

## How the Rhetoric of Reaction justifies the Legalized Exploitation of Migrant Care Labor

### Abstract

Austria legalized the 24/7 elder care provided mainly by migrant carers from poorer Eastern European countries. The debate around this legalization during the years 2006-2008 fits the patterns in Albert Hirschman's *Rhetoric of Reaction*: The *jeopardy thesis* claims that a legalization according to established labor law standards of geriatric care personnel would lead to skyrocketing costs jeopardizing the sustainability of the welfare state. The *futility thesis* denied that the existing legal system of elder care would be sufficient for severely care dependent older adults, since home care is delivered in relatively short house calls and hardly available on weekends or at night. The *perversity thesis* again imputed the paradox effect of a veritable care crisis to the legalization, because migrant care workers would fear retroactive punishment.

This case of instance of the *rhetoric of reaction* aims at diminishing social rights for people in need of the welfare state: older care dependent Austrians and women from Eastern Europe who work willy-nilly around the clock in irregular employment.

In short, the legalization subjected the mostly migrant care workers to working conditions that are much worse compared to domestic care personnel enjoying social security and the benefits of collective bargaining.

### Introduction

The following is going to analyze the political discourse that made it possible to establish a legalized and (at least in Austria) even publicly subsidized care arrangement in European private households that explicitly exploits migrant labor in order to keep welfare state expenditure for elder care low. Similar arrangements have been discussed by feminist economists under the headings of a care deficit in affluent countries which is compensated by the import of a temporary female workforce from less well-to-do societies (cf. Stark, 2007; Tronto, 2010). In Austria, Germany, Switzerland, and Italy live-in carers mostly from Eastern Europe - offer a service for older care dependent people, or rather their families, on a 24-hour-seven-days-a-week-basis (in German it's called "24-Stunden-Pflege", while the Italian term is „badante“, literally a guardian or keeper), and it is very similar to the work of domestics in urban bourgeois households around 1900. The employment is irregular or illegal (apart from the Austrian case) and definitely undermines current labor law standards in nursing or care professions. So due to the economic differential between Central and Eastern Europe the master-servant-relationship has returned to modern, democratic societies with their developed welfare states, which generally

offering protection against the threats of misery and impoverishment posed by the capitalist market - unless you are a migrant from a poor country.

„The master-servant relationship has been one of the primordial relationships in all of Western culture. It was the prototypical relationship between the superior and inferior.“(Coser, 1974, p. 68) Because this return to premodern forms of organizing care labor can justly be called a setback of political and social rights I plea for analyzing the arguments in favor of the legalization of this globalized master-servant-relationship (with very low labor law standards) as exemplary for the rhetoric of *reaction*. Hirschman's suggestion to replace the term *reaction* with *intransigence* does not seem appropriate in this specific case.

My paper thus follows the ideas of Hirschman's thought-provoking essay on the rhetorical stereotypes of conservative and reactionary thinkers who oppose an expansion of political or social rights. The point of departure of his work was the fierce criticism against the welfare state in the USA and the UK, which led the Ford Foundation to invite a think tank of experts to discuss whether the process of a stepwise increase of citizenship rights (as it was laid out by T.H. Marshall) would come to a standstill or even be reversed (Hirschman, 1991, p. 1 ff.). Hirschman's intention is not to test the validity of the rhetoric of reaction but rather to reveal its stereotypical fashion with which it counters any attempt to reform. Three types of theses are described as core arsenal of the rhetoric of reaction:

(1) The so-called perversity thesis, which states that any purposive action to improve society will be counterproductive and lead to a worse problem than the initial one. (2) The futility thesis claims that all attempts of social or political transformation are futile, because society is structured according to solid internal laws and can thus not be changed at all by intervention. (3) The jeopardy thesis says that the proposed reforms - desirable as they may be - will put the previous accomplishments of social and political rights at risk (Hirschman, 1991, p. 7).

