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RAP/RCha/AUT/11(2023)

EUROPEAN SOCIAL CHARTER

Comments submitted by
the United Nations High Commissioner for Refugees
concerning the 11th National Report on the implementation of
the European Social Charter

submitted by
THE GOVERNMENT OF AUSTRIA
Articles 7, 8, 16, 17, 19, and 27
for the period 01/01/2018 – 31/12/2021

Comments registered by the Secretariat
on 14 July 2023

CYCLE 2023



**Comments by the United Nations High Commissioner for Refugees
to the European Committee of Social Rights**

**Examination of the 11th National Report on the implementation
of the European Social Charter
submitted by the Government of AUSTRIA
Articles 7, 8, 16, 17, 19 and 27
for the period 01/01/2018 – 31/12/2021**

RAP/RCha/AUT/11(2023)

Austria has a long history as an asylum country and a well-established asylum system. At the end of 2022, Austria hosted 53,000 asylum-seekers and was estimated to host 169,000 recognized refugees and beneficiaries of subsidiary protection coming mainly from Syria, Afghanistan, and the Russian Federation (since no official figures are available, this number includes all persons granted international protection during the past ten years). In addition, some 90,000 refugees, who have fled the war in Ukraine, have obtained temporary protection in 2022. According to *Statistik Austria*, 4,700 stateless people, 800 individuals of unknown nationality and 14,300 persons of undetermined nationality were registered in the Central Register of Residents as of 14 February 2023.

UNHCR has a presence in Austria since 1951 and can fully exercise its duty to supervise the application of the 1951 Convention. National legislation inter alia authorizes UNHCR to visit all places where asylum-seekers are accommodated or detained and to obtain information on asylum decisions. UNHCR enjoys a good cooperation with all relevant stakeholders.

Due to resource constraints, the UNHCR Office in Austria has been unable to prepare a comprehensive submission. To still facilitate the examination of the 11th National Report on the implementation of the European Social Charter concerning the rights of children, families and migrants, UNHCR wishes to draw the attention of the distinguished members of the European Committee of Social Rights to its following position papers and statements issued during the reporting period. The protection concerns identified in these documents are still valid.

Article 16 – The right of the family to social, legal and economic protection

In June 2019, a law amendment entered into force which firstly foresaw language requirements for recognized refugees to receive the same amount of social aid as Austrian nationals. At the same time, it generally limited the amount of social aid for beneficiaries of subsidiary protection to the basic care and welfare support allowances that was introduced for asylum-seekers.¹ While the provision concerning recognized refugees was repealed by the Constitutional Court for being at variance with the Federal Constitutional Act on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the court upheld the differential treatment of beneficiaries for subsidiary protection.² The latter, moreover, lose their entitlement to child benefits and childcare allowance if they are

¹ For UNHCR's concerns see [Sozialhilfe: UNHCR warnt vor Bruch der Genfer Flüchtlingskonvention](#), 14 April 2019 and the position paper on the draft law [UNHCR-Analyse des Entwurfs für ein Sozialhilfe-Grundsatzgesetz](#), 8 January 2019.

² [Austrian Constitutional Court Judgement](#), G 164/2019-25, G 171/2019-24, 12 December 2019.

not employed, receive sick pay or are on maternity leave. Hence, as a consequence of the COVID-19 pandemic, their situation was further exacerbated.³

With regard to the Committee's 2019 conclusions on family reunion, UNHCR would like to point out that, by contrast to recognized refugees, family members granted subsidiary protection are required to wait for three years after having been granted this status before being entitled to family reunion with their under-age children and spouses or, in the case of under-age children, with their parents.⁴

Article 17 – The right of children and young persons to social, legal and economic protection

In February 2019, UNHCR issued a comprehensive study on guardianship for unaccompanied or separated children⁵. It found that during the admissibility procedure, when care and accommodation is provided by the Federal Agency for Reception and Support Services, guardians are not yet appointed although this can take several months and the appointed legal representatives only support UASC with respect to the asylum procedure. During the admissibility procedure, the child protection authorities typically are only involved in cases where there are imminent emergencies. At the same time, the expertise and experience of local child protection authorities with guardianship for refugee and asylum-seeking children varies, and their resources for training and exchange of information are limited. Hence, UNHCR recommended to systematically assign a guardian to all UASC without delay or pre-condition (such as age assessments) from day one of their arrival or their identification as being without their habitual guardian. Furthermore, the capacity of guardians to provide effective support for the needs of asylum-seeking and refugee children should be increased. UNHCR welcomed that enhancing and strengthening the protection and legal status for child asylum-seekers and refugees inter alia through “early guardianship for unaccompanied or separated children” is part of the platform of the current government and repeatedly called for a law amendment⁶. However, so far no law amendment has been adopted.

