



# **AUSTRIA: HUMAN RIGHTS CHALLENGES PERSIST**

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC  
REVIEW, 37<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, JANUARY 2021

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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Austria in January-February 2021. In it, Amnesty International evaluates the implementation of recommendations made to Austria in its previous UPR, including in relation to police accountability, the justice system, including prison overcrowding, and to the rights of asylum-seekers and refugees.

It also assesses the national human rights framework with regard to non-discrimination, social security and the rights of refugees and asylum-seekers, including in the context of the asylum procedure.

With regard to the human rights situation on the ground, Amnesty International raises concern about the persistent failure to independently and effectively investigate allegations of excessive use of force and ill-treatment by the police; the violation of refugees and asylum-seekers' rights, including in the context of the poor housing conditions and remote locations of return centres; and the continuous failure to provide sufficient financial and human resources to ensure wide access to women's support shelters.

In addition, this submission refers to some specific human rights challenges that arise in the context of the COVID-19 pandemic.

## FOLLOW UP TO THE PREVIOUS REVIEW

During its last review in 2015, Austria supported 162 out of 229 recommendations and rejected 67.<sup>1</sup> The government has taken some positive steps since then, including the withdrawal of declarations to international treaties<sup>2</sup> and the launch of a research project to strengthen support of the public security sector in recording racially motivated crimes.<sup>3</sup> Latter is particularly important, as to date, the police only collects data on hate crimes that are ideologically or religiously motivated or extremist in nature, which applies in particular to the context of right-wing extremism. However, Austria failed to ratify the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure (OPIC-CRC). In this respect, Amnesty International recalls that Austria's ratification of the OPIC-CRC should not be conditioned on the committee's jurisprudence.

Austria accepted three recommendations to promote human rights education in the schooling context.<sup>4</sup> In general, Amnesty International welcomes the efforts by the Austrian government to strengthen the school subject "political education" by embedding it in the school subject "history and social studies" for sixth grade. However, on a structural level, human rights education is not strongly embedded in the Austrian school curricula, including with respect to elementary schools

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<sup>1</sup> Human Rights Council, *Report of the Human Rights Council on its thirty-first session*, A/HRC/31/12, para 741 ff. Notably, Austria did not submit a mid-term report to the Office of the High Commissioner for Human Rights (OHCHR).

<sup>2</sup> A/HRC/31/12 Add. 1, para 2, Recommendations 141.16 (Spain), 141.17 (Netherlands); Austria notified the Secretary-General on 26 November 2018 of its decision to withdraw the declaration made upon ratification in respect of article 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at <https://indicators.ohchr.org/>

<sup>3</sup> See Ministry of Interior, Project "Expanded, systematic hate crime data collection and reporting of the Austrian Police", available at <https://www.bmi.gv.at/408/Projekt/start.aspx>

See A/HRC/31/12, Recommendations 139.55 (Norway), 139.102 (Iceland), 139.79 (United Kingdom of Great Britain and Northern Ireland); see also A/HRC/31/12 A/HRC/31/12, Recommendations 139.45 (Senegal), 139.43 (China), 139.70 (Pakistan), 139.74 (Morocco), 139.41 (Plurinational State of Bolivia), 139.56 (Azerbaijan), 139.76 (Bahrain), 139.71 (Namibia), 139.50 (Costa Rica)

<sup>4</sup> A/HRC/31/12, Recommendations 139.113 (Georgia), 141.29 (Morocco), 139.22 (Viet Nam)

and nurseries. Hence, the aims of human rights education, as stipulated in the UN Declaration<sup>5</sup> are not met. Moreover, it depends on teachers' individual commitment whether and to what extent human rights education is part of the general education. However, teachers receive little training in effectively conveying human rights as part of their classes.

As a result of jurisprudence by the Austrian constitutional court, discrimination between same-sex couples and heterosexual couples in marriage law was abolished<sup>6</sup> and intersex persons have the right to register their gender according to a third gender option in the civil registry and other official documents.<sup>7</sup>

However, Amnesty International remains concerned that Austria has not adequately implemented the majority of recommendations supported during the previous review, especially concerning police accountability and the rights of refugees and asylum-seekers.

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

### NATIONAL HUMAN RIGHTS FRAMEWORK

Despite accepting respective recommendations during the second review,<sup>8</sup> Austria failed to develop and adopt a national human rights action plan due to a lack of political commitment and an unwillingness to meaningfully engage with civil society.<sup>9</sup> Therefore, Amnesty International welcomes the newly elected government's commitment thereto.<sup>10</sup>

Amnesty International is concerned that despite the acceptance of respective recommendations during the previous review,<sup>11</sup> the Austrian Ombudsman Board (AOB) does not yet fully comply with the Paris Principles,<sup>12</sup> due to the political appointment process of its members. The three members of the AOB are appointed by the three parties with the highest number of seats in the National Council and subsequently, elected by the National Council. However, there are no clear

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<sup>5</sup> United Nations General Assembly, resolution 16/1 on United Nations Declaration on Human Rights Education and Training, A/HRC/RES/16/1, 08.04.2011