Hirschman illustrates his typology with a broad range of historical and (almost) contemporary debates about the declaration of human rights in the process of the French Revolution, the fight for democracy and franchise as well as the struggle for social rights in terms of support by the welfare state. Albeit the brilliant arguments of Hirschman would justify reviewing all facets of reactionary rhetoric, I will restrict myself here to the illustrations linked to the welfare debate.

The perversity thesis in the realm of the early discussions on welfare measures in 19<sup>th</sup> century England stated that social protection for the poor would only encourage their laziness and defective morale. Thus the New Poor Law of 1834 set up workhouses and purposively stigmatised the poor seeking support and shelter (Hirschman, 1991, p. 27). In the 20<sup>th</sup> century debate about the welfare state, Charles Murray's book "Losing Ground" (1984) counts

as a powerful voice of the rhetoric of reaction, claiming that supporting the poor, such as e.g. single mothers, would only exacerbate poverty and increase the number of welfare recipients, because women would be encouraged to have children out of wedlock (Hirschman, 1991, p. 29).

He was joined (among others) by Nathan Glazer who saw the modern welfare state eroding the communities, churches and families whose original task was to provide for the sick and poor (Hirschman, 1991, p. 33 ff.).

The futility thesis is somewhat incompatible with the perversity thesis when questioning the welfare state: if welfare measures fail to have any effect - because they are futile - they can hardly be blamed for worsening the situation. However, in 20<sup>th</sup> century debates about the welfare state, the rhetoric of reaction was not limited to the somewhat arrogant claim that the well-meaning reformers obviously lacked the brains to understand what terrible unintended consequences they launched with their reforms. Far more mortifying actually was the statement that welfare measures, although intended to help the needy, actually helped the middle and upper class. Gordon Tullock's book on the "Welfare for the Well-to-do" (1983) carried that argument to its extremes. Basically, the reactionaries accused the social administrators, social workers and various experts of the welfare services to only follow their own interests to hold a well paid job and thus exploit the poor by administrating e.g. means-tested benefits etc. (Hirschman, 1991, p. 65 f.). The futility thesis can also be shaped as an accusation that welfare benefits do not redistribute wealth from the rich to the poor but rather vice versa.

The jeopardy thesis, at last, applied to the debate about welfare is personified by Friedrich Hayek who in his book "The Road to Serfdom" (1938) suspected social policy to corrupt individual freedom and democracy (Hirschman, 1991, p. 110). Society's freedom would be threatened by the power of the government to provide services and benefits. Conceptions of social justice would be imposed by the political elite and restrict the individual freedom. Samuel Huntington in the mid 1970s took up Hayek's argument and predicted that the crisis of modern democracies, the impossibility to govern modern societies, had its origin in welfare: The idea of equality and support for the needy, affirmative action for women and minorities according to Huntington had undermined the state's authority which in turn had caused the crisis of democracy (Hirschman, 1991, p. 118 f.).

The interplay of the various theses adds complexity but also realism to Hirschman's argument, and can be illustrated by contemporary debates, such as the Austrian debate about elder care.

## Elder Care in Austria

Austria with its population of some 8 million people experienced a first peak of the public debate on elder care in the 1980s, which echoed the German discussions around restructuring care. The main outcome was the introduction of professional home based care to support the families - and here particularly the women - who carry the largest part of the care burden. Residential care in geriatric hospitals, wards and care homes no longer was seen as a feasible solution for the future of an ageing society. Non-profit organizations began to establish a network of care services for older adults, and the profession of home-helpers was created who supported nurses and geriatric nurses. The nursing staff had so far been employed in hospitals only and gradually began to grow a second foothold in home-based care.

