



March 2022

## **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2021

**AUSTRIA**

*This text may be subject to editorial revision.*

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Austria, which ratified the Revised European Social Charter on 20 May 2011. The deadline for submitting the 9<sup>th</sup> report was 31 December 2020 and Austria submitted it on 16 April 2021.

The Committee recalls that Austria was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2017).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2017) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 9<sup>th</sup> report by Amnesty International were registered on 1 July 2021. The reply from the Government to Amnesty International comments was registered on 12 November 2021.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 23);
- the right to protection against poverty and social exclusion (Article 30).

Austria has accepted all provisions from the above-mentioned group, except Articles 23 and 30.

The reference period was from 1 January 2016 to 31 December 2019.

The conclusions relating to Austria concern 12 situations and are as follows:

- 6 conclusions of conformity: Articles 3§1, 11§2, 11§3, 12§2, 12§4 and 14§2;
- 2 conclusions of non-conformity: Articles 13§1 and 14§1.

In respect of the other four situations related to Articles 3§2, 3§3, 11§1 and 12§3, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Austria under the Revised Charter.

The next report from Austria will deal with the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);

- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 December 2021.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee notes that, for the purposes of this report, States were asked to reply to the specific targeted questions put to them in relation to Article 3§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the remit of the thematic group “Health, social security and social protection”).

In its previous conclusion the Committee found that the situation in Austria was in conformity with Article 3§1 of the Charter (Conclusions 2017). It will therefore restrict its consideration to the Government’s replies to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e., after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

#### ***General objective of the policy***

In its targeted question, the Committee asked about policy formulation processes and the practical arrangements made to identify new or emerging situations that represent a challenge to the right to safe and healthy working conditions, the results of such processes as well as intended future developments.

In reply to the Committee’s question, the report recalls that the Occupational Safety and Health Strategy for Austria (ÖAS) 2013–2020 is built on a joint resolution by policymakers and other parties engaged in occupational safety and health (including ministries with related portfolios, accident insurance funds, social partners and interest group representatives), and aims to reduce the risk of occupational injury and disease as well as minimise work-related health risks, while at the same time setting out practical, focused activities to achieve these objectives.

The Committee takes note that the report outlines the outcomes to date of the ÖAS, such as providing for a framework for potential joint initiatives toward occupational safety and health; linking all the actors involved in occupational safety and health (OSH) in one network that brings opportunities for free discussions and operative coordination; focusing on implementation processes in detail. As an example of the result of the ÖAS, the report quotes the implementation project focused on carcinogenic agents.

Within the context of a project focused on health management at work that was defined in 2014, the report provides, as an example, the outcome of the survey carried out in 2019 among Vorarlberg government employees regarding health management at work. The report states that one of the objectives mentioned in the evaluation is the early recognition of unhealthy work-related psychological stress as a prerequisite for measures to promote and improve worker health.

The Committee notes that policy plans and strategies in Austria are periodically assessed and revised, particularly in the light of changing risks, which should help to identify diseases at earlier stages and promote better recording of occupational diseases.

#### ***Organisation of occupational risk prevention***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

### ***Improvement of occupational safety and health***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

### ***Consultation with employers' and workers' organisations***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

### **COVID-19**

In its targeted question, the Committee asked about the protection of frontline workers, instructions and training, the quantity and the adequacy of personal protective equipment provided to workers, and the effectiveness of these measures within the context of the Covid-19 pandemic.

The Committee notes that, according to the report, the Labour Inspectorate supported employers from 25 May to 12 June 2020 by means of an advisory approach agreed with the Ministry of Social Affairs, Health, Care and Consumer Protection on the implementation of protective measures. The report states, in this context, that the Labour Inspectorates visited 1,010 companies where there is typically a higher density of employees working clustered together and a greater degree of cooperation. The report shows that in 808 out of the 1,010 companies advised (80%), no immediate potential for improvement was identified. Where potential improvements were found, these were mostly in maintaining the minimum distance in zones outside the core work area. The report also states that the Labour Inspectorate continued to deploy the Covid-19 advisory approach in the autumn of 2020.

The report goes on to explain that the Upper Austrian Agriculture and Forestry Inspectorate has taken up the concept for advising companies in the implementation of protection measures and has also carried out consultations in their area of responsibility.

Regarding the protection of frontline workers, the report states that the Central Labour Inspectorate released several guidelines regarding health protection measures to prevent SARS-CoV-2 infections among frontline workers (retail workers, schools and nursery schools, non-medical healthcare professionals, health care staff, cleaning workers and laboratory workers). These guidelines, which include protection measures such as increased personal hygiene, disinfection, ventilation, the use of personal protective material, a prohibition of reuse of face masks, are reviewed and updated on a regular basis and publicly available on the Labour Inspectorate's website.

The report also refers to the laws and ordinances issued by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection that aim at protecting the health of federal employees from the threat of Covid-19. These laws are consistently evaluated and reviewed. The report also mentions the State Crisis and Disaster Protection Management body (*Staatliches Krisen- und Katastrophenschutzmanagement, SKKM*), that coordinates activities including specific measures to manage the coronavirus pandemic.

With regard to the safety of police, prison staff and other security staff as well as military personnel, the report states that the Federal Ministry for Arts, Culture, Civil Service and Sport is responsible for the legal framework relating to the safety of federal service employees. The report adds that police officers are protected from potential infection of Covid-19 by using face masks, FFP masks, protective overalls, gloves and protective glasses which are made available to police officers for each type of operation. The report also states that specially equipped and trained teams have been set up within the regional police directorates for deployment in operations involving a high infection risk. Furthermore,

it mentions that a coronavirus information platform has been set up on the intranet to provide police officers with information relating to protective measures, prevention and current legal developments.

In line with its Statement on Covid-19 and social rights (March 2021), the Committee recalls that in the context of the Covid-19 crisis, and with a view to mitigating the adverse impact of the crisis and accelerating the post-pandemic social and economic recovery, each State Party must assess whether its existing legal and policy frameworks are adequate to ensure a Charter-compliant response to the challenges presented by Covid-19. Where those frameworks are not adequate, the State must amend them, including through the adoption of any additional measures that are required to ensure that the State is able to comply with its Charter obligations in the face of the social rights risks posed by the Covid-19 crisis. In the same vein, the Committee recalls that the Covid-19 crisis does not obviate the requirements set out by its long-standing jurisprudence regarding the implementation of the Charter and the obligation of the States Parties to take measures that allow them to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

The Committee points out that, in order to secure the rights set out in Article 3, a response to Covid-19 in terms of national law and practice to Covid-19 should involve the immediate introduction of health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, strengthened hygiene and disinfection measures, as well as stricter medical supervision, where appropriate. In this respect, due account should be taken of the fact that certain categories of workers, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, and agro-food processing workers are exposed to heightened risks. States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agent and the particular psychosocial risks faced by different groups of workers in the Covid-19 context. The Committee also stresses that the situation requires a thorough review of occupational risk prevention, at national policy level, as well as at company level, in close consultation with the social partners as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment, and risk assessments at company level must be adapted to the new circumstances.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 3§1 of the Charter.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Austria. It also takes note of the comments submitted by Amnesty International on 1 July 2021 and of the Government's reply to these comments submitted on 12 November 2021.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 3§2 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection").

The Committee notes that previously the Committee found the situation in Austria to be in conformity with the Charter (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted question.

#### ***Content of the regulations on health and safety at work***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

The report lists the laws and regulations issued and/or amended during the reference period, for instance, the Act on deregulation of occupational health and safety (Federal Law Gazette I No. 126/2017), Act on health and safety at work (Federal Law Gazette I No. 60/2015), Act on the labour inspection (Federal Law Gazette I No. 44/2016), the Ordinance amending the Ordinance on specialist training of safety officers and on specific aspects of advising on underground mining activities, the Ordinance governing documentation of skills in preparing and organizing activities involving stage and lighting equipment, and the Ordinance governing documentation of skills (which was issued in order to implement Directive 2013/55/EU of the European Parliament and the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System) (Federal Law Gazette II No. 226/2017), the Ordinance governing workplaces (Federal Law Gazette II No. 309/2017), the Ordinance on the health surveillance at work (Federal Law Gazette II No. 253/2017), the Ordinance governing limit values (Federal Law Gazette II No. 40/2017), the Ordinance governing limit values for working substances and governing carcinogenic agents and substances toxic to reproduction (Federal Law Gazette II No. 254/2018), the Ordinance governing the protection of workers from the exposure to electromagnetic fields (Federal Law Gazette II No. 179/2016), the Ordinance amending the Ordinance governing the protection of construction workers and the Ordinance governing prohibitions and restrictions of employment for young people (Federal Law Gazette II No. 241/2017), the Ordinance governing the exposure to tobacco smoke permitted for young people and apprentices employed in catering and restaurants (Federal Law Gazette II No. 221/2018), the Ordinance on the storage of aerosol dispensers at commercial businesses (Federal Law Gazette II No. 347/2018).

The Committee notes that psychosocial risks, stress, aggression and violence in the workplace, especially for workers under atypical working relationships must be covered under Article 3§2 of the Charter. According to this report, the Act on Health and Safety at Work (Federal Law Gazette I No. 60/2015) focuses on prevention of work-related psychosocial risks, the risk assessment focuses of job requirements, social and organisational climate, working environment, workflow and work organisation. The report states that violence and sexual harassment are considered when assessing risks.

In its targeted question on Article 3§2, the Committee asked for information on regulations adopted to improve health and safety in evolving new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

The report states that remote work is an important topic when assessing risks. The report also notes that currently there are no provisions in the Austrian law explicitly requiring a “digital detox” for any employment relationship. However, employees are generally not allowed to carry out work during daily and weekly rest periods, unless on standby as expressly agreed between the employer and the employee. Moreover, the scheduling of working hours must be expressly agreed upon between the employer and the employee, and exceptions to this rule are specifically defined in order to prevent the employees from having to work on call.

The Committee notes that no sufficient information requested in reply to the targeted question is provided, therefore it repeats this request for information. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Austria is in conformity with Article 3§2 of the Charter on this point.

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Teleworking or remote working may lead to excessive working hours.

The Committee considers that, consistent with States Parties’ obligations in terms of Article 3§2, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the “right to disconnect”).

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.

Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

### ***Establishment, alteration and upkeep of workplaces***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

As regards specific regulations on establishment, alteration and upkeep of workplaces, the report states that regulations have notably been amended concerning the length of escape



routes, the width of emergency exits and illumination of outdoor traffic and transport routes (Ordinance, Federal Law Gazette II No. 309/2017), worker protection by means of personal protective equipment (Ordinance, Federal Law Gazette II No. 120/207), electrical protection (Ordinance, Federal Law Gazette II No. 121/2017), health surveillance at work (Ordinance, Federal Law Gazette II No. 253/2017).

### ***Protection against hazardous substances and agents***

The Committee previously found the situation to be in conformity in this respect but, as regards ionising radiation, asked whether workers were protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007) (Conclusions 2017).

The Committee notes that no information is provided on whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007). Nevertheless, the Committee notes that Austria is a member of the European Union and that it has transposed the Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation.

The report also states that formaldehyde was added to the list of substances known to be carcinogenic, and a new limit value has been set (Ordinance, Federal Law Gazette II No. 40/2017). The report also states that when known carcinogens are used as working substances, air recirculation is prohibited. The report adds that Commission Directive (EU) 2017/164 of 31 January 2017 establishing a fourth list of indicative occupational exposure limit values pursuant to Council Directive 98/24/EC, and amending Commission Directives 91/322/EEC, 2000/39/EC and 2009/161/EU was fully transposed into Austrian law by Ordinance governing limit values for working substances and governing carcinogenic agents and substances toxic to reproduction (Federal Law Gazette II No. 254/2018). Also the Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) and repealing Directive 2004/40/EC was transposed into national law by Ordinance on electromagnetic fields (Federal Law Gazette II No. 179/2016). The report specifies that young people are permitted to work for a maximum of one hour daily if immediately exposed to tobacco smoke while employed at facilities of catering and restaurant businesses where smoking is allowed, also, the Apprenticeship Office of the Economic Chamber has the duty to advise and support apprentices who are employed at a catering or a restaurant business where smoking is allowed and who wish to transfer where the smoking is prohibited (Ordinance, Federal Law Gazette II No. 221/2018). The report states that storage of aerosol dispensers at work is limited to a maximum net storage weight of 5,000 kilograms per fire compartment (Ordinance, Federal Law Gazette II No. 347/2018).

The report states that the following regulations related to labelling of working substances were amended: Ordinance on safety and health labelling, Ordinance on the protection of federal public employees against danger from biological agents, Ordinance on public employees' protection from explosive atmospheres (Federal Law Gazette II No. 94/2016), Act on health and safety at work (Federal Law Gazette I No. 60/2015), Ordinance governing labelling (Federal Law Gazette II No. 184/2015), Ordinance governing biological agents (Federal Law Gazette II No. 186/2015), Ordinance governing explosive atmosphere (Federal Law Gazette II No. 186/2015).

As regards the protection of workers against asbestos, the report clarifies that although the production, sale and use of asbestos has been prohibited since 1990, workers still have to deal with it in various contexts. The report lists legal acts pertaining to working with asbestos, which include Act on health and safety at work, Ordinance governing personal protection equipment, Ordinance governing limit values for working substances and

governing carcinogenic agents and substances toxic to reproduction, Ordinance on health surveillance at work, Ordinance governing labelling. Asbestos fibres fall into the category of working substances known to be carcinogenic and appropriate clothing has to be made available when using such substances. The applicable technical reference concentration for asbestos is 100,000 fibres per cubic metre. Also, employers are required to provide their employees with general information on the risks of asbestos and appropriate protection measures. Exposure to asbestos has to be minimised as much as possible. The report notes that the Austria regulations related to asbestos at work are basically identical to those set out in Annex XVII of the Regulation No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC and 2000/21/EC.

### ***Personal scope of the regulations***

The Committee takes note of the comments submitted by the Amnesty International on the self-employed live-in carers and the Government's response, where it states that there are two forms of possible employment relationship for caregivers: they can enter into a contract for works and services (self-employed carers) or into an employment contract. The latter receive equivalent protection as other workers. For the self-employed carers, the Economic Chamber supports them if they need information or help and if they are members of the Chamber. The Government states that the general care reform will be implemented as soon as the Covid-19 crisis no longer ties up all forces and the criticism of Amnesty International will be discussed.

### ***Consultation with employers' and workers' organisations***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

#### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

**Article 3 - Right to safe and healthy working conditions**  
*Paragraph 3 - Enforcement of safety and health regulations*

The Committee takes note of the information contained in the report submitted by Austria

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions for Article 3§3 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 3§3 of the Charter. It will therefore restrict its consideration to the Government’s replies to the targeted questions.

***Accidents at work and occupational diseases***

The Committee previously examined the situation regarding accidents at work and occupational diseases (Conclusions 2017). It noted the generally positive evolution in the number of accidents at work and occupational diseases and concluded that the situation in Austria was in conformity with Article 3§3 of the Charter. In its targeted question under Article 3§3 with regard to accidents at work and occupational diseases, the Committee asked for information on statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including in particular contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield high-stress trading; military and law enforcement; etc.) and also as regards the victims of harassment at work and poor management.

The report indicates that the number of work accidents (excluding commuting accidents) during the reference period remained generally stable (84,118 in 2015, 85,031 in 2016, 85,604 in 2017, 87,610 in 2018 and 86,791 in 2019) and these figures are lower as compared with the previous reference period (116,407 in 2008 and 92,954 in 2010). The incidence rate of non-fatal accidents also remained stable (2,861 in 2015, 2,847 in 2016, 2,810 in 2017, 2,806 in 2018 and 2,738 in 2019) but was higher than the average rate in the EU-27 according to EUROSTAT data (1,761 in 2015 and 1,768 in 2018).

Concerning fatal accidents at work, the report indicates that the number of fatal accidents at work was 67 in 2015, 59 in 2016, 64 in 2017, 81 in 2018 and 70 in 2019. These figures are lower compared to the figures of the previous reference period (115 in 2008 and 84 in 2010). The EUROSTAT data shows however that the incidence rate of fatal accidents at work in Austria is higher than the EU-27 average (in 2018, 4.31 in Austria and 2.21 in the EU-27, in 2017 4.11 in Austria and 2.25 in the EU-27).

As to occupational diseases, the report indicates that the number of cases of occupational diseases remained generally stable during the reference period (1,128 in 2016 and 1,130 in 2019) but were lower compared to the previous reference period (1,446 in 2010).

Concerning the reporting obligations of accidents at work, the report indicates that Federal employees have the duty to immediately report any accident at work to their superiors or to another party otherwise responsible. The employer is subject in such cases to specific obligations about recording and reporting the accident.

The Committee asks that the next report provide updated and detailed information on the number and incidence rates of fatal and non-fatal accidents at work and the preventive and enforcement activities undertaken to prevent them. It also reiterates its request for epidemiological studies conducted to assess the long-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sport entertainment industry, jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; etc.). The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that work accidents and occupational diseases are monitored effectively.

### ***Activities of the Labour Inspectorate***

In its previous conclusions, the Committee concluded that, in the light of the number of inspection visits, the proportion of workers covered and the extent of the monitoring, that the Labour Inspectorate in Austria was efficient (Conclusions 2017). The targeted questions with regard to activities of the Labour Inspectorate concerned the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the Labour Inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

In reply to the targeted question, the report states that the Labour Inspectorate continues to put increasing priority on service orientation and supporting companies by providing advice. In this way, the Labour Inspectorate seeks to strengthen its profile as a competent partner for businesses and their employees in all issues relating to safety and health at work. In addition to monitoring compliance with occupational safety and health regulations, advising and supporting employers and employees is defined as a core responsibility in the Labour Inspection Act. According to the report, the core task of “providing advice” was correspondingly prioritized in 2018. The number of on-site consultations was increased from the previous year, through directly addressing business with the offer of advice. Advice was provided on all matters relating to safety and health at work, while frequent issues could be identified: 15% of consultations related to setting up and providing prevention services; 12% to workplace design; 9% to ensuring escape and exists in the event of hazards, fire safety and first aid; 6% to working hours-related issues; and 5% to protection of pregnant or breastfeeding women.

Moreover, in the interest of ensuring safety and health at work, labour inspectors are primarily active in the field, where they perform inspections, check drivers, participate in official hearings, provide advice and assessment, and contribute other vital services (including collaboration with other authorities, and attending advanced training, workshops and conferences). It is also indicated that the Labour Inspectorates have set up a standby duty service to ensure availability of labour inspectors outside of normal office hours. An inspector is available on call 24/7 in the event of emergencies (including fatal or serious work accidents, or imminent hazards to the lives or health of workers) and can quickly be on site if need be to take any necessary action.

The report indicates that the number of labour inspectors (excluding the Transport Labour Inspectorate) slightly decreased during the reference period (411 in 2016 – 285 field staff and 109 administrative staff-; 403 in 2017 – 285 field staff and 101 administrative staff-; 401 in 2018 – 286 field staff and 98 administrative staff-; 393 in 2019 – 283 field staff and 94 administrative staff-). The number of Transport Labour Inspectorate employees was 26 in 2016 and in 2017, 24 in 2018 and 22 in 2019. The report also indicates that during the reference period, there was also a slight decrease in the number of workplaces inspected by the labour inspectors (60,187 in 2016 and 57,735 in 2019) as well as the percentage of

workplaces subjected to inspections (13% in 2016 and 12.2% in 2019) and the total number of inspections performed each year (66,639 in 2016 and 61,839 in 2019). The report also provides figures concerning the total number of workers covered by the inspections (1,394,277 in 2016 and 1,426,831 in 2019) and the percentage of inspected employees (43% in 2016 and 41.1% in 2019).

The most frequent violations of safety regulations in workplaces concerned the workplaces' design, escape routes, first aid or fire protection (15,479 violations in 2019) and lack of coordination in construction works (14,926 violations in 2019). Written requests were sent to enterprises and offence reports were filed during the reference period. As a result, the number of administrative penal proceedings completed in 2019 was 779 and in 2018, 846. The total amount of penalty fines imposed was 1,375,404 € in 2019 and 1,496,764 € in 2018.

