

# COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO AUSTRIA  
FROM 13 TO 17 DECEMBER 2021



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## SUMMARY

Commissioner Dunja Mijatović and her team visited Austria from 13 to 17 December 2021. The present report focuses on the following issues raised during the visit: reception and integration of refugees, asylum seekers and migrants, and women's rights and gender equality.

### **Reception and integration of refugees, asylum seekers and migrants**

The Commissioner observes that the living conditions prevailing in Austrian reception centres may vary from one facility to the other, and that the difficulties in implementing the rules regarding the repartition of tasks between the federal and the provincial authorities in the field of reception may result in overcrowding and lengthy stays in certain federal infrastructures such as the Initial Reception Centre of Traiskirchen which she visited. Therefore, the Commissioner calls on the Austrian authorities to adopt harmonised standards regarding the reception centres and to pursue cooperation with the provinces with a view to addressing these shortcomings, with particular attention paid to the specific needs of vulnerable people, especially unaccompanied children. In this regard, she urges the authorities to ensure the appointment of a guardian for all unaccompanied children without delay or pre-condition from their arrival or identification. The Commissioner also invites the authorities to enhance their cooperation with NGOs in order to increase transparency and accountability in the field of reception and improve the services provided to residents of the reception facilities. Among these services, ensuring asylum seekers' access to education and to employment is an important part of the State's duties regarding reception which requires further efforts. Providing independent and good quality legal counselling is another essential part, which the Commissioner recommends strengthening by legally safeguarding the structural and functional independence of the federal agency tasked with providing this service.

In the field of integration, the Commissioner is worried about existing practical obstacles hindering access to family reunification and invites the Austrian authorities to remove them, to speed up the family reunification procedures concerning unaccompanied children, as well as to provide beneficiaries of subsidiary protection with the same favourable rules as refugees, abolishing the three-year waiting period before relatives of beneficiaries of subsidiary protection can apply for family reunification. She also invites the Austrian authorities to ease access to long-term residence, especially for beneficiaries of subsidiary protection, to shorten the length of uninterrupted residence in Austria required for citizenship and to address the delays in the naturalisation procedures. Concerned about the deterioration of the climate prevailing in Austria towards asylum seekers, refugees and migrants, the Commissioner welcomes the measures taken to combat hate speech and hate crime, and urges the Austrian authorities to raise awareness about these measures and to ensure their effective and prompt implementation, including in the framework of the national action plan on racism under preparation which the Commissioner encourages the authorities to speed up and to open to all relevant stakeholders, including NGOs and national human rights structures.

During her visit, the Commissioner's attention was also drawn to credible allegations of pushbacks, which point to the existence of an established practice, as noted by a provincial court on two occasions. The Commissioner urges the Austrian authorities to ensure that independent and effective investigations are carried out into allegations of pushbacks and of ill-treatment by members of security forces in the context of such operations, and to put an end to these practices.

### **Women's rights and gender equality**

In the field of women's sexual and reproductive health and rights, the Commissioner welcomes the existence of a solid legal framework related to sexuality education. However, she considers that efforts should be made to complement the curricula, especially on self-determination and consent issues, and to provide training to all teachers involved. Concerned about the fact that contraception services are

not covered under public health insurance or reimbursement schemes in Austria, the Commissioner calls on the authorities to subsidise counselling on contraception and contraceptives, cover them under public health insurance or reimbursement schemes, or provide them free of charge. Finally, the Commissioner urges the authorities to cover the costs of abortion care under public health insurance, and to ensure the dispersal and availability of adequate numbers of health professionals across public and private health facilities, in urban and rural areas, who are willing and able to provide sexual and reproductive care, including abortion care.

The Commissioner is very concerned about the high level of various forms of violence against women prevailing in Austria. She welcomes the legislative and practical steps taken by the authorities to address this phenomenon and calls on them to significantly increase their efforts in order to ensure that a set of comprehensive policies in the fields of prevention, protection and prosecution exists in relation to all forms of violence against women. In particular, the Commissioner urges the Austrian authorities to take resolute measures to improve the police response to acts of violence against women and to rebuild trust between the police and victims of violence against women. She also invites the authorities to pursue their efforts to strengthen the response of the justice system in order to improve the prosecution and conviction rates in cases of violence against women. As regards the fight against the digital dimension of violence against women, the Commissioner welcomes the measures taken by the Austrian authorities to address this phenomenon and calls on them to raise awareness about the means provided to victims by the legislative package on online hate, and to pursue their dialogue with private actors, including social media platforms, to foster its implementation while ensuring full transparency over the means applied to restrict online violence against women. Scrupulous efforts must further be made to ensure that the enforcement of the measures does not lead to content overblocking and abusive restrictions on freedom of expression and freedom of the press.

Noting that more efforts are needed, including in the fields of awareness-raising, prevention, training, repression, shelters, legal and psychosocial support to victims, the Commissioner calls on the Austrian authorities, both at federal and provincial level, to significantly increase the budgets related to the fight against all forms of violence against women. She also calls on the authorities to safeguard the best interests of the child, including by ensuring that the custody rules protect the children from any violent parent, including in cases where the children have witnessed violence against their mother.

As regards gender equality, the Commissioner is concerned about gender pay and pension gaps and urges the authorities to address these as matters of priority. She also calls on the Federal and provincial authorities to significantly improve the availability of high-quality childcare support to facilitate women's re-entry into the labour market.

## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), and her team carried out a visit to Austria from 13 to 17 December 2021. The visit focused on certain issues concerning reception and integration of refugees, asylum seekers and migrants (section 1 of the present report), and women's rights and gender equality (section 2).
2. During her visit, the Commissioner met the Federal President, Alexander Van der Bellen; the Federal Minister for European and International Affairs, Alexander Schallenberg; the Federal Minister for the EU and Constitution at the Federal Chancellery, Karoline Edtstadler; the Federal Minister of Social Affairs, Health, Care and Consumer Protection, Wolfgang Mückstein; the Federal Minister for Women and Integration at the Federal Chancellery, Susanne Raab; the Federal Minister of Justice, Alma Zadić; and senior officials of the Federal Ministry of the Interior. She also met Petra Bayr, member of the Austrian parliament; the Ombud for Equal Treatment; the Austrian Ombudsman

Board; the Mayor of Traiskirchen, Andreas Babler; as well as representatives of civil society, and international organisations.

3. The Commissioner visited the Initial Reception Centre of Traiskirchen (Lower Austria), where she talked to asylum seekers and migrants and staff members of the facility. In Vienna, the Commissioner also visited a counselling centre for women and girls run by the Austrian Society for Family Planning, where she discussed women's sexual and reproductive health and rights with staff members.
4. The Commissioner would like to thank the Austrian authorities in Strasbourg and Vienna for their assistance in organising her visit in particularly challenging times and for providing her with additional information following the visit. She expresses her gratitude to all her interlocutors in Austria for sharing with her their knowledge, experiences and insights.<sup>1</sup>

## 1. RECEPTION AND INTEGRATION OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS

5. Following a peak in arrivals in 2015 and 2016<sup>2</sup>, Austria saw a decline in the following three years,<sup>3</sup> before the numbers rose again. This recent increase was moderate in 2020<sup>4</sup> and became more significant in 2021, with 38 638 asylum applications lodged. Despite these variations in numbers, the Commissioner observes that, since 2014, the majority of the asylum applications were lodged by nationals of the same two countries: Syria and Afghanistan.<sup>5</sup> The Commissioner also notes that, in 2021, refugee status was granted to 11 672 applicants,<sup>6</sup> while 4 069 persons received subsidiary protection.<sup>7</sup>
6. Although the following report does not cover this aspect, the Commissioner notes that, as of 25 March 2022, 27 000 people fleeing the conflict in Ukraine registered in Austria. She welcomes the solidarity demonstrated by country's authorities and population and recalls that all Council of Europe member states should strengthen their efforts to coordinate – both at domestic and European levels – and scale up support for the response to the humanitarian and human rights needs of people fleeing the war in Ukraine.
7. During her visit to Austria, the Commissioner focused on several issues pertaining to the reception and integration of refugees, asylum seekers, and migrants, which are the subject of the following subsections of the present report. However, the Commissioner's interlocutors also drew her attention to allegations of summary returns ("pushbacks"), sometimes accompanied by the use of violence, preventing people on the move from gaining access to the asylum procedure and to any form of reception or integration in Austria. The Commissioner notes with concern that several cases have been reported and documented in the past two years at the Austrian borders with Slovenia and Hungary.<sup>8</sup> According to NGOs, these operations may contribute to chain pushbacks along the

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<sup>1</sup> This report was finalised on 31 March 2022. All online documents quoted in the report were last accessed on that date.

<sup>2</sup> According to the Federal Ministry of the Interior, 88 340 asylum applications were lodged in [2015](#); 42 285 in [2016](#).

<sup>3</sup> According to the Federal Ministry of the Interior, 24 735 asylum applications were lodged in [2017](#); 13 746 in [2018](#); 12 886 in [2019](#).

<sup>4</sup> According to the Federal Ministry of the Interior, 14 775 asylum applications were lodged in [2020](#).

<sup>5</sup> In [2021](#), 40.9 percent of the asylum applications were lodged by Syrian nationals, 21.9 percent by Afghan nationals. In [2020](#), 34.7 percent of the asylum applications were lodged by Syrian nationals, 21.2 percent by Afghan nationals.

<sup>6</sup> Representing 46.9 percent of the 24 894 decisions on asylum applications issued in [2021](#). In [2020](#), refugee status was granted to 8 069 applicants, *i.e.* 45.8 percent of the 17 636 decisions on asylum applications issued over this year.

<sup>7</sup> Representing 31 percent of the 13 134 decisions on subsidiary protection issued in [2021](#). In [2020](#), subsidiary protection was given to 2 524 persons, *i.e.* 27.5 percent of the 9 184 decisions on subsidiary protection issued over this year.

<sup>8</sup> See "Berichte über illegale Pushbacks von Migranten an österreichischer Grenze", [Der Standard](#), 16 November 2020. Also see Border Violence Monitoring Network, [reports](#) on pushbacks from Austria, and "Wieder dokumentierter Pushback von Österreich nach Slowenien", [Der Standard](#), 7 September 2021.

