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From avoidance to empowerment? Understanding the (in)significance of the law for migrant care workers in Austria

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Abstract

Migrant care workers are a marginalised group within Austrian society. Based on semi-structured interviews, this paper explores their real-life experiences and the problems they face and asks whether and how the law is relevant to their struggles. In short, migrant care workers are aware of some aspects of the law of the country in which they work, but they are reluctant to mobilise the law. Instead, they avoid disputes by using strategies such as leaving, denying or playing down conflicts. This behaviour can be understood by looking at the situation of migrant care workers in Austria. This paper also highlights the important role of migrant care workers' networks and how these networks compensate for the lack of individual legal mobilisation.

Keywords: care migration; legal mobilisation; care workers; freedom of movement; Austria

1 Introduction: care work, migration and the law

Many countries in the Global North are currently facing a 'care crisis'. Within Europe, some countries are able to meet the growing demand for care workers through work migration, such as Austria. The COVID-19 pandemic highlighted the Austrian social system's reliance on Eastern European migrant workers. In the spring of 2020, amid Europe-wide border closures, Austria chartered trains for essential Romanian care workers (Reuters Staff 2020).

The intra-European Union (EU) mobility of care workers is facilitated by the Fundamental Freedoms enshrined in EU law. As such, EU law can be seen as an enabler of care migration to Austria. This is one of the ways in which the law affects the issue of care migration. Other areas of the law that could be relevant to this issue are workers' rights and antidiscrimination. However, as a marginalised group (intersectional marginalisation resulting from migrant status, the gendered dimension of care work and the low social status of care work in many countries), migrant care workers can be expected to make very little use of these rights and the law in general. To date, there is little research on the experiences of these groups and the relevance of the law for them. This article explores how the law affects the everyday struggles and challenges of migrant care workers in Austria. It links research on care migration with research on legal mobilisation, access to justice and disputing behaviour.

To this end, the article outlines the issues that have been explored in previous research and identifies a research gap (Section 2). To fill this gap and to learn about the experiences of migrant

care workers in Austria, semi-structured interviews were conducted. Section 3 describes the methods used and provides background information on care migration and related policies in Austria. Section 4 presents the findings of the empirical research. Section 5 discusses these findings and draws conclusions, also linking the findings to broader research issues.

2 Literature review: care migration in existing literature

In order to provide the necessary context to situate this study and to highlight existing research gaps, this section examines the dynamics of outsourcing eldercare to migrant care workers, a practice that is not unique to Austria (Section 2.1). The section then examines scholarly perspectives on care migration, highlighting the implications for migrants and their families, as well as policy responses to potential care crises (Section 2.2). Finally, the section looks at scholarship on the legal mobilisation of migrant care workers, focusing on their rights and the factors influencing their engagement with the legal framework (Section 2.3).

2.1 Care work, care crisis, care migration

The outsourcing of care for the elderly to migrant workers is not unique to Austria (Colombo *et al.* 2011, pp. 174–78; Gallo and Scrinzi 2016). Care work, a broad term encompassing various tasks for those in need, often requires foreign workers due to insufficient national labour supply (Benoit and Hallgrímsdóttir 2011). It includes medical assistance and domestic tasks, typically performed in the home. While some care work is done in formal settings, most is done informally by women in families. The increasing participation of women in the labour force and the ageing of society have increased the demand for professional care workers.

Care workers, who are predominantly female, vary in their roles (nurses, social workers, nannies) and education levels (Benoit and Hallgrímsdóttir 2011). In countries of the Organisation for Economic Co-operation and Development, they are often middle-aged, less educated and low-paid (Colombo *et al.* 2011, pp. 161–69).

Care work is physically, emotionally and mentally demanding (Colombo *et al.* 2011; Kurowski *et al.* 2015). In elderly care, clients are often disabled or suffer from dementia, which can lead to verbal abuse of care workers. The European Union Agency for Fundamental Rights has identified domestic workers – which includes domestic care workers – as being at increased risk of exploitation and abuse in the workplace (FRA 2017). In addition to this, wages for professional care workers are generally low, although this depends on the country at hand as well as on the level of education of the care workers. All of this leads to high turnover of care workers and can lead to labour shortages (Colombo *et al.* 2011).

The developments briefly described can lead to what some call a care crisis (Hager and Bachner 2020), a situation in which the demand for care within a country can no longer be met. This is a situation that states, particularly welfare states, are trying to avoid through various strategies, such as increasing public spending on the care sector, introducing new forms of financial support for care or ‘importing’ cheap labour (ILO 2018; Lamura *et al.* 2010; Lipszyc *et al.* 2012). The literature points out that even where care migration is not actively encouraged by states, cash-for-care schemes increase the demand for (migrant) care workers (da Roit and Weicht 2013; Lutz and Palenga-Möllnbeck 2011).

2.2 Scholarly perspectives on care migration

Care migration is addressed in many academic fields, such as migration studies, welfare studies, economics, political science and feminist studies. Rather than provide a complete overview of the topics discussed in these fields (but see Sekulová and Rogoz 2017), it will suffice to highlight some aspects here. Research in this area can be grouped into three categories: 1) the specific

characteristics of care work; 2) care migration and its impact on migrant care workers, care recipients and their families; and 3) the implications of possible care crises for policy-making and policy responses to care migration.

Research on the specific characteristics of care work addresses the problems of defining care work and often highlights that care activities are still mainly performed by women and within the family. As a result, care work is often not qualified as 'work' and is devalued in societies (Bahn *et al.* 2020; Duffy 2011; Palmer and Eveline 2012; cf. Le Bihan *et al.* 2013). Research in this area also addresses the working conditions of care workers and the physical, mental and emotional consequences of this work for them (Carlos and Wilson 2018; Nielsen *et al.* 2017). Another aspect often highlighted is the affective nature of care work (Rodríguez 2014). Caring for a person involves intimate tasks and can lead to the care worker becoming emotionally involved. Finally, the literature in this area discusses the job satisfaction of care workers (Carlson and Idvall 2015; Hebson *et al.* 2015).