<sup>6</sup> Austrian Constitutional Court, G 258-259/2017-9, 04.12.2017

Cf. A/HRC/31/12, Add. 1, Recommendations 141.53 (Denmark), 141.54 (Iceland), 141.55 (Ireland), 141.56 (Netherlands), 141.57 (United Kingdom of Great Britain and Northern Ireland)

<sup>7</sup> Austrian Constitutional Court, G 77/2018, 29 June 2018

<sup>8</sup> A/HRC/31/12, Recommendations 139.12 (Timor Leste), 139.13 (Georgia), 139.14 (Sudan), 139.15 (Democratic Republic of the Congo), 139.16 (India), 139.17 (Republic of Moldova)

<sup>9</sup> The development of a national human rights action plan ended in 2016. Amnesty International participated in the process. However, when it became apparent that civil society's recommendations were not meaningfully addressed, Amnesty International jointly with two other organizations decided to withdraw from the process in 2016. The Government's programme of work 2017 – 2022 did not include a reference to it. A motion for resolution by members of parliament to invigorate the process and recommence developing such an action plan was not followed through.

<sup>10</sup> Austrian Government's programme of work 2020 – 2024 entitled 'Aus Verantwortung für Österreich', p 212, <https://www.bmoeds.gv.at/dam/jcr:dde225f7-4a3b-4ca4-8c24-5e8683221d50/Regierungs%C3%BCbereinkommen.pdf>

<sup>11</sup> UN Doc. A/HRC/31/12, Recommendations 139.7 (Croatia), 139.8 (Egypt), 139.9 (Indonesia), Add. 1, para 2, 141.27 (India), 139.10 (Germany), 139.11 (Hungary); UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Austria, CEDAW/C/AUT/CO/9, 30 July 2019, para 17

<sup>12</sup> United Nations General Assembly, resolution 48/134, UN Doc. A/RES/48/134, 20 December 1993, *Principles relating to the Status of National Institutions (The Paris Principles)*

eligibility criteria for the election of members of the AOB and there is neither a public hearing of the candidates nor a possibility of participation by civil society in this process.<sup>13</sup>

## NON-DISCRIMINATION

Amnesty International regrets that Austria failed to strengthen and harmonise its anti-discrimination legislation at the federal and regional (*Länder*) level.<sup>14</sup> Despite having enacted approximately 50 anti-discrimination laws, protection gaps continue to exist, in particular with respect to access to goods and services on the grounds of age, religion and belief, sexual orientation and gender identity.<sup>15</sup> Austria further failed to ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Amnesty International is concerned that this fragmentation in legislation could prevent persons affected by discrimination from securing an effective remedy.

## RIGHTS TO PRIVACY AND FREEDOM OF EXPRESSION ONLINE

Despite Austria's efforts to promote human rights online at the international level,<sup>16</sup> the plans to introduce backdoor access to encrypted communications for law enforcement<sup>17</sup> and to roll out a pilot phase for law enforcement's use of facial recognition technology by the end of 2020<sup>18</sup> raise severe concerns. These initiatives could have a chilling effect on the rights to privacy, freedom of expression and peaceful assembly. In addition, uncertainties remain regarding adequate safeguards for individuals and how and what data would be used.<sup>19</sup>

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<sup>13</sup> The three members of the Austrian Ombudsman Board (AOB) are elected for a six-year term, with the possibility of re-election. The candidates must be eligible to the National Council, have knowledge in the field of the organization and functioning of administration and in the area of human rights compliance. Moreover, the current appointment of three men disregards the importance of gender equality.

<sup>14</sup> Austria's highly fragmented anti-discrimination legislation has been criticized by international committees, including the European Commission against Racism and Intolerance, Conclusions on the Implementation of the Recommendations in respect to Austria, CRI (2018)21, adopted on 21 March 2018.

<sup>15</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Austria, UN Doc. CEDAW/C/AUT/CO/9, 30 July 2019, para 10 – 11; UN Committee on Economic, Social and Cultural Rights, List of Issues prior to submission of the fifth periodic reports of Austria, UN Doc. E/C.12/AUT/QPR/5, para 14; UN Doc. A/HRC/31/12 and A/HRC/31/12 Add. 1, Recommendations 141.30 (Switzerland), 141.33 (Rwanda), 131.35 (Trinidad and Tobago), 141.20 (Czech Republic), 141.21 (Namibia), 141.22 (Ecuador), 141.23 (Finland), 141.45 (Bahrain), 141.24 (India), 141.18 (Belgium), 141.19 (Uruguay), 141.34 (Canada), 141.32 (Bulgaria), 141.36 (Germany),

<sup>16</sup> For instance, Austria has been part of the core group of states in the adoption of the UN Human Rights Council resolution on the right to privacy in the digital age, UN Doc. A/HRC/34/L.7/R.1 and A/HRC/RES/42/15

<sup>17</sup> Austrian Government's programme of work 2020 – 2024 entitled '*Aus Verantwortung für Österreich*', p 216, <https://www.bmoeds.gv.at/dam/jcr:dde225f7-4a3b-4ca4-8c24-5e8683221d50/Regierungs%C3%BCbereinkommen.pdf>; Amnesty International Austria, Submission to the Security Package, 27 March 2018, <https://www.amnesty.at/presse/sicherheitspaket-bittere-pille-mit-massiven-nebenwirkungen/> (in German only); Constitutional Court of Austria, G 72-74/2019, G 181-182/2019, 11 December 2019 declaring the provision allowing for surveillance of encrypted communications that was established by Security Package to be unconstitutional.