Balkan Route, from Austria to Slovenia or Hungary, and then to Croatia and Bosnia and Herzegovina.<sup>9</sup>

8. The Commissioner also notes that, according to the Federal Minister of the Interior, none of the people returned expressed their wish to claim for asylum in Austria and that returns to Hungary and Slovenia were operated in application of readmission agreements.<sup>10</sup> However, in a [judgment](#) delivered on 1 July 2021, the Provincial Administrative Court of Styria ruled that the return of a Moroccan national to Slovenia and subsequently to Croatia and Bosnia and Herzegovina had deprived this person of his right to apply for asylum, and concluded that "pushbacks are partly applied as a method in Austria." The Court also suggested that such operations are part of chain refoulement.<sup>11</sup> In another judgment delivered on 16 February 2022 in the case of an underaged Somali national allegedly pushed back to Slovenia by the Austrian authorities in the summer of 2021, the same Provincial Administrative Court of Styria confirmed its previous conclusion regarding the methodological use of pushbacks.<sup>12</sup>
9. In its exchanges with the Office of the Commissioner, the Federal Ministry of the Interior firmly rejected the allegation of systematic pushbacks, stressing that internal evaluation of the reported incidents concluded that there had been no misconduct on the part of the officers concerned. The Federal Ministry of the Interior further indicated that a decree on the procedure in case of accusations of pushbacks at the Austrian border was issued in December 2021.<sup>13</sup>
10. The Commissioner addresses in the present section selected issues concerning reception (1.1) and integration (1.2).

### 1.1. ISSUES CONCERNING RECEPTION

11. In virtue of the Austrian legislation, the responsibilities regarding reception are shared between the federal state and the provinces.<sup>14</sup> The federal state is responsible for providing basic care services during the admission procedure, after the completion of which the provinces are in charge. The repartition of tasks between the federal and the provincial authorities in this regard is further regulated by a series of agreements concluded between the federal state and the provinces, as provided for by article 15a of the Federal Constitution.<sup>15</sup>
12. During her visit, the Commissioner mostly focused on the federal state's duties in the field of reception, which – further to a reform adopted in 2019 which entered into force in December 2020 – are carried out by the Federal Agency for Care and Support Services Limited Company (BBU-GmbH), a private company owned by the Federal Ministry of Interior.<sup>16</sup> In virtue of the Federal Law

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<sup>9</sup> Asylkoordination Österreich, [AIDA Country Report: Austria](#), AIDA/ECRE, 2021, p. 21-22. See also APA/OTS, "[Chain Push-Backs from Austria to Bosnia](#)", 26 February 2021.

<sup>10</sup> Federal Ministry of the Interior, [reply](#) to the parliamentary written question 4300/J on pushbacks at the southern borders of Austria, 20 January 2021 (in German). According to this reply 514 persons were returned to Slovenia in 2020 in virtue of the bilateral readmission agreement concluded between this country and Austria.

<sup>11</sup> According to information provided by the Federal Ministry of the Interior to the Commissioner following her visit to Austria, the Regional Police Directorate Styria (Landespolizeidirektion) filed an extraordinary appeal against this decision with the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH), which was pending at the time of writing this report.

<sup>12</sup> Landesverwaltungsgericht Steiermark, LVwG 20.3-2621/2021-49, 16 February 2022: "As already stated in the decision of the court of July 01, 2021, GZ: LVwG 20.3-2725/2020-86, the court comes to the conclusion from the procedure described [...] that "push-backs" are partially used methodologically in Austria."

<sup>13</sup> Erlass Vorwurf angeblicher illegaler Pushbacks an der österreichischen Binnengrenze, 2021-0.110.630, 3 December 2021.

<sup>14</sup> Basic Care Act (Grundversorgungsgesetz – Bund 2005 – [GVG-B 2005](#)), para 2.

<sup>15</sup> [Agreement](#) of 15 July 2004 concerning joint action for the temporary basic provision of aliens in need of help and protection in Austria; [Agreement](#) concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement of 2013, amended in 2016.

<sup>16</sup> Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company (Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung - [BBU-G](#)), 2019.

on the BBU-GmbH, the latter is tasked with providing not only basic care services during the admission procedure, but also legal counselling to asylum seekers at first and second instance of the asylum procedure, which raises several issues that the Commissioner wishes to briefly mention before addressing the reception conditions.

13. **Access to independent and good quality legal counselling** is instrumental for asylum seekers. Before the entry into force of the Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company, legal assistance was provided by contracted non-state actors. The shift to BBU-GmbH raised serious concerns among legal professionals and NGOs, who pointed out the lack of structural independence of the BBU-GmbH and questioned its impartiality in light of the fact that the authority deciding on asylum claims in first instance and the agency providing legal counselling and representation would both be embedded in the Ministry of the Interior.<sup>17</sup> The Commissioner observes that, a year after the BBU-GmbH started operating, most stakeholders, including NGOs, seem to consider that the quality of the legal assistance provided to asylum seekers has not significantly decreased, despite specific concerns notably related to the lack of technical expertise and/or instances of anti-LGBTI prejudices reportedly demonstrated by several interpreters hired by the Agency and their possible consequences on the legal assistance and the asylum procedure as a whole. However, some issues of concern remain as the structural and functional independence of the BBU-GmbH are not ensured by strong legal safeguards and therefore mainly depend on the persons in charge.<sup>18</sup>
14. **Living conditions in reception facilities.** According to the Austrian authorities, as of 1 February 2022, 3 767 persons were accommodated in 23 federal reception facilities consisting of Initial Reception Centres (*Erstaufnahmestellen*, EAST),<sup>19</sup> Distribution centres (*Verteilerquartiere*, VQ),<sup>20</sup> Federal reception centres (*Betreuungsstellen*, BS),<sup>21</sup> and Specialised reception centres (*Sonderbetreuungsstellen*).<sup>22</sup> In addition, 26 465 people were hosted in provincial reception facilities, including reception centres mostly run by NGOs contracted by the provinces and individual housing.
15. In its 2020 [submission](#) for the Universal Periodic Review on Austria, UNHCR noted an improvement of the reception conditions since the 2015-2016 reception crisis, while stressing that “quality and conditions of accommodation and support in reception facilities still varies greatly as there are no harmonized reception standards and the respective responsibility is shared between the Federal Government and the nine Provinces.” The information received by the Commissioner during her visit also depicts a mixed picture, with living conditions being described as acceptable in some reception centres, and unsatisfactory in others. Moreover, the isolated location of several reception centres and the limited availability of public transportation result in additional difficulties for people accommodated in these facilities.<sup>23</sup> Concerns were also raised regarding the specific needs of

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<sup>17</sup> See, e.g. ECRE, “[Reforming legal assistance in Austria: an end to independent provision?](#)”, July 2019.

<sup>18</sup> During her visit, the Commissioner was informed that a series of changes in the leadership of the agency occurred in a limited period of time, fuelling a sense of uncertainty in this regard among NGOs and legal experts.

<sup>19</sup> Accommodating asylum seekers during the admission procedure, in particular those whose application present a high risk of inadmissibility and unaccompanied migrant children.

<sup>20</sup> Also hosting asylum seekers during the admission procedure, but with a focus on those whose application has higher chances to be declared admissible.

<sup>21</sup> For asylum seekers during the admission procedure, and once their application has been declared admissible, pending their transfer to a provincial reception centre.

<sup>22</sup> For applicants in need of special medical care and for unaccompanied minors. See EASO, [Overview of the organisation of reception systems in EU+ countries](#), Situational Update, Issue No 8, 13 January 2022.

<sup>23</sup> The Commissioner’s attention was, in particular, drawn to a facility operating as both a reception and a pre-removal centre, located in the Tirolian mountains, at more than one hour walking distance from the village of Bürglkopf, with very limited access to transportation. Protests and hunger strike of residents led, in 2019, to a human rights review of this facility, as well as of another one located in Schwechat, carried out by the Federal Ministry of the Interior in cooperation with UNHCR resulting in a series of [recommendations](#) aimed at improving living conditions in these centres and their residents’ access to services



vulnerable people, which are reportedly not always adequately addressed. Several NGOs stressed, in particular, that most reception facilities are unfit for ensuring LGBTI people's safety.

16. **Situation of unaccompanied children.** On the occasion of her visit to the Initial Reception Centre of Traiskirchen, the Commissioner could observe that the situation of unaccompanied children, especially those under 14, living in such facilities is also worrying. On the day of her visit, around 400 unaccompanied children were accommodated in the Initial Reception Centre of Traiskirchen. 24 of them being under 14 were taken care of by asylum-seeking mothers also living in the centre. The Commissioner understood from the discussions she held there that these women, who receive remuneration for performing this task, sometimes do not even speak the same language as the children they are taking care of.
17. In addition to this system of "remunerated mothers", which does not seem adequate to meet the needs of these young children, the shortcomings in the system of guardianship of unaccompanied children constitute another issue of concern. As pointed out by [UNHCR](#), a legal representative is assigned to them as soon as they lodge their asylum application, but fully-fledged guardians are appointed only once children between 14 and 18 are admitted to the asylum procedure and placed in a provincial reception facility.<sup>24</sup> This means that, for weeks – even a few months in cases where age assessment is carried out – there is no guardian who can provide these children with the information, assistance, and support they may need to facilitate their interactions with the authorities and safeguard their rights and best interests. The Commissioner notes that, in addition to UNHCR, IOM and UNICEF,<sup>25</sup> the *Independent Commission for the protection of children's rights and the child's well-being in asylum and aliens law* set up by the Federal Minister of Justice also expressed concern regarding the protection of the rights and the best interests of these unaccompanied children and urged the authorities to ensure early guardianship.<sup>26</sup>
18. **Consequences of the COVID-19 pandemic on living conditions in reception facilities.** The COVID-19 pandemic also had negative consequences on living conditions in reception facilities, where asylum seekers were reportedly subjected to lengthy quarantine measures and often remained stranded in inadequate conditions<sup>27</sup> even after the completion of the admission procedure due to successive decrees issued in 2020 by the health authorities.<sup>28</sup> These measures banning entry and exit came to an end, and the Commissioner could observe, on the occasion of her visit to the Initial Reception Centre of Traiskirchen, that the sanitary situation seems to be addressed in a less restrictive and more targeted manner thanks to a systematic testing policy. Nevertheless, several people hosted in this facility complained about the living conditions in the premises where people tested positive are isolated, while other interlocutors expressed concern about the sanitary risk entailed by big facilities such as the Initial Reception Centre of Traiskirchen, where more than 1 200 people were accommodated at the time of the Commissioner's visit.
19. **Responsibility sharing between the federal state and the provinces.** The Commissioner understands that the high numbers of residents which can be observed in several Federal reception facilities not only result from the above-mentioned Covid-related sanitary precautions applied in Initial Reception Centres, especially quarantine measures, but also from difficulties in transferring

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provided in the neighbouring localities. However, it seems that these recommendations have not all been implemented (see Asylkoordination Österreich, [AIDA Country Report: Austria](#), AIDA/ECRE, 2021, p. 97).