Care migration is another aspect of care work that has received a lot of academic attention. There are many in-depth ethnographic descriptions and analyses of the situation of care migrants, such as Hondagneu-Sotelo's (2007) account of Latina domestic workers in California, Parreñas's (2015) retelling of the life of Filipina migrant workers or Mourkabel's (2009) description of the daily life and challenges of Sri Lankan housemaids in Lebanon. In the field of critical globalisation studies, the global trend of care migration has led Hochschild (2000) to coin the term 'global care chains'. In 'global care chains', care work is globalised, very often resulting in women from less privileged countries doing care work in richer countries (Nadasen 2017). These women leave their own families behind in their country of origin to provide care for children or elders in another country, resulting in other people having to take over the care work in their home countries. One of the issues addressed in the literature is the structural impact of these care chains and migration processes on sending countries, and how migrants' families are affected by their migration (Lee and Johnstone 2013). The case of care migration to Austria is unique in this respect, as it is usually temporary, fortnightly migration rather than permanent migration. Migrant care workers in Austria can therefore often be described as 'trans-migrants', living in more than one national context (cf. Lutz and Palenga-Möllnbeck 2011).

Another area of research examines policy responses to potential care crises, analysing how (welfare) states cope with demographic changes and growing care demands, and the implications for care workers (Baines *et al.* 2019; Trydegard 2012). Comparative studies highlight both the interconnectedness of different regimes, such as migration, gender, care and employment, and of different levels (macro, meso and micro) within these regimes (da Roit and Weicht 2013; Lutz and Palenga-Möllnbeck 2011). Studies often propose strategies to maintain the quality of care services (Duffy *et al.* 2013). In Austria, despite the crucial role and emotional significance of migrant care workers in the care system, recent 'welfare chauvinist' social policies challenge their status. Welfare chauvinism (also referred to as welfare nationalism), a concept often associated with right-wing politics, argues for limiting welfare benefits to citizens or those with strong ties to the state (Larsen 2020). This trend, which is not unique to Austria but widespread in Europe, has gained traction with increased labour mobility in the EU (Kramer *et al.* 2018). However, EU treaties mandate non-discrimination between citizens of member states in terms of freedom of movement and access to social systems (Article 18 TFEU), a principle upheld by the Court of Justice of the European Union, which affirms migrant workers' rights to social benefits in host countries (Blauberger *et al.* 2020, p. 933; Blauberger and Schmidt 2014).

2.3 Migrant care workers and legal mobilisation

Given the tendencies described to restrict access to social benefits, and the corresponding protection that EU law provides on paper, one might ask how migrant care workers use their EU rights against discrimination in cases such as those described above, and why some might not.

This is a question that has been addressed in relation to migrant workers in the EU (FRA 2019). More recently, Heindlmaier and Kobler (2023) use migrant care workers as an example of essential workers and analyse how the labour rights of care workers are enforced by public authorities. Their findings show that these actors are reluctant to enforce care workers' rights. According to the authors, this is due to both a lack of willingness (resulting from the need for cheap live-in care) and a lack of capability (resulting from structural features of live-in care, such as the isolation of care workers) to enforce care workers' rights. The authors conclude by stressing the importance of alternative forms of advocacy. Heindlmaier and Kobler provide an important perspective on the issue of care workers' position within the legal system by focusing on enforcement actors. Sagmeister (2024) analyses the challenges of domestic care work during the COVID-19 pandemic in Austria and discusses in detail how the policy responses affected migrant care workers. The author shows that the policies failed to provide relief to migrant care workers because the structural characteristics of migrant domestic care work were not taken into account in the design of the policies. Sagmeister provides a valuable account of the weaknesses of the legal framework in this area. However, there is currently no research dedicated specifically to the issue of the legal mobilisation of migrant care workers in Austria. Furthermore, there is almost no information available on the legal struggles and court cases of migrant care workers.¹

Legal mobilisation is the process of invoking legal norms (McCann 2008; Zemans 1983). There are various tools of legal mobilisation, ranging from lobbying and advocacy to litigation. The literature on legal mobilisation identifies various factors that influence the mobilising behaviour of individuals and organisations (Coglianese 1996; Conant 2016; Solberg and Waltenburg 2006). Researchers argue that, in order to understand the impact of (European) law on democracy and rights, more research is needed on the issue of how and why different individuals mobilise law (Conant *et al.* 2018).

Given that there are no significant court cases or other documented cases of legal mobilisation of migrant care workers in Austria to speak of, the question of why migrant care workers do not mobilise the law, and their disputing behaviour in general, comes into focus. In order to understand migrant care workers' engagement, or lack thereof, in rights mobilisation, the social and cultural contexts of their disputes need to be considered (Albiston and Sandefur 2013; Felstiner *et al.* 1980–1981; Mather and Yngvesson 1980–1981).

Institutions such as the law and the courts, as well as social institutions, provide a framework, but the use and usefulness of this framework by and for individuals also depend on their resources, perceptions and beliefs. For example, people might not use legal means to resolve their problems because they are ashamed or afraid of retaliation (Sandefur 2009, p. 954) or because they do not want to take on the role of a victim (Bumiller 1987, p. 435). People may also not perceive their own position as problematic because they are surrounded by others in similar positions with whom they (only) compare themselves; their normative framework is thus influenced by their social environment (Shildrick and MacDonald 2013). Others may see only their own individual problem and not connect this to larger structural issues, and therefore be less likely to take action (Secombe *et al.* 1998, p. 863). Social or professional networks ('intermediaries') also strongly influence people's actions (Sandefur 2009, p. 960; Shildrick and MacDonald 2013). Finally, people's social behaviour is influenced by their cultural capital, such as their language skills and professional skills (cf. Galanter 1974). Processes of legal mobilisation are influenced by justice seekers' 'legal capital' (Bedner and Vel 2011, p. 15) – that is, their legal knowledge and skills and

¹For the recent initiative to finance litigation by IG24, see below at Section 4.2.2. For the litigation efforts by VKI – Verein für Konsumenteninformation, a consumer rights organisation that usually brings claims for consumers, rather than migrant care workers, see, for instance, <https://verbraucherrecht.at/urteil-klauseln-bei-24-stunden-pflege/3690> (accessed 7 October 2024).

the networks that provide them with such knowledge and skills (cf. Aubert 1966). This legal capital is a specialised version of Bourdieu's (1986) concepts of cultural, economic and social capital.