In the early 1990s the introduction of either long-term-care insurance (as it was realized in Germany in 1995/96) or a tax-based cash benefit was discussed in order to create a sustainable financial basis for home based care. At this time the Western welfare states have become disenchanted with the state's commitment in welfare services (benefits in kind). This fact ruled out a solution similar to Scandinavian welfare states, where an extensive system of services and benefits in kind for the care dependent has been aiming at offering alternatives to residential care since the mid 1980s.

Home based care for older adults is still a family based system in Austria, where supply is mostly regulated by the providers acting on behalf of the public authority. Their assessment of needs defines the extent of services subsidised by the public authorities and also the extent of services the clients will buy from them - under the conditions of regulated prices and legally defined quality standards (regulating training and competencies of the personnel). The prices for the users of the service are adapted to the users' income level in a form of means testing.

This "care market" leaves out the user who cannot choose quality or extent of supply. Rather we observe a user who arranges her home based care under conditions dictated by the public authority. If a family of a care dependent thus needs more help than is provided under these legal regulations, it has to make an additional private investment: either in terms of cash or in terms of time of a family member.

Due to demographic change (i.e. a rising proportion and total number of older people who have a higher risk of becoming care dependent), the demand for home based care has been rising. In addition, the increased labor market participation of women and the demand for a flexible and highly mobile work force undermined the families' capacity to provide the care themselves.

The system of care allowance was introduced by the federal government of Austria in 1993/4 and intended to compensate care dependent people of all age groups for the expenses related to care

dependency. It is a lump sum irrespective of income and type of care. I.e. no matter whether a person gets care in a nursing home, or by professional home care services or by her daughter - or whether she does not get any care at all - the care allowance is paid monthly as a cash benefit to the care dependent person in seven levels from level 1 (lowest) 154 EUR (= 181 US\$) to level 7 (highest) 1656 EUR (= 1.943 US\$).

## The 'Care Crisis' of 2006

In 2006, during the national election campaign a public debate in Austria about an alleged elder care crisis broke out. It was fuelled by the scandalous fact that a couple of high ranking politicians had hired black market care workers from Eastern Europe to deliver privately paid 24-hour care to their care dependent relatives. Public interest, however, was discontinuous and so the complexity of the problem could not easily be conveyed. As one of the few critical law professors put it polemically: During the short but fierce debate the public realized that society did not so much face a care crisis but rather a legalization crisis, since the care was being delivered but lacked a legal basis.<sup>1</sup>

According to unofficial estimates 20.000 care dependent Austrians had benefited from open borders to the Eastern neighboring countries from the late 1990s onwards by importing 40.000 nurses and care workers from Slovakia, Hungary and the Czech Republic who would be willing to work as live-in care givers in the homes of a care dependent person for a daily 'wage' of some 40 EUROs (46,77 US\$). The service comprised of 24 hour presence 7 days a week and was covered by two commuting care workers who take turns every two weeks. Given the fact that one hour of legal nursing care by a registered nurse could cost up to 40 EUR, depending on income situation and care allowance level, the incentive to hire a privately paid carer was high among people with higher incomes. And, of course upper middle class and upper class people also could afford the costs of a live-in carer.

Given the fact that part of these privately paid costs could be covered by the care allowance cash benefit - which can amount to e.g. approx. 630 EUR/month for level 4 which requires a dependency of at least 160 hours per month<sup>2</sup> - particularly more severely care dependent persons staying in their homes opted for the private - and

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<sup>1</sup> „Nach einer kurzen aber heftigen Debatte darüber, ob ein Pflegenotstand vorliege, wurde zutreffend erkannt, dass es sich im Grunde genommen um einen Legalitätsnotstand handelt, weil die Betreuungsleistungen zwar tatsächlich erbracht wurden, jedoch eine klare legale Basis dafür fehlte.“ Wolfgang Mazal, Hausbetreuung - kritische Aspekte, in: *Ecollex - Fachzeitschrift für Wirtschaftsrecht*, 2007, S. 580.