<sup>24</sup> According to [UNHCR](#), a guardian is "normally appointed" at the same time as the legal representative for those who are below the age of 14 years.

<sup>25</sup> See "Obsorge ab Tag 1: UNHCR, IOM und UNICEF rufen Österreich auf, Maßnahmen für unbegleitete Kinder und Jugendliche zu verstärken", [press release](#) of 25 February 2020.

<sup>26</sup> [Report](#) of Independent Commission for the protection of children's rights and the child's well-being in asylum and aliens law, 13 July 2021 (in German).

<sup>27</sup> See, *inter alia*, Asylkoordination Österreich, [AIDA Country Report: Austria](#), AIDA/ECRE, 2021, p. 95.

<sup>28</sup> On these decrees and the COVID-19 pandemic impact on living conditions in reception facilities, see Austrian Ombudsman Board, [Annual report to the National Council and the Federal Council 2020, COVID-19](#), p.168-171.

people to provincial reception facilities once the admission procedure is completed. During her visit to the Initial Reception Centre of Traiskirchen, the Commissioner met with several asylum seekers who were stuck in this centre for weeks despite being admitted to the asylum procedure and therefore eligible for transfer to a provincial reception facility. According to the Federal Ministry of the Interior, many people present in federal reception centres should be hosted in the provincial reception facilities as provided for by the agreements concluded by the federal and the provincial authorities.<sup>29</sup> To explain this situation, the authorities have put forward both the reluctance of some provinces to take all their share of the reception, and administrative and technical obstacles at federal level.

20. **Transparency and accountability.** The Commissioner's attention was drawn to the fact that the access to federal reception facilities is very restricted, not only for civil society actors, but also for local officials. Several of the Commissioner's interlocutors complained about what they consider to be a lack of transparency and accountability and raised concern about the risk of these facilities becoming "black boxes" operating without non-state actors' scrutiny. In the course of her visit to the Initial Reception Centre of Traiskirchen though, the Commissioner was informed that it is envisaged to enhance the cooperation with NGOs, including to propose recreational activities for residents, especially children.
21. **Access to education.** According to the Austrian legislation,<sup>30</sup> all children living in the country are required to attend school for nine school years from the age of six. While asylum-seeking children have access to public primary and secondary schools once their application is admitted to the regular procedure, this is not the case during the admission phase. The Commissioner notes that this phase is supposed to last only a few weeks, but she is concerned about the consequences of the above-mentioned prolonged stays in Initial Reception Centres<sup>31</sup> on the right to education of the children stranded in these facilities.
22. The Commissioner was informed about the existence of an educational and recreational programme for the children hosted in reception facilities, which had been discontinued at the time of her visit to the Initial Reception Centre of Traiskirchen.<sup>32</sup> According to information subsequently provided by the BBU-GmbH, this interruption, which resulted from both pandemic-related restrictions and insufficient capacities to cover the educational needs of the high number of asylum-seeking children due to high numbers of asylum applications, came to end in February 2022. Three teachers and four classrooms are reportedly available in the Initial Reception Centre of Traiskirchen, allowing children in the compulsory schooling age to have classes for approximately 20 hours per week. According to the BBU-GmbH, the classes are formed according to age groups and other relevant criteria, such as levels of literacy and of learning. Teachers and the curriculum are provided by the educational authority. Children older than 15 have also access to this programme if capacities allow.
23. The Commissioner notes that the Covid-19 pandemic has also had consequences on children attending primary and secondary schools, which were closed for several months in 2020. According to NGOs, many asylum-seeking children had difficulties following home-schooling due to a lack of access to the necessary digital equipment and/or access to the Internet.<sup>33</sup>

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<sup>29</sup> See above, para. 11.

<sup>30</sup> Compulsory Education and Training Act ([Ausbildungspflichtgesetz](#)), 2016.

<sup>31</sup> See above, para 19.

<sup>32</sup> According to the Ministry of the Interior, this programme focusses on child-friendly age-appropriate educational and recreational activities. These include about 20 hours of lessons per week, a daily German class, workshops on specific topics (e.g. health, nutrition, intercultural coexistence, Austrian values, children's rights, democracy and the rule of law, etc), regular sports and leisure programs, talks about different nations, excursions, use of leisure rooms and the organisation of various festivities.

<sup>33</sup> See, *inter alia*, Asylkoordination Österreich, [AIDA Country Report: Austria](#), AIDA/ECRE, 2021, p. 101.

24. Finally, the Commissioner notes that not all asylum seekers have access to German language and integration classes. According to [Art. 68](#) of the Asylum law, only those who have been admitted to the procedure and who “are very likely to be granted international protection”, can attend these classes, provided that the financial and organisational resources are available. NGOs stressed that this provision raises serious questions as regards both the assessment of the asylum seekers’ chances to be granted international protection, and the delay in integration of those eventually granted international protection although this was initially considered unlikely.
25. **Access to the labour market.** According to the Foreigners Employment Act,<sup>34</sup> asylum-seekers can be authorised to work three months after the completion of the admission procedure, provided that no Austrian national or third-country national already benefiting from a work permit is available to take up the job. A 2004 regulation of the Federal Ministry of Economy and Work restricted the actual possibility for asylum seekers to be granted a work permit to seasonal employment and limited the validity of such a permit to six months per year, which reportedly resulted in a limited number of asylum seekers having access to employment.<sup>35</sup> The Federal Constitutional Court overturned this regulation by a [decision](#) delivered on 23 June 2021, the actual impact of which remains to be assessed once the statistics for 2021 are published.

## 1.2. ISSUES CONCERNING INTEGRATION

26. According to the Federal Ministry of the Interior, 480 100 persons had a valid residence permit in Austria in 2020, including 147 000 beneficiaries of international protection and 21 000 asylum seekers. Among them, 18 400 people received their first residence permit and, therefore, integration measures were particularly relevant to them. During her visit, the Commissioner paid specific attention to the following integration measures:
27. **Right to family reunification.** As pointed out in the Commissioner’s [Issue Paper](#) on realising the right to family reunification of refugees in Europe, family reunification is a human right and a major integration factor. Family life is essential for refugees and migrants to rebuild their lives in the host country, as it improves their well-being, their employment prospects and the educational achievements of their children.
28. The Commissioner notes that, under Austrian law, only parents of an underage child, spouses and unmarried, underage children, and LGBTI partners with a registered civil partnership existing before the person was granted protection entered Austria are eligible to family reunification.<sup>36</sup>
29. These relatives of refugees can apply for family reunification without further restriction within three months after their relative has been granted refugee status. If their application is submitted later on, additional material requirements are imposed, including sufficient income, health insurance, and stable accommodation. According to several of the Commissioner’s interlocutors, the requirement to lodge an application for family reunification within three months is often complicated in practice by the obligation to do it in person, with an Austrian diplomatic mission. NGOs also mentioned that, even when family reunification is requested at an early stage, it may take months if not years before refugees are reunited with their relatives. Particular concern was raised regarding delays in reunification of unaccompanied children with their family.
30. Relatives of beneficiaries of subsidiary protection are required to wait three years after their relative, including unaccompanied minors, has been granted subsidiary protection before applying

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<sup>34</sup> [Ausländerbeschäftigungsgesetz](#), para. 4 (in German).

<sup>35</sup> According to the NGOs, by the end of 2020, only 576 applicants had valid working permits, out of which 397 were apprentices. See Asylkoordination Österreich, [AIDA Country Report: Austria](#), AIDA/ECRE, 2021, p. 100.

<sup>36</sup> Law on Asylum ([Asylgesetz](#) 2005), para. 35. According to information received by the Commissioner, Austrian courts may decide in exceptional circumstances that other dependent relatives should be granted entry to Austria too based on Article 8 ECHR (right to private and family life).

for family reunification. In addition, beneficiaries of subsidiary protection are required to meet the above-mentioned material conditions of income, insurance and living space.

31. **Long-term residence and access to citizenship.** Under Austrian law, long-term residence permits may be granted after five years of uninterrupted actual residence in Austria<sup>37</sup> and if the “Module 2 of the Integration Agreement” is fulfilled.<sup>38</sup> In addition, applicants must meet the general requirements for obtaining a residence permit.<sup>39</sup> The Commissioner notes that long-term residence permits are delivered in limited numbers.<sup>40</sup> She is concerned about reports according to which such permits are particularly difficult to obtain for beneficiaries of subsidiary protection, who are generally granted one- or two-year residence permits.
32. As regards access to citizenship, the Commissioner notes with concern that the required length of uninterrupted residence in Austria has significantly increased, from six to ten years for refugees,<sup>41</sup> and to 15 years for beneficiaries of international protection. Applicants are also required to meet the following conditions: sufficient income for the past three years; proven B1 knowledge of the German language; successful completion of integration course; and absence of a criminal record. The Commissioner also notes that every year, the Austrian Ombudsman Board examines many complaints about the duration of citizenship procedures in Vienna.<sup>42</sup>
33. **Access to the labour market.** The promotion of “migrants’ ability to sustain themselves” is presented by the Austrian authorities as one of their main aims, and access to employment as an instrumental tool for integration into Austrian society.<sup>43</sup> Therefore, the Austrian legislation provides that refugees and beneficiaries of subsidiary protection have free access to the labour market.
34. However, according to the Federal Minister for Women, Family, Youth and Integration, “in general, the situation of migrants in the labour market has worsened, with unemployment rates above 50% for refugees, and women being particularly affected.”<sup>44</sup>
35. In addition to the COVID-19 pandemic, which has reportedly particularly affected the sectors in which many refugees and migrants are employed, several impediments hinder their access to the labour market, including language barriers and the lack of (recognised) qualifications.
36. The Commissioner notes that many efforts were deployed by the Austrian authorities to increase the offer of German language courses for both children and adults, including summer schools for children with a learning lag and accompanying courses for parents with a migrant background. Following the pandemic, the Austrian Integration Fund developed online German language programmes for children and parents having attracted more than 75 000 participants, according to the Federal Ministry for Women, Family, Youth and Integration.