3 Data, methods; background information

This section provides an in-depth examination of eldercare in Austria, focusing on the increasing demand for care due to the ageing population, the important role of migrant care workers and the existing financial support mechanisms, such as the care allowance and live-in care subsidies (Section 3.1.1). The section then discusses the challenges migrant care workers face, including inadequate regulation (Section 3.1.2) and lack of professional representation (Section 3.1.3). This section also outlines the data and methods used in the empirical part of the study (Section 3.2).

3.1 A case in point: Austria

3.1.1 Background information: eldercare in Austria

Given the ageing of Austrian society, the demand for care for the elderly in Austria is high and is expected to increase. The Austrian Court of Audit (2018) estimates an increase in the number of people aged sixty-five years or older, to 2.67 million in 2050, an increase of 67 per cent compared to 2015. The population aged eighty and over is the group with the highest demand for care and is expected to grow the most.

Austria provides substantial cash benefits for home care (Trukeschitz and Schneider 2012). An important financial instrument is the so-called 'Bundespflegegeld' (general care allowance), which is currently received by about 450,000 people (about 5 per cent of the Austrian population); this number is likely to increase to 750,000 by 2050 (Bundesministerium für Soziales Gesundheit, Pflege und Konsumentenschutz 2023; Hilfswerk Österreich 2018, p. 3). Of the people receiving the general care allowance, 84 per cent still live at home, and the vast majority of the necessary care work (personal assistance, domestic work, basic medical assistance) is provided by relatives (Hilfswerk Österreich 2018, p. 20).

In addition to the general care allowance, the Austrian government supports live-in care with cash payments ('Förderung der 24-Stunden-Betreuung'). If someone is entitled to at least category three of the general care allowance (around 460 euros, awarded for more than 120 hours of care needed monthly), they can additionally profit from financial support for twenty-four-hour live-in care workers (in case of self-employed care workers: 800 euros per month as support for employing two care workers).² In addition to this requirement relating to the person in need of care, the care workers working for the client have to meet minimum quality standards, such as having received approximately 400 hours of training (theory and practice) or having provided live-in care for the past six months. According to a recent report by the Austrian Court of Audit (2018), 33,187 people received financial support for twenty-four-hour care in 2015 (7 per cent of all recipients of general care allowance). The average age of the beneficiaries is over eighty. The total amount granted under this support scheme increased sharply from its introduction in 2008 (€9.14 million) to 2015 (€138.75 million).

Financial support from the Austrian state enables elderly individuals to remain in their homes, increasing the demand for live-in care workers, who are predominantly women (Sardadvar and Mairhuber 2018, p. 64). These care workers, who are available twenty-four hours a day, provide personal care, medication management, household tasks and companionship. The affordability of such extensive care relies on Eastern European migrants, who often work for as little as one or two

²How much clients have to pay on top of this varies. One of Austria's largest organisations providing for twenty-four-hour care arrangements calculates additional costs of approximately 1,400 euros per month (2024); see <https://www.hilfswerk.at/oesterreich/24-stunden-betreuung/kosten-und-foerderungen/kosten-langzeitbetreuung/> (accessed 7 October 2024).

euros per hour. Enabled by the EU's freedom of movement, many care workers from Slovakia and Romania leave their families behind to come to Austria for eldercare jobs (Sekulová and Rogoz 2017). Non-Austrian nationals make up 98.39 per cent of Austria's live-in care workers, with the Austrian Ministry for Social Affairs, Health, Care and Consumer Protection (2021) reporting 60,061 migrant care workers in 2020. The majority are from Romania (37 per cent) and Slovakia (47.1 per cent), countries within the EU, which facilitates unrestricted travel for work (Austrian Court of Audit 2018, p. 56). Economic factors in Romania and Slovakia make care work in Austria more attractive than it is for Austrians, although neither government actively encourages such migration.

3.1.2 Policies on live-in-care and migrant care workers

While the Austrian state provides financial support to care recipients, enabling them to hire migrant care workers, state policies that affect migrant care workers themselves do not reflect the importance of migrant care workers to the Austrian social system.

First, the Austrian state does not properly regulate or supervise the live-in care sector, leaving room for exploitative contracts and poor working conditions for migrant care workers. To give just one example: The Live-In Care Act, introduced in 2007, legalised twenty-four-hour care and set maximum working hours (cf. Sagmeister 2024). While this law is very restrictive on paper and provides for a high level of worker protection, it does not apply to 99.8% of all cases in which financial support for twenty-four-hour care was received, as in these cases the carer was not employed but worked on a freelance basis (Austrian Court of Audit 2018, p. 8). Migrant care workers are mostly dependent on agencies that put them in contact with clients in need of care. There are no specific requirements for establishing such agencies, but there is a voluntary certification system for agencies.³

Second, recent Austrian legislation has discriminated against migrant care workers. One example is the policy of 'indexation' of social benefits. Indexation means that the amount of a payment depends on another value (cf. Blauberger *et al.* 2020). In the case of the Austrian family allowance, indexation has been in force since 2019. Familienbeihilfe is a benefit paid to people living or working in Austria for their dependent children. It is not means-tested, so in principle, people with low or no income receive the same amount as those with a high income. This has changed since 2019 for migrant workers who are entitled to family allowance for their dependent children. For children not living in Austria, the amount received is adjusted to the cost of living in the country where the children live. This means that, for instance, for a child living in Austria, the allowance is 114 euros monthly, but a care worker working in Austria whose child lives in Romania only receives 56.20 euros. Given the low income of migrant care workers, this amounts to a considerable economic loss. This policy was a clear violation of EU law, which prohibits discrimination between nationals of different EU member states. The violation of EU law was recently confirmed by the European Court of Justice (Court of Justice of the European Union, C-328/20, Commission v. Austria). Nevertheless, the ruling conservative party has already announced plans to introduce a modified version of this policy, which would again negatively affect migrant care workers (Kroisleitner *et al.* 2023). Further examples of discriminatory policies can be found in the policy responses to the COVID-19 pandemic in Austria (cf. Sagmeister 2024).

3.1.3 Lack of formal professional representation of migrant care workers

In order to understand the (lack of) legal mobilisation of migrant care workers in Austria, the system of professional representation should also be taken into account. In Austria, professional interest organisations are established by law – there is a Chamber of Labour, a Chamber of

³See <https://oeqz.at/> (accessed 7 October 2024).

Commerce, a Bar Association and so on. Membership of these organisations depends on the professional activity in question. These organisations wield a lot of power because they have an important position in the Austrian corporate political culture, and they employ lawyers to deal with the legal issues of their members.