<sup>2</sup> i.e. if you calculate a fictitious hourly pay by the care allowance this would be max. 3,90 EUR/hour for level 4. If you multiply this fictitious rate by 12 hours a day you get 47,25 EUR. That is the approximate pay for a live-in black market carer.

illegal - solution. The precondition of a large enough home in order to accommodate the live-in carer is linked to higher social status, too. And again this higher social status made it more likely that the family was interested in preserving the assets and estate and not have it consumed by the co-payments for residential nursing home care.

The existence of the informal carers from Eastern Europe has been known for years to the non-profit providers operating legally, and some also made efforts to sue the black market competitors. Cases of neglect<sup>3</sup> and incompetent care became known on the side of the care users as well as cases of abuse and exploitation<sup>4</sup> on the side of the care providing migrants.

## **Legalise it - New Regulations for Migrant Care Workers**

When the center left coalition government with the Social Democrats in the leading position was voted into office in October 2006, efforts had to be made to find a way to tackle the problem of illegal care workers. From the very beginning the „care crisis“ was not seen as a wake-up call for a change of the system of home-based care in Austria. Although studies show that between 1994 (the introduction of the care allowance) and 2006 both benefits in cash (the care allowance) and benefits in kind for home based care had not risen at the same pace as the number of care dependent users of these services, no one seemed to question that the extensive use of cheap black market labor could be an indicator of neglected public responsibility to meet needs. Comparisons with elder care in other countries could have revealed that an investment in benefits in kind would dry out the base for illegal work, that exploits migrants and that dequalifies elder care in general. Few and feeble critical voices questioned which social class mainly benefits of a legalization of the live-ins and that a legalization would not help to cover the shortcomings that affect the lower social classes. Here care allowance is mainly used as a subsidy for the low income, it increases purchasing power but not necessarily for care related goods and services (Amann, 2004, p. 182; Ungerson, 2004; Mühlberger, Knittler and Guger, 2008, p. 13).

Abolishing and penalizing the black market care was out of question, instead politicians and public opinion seemed determined to acknowledge the black market solutions as initiatives of civil society<sup>5</sup>. Thus legalization was the prime goal, but certain

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<sup>3</sup> An unskilled carer left a dying woman because she was scared (personal communication B. Schafarik 2004).

<sup>4</sup> Extreme cases of sexual abuse (Upper Austria) and victimisation as a by-stander in a case of mass murder (Burgenland) were documented in the media.

<sup>5</sup> E.g. a politician of the Green Party (Bundesrat Schennach) said in the parliamentary debate: “Ich bin ja nicht jemand, der einem Regelungswahn unterliegt, und ich finde, dass manche Menschen für sich Lösungen gefunden haben, wo sich tatsächlich die Frage stellt, ob man nicht vielleicht diese Lösungen, die die Menschen gefunden haben, um mit diesem Pflegenotstand in Österreich individuell fertig zu werden, hätte belassen sollen.“(Bundesrat, 2007) (I am not obsessed with

conditions would have had to be met: Neither the costs for the individual care dependent hiring a migrant care worker nor public expenditure for care should rise. The latter is particularly interesting, since the expenditure for care as percentage of the GDP had never exceeded 1,25% of the GDP over decades (Mühlberger, Knittler and Guger, 2008), by the way these expenditures include nursing home care and had even sunk between 1994 and 2006 to 0,75% of the GDP. The OECD average of long term care expenditure in 2008 was 1,5 % of the GDP, with Sweden (3,6%), The Netherlands (3,5%) and Finland (2,2%) ranging significantly higher (OECD, 2011).

So, although the social policy makers could have taken advantage of the public debate and thus could justly have claimed that now the time had come to invest in home based care, all negotiators assumed that expenditure could and should not be expanded. Interestingly enough the Social Democrats in government seemed to have no interest in a progressive solution that would link Austria to the Scandinavian countries but remained loyal to the good old Bismarck welfare state model relying on the family as major unpaid resource of welfare.