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<sup>37</sup> “Temporary residency permit” (granted for a temporary stay without intention to permanently settle, e.g. students, employees on secondment, volunteers) excluded.

<sup>38</sup> See Expert Council for Integration, *Integration in the context of the coronavirus pandemic*, Integration [Report](#) 2021, p. 22. It includes knowledge of German at B1 level.

<sup>39</sup> Including a regular income of 933 euros or more if the cost of rent is higher than 295 euros for a single person in 2020; sufficient health insurance; suitable accommodation; and absence of security risk.

<sup>40</sup> 1 097 in 2020. See Expert Council for Integration, *Integration in the context of the coronavirus pandemic*, op. cit.

<sup>41</sup> See Law on Austrian Citizenship ([Bundesgesetz über die österreichische Staatsbürgerschaft](#)), para. 11a(7).

<sup>42</sup> Austrian Ombudsman Board, [Report 2020 on COVID-19](#), p. 133.

<sup>43</sup> See the foreword by the Federal Minister for Women, Family, Youth and Integration of the Expert Council for Integration’s [report](#) 2021, p. 3-5

<sup>44</sup> *Ibid.*

37. NGOs also reported improvements resulting from the implementation of the 2016 law on Recognition and Evaluation,<sup>45</sup> speeding up the procedure for the recognition of foreign education and professional qualifications and facilitating the recognition of work experience.<sup>46</sup>
38. The Commissioner also notes that integration counselling covering various topics, including employment-related issues, is provided by the [Austrian Integration Fund](#). According to information provided by the Ministry of Social Affairs, Health, Care and Consumer Protection, migrants working in Austria without a secure residence permit and/or limited or no access to the labour market may receive free multilingual information and counselling, including on labour and social rights, through a counselling [centre](#) for undocumented workers run by Austrian trade unions and co-financed by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.
39. Despite these efforts, the Commissioner observes that access to the labour market remains difficult for refugees and migrants, and that their employment situation remains precarious. The overall unemployment rate increased to 9.9 percent (7.4 percent 2019), while the unemployment rate of foreigners rose from 10.8 percent in 2019 to 15.3 percent in 2020. More significantly, in 2020 the unemployment rate of Syrian and Iraqi nationals was of 41.8 percent, 36.7 percent for Afghan nationals.<sup>47</sup>
40. **Protection against racism and discrimination.** For decades, Austria has been a hosting country for asylum seekers, refugees, and migrants. Despite this long tradition, the Commissioner observes with concern that the climate prevailing in the country progressively became less welcoming – sometimes even hostile – following the reception crisis of 2015-2016.
41. The Commissioner notes that, in 2015, the UN Human Rights Committee [expressed](#) concern about the resurgence of far right-wing and other groups inspired by extremist national socialist ideologies and neo-Nazism, and the rise of advocacy of racial or religious hatred against Roma, Muslims, Jews, (ethnic) minorities, migrants and asylum seekers. More recently, in its 2020 [report](#), the European Commission against Racism and Intolerance (ECRI) of the Council of Europe noted with concern that Austrian public discourse had become increasingly xenophobic in recent years, and political speech had taken on highly divisive and antagonistic overtones particularly targeting Muslims and refugees.
42. The information received by the Commissioner during her visit confirms the above-mentioned concerns, with several of her interlocutors deploring a rise in racist hate speech and hate crime and noting that certain initiatives of the authorities, such as the attempt to prohibit the headscarf in primary schools,<sup>48</sup> or supported by them such as the publication of an “Islam map”,<sup>49</sup> contributed to fuelling a hostile rhetoric and the stigmatisation of asylum seekers, refugees, and migrants, in particular those of Muslim confession. NGOs drew the Commissioner’s attention to the rise in racist incidents targeting people of Asian descent following the COVID-19 pandemic. The Commissioner also notes with concern that recent [data](#) revealed a sharp rise in the number of right-wing extremist crimes in 2021, with 1 053 such crimes recorded, compared to 895 in 2020.
43. The Commissioner is aware of the existence of a solid legal framework in the field of combating racism and discrimination, including the criminalisation of not only racist hate speech as such but

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<sup>45</sup> Anerkennungs- und Bewertungsgesetz ([AuBG](#)), 2016.

<sup>46</sup> See Asylkoordination Österreich, [AIDA Country Report: Austria](#), AIDA/ECRE, 2021, p. 138.

<sup>47</sup> See [Statistisches Jahrbuch](#) "Migration & Integration 2021", p.55.

<sup>48</sup> An amendment adopted in 2019 to the Law on School Organisation provided that schoolchildren were prohibited from wearing ideologically or religiously influenced clothing that involves covering their heads until the end of the school year in which they reach the age of 10. In a [decision](#) of 11 December 2020, the Federal Constitutional Court struck down this provision, judging that the law was aimed at the Islamic headscarf and breached rights on religious freedom.

<sup>49</sup> In May 2021, a state-funded organisation called Documentation Centre for Political published an ‘Islam map’ consisting in a digital map showing 623 addresses of mosques, Muslim associations and individual representatives, which sparked major controversy and many reactions, including from the [Special Representative](#) of the Council of Europe Secretary General on antisemitic, anti-Muslim and other forms of religious intolerance and hate crimes.

also incitement to hatred<sup>50</sup> and the recognition of racist and xenophobic motivation as aggravating circumstances. In addition, the online hate package (*Hass im Netz*) foresees several innovations in the area of criminal, media and civil law, consisting of, *inter alia*, the inclusion of insults offending the human dignity and directed against individual members of protected groups to the scope of “hate speech”, and the extension of the provision on cyberbullying.<sup>51</sup> The Commissioner also notes that, according to information provided by the authorities, the Ministry of Justice participated in a project of the Ministry of the Interior for a systematic registration of discriminatory motivations, conducted from 2019 to 2021, with the aim of making the phenomenon of hate crimes statistically visible by meaningful annual evaluations, starting in 2022.

44. Several interlocutors of the Commissioner drew her attention to the fact that the implementation of these provisions may be difficult in practice. For example, the main criterion characterising continued harassment by means of a telecommunications or computer system<sup>52</sup> is that the offence is “perceptible for a longer period of time”, which can be rather challenging to demonstrate in court. Other provisions such as the one criminalising the violation of personal rights compromising one’s human dignity via an electronic communication network may be difficult to interpret pending the development of a significant case-law. In addition, NGOs stressed that extra-legal factors may also complicate the implementation of the provision aimed at fighting online hate speech, including the reluctance of the victims to be confronted with the alleged perpetrator out of fear of being re-traumatised.
45. Lastly, the Commissioner is aware of existing preliminary discussions with a view to the elaboration of a national action plan on racism, which have reportedly been slowed down by the pandemic.

### 1.3. CONCLUSIONS AND RECOMMENDATIONS

46. The Commissioner is concerned about consistent and credible allegations of pushbacks, which point to the existence of an established practice, as noted by the Provincial Administrative Court of Styria on two occasions.<sup>53</sup> She underlines that pushbacks are illegal practices depriving those who may seek asylum from the opportunity to apply for it. In addition, when persons at the border are returned without individual identification or procedure, member states cannot establish whether they may be sending them back to human rights abuses. This may lead to violations of Article 3 of the European Convention on Human Rights (ECHR) and the UN Refugee Convention. Moreover, collective expulsions of migrants are prohibited under Article 4 of Protocol 4 to the ECHR, to which Austria is a party. Lastly, as the Commissioner has stressed on several occasions, pushbacks eat away at the foundation of international human rights law which protects refugees and, as such, cannot be tolerated.<sup>54</sup>
47. Therefore, the Commissioner urges the Austrian authorities to ensure that independent and effective investigations are carried out into allegations of pushbacks and of ill-treatment by members of security forces in the context of such operations and to put an end to these practices. The Commissioner also invites the Austrian authorities to follow the recommendations contained in her recent paper entitled *Pushed beyond the limits*<sup>55</sup>, notably with a view to enhancing

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<sup>50</sup> Which includes publicly inciting violence or hatred against a church or a religious group or any other group of persons defined by the existing or absent criteria of race, color, language, religion or belief, nationality, ancestry or national or ethnic origin, sex, disability, age or sexual orientation, or against a member of such a group expressly because of membership in that group.

<sup>51</sup> For further details regarding the online hate package, including in the field of media law, see below, para. 85.

<sup>52</sup> Para. 107c of the Federal Criminal Code.

<sup>53</sup> See above, para. 8

<sup>54</sup> See Commissioner for Human Rights, “Pushbacks and border violence against refugees must end”, [statement](#) of 19 July 2020.

<sup>55</sup> Commissioner for Human Rights, *Pushed beyond the limits, Urgent action needed to end human rights violations at Europe’s borders*, CommDH 6(2022), 7 April 2022.



transparency of border control activities, in particular through independent monitoring to prevent and identify violations, as well as bolstering mechanisms to ensure accountability when such violations occur.

