up on Amnesty International's requests for a meeting. One agency responded to questions in writing. The other agencies did not reply to Amnesty International's requests for a meeting.

In addition, Amnesty International requested information in writing about statistics regarding live-in care workers as well as their working conditions from the Ministries of Labour, of Social Affairs, Health, Care and

Consumer Protection and for Digital and Economic Affairs. On 10 May, the Ministry of Labour shortly replied to Amnesty International by email emphasizing that the Ministry does not have competence for live-in care workers as they are self-employed. On 18 May 2021, the Minister of Social Affairs, Health, Care and Consumer Protection replied to Amnesty International in writing. On 7 June, the Ministry for Digital and Economic Affairs replied to Amnesty International by email. The information provided by the two Ministries is reflected in the report. Prior to their publication, Amnesty International shared the main findings and recommendations included in this report with the three Ministries mentioned above with a view to offering the possibility to comment on them. On 23 June, the Minister of Social Affairs, Health, Care and Consumer Protection provided some further comments, which are reflected in this report.

Amnesty International would like to thank all the stakeholders interviewed as part of this research, and, in particular, all the women working as live-in carers who shared their experiences and perspectives with us.

# BACKGROUND: WORKERS' RIGHTS IN THE LONG-TERM CARE SECTOR IN EUROPE

Older people have been hit hard by the COVID-19 pandemic. In the OECD region, ninety-four per cent of people who died because of COVID-19 were over 60 years-old.<sup>1</sup> The pandemic has also exposed the dire, long-term working realities of care workers in Europe, where, on average, up to 90% are women and 20% migrant workers. In countries such as Ireland and Austria, the percentages of foreign-born care workers are considerably higher than the average, amounting to 50% and 30%, respectively.<sup>2</sup> While the need to provide care for older people is essential and 83% of care workers have a medium or high level of education<sup>3</sup>, they are often under-valued and work in situations of precarity, being employed through temporary and insecure contracts, receiving low wages and having inadequate access to social security.<sup>4</sup>

Restrictions on international travel have had an impact on live-in care workers in countries such as Austria, Germany and Switzerland, where the majority of live-in care workers are often migrants from Central and Eastern Europe who spend at least half of the year in their countries of origin.<sup>5</sup> During the height of the COVID-19 pandemic, live-in care workers were often suddenly required to extend their working rotas in the countries where they were working. Lockdown measures also frequently saw live-in migrant carers compelled to work 24/7, as these measures restricted opportunities for family and friends to visit and spend time with older people.

## POOR WORKING CONDITIONS IN THE LONG-TERM CARE SECTOR (LTC SECTOR)

As in many other regions of the world, the European population has an increasingly large number of older people. In Europe, between 2019 and 2050, the number of people older than 65 years will increase by more than 43%, from about 90.5 million to 129.8 million.<sup>6</sup> The changes in the age structure of the European

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<sup>1</sup> Organization for Economic Cooperation and Development (OECD), Workforce and safety in the long-term care during the COVID-19 pandemic. Figure 1, percentage of total accumulated COVID-19 related death by age, 2020, available at [www.oecd.org/coronavirus/policy-responses/workforce-and-safety-in-long-term-care-during-the-covid-19-pandemic-43fc5d50/#figure-d1e46](http://www.oecd.org/coronavirus/policy-responses/workforce-and-safety-in-long-term-care-during-the-covid-19-pandemic-43fc5d50/#figure-d1e46).

<sup>2</sup> OECD, Who Cares? Attracting and retaining care workers for the elderly, 2020, p.45, available at [www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&csp=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book](http://www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&csp=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book)

<sup>3</sup> According to the OECD, 63 % of care workers in the LTC sector hold upper secondary education and 21% university education. OECD, (previously cited).

<sup>4</sup> OECD, Who Cares? (previously cited).

<sup>5</sup> M. Leibfingher et al., "Impact of COVID-19 Policy Responses on Live-In Care Workers in Austria, Germany, and Switzerland" in *Journal of Long-Term Care*, pp.144-150, 2020, available at [eprints.lse.ac.uk/108515/1/Impact\\_of\\_covid\\_19\\_policy\\_responses\\_on\\_live\\_in\\_care\\_workers\\_published.pdf](http://eprints.lse.ac.uk/108515/1/Impact_of_covid_19_policy_responses_on_live_in_care_workers_published.pdf)

<sup>6</sup> Eurostat, Ageing Europe. Statistics on population developments, 2020, available at [ec.europa.eu/eurostat/statistics-explained/index.php?title=Ageing\\_Europe\\_-\\_statistics\\_on\\_population\\_developments#Older\\_people\\_.E2.80.94\\_population\\_overview](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Ageing_Europe_-_statistics_on_population_developments#Older_people_.E2.80.94_population_overview).

population mean that states have to design policies, systems and take measures to ensure the increasing need for long-term care (LTC) of older people is met. LTC comprises all services to help older people living as independently and safely as possible as they age.

One crucial challenge in the long-term care sector is the shortage of carers as the growth in demand outpaces the supply of carers.<sup>7</sup> However, the shortage of care workers in the LTC sector is exacerbated by the continued lack of value this feminized work is given, the consistently low pay as well as poor working conditions which lead to low numbers applying for the role, as well as low retention rates. In the LTC sector job retention is on average two years shorter than in any other economic sector.<sup>8</sup> This high turn-over is largely due to the poor working conditions, in particular low wages and short-term contracts. For example, workers in care homes are usually paid less than workers in similar occupations employed by hospitals. Moreover, care workers are often employed temporarily, part-time or are outsourced agency workers.

The OECD estimates that while the median hourly wage of care workers in the LTC sector is €9, the median hourly wage of hospital workers in the same occupations is €14. About one fifth of care workers have temporary contracts, compared to one tenth of hospital workers. New forms of non-standard employment, such as “zero hour” contracts or agency work, are widespread in some countries; for example in the United Kingdom a quarter of care workers are on “zero-hour” contracts, which are associated with unpredictable income and working patterns. In some countries such as Austria, live-in care workers, who care for older people in their homes, are often misclassified as self-employed.

Care workers in non-standard employment often experience barriers in accessing social protection schemes such as unemployment benefits, sick pay, sickness benefits, and special parental leave arrangements.<sup>9</sup> During the pandemic governments have put in place some measures to improve access to social protection; for example, many European countries, including Austria, have extended sick pay and sickness benefits to workers who had to quarantine. However, these measures have often been temporary and have fallen short of addressing long-term barriers for enjoying the right to social security.<sup>10</sup>

Live-in care workers are categorised as domestic workers by the International Labour Organization (ILO) as they live with the older people whom they care for.<sup>11</sup> The ILO has emphasized that the working hours of domestic workers are among the longest and most unpredictable in the world.<sup>12</sup> Moreover, women working in domestic work such as live-in carers are also vulnerable to experiencing stress, physical violence and sexual harassment because of their frequently precarious working conditions and location of employment.<sup>13</sup>

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<sup>7</sup> OECD, Who Cares? Attracting and retaining care workers for the elderly. Chapter 2: addressing the shortfall of workers, 2020, available at [www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&\\_csp=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book](http://www.oecd-ilibrary.org/sites/92c0ef68-en/1/3/2/index.html?itemId=/content/publication/92c0ef68-en&_csp=50980b2bb9059e51e350f213ee338dac&itemIGO=oecd&itemContentType=book)

<sup>8</sup> OECD (2020). Who Cares? Attracting and retaining care workers for the elderly. Chapter 4: addressing retention by creating better quality jobs in the long-term care sector (previously cited).

<sup>9</sup> European Trade Union Institute (ETUI), Non-standard workers and the self-employed in the EU: social protection in the Covid-19 pandemic, 2020, available at [www.etui.org/sites/default/files/2021-03/Non-standard%20workers%20and%20the%20self-employed%20in%20the%20EU%20social%20protection%20during%20the%20Covid-19%20pandemic-2021\\_0.pdf](http://www.etui.org/sites/default/files/2021-03/Non-standard%20workers%20and%20the%20self-employed%20in%20the%20EU%20social%20protection%20during%20the%20Covid-19%20pandemic-2021_0.pdf)

<sup>10</sup> (ETUI), Non-standard workers and the self-employed in the EU: social protection in the Covid-19 pandemic, p. 27 (previously cited).

<sup>11</sup> International Labour Organization (ILO), Who are domestic workers, available at [www.ilo.org/global/topics/domestic-workers/who/lang-en/index.htm](http://www.ilo.org/global/topics/domestic-workers/who/lang-en/index.htm)

<sup>12</sup> ILO, Working time of domestic workers, Policy Brief no. 7, available at [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_230837.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_230837.pdf)

<sup>13</sup> Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 26 on women migrant workers, 2008, available at [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf). Committee on the Rights of All Migrant Workers and Members of their Families, General Comment No. 1 on domestic migrant workers, 2010, available at [www2.ohchr.org/english/bodies/cmw/cmw\\_migrant\\_domestic\\_workers.htm](http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm)



# INTRODUCTION: THE SITUATION OF MIGRANT WOMEN CARING FOR OLDER PEOPLE IN AUSTRIA

Austria has an increasingly ageing population – more than one fourth of the population will be older than 65 by 2040 – and thus a growing need for care workers.<sup>14</sup> Cash benefits and, until 2018, the responsibility of older people for funding their own long-term care in residential care homes (see chapter 1) have resulted in home care being prioritized in Austria.<sup>15</sup> Care is provided to older people in their homes by health professionals, family members<sup>16</sup> as well as by more than 60,000 live-in care workers.<sup>17</sup>

The latter are often referred to as 24-hour care workers (*24-Stunden Betreuer\*innen*). Almost all live-in care workers are women from Central and Eastern European countries, mainly Romania and Slovakia.<sup>18</sup> Women working in this way commonly migrate for short periods, and alternate working rotas of two or four weeks in Austria, then returning for a period to their countries of origin.

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<sup>14</sup> Austrian Office for Statistics, Population forecasts 2020: more elderly people than children and teenagers, 2020, available at [www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bevoelkerung/demographische\\_prognosen/067546.html](http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/demographische_prognosen/067546.html)

<sup>15</sup> European Commission, Challenges in long-term care in Europe. A study of national policies. Chapter 1.3 Cash benefits for the care-dependent person, 2018, available at [ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9185](http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9185)

<sup>16</sup> In 2019, about 382.100 older people received some form of long-term care in Austria, either in their homes or in residential care homes. In addition, about 30,000 older people were cared for by about 60,000 live-in care workers. Live-in care workers cared for about 7% of the overall number of older people receiving long-term care in that year. Further information is provided by the Austrian Office of Statistics and is available here:

[https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/soziales/sozialeleistungen\\_auf\\_landesebene/betreuungs\\_und\\_pflegedienste/index.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/soziales/sozialeleistungen_auf_landesebene/betreuungs_und_pflegedienste/index.html)

<sup>17</sup> In March 2021 the Ministry for Social Affairs, Health, Care and Consumer protection estimated that 60,280 live-in care workers were actively working in Austria. Written correspondence between the Ministry and Amnesty International, 18 May 2021. In June 2021, the Ministry for Digital and Economic Affairs indicated that more than 88,000 business licences for exercising the profession of live-in care workers were registered in Austria. Not all those who have a business licence actively work as live-in care workers. Email correspondence between the Ministry and Amnesty International, 7 June 2021.

<sup>18</sup> The Ministry for Social Affairs, Health, Care and Consumer protection provided information regarding the nationality of 33,069 live-in care workers (the number of care-workers whose remuneration is funded by extra financial support provided by the Ministry, see chapter 1); 51.3% of these live-in care workers are Romanian, 27.1% Slovak, 8.6% Croatian, 6.7% Hungarian, 3% Bulgarian, 1.3% Polish, 0.6% Slovenian and 1.4% of other nationalities. Written correspondence between the Ministry and Amnesty International (previously cited). The Ministry for Digital and Economic Affairs stated that 98,4% of the people holding a business licence to work as live-in care workers are non-Austrian nationals. 27.2% are Slovak nationals and 50.83% are Romanian nationals. Email correspondence between the Ministry and Amnesty International (previously cited).

The vital role of live-in care workers is not highly valued socially or politically. In Austria more than 92% of live-in care workers are women and more than 98% of them are migrants.<sup>19</sup> Austria has one of the highest gender pay gaps in Europe (19% in 2019).<sup>20</sup> Moreover, migrant workers are paid 25% less than nationals and migrant women are paid 26.8% less than non-migrant women.<sup>21</sup> The intersecting factors of being women and their migrant status contribute to workers' precarity: low wages, lack of protection by labour regulations and barriers in accessing social protection.