## The Solution – a new trade is born: The self-employed care worker or „Personenbetreuer“

Originally a new model of legal employment of the 24-hour-care workers was developed which followed the principles of a rather outdated housekeeping law (Hausbetreuungsgesetz HBeG)<sup>6</sup>.

However, finally realized was the creation of a new trade by an amendment of the trade regulations<sup>7</sup> – and thus the self-employed care worker (Kretschmann, 2016, p. 58 f.). This form of legalization is much disputed among labor law experts who suspect it to constitute a case of fake self-employment (Mazal, 2007; Tomandl, 2007). “Can we imagine a person working in the household of another person with the utilities (i.e. the capital) of this other person and performing tasks of high variance, being available over many hours, can we imagine her acting in any aspect as autonomously as it is required for occupation in self employment?” (Mazal, 2007, p. 582 f., translation MEdC)

Today 99% of all care workers in Austria are self employed. That means that working hours, rest periods and breaks are subject to free bargaining between the care worker and her ‘employer’. Above all it means that the care worker will not receive unemployment benefits, sick leave or paid leave.

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regulations and I think, that we should have left at that, the solutions found by some people who coped individually with this care crisis in Austria.)

<sup>6</sup> Hausbetreuungsgesetz,

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005362&ShowPrintPreview=True](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005362&ShowPrintPreview=True) (24.07.2015)

<sup>7</sup> Gewerbeordnung,

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40097468](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40097468) (24.07.2015)

The costs of these non wage labor costs for the employers were highly exaggerated in the public debate, which distracted the public from the fact that the self-employed care workers simply get less pay than the very few ones in employed position (Bachinger, 2010, p. 411).

In December 2007 a constitutional law was enacted granting amnesty to those who benefited of the originally illegal employment of 24-hour-care-workers, which meant that any claims of care-workers based on labor or social law were annulled retro-actively. (Bundesrat, 2007; Bachinger, 2010, p. 406).

## **Public Subsidies for Employers of 24-hours-Care Workers**

In order to increase the incentive for illegal employers to transfer their care workers into a legal arrangement, Austria introduced subsidies of 550 EUR (645 US \$) monthly for hiring the two self-employed care workers. The conditions to get this support are very low-threshold: The employer needs to be assessed at care allowance level three or higher and have a monthly net income below 2.500 EUR (2.934 US \$), without care allowance. Originally also cash assets above a total of 7.000 EUR (8.214 US \$) would have been considered. But this point of considering cash assets turned out to be a bone of contention, since some provinces subsidized richer people with tax money. Nowadays there is no limit of cash assets in the hands of the care dependent that would prevent to subsidize his or her care worker and interestingly enough no one seems to question that the actual beneficiaries of this rule are the care dependent's future heirs.

Today some 22.700 care dependent employers of care workers benefit of this subsidy, that is 5% of all care dependent Austrians (Source: personal communication of the Federal Ministry of Labor, Social Affairs and Consumer Protection Abt. IV/B; July 11<sup>th</sup> 2015).

The officially sanctioned exploitation of female migrant care workers or their working conditions played no role whatsoever during the discussion about the legalization of their black market care work.

Rather the opposite: becoming care dependent was portrayed as unimaginable misery to which one cannot add any more hardship. Even politicians of the left would not point out that affluent citizens becoming care dependent and thus dependent on public welfare may justly be asked to contribute part of their wealth to the costs incurring to them as a consequence of their care dependency or sickness. The redistributive measure of means-tested co-payments effective in the legal home-based care system could thus be quietly side-stepped. The image of care dependency as a severe blow of fate, that justifies any protection from prosecution is most probably also the reason why to date no litigation has questioned the fake self-employment of care workers. Supreme Court jurisdiction in this

regard of 2011 had no political effect (Prochazkova, Rupp and Schmid, 2008, p. 74; *80bA 17/11z*, 2011) whatsoever.