48. The Commissioner attaches great importance to independent and good quality legal counselling in the context of the asylum procedure. She notes with interest that the legal counselling activities of the Federal Agency for Care and Support Services Limited Liability Company (BBU-GmbH) is subjected to annual evaluation by an independent body and would appreciate being informed of the conclusions of the first evaluation report. She also invites the Austrian authorities to put in place all necessary measures to legally safeguard the structural and functional independence of the BBU-GmbH.
49. The Commissioner is concerned about the unsatisfactory living conditions prevailing in several reception facilities. She calls on the Austrian authorities to effectively protect the right to adequate housing of applicants for international protection, including by adopting harmonised standards regarding the reception centres and pursuing cooperation with the provinces with a view to addressing the shortcomings in the implementation of the instruments defining the repartition of tasks between the federal state and the provinces, and to put an end to lengthy stays and overcrowding in federal reception facilities.
50. The Commissioner also urges the Austrian authorities to pay particular attention to the specific needs of vulnerable people, including persons with disabilities, LGBTI people, women victims of violence, and children, especially those unaccompanied.
51. The Commissioner recalls that the reception conditions of unaccompanied children should be appropriate, safe and adapted to their age. They should, in particular, benefit from the support of a guardian providing information and support, facilitating their interactions with the authorities and safeguarding their rights and best interests. The Commissioner is concerned about the fact that this was not the case for all these children at the time of her visit and urges the authorities to ensure the appointment of a guardian for all unaccompanied children without delay or pre-condition from the moment of their arrival or identification.
52. She notes with interest that, according to information provided by the Federal Ministry of Justice, a working group has been set up to prepare a legislative reform of the guardianship system and would appreciate being kept informed of its conclusions and recommendations. The Commissioner strongly encourages the authorities to build on the Recommendation [\(2019\)11](#) of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration, which sets the principle of appointment or designation of guardians without undue delay. She also invites them to follow the recommendations contained in the comprehensive [report](#) dedicated to this topic by UNHCR in 2019, and [those](#) of the *Independent Commission for the protection of children's rights and the child's well-being in asylum and aliens law*, which not only include the early appointment of a guardian for all unaccompanied children, but also a comprehensive examination of the best interests of the child and of the effects on the rights of the child of all decisions relating to asylum and aliens law affecting children.
53. The Commissioner wishes to stress the instrumental role played by NGOs in defending the human rights of refugees, asylum seekers and migrants. She encourages the authorities to enhance their cooperation with them, including within the reception centres, as NGOs can contribute to improving the transparency and accountability of such centres. They can also provide useful support and assistance, in cooperation with the BBU-GmbH, including in the areas of social care and education.
54. As regards asylum seekers' access to education, the Commissioner welcomes the existence of an educational and recreational programme for children hosted in reception facilities. Mindful of the interruptions which have occurred and of the fact that not all persons over 18 can benefit from this programme due to limited capacities, she calls on the Austrian authorities to ensure that all children

accommodated in reception facilities have access to educational activities, as well as young adults willing to benefit from these services. She also urges them to ensure that all asylum seekers have access to German language and integration courses.

55. As stressed in the Commissioner's Issue Paper entitled *Time for Europe to get migrant integration right*, citizens and third-country nationals with the same socio-economic background should be just as likely as others to be in employment, education and training in a society that delivers on its promises of equal opportunities. Therefore, the Commissioner calls on the Austrian authorities to give asylum-seekers effective access to the labour market as soon as possible.
56. Integration is a long process, and all those entitled to settle in Austria should benefit from measures such as access to family reunification, long-term residence, language and integration courses, education, employment, and protection against discrimination. The Commissioner is therefore worried about existing practical obstacles hindering refugees' access to family reunification and invites the Austrian authorities to remove them. She is also concerned about reported delays in reunification of unaccompanied children with their family and urges the authorities to speed up the procedures concerning these vulnerable children so as to safeguard their best interests. Finally, the Commissioner recommends providing beneficiaries of subsidiary protection with the same favourable rules as refugees. In particular, she calls on the Austrian authorities to abolish the three-year waiting period before relatives of beneficiaries of subsidiary protection can apply for family reunification. In this regard, the Commissioner underlines that the Grand Chamber of the European Court of Human Rights found, in the case of [M.A. v Denmark](#), that a waiting period of three years, as a strict requirement, was too long.
57. The Commissioner stresses that securing long-term or permanent residence encourages refugees, migrants and communities to invest in integration. She is concerned about difficulties in obtaining long-term residence permits and invites the Austrian authorities to ease access to long-term residence, especially for beneficiaries of subsidiary protection. She also calls on them to shorten the length of uninterrupted residence in Austria required for access to citizenship and to address the delays in the naturalisation procedures.
58. The Commissioner welcomes the measures taken by the Austrian authorities to provide refugees and migrants with German language and integration classes and to facilitate their access to the labour market. Concerned by their high unemployment rate, she encourages the authorities to scale up their efforts and invest more in integration, in co-operation with their civil society partners.
59. The Commissioner is concerned about the deterioration of the climate prevailing in Austria towards asylum seekers, refugees and migrants. While welcoming the measures taken to combat hate speech and hate crime, she urges the Austrian authorities to raise awareness about these measures and to ensure their effective implementation, and recalls the particular responsibility of political leaders who, as stressed by [ECRI](#), "must take a firm and public stance against the expression of racist hate speech and react to any such expression with a strong counter-hate speech message." She further invites authorities to implement all the recommendations issued by ECRI in its 2020 [report](#).
60. Finally, the Commissioner welcomes the process aimed at elaborating a national action plan on racism and invites the Austrian authorities to speed up this process and to open the discussions to all relevant stakeholders, including NGOs and national human rights structures.



## 2. WOMEN'S RIGHTS AND GENDER EQUALITY

61. Austria has ratified the major international instruments establishing obligations with respect to women's rights, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol setting up an inquiry procedure and a procedure for individual communications, Protocol No. 12 to the European Convention on Human Rights, which establishes a general prohibition of discrimination, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Austria has also taken steps to strengthen its national legislation and policy for the protection of women's rights.
62. In this section, the Commissioner sets out her observations and recommendations on some specific issues concerning women's sexual and reproductive health and rights, violence against women, and gender equality.

### 2.1. WOMEN'S SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

#### 2.1.1. ACCESS TO COMPREHENSIVE SEXUALITY EDUCATION

63. International human rights standards guarantee women's right to receive and impart information related to their sexual and reproductive health and rights. As stressed in the [Issue Paper](#) on women's sexual and reproductive health and rights in Europe published by the Commissioner's Office, "human rights mechanisms have outlined that states must ensure women's access to evidence-based information on all aspects of sexual and reproductive health including their own health status, and must enable women to make informed decisions about their sexual and reproductive health".
64. The Commissioner notes with satisfaction that the Federal ministry of Education, Science, and Research, [considers](#) sexuality as "an important part of children's overall development as a person", and that "comprehensive and holistic sexuality education is designed to support children in ensuring their sexual health physically, cognitively and emotionally". [Circular no. 11/2015](#) sets the objectives of sexuality education and the general principles for its implementation, from primary school to the end of secondary school. The curricula are multidisciplinary, and include contents on biological processes, pregnancy, contraception, and prevention of sexually transmitted infections. According to a 2020 European Commission [study](#), the curricula also explore issues around sexual identity, mutual consent, online media and gender-based violence.
65. The same circular also stresses that parents and legal guardians have a central role in the area of sexuality education and should, therefore, be informed in advance of any intervention of external experts or NGOs at school on this topic, and given indications as regards the background of the intervener, the content of the intervention, and the methodology followed. The Federal ministry of Education, Science, and Research plans to provide schools with a list of certified external interveners in the months to come.
66. Despite this solid legal framework, complemented in 2016 by the establishment of the Federal Centre for Sexuality Education tasked with delivering and supporting sexuality education in all Austrian schools, the Commissioner observes that several challenges remain ahead in practice. In 2019, the UN [Committee on the Elimination of Discrimination against Women](#) expressed concern about the lack of comprehensive sexual and reproductive health education for adolescents. The Committee recommended that Austria ensure that school curricula included mandatory and age-appropriate education on sexual and reproductive health and rights for girls and boys, including on responsible sexual behaviour.

67. Similar concerns were raised by representatives of civil society organisations during the Commissioner’s visit, some of them stressing that school curricula do not sufficiently cover the topics of self-determination and consent issues and pointing out the lack of sufficient training opportunities provided to teachers by the authorities. Against this background, the Commissioner wishes to praise the instrumental role played by those civil society organisations in the field of sexuality education by intervening in schools, providing training material to teachers, and offering counselling online and offline on sexuality. She notes that, despite these efforts, all the needs are not met, certain schools reportedly having no funding to cover the costs of interventions by external experts, while, at the same time, the COVID-19 pandemic has significantly restricted the possibility of such interventions. As a result, there still are pupils reportedly having no – or irregular – access to sexuality education in Austria.

#### 2.1.2. ACCESS TO CONTRACEPTION AND TO SAFE AND LEGAL ABORTION SERVICES

68. **Availability and affordability of modern contraception.** Human rights mechanisms have repeatedly held that guaranteeing women’s effective access to modern contraception is critical for the realisation of their sexual and reproductive health and rights.<sup>56</sup> The Commissioner notes that, according to a UN [report](#), 60.1 percent of all women of reproductive age used contraception in Austria in 2019.

69. The Commissioner further observes that most contraception methods, including birth control pills, male condoms, shots, patches, and Intrauterine Devices (IUDs) are available in Austria. However, neither these methods, nor medical counselling on contraception provided by gynaecologists are covered under public health insurance or reimbursement schemes, which constitutes a major obstacle to women’s access to these services, and in particular for poor women.

70. The Covid-19 crisis has further complicated women’s access to contraception in Austria. According to a European Parliamentary Forum for Sexual and Reproductive Rights’ [report](#), “some gynaecological offices were kept closed or did not accept new clients during lockdowns in 2020”, and the restrictions put in place to counter the pandemic also limited the choice of contraception. Women with no or low income reportedly usually visit the Austrian Family Planning Association’s counselling centres to obtain contraceptives, mostly IUDs, free of charge or for a small donation; however, during the pandemic, the demand dropped: compared to 2019, less than half of all IUDs were provided in 2020.