In 2016, the average monthly net income for Slovak live-in care workers was €840 or €10,080 per year.<sup>22</sup> The yearly average income of these care-workers was about 30.7% of the net average yearly earnings in Austria in the same year, which raises concerns regarding the right to fair remuneration (see chapter 1.1). Austrian domestic law establishes a higher minimum wage for employed live-in care workers (see chapter 1.1). However, because more than 98% of live-in care workers are classified as self-employed, they are denied minimum wage protection.<sup>23</sup>

Women who are migrant live-in care workers often decide to work for periods of time in Austria due to high rates of female unemployment, gender pay gaps and low wages in their countries of origin and to financially support their families. For example, **"Nadia"**, a Romanian care worker, explained to Amnesty International:

"I've been working in Austria for six years now because I want to support my family back home in Romania. My daughter has two children. My grandson is three years old and lives with a disability. I have to support my daughter and my grandson because my grandson needs a surgery sooner or later. My son-in-law has been unemployed for five months. They've got €400 to survive every month. My family depends on me and my work in Austria. Of course, it's difficult to be separated from my family for a month but it's the only way to ensure that my family has enough money to survive. [I work] one month in Austria to earn enough money for my family and when I'm back home in Romania for a month [I do all I can to] help my daughter and her family."<sup>24</sup>

The United Nations Working Group on Discrimination against Women and Girls (UN Working Group), an expert group tasked with analysing and providing interpretative guidance as to state obligations to respect, protect and fulfil women's human rights, highlighted the human rights concerns relating to women migrants conducting care work abroad. They predict that: "There will likely be an increased demand for migrant domestic and care workers in the context of population ageing. However, migrant workers are often denied human rights, such as access to health care and social protection, in their country of work. [...] For migrant domestic and care workers, gender-based discrimination is compounded by further discrimination, among other things, based on their legal status, ethnicity, race, class or caste identities."<sup>25</sup>

Amnesty International's research and the findings in Chapters 1, 2 and 3 indicate that the situation of women who are also migrants and work as live-in carers in Austria raises concerns in relation to minimum wage, working time, rest periods, access to sick benefits and discrimination, and requires that the government take measures to urgently address the same and comply with their obligations under international human rights law.

<sup>19</sup> Email correspondence between the Ministry of Digital and Economic Affairs and Amnesty International, (previously cited).

<sup>20</sup> EUROSTAT, The gender pay gap in the EU, 2019, available at: [ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en). The Committee on the Elimination of Discrimination against Women (CEDAW) recommended Austria to "effectively enforce the principle of equal pay for work of equal value, in order to narrow and ultimately close the gender pay gap". CEDAW, Concluding observation on Austria, 2019, para. 33, available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPriCAqKb7yhscjdmOxgERNalXh22nhTUINZW7AQztOWsZeq8NsaJT1xH1X6OFJixMF%2b80Dwd4h19F%2bZHoswD6RDdhYFrDViGjO5Jnd3yfeNRkGwhWwV%2fOE>

<sup>21</sup> ILO, Migrant pay gap: understanding wage differences between migrants and nationals, 2020, available at [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_763803.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763803.pdf).

<sup>22</sup> Care Workers Survey, Statistical Office of the Slovak Republic, 2016, in M. Bahna, & M. Sekulová, "Crossborder Care: Lessons from Central Europe, 2019. The average net earnings in Austria for 2016 (€30,601.53) is provided by Eurostat, available at [ec.europa.eu/eurostat/databrowser/view/earn\\_nt\\_net/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/earn_nt_net/default/table?lang=en)

<sup>23</sup> According to the Austrian Chamber of Commerce, 98.2% of live-in care workers were self-employed in 2020. Austrian Chamber of Commerce. Personenberatung und Personenbetreuung: Branchendaten. February 2021, p. 8: [http://wko.at/statistik/BranchenFV/B\\_127.pdf](http://wko.at/statistik/BranchenFV/B_127.pdf). According to the Ministry of Social Affairs, Health, Care and Consumer's Protection, 99.94% of the live-in care workers whose costs were paid by older people through additional funding provided by the Ministry were self-employed. Communication between the Ministry and Amnesty International, (previously cited).

<sup>24</sup> Interview by phone with "Nadia" (name changed for security reasons), 12 March 2021.

<sup>25</sup> Report of the United Nations Working Group on discrimination against women and girls, "Women's human rights in the changing world of work," A/HRC/44/51, 16 April 2020, para. 30, available at: [undocs.org/A/HRC/44/51?utm\\_source=Unknown+List&utm\\_campaign=10250d60a3-EMAIL\\_CAMPAIGN\\_2020\\_07\\_06\\_11\\_27&utm\\_medium=email&utm\\_term=0\\_-10250d60a3-](https://undocs.org/A/HRC/44/51?utm_source=Unknown+List&utm_campaign=10250d60a3-EMAIL_CAMPAIGN_2020_07_06_11_27&utm_medium=email&utm_term=0_-10250d60a3-)

# 1. THE HUMAN RIGHTS CONSEQUENCES OF BEING CATEGORISED AS SELF-EMPLOYED LIVE-IN CARE WORKERS

In Austria live-in care workers can either be directly employed by the older person whom they care for or by a not-for-profit organization or be self-employed. More than 98% of live-in care workers are categorised as self-employed; many of them are matched with older people in need of care by placement agencies.<sup>26</sup> Austrian law establishes minimum wage and working time protection for live-in care workers. However, these protections only apply to employed live-in care workers; therefore, the huge majority of live-in care workers has no legal protection for minimum wage and working hours. In theory, self-employed care workers should be able to negotiate their wages and their working time directly with the people they care for. In practice, however, they often do not have that autonomy. In addition, self-employed care workers do not receive sickness benefits (*Krankengeld*) until the 42<sup>nd</sup> consecutive day of sickness, unless they pay additional contributions to the social insurance scheme. While the tasks of employed and self-employed live-in care workers are essentially the same, the latter largely have no protection of the law in terms of minimum wage and work hours and experience barriers in enjoying their human rights to just and favourable conditions of work and to social security.

Prior to 2007, when parliament passed a law to regulate the sector, migrant live-in care workers worked informally in Austria, as the authorities had put in place a system that provided financial incentives to Austrian families to provide care for older people in their homes.

Csilla, a live-in care worker from Slovakia told Amnesty International:

“Before the legalisation [of 2007], the situation was different. We were called ‘Bohemian angels’ and most of us were nurses who came to Austria to take care of seriously ill persons because many were looked after at home. The money was also pretty good then, gross salary equalled net salary and the situation in Slovakia was also different [the cost of living was cheaper].”<sup>27</sup>

<sup>26</sup> According to the Austrian Chamber of Commerce, 98.2% of live-in care workers were self-employed in 2020. Austrian Chamber of Commerce. *Personenberatung und personenbetreuung: branchendaten* (previously cited). According to the Ministry of Social Affairs, only 20 out of 33,069 live-in care workers (those whose costs were partly covered by additional funding that older people received from the Ministry) were employed. Written correspondence between Amnesty International and the Minister for Social Affairs, Health, Care and Consumer protection (previously cited).

<sup>27</sup> Interview by phone with Csilla (surname withheld for security reasons), 13 January 2021.

The policy measure that facilitated the use of domestic care workers was the allowance *Pflegegeld*. It was introduced in 1993 by the government as an allowance disbursed as a lump-sum cash benefit to people of all ages requiring care that covered related expenses. The scheme is still widely used in Austria, as it enables people to make choices regarding their care or the care of their family members in the long term. It has not been subject to any major revisions since its introduction. While the exact amount of the allowance differs depending on the recipient's health condition and needs,<sup>28</sup> the scheme is not tied to any specific choice regarding the type of care covered. In January 2021, more than 460,000 people received a *Pflegegeld* allowance.<sup>29</sup> In addition, the Ministry of Social Affairs, Health, Care and Consumer Protection has developed a funding model to support people who specifically choose the provision of care by live-in care workers.<sup>30</sup> According to the Minister, more than 29,000 persons received this additional financial support in 2020.

Moreover, until 2018 the authorities could seize assets of people in inpatient long-term care to cover for care-related costs, which implied that older people were legally responsible for funding their own long-term care in residential care homes.<sup>31</sup> This situation, responsibility and risk of having assets seized, coupled with the existence of the *Pflegegeld*, meant that older people and their families frequently opted to hire the services of care workers, often from neighbouring countries, who would live with them.

In 2007, the Austrian parliament passed the Home Care Act, a law regulating the employment of live-in care workers. According to the law, live-in care workers can be either self-employed or employed.<sup>32</sup> Employed care workers have a contract of employment with either the person in need of care/their family or a not-for-profit organization. Self-employed care workers have to register with the district administrative authority to obtain a business licence; they do not need any specific qualification and must produce only a few documents for that purpose.<sup>33</sup> In addition, representatives of Vidaflex, a trade union representing self-employed people, and of the Chamber of Labour, a body representing all employees in Austria, emphasized that self-employment may be associated with greater flexibility as many live-in care workers do not live permanently in Austria and lowers costs for older people and their families.<sup>34</sup>

The Home Care Act establishes that employed live-in care workers work in rotas of a maximum of two weeks in Austria, which are followed by a period of equal length back in their country of origin.<sup>35</sup> However, these safeguards do not apply to self-employed care workers. In practice, as many migrant live-in care workers are self-employed, they work much longer rotas in Austria than the two weeks established by the law, especially when coming from Romania because of the distance between the two countries.<sup>36</sup> Seven out of the 13 women interviewed by Amnesty International had rotas of over two weeks.

In 2020, the newly elected Austrian government included the reform of the care sector in its programme of work.<sup>37</sup> A special taskforce subsequently set up by the Ministry of Social Affairs, Health, Care and Consumer Protection drafted a report, which was published in spring 2021. While the report envisages an evaluation of existing regulations and measures to ensure the quality in the live-in care sector, it does not make

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<sup>28</sup> The *Pflegegeld* is paid monthly and is tax free. Its amount varies from a minimum of €162.50 to a maximum of €1,745.10. More information is available at [www.sozialministerium.at/Themen/Pflege/Pflegegeld.html](http://www.sozialministerium.at/Themen/Pflege/Pflegegeld.html) and at [www.oesterreich.gv.at/themen/soziales/pflege/4/Seite.360516.html](http://www.oesterreich.gv.at/themen/soziales/pflege/4/Seite.360516.html)

<sup>29</sup> More information is available at [orf.at/stories/3204303/](http://orf.at/stories/3204303/)

<sup>30</sup> Section 21(b) of the Federal Act on the Introduction of *Pflegegeld* (*Bundespflegegeldgesetz*). The financial support amounts to a maximum of EUR 550 for two self-employed live-in care workers and a maximum of EUR 1,100 for two employed live-in care workers.

<sup>31</sup> The principle of the recourse to the assets of persons in inpatient long-term care (*Pflegeregress*) was abolished only in 2018 following a ruling of the Austrian Constitutional Court. Ruling E 229/2018-17, 10 October 2018, available at [www.vfgh.gv.at/medien/Pflegeregress\\_Zugriff\\_auf\\_Vermoege\\_nach\\_dem\\_1\\_.de.php](http://www.vfgh.gv.at/medien/Pflegeregress_Zugriff_auf_Vermoege_nach_dem_1_.de.php)

<sup>32</sup> Section 1 of the Home Care Act (*Hausbetreuungsgesetz*), available at [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005362](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005362)

<sup>33</sup> Section 159 Trade Act, Sections 339 and 5(2) of the Trade Act (*Gewerbeordnung*), available at [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007517](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007517). Self-employed care workers must be at least 18-years-old, nationals of an EU or EEC country and not be subject to any exclusion clause (*Gewerbeausschlussgründen*). They must produce a valid passport or ID, their residence registration in Austria and a copy of their criminal record. For more information, see Austrian Chamber of Commerce, *Daheim statt ins Heim, Schritt für Schritt zum Personenbetreuer, Leitfaden*, 2021, available at [www.wko.at/service/wirtschaftsrecht-gewerberecht/Leitfaden\\_Personenbetreuer.pdf](http://www.wko.at/service/wirtschaftsrecht-gewerberecht/Leitfaden_Personenbetreuer.pdf)

<sup>34</sup> Interview via secure online platform with a representative of Vidaflex, a trade union representing self-employed people, 23 February 2021. Interview via a secure online platform with a representative of the Austrian Chamber of Labour, conducted on 7 January 2021.

<sup>35</sup> Section 1.3 of the Home Care Act.

<sup>36</sup> Interview by online platform with representatives of the organizations *DREPT pentru ingrijire* and *Iniciativa za zlepšenie podmienok v 24h opatrovani*, 5 January 2021.