In 2016 an administrative court verdict ruled that the public authority is to pay for the costs of the 24-hours-carers that a care dependent woman who refused to move into a nursing home could not cover with her pension, care allowance and Federal subsidy for 24-hours-care (*LVwG 47.11-3129/2015 Landesverwaltungsgericht Steiermark*, 2016). This additional public support was justified – as the verdict states – by the fact that nursing home care, which is far more costly and in this case rejected by the woman, would have been paid for by the public authority, too.

The following table compares the costs incurring to a care dependent in institutional care to the migrant care worker arrangement and clearly shows that the latter is much cheaper.

#### Example Care Worker („Personenbetreuung“)

One Person in private household, as of January 2015 – no costs in kind (=accommodation of the care worker) and excluding the brokerage fee and needs assessment of 817 EURO (959 US \$)

Wages for care workers including administration fee	2.190 EURO
Subsidy of Federal Government	-550 EURO
Care Allowance level 4	-664,30 EURO
Total	975,70 EURO (1.145 US\$)

#### Example institutional care in a nursing home

in a shared room according to the Social Code of the province Styria (*Sozialhilfegesetz Steiermark 2015*)

Accommodation costs = 63,30 EURO/day	1.899,00 EURO
Care surcharge, for care allowance level 4 = 50,12 EURO/day	1.503,60 EURO
Care Allowance level 4	-664,30 EURO
Total	2.737,70 EURO (3.213 US\$)

*Table 1: Comparison of an example calculated for two different care arrangements (institutional care versus 24-hour-care) (Source: Steiermärkische Volkshilfe 2015)*

Of course, it is much cheaper, because the labor costs of the 24-hours-care workers are lowered by the fact that these migrant care workers are denied the same social rights as their native Austrian colleagues.

### Care Work versus professional nursing care

One further aspect of the legalization concerns the undermining of qualification and professional standards in elder care in Austria. For nursing chores and medical care (such as injections or application of bandages) the health care code *Gesundheits- und Krankenpflegegesetz* (GuKG) requires at least two years of schooling as a geriatric nurse. But an amendment of the health care code (GuKG § 15 Abs. 6) allows these tasks to be performed by the migrant care worker no matter what qualification she has as long as a doctor or registered nurse assigns these interventions (Hausreither, 2007; Kretschmann, 2016, p. 67). The self-employed migrant care workers need no proof of nursing qualification and as a matter of fact a study among 600 migrant care workers in Austria found out in 2013 that some 80% of them had attended a first aid class of the Red Cross (amounting to some 200 hours). Interestingly enough the study

also revealed that half of the migrant care workers have the equivalent of a high school diploma and even a quarter is academically qualified, though not necessarily in nursing or geriatric care (Pfandl, 2013, p. 38).

## **The Jeopardy Thesis - Base of the Austrian Care Regime**

As I argued above, the Austrian care crisis is a result of comparably low investments into a comprehensive home based care system. Since introducing the care allowance the expenses for it in terms of percentage of the GDP had actually fallen, which is due to the fact that the benefit had only been valorized three times in this period. Investments in benefits in kind have also been small. Further, the solution for the originally illegal care workers was negotiated under the premise of low costs. Money for care is scarce in Austria. Still the debate about legalization was marked by the argument that Austria cannot afford the increasing costs for their elders. This argument is particularly interesting if we compare the expenses (% of the GDP) with other European countries: Austria is far from reaching the top position, and even a model calculated by economists predicting an increase of users of professional services and recipients of care allowance for the future, only envisaged a GDP percentage for care expenses ranging between 1,96 and 2,31 by the year 2030 (Mühlberger, Knittler and Guger, 2008, p. 34). Here clearly all politicians - even those of the left - followed the rhetoric of reaction by claiming that Austria risks its economic prosperity if it increases public spending for elder care (cf. Mazal, 2007, p. 583). Establishing appropriate labor law and qualification standards for elder care would jeopardize the Austrian welfare state as a whole. This consequently led to a solution denying social rights to the exploited migrant women.

