

Comments by Austria on the report by
Dunja Mijatović,
Council of Europe Commissioner for Human Rights,
following her visit to Austria

Austria thanks the Commissioner for Human Rights for her report following her visit to Austria from 13 to 17 December 2021 and wishes to assure that it will give careful consideration to her report and recommendations. Austria attaches great importance to the work of the Council of Europe and its Commissioner for Human Rights and is fully committed to cooperation and exchange in order to strengthen the protection and promotion of human rights. Austria would also like to avail itself of this opportunity to thank the Commissioner for the close cooperation during and after her visit.

The report focuses on two major issues, on which Austria wishes to comment as follows:

Human Rights concerning reception and integration of refugees, asylum seekers and migrants

Para 8, 9 and 47:

With regard to the judgements of Austrian courts, which held that "pushbacks are partly applied as a method in Austria", it should be noted that these cases are still pending before the Supreme Administrative Court and the judgements are not yet final.

Austria firmly rejects the allegation of systematic pushbacks and would like to underline that an internal evaluation of the reported incidents came to the conclusion that there had been no misconduct on the part of the officers concerned. For Austria respect for fundamental and human rights is a top priority in police operations.

A decree on the procedure in case of accusations of pushbacks at the Austrian border was issued by the Federal Ministry of the Interior in December 2021. The border police units were informed about the Commissioner's recommendations contained in her recent paper entitled "Pushed beyond the limits". In this information, it was stressed that these principles should be part of the ongoing training and awareness activities.

Para 13:

It should be noted that according to the opinions reflected in the evaluation report, the quality of legal counselling has rather improved.

In 2019, Austria promulgated the Federal Law establishing the Federal Agency for Reception and Support Services (*BBU-Errichtungsgesetz* – "BBU-G"). Since 1 January 2021, the Federal Agency (BBU) provides inter alia legal counselling. In drafting the bill establishing the BBU, special attention was paid to ensuring that all requirements under European, constitutional and international law were fulfilled and, in particular, that the independence of the legal counsellors continued to be guaranteed.

According to the provisions of the BBU-G, legal counsellors are expressly independent and free from instructions in the performance of their duties (§ 13 par. 1 BBU-G). In order to avoid possible conflicts of interest, the BBU-G also expressly stipulates that an alien may not be provided with “legal counselling” on the one hand and “return counselling” on the other hand by the same employee of the Federal Agency (§ 13 par. 5 BBU-G). Furthermore, the independence of the legal counsellors is secured institutionally respectively organizationally, as inter alia the department (*Bereichsleitung*), within the Federal Agency responsible for legal counselling both in proceedings at the Federal Office for Immigration and Asylum and at the Federal Administrative Court, is appointed by the Federal Minister of Justice.

The legal counsellors employed by the Federal Agency shall perform their counselling activities objectively and to the best of their knowledge. As mentioned above, they are independent and not bound by instructions in their activities. It is impossible to influence how legal counselling is provided in individual cases.

Independence is also ensured by structural measures in the framework contract (for further information please refer to the reply to question 34 of the parliamentary question No. 3759/J of 14 December 2020 given by the Federal Minister of Justice; available at https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_03802/imfname_855716.pdf).

In conclusion, the required independence within the framework of the performance of tasks in the Federal Agency in the area of legal counselling is therefore given in any case.

Para 14 and 15:

The Federal and Provincial Government Coordination Board, which includes members of the Federal Ministry of the Interior and members of each province, meets at least once a week to discuss various topics. This includes general topics, such as ongoing updates related to COVID-19, legal clarifications, the cooperation with other entities (such as NGO’s, local partners), the adequate care and accommodation for applicants of international protection as well as people now seeking protection under the Temporary Protection Directive, and the review of individual cases of (vulnerable) people.

Due to the high number of asylum applications in 2021, the Federal Ministry of the Interior had to reopen nine (temporarily closed) reception facilities to ensure adequate care for applicants of international protection. A high number of asylum applications automatically means a high number of people within the reception system. Nevertheless, the Federal Ministry of the Interior has always ensured the fulfilment of the Reception Conditions Directive 2013/33/EU.