71. Health care professionals and civil society organisations with whom the Commissioner met during her visit stressed the need to provide free counselling on contraception and to cover contraception costs in order to safeguard women’s sexual and reproductive health and rights, and to reduce the number of unintended pregnancies. The UN Committee on the Elimination of Discrimination against Women [recommended](#) in 2019 that Austria ensure that modern contraceptives were accessible, affordable, covered by health insurance and available throughout the territory of the State.

72. **Access to safe and legal abortion services.** The Commissioner notes that access to safe and legal abortion services is also very challenging in Austria. Abortion remains a criminal offence under Austrian law<sup>57</sup>, although it is no longer punishable since 1975 if performed within the first three months of pregnancy, after medical consultation.<sup>58</sup> After this period, abortion is only allowed under certain circumstances, including in case of serious danger to the life or to the physical or mental health of the pregnant woman.

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<sup>56</sup> See Commissioner for Human Rights of the Council of Europe, [Issue Paper](#) on women’s sexual and reproductive health and rights in Europe, 2017, p. 58.

<sup>57</sup> § 96 of the criminal code.

<sup>58</sup> § 97 of the criminal code.

73. Several factors render access to abortion services difficult in practice. First of all, the costs of abortion, ranging from 325 euros in public hospitals to 1 500 euros and more in private clinics, are not covered under public health insurance, unless abortion is necessary for medical reasons. As a result, women who cannot cover these costs are de facto deprived of access to abortion services, unless they can get support from civil society organisations. The Commissioner notes that, according to the Austrian gender equality petition ([Frauen\\*Volksbegehren 2.0](#)), the consequences of the Covid-19 crisis on the financial situation of women has made abortion unaffordable for an increased number of them, to the point that an organisation named “Changes for Women” was created to raise funds for abortion.
74. In addition, many public hospitals do not provide abortion services, especially in the provinces. In several provinces, abortion services are reportedly available in the provincial capital only, whereas the province of Burgenland reportedly counts not a single abortion provider.<sup>59</sup>
75. The Commissioner notes that other elements hinder access to abortion services, including insufficient training of medical professionals – including gynaecologists – on abortion, the use of the clause of conscience among medical practitioners, and occurrences of intimidations of women by hostile anti-abortion activists in the vicinity of hospitals or clinics known to perform abortions.<sup>60</sup>
76. Finally, the Commissioner observes that the medical abortion legalised in 2020 is reportedly hardly available in practice.

## 2.2. VIOLENCE AGAINST WOMEN

### 2.2.1. A WIDESPREAD PHENOMENON AMPLIFIED BY THE PANDEMIC

77. Violence against women is a reportedly widespread phenomenon in Austria, with the number of feminicides among the highest in the EU. More than 300 feminicides were reported in Austria in the last ten years, including [31](#) in 2021. In the majority of feminicides, the perpetrator was the partner or ex-partner. The Commissioner observes that media have also reported many cases of murder attempts and serious violence by (ex-)partners or family members or by persons close to the victim in 2021.<sup>61</sup>
78. According to the NGO [Wiener Interventionsstelle gegen Gewalt in der Familie](#), 20 587 victims of domestic violence were cared for by the violence protection centres and intervention centres in Austria in 2020. Around 81.5 percent of the supported persons were women and girls, and 91 percent of the perpetrators were men. In the same year, the 26 women’s shelters operating in Austria<sup>62</sup> hosted a total of 2 994 people, of which 1 507 were women and 1 487 children. Compared to 2019, this corresponds to a decrease of nearly ten percent but, according to the [Association of Autonomous Austrian Women's Shelters](#), this decline is rather the result of the Covid-19 pandemic than of an actual decrease in violence. For many women affected, it was reportedly much more difficult to flee because the family was constantly present, because they were more exposed to the control of the violent partner, and because the social pressure to abide by the traditional family model and therefore not to leave was more noticeable, especially in rural areas.
79. This seems to be corroborated by the significant increase in calls to the [women's helpline](#) against violence observed in 2020: the employees of the women's helpline took 71 percent more calls in March, April and June 2020 and 33 percent more calls in December 2020. In 2020, the women's helpline received a total of 10 571 calls, around 81 percent of which were from women and girls. In

<sup>59</sup> Frauen\*Volksbegehren 2.0, Recommendations on reproductive rights and sex education in Austria.

<sup>60</sup> See Austrian Federal Association of Autonomous Rape Counselling Centres, [submission](#) the UPR on Austria, 2020.

<sup>61</sup> See Autonome Österreichische Frauenhäuser, [Mutmaßliche Mordversuche und schwere Gewalt 2021](#).

<sup>62</sup> According to the Federal Ministry for Women and Integration at the Federal Chancellery, as of 4 February 2022, 28 shelters were available for victims of violence against women.

329 calls, the police or authorities such as the Office for Child and Youth Welfare had to intervene with the consent of the callers because of acute violence or danger.<sup>63</sup>

80. The digital dimension of violence against women is also widespread. In 2019, the UN Committee on the Elimination of Discrimination against Women expressed concern about the increase in hate speech against women and girls on internet forums and social media. Moreover, information received by the Commissioner indicates that, besides online sexist hate speech, new digital dimensions of violence against women have emerged, including the use of tracing and tracking apps and devices by partners or ex-partners, which significantly complicates the protection of victims of violence against women, including those residing in shelters. This trend has led the city of Vienna to set up the "[Security Hub](#)" [WienCERT](#), whose IT experts are available as a contact point for the women's emergency hotline and the Vienna women's shelters. According to the [City of Vienna's](#) presentation of this service, "after analysing the case, a decision is made as to whether there is a technical solution, whether the case should be forwarded to the police - or whether technical support from other specialists is required [...]. In very complex cases of cyber violence, external companies are commissioned with specialized tasks and technical support ("digital forensics")."
81. The Commissioner also notes that migrant women and girls are reportedly particularly vulnerable to and affected by violence. According to the [Association of Autonomous Austrian Women's Shelters](#), migrant women affected by violence encounter specific difficulties in getting out of a situation of domestic violence, which are not sufficiently taken into consideration. These difficulties include language barriers; a limited knowledge about the social and legal system; mistrust towards the police, the judiciary and the child and youth welfare services; often a lack of supportive social networks; barriers to getting access to women's shelters in several federal states, especially for women with precarious residence status/without documents and asylum seekers, as well as women with limited rights and the right to social benefits; and fear of being deported if they call the police or file a complaint.
82. In 2019, the UN Committee on the Elimination of Discrimination against Women [noted](#) with concern that efforts to identify women as victims of trafficking in human beings were undermined by the restrictive asylum policies in place, which often involved speedy deportation. Sharing this concern, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), in its 2020 third [report](#) on Austria, urged the authorities to review the application of the Dublin Procedure to presumed trafficking victims and conduct risk assessments in order to prevent victims being returned to the country where they first applied for asylum, where they would face the risk of being re-trafficked.

### 2.2.2. AUSTRIA'S RESPONSE TO VIOLENCE AGAINST WOMEN

83. Against this background, the Commissioner appreciates that Austria was among the first signatories of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in 2011 and has taken important legislative steps to fight against this scourge. Following the ratification of the Istanbul Convention in November 2013, a national action plan on the Protection of Women Against Violence was implemented between 2014 and 2016, and the legislation on sexual violence, including sexual harassment, was broadened: the offence of 'violation of the right to sexual self-determination' was introduced, and the protection against sexual harassment expanded by virtue of the 2015 Criminal Law Amendment Act.<sup>64</sup> A project entitled 'Delphi – Implementing violence prevention in the context of transculturality and gender' pointing out, according to the Austrian authorities, "known and new forms of violence, e.g. sexual

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<sup>63</sup> See Frauenhelpline gegen Gewalt, [Annual report](#) 2020.

<sup>64</sup> [Strafrechtsänderungsgesetz](#) 2015.

degradation, racist violence, family-honour-related conflicts, violence in forced marriages, relationship models involving oppression of girls/young women” was also set up.

84. Adopted in 2019, the Violence Protection Act<sup>65</sup> introduced new measures, including mobile restraining orders of 100 metres around the person at risk; compulsory counselling for perpetrators of violence; re-introduction of multi-agency case conferences for high-risk cases; extension of interim injunctions to allow for protection from derogatory publications on social networks; specific criminal offence of female genital mutilation. According to information provided by the Federal Ministry of Justice, a further amendment to the existing protection order system will enter into force in July 2022, providing courts responsible for imposing restraining orders with an additional instrument to prevent future violence, namely the possibility for the court to instruct the endangerer to participate in mandatory counselling in a violence prevention centre.
85. Addressing the issue of cyberviolence, the Austrian parliament adopted a legislative package on online hate speech (“Hass im Netz”), which entered into force on 1 January 2021 and aims, according to the Minister of Justice, at “giving victims of online insults and abuse the opportunity to fight back quickly at a low cost”.<sup>66</sup> It introduced a new criminal offence penalising unauthorised visual recordings (“upskirting”), and a new fast-track procedure enabling victims of online abuse to obtain a cease and desist order within days. Furthermore, platforms are obliged to set up easily accessible reporting systems, appoint a contact person for users and report on the complaints received annually. Obviously criminal content must be withdrawn within 24 hours of receiving a complaint and otherwise unlawful content within seven days. The Commissioner has taken note of the concerns raised by this legislative package among the freedom of expression community, who expressed worries about “overblocking” and stressed that it could lead to restrictions on freedom of expression and freedom of the press.<sup>67</sup>
86. The Commissioner also notes that the federal government organised a ‘special summit’ on violence against women in May 2021 resulting in new measures to combat violence against women, including enhanced data and information sharing between authorities, better screening of potential motives, and enhanced dedicated training efforts for police officers on prevention. The Federal Minister for Women and Integration also tasked the Federal Criminal Police with conducting a qualitative study of all homicides against women in the past decade.<sup>68</sup>
87. Significant budgetary efforts were made: the budget of the Federal Ministry for Women was progressively increased from 10 million euros in 2018, to 10.15 million euros in 2019, 12.15 million euros in 2020, 14.65 million euros in 2021, to reach 18.4 million euros in 2022. Other ministries, including the ministries of Justice, Interior, Family, and Social Affairs, Health, Care and Consumer Protection, also dedicate funds to the fight against violence against women<sup>69</sup> and will, according to the [analysis](#) of the Federal budget 2022 by the Vienna Chamber of Labour, spend a total amount of 15.1 million euros in 2022 for the implementation of the measures resulting from the ‘special summit’ of May 2021.<sup>70</sup>
88. Information provided by the Federal Ministry of the Interior indicates that training efforts have been undertaken in order to help members of the judiciary and of the law enforcement forces deal adequately with cases of violence against women.<sup>71</sup> The Federal Ministry of Justice has also

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<sup>65</sup> [Gewaltschutzgesetz](#) 2019 (970/A).