In reply to the targeted question on whether inspectors are entitled to inspect all workplaces, including residential premise, in all economic sectors, the report states that the Labour Inspectorate is the largest authority for the monitoring of employment conditions and its sphere of competence covers the majority of employees. The Labour Inspectorate is entitled to inspect all workplaces, except the employees of the Länder and municipalities who do not work for a company, employees in the agriculture and forestry, the institutions operated by legally recognised religious communities and private households.

Specialised inspectors are tasked with monitoring agricultural and forestry businesses, and as such, are authorised to enter and examine at any time the dwelling and accommodations as well as welfare and hygiene facilities provided by business owners. According to the report, no separate labour inspection authorities have been set up to monitor compliance with the Land and Municipal Public Employees Protection Act. Observance of these regulations is ensured through an intricate system of accountability: public administration bodies in Vorarlberg for instance, are politically accountable to the legislative body for complying with provisions of the regulations and could potentially be called upon to answer before the Constitutional Court. These bodies are additionally liable -in cases of violation of an official duty- under public sector employment law as well as under the act governing liability for employees. All organisational units within the Vorarlberg administration are informed on an annual basis of their responsibility to ensure the safety and health of public employees. Concerning specifically the inspection of private households, the report indicates that although labour inspectors are not entitled to inspect private households, persons legally employed in a household are covered by the Domestic Help and Domestic Employees Act. The Committee requests that the next report provides more detailed and updated information concerning the safety and health inspection of municipalities and concerning domestic employees.

As to the religious institutions operated by religious communities, although the report explains that they are excluded from the sphere of competence of the Labour Inspectorate, it also states that the workplaces of employees of the religious authorities fall under the inspection of the Labour Inspectorate. The Committee requests that the next report provide clarifications with regard the safety and health inspection of workplaces operated by religious communities.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

**Article 3 - Right to safe and healthy working conditions**

*Paragraph 4 - Occupational health services*

The Committee notes that no targeted questions were asked under Article 3§4 of the Charter. As the previous conclusion found the situation in Austria to be in conformity with the Charter, there was no examination of the situation in 2021.

## **Article 11 - Right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Austria was in conformity with Article 11§1 of the Charter, pending receipt of the information requested (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Measures to ensure the highest possible standard of health***

In a targeted question for this cycle, the Committee asked for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

The report indicates that the statistics on the causes of death are regularly updated by Statistics Austria and provide data on the causes of death of all individuals who died on Austrian territory (about 80,000 cases a year). For example, in 2018, 83,975 people died in Austria, of which 51% were female and 49% male. Cardiovascular diseases were the most common cause of death (32,684 cases or 38.9%) followed by cancer (20,574 cases or 24.5%); 6.6% of deaths were caused by respiratory diseases, 3.3% by gastro-intestinal diseases and 21.3% by other diseases; 5.3% of death cases had unnatural causes (injuries and poisoning incidents).

The report does not provide information in response to the above-mentioned targeted question. The Committee reiterates its request for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and updated information on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases.

### ***Access to healthcare***

In a targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood, as well as child and maternal

mortality (as a targeted question). It also asked for information on policies designed to remove as far as possible the causes for the anomalies observed (premature death; preventable infection by blood borne diseases; etc.).

Furthermore, the Committee noted in its previous conclusion that [according to Euro Health Consumer Index (ECHI) 2015], Austria does not ban abortion, but abortion is not carried out in the public healthcare system and that there are no official statistics on abortion (Conclusions 2017). The Committee asked that the next report provide information on the conditions of abortion and the measures taken by Austria to ensure that women can effectively have access to such abortion services (Conclusions 2017).

The report indicates that all insured persons have a legal right to services, including sexual and reproductive healthcare services, the financing of which is based on solidarity. Social health insurance has nearly universal coverage, with 99.9% of all people in Austria being covered. There is also a free choice of doctors.

The report further indicates that abortions without a medical reason are legal only if they are performed during the first three months of pregnancy and after prior medical advice. Abortions are carried out in hospitals, outpatient clinics and by general practitioners. After the first three months of pregnancy, abortion is possible only in cases where (i) there is a serious risk to the mental or physical health or life of the pregnant woman; (ii) the child would be born with a severe mental or physical disability; (iii) the woman was under 14 years when she became pregnant. Before the 14th birthday, the consent of a parent or legal guardian is always necessary for an abortion.

The report states that the cost of an abortion is covered by social health insurance if the abortion is necessary for medical reasons, otherwise the costs have to be borne by the pregnant woman.

The report indicates that statistical data are only available from hospitals. In 2018, a total of 1,404 abortions were performed in hospitals (Statistik Austria 2020). It further provides information on the Austrian Action Plan for Women's Health which includes measures designed to establish counselling centres throughout the country and develop online portals.

At the counselling centres "First Love Ambulances" for young people aged 12 to 18, girls and boys get free and anonymous advice about sexual and reproductive health, e.g., contraception and pregnancy. Girls can also benefit from a gynaecological examination free of charge and anonymously. The report further provides information on the mother-child health pass programme (Mutter-Kind-Pass) which has been established to assure medical care during pregnancy and in the first years of a child's life.

The Committee asks for information on measures taken to ensure that women and girls have access to modern contraception. It also asks for information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The report states that early motherhood is quite rare in Austria. For example, in 2018, the number of births given by mothers under the age of 15 years was 11, and 1,160 from 15 up to 19 years (according to Statistik Austria 2020). The maternal mortality rate was 7.0 per 100,000 live births (compared to the EU average of 6.0 in 2017), while infant mortality decreased to 2.7 per 1,000 live births in 2018 (Statistik Austria 2020) compared to an EU 27 average of 3.4 in 2018.

In its previous conclusion, the Committee also asked for updated information on the concrete waiting times in the healthcare system (Conclusions 2017). Since the report does not provide the requested information, the Committee reiterates its question.

The Committee asks that the next report contain information on the public health expenditure as a share of GDP.



The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

In a targeted question, the Committee asked for information on measures to ensure informed consent to health-related interventions or treatment (under Article 11§2). The Committee notes from the report that, according to Section 173 of the Austrian Civil Code, any measures taken by school doctors require the consent of the pupil who is mentally capable of consent or, if this is not the case, of his/her legal guardian. If any health issues are identified, the school doctor must inform the schoolchild of the necessary medical measures. The Committee reiterates its request for information on measures to ensure informed consent to health-related interventions or treatment in general, not only in the school context.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population as well as the measures taken to treat the ill (under Article 11§3).

For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

With regard to treating those who are ill, the report states that Austria has a fairly strong inpatient sector and is one of the countries with the highest number of physicians and hospital beds per inhabitant. Concerning intensive care unit beds, Austria also disposes of comparatively high capacities with a ratio of beds per capita well above the EU or OECD average. Austria set up a monitoring system regarding hospital capacities and established a prognosis tool for Covid-19 cases and hospitalisation rates. During the course of the pandemic and as of the date of the report, Austria has fortunately not even come close to reaching its capacity limits. However, if necessary, the availability of additional capacities in facilities other than hospitals, for example rehabilitation facilities, could have been ensured.

The report also states that the Federal Ministry of Social Affairs, Health, Care and Consumer Protection plans to entrust the Austrian Public Health Institute (Gesundheit Österreich GmbH, GÖG) and the European Observatory on Health Systems and Policies with the implementation of a health impact assessment of the measures taken to limit the spread of SARS-CoV-2 in Austria. It will focus on vulnerable groups (socio-economically disadvantaged, people with pre-existing conditions, etc.) and on the effects on health equity. The results should be available at the end of 2020.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee also recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

#### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee found that the situation was in conformity with Article 11§2 of the Charter (Conclusions 2017).

### ***Education and awareness raising***

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community, on a lifelong or ongoing basis, and in schools.

In reply, the report indicates that the Austrian Health Targets (adopted in 2012) were developed with the aim of prolonging the healthy years of all people living in Austria for 20 years (until 2032), irrespective of their level of education, income or personal living conditions. They include, among others, specific targets on health literacy and on mental health. The Committee takes note of the measures and actions mentioned in the report that have been taken to improve the population’s health literacy, to promote awareness of mental health issues and to prevent mental disorder. The report stresses that these measures help prevent, among others, self-harm conducts, eating disorders, alcohol and drug abuse.

The report also indicates that the Austrian Addiction Prevention Strategy and its associated regional strategies highlight the need for comprehensive measures based on a holistic, all-encompassing (environmental, interdisciplinary) approach that integrates the underlying causes of addiction, addresses specific target groups, and covers both legal and prohibited substances, as well as non-substance-related forms of addiction. Most of the prevention activities focus on specific target groups, including homeless young people, young people at risk of becoming addicted or young people with an immigration background, as well as users of stimulants or new psychoactive substances (NPS), and pregnant women.

The Committee notes from the report that the Austrian Health Literacy Alliance (ÖPGK) is focusing on the improvement of health information. It has developed checklists and quality criteria for “good” health information – that is, understandable, independent, reliable, evidence-based, undistorted, and gender-balanced, and provides fact sheets on its core topics.

With regard to health education in schools, the report indicates that a service centre for schools and teachers, GIVE (*Servicestelle für Gesundheitsförderung an Österreichs Schulen*), provides information and counselling on health education and health promotion in schools. GIVE was established in 1998 by the Federal Ministries of Education and Health in cooperation with the Austrian Youth Red Cross. According to the report, GIVE has developed and published several teaching aids and manuals on various health topics relevant to schools (e.g., nutrition, physical activity, mental health and health promotion for teachers, mental health of schoolchildren, positive and friendly relationships in schools, the promotion of health literacy, etc.).

The report recalls that the Health Promotion Strategy of the Federal Ministry of Education, Science and Research (BMBWF), adopted in 2014, is based on the outcomes of the Healthy School Project (see Conclusions 2017) and the Austrian Health Targets (see above). This Strategy created the framework for broadly targeted and impact-oriented actions, for the coordinated deployment of funds for preventive medicine and the use of the resources of the Health Promotion Funds of the provinces. It provides fundamental guidance for all health promotion measures. The report indicates the main areas of action that have been identified in terms of health promotion in schools: school administration and organisation; teachers and learning, including teacher education and professional development; support systems to promote physical and emotional health; physical exercise and sport; environment, safety and security.

The report recalls that the Austrian school system promotes health, defined as a principle to be conveyed by teachers in all subjects. Health topics are included in primary school curricula in general education subjects (*Sachunterricht*) and physical education. In lower secondary schools and general secondary schools (as well as in for nursery schools and social education institutions), the content of health promotion represents a major element in many subjects: biology and environmental studies, home economics and nutrition, physical education, psychology, educational studies, health studies and handicrafts. Moreover, schools can define additional health topics through elective subjects and exercises.