Para 16:

The BBU GmbH is constantly working to ensure that adequate measures on child protection within the federal reception system are taken and standards upheld. Underage minors are accommodated in federal reception facilities after the written request of the locally responsible child and youth welfare institution. The federal reception facility Traiskirchen has a separate area for underage minors. In addition to the qualified staff members of the BBU GmbH, asylum-seeking mothers/fathers who live in the same facility are also taking care

of underage minors. This individual allocation happens in close cooperation with the locally responsible child and youth welfare institution.

Para 20:

The Federal Ministry of the Interior as well as the BBU GmbH value cooperation with various NGOs. The Federal Ministry of the Interior initiated a working group with various NGOs in order to offer a suitable platform aimed at exchanging needs and expertise of the relevant stakeholders regarding the evacuation of especially vulnerable people fleeing from Ukraine and its neighbouring countries. A cooperation with a sports association (“Sportunion”) was initiated to give applicants of international protection access to a variety of sports offers. Furthermore, the expertise of NGOs is consulted in specific cases, eg. LGBTIQ+ persons.

Regular meetings with psychiatric institutions are also hold, to ensure a specialized offer for children with mental illnesses.

Para 25:

Regarding the access of asylum seekers to the labor market, restrictions to seasonal work have been lifted following a decision of the Federal Constitutional Court. Effective labor market access is available to asylum seekers in all economic sectors by means of a work permit. However, in line with Directive 2013/33/EU, preferential access to vacancies is given to persons already integrated in Austria’s labor market, including refugees and beneficiaries of subsidiary protection.

According to Article 15 of Directive 2013/33/EU (Recast Reception Conditions Directive), Member States shall ensure that applicants have access to the labour market no later than nine months from the date when the application for international protection was lodged, if a first instance decision by the competent authority has not been taken. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law. There is the possibility to provide for restrictions for reasons of labour market policies. Thus, the precise regulation of the conditions is left to the Member States.

In Austria, access to the labour market is already granted after three months following a labour market examination. This regulation is therefore in line with the Reception Conditions Directive (after nine months at the latest).

In principle, there is a strict separation of the concepts asylum and migration. In this sense, the right of asylum primarily serves to offer refugees protection from persecution and is not an instrument of controllable labour migration. However, if the need for protection is established, beneficiaries of asylum and subsidiary protection have immediate access to the labour market.

Para 44:

So far there has been no concrete response from the judiciary that the criterion “perceptible over a longer period of time” stated in § 107c Austrian Criminal Code was difficult to demonstrate at court. Both § 107c para 1 subpara 1 and subpara 2 require that the conduct

is perceptible “over a longer period of time”. The term “over a longer period of time” can also be found in other criminal provisions of the Austrian Criminal Code (cf. §§ 106 para 1 subpara 2, 107 para 2, 107a para 2, 107b para 1, 145 para 1 subpara 2 und para 2 subpara 2, 222 Abs. 2 Austrian Criminal Code)

Para 54:

The focus of the Directorate-General for Integration in the Federal Chancellery is on providing German courses for persons with long-term residence prospects. The provision of integration assistance measures is always dependent on the available budgetary resources and requires a high degree of predictability and thus plannability in order to ensure a continuous, comprehensive range of services. Against this background, asylum seekers from countries of origin with a high probability of recognition, provided that their identity is proven during the implementation of integration assistance, receive either a literacy course or an A1 German course in accordance with section 68(1) 3rd sentence of the Asylum Act, subject to organizational and financial resources. In 2021, 1.434 German language course places were taken up by asylum seekers from countries of origin with a high probability of recognition, and 753 places by March 2022.