Concerning the reception of asylum-seekers in Austria, in December 2021, UNHCR issued a press release calling on the Federal Government and the provinces to find a common solution to ease the situation. At the time, the federal care facilities have been at their capacity limits for a long time and adequate care and support for asylum seekers was hardly possible in many places. UNHCR also pointed out that due to the tense accommodation situation in federal facilities, it was often hardly possible to offer more care for the persons concerned because there was a lack of both space and resources. This was especially true for unaccompanied or separated children, for whom care as well as learning and recreational opportunities are doubly important.⁷

With regard to its questions concerning the reduction of statelessness, UNHCR wishes to inform the Committee that it is not aware of any gaps concerning the birth registration of children born in Austria⁸. However, the identification of stateless children continues to be a gap due to the absence of a

³ UNHCR, *COVID-19 verschärft die Situation von subsidiär schutzberechtigten Familien in Österreich*, 7 Dezember 2020.

⁴ See *VfGH: Familiennachzug bei subsidiärem Schutzstatus - Blog Asyl*

⁵ UNHCR, *Vorschläge für ein verbessertes Obsorgesystem für unbegleitete Kinder und Jugendliche in Österreich*, February 2019.

⁶ *Obsorge ab Tag 1: UNHCR, IOM und UNICEF rufen Österreich auf, Maßnahmen für unbegleitete Kinder und Jugendliche zu verstärken – UNHCR Österreich*, 25 February 2020; *UNHCR-Appell zum Tag der Kinderrechte: Kinder sind Kinder!*, 19 November 2020; *UNHCR begrüßt Empfehlungen der Kindeswohlkommission zu Stärkung von Kinderrechten*, 13 July 2021; For statements issued after the reporting period, please see *Pressemitteilungen – UNHCR Österreich*.

⁷ *UNHCR zu Asylgipfel: Gemeinsame Lösung für Schutzsuchende finden!*, 1 December 2021. See also this recent statement of 5 October 2022: *UNHCR, UNICEF und IOM: Dringender Handlungsbedarf für Obsorge ab Tag 1*.

⁸ For barriers regarding late birth registration see the *ENS Statelessness Index Survey 2022: Austria*.

dedicated statelessness determination procedure.⁹ Through a law amendment in 2022,¹⁰ the upper age limit for acquisition of Austrian nationality by application for children born stateless in Austria was increased from 20 to 21, bringing the respective provision in line with the minimum requirements under the 1961 Convention (i.e., an application window of three years after the age of majority). However, UNHCR still sees an urgent need for action for children born stateless in Austria in order to be able to naturalize at or soon after birth. Around 400 children have been born without nationality in Austria in the last 20 years.¹¹ Apart from the provision on children born stateless in Austria, the Nationality Act does not contain a facilitated naturalization procedure specifically for stateless persons, and there are several barriers to naturalization of stateless persons, including lengthy residence requirements and high fees.¹² Also according to UNHCR's Report "Mapping Statelessness in Austria"¹³ and the ENS Statelessness Index, there are still gaps in safeguards to prevent childhood statelessness, including with regards to foundlings and adoption.

Article 31 – The right to housing

With regard to the Committee's 2019 Conclusions, UNHCR would like to point out that since August 2019, according to an amendment of the Public Housing Act (*Wohnungsgemeinnützigkeitsgesetz*), third-country nationals (who are not entitled to equal treatment through state treaties) generally need to demonstrate more than five years of residence in Austria and to have passed an integration exam including German language requirements to be granted public housing support. UNHCR already at the time had voiced its concern that this makes their access to affordable housing more difficult.¹⁴

As mentioned in the submission by the Federal Chamber of Labour, access to housing subsidies and subsidized housing is in principle open to recognized refugees as a group of persons who have the same status as Austrian citizens. However, in practice there are some hurdles that affect this group in particular (e.g., income from employment or several years of main residence at the same address as a prerequisite).¹⁵

⁹ See UNHCR, [Mapping Statelessness in Austria](#), January 2017.

¹⁰ See [Tweet by the Head of UNHCR Austria](#), 28 March 2022.

¹¹ UNHCR, [60 Jahre Übereinkommen zur Verminderung von Staatenlosigkeit](#), 30 August 2021.

¹² See UNHCR, [Mapping Statelessness in Austria](#), January 2017, Chapter 7.6.2 and the [ENS Statelessness Index Survey 2022: Austria](#).

¹³ See UNHCR, [Mapping Statelessness in Austria](#), January 2017, recommendations at p. 101f and the [ENS Statelessness Index Survey 2022: Austria](#).

¹⁴ See UNHCR's position paper on the draft law [UNHCR-Analyse des Entwurfs einer Novelle zum Wohnungsgemeinnützigkeitsgesetz](#), 10 May 2019.

¹⁵ [Bundesarbeitskammer, Bericht Österreichs über die Umsetzung der Artikel 7, 8, 16, 17, 19, 27 und 31 der Revidierten Europäischen Sozialcharta \(RESC\) \(AUT\)](#), 25 August 2022, p.6. E.g. in Vienna and Salzburg access to social housing requires two years of main residence at the same address in Vienna or five years of main residence in Salzburg. See [Neu in Wien? Alles zum Thema Wohnen - StartWien](#) and [Stadt Salzburg - Voraussetzungen für eine Mietwohnung \(stadt-salzburg.at\)](#).