As regards sexual and reproductive health education, the report indicates that various theories and concepts of sex education or the basics of sex education are included in all curricula. In the curricula of primary schools, they are mainly included in areas such as general studies, science/nature and technology or inclusive education. Secondary school curricula (general education) include sexual and reproductive health education in the programmes of biology and environmental studies in all regions.

In its targeted questions, the Committee also asked for information about awareness-raising and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. The Committee notes from the report that there are two legal acts that concern diverse sexualities and gender identities in the classroom: the “Reflexive Gender Pedagogy and Equality Act” of 2018 (Circular No. 21/2018) and “Sexuality Education Act” of 2015 (Circular No. 13/2015). The latter establishes the basis and content of sex education, highlighting a positive approach to human sexuality. It also addresses homophobia and transphobia and encourage schools to adopt a universal pedagogical stance that should be geared towards the principle of gender equality and the diversity of lifestyles. The former addresses, among other things, the issue of gender-based violence in all its facets (e.g., sexual harassment, homophobia, gender-related innuendos, gender-related stereotypes, honour-based violence). It calls upon the Austrian school administration, teacher training colleges and education professionals to take measures in order to prevent sexism and gender-based violence, especially through the introduction of reflexive gender pedagogy and the development of necessary competences at every level of intervention. According to the report, the Boards of Education (i.e. the central education authorities in the *Länder*) should develop appropriate plans for the implementation of the aforementioned Act for the 2021-2023 period in line with the current resource requirements, target and performance plans, which would be approved by the BMBWF at the end of 2020 (outside the reference period); its implementation will be reviewed on an ongoing basis.

### ***Counselling and screening***

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 11§2 with respect to counselling and screening services available to pregnant women and children (Conclusions 2017).

The report provides a list of counselling and medical diagnostic services available to children, such as school dental clinics, psychological counselling centres, special counselling

centres for those with impaired vision, hearing disabilities, speech disorders, orthopaedic conditions, etc.

The report also provides a list of counselling and medical diagnostic services available to other groups: infertility, family planning and counselling, parenting support for mothers, developmental disorders, services and information centres for health initiatives and self-help groups. According to the report, these services are run by the *Länder* or municipalities, as well as by university hospitals and private sector organisations.

With regard to medical examination in schools, the report indicates that the Education Reform Act (*Bildungsreformgesetz*, Federal Law Gazette I No. 138/2017) has resulted in comprehensive amendments to the legal provisions concerning school medical care and preventive health care for young people attending school. The relevant sections (Sections 66, 66a and 66b) of the School Education Act (*Schulunterrichtsgesetz*, *SchUG*, original version Federal Gazette No. 472/1986) have been completely redrafted.

The Committee notes from the report that school doctors are required to examine pupils and to advise teaching staff of schoolchildren's health issues, insofar as they relate to learning and school attendance. Schoolchildren are required to undergo a medical examination at school once a year. If any health issues are identified, the school doctor must inform the pupil.

The report also points out that the Ordinance of the former Federal Minister of Labour, Social Affairs, Health and Consumer Protection "governing the assumption of tasks of preventive health care for school-attending youth by school physicians" (Federal Law Gazette II No. 388/2019) contains detailed specifications for preventive health services for young people attending school.

Regarding specific measures to combat pseudoscience with respect to health issues, the report indicates that the decree of the Federal Ministry for Education, Arts and Culture on "Pseudoscientific offers on the market for psychological and esoteric services" in 2010 recommends that offers to schools characterised by "the promise of quick, easy and uncomplicated solutions" to personal and/or school-related problems, such as overcoming stress, improving concentration, increasing motivation to learn and improving academic achievement, be carefully evaluated with the help of professionals. School psychological and health counselling focus on the provision of rigorously evidence-based treatment, and professionals working in these areas are informed about pseudoscientific proposals in the health sector in order to critically analyse such proposals. Moreover, the report indicates that the BMBWF has established a coordinating office for the promotion of health in schools, which focuses on achieving the framework objectives, analysing scientific findings and ensuring quality standards in the field of health promotion and prevention.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 11§2 of the Charter.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about healthcare services in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 11§3 of the Charter (Conclusions 2017).

### ***Healthcare services in places of detention***

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).

The report indicates that prison healthcare is based on the principle of equivalence between the levels of healthcare provided to inmates and in the community, respectively. The penal system provides inmates with comprehensive medical care, dispensed in prison surgeries and two prison-run hospitals that specialise in treating diseases commonly associated with prison life, such as infectious diseases or tuberculosis. In addition, the penal system has entered contracts with civil hospitals to provide inmates with specialist inpatient treatment in secure facilities. The costs of medical and dental care are borne by the prison administration. Special screening procedures apply upon admission to and discharge from prison respectively. The report describes the procedures in place to control quality and maintain standards of healthcare in prison.

However, the report does not provide any information on mental healthcare provision. Accordingly, the Committee asks for information about the measures taken to ensure adequate access to mental healthcare in places of detention, in particular prisons.

### ***Community-based mental health services***

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

The Committee takes note of the information provided in the report regarding measures aimed at providing primary mental healthcare that is substantial, low-threshold, gradual and inclusive, the efforts aimed at increasing the number of psychiatrists, and the measures aimed at removing contingent costs for mental health services users.

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

### ***Drug abuse prevention and harm reduction***

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

The Committee takes note of the figures that indicate a relatively low and stationary prevalence of drug-related deaths, HIV, Hepatitis B, but also a higher prevalence of Hepatitis C, including among prison inmates. The report indicates that drug users benefit from a range of support and treatment options; from advice, psychosocial counselling and treatment; to pharmacologically assisted outpatient and inpatient treatment, detoxification in outpatient or inpatient settings, as well as various forms of abstinence-oriented inpatient/residential treatment.

### ***Healthy environment***

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as on the measures taken to address the health problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

The Committee takes note of the different measures aimed at reducing environmental risks related to air, water and other forms of environmental pollution, by, among other, adopting legislation and regulations, including in the criminal sphere, with specific indicators and responsibilities, and ensuring its application in practice, providing financial assistance, ensuring regulatory oversight, encouraging partnership between different levels of government and/or private actors, fostering transparency. In particular, the National Adaptation Strategy adopted in 2012 and updated in 2017 includes a catalogue of 135 adaptation options in 14 action areas, including agriculture, forestry, water resources and

water management, tourism, energy (with a focus on the electricity industry), protection from natural hazards, construction and housing, disaster risk management, health, ecosystems and biodiversity, transportation infrastructure and selected aspects of mobility, spatial planning, business/industry/trade, and cities (with a focus on urban green and open spaces). The Committee also takes note of the measures taken to inform the public, including pupils and students, about environmental problems.

### ***Immunisation and epidemiological monitoring***

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The report notes that Austria does not have specific programmes on vaccine research, but that it is taking part in international efforts to implement the WHO Global Action Plan on Antimicrobial Resistance through funding and scientific support.

### ***Covid-19***

In a targeted question, the Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The Committee notes that Austria is conducting a health impact assessment of measures taken to limit the spread of the Covid-19 virus and wishes to be informed of its results.

The Committee also notes the special precautionary measures that have been put in place in order to limit the spread of Covid-19 in prisons, including by replacing visits in person with video links, setting up special admission units where new arrivals were held for 14-day observation periods, introducing novel screening procedures for identifying vulnerable inmates and reinforcing hygiene measures.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 11§3 of the Charter.



**Article 12 - Right to social security**

*Paragraph 1 - Existence of a social security system*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2021.

## **Article 12 - Right to social security**

### *Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee recalls that Article 12§2 obliges States to maintain a social security system at a level at least equal to that necessary for ratifying the European Code of Social Security. The Code requires the acceptance of more parts than ILO Convention No. 102 on social security (minimum standards), i.e. at least six of Parts II to X (on the understanding that Part II, Medical care, counts as two parts and Part V, Old-age benefit, counts as three parts).

The Committee notes that Austria has not ratified the European Code of Social Security. Therefore, the Committee cannot take into consideration the Committee of Ministers' resolutions on the application of the Code by States which are bound by it, and must make its own assessment.

The Committee notes that Austria has ratified ILO Convention No. 102 and accepted Parts II, IV, V, VII and VIII, which concern medical care (II), unemployment benefit (IV), old-age benefit (V), family benefit (VII) and maternity benefit (VIII). However, Part V ceased to apply after Austria ratified ILO Convention No. 128 on invalidity, old-age and survivors' benefits (of which Austria has accepted Part III, old-age benefit).

The Committee recalls that to assess whether a social security system is maintained at a level at least equal to that which is necessary for ratifying the European Code of Social Security, it assesses the information relating to the branches covered (risks covered), to the personal scope and to the level of the benefits paid.

In this respect, the Committee refers to the assessment made in its previous conclusion on Article 12§1 of the Charter (Conclusions 2017). It had noted that the Austrian social security system continued to cover all the traditional branches (medical care, sickness, unemployment, old age, work accidents and occupational diseases, family, maternity, invalidity and survivors); it had moreover considered that the personal scope and the level of benefits paid were in conformity with Article 12§1.

In addition, the Committee notes that during the reference period, the Committee of Experts on the Application of ILO Conventions and Recommendations made no observation or direct request to the Austrian Government concerning Conventions Nos. 102 or 128.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 12§2 of the Charter.

## **Article 12 - Right to social security**

### *Paragraph 3 - Development of the social security system*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee recalls that States were asked to reply to two targeted questions for Article 12§3 of the Charter as well as, where applicable, the previous conclusions of non-conformity or deferral (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 12§3 of the Charter (Conclusions 2017). It will therefore restrict its consideration to the Government’s replies to the two targeted questions, namely:

- social security coverage, and its modalities, provided to persons employed by digital platforms or whose work is managed via such platforms; and
- any impact of the Covid-19 crisis on social security coverage, and any specific measures taken to compensate for or alleviate any possible negative impact.