## **The Futility Thesis and the Myths of Care**

The futility thesis in the Austrian care debate is closely linked to the misconceptions about care dependency. Given that one thinks that frailty calls for 24-hour supervision, it makes sense to regard the legally offered system of home based care with its short house calls as insufficient; the same would apply to the few day care centers that cover at most a third of the 24 hours.

The necessity and legitimacy of the black market care workers was often underscored in the care debate by the criticism of the expensive legal professional services. These service organizations experience a shortage of subsidized staff and thus can only rationalize by shortening the time with the clients. Further, the commissioning public authorities designed the system of home based care as *supporting* but not *replacing* the family. This view becomes a self fulfilling prophecy, since the lack of weekend or night-time service in effect calls for a family member (or her domestic) to be available if the care dependent should need immediate assistance. So

the rhetoric of reaction in this claim is at least partly accurate: the existing legal system of elder care is insufficient - and thus to a large part a futile piece of the welfare state - for many severe cases of dependency and for many persons with dementia. But it is questionable whether all frail older persons fall under this category, and whether it is justified that the well-to-do are subsidized to afford live-in migrants while the poorer severely care dependent stay in nursing homes.

### **The Perversity Thesis: Crowding Out revisited**

The rhetoric of reaction applying the perversity thesis in the Austrian care debate reminds us of the crowding-out thesis in welfare debates. The latter states that the more public care is offered, the lower the contribution of the families. Therefore it is claimed that supply of elder care evokes demand and public expenditure would sky rocket. In fact, internationally comparative studies have indicated that families do not pull out when there are more services available, but rather the care dependent experiences more and comprehensive care both in terms of instrumental help and emotional support (cf. Daatland and Herlofson, 2003).

Further, the rhetoric of reaction questioned the legalization of these care workers as provoking a real 'care crisis'. They claimed that the legalization would be too expensive, too bureaucratic and would also scare the migrants away for fear of prosecution. Any interference of the state into the spontaneous illegal solutions would necessarily result in a crisis. Instead of providing some security and sustainability, the legalization would create an even bigger problem.

The perversity thesis was particularly successful in the negotiations about the conditions for legalization: firstly, the amnesty for illegal employers willing to legalize prevents them from the risk to pay social benefits and taxes for the past illegal employment retro-actively. The rhetoric of reaction regards black market work as so delicate a matter that it calls for lenience in order not to scare-off the perpetrators<sup>8</sup>.

Secondly, the threshold of certified qualification of the migrants was dropped to the least possible while at the same time the competencies were raised significantly to the level of nursing care. Care work has been degraded from a low professional status to the job of a domestic. At the same time the standards of the legal professional services were ridiculed by the legalization, because obviously anyone can deliver care.

The Austrian solution to legalize a domestic servant for older people in the form of a self-employed care worker ("Personenbetreuer") undermines social and qualification standards in a particularly delicate realm of employment. Since only recently

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<sup>8</sup>Which in the case of practically immobile care dependent persons is a little far fetched. If the authorities wished to prosecute the perpetrators, this group would be easy to get a hold of.

(during the past 20 years) the care delivered without pay by family members or informally and irregularly by others became normalized to a regular employment contract in the home based care system (cf. Bachinger, 2010, p. 411).

## Conclusion

What Austria experiences in the realm of elder care is similar to the situation in Germany, Switzerland, and Italy. In Germany the trend for more professional services - the benefits in kind of the long term care insurance - indicates that the female work force for informal care is diminishing. Germany also faces an influx of migrant care work from Poland and other Eastern European countries. Due to the obligatory supervision of informal care related to the long term care insurance cash benefit, the take-up of illegal work seems to be comparably lower than in Austria. Further, courts are rather strict in their verdicts concerning fake self-employment (*Verbraucherzentrale Nordrhein-Westfalen: Hilfe rund um die Uhr - (1)legal durch wen?*, no date).