The majority of migrant care workers in Austria work on a freelance basis; they are formally self-employed. As such, they are members of the Austrian Chamber of Commerce (Wirtschaftskammer Österreich – WKO). Their membership in the WKO is required by law (§ 1 para. 2 Wirtschaftskammergesetz). So, why does the WKO not lobby for the rights of the migrant care workers?

A closer look at the internal organisation of the WKO reveals why the interests of migrant care workers are not effectively represented by this organisation (cf. Heindlmaier and Kobler 2023, p. 3702). Companies and the self-employed are organised within different professional subsections. The professional section to which migrant care workers belong also includes recruitment agencies. Agencies often have interests that are contrary to those of the care workers. For example, agencies are not interested in higher wages for care workers as this would make it more difficult to place them with clients. Taking into account this conflict of interests, and the fact that the agencies are mostly founded by Austrians who speak German and have more economic and cultural capital, it is clear why the Chamber of Commerce does not represent migrant care workers effectively. The interests of the agencies prevail in this institution. As one of the care workers interviewed put it:

‘Because the WKO, there they simply don’t help. Because there in WKO sit the representatives of the recruitment agencies. And they will not ever fight for care worker, they will always fight for agency. So really, there is missing an organisation for the care workers, that if a care worker needs something, can help.’ (B 194).

This point is underlined by looking at the concrete composition of the relevant professional section in Lower Austria (one of the nine provinces – the organisation of the WKO is also territorially decentralised). In 2021, this section had about 18,300 members, of whom about 16,900 were migrant care workers, 222 were agencies and 1,200 were in other professions. The section’s executive committee consists of ten agency representatives, thirteen representatives of other professions and only four migrant care workers. While 92 per cent of the members of this section are migrant care workers, only 15 per cent of the members of the executive committee represent them, and about 37 per cent of the committee members represent agencies, whose interests are usually opposed to those of migrant care workers (Weber 2021, pp. 233–35). It is also worth noting that there have been at least three investigations into alleged electoral fraud by agency staff who allegedly filled in the ballots of migrant care workers working with them (Meinhart and Winter 2020; Winter 2021).

In short, migrant care workers are usually self-employed and, as such, members of the Austrian Chamber of Commerce. Membership is compulsory by law. Nevertheless, the interests of migrant care workers are not properly represented by the Chamber of Commerce, as this institution is involved in serious conflicts of interest: it also represents the agencies on which migrant care workers usually depend.

3.2 Data and methods

To explore the perceptions and experiences of migrant care workers in Austria, in particular the beliefs, attitudes and emotions that accompany and possibly influence their behaviour (as advocated by Albiston and Sandefur 2013, p. 112), I conducted six semi-structured interviews.

Three of these interviews were conducted with migrant care workers, and the other three with members of their networks and people who advocate for migrant care workers.

I approached the migrant care workers through a Facebook group, where I asked for interview partners and used additional snowball sampling. Accessing migrant care workers proved challenging for a number of reasons. A care worker's job is to be on call twenty-four hours a day, leaving little time to participate in interviews. Additionally, my fieldwork took place during the COVID-19 pandemic, when care workers were under great pressure and often anxious about coming into contact with new people who might put them and their clients at risk of infection. Furthermore, live-in care workers in Austria are legally obliged to maintain professional confidentiality (§ 160 para. 1 Gewerbeordnung = Austrian Federal Trade Act). Although I did not ask any questions about the personal affairs of the care workers' clients, this confidentiality may have prevented some of the care workers from participating. The sensitivity of the issues discussed and the duty of confidentiality are two of the reasons why the identities of my interviewees are kept confidential. Given the adverse circumstances, and the exploratory nature of my research, I am confident that the three care worker interviews I conducted, along with the additional sources I used, provide a valid account of the problems migrant care workers experience in Austria and how they deal with them. However, the small number of care workers interviewed is one of the main limitations of my research.

All of the care workers I interviewed are of Slovak nationality and work in Austria. Two of the care workers are female, in their fifties and have more than ten years of work experience in the field (care workers A and B). One of my interviewees is a male care worker in his forties with less than five years of experience in the field (care worker C). The interviews lasted approximately fifty to seventy-five minutes and took place by telephone or video chat (Jitsi Meet). Two of the interviews were conducted in German and one in English.

During these interviews, I asked questions about the work situation and family life, perceptions of fairness and unfairness of treatment, wages and benefits received, and available professional and personal networks and information channels. I kept the questions broad to give interviewees enough space to voice their perceptions and elaborate on their experiences.

In addition to the migrant care workers themselves, I interviewed three actors from migrant networks: a young female activist who is the founder of one of the main non-governmental organisations (NGOs) in the field (SD), a male social worker who works for a newly established 'ombudsinstitution' for migrant care workers (CL) and an artist who curated an exhibition on the work of migrant care workers in Austria with the participation of migrant care workers in Austria (CB). All of these interviews were conducted in German, lasted between sixty and ninety minutes, and took place via video chat (Jitsi Meet).

During these interviews, I asked questions about the problems and concerns that migrant care workers expressed in their conversations with my interviewees, as well as questions about the general situation of migrant care workers in Austria.

Finally, I also transcribed a video, which is publicly available online, in which a young female activist and a Romanian care worker (care worker D) describe the current situation of migrant care workers in Austria.

After obtaining the consent of each interviewee, I recorded all interviews with a voice recorder and then transcribed them. I deleted the recording after the transcription was completed.

For the analysis, I used ATLAS.ti to code the transcripts based on the concepts I described above.

It is worth noting that, with the exception of one interview conducted in English, I conducted and transcribed all interviews in German (on the challenges of translating interview data, see Feldermann and Hiebl 2020). The online content is also in German. In order to keep the relevant translation effort low and to minimise the problems of meaning associated with translation (Regmi *et al.* 2010) the coding and analysis of the data were done by me in the language of the

interviews (German). To ensure the quality of the data, I only translated the parts that I quote directly in this article.

Apart from the small number of care workers I was able to access, language is also one of the main limitations of my research. I do not speak any of the primary languages of migrant care workers well enough to conduct interviews in that language, which obviously limits my ability to interview a variety of migrant care workers. I can only interview those who speak a second language that I understand and who are willing to be interviewed in that language. Most migrant caregivers are learning German and speak it more than sufficiently for everyday interactions. All of my interviewees spoke German very well but initially expressed concern about whether I would be able to understand them.