The Committee wishes to point out that it will take note of the reply to the second question for information purposes only, as it relates to developments that occurred outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### **Platform workers**

The Committee recalls that it has posed a targeted question to all States on social security cover for persons employed or whose work is managed by digital platforms. The emergence of these new forms of employment has had a negative impact on certain rights of these workers, as explained in the General Introduction. In matters of social security, compliance with Article 12§3 of the Charter requires that the existing social security systems be adapted to the specific situation and needs of the workers concerned, in order to guarantee that they enjoy the social benefits included within the scope of Article 12§1. The Committee is keenly aware that there are significant gaps in the social coverage of workers in new forms of employment such as platform workers. It considers that the States Parties are under an obligation to take all the necessary measures to address these shortcomings.

In particular States Parties must take steps to ensure that all workers in new forms of employment have an appropriate legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers.

The Committee notes that in its report, the Government provided an updated overview of the Austrian social security system. In particular, it mentioned the structural reform of the social security system (enactment in December 2018 of the Social Insurance Organisation Act, which merged the numerous social insurance institutions that existed at the time and created five social insurance institutions under an umbrella organisation; entry into force on 1 January 2020). It also gave details of the number of persons covered (by type of insurance: health, retirement, etc.) and the levels of the benefits. The Committee notes, however, that the Government has not provided any information regarding the social security coverage of digital platform workers. The Committee therefore reiterates its question. It asks for information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other

category), the number/percentage of these workers by status and their social security protection (by status). In the meantime, the Committee reserves its position on this point.

### **Covid-19**

In response to the second question, the Government mentions several social security measures that have been taken to alleviate the negative impact of the Covid-19 crisis. These measures include:

- continuing to pay the last temporary health insurance benefit or pension insurance scheme benefit throughout the pandemic, in the event of benefit applications or legal proceedings being suspended pending medical examinations which cannot be carried out (see 9th Covid-19 Act, published on 5 May 2020);
- defining “at-risk groups” and enabling members of these groups to request paid leave (see 9th Covid-19 Act, published on 5 May 2020);
- increasing the level of unemployment assistance (*Notstandshilfe*, which is granted on a means-tested basis to persons who have exhausted their entitlements to unemployment benefits), to make it equivalent to unemployment benefits (from 16 March 2020);
- paying a lump-sum allowance (€450) to people who received unemployment assistance or unemployment benefits for at least 60 days during the months of May to August 2020;
- for self-employed persons, relaxing the eligibility requirements for unemployment benefits (March-September 2020).

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

The Committee takes note of the information contained in the report submitted by Austria.

### ***Equality of treatment and retention of accrued benefits (Article 12§4a)***

#### ***Right to equal treatment***

The Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination against nationals of other States Parties from their social security legislation (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination should be eliminated. National legislation cannot reserve a social security benefit to nationals only or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, pursuant to the Charter's Appendix legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4a requires that any such prescribed period of residence be reasonable. The Committee considers that the right to equal treatment covers both equal access to the social security system and equal conditions for entitlement to social security benefits.

The Committee notes from the report that the laws governing social security in Austria are based on the principle of compulsory insurance, meaning that anyone taking up employment at a level of pay superseding the minimum set for social security is normally included in the social security scheme. According to the report, Austria makes no distinction, neither along the lines of the personal law applying to individuals nor their citizenship nor the type of employment pursued (i.e. self or dependently employed). Duties to pay contributions or to register, as well as later entitlement to benefits, may arise even in the case of individuals who do not meet all requirements for legal residence.

As regards equal access to the social security system, the Committee understands that all lawfully resident nationals of other States Parties are included in the compulsory insurance scheme.

As regards equal conditions for entitlement to social security benefits, the Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties remove all forms of discrimination from their social security legislation against foreigners in so far as they are nationals of other States (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination are covered. National legislation cannot reserve a social security benefit to nationals only, or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4 requires that any such prescribed period of residence is reasonable. The Committee asks whether equal treatment is guaranteed as regards conditions for entitlement to social security benefits for nationals of States Parties lawfully resident in Austria.

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1

States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

In respect of payment to family benefits, the Committee has previously considered that because of lack of bilateral treaties, the situation was not in conformity with the Charter on the ground that equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

The Committee notes from the report in this respect that in Austria, family allowance is payable to persons whose place of residence or centre of vital interest is in Austria. Entitlement is independent of employment or income. Third-country nationals require a valid residence title. There are no minimum residence or minimum employment periods. The Committee understands that since 1996 the granting of family benefit has been made conditional on the child's residence in Austria. The Committee recalls that this condition is in conformity with the Charter.

### ***Right to retain accrued benefits***

The Committee has previously (Conclusions 2017) considered that the situation was in conformity with the Charter as regards the right to retain accrued benefits.

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories. The Committee asks what is the legal basis for exportability of old age, disability and survivor's benefits and the international coordination in the social security field with non-EEA States.

### ***Right to maintenance of accruing rights (Article 12§4b)***

The Committee recalls that under Article 12§4b there should be no disadvantage in terms of accrual of rights for persons who move to another State for employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory for the purposes of the opening, calculation and payment of benefits. In the case of long-term

benefits, the pro-rata approach should also be employed. States may choose between the following means in order to ensure maintenance of accruing rights: bilateral or multilateral agreement or, unilateral, legislative or administrative measures. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

According to the report, where Austria has international agreements with other countries regulating the mutual recognition of social security schemes, Austria also recognises insurance periods accumulated in other countries and counts them towards entitlement to benefits, e.g. to retirement or disability pension benefits.

As regards social security agreements signed between Austria and the State Parties to the Charter, there has now been an agreement in place with Albania since 1 December 2018.

According to the report, with a view to the policy of signing new social security agreements (required to add up insurance periods where no entitlements to benefits have accrued for insurance periods acquired in Austria) efforts have been hampered to some degree due to limited human resources available and, therefore, new agreements can only be implemented gradually, depending on the size of the groups affected by the respective agreements. From Andorra, Armenia, Azerbaijan, Georgia and Russia no initiatives have been submitted by the potential groups of persons involved, i.e. there are no plans currently to commence talks with these countries. The Committee wishes to be informed about the developments in this regard.

The Committee notes that Austria has ratified the European Convention on Social Security in 1975. Therefore, the situation is in conformity with the Charter in this regard.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 12§4 of the Charter.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the right to social and medical assistance is ensured and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion considered that the situation in Austria was not in conformity with Article 13§1 of the Charter on the grounds that the right to the adequate level of social assistance is not guaranteed for all persons in need; in some Länder non-EEA nationals, lawfully resident are subject to a length of residence requirement of five years to be entitled for social assistance.

### ***General legal framework, types of benefits and eligibility criteria***

The report notes that the at-risk-of-poverty threshold currently amounts to EUR 1,286 per month in 2020. As a result, 1,161,000 persons or 13.3% of the Austrian population can be defined as “at risk of poverty”. The agreement on means-tested minimum income concluded with the Laender in 2010 pursuant to Art. 15a of the Federal Constitutional Law (Bundes-Verfassungsgesetz, B-VG) expired at the end of 2016. As from 1 January 2017, any Laender could take a different approach to their respective minimum income laws without adhering to common standards. A new legal framework was adopted at the federal level, the Social Assistance (Principles) Act (*Sozialhilfe-Grundsatzgesetz, SH-GG*) entered into force on 1 June 2019. A decision handed down by the Austrian Constitutional Court of 12 December 2019 (G 164,171/2019) repealed individual provisions of this fundamental law, deeming unconstitutional scaled benefits for children or lower benefits for new immigrants without adequate language skills. However, the provisions of the 2019 Law establishing that the Laender may now stipulate maximum rates instead of minimum standards for social assistance, remains in force and unchanged. The new maximum rates continue to be based on the equalisation supplement in the pension insurance system (minimum subsistence level recognised in Austria) and are adjusted each year. The SH-GG must be implemented by the Laender, but the process for implementing it throughout Austria has not yet been completed at the Laender level.

#### Information provided by the Laender

##### Vienna

The Vienna Minimum Income Act was last amended in 2018, with emphasis being given to integrating young minimum income beneficiaries in Vienna. There is no implementing act in Vienna to date to transpose the SH-GG. The means-tested minimum income scheme is aimed at avoiding and combating poverty and social marginalisation as well as at facilitating the integration or reintegration into the labour market.



The means-tested minimum income benefit covers the minimum standard amount in the areas of subsistence, accommodation, health, pregnancy and childbirth. There is a legal entitlement to these benefits.

Section 5 WMG defines the group of persons eligible to receive benefits as follows: only Austrian nationals of legal age; the following persons shall be treated equally to Austrian nationals if they are of legal age, have permission to stay in Austria and have not entered the country in the intention of receiving social assistance benefits: persons entitled to asylum or subsidiary protection who were granted this status based on the provisions of the Federal Act on the Granting of Asylum (Asylum Act, AsylG) 2005 as well as persons who are citizens of an EU or EEA state or Swiss nationals and victims of trafficking in human beings, cross-border prostitution trade or victims of violence or person who have a residence permit as victims of trafficking in human beings or cross-border prostitution trade or victims of violence; citizens of an EU or EEA state or Swiss nationals, if they are in employment or qualify as in employment or have been granted the right of permanent residence; persons holding a "Permanent residence – EU" title, including of another Member State; spouses, registered partners of persons who live with them in the same household and are lawfully resident in Austria. Persons who have filed an application for asylum pursuant to the provisions of the AsylG 2005 shall not be entitled to minimum income benefits in Vienna until the asylum procedure has been concluded with final effect.

According to Section 39 Para 2 of the Vienna Minimum Income Act, persons who have been legally residing in Austria for at least three months may also be granted minimum income benefits to avoid social hardships.

The minimum standards for 2016 to 2019 (in EUR per month) amounted to €837,76 in 2016 and €885,47 2019 for a single parent as sole beneficiary. The minimum standard amounts for persons of full age include a base amount earmarked for accommodation needs corresponding to 25% of the respective minimum standard amount. In Vienna, this base amount is paid out to recipients of minimum income benefits regardless of the actual rent they pay (no disallowance or cuts). In addition, recipients of minimum income benefits are eligible for rental assistance if they can provide evidence of higher accommodation expenses.

When recipients of means-tested minimum income benefits were included in the statutory health insurance, the health insurance vouchers specifically issued for recipients of social assistance, which they had always perceived as stigmatising, were replaced by the e-card. Individuals for whom health insurance contributions are covered by the bodies responsible for paying minimum income are entitled to the same services and benefits as recipients of an equalisation supplement from pension insurance.