<sup>37</sup> The government's programme includes measures to further develop and expand the quality certificate ÖQZ24, and to enhance the quality in the 24h live-in care sector. "Aus Verantwortung für Österreich", Government's programme of work 2020-2024, p. 172, available at [www.bundestkanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf](http://www.bundestkanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf)

recommendations specifically focusing on the rights of self-employed live-in care workers, which are not adequately protected as shown in the following section.<sup>38</sup>

In communication with Amnesty International, the Minister of Social Affairs, Health, Care and Consumer Protection Dr. Wolfgang Mückstein stated that the geographical scope of the current project “CuraFAIR”, implemented by the NGO Volkshilfe in Upper Austria, will be expanded to Vienna, Graz and Linz. The project establishes a contact point for all live-in care workers, a demand that live-in care workers and grassroots organizations have also mentioned in interviews with Amnesty International.<sup>39</sup>

## 1.1 A TWO-TIER SYSTEM THAT RESULTS IN SELF-EMPLOYED LIVE-IN CARERS HAVING LESS RIGHTS

The core tasks of live-in care workers are the same irrespective of whether they are categorised as employed or self-employed. These tasks generally include personal assistance and housekeeping, including for example cooking, cleaning and ironing.<sup>40</sup> However, while employed care workers enjoy minimum wage and working hours protection, self-employed live-in care workers do not, as the relevant provisions in the Home Care Act do not apply to them.

### SELF-EMPLOYED LIVE-IN CARERS ARE PAID LESS THAN THE MINIMUM WAGE

According to EUROSTAT, the annual average net earnings for a single person without children in Austria in 2020 was about €32,811.<sup>41</sup> The net minimum wage for employed live-in care workers is between €17,484 per year (€1,243 per month, for up to five years of professional experience) and €21,129 (€1,500 per month, for more than 11 years of professional experience).<sup>42</sup> The gross minimum wage for employed live-in care workers is between €12.95 and €16.75 per hour depending on experience (or between €1,518 per month, for up to five years of professional experience, and €1,958 per month for more than 11 years of experience).<sup>43</sup> Night shifts between 10pm and 6am must be paid €31.35 extra per shift.<sup>44</sup> The basic net income for live-in employed care workers with up to five years of experience is only 53% of the average net earnings in Austria.

Self-employed live-in care workers do not enjoy minimum wage protection, and thus can be paid less than the minimum wage. According to the data provided by the Slovak Office for Statistics, in 2016, the average monthly net income for Slovak live-in care workers, most of whom are self-employed, in Austria was €840 per month or less than €10,080 a year.<sup>45</sup> The remuneration of these care workers is about one third lower than the minimum wage of employed live-in care workers and about 30.7% of the net average yearly earnings in Austria in the same year. This situation raises concerns regarding the right to fair remuneration for self-employed live-in carers and the lack of minimum wage protection for them.

The remuneration of self-employed live-in care workers contracted through placement agencies equally raises concern regarding the right to fair remuneration, as they receive below the minimum wage for employed live-in care workers. For example, live-in carers working for a not-for-profit organization that provides long-term care to older people are paid €71.50 a day. Their monthly gross income is €1,001,

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<sup>38</sup> Taskforce Pflege. Begleitung des Prozesses zur Erarbeitung von Zielsetzungen, Maßnahmen und Strukturen. Ergebnisbericht, Gesundheit Österreich GmbH, 2021, p 9, available at [www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiK3IKEp4LwAhXI2aQKHZLoAA8QFIADegQIAxAD&url=https%3A%2F%2Fwww.sozialministerium.at%2Fdam%2Fjcr%3Ad7f5ca44-95d2-43f2-bb0c-304ed51d50d2%2FBericht\\_TFPflege\\_fin\\_.pdf&usq=AOvVawOvrRhYs5kHK-dqIRnva3-U](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiK3IKEp4LwAhXI2aQKHZLoAA8QFIADegQIAxAD&url=https%3A%2F%2Fwww.sozialministerium.at%2Fdam%2Fjcr%3Ad7f5ca44-95d2-43f2-bb0c-304ed51d50d2%2FBericht_TFPflege_fin_.pdf&usq=AOvVawOvrRhYs5kHK-dqIRnva3-U)

<sup>39</sup> Written correspondence between Amnesty International and the Minister for Social Affairs, Health, Care and Consumer protection, 23 June 2020. .

<sup>40</sup> Section 1, paras. 3-5 of the Home Care Act and section 159 of the Trade Act. Live-in care workers may also carry out medical and nursing activities only if authorized by a competent health worker.

<sup>41</sup> EUROSTAT, Annual net earnings, available at [ec.europa.eu/eurostat/databrowser/view/earn\\_nt\\_net/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/earn_nt_net/default/table?lang=en)

<sup>42</sup> These amounts include the 13<sup>th</sup> and 14<sup>th</sup> months payments which are not received by self-employed care workers. These calculations have been made by using an online tool available at [www.taxes.at/tools/online\\_tools/#brutto\\_nettoberrechnung\\_-\\_gehaelter](https://www.taxes.at/tools/online_tools/#brutto_nettoberrechnung_-_gehaelter)

<sup>43</sup> Rules on minimum wages for household occupations in Austria (Gesamte Rechtsvorschrift für Festsetzung des Mindestlohntarifs für im Haushalt Beschäftigte für Österreich), 2021, available at [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011378](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011378)

<sup>44</sup> Rules on minimum wages (previously cited).

<sup>45</sup> Care Workers Survey 2016, Statistical Office of the Slovak Republic in: M. Bahna, & M. Sekulová, *Crossborder Care: Lessons from Central Europe* (previously cited).

assuming that they work a 2-week rota, this corresponds to approximately €10,136 net a year.<sup>46</sup> This income is 30.9% of the average yearly earnings in Austria in 2020.

Amnesty International confirmed that self-employed care-workers who work for one of the earliest established agencies in Austria were paid according to the federated state where they work. For example, live-in care workers working for the company in Vienna are paid €80 gross a day, which corresponds to approximately €11,451 net a year (34.9% of the average net yearly earnings).

One of the biggest agencies in Austria pays live-in care workers according to the needs of older people; as they indicate on their website, the net daily fee for live-in care workers is between €52.50 and €80 a day, which amounts to approximately between €6,944 and €11,451 net a year (21,2% and 34,9% of the average yearly earnings).

According to international human rights law and standards, fair remuneration is a component of the right to just and favourable conditions of work, which is protected by the UN Covenant on Economic, Social and Cultural Rights (CESCR, Article 7) to which Austria is a party.<sup>47</sup> The right to fair remuneration is further enshrined in the European Social Charter (ESC revised, Article 4.1), to which Austria is also a party. According to the European Committee on Social Rights, in order to ensure a decent standard of living within the meaning of Article 4.1 of the Charter, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average national wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living.<sup>48</sup> As outlined in this section, self-employed live-in care workers are often paid less than employed live-in care workers and much less than 50% of the net average national wage.

The UN Committee on Economic, Social and Cultural Rights in its General Comment emphasises to state parties that: “Any assessment of fairness should also take into account the position of female workers, particularly where their work and pay has traditionally been undervalued.”<sup>49</sup> As noted by the UN Working Group on Discrimination against Women and Girls, the “potential growth of the care sector, in the context of population ageing, must entail paid care work being properly valued both economically and socially through decent wages and conditions.”<sup>50</sup>

## SELF-EMPLOYED CARERS HAVE NO PROTECTION AGAINST EXCESSIVE WORKING HOURS OR DENIAL OF BREAKS

According to the Home Care Act read in conjunction with the Domestic Helpers and Domestic Workers Act, employed live-in care workers can work for a maximum of 128 hours in two consecutive weeks<sup>51</sup> Their daily working hours cannot exceed 10 hours and they are entitled to at least a 3-hour break every day. No such protection regulating working hours and rest period is accorded to self-employed care workers.

According to the UN CESCR, the right to just and favourable conditions of work includes rest, leisure, reasonable limitation of working hours and periodic paid holidays (Article 7d), which are a prerequisite to prevent work-related stress, accidents and diseases, and thereby promote the realization of the right to health (Article 12).<sup>52</sup> The Committee on Economic, Social and Cultural Rights has emphasized that the maximum working hours should be, as a general rule, set at 8 hours per day or 40 hours per week.

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<sup>46</sup> The calculation is based on the minimum contribution that self-employed live-in care workers have to make to the social insurance and which corresponds to €156.32 every month. An income tax of 20% is applicable to any earning beyond €11,000 a year.

<sup>47</sup> According to the Committee on Economic, Social and Cultural Rights (CESCR), the right to just and favorable conditions of work include several components and, in particular, equal remuneration, fair wages and an adequate standard of living for workers and their families. The CESCR has emphasized that: “Remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs”. UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 23 (GC 23) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, 7 2016, E/C.12/GC/23, at para 10, available at [http://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fGC%2f23&Lang=en](http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fGC%2f23&Lang=en)

<sup>48</sup> Digest of the case law of the European Committee of Social Rights, Article 4 The right to a fair remuneration, p. 85, available at <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>

<sup>49</sup> CESCR, GC 23 on the right to just and favourable conditions of work, 2016, para.18 (previously cited).

<sup>50</sup> Report of the United Nations Working Group on discrimination against women and girls, “Women’s human rights in the changing world of work,” A/HRC/44/51, 2020, para. 49 (previously cited).

<sup>51</sup> Section 5 of the Domestic Helpers and Domestic Workers Act (*Hausgehilfen- und Hausangestelltengesetz*) applies only to employed live-in care workers, available at

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008191> .

<sup>52</sup> CESCR, GC 23 (2016) on the right to just and favourable conditions of work, para. 34

Moreover, at least 24 consecutive hours of break should be allowed every 7 days of work, although two days of rest per week are preferable to ensure health and safety at work.<sup>53</sup>

As elaborated in chapter 2, self-employed care workers have in practice little autonomy to negotiate their working hours and rest periods; because of the nature of their work and lack of legal protection, they are more likely to work excessively long hours. For example, “**Nadia**”, a live-in care worker from Romania, explained to Amnesty International’s researchers: “It was difficult to take breaks. The family and the agency told me, [that] only if [it was] possible, I am allowed to take a break. Otherwise not.”<sup>54</sup> **Csilla**, a live-in care worker from Slovakia, told Amnesty International researchers:

“Although I am self-employed, I have to adapt to my client. If my client wants to get up at 7am, I cannot say 7.30am... It’s agreed that I have 2 hours off every day – from 1pm to 3pm [when he takes his naps]. If he got bored, he would get up. He often fell out of bed [when he was trying to get out of bed]. My client can’t get up [on his own] easily. But when should I take my break then?”<sup>55</sup>

## SICK BENEFITS AND THE RIGHT TO SOCIAL SECURITY

Employed and self-employed live-in care workers have different access to sick pay and sickness benefits. Employed live-in care workers fall within the applicability of the general social insurance scheme. They make a contribution of 18.12% of their gross salary to the social insurance scheme; their employers make a contribution that amounts to 21.38% of the gross salary. These contributions ensure that they have access to paid holidays, sick pay and maternity leave.<sup>56</sup> More specifically, they can access sick pay after three days of consecutive illness.

In contrast, self-employed live-in care workers, as is the case for self-employed people more generally, have access to a specific social insurance regime, which covers for their health and safety at work as well as for their pensions. Self-employed live-in care workers are responsible for paying their own contributions and can be sanctioned if contributions are not paid on time. In the first three years of activity, they pay a basic contribution of €156.32 every month.<sup>57</sup> The basic contribution does not provide self-employed care workers with access to unemployment benefits and prevents them from receiving sickness benefits unless they are sick for a continuous period of 42 or more days.

In theory, self-employed care workers can pay additional contributions to social insurance, ensuring that like employed care workers, they also have access to paid holidays, sick pay and maternity leave.<sup>58</sup> In practice self-employed care workers have little information about the additional voluntary contributions to social insurance due to language barriers and a lack of knowledge about the Austrian social insurance system, as “**Viktória**” who worked as a live-in care worker in Austria told Amnesty International. Without paying additional contributions, self-employed live-in care workers do not receive unemployment benefits and receive sick benefits only if unwell for a period longer than 42 days (see chapter 3.1). Therefore, “**Viktória**” organized information sessions for colleagues who also worked as live-in care workers, together with the Chamber of Commerce in Vorarlberg.<sup>59</sup>

Under international human rights law and standards, accessing cash or in-kind benefits to secure protection from lack of income including due to sickness and maternity is a component of the right to social security (CESCR, Article 9, ESC, Article 12). General Comment 19 of the Committee on Economic, Social and Cultural Rights emphasizes that the right to social security encompasses “the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member [...]”.<sup>35</sup>

The ILO Convention on Domestic Workers emphasizes that domestic workers should have access to social protection schemes that are not less favourable to those applicable to other workers generally (ILO C189,

<sup>53</sup> GC 23, para. 37-40 (previously cited).

<sup>54</sup> Interview by phone with “**Nadia**”, 12 March 2021.

<sup>55</sup> Interview by phone with **Csilla**, 13 January 2021.

<sup>56</sup> More information is available on the webpage of the Austrian health insurance company, available at [www.gesundheitskasse.at/cdscontent/?contentid=10007.828077&portal=oegkoportal](http://www.gesundheitskasse.at/cdscontent/?contentid=10007.828077&portal=oegkoportal)

<sup>57</sup> SVS, Information Sheet, Versicherung und Beitrag – Personenbetreuerinnen, available at [www.svs.at/cdscontent/load?contentid=10008.728929&version=1611904186](http://www.svs.at/cdscontent/load?contentid=10008.728929&version=1611904186).