4 Findings

Based on the interviews, this section explores the obstacles to legal mobilisation faced by migrant care workers in Austria (Section 4.1), focusing on their self-employment status, dependency on recruitment agencies and the challenges posed by live-in care arrangements. It examines how these factors, together with economic vulnerability, language barriers and lack of professional representation, prevent care workers from asserting their legal rights and addressing disputes. The section also discusses the strategies care workers use to cope with these challenges, including the formation of networks and self-organised advocacy groups (Section 4.2).

4.1 Obstacles to legal mobilisation

4.1.1 Self-employment, agencies, clients

Migrant care workers in Austria usually work as self-employed contractors, on a freelance basis. Working as a freelancer in Austria entails the responsibility of being aware of and complying with all applicable rules and regulations. In turn, freelance work is independent of an employer. The worker is (in theory) free to choose how much and for whom they want to work, and under what conditions.

While migrant care workers are self-employed, they often rely on recruitment agencies for access to clients and pay agencies commissions for this service. In addition to connecting care workers with clients, these agencies often dictate working conditions and wages, handle official registration and transportation and manage wages and social security contributions (Durisova 2017). Conflicts between care workers and agencies can arise from miscommunication about clients' medical needs, disputes over termination of assignments or when care workers change or leave agencies and face strict non-competition clauses.⁴

'Many contracts include a non-competition clause, I mean, I don't know if that's what it's officially called . . . in effect, the contract says OK, the care worker works with the family and was recruited by the agency, and if the care worker quits the agency, she is not allowed to work with this family for five years or has to pay 5,000 euros.' (CL 40)

'What we did is, we took the contract and all this, and went to an expert of labour law, paid him, what we had in budget. And he told us pretty quickly, in his legal opinion, this is against the law, these sanction payments are way too high, five years is absurdly long, 5,000 euros is

⁴As for the non-competition clause, a recent court case declared a non-competition clause void: Handelsgericht Wien, 03.08.2022, 16 Cg 23/22i, available at: https://verbraucherrecht.at/system/files/2022-10/HG_Wien_16_Cg_23_22i.pdf (accessed 7 October 2024). The case was brought to the court by VKI. In this case, VKI did not represent the migrant care workers but the clients, as the non-competition clause was part of the general terms and conditions of business of the agency relevant for contracts with both the clients and the care workers. VKI has litigated against a number of agencies, and – depending on whether interests of clients and care workers converge – is sometimes seen as an ally of care workers.

absurdly high, he can't see any way how this is legal. The problem is, as I said, I only have limited legal knowledge, the problem is that this issue has not been adjudicated yet. No case has been brought before the courts.' (CL 42)

In addition to being dependent on recruitment agencies, live-in care workers are also dependent on the person they are caring for and their needs. Caregivers are only able to provide twenty-four-hour care to one person at a time, which limits their freedom to choose their work. It should also be noted that the live-in arrangement is a crucial factor influencing the working conditions of migrant care workers, as Hondagneu-Sotelo (2007) found for migrant care workers in California. As noted above, care workers typically stay with their client for two weeks and then return home for two weeks. During the two weeks they work, they share a household with the person they are caring for and working for. The live-in arrangement is not regulated by law, leaving migrant workers in a weak position to negotiate their working conditions. This can lead to problems ranging from inadequate food to lack of privacy and sexual harassment. The range of potential conflicts is widened by the fact that many care recipients suffer from mental illness or dementia, which can lead to unpredictable and hostile behaviour towards the care worker. Even if the client is favourable (or indifferent) towards the care worker, the client's relatives are another potential source of conflict. They may add non-care tasks to the care worker's duties or question the care worker's honesty and trustworthiness by counting every penny spent on food.

In addition to the actors just mentioned – care workers, recruitment agencies, clients and their families – there are a number of other actors who can become involved in disputes and, in some cases, shape the disputing behaviour of care workers. These include state authorities (cf. Heindlmaier and Kobler 2023) as well as the Austrian Chamber of Commerce, which is legally mandated to represent the interests of care workers, as well as activists and NGOs in the field. I will discuss their specific roles in more detail below.

4.1.2 Dispute avoidance through leaving, denying and downplaying potential disputes

The most prominent area of conflict is the live-in arrangement. The problems described in the interviews range from being denied internet access to sexual harassment and being allowed to shower only once a week. Caregiver A describes her bad experiences during her first caregiving job, which she held for more than two years, before live-in care was made legal:

'Yes, there was no food, often in the evening they gave me the food that was already past the expiration date. I saw that, I noticed. I say thank you. If I eat that, I will get diarrhoea, stomach problems. And what can I do if I cannot go to a doctor, have no insurance, no doctor, working illegally, it's better I lay on the bed hungry, drink a little bit of water and have a piece of bread in the morning.' (A 41)

Asked about later experiences, she describes how a male client with an alcohol problem sexually harassed her, and how she was later confronted by the client's son, who accused her of not looking after his parents properly. She then explains her decision to leave this household:

'With such things, not because of food, it's better I leave. If I have too little food, OK, but in this case, I leave. In this way, I will never have to argue, you have to do this, you have to pay for this or that, I hit the road, I leave.' (A 123)

In another situation, where this care worker was faced with hostile family members who treated her disrespectfully and added tasks to her duties, she states:

‘This is, I did this once already. I once already experienced such a family. One week, and I leave.’ (A 49)

Another care worker talked about a client who had shown hostile and racist behaviour towards her, which had left her feeling stressed, unwell, nervous and with high blood pressure. This care worker also chose to avoid (escalating) the conflict by leaving, even if it meant being out of work for some time:

‘But then I said, it’s simply my decision, I will stay at home if I have to and wait for a new client, better to be at home without money than to go back there.’ (B 83)

Even in cases where the problem originated from the recruitment agency not adequately describing the client’s medical condition, care workers chose to deal with the problem by leaving the household (B 56). When faced with recruitment agencies that repeatedly made such mistakes, one care worker chose to change agencies (B 62). The same behaviour was shown by another care worker, who was not satisfied with the compulsory transport imposed by her agency and therefore changed agencies.

Leaving seems to be a prominent strategy for many care workers, as it was pointed out several times in the interviews by care workers and people from their networks that there are clients who have had several care workers within a very short period of time. Experienced care workers know to avoid these clients. As there is a high demand for care workers in Austria, it is also economically feasible for care workers to leave, because they can find other clients.