Para 55:

Access to the labour market for asylum seekers is defined at the level of European law in the Reception Conditions Directive (Art. 15), which leaves it up to the member states to regulate the conditions under which asylum seekers are granted access to the labour market in accordance with their national law. In Austria, the directive is implemented in § 4 of the Act Governing the Employment of Foreign Nationals (Ausländerbeschäftigungsgesetz-AuslBG). In order to obtain an employment permit, foreigners and thus also asylum seekers must fulfill certain requirements according to the AuslBG. An employment permit can be issued to asylum seekers as well as to aliens with a right of residence under the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz - NAG) or the Aliens Police Act (Fremdenpolizeigesetz) after only three months from admission to the asylum procedure. Following the revocation of two decrees of the former Federal Ministry of Social Affairs, Health, Care and Consumer Protection (BMASGK) by the Constitutional Court, asylum seekers are now to be granted employment permits after a positive labour market assessment without restriction to a specific activity.

Para 56:

It may be noted, that according to the mentioned case of the European Court of Human Rights (*M.A. v Denmark*) the waiting period of 3 years is not fundamentally inadmissible as long as there is a balance of interests according to Article 8 ECHR in the specific case.

In Austria, the ECHR has constitutional status. Legislation and enforcement are thus obliged to observe and implement the fundamental rights guaranteed therein. These fundamental rights are directly applicable before all courts and administrative authorities and are therefore always examined in all proceedings.

Para 57:

Citizenship entails rights and duties and enables full participation in social, professional and political life in Austria. At the same time, it implies a high degree of belonging to a state. Immigrants should therefore make a clear commitment to the state of Austria at the end of their integration process - i.e. also to recognizing Austria as their home, Austrian values as their own and Austrian law.

Para 59:

Racism is an issue that affects society as a whole. Especially Antisemitism and the incidents in the context of a demonstration in Vienna in 2020 made it clear that racist and discriminatory tendencies also exist among immigrants. A study of young people with an immigrant background in Vienna revealed, among other things, that especially prejudice against women, homosexuals and Jews is prevalent among immigrants from Afghanistan, Turkey, Syria, Iraq and Bosnia.

The Austrian federal government therefore pursues a comprehensive approach to the prevention of discrimination. Thus, numerous projects with a focus on anti-discrimination are funded within the framework of the Directorate-General for Integration in the Federal Chancellery (2022: 15 projects, project volume around € 1 million; 2021: 14 projects, project volume around € 1 million).

Para 60:

The Austrian government programme provides for a separate national plan of action (Nationalen Aktionsplan – NAP) against racism and discrimination. However, NAPs are longer-term and projects that require administrative resources. Like other measures from the government programme, the NAP is to be implemented in this legislative period.

Women's Rights and Gender Equality

General remarks:

Regarding the data collection, please refer to the official data set of the National Coordination Body (Art. 10) of the Istanbul Convention: [Allgemeines zu Daten – Gewalt gegen Frauen \(coordination-vaw.gv.at\)](#) The co-ordinating body is responsible for preparing subject-specific information and data for the public. Therefore, the co-ordinating body collects official data from various sectors, compares the data on an annual basis and publishes the outcomes [here](#). The following topics are covered:

- [Violence against women in AT and the EU](#)
- [Women's shelters](#)
- [Women's helpline](#)
- [Violence protection facilities](#)
- [Criminal data](#) (incl. physical violence, sexual violence, psychological violence, etc.)
- Data from the justice sector, for example data on [judicial convictions](#) or [statistics of the justice department on specific crimes](#)

Para 77 to 79:

Number of murders with female victims: The official number is 2021 is 29 (and not 31). Please see [official statistics by the Austrian Federal Ministry of the Interior](#). The specific sheet on murders of female victims in year 2021 is available [here](#).

Please refer to the official data set of the National Coordination Body instead of the *NGO Wiener Interventionsstelle gegen Gewalt in der Familie* ([GSZ-Statistiken 2020.pdf \(coordination-vaw.gv.at\)](#), p. 7).

Please provide a reference value regarding the percentage of male perpetrators: 18,471 ([GSZ-Statistiken 2020.pdf \(coordination-vaw.gv.at\)](#), p. 9).