There is a legal entitlement to benefits to secure subsistence and accommodation as well as to cover the needs in cases of illness, pregnancy and childbirth.

As provider of means-tested minimum income, the Land of Vienna may grant assistance within the framework of private sector administration to help people in special life situations when they are affected or threatened by poverty or social exclusion due to their special personal, family or economic situation. It is specifically assumed that individuals are in a special life situation when they are confronted with unexpected expenses for which they are not responsible themselves or when they are in arrears with their rent, which may directly result in their eviction if they fail to pay.

Higher benefits are available for elderly minimum income beneficiaries and minimum income beneficiaries who are permanently unfit to work: This target group receives means-tested minimum income benefits 14 times per year.

The report finally states that, in combination with other benefits (e.g. housing and family allowances), the amount of means-tested minimum income granted reaches the poverty threshold in individual cases (not in general and not in all constellations). When looking at

the situation from this perspective, the development level of social infrastructure, which is particularly high in Vienna, is not taken into account. The Land of Vienna additionally focuses on an extension of benefits in kind (e.g. guidance for work). The *Land* of Vienna intends to keep the current legal situation as it is and there are no plans to enlarge the groups of entitled persons. Instead, the instruments for combating the causes of poverty and social marginalisation need to be further developed without burdening the responsible territorial corporate bodies with additional tasks that cannot be funded.

### Lower Austria

Since 2010, the means-tested minimum income scheme (Bedarfsorientierte Mindestsicherung, BMS) under the Lower Austria Minimum Income Act (NÖ Mindestsicherungsgesetz, NÖ MSG) has played a key role in combating poverty in Austria by further developing the social assistance systems of the Laender. An amendment to the means-tested minimum income scheme came into effect on 1 January 2017. Among other things, it capped the payments under the scheme at €1,500 per household or flat-sharing community per month and reduced the minimum income for persons who have resided in Austria for less than five of the past six years ("minimum standards for integration"). Furthermore, persons of full age seeking assistance and residing in Austria for less than five of the past six years were required to take any measures deemed possible and reasonable to improve their degree of integration. Such measures included attending a course on values and orientation and acquiring German language skills.

The amount of the minimum income was in 2019 €885.47 for a single person or single parent (in an owner-occupied home: €774.78).

Social assistance benefits, which came into force on 1 January 2020 (outside the reference period), also include benefits to support general subsistence and to meet accommodation needs. Benefits are provided in cash or in kind in the form of lump-sum reference rates. The report concludes that, from the perspective of the Land of Lower Austria, adequate social assistance benefits are available to persons in need.

### Carinthia

Minimum income amounted in 2019 to €885.47 (in 2008 it was €490.00). In addition to the Social Assistance Act 2021, not yet implemented, the Carinthia Equal Opportunities Act (Kärntner Chancengleichheitsgesetz, K-ChG) is also due to be revised in a number of areas. The Laender legislature's scope for discretion here was largely forsaken in favour of the group of entitled persons.

In view of the provisions of the Social Assistance (Principles) Act (SH-GG) regarding person-related requirements, *the Carinthia Social Assistance Act 2021 will not change the five-year residence requirement for third-country nationals*. The only exceptions here would be persons for whom applicable obligations under international treaties or EU law enable them to become entitled earlier, as well as EU/EEA citizens with the status of long-term resident, Swiss citizens and third-country nationals, if the benefit is mandatory under international treaties or EU law and the responsible immigration authorities have established this in the individual case. It remains the responsibility of the relevant authority to decide whether to grant social assistance benefits. The immigration authorities must therefore only be consulted. The case-by-case examination to determine whether a person would be eligible before the end of the five years is at least in line with the case law of the ECJ.

### Vorarlberg

Some changes in the legal situation happened during the reporting period. The Minimum Income Act was amended in 2017 as follows: inclusion of the family supplement when assessing the need for assistance; facilitation for benefits in kind granted instead of cash benefits; option of the minimum income being granted as a loan in the case of non-realizable assets; option of reducing the minimum income where persons refuse to take reasonable

measures to support their integration or in case of a loss of entitlement; flat rate for accommodation needs; obligation to reimburse benefits wrongly received due to a person's failure to report a change in circumstances; option of granting a minimum income subject to conditions and time limits.

The report states that the level of minimum income is appropriate in Vorarlberg. The minimum income is based on the equalisation supplement and not on the at-risk-of-poverty threshold value. The subsistence allowance in 2019 for a single person granted in the framework of the minimum income scheme amounts to €658.87 (food, clothing, articles for personal hygiene, household goods, energy and other personal needs, such as reasonable participation in social and cultural life). Accommodation needs (as of 2019) comprise the recurring expenses required for an appropriate accommodation, i.e. rent, general housing maintenance charges and other charges and are to be granted monthly in the actual amount required, but not exceeding the maximum amount of €503 for a single person. This means that the subsistence allowance and accommodation needs together come to a maximum of €1,161.87 per month. In contrast, the at-risk-of-poverty threshold value for a single household is EUR 1,286 per month (current Community Statistics on Income and Living Conditions (EU-SILC) for 2019, published in May 2020). There have been no changes to the scope of persons covered since the last report. In Vorarlberg nationals of States Parties the Social Charter enjoy equal status with Austrian citizens.

### Tyrol

There has been no substantive changes since the last reporting cycle. Austrian nationals or individuals who are considered equal to Austrian nationals (in particular EU citizens) and have their legal abode in Austria and permanently reside in Tyrol (primary or permanent residence) are entitled to receive minimum income benefits.

As regards basic benefits, in 2019, singles and single parents are entitled to €664.11. These minimum amounts are paid out twelve times per year. Those who receive minimum income benefits for more than three months receive a special payment of €79.69 per quarter. Before being granted minimum income benefits, the person seeking help has to use their own means including their entire income and realisable assets.

### Styria

Pursuant to the Styria Minimum Income Act, all persons in need and with their primary residence in Styria and the right of permanent residence in Austria are eligible for minimum income. They have a claim if their individual subsistence and accommodation needs cannot be covered by their work, (deployment of) their own means or third-party financial benefits or benefits in kind. The means-tested minimum income scheme focuses on harmonising and concentrating the benefits to cover subsistence and accommodation needs, while at the same time putting more emphasis on lump-sum payment. The social assistance reference rates, which could in some cases be undercut or (very rarely, though) exceeded, have been replaced by set minimum standard rates. These rates should basically be available in any case, except in the event of unwillingness to work. The base value for assessing the minimum standard amount is the net amount resulting from the equalisation supplement reference rate for singles less the health insurance contributions to be paid, resulting in € 885.48 in 2019. The minimum standard amount is paid out 12 times per year to adults and 14 times per year to children (14 times a year for adults did not get a political majority). 25% of the minimum standard amount is earmarked for covering accommodation needs. Moreover, recipients are eligible for additional accommodation expenses (regulated by ordinance).

Regarding the criticism of the five-year waiting period for third-country nationals, it should be noted that, as of 2019, the Styria Minimum Income Act stipulates that are not eligible for minimum income benefits: EEA citizens and Swiss nationals and their relatives during the first three months of their respective period of residing in the country, or as long as they do

not qualify as employees or self-employed persons and are not eligible for permanent residence; Persons residing in Austria without a visa or subject to a visa requirement, or who only have a temporary right of residence pursuant to Section 13 AsylG 2005.

The income poverty level is defined as 60% of the median per capita household income: the current at-risk-of-poverty threshold value for a one-person household is around €15,437 per year, one twelfth of which translates into a monthly amount of €1,286. The combined total of means-tested minimum income benefits together with the other benefits reaches the at-risk-of-poverty threshold value in the individual case and/or in many cases. Finally, in order to make it easier for people with low incomes to cope with larger financial expenses that arise in the course of obtaining accommodation, it should be noted that a fund for assistance with rental deposits was also launched by the Land of Styria in 2016, with a maximum supplement of € 1,000 being able to be provided for that purpose. It is granted as an interest-free loan which must be repaid in small instalments within three years. Eligibility for an "interest-free loan" from the rental-deposit fund is subject to pre-defined income limits.

### Salzburg

The means-tested minimum income scheme in the Land of Salzburg comprises two types of benefits. Those to which there is a legal entitlement (compulsory benefit) and those which are granted by the means-tested minimum income institution as an entity under private law (optional benefit). It should be noted, however, that benefits to which there is no legal entitlement must also be granted if the statutory prerequisites are met. The authority's discretion here is therefore also based on legal provisions that must be observed. For 2019, these monthly minimum standard amounts are for singles or single parents of €885.47. This amount is divided into subsistence help (75% of the minimum standard amount) and assistance for accommodation needs (25% of the minimum standard amount; base amount). Moreover, persons who cannot cover their accommodation needs with the base amount are granted an additional benefit in cash by the means-tested minimum income institution as an entity under private law, which may not exceed the maximum permissible accommodation allowance (= supplementary assistance for accommodation needs). Housing allowances can also be granted outside the scope of the means-tested minimum income scheme to provide further financial relief in respect of the living situation of the persons concerned.

In the Land of Salzburg, persons who are Austrian citizens or who have a right of residence under EU law are eligible for benefits under the means-tested minimum income scheme. It should also be noted that, pursuant to the Ordinance governing the minimum income scheme pertaining to foreigners, persons who do not fall under the group of eligible persons, i.e. also third-country nationals, may be eligible for means-tested minimum income benefits. Persons seeking assistance who have been legally residing in Austria for six months may receive means-tested minimum income benefits, although this time requirement does not apply to third-country national children born in Austria. Persons who have not yet been legally residing in Austria for six months may only be granted benefits in exceptional cases, although medical care is also provided in this case.

### Burgenland

The Burgenland Minimum Income Act (*Burgenländisches Mindestsicherungsgesetz*, Bgld. MSG), State Law Gazette no. 76/2010 came into force on 1 September 2010. Means-tested minimum income is no unconditional basic income, but is based on the principle of subsidiarity and is consequently granted only if subsistence needs cannot be met in any other way. Hence a major prerequisite for receiving means-tested minimum income benefits is the use and contribution of one's own income and possibly existing assets as well as using one's working capacity. In addition, the granting of benefits is tied to the "right to permanent residence".