<sup>58</sup> Additional contributions between €25.18 and €55.47 per day can be made to access unemployment benefits. An additional contribution of €30.77 a month can be made to access sick benefits as of day four of sickness.

<sup>59</sup> Interview by secure online platform with “**Viktória**”, (name changed for security reasons, 3 February 2021).

Article 14). The UN Convention on the Rights of All Migrant Workers and Members of their Families establishes with regard to social security that migrant workers should be entitled in the state where they work to the same treatment as nationals (UN CPRMW, Article 27). As the Committee on the Protection of All Migrant Workers and the Members of their Families has emphasized, the exclusion of domestic migrant workers from access to social security further increases their vulnerability and dependence on their employers.<sup>60</sup>

As the Working Group on Discrimination against women and girls notes in its 2020 expert guidance to states about their obligations to respect, protect and fulfil human rights: “Realizing women’s human rights in the changing world of work requires workers in new forms of work to have access to human rights. There is an urgent need to extend rights and entitlements to all workers, with a focus on women informal workers, including paid sick leave, annual leave, working time limits and rights to health and safety at work.”<sup>61</sup>

Live-in carers have carried out crucial and essential work during the COVID-19 pandemic, while withstanding health risks and being away from loved ones. This has taken a toll on their physical and mental health. However, the Austrian authorities have still not introduced the urgent measures needed to improve access to sickness benefits for self-employed live-in care workers.

## CONCLUSIONS

The Austrian legal framework establishes a two-tier system regarding the enjoyment of human rights of live-in care workers. Employed care workers enjoy minimum wage and working hours protection, and have access to sick pay when they take sick leave. In contrast, a lack of legal safeguards for self-employed care workers, who comprise more than 98% of the overall number of live-in care workers, raises concerns regarding the protection of their rights to fair remuneration, to just and favourable conditions at work and to social security. As we shall see in the next chapter, the fact that more than 98% of live-in care workers are migrant workers and their relation of subordination to the older people they care for / their families and placement agencies mean that live-in care workers are in practice often not self-employed.

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<sup>60</sup> UN Committee on Migrant Domestic Workers, General Comment No. 1 on migrant domestic workers, para. 24, available at: [https://www2.ohchr.org/english/bodies/cmw/cmw\\_migrant\\_domestic\\_workers.htm](https://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm)

<sup>61</sup> Report of the United Nations Working Group on discrimination against women and girls, “Women’s human rights in the changing world of work,” A/HRC/44/51, 2020, para 51 (previously cited).



# 2. DISGUISED SELF-EMPLOYMENT AND LACK OF AUTONOMY FOR LIVE-IN CARE WORKERS

In practice live-in care workers are often not self-employed as they usually have little autonomy to negotiate their remuneration, working hours and rest periods. They are often recruited by placement agencies and have a contract with both the older person whom they care for and the placement agency acting as an intermediary. As live-in care workers are domestic workers who live in the same household as the older people whom they care for, they must often adapt to their daily routines and changing health needs, which often prevents them from making autonomous decisions over their working hours and rest periods, which are prerogatives of self-employment.

“Sofia”, a Slovak self-employed live-in care worker, explained to Amnesty International’s researchers the impossibility of making autonomous decisions regarding her working patterns and the little leverage that she had in the negotiation of her remuneration:

“I have been working for 12 years now with an agency. At the moment, I am taking care of two people living with dementia, a man and a woman. My clients and their families think I am their maid. Today I was doing the laundry in the cellar. When I went upstairs, the food was burning. The family told me that it would get worse and worse and that I have to have strong nerves. The old lady [I am caring for] lives with severe dementia and is aggressive. Once the old lady even locked my colleague out [of the house]. The family had to call the ambulance and the police.

Before I used to work for a client with multiple sclerosis. I had to carry out the tasks of a nurse. They told me I have two hours that are my own free time. However, this came with a caveat: I was not allowed to leave the house but had to stay in my room, next to my client’s room... The food I got there was always frozen foods. In addition, I had to take care of the cat.”<sup>62</sup>

Despite being categorised as self-employed, live-in care workers are denied the possibility to make decisions regarding their working hours, rest periods and remuneration. As explained in chapter 1, under Austrian law, live-in care workers can be employed or self-employed. Employed live-in care workers have a contract of employment with either the person they care for or a not-for-profit organization. Self-employed care workers often have a contract with both the person they care for and a placement agency, which has an intermediary role in matching care workers with people in need of care. The Ministry of Digital and Economic Affairs has specified a list of criteria that distinguishes employment from self-employment of live-in care workers. The

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<sup>62</sup> Phone interview with “Sofia” (the name has been changed for security reasons), 18 March 2021.

Ministry has stated, for example, that self-employed live-in care workers are not subject to specific requirements regarding the professional activities that they perform, or the time and place such activities are carried out. In contrast, employed live-in care workers must comply with agreed working hours, place of work and work patterns and are subject to continuous supervision regarding the implementation of their professional activities. A further distinction is that self-employed live-in care workers can be substituted by another live-in care worker.<sup>63</sup>

According to the International Labour Organization (ILO, Recommendation No. 198) disguised employment occurs when “the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due”.<sup>64</sup> In contrast with self-employment, an employment relationship is usually characterized by subordination and dependence to a another party. Subordination or dependence might be associated, for example, with work being performed under the instructions and control of another party, solely or mainly for the benefit of another party, within specific working hours or at a workplace specified by the party requesting the work. Further indicators might include the fact that the remuneration constitutes the worker’s main or principal source of income and that payment includes payment in kind such as food, lodging or transport.<sup>65</sup>

Live-in care workers in Austria are domestic workers, which means that they carry out their professional tasks and live in the household of the people they provide care for. As further detailed in this chapter, their work is strongly centred around and dependent on the needs of the older people they care for and/or their families and they perform their tasks in a specific location. They have little autonomy to decide what tasks to perform and to negotiate their remuneration.

The relationship of subordination between live-in care workers and their clients, a key characteristic of employment, and the role of placement agencies as intermediaries, point to the fact that in practice live-in care workers are mis-categorised as self-employed and that breaches their human rights (see chapter 1). Trade unions and experts who talked to Amnesty International’s researchers identified several barriers that, in practice, prevent live-in care workers from being employed. These include for example the higher costs of employment for older people and their families as they would have to pay contributions to social insurance and minimum wage, which is often higher than the remuneration of self-employed care workers (see chapter 1). Moreover, some argue that the self-employment model offers more flexibility to migrant workers, as their centre of life is not in Austria. While self-employment currently allows them to work for longer rotas in Austria, domestic law establishes that the maximum length of the working rota for employed live-in care workers is two weeks (see chapter 1).<sup>66</sup> Some live-in care workers explained to Amnesty International that lack of trust on the part of older people and/or their families was also a barrier to obtaining an employment contract with them (see chapter 2.2).

Most of the women who spoke to Amnesty International as well as the grassroots organizations supporting live-in care workers identified their status of self-employment as problematic, as it excludes them from enjoying rights. For example, **Dora**, a Romanian care worker explained:

“We don’t want to be self-employed. Employees have more rights. As a self-employed [person] you don’t have any rights. We only have obligations. No holiday pay, no unemployment benefits. We want somewhere we can go to when we have problems”<sup>67</sup>

Moreover, grassroots organizations providing support to live-in care workers as well as six care workers have identified disguised self-employment as the biggest challenge. Flavia, an activist of IG24, a community organization supporting live-in care workers, emphasized:

“Fictitious self-employment is the root problem. Live-in care workers can’t decide the number of working contracts they can accept, they can’t decide their working conditions, working hours, remuneration, breaks. There is a lack of quality standards and a clear lack of social security. It exists for clients vis-à-vis the live-in care workers but not the other way around. Conditions are

<sup>63</sup> Information provided by the Ministry for Digital and Economic Affairs on its website, available at: <https://www.bmdw.gv.at/Themen/Unternehmen/Gewerbe/Personenbetreuung.html>

<sup>64</sup> ILO Recommendation R198, Employment Relationship Recommendation, 2006, para. 4b, available at [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312535](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535)

<sup>65</sup> ILO R198, para. 13 (previously cited).

<sup>66</sup> Phone interview with the representative of a not-for-profit agency, 12 May 2021; Interview by online platform with a representative of Vidaflex, 23 February 2021.

<sup>67</sup> Group interview by online platform with Eszter, Dora and Marisela (the surnames have been withheld for security reasons), 22 January 2021.

often inhumane. Then there is no place where live-in care workers can go to [if they have problems]”<sup>68</sup>

A representative of Volkshilfe, an NGO that implements the project CuraFAIR (see chapter 1), emphasized:

“The biggest problem is the fictitious self-employment. As soon as live-in care workers open a business, they are obliged to register and have to pay contributions. In most cases, agencies [deal with the] registration and deregistration [of live-in care workers]. That’s a contractual arrangement between agencies and live-in care workers. There are structural problems: live-in care workers don’t know that they are entrepreneurs. They don’t know the rights and obligations related to it. The agencies exploit this [knowledge gap]. There are serious agencies, but even those are not good. The power imbalance is tremendous. Live-in care workers are not self-employed – they can’t chose anything.”<sup>69</sup>

When asked what she would like to change, **Hilda**, a live-in care worker from Romania, explained to Amnesty International’s researchers:

“Basically, we just want some rights. Our working conditions should be checked. The contract says one thing, but at work, when you start your job, it looks different. It is difficult to take breaks or to sleep. We are often overwhelmed by extra work.”<sup>70</sup>

## 2.1 CONTROL AND POWER IMBALANCES BETWEEN LIVE-IN CARE WORKERS AND THEIR CLIENTS

According to Austrian law, self-employed care workers should negotiate their remuneration, working hours and rest periods with their clients themselves.<sup>71</sup> However, in practice, they have little autonomy to do so. First, placement agencies often indicate on their websites the tasks that live-in care workers typically carry out.<sup>72</sup> Second, as migrant domestic workers, live-in care workers often live in isolation and heavily depend on the older people they care for and their families.<sup>73</sup> Their working hours and rest periods revolve around the changing needs of the older people they care for and with whom they live, which means that they cannot really exercise control on their working hours and working patterns, which is a key characteristic of self-employment.

Some of the care workers who spoke to Amnesty International emphasized that their clients often asked them to perform tasks that were not included in their contracts. For example, “**Nadia**”, a live-in care worker from Romania said that once family members of the older person she was caring for asked her to do gardening. Another time she was contracted by a placement agency to take care of an older man without the agency informing her that he weighed more than 100kg. She had to contact the agency to explain that she was not physically able to lift the man. Ultimately, the agency found another client for her.<sup>74</sup>

Moreover, the lack of fluency in German makes it even harder for migrant care workers to negotiate remuneration, working hours and rest periods with their clients. For example, “**Viktória**”, a former live-in care worker from Slovakia, explained to Amnesty International’s researchers:

“I started [working as a live-in care worker] in 2009 and [continued] until 2015, when my client passed away [...]. This is an absolute difficult job and at the beginning I had no idea about the

<sup>68</sup> Interview by phone with representatives of *Iniciativa za zlepšenie podmienok v 24h opatrovaní and DREPT pentru ingrijire*, the grassroots organizations who launched IG24, 5 January 2021.

<sup>69</sup> Interview by online platform with a representative of Volkshilfe, 11 December 2020.

<sup>70</sup> Interview by phone with Hilda, 25 February 2021.

<sup>71</sup> B. Aulenbacher et al., *Gute Sorge ohne gute Arbeit? Live-in-Care in Deutschland, Österreich und der Schweiz*, 2021, p. 67, available at [www.beltz.de/fachmedien/sozialpaedagogik\\_soziale\\_arbeit/buecher/produkt\\_produktdetails/44322-gute\\_sorge\\_ohne\\_gute\\_arbeit.html](http://www.beltz.de/fachmedien/sozialpaedagogik_soziale_arbeit/buecher/produkt_produktdetails/44322-gute_sorge_ohne_gute_arbeit.html)

<sup>72</sup> Some of the websites of placement agencies providing details about the typical tasks carried out by live-in care workers are available at <https://www.aha-pflege.at/leistungen/>, <https://24-stunden-pflege-rodlaue.at/kosten/>; <https://www.24-stunden-betreuung.at/betreuung/pflegeleistung/>; <https://www.lebeninwuerde.at/leistungen/>

<sup>73</sup> UN Committee on Migrant Workers, General Comment No. 1 on domestic workers, para. 7 (previously cited).