In Switzerland the situation matches a grey market: the women from Eastern Europe are legal residents but have no work permit for care labor. They work as domestic servants under the regulations of local (cantonal) codes that grant a minimum wage of 18,20 SFr (= 18,86 US\$) but do not guarantee rest periods or maximum working hours. The practice in Switzerland is such that some five to eight hours per day are paid legally and the rest of the 24-hours is black market work without any securities or controls (Schiliger and Medici, 2012, p. 19).

In Italy, the so-called *badanti* are live-in migrant carers from poorer European, South American and African countries that have been quasi legalised by the Bossi/Fini Act of the year 2002 (Socci *et al.*, 2003).

Here too, the private initiatives complement the insufficient official care system and expenses are covered by a generous cash benefit for the care dependent.

The blessing of cash benefits for long term care turns into a curse in an increasingly globalized economy with poorer countries in the immediate neighborhood. This fact led to a differential in the purchasing power of the care dependent: when using professional services of the legal system as opposed to the illegal 24-hours-care, their purchasing power (and also the supply of care) is very low. When using a black market carer from abroad, the purchasing power is comparable to that of an upper class household affording domestics.

In addition, the low professionalization and the family-boundedness of long term care led to a situation, where care for older people is misunderstood as a permanent supervision job requiring no specific qualification, which makes it possible to hire cheap labor.

In this constellation the rhetoric of reaction succeeded in preventing a care reform that would create a professional and sustainable elder care system and that would not take advantage of exploiting a work force from poorer countries in dubious self-employment. That a center left government in Austria agrees with the rhetoric of reaction and promotes a legalization that is largely similar to what the Berlusconi government enacted in 2002 in Italy, is remarkable, to put it mildly.

As the debate in Austria demonstrates, the social policy makers seem to be far too entangled in the alleged practical constraints of their political routines to see the overall pattern in the arguments. In particular, they neglect to question "what constitutes an acceptable level of human misery" (Marx, 1981, p. 242) for the people involved in care: currently it seems that the interests of the affluent masters are estimated as being of higher relevance than the universal access to social rights that would benefit the migrant women from the poor countries. The expectations of Joan Tronto concerning a democracy of care have yet to be fulfilled: "The best we might be able to hope for in households are more democratic forms of care, to embody the principles of expecting humans to distinguish their genuine needs from their whims ... Whether 'respect' can exist without 'equality' is the underlying problem here." (Tronto, 2010, p. 84 f.)

Here Hirschman's categories of the rhetoric of reaction help to clear the view and point at the fact that the rhetoric of reaction in the Austrian care debate disguises the intention to benefit as colonizers from the accession of poorer countries to the European Union. Across political borders consensus was established to raise the Austrian middle class to the status of masters in a master-servant-relationship. However, "the true advancement of progressive policy, Hirschman seemed to suggest, is not the result of any particular social achievement per se. It is due rather to the real consolidation and development of democracy that it becomes self-propulsive, transforming the collective thrusts of modern capitalist society into lasting achievements." (Meldolesi, 1995, p. 204)

The progressive forces of the political left in Austria failed "to make the democratic system increasingly self-sustaining" (Meldolesi, 1995, p. 212) and instead joined the rhetoric of reaction by justifying an exploitative care regime denying migrant women access to social rights. To analyze the points made in the Austrian debate about legalizing migrant care work with the Hirschmanian view of the rhetoric of reaction helps to identify a road to deliberation "as an opinion forming process" (Hirschman, 1991, p. 169) in democratic societies and even establishes ties to Feminist economics and the plea for a democracy of care, for "(w)hatever democracy might mean, it should not begin with the assumption that some are masters and some are servants". (Tronto, 2010, p. 71)

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