<sup>18</sup> Minister of Interior, 1193/AB regarding 1183/J (XXVII. GP), 4 May 2020, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01193/imfname\\_795341.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01193/imfname_795341.pdf); Barbara Wimmer, FutureZone, *Polizei verschiebt Start der Gesichtserkennung*, 3 December 2019, <https://epicenter.works/content/gesichtserkennung-in-oesterreich-woher-stammen-die-daten>

<sup>19</sup> Epicentre.works, *Gesichtserkennung in Österreich: Woher stammen die Daten?*, 17 July 2019, <https://epicenter.works/content/gesichtserkennung-in-oesterreich-woher-stammen-die-daten>; der

Amnesty International is further concerned about the rise in hate speech and advocacy of violence online. Notably, during the first couple of weeks of the COVID-19 pandemic, hate speech targeting asylum-seekers and refugees saw a significant increase.<sup>20</sup> Amnesty International is concerned that despite the establishment of an expert group on hate speech by the Minister of Justice in 2020, Austria failed to adequately address advocacy of hatred and violence online, including by adopting positive measures to protect individuals and to counter stereotypes and discrimination.

## RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

Since 2015, parliament has passed several laws that raise concerns with respect to the rights of refugees and asylum-seekers.<sup>21</sup>

Amnesty International is concerned about the quality of asylum procedures, in particular as a high number of cases, especially concerning asylum-seekers from Afghanistan, were overturned by the federal administrative courts on appeal.<sup>22</sup> In this respect, particular concerns exist that the law establishing the Federal Agency for the Provision of Care and Support,<sup>23</sup> which will be embedded in the organizational structure of the Ministry of Interior, will exacerbate this issue, as the Federal Agency will provide legal counselling and representation in asylum proceedings in first and second instance as of January 2021.<sup>24</sup> Thus, it will replace independent counselling provided by civil society organizations, with the result that the authority deciding in asylum claims in first instance and the agency providing legal counselling and representation will both be embedded in the organizational structure of the Ministry of Interior. This could have repercussions on the fairness of asylum procedures and the right to seek and enjoy asylum, as legal counsellors might face situations of conflict of interest.<sup>25</sup>

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Standard, *Gesichtserkennungs-Software für Polizei kostet 450.000 Euro*, 25 June 2019, <https://www.derstandard.at/story/2000105431728/gesichtserkennungssoftware-fuer-polizei-kostet-450-000-euro>

<sup>20</sup> Zivilcourage & Anti-Rassismus-Arbeit (ZARA), *Rassismus Report 2019*, [https://www.zara.or.at/de/wissen/aktuelles/n/pressemitteilungen/kPbdJXoUO/Pressestatement:\\_Rassismus\\_Report\\_2019](https://www.zara.or.at/de/wissen/aktuelles/n/pressemitteilungen/kPbdJXoUO/Pressestatement:_Rassismus_Report_2019)

<sup>21</sup> A/HRC/31/12, Recommendations 139.122 (Sweden), 139.123 (Plurinational State of Bolivia), 139.125 (Albania), 139.126 (Holy See), 139.124 (United States of America), 139.128 (Brazil), 139.20 (Russian Federation), 141.68 (Pakistan)

Notably, in 2018, there were 13,746 asylum applications in total. In comparison, in 2015 the total number of was 88,340. In 2018, the number of deportations was 4,661, whereas in 2015, there were 3,278 deportations. Office of the High Commissioner for Human Rights, Report of mission to Austria 15 – 18 October 2018, <https://www.ohchr.org/Documents/Countries/AT/AustriaReport.pdf>

<sup>22</sup> In 2019, approximately 45 per cent of the 17,000 contested decisions by the Federal Office of Immigration and Asylum (BFA) were annulled or altered in second instance. Federal Ministry of Justice, 673/AB 23.03.2020 regarding 638/J (XXVII. GP),

[https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_00673/imfname\\_788941.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_00673/imfname_788941.pdf); der Standard, *45 Prozent der beanstandeten Asylentscheide hielten in zweiter Instanz nicht*, 26.03.2020, <https://www.derstandard.at/story/2000116209191/asylbehoerde-entschied-in-45-prozent-von-rund-17-000-faellen>.