<sup>74</sup> Phone Interview with “Nadia”, 12 March 2021.

conditions. Based on the working structure, a care worker is working a 24 hours' shift. There's a general manual of the Chamber of Commerce on tasks and obligations but whether a care worker has some free time or not depends on her luck and her [German] language skills. Poor language skills result in situations where women have no idea about the basics – not even the basic terms – and therefore cannot negotiate. It's especially difficult when the chemistry is not right. For example, if a client's wife is still alive, she might be jealous of the carer because she wants to control everything; it's a human factor though. There are several factors that affect the situation. But the care workers find themselves in a complicated situation. When they find work through an agency, they can indeed contact the agency when there are problems. However, the agency is paid by the client. Therefore, there's pressure on the care workers to adapt themselves to the situation, because there is always this threat that they might be replaced by another care worker."<sup>75</sup>

**Hilda**, a 48-year-old self-employed worker from Romania explained:

"There is no legal framework for our work. I often work 12 to 14 hours a day. The name "24h-live-in care workers" is wrong. Only a service station is open 24/7 but even there the personnel works in shifts. I am not a machine or a robot. It is impossible [to work that much]."<sup>76</sup>

Four live-in care workers told Amnesty International's researchers about the difficulties they experience when they would like to take breaks and rest periods. **Csilla**, a Slovak live-in care worker from Slovakia told Amnesty International: "During the night I am on-call duty. Therefore, I cannot leave the house."<sup>77</sup> **Eszter**, a Romanian care worker told Amnesty International: "My contract foresees breaks, actually a two-hour lunch break every day. But, in my experience, it all depends on the patient. During the nights, I get up twice to check on my patient."<sup>78</sup>

**Katarína**, a Slovak live-in care worker explained what had happened once when she told her client that she was exhausted:

"It happened to me with a client, that he told me at 3am, because I checked on him every half an hour as he wasn't happy with his duvet, pillow, feet, and I told him 'I'm exhausted, I have to sleep a bit, too because I need to wake up at 6am for the medication.' And he told me 'OK but you are a 24-hour live-in care worker, I'm not paying you for sleeping here.' This actually hurts. I am not a robot. I am only a human being... The first three days [at this place] I cried... but one has to manage..."<sup>79</sup>

The daily working experiences of live-in care workers show that in practice the way the system is constructed and functions means that there is often an employment relationship of subordination between the live-in carer and the older people they care for and/or their family. As migrant domestic workers, live-in care workers in Austria can rarely make fully autonomous decisions about their working hours and rest periods, and are given little scope or status to negotiate effectively. As legal safeguards do not apply to them, self-employed care workers end up working excessively long hours without adequate rest periods.

## 2.2 THE ROLE OF PLACEMENT AGENCIES

As of June 2021, there were more than 950 placement agencies registered with the Austrian Chamber of Commerce.<sup>80</sup> While some of these agencies have dozens of clients, operate throughout Austria and have partner agencies in Central and Eastern Europe, others are much smaller, have a handful of clients and

<sup>75</sup> Interview by phone with "Viktória", 3 February 2021.

<sup>76</sup> Phone interview with Hilda (the surname has been withheld for security reasons), 25 February 2021.

<sup>77</sup> Phone interview with Csilla, 13 January 2021.

<sup>78</sup> Online interview with Eszter, 22 January 2021.

<sup>79</sup> Interview with Katarína, 12 May 2021.

<sup>80</sup> Austrian Chamber of Commerce, Organisation of Personal Care Work, online search tool available at [firmen.wko.at/?standortid=0&branche=47616&branchenname=organisation+von+personenbetreuung&categoryid=0&ga=2.12303284.147593421.1617178271-1853004467.1617178271&firma=#result](https://firmen.wko.at/?standortid=0&branche=47616&branchenname=organisation+von+personenbetreuung&categoryid=0&ga=2.12303284.147593421.1617178271-1853004467.1617178271&firma=#result)

operate only in some cities or regions.<sup>81</sup> Placement agencies are often business enterprises and they charge fees for their services to both self-employed care workers and older people in need of care and/or their families.<sup>82</sup> The latter include for instance services such as replacing live-in care workers or managing potential conflicts. The monthly fees that older people pay for these services differ; for example, the fees charged by some agencies who advertised their fees online range from €251 to €380.50 per month.

The services provided by agencies to care workers include, for example, finding another employment opportunity when a client passes away. Three live-in care workers who spoke to Amnesty International's researchers specifically pointed out that live-in care workers often struggled to find clients without placement agencies. They emphasized that families often preferred to make use of the services of placement agencies to find a suitable live-in care worker as the provision of home care requires trust from families and commitment from care workers. In an interview, **Csilla**, a Slovak care worker, said:

"I was lucky to find a reliable agency but I also had bad experiences before. The agencies support the clients and give them a feeling of security. Only when clients know the care worker and are sure that she's reliable, they will contract her [directly without an agency]."<sup>83</sup>

Two care workers explained to Amnesty International that they could work as self-employed carers directly with people in need of care but only after having worked several years with a placement agency and having established a relationship of trust with clients. "**Otilia**", a care worker from Romania told Amnesty International that she worked for four years as a self-employed live-in care worker with a Romanian agency before her client's family had directly contracted her.<sup>84</sup> **Dora**, a 24h live-in care worker from Romania, told Amnesty International that she was able to get a contract directly with a client after she could produce a reference by a not-for-profit organization.<sup>85</sup>

Placement agencies often manage the earnings of care-workers and pay the contribution to the social insurance on their behalf according to a practice called "power of collection" (*Inkassovollmacht*), which is contested by live-in care workers, experts and some placement agencies.<sup>86</sup> This prerogative, which can be included in the contracts between self-employed care workers and placement agencies, though not a legal requirement, prevents care workers from invoicing their clients directly and recalls a subordinate employment relationship in which payments to social insurance are made directly by the employer.<sup>87</sup> Some care workers who talked to Amnesty International's researchers noted that often new colleagues do not understand the legal consequences of this provision when signing their contracts.<sup>88</sup>

Self-employed live-in care workers have little margin to negotiate their remuneration if they work with a placement agency. Agencies often indicate the remuneration of live-in care workers on their websites when they provide break-down costs for clients (chapter 1). When live-in care workers ask for an increase of their remuneration, they often have to go through their agency, as "**Sofia**" explained to Amnesty International:

"Because the work was very exhausting and tiring, I asked for an increase of my fees. I contacted my agency. They contacted my client and my client's family. When my client's wife learned that I asked for an increase, she told me that I should leave their home, because there were enough good women out there [who would do this job]. I ended up on the street. It was winter. I had to wait in the cold for 2.5 hours in front of the house until my boyfriend picked me up by car. Two days later, [when I was back home in Slovakia,] the agency inquired whether I arrived safe [in Slovakia,] and informed me that they've lost a client. I should take that as an apology perhaps. It's so difficult and humiliating. And the worst is that we get used to this."<sup>89</sup>

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<sup>81</sup> Interview by online platform with representative of ÖQZ24, 07 January 2021. Since May 2019, agencies registered with the Austrian Chamber of Commerce can voluntarily obtain a quality certification delivered by the Federation for the Promotion of Quality in the Care of Older People (*Verein zur Förderung der Qualität in der Betreuung älterer Menschen*). At the end of March 2021, 34 agencies had obtained a quality certification.

<sup>82</sup> Section 161 of the Trade Act.

<sup>83</sup> Interview by phone with Csilla, 13 January 2021.

<sup>84</sup> Interview by online platform with "Otilia" (the name has been changed for security reasons), 25 January 2021.

<sup>85</sup> Online interview with Dora, 22 January 2021.

<sup>86</sup> Phone interview with a representative of a not-for-profit agency, 12 May 2021, interview by online platform, 16 February 2021; interview by online platform with Dora, 22 January 2021

<sup>87</sup> Interview by online platform with activists from *Iniciativa za zlepšenie podmienok v 24h opatrovaní* and *DREPT pentru ingrijire*, 05 January 2021; interview by online platform with an expert on migrant labour, 16 February 2021.

<sup>88</sup> Group interview by online platform with Eszter, Dora and Marisela, 22 January 2021.

<sup>89</sup> Interview by phone with "Sophia" (the name has been changed for security reasons), 18 March 2021.

In an interview with Amnesty International, the representative of one of the largest not-for-profit placement agencies emphasized that there is little margin to negotiate the remuneration of live-in care workers as it is subject to market dynamics. He highlighted that the NGO ensures that the remuneration “is not too low” and that live-in care workers can always decide to change agencies as they are self-employed. As discussed in chapter 1, the daily remuneration for live-in care workers paid by the NGO (€71.50 gross per day), similarly to the remuneration paid by other agencies, raises concerns regarding the right to fair remuneration.

Moreover, the representative of the not-for-profit agency told Amnesty International that working hours are usually negotiated directly by live-in care workers with their clients. He also stressed that tasks are negotiated with clients ahead and the NGO offers support to their live-in care workers in case of need. He pointed out that employing live-in care workers is more expensive and would require more funding to support the costs sustained by older people and their families. Higher costs for older people and their families without adequate funding would lead to a situation prior to the 2007 reform. Moreover, he emphasized the importance of quality certification for placement agencies.<sup>90</sup>

A representative of one of the longest established agencies explained to Amnesty International that the agency works in partnership with the Red Cross in several Austrian federal states. The Red Cross carries out preliminary checks to ensure that clients can offer adequate living conditions to live-in care workers and organize quarterly check-ins with live-in care workers. The agency requires prior experience as a live-in care worker or a 200-hour training with the Red Cross before placing live-in care workers.<sup>91</sup> However, the daily fees offered by this agency (€80 in Vienna, for example) raise concerns regarding the right to fair remuneration (see chapter 1.1).

One of the largest placement agencies explained to Amnesty International that it ensures that the care needs of older people are carefully assessed and that older people and their families are aware of the tasks that self-employed care workers can perform under Austrian law (art.159 of the Trade Act). The agency clarified that its role includes regularly providing advice and information to both older people and care-workers.<sup>92</sup>

Despite the Austrian legal framework shifting the responsibility for the working conditions of self-employed live-in care workers to the workers themselves (see chapter 1), placement agencies as business enterprises must respect human rights. As discussed in the next section, there is no comprehensive mechanism to ensure that placement agencies exercise due diligence in respecting the human rights of live-in care workers.

## 2.3 LACK OF DUE DILIGENCE AND EFFECTIVE OVERSIGHT

According to the UN Guiding Principles on Business and Human Rights, business enterprises have a responsibility to respect human rights throughout their own operations and as regards their business relations.<sup>93</sup> In order to meet their responsibility, business enterprises are expected to identify, prevent, mitigate and account for how they address their impacts on human rights. Concretely, this means that placement agencies must assess how their placement activities may adversely impact on the working conditions of the live-in care workers and put effective measures in place to prevent harm. Equally, the placement agency must ensure and exert leverage over its business relationship, the care receiving client, so they do not impact adversely on the worker’s human rights. Further, placement agencies should engage in the remediation of any adverse human rights impacts they cause or to which they contribute.<sup>94</sup>

Placement agencies act as intermediaries between people who need care and self-employed live-in care workers. These agencies have a role in the organization of care work that is provided by self-employed care workers.<sup>95</sup> Currently, there is not effective regulation and oversight on the part of state authorities to ensure that placement agencies respect the human rights of live-in care workers.

Since May 2019 placement agencies registered with the Austrian Chamber of Commerce can seek, on a voluntary basis, to obtain a certification by the *Verein zur Förderung der Qualität in der Betreuung älterer*

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<sup>90</sup> Interview by phone with a representative of a not-for-profit agency, 12 May 2020.

<sup>91</sup> Interview by phone with a representative of a long-established agency, 4 February 2021.

<sup>92</sup> Written correspondence between one large placement agency and Amnesty International, 10 June 2021.

<sup>93</sup> UN Guiding Principles on Business and Human Rights, Guiding Principle No. 13, available at [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>94</sup> UN Guiding Principles on Business and Human Rights, Guiding Principle No. 13 (previously cited).

<sup>95</sup> Section 161 of the Trade Act.

*Menschen*, an association for the promotion of quality in the care of elderly people.<sup>96</sup> In an interview, a representative of a NGO that provides services in the long-term care sector, emphasized the importance of ensuring quality standards of live-in care work for all the parties involved, including older people but also live-in care workers.<sup>97</sup> This NGO advocates for binding quality standards and for training and coaching available to live-in care workers. The organization for example relies on health professionals to assess the care needs of older people and to delegate certain tasks, such as the administration of medicines, to live-in care workers.

The existing certification, apart from not being mandatory, is not made dependent on any policy statement or any procedure through which placement agencies can identify, prevent, mitigate and account for their adverse impact on human rights of self-employed live-in care workers, specifically their rights to fair remuneration and to just and favourable conditions of work (see chapter 1).