<sup>66</sup> Gesetzespaket „Hass im Netz“, 2021.

<sup>67</sup> See, for instance, the reaction of [Reporters without borders](#).

<sup>68</sup> See ORF, „[Erste Maßnahmen, zu wenig Budget](#)“, 3 May 2021.

<sup>69</sup> For an overview, see the [Budget analysis 2022](#) provided by the Austrian Parliament.

<sup>70</sup> Arbeitskammer Wien, [Budget 2022](#): Unausgewogene Steuerreform, erkennbarer, Klimaschwerpunkt, Mittel für Armutsbekämpfung, Pflege, und Bildung fehlen, November 2021, p. 40.

<sup>71</sup> According to the Federal Ministry of the Interior, the basic police training plan provides for at least 24 teaching units on violence against women. In addition, the “Modular Competence Training”, includes a mandatory module called “Violence in

integrated combating violence against women into its training curriculum, and published in April 2019 Guidelines regarding criminal prosecution in the field of domestic violence<sup>72</sup> aimed at offering approaches that allow the prosecutor's offices to collect all evidence, to develop a tighter cooperation with police forces and to decide whether a suspect is to be arrested, especially considering the suspect's dangerousness. These Guidelines have since been revised twice, taking into account the practical experiences of public prosecutors, police and victim protection facilities. The latest version of 1 October 2021 focuses, on the one hand, on direct collection of evidence by prosecutors, by means of direct questioning of accused persons and participation in case conferences conducted by the police. On the other hand, data collection on domestic violence shall be improved by the introduction of a uniform definition of domestic violence.

89. Despite these legislative and practical measures, the Commissioner observes that a certain number of shortcomings remain to be addressed. Firstly, the Committee of the State Parties to the Istanbul Convention pointed out in, its December 2021 [conclusions](#), Austria's lack of long-term strategy to combat violence against women, which would secure sustainable and comprehensive action in this area. Next, the Commissioner's interlocutors drew her attention to the distrust towards the police resulting from the lack of appropriate reaction from police officers in many cases of violence against women, in which victims felt treated like suspects rather than actual victims.<sup>73</sup> According to NGOs, many femicide cases were preceded by violent incidents neglected by the police. For instance, in one of the cases reported to the Commissioner, a woman had called the police shortly before she was murdered, but the police apparently did not take action to protect her, while in another one the police barring order had reportedly been annulled in order not to "upset the aggressor and avoid escalation," before the perpetrator returned to the house and burned it down.<sup>74</sup> The Commissioner underlines that, in its third party intervention before the European Court of Human Rights in the case of *Kurt v. Austria*, the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) submitted that law-enforcement officials should be provided with clear guidelines and criteria governing action or intervention in sensitive situations and argued that "the assessment of risk and identification of safety measures should be conducted continuously and during all the phases of the procedure by police officers, prosecutors and judges from the first meeting with the victim all the way to a possible sentence."<sup>75</sup>
90. The Commissioner notes that, according to the Federal Ministry of the Interior, on the contrary, no prior signal was sent before most femicides. However, she also notes that the absence of prior signal identified by the police may precisely result from the underreporting pointed out, *inter alia*, by the UN Committee on the Elimination of Discrimination against Women in its 2019 [Concluding observations on Austria](#).
91. The recent [reactions](#) to the launch of a "Silent emergency call" app by the Federal government also illustrate the need to foster trust in the police, with NGO representatives stressing that the requirement that women communicate their address to the police through this app could "deter" many.
92. The Commissioner also observes that the judiciary's response to violence against women is characterised by a low prosecution and conviction rates.<sup>76</sup> According to the Alliance Living free from

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the Private Sphere". The basic training for first-level leading police officers the subject is dealt with in the subjects "Security Police Law", "Criminology - Prevention and Analysis of Crime" and "Data recording". In addition, the standardized basic training for prevention officers in the area of violence in the private sphere lasts five working days or 40 hours. New recruits at the criminal police have to undergo training including the prevention / combatting of domestic violence and violence against women for at least 8 days.

<sup>72</sup> Richtlinien zur Strafverfolgung bei Delikten im sozialen Nahraum, April 2019.

<sup>73</sup> See e.g. Austrian Ombudsman Board, [Report](#) on the control over the public administration 2020, p. 94.

<sup>74</sup> In this case, the victim had fortunately decided not to stay at home, but to take refuge somewhere else with the children.

<sup>75</sup> ECtHR, *Kurt v. Austria* [GC], no. [62903/15](#), para. 190, 15 June 2021, para. 140-141.

<sup>76</sup> See CEDAW, [Concluding observations on the ninth periodic report of Austria](#), 2019.



Violence, the proportion of the reported cases of violence that lead to a conviction is 10-20%, with many cases being dropped by the prosecutor's office, which leads to a situation where women suffer from repeated victimisation by going through the process of being questioned by the authorities, often several times, only for the case to be discontinued.

93. The Commissioner underlines that the fight against impunity in human trafficking cases is also at stake. GRETA [expressed](#) concern at the low number of convictions for human trafficking, while the UN Committee on the Elimination of Discrimination against Women [criticised](#) the lenient sentences imposed on traffickers, despite the fact that the Criminal Code provided for penalties of up to 10 years' imprisonment.
94. As regards the budget allocated to the fight against violence against women, the Commissioner notes that NGOs<sup>77</sup> and international human rights bodies<sup>78</sup> consider that, despite the welcome recent increases, much more should be done to cover the actual needs in the fields of support to victims of violence against women,<sup>79</sup> as well as prevention and repression of this phenomenon. The Alliance Living free from Violence demands that the budget of the Federal Minister for Women and Integration be increased to 228 million euro. This organisation also demands the creation of 3 000 jobs for awareness raising and prevention work in all municipalities in Austria.
95. Another issue of concern is the custody of children in cases of violence against their mother. Although the Austrian law recognised that witnessing violence against a close person constitutes a violation of the best interest of the child, this provision is reportedly hardly applied by the courts that often favour the principle of joint custody set out in the Family law over the child's fundamental right to live free from violence. The Commissioner understands that a legislative reform is being prepared, according to which there will be no legal automatism of mutual parental responsibility in case of criminal conviction of one parent for certain offences against a child or against the other parent, or in case of judicial prohibition of contact with child. However, several NGOs consider that those exceptions will not sufficiently protect most women and children against violent fathers, due to underreporting of violence against women, low conviction rates, and the fact that certain forms of psychological violence, such as repeated humiliation and bullying, often remain without any legal consequence.

### 2.3. GENDER EQUALITY

96. According to the Council of Europe Gender Equality Strategy 2018-2023, gender equality "entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men."
97. The Commissioner notes that Article 7 (1) of the Federal Constitution provides that "all Federal nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded". According to the European Institute for Gender Equality (EIGE), the country's situation has improved over the last decade. Austria ranked 11<sup>th</sup> in the EU on the [Gender Equality Index 2021](#),

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<sup>77</sup> In its submission to the UPR, [Amnesty International](#) deplored the "government's continuous failure to provide sufficient financial and human resources to ensure wide access to women's support services and to improve the work with perpetrators, such as anti-violence trainings". On the occasion of the UPR other NGOs also [called](#) for an increase in preventive measures and financial support to women's support services, including existing women's shelters.

<sup>78</sup> See Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), First evaluation [report](#) on Austria, 2017; CEDAW, [Concluding observations on the ninth periodic report of Austria](#), 2019

<sup>79</sup> Information received by the Commissioner indicates that Vienna is the only province offering sufficient shelter places, while women victims of violence are reportedly facing difficulties in finding a place in other provinces, especially foreign women whose administrative situation may reportedly generate additional complications.

with 68 out of 100 points. Since 2010, Austria's score has increased by 9.3 points and its ranking has improved by one place. However, gender-based stereotypes and discrimination remain widespread.

98. Gender-equality on the labour market appears to be one of the biggest challenges. According to [Eurostat](#) data, the difference between the average gross hourly earnings of men and women was 19.9% in March 2021, with Austria ranking third last in the EU. In 2019, the UN Committee on the Elimination of Discrimination against Women [noted](#) with concern that the gender pay gap in Austria (19.9% in [2019](#)) was one of the highest in the European Union, and adversely affected women throughout their working life and in terms of their pension benefits, as evidenced by the fact that the average pension level for women is about 40 per cent lower than that for men. In their national UPR [report](#), the Austrian authorities stressed that the gender pay gap decreased from 25.1% in 2008 to 19.6% in 2018 – the median shortfall in annual earnings for women working full-time throughout the year amounting to 15.2% in 2018. For federal civil servants, the slightly lower difference between the median annual earnings of full-time working women and men declined from 13.3% in 2012 to 10.3% in 2018. However, the European Committee of Social Rights [concluded](#), in 2020, that the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled.
99. The Commissioner notes that, following the national action plan on Gender Equality in the Labour Market (2010-2013), several measures were taken between 2013 and 2019, including efforts to eliminate barriers to full-time employment, gender-sensitive career guidance by the Public Employment Service, and the introduction of an Equal-Pay-Label as a quality standard for businesses creating equal opportunities. According to the Austrian authorities, between 2017 and 2020, the implementation of minimum gross wages of 1 500 euros almost nationwide under collective bargaining agreements has contributed to improving women's income situation. In addition, since 2018, the partner's income is no longer taken into account when calculating unemployment assistance, contributing to more autonomous social security especially for women.<sup>80</sup>
100. Despite these efforts, the Commissioner observes that almost half of employed women work only part-time. Information received by the Commissioner indicates that this situation mainly results from the predominant perception of women as the main caretakers of family members, especially children and older persons. During her visit, the Commissioner's attention was drawn to the blatant lack of childcare services, especially in the rural areas, which leaves many women no other choice but to work part-time.<sup>81</sup> This situation, combined with the gender pay gap mentioned above, results in a worrying pension gap between women and men, amounting to 37% according to [Eurostat](#), with Austria ranking fifth last in the EU.
101. The Commissioner also notes that [research](#) by Amnesty International in 2021 revealed "exploitation of women migrant care workers in Austria, with poor pay, discrimination and excessively long hours, pushing some to the brink of collapse."<sup>82</sup> Furthermore, the Ombud for Equal Treatment expressed concerns regarding intersectional discrimination in employment. The Austrian equality body has dedicated special attention to anti-Muslim racism in employment, following many complaints received from women, in particular women wearing headscarves, regarding discriminatory treatment on the labour market. The Ombud for Equal Treatment also received complaints from trans women discriminated against in access to employment.<sup>83</sup>

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<sup>80</sup> UPR, [National report](#) by Austria, 6 November 2020, A/HRC/WG.6/37/AUT/1.