In 2017, 42 per cent of negative decisions concerning asylum-seekers from Afghanistan were reversed in second instance. See also Minister of Interior, 186/AB regarding 155/J (XXVII.GP), 3 January 2020, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_00186/imfname\\_777092.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_00186/imfname_777092.pdf)

<sup>23</sup> Federal Act on the Establishment of a Federal Agency for the Provision of Care and Support, BGBl. I No 53/2019

<sup>24</sup> Please note that January 2021 is a preliminary date only, as the exact date depends on the date of termination of the contract by the Minister of Justice.

<sup>25</sup> Section 13 (1) of the Federal Act on the Establishment of a Federal Agency for the Provision of Care and Support, BGBl. I No 53/2019; Amnesty International, *Position Paper on the establishment of a federal agency for the provision of care and support*, 2019 (in German only), [https://www.amnesty.at/media/5423/amnesty\\_stellungnahme\\_bundesbetreuungsagentur.pdf](https://www.amnesty.at/media/5423/amnesty_stellungnahme_bundesbetreuungsagentur.pdf);

Amnesty International is also concerned about the government's proposal to develop a legal basis for the administrative detention of asylum-seekers, i.e. detention for the preventive protection of public security ('*Sicherungshaft*').<sup>26</sup> While the exact content of this proposal remains unclear, such a provision would likely undermine the rights to liberty and to a fair trial, the presumption of innocence and the principle of legality and the Federal Constitutional Law on the Protection of Personal Liberty.<sup>27</sup>

## SOCIAL SECURITY

Amnesty International regrets that Austria failed to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) and that the ICESCR is not yet given full effect in national legislation, yet.<sup>28</sup>

Moreover, Amnesty International has concern regarding the Fundamental Law on Social Assistance.<sup>29</sup> While the Austrian constitutional court already declared two provisions to be unconstitutional in December 2019,<sup>30</sup> the law continues to foresee caps on social aid benefits for adults based on the equalisation supplement (so-called '*Ausgleichszulage*'), instead of guaranteeing a minimum level of cash and in-kind benefits to ensure a life in dignity.<sup>31</sup> This violates the obligation to progressively realise economic, social and cultural rights and the principle of non-retrogressive measures.<sup>32</sup> In addition, Section 4 of the law foresees that persons entitled to subsidiary protection status are only eligible for core elements of social aid benefits that do not exceed the level of social assistance granted to asylum-seekers (so-called '*Grundversorgung*'). This violates Austria's obligation to ensure non-discriminatory access to social security and European Union legislation.<sup>33</sup>

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Wirkungsorientierte Folgenabschätzung, BBU-Gesetz, 594 der Beilagen XXVI. GP – Regierungsvorlage – Vorblatt und WFA, p 5, [https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I\\_00594/fname\\_748858.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00594/fname_748858.pdf); Parliamentary Inquiry 1096/J, 20 June 2018 (XXVI.GP), Parliamentary Inquiry 3346/J-BR/2018, 6 February 2018 and subsequent Response by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, 3186/AB-BR/2018, 6 April 2018; see OHCHR, Mission report on Austria, 2018, paras 7, 33, <https://www.ohchr.org/Documents/Countries/AT/AustriaReport.pdf>

<sup>26</sup> Austrian Government's programme of work 2020 – 2024 entitled '*Aus Verantwortung für Österreich*', p 199, <https://www.bmoeds.gv.at/dam/jcr:dde225f7-4a3b-4ca4-8c24-5e8683221d50/Regierungs%C3%BCbereinkommen.pdf>

<sup>27</sup> Federal Constitutional Law on the Protection of Personal Liberty, BGBl. I No. 684/1988. Depending on the exact content, the provision could require a constitutional amendment, which would constitute a restriction of fundamental rights as guaranteed under the Austrian constitution for the first time since 1945.

<sup>28</sup> See UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the fourth periodic report of Austria*, 13 December 2013, UN Doc. E/C.12/AUT/CO/4, para 5

<sup>29</sup> Fundamental Law on Social Assistance, BGBl. I No 41/2019

<sup>30</sup> Constitutional Court of Austria, G 164/2019-25, G 171/2019-24, 12 December 2019. The decision concerned Sections 5(2) and 5 (6)-(9) that stipulated reductions of social aid benefits in inverse correlation with the number of children living in a household and pre-conditioned 35 per cent of a person's monthly social aid on their employability at the Austrian job market, respectively. Latter was coupled to the existence of sufficient relevant language skills.

<sup>31</sup> Section 5 of the Fundamental Law on Social Assistance, BGBl. I No 41/2019

<sup>32</sup> See Amnesty International, *Position Paper on the Fundamental Law on Social Assistance*, 2019, [https://www.amnesty.at/media/4791/amnesty\\_stellungnahme-sozialhilfegesetz\\_jaenner-2019.pdf](https://www.amnesty.at/media/4791/amnesty_stellungnahme-sozialhilfegesetz_jaenner-2019.pdf) (in German only); UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth periodic report of Austria*, UN Doc. E/C.12/AUT/CO/4, 13 December 2013, para 17; Constitutional Court of Austria, G 164/2019-25, G 171/2019-24, 12 December 2019

<sup>33</sup> Section 4 of the Fundamental Law on Social Assistance; Article 29 of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform

# HUMAN RIGHTS SITUATION ON THE GROUND

## JUSTICE SYSTEM INCLUDING DETENTION

Amnesty International welcomes the government's overall plans to reform the justice system and the announcement to increase its budget. However, a recent statement by the Chancellor, questioning the independence and impartiality of the Public Prosecutor's Office for Economic Crimes and Corruption, was criticised by judges and prosecutors' associations alike as an attack on the independence of the justice system.<sup>34</sup>

Serious concerns exist regarding the state of the justice system and the prison conditions, including overpopulation that has led to rising violence.<sup>35</sup> In the context of the COVID-19 pandemic, detainees' contacts with the outside world were restricted and new inmates were isolated for 14 days, which exacerbated anxiety and frustration among detainees. Moreover, monitoring visits by the national prevention mechanism were suspended. While experts recommended considering alternatives to detention,<sup>36</sup> the Minister of Justice announced that the start of new prison terms would be delayed.<sup>37</sup>

Amnesty International is particularly concerned about the system of preventive measures of detention for offenders with mental illness that may be ordered by a court in addition or instead of a punishment. Despite recommendations by a working group and a reform proposal, Austria failed to achieve any progress in this respect since its last review. The possibility of ordering preventive measures of detention for an indefinite period of time, including for juveniles, raises concerns with regard to the right to liberty and security, especially as this could result in life-long detention.<sup>38</sup> Though preventive measures of detention are judicially reviewed on an annual basis, the quality of psychiatric assessments, which are key thereto, is often poor, in particular as there are no common criteria or standards.<sup>39</sup> Concerns further remain that offenders with mental illness

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status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, read in conjunction with preambular paragraph 45

<sup>34</sup> Der Falter, *Wie Sebastian Kurz die Korruptionsbehörde anpatzt*, 05.02.2020, available at [https://www.falter.at/zeitung/20200205/wie-sebastian-kurz-die-korruptionsbehoerde-anpatzt/\\_bbeebe18f?ver=a](https://www.falter.at/zeitung/20200205/wie-sebastian-kurz-die-korruptionsbehoerde-anpatzt/_bbeebe18f?ver=a)

<sup>35</sup> Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice, *Wahrnehmungsbericht des Bundesministers für Verfassung, Reformen, Deregulierung und Justiz Dr. Clemens Jabloner, Befund, Maßnahmen für eine moderne und qualitätsvolle Justiz*, 11 November 2019, [https://www.justiz.gv.at/file/2c94848b6d50e800016e6a285abf00ed.de.0/wahrnehmungsbericht\\_hbm%20jabloner.pdf](https://www.justiz.gv.at/file/2c94848b6d50e800016e6a285abf00ed.de.0/wahrnehmungsbericht_hbm%20jabloner.pdf)

<sup>36</sup> Ludwig Boltzmann Institute of Human Rights, *Stellungnahme hinsichtlich der Situation von Insass\*innen der Justizanstalten Österreichs während der Covid-19-Pandemie*, 2020, [https://bim.lbg.ac.at/sites/files/bim/attachments/stellungnahme\\_covid-19\\_haftsituation\\_philipp\\_hamedl\\_2.4.2020.pdf](https://bim.lbg.ac.at/sites/files/bim/attachments/stellungnahme_covid-19_haftsituation_philipp_hamedl_2.4.2020.pdf)

<sup>37</sup> Federal Law regarding Accompanying Measures during COVID-19 for the Justice System (*Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz*), BGBl. I Nr. 16/2020, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011087>

<sup>38</sup> Annual Report on the activities of the Austrian National Preventive Mechanism (NPM), p 101, 2018, [https://volksanwaltschaft.gv.at/downloads/2ga09/Austrian\\_NPM\\_-\\_Annual\\_Report\\_2018\\_%28EN%29\\_-\\_Barrierefrei.pdf](https://volksanwaltschaft.gv.at/downloads/2ga09/Austrian_NPM_-_Annual_Report_2018_%28EN%29_-_Barrierefrei.pdf)

<sup>39</sup> Working Group on preventive measures of detention, *Bericht an den Bundesminister für Justiz über die erzielten Ergebnisse*, presented to the Minister of Justice in 2015, p 62,

often do not have adequate access to medical treatment, when accommodated in special wards in regular prisons.

Moreover, Amnesty International is concerned about reports of ineffective procedural safeguards in police detention and during interrogation, notably as regards the lack of legal assistance.<sup>40</sup> Several concerns also remain regarding the deprivation of liberty of older persons in care homes, including the serious shortages of qualified staff and a worrisome use of medication as a result thereof. In the context of the COVID-19 pandemic, the situation in care homes reportedly deteriorated, demonstrating the serious challenges in the provision of adequate care and support caused by a shortage of qualified staff. This might hinder a human-rights based approach in the provision of care of older persons.<sup>41</sup>

## POLICE ACCOUNTABILITY

Amnesty International is concerned about the persistent failure to independently and effectively investigate allegations of excessive use of force and ill-treatment by the police.<sup>42</sup> To date, Austria has failed to establish an independent investigations and complaints mechanism.<sup>43</sup> Hence, victims continue to face barriers in reporting cases of ill-treatment and other forms of abuse, including when such violations are racially motivated, and consequently they are not able to obtain an effective remedy and reparation.