In order to assure quality in the organization of personal care work, the Federal Ministry for Science, Research and Economy adopted rules of professional conduct and practice regarding the organization of care work.<sup>98</sup> The rules establish the responsibilities of placement agencies regarding a) the assessment of the care needs of older people, which play a role in the remuneration of care workers; b) the elements that must be negotiated and included in the agreement between placement agencies and care workers, including a period of two weeks' notice to terminate the contract and; c) the information that agencies must provide care workers with.<sup>99</sup>

However, there are insufficient control and monitoring mechanisms to ensure compliance with these rules, and more generally, the protection of human rights of live-in care workers including their right to just and favourable conditions of work. For example, the Austrian Ombudsman Board can conduct visits in places where there may be deprivation of liberty, including in residential care homes. However, its mandate does not include visits to private households.<sup>100</sup>

The Ministry of Social Affairs, Health, Care and Consumer Protection has established a centre for ensuring quality of home care, which operates within the social insurance for self-employed people (SVS). This centre is tasked with conducting announced or voluntary visits by health professionals in the households of older people to provide information and support, if necessary. While these visits are aimed to improve the quality of care provided to older people in their homes, which is necessary to protect their health and safety, they do not focus on the working conditions of live-in care workers.<sup>101</sup> Since October 2018, these visits have been mandatory for older people receiving the additional support allowance for live-in care work (see chapter 1). The system of announced visits has received substantial criticism, including from the Ombudsman Board.<sup>102</sup> In January 2019, in order to address some of those concerns, unannounced visits started to be conducted as part of a pilot project.<sup>103</sup>

Moreover, while a 2015 amendment to the Trade Act has attempted to make clear the distinction between the organization and the provision of care work, the Chamber of Commerce nonetheless represents the interests of both placement agencies and self-employed live-in care workers.<sup>104</sup> Live-in care workers,

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<sup>96</sup> Österreichisches Qualitätszertifikat für Vermittlungsagenturen in der 24-Stunden-Betreuung. The list of certified agencies is available at [oeqz.at/zertifizierte-vermittlung-agenturen/](https://oeqz.at/zertifizierte-vermittlung-agenturen/). By end of May 2021, 34 placement agencies had obtained the quality certificate.

<sup>97</sup> Interview by phone with a representative of a not-for-profit agency, 12 May 2020.

<sup>98</sup> Such rules also exist for personal care work services, see Regulation by the Federal Ministry for Science, Research and Economy on rules of professional conduct and practice for personal care services, 2007, available at [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005494](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005494)

<sup>99</sup> Rules of professional conduct and practice regarding the organization of care work, 2015, available at [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009377](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009377)

<sup>100</sup> More information regarding the competences of the Ombudsman Board is available at [volksanwaltschaft.gv.at/ueber-uns/rechtsgrundlagen](https://volksanwaltschaft.gv.at/ueber-uns/rechtsgrundlagen)

<sup>101</sup> Sections 21b, 33 of the Federal Act on Affordable Care (Bundespflegegeldgesetz), available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008859>. More information is available on the website of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection at [www.sozialministerium.at/Themen/Pflege/Qualitaetssicherung.html](https://www.sozialministerium.at/Themen/Pflege/Qualitaetssicherung.html) as well as in the Social Insurance, Quality Assurance in Home Care – Handbook, available at [www.svs.at/cdscontent/load?contentid=10008.730413&version=1577088966](https://www.svs.at/cdscontent/load?contentid=10008.730413&version=1577088966)

<sup>102</sup> The Ombudsman Board voiced concerns regarding the statistics showing that in 99.9% of cases announced visits did not detect any substantial problem with the quality of care provided to older people in their homes, press-release, 2017, available at [volksanwaltschaft.gv.at/artikel/handlungsbedarf-in-der-24-stunden-betreuung](https://volksanwaltschaft.gv.at/artikel/handlungsbedarf-in-der-24-stunden-betreuung)

<sup>103</sup> Ministry of Social Affairs, Health, Care and Consumer Protection, further information regarding quality assurance, available at <https://www.sozialministerium.at/Themen/Pflege/Qualitaetssicherung.html>

<sup>104</sup> Austrian Chamber of Commerce, webpage regarding live-in care workers available at <https://www.wko.at/branchen/gewerbe-handwerk/personenberatung-betreuung/start.html>

grassroots organizations as well as experts who spoke to Amnesty International researchers consider this constellation of representation problematic, as it is prone to create conflicts of interest.<sup>105</sup>

## CONCLUSIONS

In the Employment Relationship Recommendation (R198), the International Labour Organization has emphasized that states should formulate and apply a national policy for reviewing, clarifying and adapting the scope of relevant laws and regulations to protection workers who perform work in the context of an employment relationship. Indicators of the existence of an employment relationship might include the fact that work is carried out personally by the worker, under the supervision or control of another party and according to specific working hours or in a specific workplace agreed with the party requesting work.<sup>106</sup> Some of these indicators are also mentioned by the Austrian Ministry for Digital and Economic Affairs in its guidance to distinguish employed from self-employed live-in care workers. As discussed in this chapter, all these indicators de facto characterize the relationship between live-in care workers, their clients and placement agencies.

Moreover, the ILO has pointed out that other indicators of an employment relationship pertain to remuneration and include, for example, the fact that remuneration is the main or principal source of income of the worker and comprises the provision of payment in kind such as food and lodging.<sup>107</sup> These indicators equally characterize the provision of live-in care work by domestic migrant workers in Austria. Domestic courts in other countries have established that the degree of subordination and control is one key criterion to distinguish self-employment from employment in a variety of sectors including the gig-economy, but also live-in care work. For example, in September 2018, the UK Appeal Employment Tribunal established that a live-in care worker who was contracted by the family of an older person through a placement agency was not self-employed. The court emphasized that there was a mutuality of obligation between the live-in care worker and the family of the older person, which means that there was an obligation for the family to provide work and for the care worker to accept it. Moreover, the care worker provided her services personally and the family exercised a degree of control on the care worker's performance that was sufficient to consider her an employee.<sup>108</sup>

In March 2020, the French Court of Cassation ruled in the case of *Uber France and Uber BV v. A.X.* that an Uber driver was not an independent worker because the company "sent him instructions, supervised performance and exercised the power to sanction, without distorting the terms and conditions of the agreement".<sup>109</sup> In February 2021, the UK Supreme Court reached a similar conclusion in the case *Uber BV and others v Aslam and others*.<sup>110</sup>

**In practice live-in care workers are often not self-employed despite being categorised as such. In general, the way the system is constructed and functions implies that live-in carers have little power, status or scope to negotiate their working hours and rest periods. Clients exercise a high degree of control on their working patterns and their performance of tasks in ways that are typical of what is known as subordinate employment. Placement agencies equally exercise control while performing their function of intermediaries as they assess the needs of older people, which is the basis for the remuneration of care workers and their tasks, and often exercise the power to collect the earnings of care workers.**

**As placement agencies are business enterprises, they should put in place a due diligence process to make sure that they identify, mitigate and address the impact of their operations on live-in care workers, particularly on their rights to favourable and just conditions of work and to fair remuneration. The existing oversight mechanisms put in place by the state to ensure that live-in care workers can enjoy their human rights are insufficient.**

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<sup>105</sup> Interview by online platform with "Csilla", 13 January 2021, Interview by online platform with activists from Iniciativa za zlepšenie podmienok v 24h opatrovaní and DREPT pentru îngrijire, 05 January 2021, interview by online platform with representative of the Chamber of Labour, 07 January 2021

<sup>106</sup> ILO R198, para. 13a (previously cited).

<sup>107</sup> ILO R198, para. 13b (previously cited).

<sup>108</sup> UK Appeal Employment Tribunal, judgment Chatfeild-Roberts v Phillips and Universal Aunts Limited, available at [assets.publishing.service.gov.uk/media/5c3727cf40f0b644631dc832/Mr\\_J\\_Chatfeild-Roberts\\_v\\_1\\_Ms\\_M\\_Phillips\\_2\\_Universal\\_Aunts\\_Ltd\\_UKEAT\\_0049\\_18\\_LA.pdf](https://assets.publishing.service.gov.uk/media/5c3727cf40f0b644631dc832/Mr_J_Chatfeild-Roberts_v_1_Ms_M_Phillips_2_Universal_Aunts_Ltd_UKEAT_0049_18_LA.pdf)

<sup>109</sup> French Court of Cassation, judgment Uber v A.X. para. 15, available at [www.courdecassation.fr/IMG/20200304\\_arret\\_uber\\_english.pdf](http://www.courdecassation.fr/IMG/20200304_arret_uber_english.pdf).

<sup>110</sup> UK Supreme Court, judgment Uber BV and others v Aslam and others, available at [www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf](http://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf)



# 3. THE IMPACT OF COVID-19 ON THE RIGHTS OF LIVE-IN CARE WORKERS

As discussed in the introduction, self-employed live-in care workers from Central and Eastern Europe travel to Austria once or twice a month as they alternate 4-week or 2-week working rotas in Austria with period of equal length at home in their countries of origin.

Following the restrictions on international freedom of movement that European authorities introduced as of March 2020 to counter the COVID-19 pandemic,<sup>111</sup> migrant live-in care workers stayed for longer periods in Austria as they could not return to their countries of origin. Those care workers who had returned to their countries before the outbreak of the pandemic were unable to return to Austria. The authorities put in place several measures to enable migrant workers to travel to Austria.<sup>112</sup> These measures included, for example, charter flights and trains and the establishment of special travel corridors between Austria and its neighbouring countries.

Restrictions on freedom of movement due to COVID-19 related measures had a negative impact on the working conditions of live-in care workers and on their rights to just and favourable conditions of work, safe and healthy working conditions and to health. According to six care workers who talked to Amnesty International, the pandemic worsened their working conditions by extending not only their rotas but also their working hours, which had, in turn, a negative impact on their physical and mental wellbeing. They worked under high levels of pressure, including when, for example, they were caring for people living with dementia who had limited cognitive capacity to understand the situation and the lockdown measures that restricted their opportunities for socializing with friends and relatives. **Eszter**, a Romanian care worker who was working in Austria when the pandemic broke out, shared with Amnesty International's researchers the painful consequences of her extended working rota in Austria, which led to excessive working hours with no breaks and which took a severe toll on her physical and mental health. As Eszter explains:

"I should have returned home on 21<sup>st</sup> March [2020]. However, I had to stay. It was very difficult for me because I never had a break. And these breaks are crucial! I left my client's house at night to get some fresh air. I worked 3.5 months in a row during the lockdown. I also had problems with my agency then. They never called me and cut my earnings. Then, I collapsed and had to see a doctor. I was lucky because friends helped me to see a doctor. I had to take medicine and stay in bed to rest. The agency was able to find someone to replace me for this time, but I left the agency afterwards. Another issue was that patients went crazy during the lockdown. They didn't understand what was happening. Many of my colleagues got a depression. I was also very depressed during this time. And I have a weak heart... I know of many colleagues, who contracted the coronavirus because of the families. However, the families put them on the streets when they

<sup>111</sup> World Tourism Organization, COVID-19 related Travel Restrictions, First report as of 16 April 2020, available at [https://webunwto.s3.eu-west-1.amazonaws.com/s3fs-public/2020-04/TravelRestrictions\\_0.pdf](https://webunwto.s3.eu-west-1.amazonaws.com/s3fs-public/2020-04/TravelRestrictions_0.pdf)

<sup>112</sup> M. Leibfingher et al., Impact of COVID-19 Policy Responses on Live-In Care Workers in Austria, Germany, and Switzerland, 2020 (previously cited).

learned about it. There's no centre or place, where we can go and isolate ourselves... If we don't work, we don't get paid. What are we supposed to do then? I'm worried what will happen when I'm sick or when I have an accident or when I have a heart attack. Our insurance isn't good, [and we don't receive any] unemployment benefits nor [do we] have holidays."<sup>113</sup>

In an interview with Amnesty International, activists mobilizing with *Iniciativa za zlepšenie podmienok v 24h opatrovaní* and *DREPT pentru ingrijire* – two grassroots initiatives, raised concerns regarding the increased pressure on live-in care workers during the pandemic. Flavia, an activist of *DREPT pentru ingrijire* pointed out:

"The first lockdown was the most difficult [situation for the live-in care workers]. The care workers were crying on the phone, they were exhausted and on the verge of physical and psychological collapse. The pressure they experienced at their workplace and the insecurity were unbearable. There was insufficient support from the placement agencies and from the Austrian Chamber of Commerce. DREPT spontaneously filled this gap and provided support to the women in Romanian."<sup>114</sup>

Live-in care workers who fell sick because of strenuous working conditions and/or experienced stress, anxiety or burn-out during the pandemic often do not receive any sickness benefits if they took sick leave. As they are considered self-employed carers, they often pay only the minimum contribution to social insurance, which does not give them access to any sickness benefits for the first 42 days of sickness. Lack of information regarding social protection in their mother tongue language combined with low wages are barriers to care-workers paying the additional contribution to the health insurance (minimum €30.77 per month) in order to receive sickness benefits from the fourth day of sickness.<sup>115</sup>

"Nadia", a Romanian care worker explained to Amnesty International the hurdles in understanding the functioning of the Austrian social protection system for a migrant worker. She said:

"I only pay the minimum social insurance contributions. When I'm sick, I don't get sick pay immediately but only after 42 days. And when I'm sick, I can't work and then I don't earn any money. Luckily, I haven't been sick while working in Austria but there are cases [of workers falling sick] and families not employing them anymore... When I started working in Austria, I received a folder with several documents concerning the social insurance system. However, all those documents were in German. I had to hire a translator to help me understand [them]. You won't understand otherwise [what you're required to pay and why]. It would be important that this information is also provided in the mother tongue [of the care workers]."<sup>116</sup>

In interviews with Amnesty International, NGOs and experts raised concerns regarding the lack of legal counselling and information for migrant care workers in their native languages. While the Ministry of Social Affairs, Health, Care and Consumer Protection and the Austrian Chamber of Commerce provide migrant care workers with a translation of some documents, including the application to register as a self-employed care worker and the contract form between care workers and the person in need of care, into several languages –including in Slovak, Romanian and Bulgarian<sup>117</sup>— detailed information concerning the social insurance system is only available in German.<sup>118</sup>

**COVID-19 has worsened the working conditions of live-in care workers. Before the pandemic live-in care workers, who are nearly all self-employed, were already likely to work excessively long hours without enjoying adequate rest periods. In the absence of legal safeguards protecting them, and the additional restrictions on**

<sup>113</sup> Group interview by online platform with Estzer, Marisela and Dora, 5 January 2021.