What is also clear from the interviews I conducted is that care workers are afraid to confront the agencies they work for. One care worker explains:

‘I am happy to have this job. So I try to avoid any legal disputes with my agency.’ (C 176)

A similar attitude is displayed in this care worker’s stance on having the contractually prescribed breaks of two hours each day, or having privacy in his own room:

‘We are entitled to two hours of free time each day. If I don’t have it, I don’t care, I don’t mind. It doesn’t really matter to me. I am at work. I don’t care.’ (C 155)

‘Well, it’s not really a room, it used to be a walk-in wardrobe, so I make a joke that I live like Harry Potter, but basically, I have something like my own room, I use it only for sleeping, so. It’s not a big deal.’ (C 80)

This behaviour can be qualified as denying or playing down the existence of problems. In the light of the quote above, this is most likely due to fear of the agency. Also, this avoidant behaviour has to be seen in the context of the affective nature of the work carried out by care workers, who often develop strong emotional ties and affection for their clients, in some cases even calling it love:

‘I do everything for my clients, everything with love. When I was in Burgenland, there was a client, unmarried, without a partner, without kids, only a sister-in-law. She was called Steffi, and I still love her. Unfortunately, she died. But for me, still, I love her, she is one of my favourite human beings.’ (A 49)

In some instances, hostile or aggressive behaviour is also attributed to the client’s mental or physical condition and thus dismissed as not serious, as evidenced by care worker C’s account of why his (female) predecessors quit:

'I know, that there was some kind of harassment going on. The person that I take care of has dementia. That's a person that was born eighty years ago. So he has totally different attitude towards women. For example, like I do. So touching ass and making suggestions and whatever, for him, it's, it's something that he considers normal, for example.' (C 155)

All of the care workers I interviewed said that they very much like their job and that their greatest reward was the gratitude of their clients. This may make them reluctant to enter full-grown disputes with clients or family members. Similar observations have been made about why domestic workers shy away from collective action in trade unions (Le Petitcorps 2018, p. 96).

4.1.3 *Migrant care workers as 'working poor'*

It is clear from the data I have collected that migrant care workers can be described as working poor, at least by Austrian standards. Their net monthly income ranges between 300 and 550 euros. It has been pointed out that this is not always justified by the lower cost of living in their home countries, especially for Slovak care workers. The low income makes it unrealistic for care workers to build up savings. All of the care workers I interviewed had children who, at least at some point in their careers, were a reason for taking up the job. In their home countries, where the care sector is not as well funded as in Austria and the unemployment rate is higher than in Austria, care workers usually do not have available job alternatives.

This also affects their ability to mobilise the law and access justice: hiring a lawyer and getting legal advice is expensive. When asked what he would do in case of legal problems related to his work, one of the care workers immediately replied that he would simply hire a lawyer, but later added that an Austrian lawyer would definitely be too expensive for him, so he would try to hire a lawyer from Slovakia – who would most likely not be familiar with Austrian law.

The precarious economic situation of migrant care workers is often exacerbated by a lack of resources for professional advice. As a result, they must navigate the Austrian legal and bureaucratic systems on their own, sometimes relying on recruitment agencies that may not effectively address their problems. This lack of support leads to problems with significant economic implications. For instance, as one network member revealed, care workers who leave Austria without deregistering often unknowingly accumulate substantial insurance debts.

'We were confronted with the whole range of problems with which twenty-four-hour care workers are faced quite quickly, especially things such as backlogs for social security payments, which is one of the main issues, that care workers haven't worked in Austria for three years and suddenly they receive a letter from the fiscal authorities, the Romanian fiscal authorities, saying, "OK your assets are now being seized, because you have debts of 5,000 euros with the Austrian social security", and they don't know where this is coming from, "why? I always worked, I always paid for everything".' (CL 36)

Similar problems were reported by another activist, who criticised the system of 'Inkassovollmacht' (power of attorney for collection), which means that the care workers' wages are not paid directly to them, but to the agencies, who are then supposed to pay all the fees and pass on the remaining money to the care worker:

'The agencies promise that they will pay the social security contributions, but then they just don't, or only pay parts of the contributions, which leads to debts of the care workers. This happens ... There have been many issues with payment delays. This can't be, that a care worker works for two weeks in Austria, comes home and only receives here money two weeks later. This is a scandal, the care workers need the money. But this happens. It is not even illegal.' (SD 77)

4.1.4 Language barriers and legal mobilisation

As work migrants, migrant care workers are disadvantaged in terms of cultural capital: they usually do not speak German and are not familiar with the legal system and the bureaucratic structure in Austria. Although all care workers try to learn German, it is not an easy task, and they have limited opportunities to do so during their working hours. This is a major obstacle to accessing Austrian authorities, most of which operate in German.

‘Yes, the language barriers are too big. Because, yes. She could very well turn to the Anti-Discrimination Agency in Graz, but if she doesn’t speak German, or if she doesn’t understand, then she has a problem.’ (SD 73)

Lack of language skills not only affects the ability to deal with authorities and to understand the law, but is also seen as a reason why some care workers take on additional, non-care-related tasks as part of their duties – because they do not understand and therefore do not know better, and because they believe that what the clients tell them to do is what they have to do (B 117). Although the Austrian Chamber of Commerce has produced model contracts in the primary languages of migrant care workers, many contracts are still only issued in German (CL 77). Unfamiliarity with the language and the legal system leads to a very specific type of legal consciousness, characterised by powerlessness and speechlessness. While many care workers do voice their dissatisfaction with current policies and describe them as discriminatory, they lack the necessary frame of reference to relate this to an actual injustice that can be addressed by legal means:

‘They made the family bonus in half for us, meaning half of what Austrian children get our children get. This is also discriminatory. We pay for everything in Austria, we work in Austria.’ (D 41)

‘If we are in EU, I believe then the wage for us, or the family allowance, that is not right. I have less than the cleaning lady. . . . But why the care worker, if she works in Austria, why does she have less family allowance because the children are in Slovakia. I believe this is not right. I am sorry, I cannot say it better, because these are things, with my clients, we don’t talk that much about this.’ (B 184)

In this way, unfamiliarity with the language and the legal system prevents care workers from addressing structural problems, because they do not see them as problems that can be solved by legal means.