The correct number of women's shelters in 2020 is 30 (instead of 26). The total number of people hosted by women's shelters should be 3,329 (1,793 women, 1,536 children); please see [Statistiken Frauenhäuser Daten 2020.pdf \(coordination-vaw.gv.at\)](#), p. 2). Please note that not all women's shelters are organised under one umbrella organisation.

There is no legal definition of femicide in Austria. Therefore, although the presented figures are important in order to determine the situation of domestic violence and violence against women in Austria, their precise interpretation to a certain degree depends on the respective definition of terms.

Para 80:

Regarding mistrust towards the police on behalf of migrant women, it should be noted that being accessible to every victim regardless of ethnicity or sexual orientation is a priority of the police in Austria. In the past, there have been several initiatives to increase accessibility for migrants in particular. Additionally, it is ensured that translators are provided when victims cannot communicate in German in order to ensure that they are able to communicate your needs adequately.

Para 86:

The "special summit on violence against women" in May 2021 led to an additional funding amounting to € 24.6 Mio. for measures to combat violence against women and girls (=Violence Prevention Package). The measures taken include:

- The comprehensive contract extension (additional funding of up to 50%) to strengthen the valuable work of the Violence Protection Centres in every federal state and the Intervention Centre for Trafficked Women; additional counselling services include:
 - cooperation with regards to security police case conferences and victim protection-oriented perpetrator work;
 - cooperation with the newly established Counselling Centres for Violence Prevention;
 - counselling services covering the augmented aspect of cyber violence and
- the pro-active aftercare (i.e. actively contacting victims after the counselling has been completed to ensure the sustainable impact of the support)

- a comprehensive sensitization campaign on violence against women and girls so that every woman and every girl knows where to seek help;
- a funding call for projects combatting violence against women and girls as well as a call for projects to support women at risk of forced marriage;
- the increase in funding of Family Counselling Centres as well as the expansion and financial safeguarding of Child Protection Centres and the strengthening of Family Court Assistance;
- the promotion of legal and psychosocial support for victims in criminal proceedings by improving information flow about this service;
- the strengthening of anti-violence training for perpetrators as well as
- a research study on all homicides against women of the past 10 years in order to acquire knowledge of the circumstances under which femicides were committed and accordingly to take targeted measures.
- In addition, perpetrator work is an important pillar in the protection against violence. Therefore, new Counselling Centres for Violence Prevention were established. Since 1st of September 2021, counselling is mandatory for recipients of a protection or mobile restraining order.

Please add in particular the information regarding the comprehensive contract extension with Violence Protection Centres.

Para 98:

In the first sentence, we suggest to refer to the correct and current Eurostat data for the gender pay gap: in Austria, the gender pay gap was 19.9% in 2019 and 18.9% in 2020; no data are yet available for 2021.

Para 112:

Cooperation with relevant stakeholders has already been intensified. As follow-up process of an intergovernmental round table on victims' rights, the Federal Ministry of Justice organized in 2021 an exchange of experience on domestic violence with members of the prosecution offices, courts, the Federal Criminal Police Office (BKA), the Ministry of Women's Affairs, victim protection services, NEUSTART and the Advocacy. This exchange on a federal level will take place annually in the future in order to improve communication and networking between the institutions and to elaborate best practice and discuss problems on the basis of closed cases.

Para 102 to 113:

The conclusion and recommendations of the Commissioner for Human Rights of the Council of Europe are very much appreciated and will find due consideration within the relevant departments in the Ministry of Interior. Violations of human rights constitute an issue that is taken very seriously within all governmental institutions of Austria. In this regard, it is among the priorities of the Ministry of Interior to further strengthen the trust between the police and victims of violence in order to facilitate both preventive and repressive efforts. Specific training is being carried out and expanded upon both qualitatively and quantitatively to

strengthen the abilities of the police towards all forms of domestic violence. Associated budgets, as well as those pertaining to the financing of NGOs working in this sector, have been increased continuously over the last decade. In this context, it is important to note that a coordinated approach, together with specialized non-governmental institutions is a well-established practice in Austria. This also pertains to children exposed to situations involving violence in particular.