### Upper Austria

The Upper Austria Social Assistance Implementing Act came into force on 1 January 2020. With this law, social assistance (previously means-tested minimum income) was given a new framework based on the Social Assistance (Principles) Act (SH-GG). It provides in particular for social assistance to support general subsistence and to meet accommodation needs, by granting benefits and services both in cash and in kind. The amount of the individual benefits (reference rates) is based on the equalisation supplement for single persons and is defined in the fundamental law.

### ***Level of benefits***

To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- Basic benefit: according to MISSOC, the minimum standard was in 2019 €885,47 for a single person. As explained in the information submitted concerning each Laender, the amount of minimum income awarded normally excludes additional housing assistance and sometimes is paid 14 and not 12 times.
- Poverty threshold (defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €1072 in 2019.

The Committee takes note of the detailed information on different types of benefits that are paid in addition to the basic amount of assistance by different *Länder*. It notes that the overall assistance may in some cases reach and even exceed 50% of the median equivalised income. However, the Committee cannot exclude that not all persons in need are granted adequate social assistance. The Committee therefore considers that the right to an adequate level of social assistance is not guaranteed for all persons in need.

### ***Right of appeal and legal aid***

The Committee considered the situation to be in conformity on this point in its former conclusions. Since there was no targeted question on the right of appeal and legal aid in this cycle, the report does not contain any information in this respect.

### ***Personal scope***

The specific questions asked in relation to Article 13§1 this year do not include an assessment of assistance to nationals of States parties lawfully resident in the territory. Therefore, this particular issue will only be assessed if there was a request of information or a non-conformity in previous cycle.

#### **Foreign nationals lawfully present in the territory**

In many of its previous conclusions, the Committee found that the situation was not in conformity with the Charter on the ground that non-EEA nationals, lawfully resident in Austria were subject to a length of residence requirement to be eligible for social assistance.

In reply to this, the report states that the 2019 Federal law cited above created new eligibility criteria for social assistance benefits. It stipulates that social assistance benefits shall only be granted to Austrian citizens and persons entitled to asylum, without prejudice to any applicable obligations under international treaties or EU law, and otherwise only to foreigners holding permanent residency having actually resided lawfully in the territory of the Federal Republic of Austria on a permanent basis for a period of least five years (see Section 4 Para. 1 SH-GG, Federal Law Gazette I no. 41/2019 as amended).

According to the report, the insertion of “without prejudice to any applicable obligations under international treaties or EU law” clarifies that immigrants, even those immigrating from third countries, are not necessarily required to have resided in Austria for five years in order to be treated equally when it comes to receiving social assistance benefits.

The Committee recalls that under Article 13§1 equality of treatment must be guaranteed once the foreigner has been given permission to reside lawfully in the territory of a Contracting Party. Equality of treatment also implies that additional conditions such as length of residence, or conditions which are harder for foreigners to meet, may not be imposed on them.

The Committee understands that this new legislation of 2019 introduces the need to respect other international obligations and among them the Charter. This could mean then that in respect of social assistance benefits, the five years residence can be waived. The Committee asks whether this understanding is correct. Nevertheless, the Committee further notes that this Fundamental Law has not yet been implemented in many Laender, which in some cases only guarantee equal access to social assistance to nationals of other States Parties who have a permanent resident status, which implies that they have five years of previous residence. Many of the Laender submit in the report that this is not going to change. The Committee therefore reiterates its previous finding of non-conformity.

#### Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

In its previous conclusions (Conclusions 2017) the Committee considered that the situation as regards emergency medical and social assistance to unlawfully present persons was in conformity with the Charter. Since, according to the report, there has been no changes, the Committee reiterates its previous finding of conformity. The Committee asks to receive updated information in this regard.

#### ***Medical and social assistance during the Covid-19 pandemic***

The report states that, in response to the Covid-19 crisis, a total of €150,000,000 was made available to the family hardship fund (*Familienlastenausgleich*) between 15 April 2020 and 31 March 2021 to support families with children who, as a result of the pandemic, were affected by temporarily reduced working hours (*Kurzarbeit*), unemployment or were affected as self-employed after 28 February 2020, or were already unemployed at that time and receiving unemployment benefit or long-term unemployment assistance. The scheme was renewed in 2021 and the scope of eligible persons was extended.

A further €30,000,000 were made available through the Family Crisis Fund (*Familienkrisenfonds*) to help low-income families cope with the consequences of the pandemic. A portion of this fund (€13,000,000) will be disbursed to assist families with children in receipt of minimum income benefits. The grants were awarded in the form of a fixed amount of €50 per child per month (equivalent to a maximum grant of €100 per child). The Public Employment Service (AMS) carried out a check to determine whether the conditions were met. A range of other measures were also taken, including the following: long-term unemployment assistance was raised for a period of six months to the initial level of unemployment benefit; job seekers received a one-off payment of €450 provided they met certain conditions. This was not offset against any social assistance benefits, resulting in no reductions of other social payments; the family allowance payment for the month of September 2020 was increased by €360 for each child. This support provides financial relief for families with several children in particular.

Steps were also taken in how to obtain government benefits. For example, it was made easier to access “regular” social assistance benefits, such as by allowing simplified forms of

submitting an application, providing immediate help or automatically prolonging benefits. The Laender took different approaches in this respect.

### Vienna

During the Covid-19 crisis, face-to-face contact with persons was reduced to a bare minimum. During the lockdown itself, minimum income benefits were automatically extended by four months in many cases, without the need to reapply, in order to avoid interruptions in the receipt of benefits (e.g. for persons considered at risk, persons with no access to the internet, etc.). All in all, this helped ensure that people in Vienna reliant on minimum income benefits continued to receive financial support during the Covid-19 crisis. In addition, counselling on the telephone by social workers was increasingly offered. The COVID-19 crisis revealed was that, among other things, the target group has a much greater degree of access to the internet and telephone than believed, but also that there continues to be room for improvement in how this is handled (multiple submission of applications in formats that are sometimes unreadable, etc.). Digital literacy and access to digital media are key challenges in general for people suffering from poverty and social marginalisation when it comes to coping with future crises even better.

### Lower Austria

During the Covid-19 crisis, and particularly during the time of the lockdown, a greater amount of telephone counselling was given, applications were delivered by post as needed, and generous deadlines for submitting documents etc. were given. It is also worth mentioning that the Ordinance governing allowance for own funds.

### Carinthia

Due to the Covid-19 crisis, people were given the option of submitting their application online. For this purpose, a special application form was created that can be filled out using a PC. Every effort was made to make this application as simple as possible so that applicants can complete it by themselves. In parallel, applications for minimum income could be submitted in person at the local municipal authorities as previously. The conditions for receiving the minimum income remained the same as they were before the Covid-19 crisis.

The Committee takes note of this information, which is very relevant although outside the reference period and asks the next report to continue informing of the measures taken in the context of the pandemic.

### Voralberg

Additional measures were taken during the Covid-19 pandemic, in particular the temporary relocation of people in need of care to alternative accommodation where 24-hour care or the care of the family can no longer be provided; the provision of free tests for nursing staff; the creation of a service where additional hours (are covered when providing mobile care.

### Tyrol

The Covid-19 Workers' Fund was created as part of launching the economic stimulus package. This fund can be used to grant support in the form of one-time, non-repayable lump sums to low-income workers and their families who have suffered income losses as a direct result of the coronavirus pandemic.

### Styria

The decline in economic and social activity that followed the outbreak of the coronavirus pandemic also had an impact on the providers of social services in Styria. The primary objective was to ensure that the social safety net remain firmly in place for matters such as combating poverty, ensuring child and youth welfare, providing assistance for the disabled, etc. Styria's department of social affairs was therefore faced with the task of maintaining the range of social services financed by defined benefit rates during the lockdown, even if the services and/or benefits could not be provided or could not be provided in the usual form. It

was also necessary to safeguard the basic social needs of people living in the Land of Styria for the time after the pandemic, which means specifically establishing security of supply in all areas of activity of the department of social affairs, to secure the subsidies for 2020, to protect jobs in the social services sector and to set an example for other sectors. Overall, the measures taken by the department of social affairs were aimed at maintaining the full and uninterrupted functionality of social services and at ensuring social security for the population in Styria.

Immediately following the outbreak of the coronavirus crisis, action was taken in cooperation with the District Administration Authorities to be able to give some degree of security to persons facing existential hardship. The procedure to apply for minimum income benefits was simplified (e.g. by enabling applications to be made by telephone or electronically) with a view to ensuring people to have continued access to absolutely essential social benefits despite the restrictions on movement.

Many Styrians were and are faced with financial difficulties as a result of having to accept temporarily reduced working hours or losing their job. If people are also in arrears with their rent, electricity or heating costs, or if an unforeseeable and necessary investment has to be made, it is possible to apply for a one-time support payment.

There was also accommodation assistance and, at the start of the coronavirus crisis, it was possible to halt evictions of building companies serving the benefit of the public. In addition to subsidies for all recipients of funding from the department of social affairs being guaranteed for 2020, additional places were also secured for the sensitive area of help for the homeless with the aid of an additional EUR 20,000. Furthermore, an emergency plan was immediately drawn up and precautions were taken together with the cooperation partners of VinziWerke and Caritas for possible (suspected) cases of Covid-19 in homeless facilities.

The Committee asks the next report to produce further information on social assistance and specific measures taken during the Covid-19 pandemic.

### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 13§1 of the Charter on the grounds that:

- the right to an adequate level of social assistance is not guaranteed for all persons in need.
- in some Länder non-EEA nationals, lawfully resident are subject to a length of residence requirement of five years to be entitled for social assistance.



**Article 13 - Right to social and medical assistance**

*Paragraph 2 - Non-discrimination in the exercise of social and political rights*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

**Article 13 - Right to social and medical assistance**

*Paragraph 3 - Prevention, abolition or alleviation of need*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

**Article 13 - Right to social and medical assistance**

*Paragraph 4 - Specific emergency assistance for non-residents*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

## **Article 14 - Right to benefit from social welfare services**

### *Paragraph 1 - Promotion or provision of social services*

The Committee takes note of the information contained in the report submitted by Austria, as well as the comments by the Amnesty International.