Obstacles also remain in identifying perpetrators in cases of ill-treatment and excessive use of force, since law enforcement officials are still not required to wear identification badges. Amnesty International is further concerned that cases of ill-treatment and excessive use of force by the police in May 2019 have not been effectively evaluated to take adequate preventive measures.<sup>44</sup>

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<https://www.justiz.gv.at/file/2c94848a4b074c31014b3ad6caea0a71.de.0/bericht%20ag%20ma%C3%9Fnahmenvollzug.pdf>

<sup>40</sup> Ludwig Boltzmann Institute of Human Rights, *Die ersten 48 Stunden, Beschuldigtenrechte im polizeilichen Ermittlungsverfahren*, 2018,

[https://bim.lbg.ac.at/sites/files/bim/attachments/bim\\_die\\_ersten\\_48\\_stunden\\_0.pdf](https://bim.lbg.ac.at/sites/files/bim/attachments/bim_die_ersten_48_stunden_0.pdf)

<sup>41</sup> Austrian Ombudsman Board, *Report regarding the Control of the Public Administration*, 2018 (in German only), p 22, <https://volksanwaltschaft.gv.at/downloads/72sag/PB-42-Nachpr%C3%BCfend.pdf>

<sup>42</sup> According to a study by the Austrian Center for Law Enforcement Sciences (ALES) in 2018, around 1,500 complaints were filed against police officials due to alleged ill-treatment. In only seven cases, a criminal proceeding was opened. However, none of these seven cases led to a conviction of the perpetrator. Austrian Center for Law Enforcement Sciences, *Studie über den Umgang mit Misshandlungsvorwürfen gegen Exekutivbeamte*, 9 February 2018,

<https://www.justiz.gv.at/home/strafvollzug/publikationen/ales-studie-ueber-den-umgang-mit-misshandlungsvorwuerfen-gegen-exekutivbeamte~11c.de.html?highlight=true>

<sup>43</sup> Amnesty International, *Submission for the UN Universal Periodic Review of Austria, 23<sup>rd</sup> Session of the UPR Working Group, November 2015*. Index: EUR 13/2189/2015, March 2015,

<https://www.amnesty.org/download/Documents/EUR1321892015ENGLISH.pdf>

<sup>44</sup> Amnesty International, *'Streik mit Greta – No Future on a Dead Planet'*, 31 May 2019,

[https://www.amnesty.at/media/6553/amnesty\\_kurzbericht-polizeigewalt-bei-klimademo-dezember-2019.pdf](https://www.amnesty.at/media/6553/amnesty_kurzbericht-polizeigewalt-bei-klimademo-dezember-2019.pdf) (in German only).

The Administrative Court in Vienna already found in one case that actions by law enforcement officials reached the degree of degrading treatment and, therefore, amounted to a violation of Article 3 of the European Convention on Human Rights and affected the human dignity of the person concerned. Der Standard, *Polizeigewalt bei Klimademo: Weitere Amtshandlung teils rechtswidrig*, 14 January 2020, <https://www.derstandard.at/story/2000113298710/polizeigewalt-bei-klima-demo-weitere-amtshandlung-teils-rechtswidrig>.

According to the Minister of Justice, eight police officers are under investigation. However, the proceedings by the Public Prosecutors Office are not concluded, yet, see Minister of Justice, 603/AB regarding 567/J (XXVII. GP), 17 March 2020,

Further concerns remain with regard to the number of reported cases of ethnic profiling and racial discrimination by police officials.<sup>45</sup>

## REFUGEES AND ASYLUM-SEEKERS

The government rigorously implemented its policy to accelerate returns of rejected asylum seekers, including by extending the list of safe countries of origin.<sup>46</sup> By prioritising the deportation, in particular of Afghan nationals, Austria violates the principle of *non-refoulement*.<sup>47</sup> Rejected asylum seekers who cannot be returned to their countries of origin are accommodated in return centres. In 2019, a 46-day hunger strike by asylum-seekers prompted an inquiry into the remote locations and poor housing conditions of these centres by the Ministry of Interior in cooperation with UNHCR.<sup>48</sup> Subsequently, the Ministry of Interior presented a report that recommended for instance that families with children at school age should no longer be accommodated in the return centre of Fieberbrunn, Tyrol. While this recommendation enjoyed immediate effect, the majority of recommendations are still awaiting implementation, including increasing the presence of social workers at this facility.<sup>49</sup>

Concurrently, Austria adopted a more restrictive policy vis-à-vis persons entitled to subsidiary protection status by increasing the waiting period for family reunification, including for unaccompanied minors, from one to three years, in addition to already high eligibility criteria. The different legal and administrative requirements for refugees and individuals entitled to subsidiary

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[https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_00603/imfname\\_788037.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_00603/imfname_788037.pdf). According to the Minister of Interior, five activists filed a measures complaint ('Maßnahmenbeschwerde') against police officers before the Administrative Court in Vienna. While an evaluation is envisaged, it has been postponed until the administrative proceedings are closed, see Minister of Interior, 605/AB regarding 566/J (XXVII. P), 17 March 2020,

[https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_00605/imfname\\_788054.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_00605/imfname_788054.pdf).