<sup>114</sup> Interview conducted by online platform, 5 January 2021.

<sup>115</sup> None of the live-in care workers who spoke to Amnesty International contracted COVID-19 at work. When workers contract COVID-19, the health authorities issue a decision for them to self-isolate. They can claim compensation for the loss of earnings during the period in which they self-isolate, irrespective of whether they are employed or self-employed. More information on this process is available on the website of the Ministry for Social Affairs at [www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus---Haeufig-gestellte-Fragen/FAQ-Wirtschaft-Veranstaltungen-Arbeitsrecht.html](http://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus---Haeufig-gestellte-Fragen/FAQ-Wirtschaft-Veranstaltungen-Arbeitsrecht.html)

<sup>116</sup> Interview by phone, 12 March 2021.

<sup>117</sup> Some of these documents can be found on the website of the Austrian Chamber of Commerce at [www.daheimbetreut.at/en/node/505](http://www.daheimbetreut.at/en/node/505)

<sup>118</sup> See for instance the information regarding the social insurance scheme available at [www.svs.at/cdscontent/?contentid=10007.816771](http://www.svs.at/cdscontent/?contentid=10007.816771)

movement due to public health measures, live-in care workers have experienced further violations of their right to just and favourable conditions of work during the pandemic. This has taken a toll on their physical and mental wellbeing. However, given that most self-employed live-in care workers pay the minimum contribution to social insurance, they do not receive sick pay unless they are off sick for periods of longer than 42 days, live-in care workers often do not have access to sick benefits if they fall sick because of excessively long work hours, pressure and stress at work.

### 3.1 BARRIERS IN ACCESSING COVID-19 BENEFITS AND FINANCIAL SUPPORT MECHANISMS

Live-in care workers continue to experience barriers in accessing some of the benefits that the Austrian government put in place with a view to offering them incentives to extend their working rotas in Austria at the beginning of the pandemic or to compensating for their financial losses caused by COVID-19. In April 2020, the Austrian government introduced the so-called “stay-here bonus”, a benefit amounting to €500 for live-in care workers who extended their working rotas in Austria by at least four weeks. As discussed earlier, restrictions on international travel often prevented care workers from traveling to Austria, a situation that could have jeopardized a care system which is reliant on circular migration and people frequently travelling.

The conditions and procedures to access the stay-here bonus varied across the different Austrian federal states (*Länder*). For instance, while in Upper Austria migrant workers could receive the payment on a foreign bank account, in Lower Austria they needed an Austrian bank account. In this latter state, clients or families had to apply on their behalf, as care workers could not apply directly for the benefit despite them being self-employed. These restrictions and process may also point to a subordinate employment relationship between clients and live-in care workers (see chapter 2). In other states in Austria, live-in care workers often had to rely on their clients or grassroots organizations to assist them in the application process, as they had to fill in long application forms in German rather than their mother tongue language.

Six out of 13 live-in care workers interviewed told Amnesty International researchers they had to get support by their clients’ families or their agencies in order to apply for the COVID-19 financial support mechanisms. “Nadia”, a care-worker from Romania, shared with Amnesty International the difficulties she experienced in receiving the “stay-here bonus”:

“I’ve applied for it and eventually received it – but it was a very difficult situation for me. I was working in Lower Austria then. On 23 March [2020], I returned to Romania. In Lower Austria only the families could apply for the bonus and had to transfer it to the care worker. In my case, the family promised me to send the money to my bank account. Because I do have a Romanian bank account. However, it took two to three months to eventually receive the money... I even had to involve an activist [from *DREPT pentru îngrijire*] to support me and to put pressure on the agencies, because what actually happened was the following: my agency sent the application form for the bonus payment to the family I was working for. The family filled it in and sent it back to the agency. After the bonus payment was made, the agency transferred the money to its partner agency in Romania. I didn’t know any of this! I called the family and the agency several times... without success. They didn’t know either where the money was. I also tried to call the Romanian agency, but they never picked up the phone. I decided to involve an activist from DREPT. She put a lot of pressure on the agencies and called them – also the Romanian one. The Romanian agency told her that I had never called them. Suddenly, I received the €500 in cash from the Romanian agency.”<sup>119</sup>

Migrant care workers have experienced barriers to access other benefits such as the hardship fund put in place by the federal government to support self-employed people and small businesses who were experiencing significant loss of income because of COVID-19. A tax number, an income tax assessment notice and an Austrian bank account have been mandatory requirements to access the fund.<sup>120</sup> However, as the income of migrant live-in care workers is often below the minimum taxable threshold, they often do not

<sup>119</sup> Interview by phone interview with “Nadia”, 12 March 2021.

<sup>120</sup> The criteria for accessing the hardship fund are available on the website of the Federal Chamber of Commerce at [www.wko.at/service/haertefall-fonds-phase-2.html?shorturl=wkoat\\_haertefall-fonds](http://www.wko.at/service/haertefall-fonds-phase-2.html?shorturl=wkoat_haertefall-fonds)

have a tax number or a tax assessment notice.<sup>121</sup> While the authorities argued that these requirements were necessary to prevent tax fraud and money laundering, NGOs explained to Amnesty International that an Austrian bank account was not required for self-employed care-workers to obtain a business licence with the Chamber of Commerce; nor was it a mandatory requirement for receiving the “stay-here bonus” in some states (Länder).<sup>122</sup>

As described above, since the application process for receiving the hardship fund was - and still is for some - complex and rife with obstacles, two migrant care-workers explained to Amnesty International that they were able to access the fund only because their clients or grassroots organizations, like *DREPT pentru îngrijire* and *Iniciativa za zlepšenie podmienok v 24h opatrovaní* supported them. Only on 15 April 2021 the Austrian Federal Chamber of Commerce finally clarified that the hardship fund can be paid to eligible self-employed people through transfers towards bank accounts abroad.<sup>123</sup>

Moreover, in July 2020, the Austrian government announced the introduction of a “family bonus”, which is an additional COVID-19 specific financial support mechanism consisting of a one-time lump sum payment of €360 per child.<sup>124</sup> Anyone receiving basic family benefits should also have access to the COVID-19 specific family bonus. However, migrant workers with children living in another EU/EEA country or in Switzerland receive a different amount based on a policy of indexation. Specifically, they receive a lower amount if the cost of living of the country where their children reside is lower than in Austria. This policy was introduced in 2019 to family benefits, child tax credits and family tax credits for EU/EEA workers working in Austria but with children living permanently in another EU/EEA country or in Switzerland.<sup>125</sup> In May 2020, the European Commission referred Austria to the European Court of Justice, as it argued that the policy of indexation of family benefits, child tax credits and family tax credits is discriminatory and violates EU law.<sup>126</sup>

## 3.2 LIVE-IN MIGRANT WORKERS AT RISK OF HARASSMENT AND SUBJECT TO RACISM AT WORK

Migrant live-in care workers, like other migrant workers are vulnerable to discrimination that extends beyond their access to COVID-19 related benefits. In general, migrant women in Austria face discrimination at work as well as violence and harassment.<sup>127</sup> For example, according to a survey carried out by the European Union Agency for Fundamental Rights in 2016, 46% of the women with Turkish background who participated in the survey in Austria said they had been victim of harassment and violence. Thirty per cent said that they had been victim of discrimination in different areas of life and 10% reported discrimination at work.<sup>128</sup>

Six out of 13 women interviewed by Amnesty International indicated a cause for concern in relation to harassment and racism at work.

“Sofia”, a Slovak live-in care worker, told Amnesty International’s researchers about the sexual harassment that she experienced from an older person whom she had cared for:

A client wanted me to drink wine and alcohol. I didn’t want to. He felt offended then. This was in Vienna. He asked me if my boyfriend can satisfy me [sexually] or if I needed sex toys. This was

<sup>121</sup> Interview by online platform with activists from *Iniciativa za zlepšenie podmienok v 24h opatrovaní* and *DREPT pentru îngrijire*, 5 January 2021.

<sup>122</sup> Interviews by online platforms with *DREPT pentru îngrijire* and *Iniciativa za zlepšenie podmienok v 24h opatrovaní*, 5 January 2021 and with a representative of the trade union Vidaflex, 23 February 2021.

<sup>123</sup> The guidelines for accessing the fund are available on the website of the Federal Chamber of Commerce at [www.wko.at/service/bmf-richtlinie-hff.pdf](http://www.wko.at/service/bmf-richtlinie-hff.pdf)

<sup>124</sup> Communication by the National Parliament, Nr. 769, 8 July 2020, available at [https://www.parlament.gv.at/PAKT/PR/JAHR\\_2020/PK0769/](https://www.parlament.gv.at/PAKT/PR/JAHR_2020/PK0769/)

<sup>125</sup> M. Blauburger et al., Free movement of workers under challenge: the indexation of family benefits, *Comp Eur Polit* 18, 925–943 (2020), available at doi.org/10.1057/s41295-020-00216-3

<sup>126</sup> The European Commission argued that the indexation policy violates Regulations 883/2004 and 492/2011. More information is available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_849](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_849)

<sup>127</sup> Zivilcourage & Anti-Rassismus-Arbeit (ZARA), *Rassismus Report 2019*, available at [https://assets.zara.or.at/media/rassismusreport/ZARA-Rassismus\\_Report\\_2019.pdf](https://assets.zara.or.at/media/rassismusreport/ZARA-Rassismus_Report_2019.pdf); Gleichbehandlungsanwaltschaft, *Gleichbehandlungsbericht für Privatwirtschaft 2018 und 2019*, available at [https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:48c5d572-eee7-4f5e-b138-2e4c66e30b2a/201103\\_GAW\\_Taetigkeitsbericht\\_2018-2019\\_A4\\_BF.pdf](https://www.gleichbehandlungsanwaltschaft.gv.at/dam/jcr:48c5d572-eee7-4f5e-b138-2e4c66e30b2a/201103_GAW_Taetigkeitsbericht_2018-2019_A4_BF.pdf)

<sup>128</sup> European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey, Migrant Women; selected findings*, 2019, available at [fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-eu-midis-ii-migrant-women\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-eu-midis-ii-migrant-women_en.pdf)

sexual harassment! I draw a line like a lawyer. I speak out my mind. I am fed up. I have the feeling I don't have any value in Austria.”<sup>129</sup>

“Sofia” also mentioned instances of abusive and cruel actions which some clients subject her to. She said: “It happened to me that a client turned off the running water and I could not shower anymore. Another client turned off the heating in winter.”<sup>130</sup>

In an interview, **Katarína**, a Slovak live-in care worker, shared the most difficult situation that she experienced in the workplace:

“The most difficult that happened to me... a patient, [where] I had to lock myself in the room. [My] colleague [had warned] me but I didn't know why. But then I understood. He [the old person] came into my room and [stared at me], while I am sleeping... I don't want to say what he was doing... These are things that make work difficult. Because you find yourself in this situation for two weeks. That was the most terrible thing that happened to me.”<sup>131</sup>

Six migrant care workers told Amnesty International that they had faced racism and prejudice either from the older people they care for or members of their families.<sup>132</sup> **Hilda**, a Romanian care worker explained to Amnesty International:

“I have been working in Austria since 2015. I face many problems and challenges in my daily work; it's physically and psychologically challenging and very stressful. Most problems come with the relatives of the patients [...]. They have this false pride [and they cannot accept] that someone from Romania may know something better. If you come from Romania, you must do whatever the family wants because they believe we know nothing. I have a problem with this nonsense.”<sup>133</sup>

**Hilda** talked about another instance in which she was harassed by her client and she did not receive adequate support from her agency. She explained:

“When I worked in Burgenland, I had to take care of two old people – a man and a woman. I did everything (toilet, food, etc). The man was living with dementia, he did not know whether he already ate or drank. He also harassed me. I called his daughter and told her that her father had harassed me. The daughter threw me out. She told me I was not ‘flexible’ enough. My agency did not help me. Since this incident, I only have female clients. In addition, my agency told me then that I was not doing enough. No one tells the stories about the problems we care workers are facing. The families think that we are just lazy or that we steal. This is very onerous for us. We just want to do our work. We want to work in circumstances that are humane”.<sup>134</sup>

“Sofia” shared with Amnesty International her experiences of prejudice in Austria. She said:

“I have been working for 12 years now with an agency. At the moment, I am taking care of two people living with dementia, a man and a woman. It's very difficult – psychologically and physically. In my experience we're [treated as if we are] garbage from Eastern Europe in Austria. They're trying to suppress us. It's really exhausting and very difficult. I have to pull myself together, it'd be worse not to have a job. [But] I'm physically exhausted and I am burnt-out. There's no one to help me. I'm everybody's maid”.<sup>135</sup>

<sup>129</sup> Interview by phone with “Sofia”, 18 March 2021.