<sup>81</sup> Kindergarten and primary schools normally run between 08:00 and 14:00 in Austria.

<sup>82</sup> According to this [research](#), "the vast majority of those who work as live-in carers for older people are women migrant workers from Central and Eastern Europe, who are often subjected to various intersecting forms of discrimination and abuse. Care workers told Amnesty International that unfair wages, lack of sick pay and inadequate breaks were a daily reality even before the pandemic, but Covid-19 made working conditions unbearable."

<sup>83</sup> See Gleichbehandlungsanwaltschaft, [Bericht](#) 2018/2019.



## 2.4. CONCLUSIONS AND RECOMMENDATIONS

102. **Women’s sexual and reproductive health and rights.** The Commissioner recalls that all adolescents should be provided with access to free, confidential, responsive and non-discriminatory sexual and reproductive health services, information and education, including on contraception and emergency contraception.<sup>84</sup> While welcoming the existence of a solid legal framework related to sexuality education, she considers that efforts should be made to complement the curricula, especially on self-determination and consent issues, and to provide training to all teachers involved. Stressing that all those intervening at schools on this topic, including civil society organisations, should provide age-appropriate, standardised, evidence-based and scientifically accurate comprehensive sexuality education, the Commissioner calls on the authorities to ensure that a list of certified external interveners is established by the Federal ministry of Education, Science, and Research on the basis of adequate and transparent criteria, in particular the demonstrated expertise of the interveners, and to protect children from biased and scientifically ill-founded influence.
103. The Commissioner is concerned about the fact that contraception services are not covered under public health insurance or reimbursement schemes in Austria, making them hard to afford for many women, especially low-income and destitute women, students and adolescents. She calls on the authorities to subsidise counselling on contraception and contraceptives, cover them under public health insurance or reimbursement schemes, or provide them free of charge.
104. The Commissioner underlines that ensuring women’s access to safe abortion care is a critical component of states’ obligations to respect and guarantee women’s human rights. Human rights mechanisms have stressed that states are obliged to ensure that laws and policies on abortion do not prevent or obstruct women’s access to good quality abortion care. States must also take concrete action to guarantee the quality of abortion care and ensure that it is available and accessible in practice. Measures to eliminate legal, policy, financial and other barriers that still impede women’s access to abortion care are critical.<sup>85</sup>
105. Therefore, the Commissioner urges the Austrian authorities to cover the costs of abortion care under public health insurance. She also calls on them to ensure the dispersal and availability of adequate numbers of health professionals across public and private health facilities as well as in urban and rural areas who are willing and able to provide sexual and reproductive care, including abortion care. She invites the authorities to ensure that medical professionals receive appropriate training on abortion care, and that refusals of abortion care on grounds of conscience do not jeopardise women’s timely access to such care, which implies that women should be provided timely referral to an alternative, willing and capable provider.<sup>86</sup> Finally, the Commissioner recalls that women should have access to evidence-based and scientifically accurate information about abortion.
106. **Violence against women.** The Commissioner is concerned about the high level of various forms of violence against women prevailing in Austria. She recalls that these acts constitute violations of human rights and require concrete measures from states. The Commissioner welcomes the legislative and practical steps taken by the authorities to address this phenomenon and calls on them to significantly increase their efforts in order to ensure that a set of comprehensive policies in the fields of prevention, protection and prosecution exists in relation to all forms of violence against women. In particular, the Commissioner encourages building on the recommendations contained in the Council of Europe’s Group of Experts on Action against Violence against Women and Domestic

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<sup>84</sup> See Commissioner for Human Rights of the Council of Europe, [Issue Paper](#) on women’s sexual and reproductive health and rights in Europe, 2017, p. 58.

<sup>85</sup> *Ibid.*, p. 59.

<sup>86</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), [General Recommendation No. 24](#): Article 12 of the Convention (Women and Health), 1999, paragraph 11; Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 22](#) on the right to sexual and reproductive health, 2016, paragraph 14.

Violence's first evaluation [report](#) on Austria (2017), and on the [Conclusions](#) on the implementation of recommendations in respect of Austria adopted on 7 December 2021 by the Committee of the Parties to the Istanbul Convention.

107. The Commissioner urges the Austrian authorities to take, as a matter of priority, resolute measures to improve the police response to acts of violence against women and to build trust between the police and victims of violence against women. She invites them, in particular, to extend the use of barring orders to protect women against further violence. She recalls that, in the [judgment](#) delivered on 15 June 2021 in the case of *Kurt v. Austria*, the Grand Chamber of the European Court of Human Rights judged that “an immediate response to allegations of domestic violence is required from the authorities who must establish whether there exists a real and immediate risk to the life of one or more identified victims of domestic violence by carrying out an autonomous, proactive and comprehensive risk assessment.”<sup>87</sup> The Court further held that once such a risk is established, the State's positive obligation to take preventive and protective operational measures is triggered.<sup>88</sup> The Commissioner notes that in the cases where the Court found that the authorities failed to act promptly after receiving a complaint of domestic violence, it held that this failure to act deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of acts of violence.<sup>89</sup>
108. The Commissioner also invites the authorities to pursue their efforts to improve the response of the justice system in order to improve the prosecution and conviction rates in cases of violence against women. She invites them to ensure that the Guidelines regarding criminal prosecution in the field of domestic violence are effectively followed and will pay close attention to the implementation of the new measures announced by the Federal Ministry of Justice.<sup>90</sup>
109. The Commissioner wishes to highlight that dealing adequately with cases of violence against women requires specific training. Therefore, she calls on the Austrian authorities to step up their efforts in this domain and to ensure that all professionals dealing with such cases receive initial and continuous training provided by experts.
110. As regards the fight against the digital dimension of violence against women, the Commissioner welcomes the measures taken by the Austrian authorities to address this phenomenon. She calls on them to raise awareness about the means provided to victims by the ‘Hass im Netz’ legislative package, and to pursue their dialogue with private actors, especially including social media platforms, to foster its implementation, while providing effective transparency over the means applied to restrict online violence against women. Scrupulous efforts must further be made to ensure that the enforcement of the measures does not lead to content overblocking and abusive restrictions on freedom of expression and freedom of the press. In this domain, the [General Recommendation No.1](#) on the digital dimension of violence against women, and [the comparative study](#) assessing the relevance of the Istanbul and Budapest Conventions in addressing online and technology-facilitated violence against women, respectively published by GREVIO on 24 November 2021 and 7 December 2021, should provide useful guidance.
111. The Commissioner welcomes the successive increases in the budget of the Federal Ministry for Women and Integration. However, she observes that not all needs are met, including in the fields of awareness-raising, prevention, training, repression, shelters, and legal and psychosocial support to victims. Therefore, she calls on the Austrian authorities, both at federal and provincial level, to

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<sup>87</sup> ECtHR, *Kurt v. Austria* [GC], no. [62903/15](#), para. 190, 15 June 2021.

<sup>88</sup> *Ibid.*, para. 177-178.

<sup>89</sup> *Ibid.*, para. 165. See also *Halime Kılıç v. Turkey*, no. [63034/11](#), para. 99, 28 June 2016, and *Talpis v. Italy*, no. [41237/14](#), para. 117, 2 March 2017.

<sup>90</sup> See above, § 84.

significantly increase the budgets related to the fight against all forms of violence against women while ensuring that these resources are allocated in a transparent and sustainable manner.

112. The Commissioner considers that the situation points to a need for a better coordinated approach in order to fight violence more efficiently. Interesting initiatives have been taken – for instance the multi-agency commissions dealing with high-risk cases – and should be generalised. More generally, she invites the Federal government to strengthen its co-operation with all relevant stakeholders, including the provinces, the national human rights structures, and civil society organisations and experts, possibly in the context of a new national action plan.
113. Finally, the Commissioner calls on the authorities to ensure the effective protection of the best interests of the child as provided for by the UN Convention on the Rights of the Child, to which Austria is a party. In particular, she invites them to ensure that the custody rules protect the children from any violent parent, including in cases where the children have witnessed violence against their mother. The Commissioner would appreciate being informed about the results of the work currently carried out within the Ministry of Justice on this topic and will pay careful attention to their implementation.
114. **Gender equality.** The Commissioner wishes to stress the need to foster a societal change in Austria in order to eradicate gender stereotypes, which in addition to contributing to the perpetuation of gender-based violence against women, continue to undermine the effective realisation of women's rights and gender equality in Austria.
115. The Commissioner urges the authorities to address, as a matter of priority, the gender pay and pension gaps, which are discriminatory and put many women at risk of poverty. In particular, the authorities should ensure that the existing legal framework is effectively implemented and that employers resorting to gender-based discrimination in remuneration are actually sanctioned.
116. The Commissioner also calls on the Federal and provincial authorities to significantly improve the availability of high-quality childcare support to facilitate women's re-entry into the labour market.
117. Finally, the Commissioner encourages the Austrian authorities to build on the conclusions and recommendations of the European Committee of Social Rights concerning gender equality and to accept the system of collective complaints provided for by the 1995 Additional Protocol to the European Social Charter, which was signed by Austria in 1999 but has not yet been ratified.