<sup>45</sup> ZARA, Civil Courage & Anti-Racism-Work, *Racism Report*, 2018, p 12f,

[https://assets.zara.or.at/download/pdf/ZARA-Racismus\\_Report\\_2018\\_EN.pdf](https://assets.zara.or.at/download/pdf/ZARA-Racismus_Report_2018_EN.pdf); ZARA, Civil Courage &

Anti-Racism-Work, *Racism Report*, 2019, [https://assets.zara.or.at/download/pdf/ZARA-](https://assets.zara.or.at/download/pdf/ZARA-Racismus_Report_2019.pdf)

[Racismus\\_Report\\_2019.pdf](https://assets.zara.or.at/download/pdf/ZARA-Racismus_Report_2019.pdf); ALES, *Studie über den Umgang mit Misshandlungsvorwürfen gegen Exekutivbeamte*, 2018, <https://www.justiz.gv.at/home/home/strafvollzug/publikationen/ales-studie-ueber-den-umgang-mit-misshandlungsvoruerfen-gegen-exekutivbeamte-11c.de.html>

<sup>46</sup> The Directive on safe countries of origin, 2019, considers Armenia, Benin, Senegal and Ukraine as safe countries of origin,

<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006306&fassungVom=2019-11-08&Artikel=&Paragraf=1&Anlage=&Uebergangsrecht=>. In 2018, there were

13,746 asylum applications in total. In comparison, in 2015, the total number was 88,340. In 2018, the number of deportations was 4,661, whereas in 2015, there were 3,278. OHCHR, Report of mission to Austria 15 – 18 October 2018, <https://www.ohchr.org/Documents/Countries/AT/AustriaReport.pdf>

<sup>47</sup> According to the Ministry of Interior, more than 200 individuals were deported to Afghanistan in the first nine months of 2019. In comparison, 168 persons were deported to Afghanistan in 2018. In 2016, there were two deportations to Afghanistan.

<sup>48</sup> orf.at, *Diskussion um Flüchtlingsheim Bürglkopf*, 18.06.2019, available at

<https://tirol.orf.at/stories/3000877/>

<sup>49</sup> Federal Ministry of Interior, *Menschenrechtliche Prüfung der Rückkehrberatungseinrichtung (RÜBE): Empfehlungen*, 2019, [https://www.bmi.gv.at/bmi\\_documents/2380.pdf](https://www.bmi.gv.at/bmi_documents/2380.pdf)

protection status has further been criticised by several UN bodies.<sup>50</sup> Amnesty International is concerned that this policy infringes international human rights law.<sup>51</sup>

Moreover, Amnesty International regrets to note that Austria's humanitarian admission programme, accepting 1,900 Syrian refugees, ended in 2017 without any further political commitment.<sup>52</sup> In this respect, it is disappointing that during the COVID-19 pandemic, Austria refused to relocate asylum-seekers from the Greek Islands in spring 2020 and reportedly impeded the submission of asylum claims at the Austrian border.<sup>53</sup>

## WOMEN'S AND GIRLS' RIGHTS

Amnesty International is concerned about the high number of femicides<sup>54</sup> and the government's continuous failure to provide sufficient financial and human resources to ensure wide access to women's support services and to improve the work with perpetrators, such as anti-violence trainings.<sup>55</sup> Concerns further exist regarding the Protection against Violence Act<sup>56</sup> that imposes on medical professionals the obligation to report suspected cases of rape to law enforcement agencies. Amnesty International is concerned that this might constitute an impediment for women to seek medical treatment. In addition, a higher number of criminal complaints might not automatically ensure better protection against violence, especially as the resources of the judiciary remain scarce.

Amnesty International is concerned about remaining barriers in accessing affordable and safe abortion medical services for pregnant persons throughout Austria. In this respect, Amnesty International continues to monitor closely developments concerning two citizens' initiatives. These initiatives call for a mandatory reflection period for pregnant persons before their decision to have an abortion, an obligation by medical professionals to inform pregnant persons about support and

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<sup>50</sup> See Committee on the Elimination of Discrimination against Women, *Concluding Observations on Austria*, CEDAW/C/AUT/CO/9, 30 July 2019, para 42; UNHCR the UN Refugee Agency, *UNHCR-Empfehlungen zu den Themen Flucht und Asyl in Österreich*, 2019, p 7f, available at [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/08/AT\\_UNHCR\\_Empfehlungen\\_Regierung\\_2019.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/08/AT_UNHCR_Empfehlungen_Regierung_2019.pdf)