<sup>130</sup> Interview by phone with “Sofia”, 18 March 2021.

<sup>131</sup> Interview with Katarína, 14 May 2021.

<sup>132</sup> Interviews conducted on 22 January 2021, 25 February 2021, 12 and 18 March 2021.

<sup>133</sup> Phone interview with Hilda, 25 February 2021.

<sup>134</sup> Phone interview with Hilda, 25 February 2021.

<sup>135</sup> Interview by phone with “Sofia”, 18 March 2021.

Flavia, an activist from the grassroots organization *DREPT pentru ingrijire* told Amnesty International that there is a need for increased support and helplines nation-wide for live-in care workers:

“We need a nation-wide, accessible counselling service for migrant care workers; [at the moment] there is a hot line for clients and several other services but nothing for care workers themselves. Even women’s shelters are unsure whether they can get involved [in cases of harassment and violence of live-in care workers] because the legal situation is unclear. It is unclear whether these qualify as cases of domestic violence or harassment at the workplace.”<sup>136</sup>

Currently there is scarce safeguarding or monitoring by the state that is directed at or available to, live-in carers (see chapter 2.3.), or that is mandated with preventing abuse or harassment and ensuring the rights and well-being of the carers. Austria has obligations under multiple treaties to prevent and eradicate discrimination, violence and harassment against women, including in the workplace, and ensure access to justice for victims.<sup>137</sup> Human rights treaty bodies, including the Committee on the Elimination of Discrimination against Women (CEDAW), and other human rights bodies, including the European Commission for Combating Racism and Intolerance (ECRI), have called on the Austrian authorities to amend both federal and regional anti-discrimination legislation.<sup>138</sup> In its 2019 Concluding Observations on Austria, CEDAW highlighted the need for reform “with a view to ensuring substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination in the private and public sectors”.<sup>139</sup>

In January 2021, Amnesty International raised concerns about the fragmentation of anti-discrimination legislation in Austria, the failure of the authorities to ratify Protocol 12 to the European Convention on Human Rights and the government’s continuous failure to provide sufficient financial and human resources to ensure wide access to women’s support services.<sup>140</sup>

## CONCLUSIONS

The requirement of having an Austrian bank account, which is, or until recently has been, a mandatory requirement for accessing COVID-19 benefits, indirectly discriminates against migrant care workers on grounds of migration status. These workers are not required by law to open a bank account in Austria before obtaining a business licence with the Chamber of Commerce, which allows them to work as self-employed care workers in Austria. Making the eligibility for COVID-19 benefits such as the “stay-here bonus” or the hardship fund dependent on having an Austrian bank account has a disproportionate negative impact on migrant workers. Moreover, the Austrian government has not ensured unhindered access to the COVID-19 benefits, including their availability in a timely manner, to all persons living or working in Austria. As migrant women live-in carers are vulnerable to being subject to discrimination, violence and harassment, Austrian authorities should strengthen the safeguards to prevent abuse, increase support services for those experiencing abuse, ensuring it is adequate and accessible by being provided in various languages

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<sup>136</sup> Interview by online platform with Flavia, *Drept pentru ingrijire*, 5 January 2021.

<sup>137</sup> UN CEDAW, articles 1-2, UN Convention on the Elimination of Racial Discrimination (CERD), article 2.

<sup>138</sup> European Commission against Racism and Intolerance, report on Austria (sixth monitoring cycle), April 2020, available at [rm.coe.int/report-on-austria-6th-monitoring-cycle-/16809e826f](https://rm.coe.int/report-on-austria-6th-monitoring-cycle-/16809e826f)

<sup>139</sup> CEDAW, Concluding observations on the ninth periodic report of Austria, para. 11 (previously cited).

<sup>140</sup> Amnesty International, *Austria: human rights challenges persist*, submission for the UN Universal Periodic Review, 37<sup>th</sup> session of the UPR Working Group (Index EUR 13/2855/2020), available at [www.amnesty.org/download/Documents/EUR1328552020ENGLISH.PDF](https://www.amnesty.org/download/Documents/EUR1328552020ENGLISH.PDF)

# CONCLUSIONS AND RECOMMENDATIONS

This report has outlined concerns regarding the protection of the human rights of migrant live-in care workers in Austria, including their right to non-discrimination, fair remuneration, favourable and just conditions of work, and social security. The current situation of the more than 98% of migrant women mostly from Central and Eastern Europe who are “self-employed” is very concerning. The status of “self-employed” means that they have no legal protection against excessively long working hours and are excluded from minimum wage protection. Migrant live-in carers who are self-employed are often paid below the minimum wage applicable to employed live-in care workers.

Migrant live-in carers work under the control of the older people/families who seek their services. This, combined with the role of the placement agencies which set daily fees, hampers live-in carers’ ability to negotiate remuneration and working conditions including hours and breaks. In practice, live-in care workers often have a subordinate employment relationship with the older people whom they care for and/or their families and placement agencies. There are indications that some women migrant workers experience harassment at work, and are subject to racist attitudes and negative stereotypes, and that the safeguards and monitoring to prevent and respond to such incidents are weak.

The COVID-19 pandemic has worsened the working conditions of live-in care workers, putting their health and well-being at risk. Amid restrictions on international travel, care workers often extended their working rotas in Austria and worked 24/7 for a minimum of six weeks during the lockdown. Although the Austrian authorities have put in place some support mechanisms either specifically for live-in care workers or for self-employed people more generally, they have failed in some instances to make them accessible to all migrant live-in care workers.

With a view to ensuring that all live-in care workers’ human rights to fair remuneration, favourable and just conditions of work and social security without any discrimination are respected, protected and fulfilled, and that the Austrian authorities comply with their obligations under multiple treaties to which Austria is party, Amnesty International calls on the Austrian federal parliament and government as well as on the parliaments and governments of the nine federal states (Länder) to:

- Take urgent steps to ensure that all live-in carers, irrespective of their employment status, have access to fair remuneration, guaranteed minimum wage, protection from excessively long working hours and access to sick pay;
- Amend the Home Care Act (*Hausbetreuungsgesetz*) and the Domestic Helpers and Domestic Workers Act (*Hausgehilfen- und Hausangstelltenengesetz*) to extend minimum wage protection and working hours protection to all live-in care workers;
- Review, clarify and adapt laws and regulations in order to protect the rights of “self-employed” live-in care workers who in practice perform work in the context of an employment relationship. As recommended by the International Labour Organization (Recommendation R198), the authorities could determine the employment status of live-in care workers by consulting with the most representative organizations of employers and workers themselves. As per R198, there might be a presumption of a subordinate employment relationship in presence of one or more of the indicators such as the fact that the work is carried out under the control or supervision of a third party, is

performed solely or mainly for the benefit of another person, must be carried out personally by the worker, is carried out within specific working hours or at a workplace agreed by the party requesting the work or the fact that the remuneration constitutes the principal source of income;

- Ensure to engage and consult with migrant women who are working as live-in carers in the process of developing reforms and responses to the concerns about their human rights;
- Ensure that migrant live-in care workers who decide to continue providing care during any future lockdown are guaranteed breaks and rest days, and can access all COVID-19 related benefits without any discrimination and that their health and well-being is respected, protected and fulfilled;
- Take measures to address discrimination against migrant women workers and introduce safeguards and support services to prevent and combat abuse or exploitation;
- Reform anti-discrimination legislation with a view to ensuring substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination in the private and public sectors;
- Ratify the ILO Domestic Workers Convention (C189), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN CPMRW), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and Protocol 12 to the European Convention on Human Rights.

In addition, Amnesty International calls on the Ministries of Social Affairs, Health, Care and Consumer Protection, Labour and of Digital and Economic Affairs to:

- Amend the rules of professional conduct and practice regarding the organization of care work (*Standes- und Ausübungsregeln für die Organisation von Personenbetreuung*) to ensure that placement agencies include minimum wage protection and working time protection in the contracts with care workers;
- Ensure that the taskforce set up by the Ministry of Social Affairs, Health, Care and Consumer Protection following the announcement regarding the reform of the care sector focuses specifically on the human rights of live-in care workers;
- Ensure that the certification process for placement agencies takes into account their responsibility to respect human rights and exert due diligence in taking into account, and mitigate, the impact of their operations on the human rights of live-in care workers;
- Review the minimum wage for employed live-in care workers with a view to assessing whether it ensures a decent standard of living for live-in care workers;
- Ensure that regular review of contracts signed between placement agencies and live-in care workers is carried out to guarantee that minimum wage protection and working time protection are respected for all live-in care workers;
- Ensure proactive safeguarding, complaints and monitoring mechanisms are devised and strengthened, in particular to prevent and eradicate sexual and physical harassment as well as racism and discrimination. Information about the safeguards and where to seek advice and assistance should be made available and accessible including by being provided in various languages;
- Ensure that the centre for quality in home care established by the Ministry of Social Affairs, Health, Care and Consumer Protection carries out regular unannounced visits of households of older people who make use of the services of live-in care workers throughout Austria and include the working conditions and situation of live-in care workers in the quality assessment of home care;
- Establish support offices for migrant live-in care workers throughout Austria to provide legal counselling services and information in several languages, in case of sexual harassment, racism, discrimination, violence, safety at work, issues regarding social insurance and social security, pay, contractual or other related concerns.
- Review the available funding mechanisms in the long-term care sector, in particular of the home care sector, with a view to assessing whether they are adequate to ensure the quality of care and the safety of older people as well as the human rights of live-in care workers, including their rights to fair remuneration and to fair and favourable conditions of work.



Moreover, Amnesty International calls on placement agencies to comply with their responsibility to respect human rights and conduct due diligence including by:

- Explicitly committing to meet their responsibility to respect human rights of live-in care workers;
- Assessing potential and actual adverse impacts of their placement services on the human rights of live-in care workers and put effective measures in place to cease and prevent harm and mitigate risks.
  - These measures may include, among others, the establishment of support mechanisms and counselling for live-in care workers who experience problems in the workplace and ensuring that all the contractual documents are provided in a language that the person being contracted fully understands;
- Requiring compliance with labour law standards in their contractual agreements with care-receiving clients regarding the services provided by live-in care workers;
- Engage in remediation of the harm in instances where harm occurred.
  - Establish processes, appropriate to their organizational structure and circumstances, that can remedy to any adverse impact on the human rights of live in-care workers that they cause or to which they contribute; these may include for example adapting wages and foreseeing compensation for excessively long working hours.

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# “WE JUST WANT SOME RIGHTS!”

## MIGRANT CARE WORKERS DENIED RIGHTS IN AUSTRIA

In Austria more than 60,000 workers care for older people in their homes. The vast majority of them are women migrant workers from Central and Eastern Europe, who are often subjected to various intersecting forms of discrimination and abuse.

Live-in care workers are under-protected and undercompensated. They receive low wages, work excessively long hours without adequate breaks and experience barriers in accessing social security. Many women migrant workers experience racism, harassment and abuse with little protection, safeguarding or monitoring in place.

The COVID-19 pandemic has not only exacerbated the pre-existing precarity of migrant women live-in care workers. It also shone a light on the dire working conditions they experience. During the first months of the pandemic, many migrant women working as live-in carers extended their working rotas in Austria to continue providing care to older people. Women interviewed by Amnesty International reported how they often ended up working 24/7 during the pandemic without adequate protection against excessively long-hours or to help them ensure they have regular rest breaks.

Amnesty International calls on the Austrian authorities to extend minimum wage protection and working hours protection to all live-in care workers, to strengthen labour inspections and to provide counselling and remedies for discrimination and abuse at work.