This unfamiliarity is particularly problematic given the freelance status of migrant carers, which puts the onus on them to find out about the law. As one activist put it:

‘These are complex matters, not easy to understand. Imagine, you travel to France for instance to start a business there, and you don’t speak French or only very little French, you have no contacts, you don’t know the ropes, how does the bureaucratic apparatus work, in France for example. That is simply – I don’t know, this is something which I, within the framework of the freedom to work, I mean, that workers can move anywhere within the European Union to work, and that they can found a business, in every European country, that is a critical point to me. Because on the one side this is of course great for people who know how to do that, who plan that, to go abroad. But with twenty-four-hour care this is not the case. The care workers don’t know the system. They know – some even think that they are employees of the agencies. But they are not.’ (SD 75)

The cultural capital of work migrants grows with their work experience. The longer they work in the field, the more they know about their rights and duties, and their German usually improves.

4.2 Compensation strategies

While the previous sections have highlighted the obstacles migrant care workers face when it comes to legal mobilisation in Austria, the following section analyses compensation strategies, drawing on the interviews I conducted and additional official and online resources.

4.2.1 Exchanging information through care worker networks

Work experience is one of the main ways in which care workers improve their cultural capital and thus also their means of access to justice in Austria. It is therefore important for care workers to form networks through which they can share their experiences with each other. The fact that migrant care workers typically work alone in a household and are on duty twenty-four-hours a day leads to isolation and poses a structural challenge to establishing such networks (cf. Heindlmaier and Kobler 2023, for the challenges it poses for enforcement actors). Nevertheless, there are two main channels through which care workers share their knowledge and experiences.

First, care workers often travel to and from Austria by bus with other care workers. Time spent on the bus was identified by all my interviewees as one of the main sources of exchange between migrant care workers. On the bus they talk about treatment options for clients, behavioural patterns of clients and how to deal with them, and exchange agency contacts.

Second, and more importantly, care workers connect with each other on Facebook. The care workers I interviewed were all members of one or more Facebook groups related to care work. There are now large support groups for migrant care workers, the most prominent being ‘Drept’ (the Romanian word for justice) for migrant care workers from Romania,⁵ which has around 12,000 members. A Facebook group for Slovak care workers, *Iniciativa24*,⁶ was initiated during the COVID-19 pandemic by an activist who is not a care worker herself. Through these Facebook groups, care workers can share and exchange information about applicable laws, treatment options for clients and warn each other about exploitative agencies to avoid. In this way, migrant care workers have found a way to communicate with each other, even though they work in separate households and rarely get together. These groups proved to be particularly useful during the COVID-19 pandemic, when applicable laws and regulations changed frequently.

However, communication within these groups takes place mainly in the primary language of the migrant care workers, which is Romanian for Drept and Slovak for groups such as *Iniciativa24*. This is a problem because the structural problems that migrant care workers face in Austria are the same regardless of their country of origin. Language barriers are therefore a significant obstacle to forming an overarching network of migrant care workers and lobbying legislators and other stakeholders in the policy-making process with one voice.

Another issue that needs to be highlighted is that migrant care workers themselves are not legal experts. They can share their experiences within the Austrian bureaucratic system and benefit from each other in this way, but they have difficulties in determining the legal situation in relation to new circumstances or conflicts that none of them have faced before.

⁵DREPT pentru îngrijire. Available at <https://www.facebook.com/dreptpentruingrijire/> (accessed 3 January 2024).

⁶*Iniciativa 24* – *Iniciativa za zlepšenie podmienok v 24h opatrovaní*. Available at <https://www.facebook.com/iniciativa24/> (accessed 3 January 2024).

4.2.2 Self-organised interest representation: IG24 and others

Given the lack of formal professional representation described above, migrant care workers have formed their own networks and structures of empowerment and representation. The starting point for this was the Facebook groups Drept and Iniciativa24 mentioned above, which were initially organised by care workers themselves and are now both registered as NGOs in Austria.

Activists from these NGOs and migrant care workers founded a joint umbrella organisation in spring 2021, called IG24 Interessengemeinschaft der 24H-Betreuer_innen.⁷ IG24's aims to strengthen solidarity among migrant care workers and to achieve better working conditions and social justice for migrant care workers in Austria. To achieve this, they use different strategies, such as lobbying the legislator, organising rallies and empowering and informing migrant care workers. One of their most important activities to date has been the production of information videos on rights and duties of migrant care workers in Austria in the care workers' primary languages. For instance, IG24 provides answers to frequently asked questions on its website on issues such as what it means to be self-employed in Austria, what care work entails, etc. In YouTube videos, an activist explains what care workers should know about recruitment agency fees or how working in Austria might affect their pensions. In providing this content, IG24 activists act as legal translators for migrant care workers: literally by translating the content of the law into their first languages, but also by filtering the relevant rules and regulations and pointing out the relevant content for the daily work of migrant care workers. The work of these organisations is based on the voluntary work of care workers and activists, which is one of the main limitations of their work: both their time and resources are far from unlimited.

After the initial research for this paper was completed, another interesting development took place: IG24 launched a crowdfunding campaign to fund litigation to challenge the legal construct of migrant care workers as 'self-employed'.⁸ The funding target has now been met, but there is no (public) information about how IG24 intends to pursue these claims and what stage the litigation is currently at.

4.2.3 Creating ombudsinstitutions: CuraFair

Another recent development of relevance to the social capital of migrant care workers is the establishment of ombudsinstitutions specifically designed to address the needs of care workers:

'I used to be an advisor for refugees at Volkshilfe Refugee and Migrant Support ... and we noticed, at our information centres for regular migrants, refugees and so on that there were more and more twenty-four-hour care workers, mostly from Romania and Slovakia, turning to us with questions concerning their contracts, integration in Austria, possibilities to take German lessons and so on. ... And then I was tasked with finding out which possibilities there are for migrant care workers, something like a Chamber of Labour, where they can turn to, to get legal counsel if for instance some dubious agency attempts something sketchy. And pretty soon, I realised that there is, de facto, nowhere they can turn to, aside from some self-organised initiatives. ... And there was the idea, OK, we are doing this now.' (CL 36)

Building on this organisation's experience in supporting refugees and migrants, they established 'CuraFair', an institution that provides services and counselling to migrant care workers. CuraFair was initially established in Upper Austria, one of Austria's nine federal states, but has recently expanded and now has staff in Graz and Vienna. The organisation is now funded by the Austrian Ministry of Social Affairs, Health, Care and Consumer Protection.