The Committee recalls that Article 14§1 guarantees the right to benefit from general social welfare services. It notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely how and to what extent the operation of social services was maintained during the COVID-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. The Committee wishes to point out that it will take note of the information provided in reply to the question relating to COVID-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the COVID-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion (Conclusions 2017), as well as in the precedent one (Conclusion 2013) the Committee concluded that the situation was not in conformity with Article 14§1 of the Charter on the ground that it has not been established due to lack of information that, in all nine *Länder*, social services were organised in such a way that they were adapted to needs. Previously, the Committee requested information on the situation in all nine *Länder* saying that, if the necessary information was not provided in the next report, there would be nothing to show that the situation was in conformity with the Charter (see Conclusions 2013). In its Conclusion 2013, the Committee further discerned that clients of social services had not a right of appeal to an independent body in urgent cases of discrimination and violation against human dignity in all the *Länder*. In Conclusions 2017, it asked, in particular, what relevant remedies were available in Burgenland. It also requested to be informed whether the principle that all non-nationals have equal access to various social services is applied in each of the nine *Länder*, as it is in Vienna *Land*.

The report recalls that pursuant to the agreement based on Article 15a Bundes-Verfassungsgesetz, BGBl. Nr. 1/1930 as amended (B-VG) between the Federal Government and the *Laender*, the *Laender* have undertaken to ensure that the social services are offered decentralized and nationwide. The *Laender* ensure that the social services are available in sufficient quality and in line with needs. The approach of case and care management is followed, i.e. the social services are tailored to the needs of the clients. In addition, the supply structures are coordinated across organisations.

As regards specific information on the situation in the *Länder*, the report provides:

### **Carinthia**

The statutory bases relevant for social services are the Carinthia Minimum Income Act, the Carinthia Equal Opportunities Act and the Carinthia Residential and Nursing Homes Act. The Social Assistance necessitates amendments at *Laender* level. “Open” social assistance, i.e. benefits in cash and in kind for subsistence and accommodation, will most likely be regulated in the Carinthia Social Assistance Act 2021 starting from 1 January 2021. Preliminarily, most social services are governed by the Carinthia Minimum Income Act. However, there are plans to replace the Carinthia Minimum Income Act by a new act

governing care in Carinthia. The Committee request the next report to provide updated information on the statutory framework in Carinthia.

No information is provided as to whether non-citizens enjoy equal access to social services in Carintia.

### **Tyrol**

According to the report, the legislative framework governing services has not changed, except for support services for people with disabilities under the Tyrol Participation Act 2018, of which it provides a detailed description. Furthermore it confirms that administrative decisions on granting public benefits or services can be challenged by way of an appeal to the Land Administrative Court. Social services can be accessed free of charge by anyone regardless their nationality or financial situation. There are some exceptions for services for persons with disabilities and under the Tyrol Minimum Income Act, where an income-based cost contribution may be required. The Committee understands that the access to the social services is granted on an equal footing to residents in Tyrol without a permanent residence status and asks the next report to confirm that this is the case.

### **Lower Austria**

Social services are mostly rendered by private welfare organisations and funded by the *Land*. The report provides a description and statistical data for socio-medical and social support services, facilities for people with disabilities and shelters.

No information is provided as to whether non-citizens enjoy equal access to social services in Lower Austria.

### **Salzburg**

The report provides that the legal framework has changed as regards the services for persons with disabilities, with the entry into force of the 2019 Salzburg Participation Act. It further provides detailed description of the new provisions and their practical implementation.

The report further states that assistance is provided subject to the following prerequisites:

- Primary residence in the *Land* of Salzburg
- Disability
- Austrian citizenship
- Persons with a residence title based on their EEA or Swiss citizenship
- Persons with a permanent residence title
- Persons who have been granted asylum

Recalling that lawfully resident nationals of all States Parties must be treated on an equal footing with nationals, the Committee asks the next report to specify whether nationals of other States Parties (non-EU/EEA) who are lawfully resident, but without having a permanent residence permit, are entitled to social services and if so, to what extent and what type of such services.

In reply to whether there is a right to appeal, the report states that approval of the services in Salzburg is not subject to issuing an administrative decision and, consequently, there is no right of appeal.

### **Styria**

In the *Land* of Styria, social services are enshrined in Section 16 of the Styria Social Assistance Act of 1998. They primarily consist of home nursing, family assistance, help to continue with household duties, meals-on-wheels services, preventive health care, general and specific counselling services and residential care in social assistance homes (nursing

homes, homes for senior citizens and nursing stations) or similar facilities or appropriate flats.

Social services are provided by the integrated social and health entities, organised in merged municipalities and entrusted with the statutory obligation to provide needs-based social services. The report presents a detailed description of how these tasks are performed.

Further, the report states that the services stipulated in the Styria Persons with Disabilities Act are available to all persons with disabilities subject to the following criteria: primary residence in Styria, citizenship of either a member state of the European Economic Area or a residence title pursuant to Section 8 Para. 1 nos. 1 to 8 of the Settlement and Residence Act or status of recognised refugee or status of 'holder of subsidiary protection status' pursuant to Section 8 Asylum Act. The Committee asks the next report to provide comprehensive information on the access to all services by non-citizens, not only those related to disability. It further asks, whether the residence title referred to requires a permanent residence entitlement.

### ***Vorarlberg***

The report provides that there were no changes to the legislative framework in the field of social services and refers to the previously submitted information. It further provides that, as a general rule, Austrians and EEA citizens, as well as third-country nationals have equal access to the various social welfare services. Counselling is provided to anyone seeking help irrespective of their nationality. The Committee requests the next report to provide more details on the eligibility to social services by non-citizens, in particular on their type and as to whether the permanent residence title is a prerequisite to access them.

### ***Upper Austria***

The report refers to the information submitted for the previous supervision cycles. No information is provided as to whether non-citizens enjoy equal access to social services.

### ***Vienna Land***

The report refers to the information submitted for the previous supervision cycles.

### ***Burgenland***

The report refers to the information submitted for the previous supervision cycles. No information is provided as to whether non-citizens enjoy equal access to social services. Neither does the report reply to the Committee's question what remedies are available in Burgenland in terms of complaints or right to appeal to an independent body in urgent cases of discrimination related to effective and equal access to social services.

The Committee notes that it still lacks information on the organization of social services in Burgenland. Accordingly, it reiterates its request to receive specific information on the situation in this *Land* and, despite the additional information provided, concludes that it has not been established that the situation is in conformity with the Charter as concerns the organisation of social services adapted to needs in all nine *Länder* due to a lack of information.

As regards the right to a remedy, the Committee notes that in the Land of Salzburg, unlike the situation in Upper Austria and Vorarlberg, no appeal can be lodged with the courts in the event of a breach of an individuals' right of access to the advice and counselling provided by the public social assistance services, as this is not subject to an administrative decision. The Committee recalls that remedies shall be available to clients of social services in terms of complaints and a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity (see Conclusions 2005, Bulgaria). It notes that this is not

the case in the Land of Salzburg which is not in conformity with Article 14§1. No information has been provided with respect to Burgenland and the Committee reiterates its request. Meanwhile, it considers that it has not been established that clients of social services have a right of appeal to an independent body in urgent cases of discrimination and violation against human dignity in all the *Länder*.

Finally, recalling that lawfully resident nationals of all States Parties must be treated on an equal footing with nationals, the Committee notes that there is a number of questions open and that is fully lacking information on the matter with respect to some *Länder*. It thus recalls its questions and underlines that should the next report not provide comprehensive information, there will be nothing to show that the situation is in conformity with the Charter on this point.

In reply to the Committee's targeted questions, the report provides that the provision of social services continued in most of the *Länder* during the COVID-19 pandemic, in compliance with the safety regulations recommended by the Federal Government. Specific manuals and policy guidelines have been developed and the state supported the *Länder* with targeted grants. Some day-care structures were reduced to an emergency mode during the state of emergency from 16 March to 30 April 2020.

#### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 14§1 of the Charter on the grounds that:

- it has not been established that the organisation of social services is adapted to needs in all nine *Länder*;
- social services users do not have a right of appeal to an independent body in urgent cases of discrimination in all of the *Länder*.

## **Article 14 - Right to benefit from social welfare services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

The Committee takes note of the information contained in the report submitted by Austria, as well as the comments by the Amnesty International.

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The “individuals and voluntary or other organisations” referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee further notes that for the purposes of the current examination, States were asked to reply to the specific targeted questions posed to States in relation to this provision (questions included in the appendix to the letter of 3 June 2020, in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals. States were therefore requested to provide information on user involvement in social services (“co-production”), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice. Co-production is understood here to mean that social services work together with users of the services on the basis of fundamental principles, such as equality, diversity, accessibility and reciprocity.

The report confirms that social services are in the responsibility of the *Laender* and are offered by them along with municipalities and free welfare associations; the aim of the Federal Government is to ensure the highest quality in the care sector and that people in need of care or support receive optimal services. Further development can only take place in a closer dialogue with the *Laender*, municipalities and a broad involvement of all stakeholders.

The report further states that In 2020, the Federal Minister of Social Affairs, Health, Care and Consumer Protection already started a dialogue tour, where he met involved parties such as employees, volunteers, nurses, critical doctors, trade unionists and NGOs. In addition, a comprehensive digital survey on the care reform was carried out in August 2020. From September 2020 onwards a discussion process is planned with hundreds of institutions, employees and those affected in all regions of Austria. In autumn, a task force with various working groups will be established. To this end, experts from NGOs and, in a further step, the civilian population are also planned to be involved. It will be the goal of the task force to work together on the challenges. The task force will offer various options for contributing experience, knowledge and perspectives.

The report provides examples of user involvement, such as:

- the Patient Safety Advisory Board (based on the Patient Safety Strategy), where patient organisations are nominated as members. Another example is that a public consultation is required before a quality standard can be finalised and published;
- in Upper Austria, persons with impairments are involved in designing, amending and implementing legal provisions concerning persons with impairments;
- Social Planning Advisory Board (*Beirat für Sozialplanung*) has been established within the Upper Austria Government to advise the Government on all social policy matters relevant in Upper Austria and to make suggestions and statements on those matters. Pursuant to the Act, the Government must consult the Advisory Board before adopting social welfare programmes or other ordinances.



The Committee asks what measures in the other *Länder*, including legislative or budgetary measures, have been adopted or are envisaged to encourage user participation in social services and how it is ensured that the principles of equality, diversity, accessibility and reciprocity are respected.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 14§2 of the Charter.