⁷IG24 – Interessengemeinschaft der 24-Stunden Betreuer_innen. Available at <https://ig24.at/> (accessed 4 January 2024).

⁸<https://ig24.at/de/thema/ig24-pflege-gerichtsprozess/> (accessed 7 October 2024).

In order to reach the migrant care workers, CuraFair established a Facebook presence, where care workers can contact them. Employees of CuraFair are also accessible via phone or WhatsApp Messenger, and they currently cover the most important languages of care workers (Romanian and Slovakian). CuraFair currently employs one legal expert. CuraFair also cooperates with the self-organised NGOs, who sometimes pass on complicated cases to CuraFair.

Another way of connecting care workers is through informal meetings of care workers, called ‘care worker cafés’ (‘Betreuerinnencafés’). CuraFair supports the setting up of such meetings. During the COVID-19 pandemic, CuraFair provided platforms for care workers to hold the cafés online. Together with Amnesty International and IG24, CuraFair also initiated the ‘Day of Caregivers’ on 27 June 2021 (Amnesty International, n.d.). On this day, care worker cafés took place all over Austria. In these cafés, information material on the rights and duties of care workers in Austria was distributed.

4.2.4 Not generalisable: clients and their families as support structures?

Whether or not clients and their family members support the legal mobilisation of migrant care workers is controversial and largely depends on the individual case. While the care workers I interviewed gave examples of supporting families who, for example, helped them with learning German, clients and their families are very often also a source of potential disputes. However, where the interests of the family and the care worker align, this can benefit care workers. This was described in a case where both the family and the care worker were threatened with a lawsuit for allegedly breaching a non-compete clause; the way this case was resolved showed that the families, who are often much wealthier than the care workers, in general know how to operate within the Austrian legal system. As consumers, clients and families can also turn to consumer organisations such as VKI – Verein für Konsumenteninformation. These organisations have privileged access to the courts and, depending on whether the interests of clients and care workers converge, can sometimes be an ally of the care worker.

5 Discussion: understanding the insignificance of the law for migrant care workers in Austria

As shown, the law does not play a decisive role in how migrant care workers deal with their real-life problems in Austria. The study thus confirms what has been pointed out in relation to migrant workers in general (FRA 2019).

Migrant care workers do not rely on the law to make claims and generally do not even try to use the law or its ‘shadow’ (Mnookin and Kornhauser 1979) to their advantage when negotiating with clients or the agency. While lack of knowledge and awareness of the law may explain some of the law’s insignificance, the care workers I interviewed were very well informed about some legal aspects of their work, such as their contractual rights and obligations and the legal limitations on their competences (e.g. they are not allowed to assist with medication without prior consultation with medical staff). Caregivers also expressed their dissatisfaction with some of the discriminatory Austrian policies (indexation of family allowances, no access to the COVID-19 assistance fund) and made it clear that they felt these laws were unfair to migrant care workers. Why does the law still not play a significant role in the actions of migrant care workers? The insignificance of the law for migrant care workers can be better understood by contextualising it with their specific situation in Austria:

Economically, migrant care workers are in a weak position, dependent on the actors with whom they are most likely to come into conflict, and unable to afford legal representation. The weak economic status of migrant care workers makes them vulnerable to the potential economic risks of litigation, so it does not make sense for them to insist on their positions and claims in these relationships. When faced with potential disputes, they leave their current jobs or agencies, deny

the existence of a problem or downplay the issue. From a disputing perspective, this is exactly what Felstiner (1975, p. 695; see also Cownie and Bradney 2020, pp. 69–71) defined as avoidance. Avoidance in some cases may be due to the legal framework – if someone knows that their legal position is weak, this may be a reason to avoid a dispute for fear of losing. This could explain the avoidance of migrant care workers in some cases where the law does not explicitly provide protection – for example, in relation to issues of the live-in arrangement. That migrant care workers do not use the law to their advantage because the law is not designed to their advantage may be true in some cases, but it does not explain cases where legal guarantees, such as contractual rights or European rights to non-discrimination, exist but are not used.

The weak economic position of migrant care workers is aggravated by their low cultural capital: they are unfamiliar with the Austrian legal and bureaucratic system and usually do not speak German. This makes it difficult for migrant care workers to access the existing support structures of the legal system. For example, in order to receive legal aid for court proceedings, a form must be filled out that is only available in German.

Migrant care workers often lack the familiarity with the legal system necessary to qualify legal guarantees (such as the principle of non-discrimination in EU law) as relevant normative frameworks applicable to their problems. In addition, migrant care workers lack the social networks that could enable them to make these connections to different normative frameworks.

Looking at the social capital available to migrant care workers also explains their tendency to avoid conflict: one of their most powerful resources is the experience and knowledge of other migrant care workers, which they make available to each other by connecting and sharing on Facebook. Based on these resources, migrant care workers can make better choices about which clients and agencies to avoid, but they are not able to address the root problems of the difficulties they face in their work.

Through the networks and organisations they have built, migrant care workers can also try to build public and political pressure, which has been useful, for example, in dealing with the denial of access to the COVID-19 relief funds (Sagmeister 2024).

However, the resources of activists and migrant care workers are limited. It is therefore important that there is funding for institutions that provide services and advice to migrant carers – and given that the WKO does not currently do this, a reform of this institution is urgently needed.

In addition to these findings, my research confirms a major downside of the freedom to move and work within the EU. Workers' mobility can lead to situations in which they face a legal and bureaucratic system that is completely unfamiliar to them, and within which they are at the mercy of national policy-makers who, as noted above, do not necessarily have the best interests of these workers in mind when designing policies. This problem is not unique to care workers or to Austria (FRA 2019), and it is not the only negative 'side effect' of EU free movement law (cf. on the gender care gap Miller, 2023). This article adds to existing research addressing this issue from the perspective of enforcement actors (Heindlmaier and Kobler 2023) by providing insights into the experiences of individual migrant care workers. Marginalised groups and individuals may be inclined to make use of their right to work in other EU member states, but they are not able to make use of the legal protection available to them. This is an important finding that should be taken into account when designing policies for the exercise of fundamental freedoms within the EU.

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