<sup>51</sup> Article 10 of the UN Convention on the Rights of the Child and Article 8 of the European Convention of Human Rights; Council of Europe, Issue Paper "Realising the right to family reunification of refugees in Europe", 2017, <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>; see UN Committee on the Elimination of Discrimination against Women, *Concluding Observations: Austria*, UN Doc. CEDAW/C/AUT/CO/9, 30 July 2019, para 42; UNHCR. *UNHCR-Empfehlungen zu den Themen Flucht und Asyl in Österreich*, 2019, p 7f, [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/08/AT\\_UNHCR\\_Empfehlungen\\_Regierung\\_2019.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/08/AT_UNHCR_Empfehlungen_Regierung_2019.pdf)

<sup>52</sup> Austrian Broadcast Organisation (ORF), *Resettlement: Österreich beteiligt sich nicht mehr*, 22 January 2020, <https://orf.at/stories/3151890/>

<sup>53</sup> derStandard: *Absage an das Asylrecht durch Ministeriumserlass*, 22 April 2020, <https://www.derstandard.at/story/2000117016994/absage-an-das-asylrecht-durch-ministeriumserlass>

<sup>54</sup> There were 41 femicides in 2018. In comparison, in 2014 19 femicides were reported. Autonomous Austrian Women's Shelters ('Autonome Österreichische Frauenhäuser'), *Gewalt an Frauen und Mädchen in Österreich*, December 2019, [https://www.a oef.at/images/04a\\_zahlen-und-daten/Factsheet\\_Gewalt-an-Frauen-und-Maedchen-in-Oesterreich\\_12-2019.pdf](https://www.a oef.at/images/04a_zahlen-und-daten/Factsheet_Gewalt-an-Frauen-und-Maedchen-in-Oesterreich_12-2019.pdf)

<sup>55</sup> A/HRC/31/12, Recommendations 139.85 (Angola), 139.86 (Russian Federation), 139.91 (Djibouti), 139.87 (Cuba), 139.86 (Chile)

<sup>56</sup> Protection against Violence Act, BGBl. I No 105/2019, in conjunction with for instance Section 54(4) Law on Doctors ('*Ärztegesetz*'); Section 7 Law on Health- and Medical Care ('*Gesundheits- und Krankenpflegegesetz*'); Section 6a Law on Midwives ('*Hebammengesetz*'); Section 13 (7) – (9) Law on Medical Assistance ('*Medizinisches Assistenzberufegesetz*'); Section 5a Law on Paramedics ('*Sanitätengesetz*') amended

counselling services, and the abolition of the sub-paragraph decriminalising abortion after three months' pregnancy in case of serious risks for the foetus' mental or physical health.<sup>57</sup>

Concerns further exist regarding the Anti-Face-Veiling Act, which bans full-face coverings in public<sup>58</sup> and an amendment to the School Education Law<sup>59</sup> that prohibits children under 10 years of age from wearing religiously or ideologically influenced clothing that fully covers their head in schools. The government's programme of works foresees to extend this provision to girls under the age of 14 years.<sup>60</sup> This ban violates the rights to freedom of expression and to freedom of religion or belief of Muslim women and girls, and the principle of non-discrimination, in particular as the School Education Law does not refer to any other religions.<sup>61</sup> Moreover, this may well result in even greater isolation and barriers for women and girls to accessing services essential to enjoying social and economic rights. Amnesty International recalls that all women and girls should be able to wear clothing that expresses their identity or beliefs, free from coercion by the state or private actors.

## RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

### AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF AUSTRIA TO:

#### INTERNATIONAL AND REGIONAL TREATIES AND OTHER INSTRUMENTS

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms; and the Additional Protocol on Xenophobia and Racism to the Convention on Cybercrime;
- Endorse and implement the United Nations Compact for Safe, Orderly and Regular Migration.

#### HUMAN RIGHTS EDUCATION

- Make human rights education compulsory in primary and secondary education and provide adequate training courses on human rights education for teachers;
- Raise awareness and support the integration of human rights into key areas of school life as part of a whole-school approach to human rights education.

#### NATIONAL HUMAN RIGHTS FRAMEWORK

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<sup>57</sup> Petitions No 6/BI 27. GP and 7/BI 27.GP (XXVII. GP), respectively.

<sup>58</sup> Federal Law on the Prohibition of Face Covering in Public, BGBl. I No 68/2017

<sup>59</sup> Section 43a Federal Law on the School Education, BGBl. No. 472/1986, amended according to BGBl. No 54/2019, Prohibition to wear religious or ideological symbols in schools

<sup>60</sup> Government's programme of work 2020 – 2024 entitled '*Aus Verantwortung für Österreich*', p 207, available at <https://www.bmoeds.gv.at/dam/jcr:dde225f7-4a3b-4ca4-8c24-5e8683221d50/Regierungs%C3%BCbereinkommen.pdf>

<sup>61</sup> Addendum to Protocol, AB 612 BGBl. No. XXVI. GP, p 3, available at [https://www.parlament.gv.at/PAKT/VHG/XXVI/II\\_00612/fname\\_751626.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/II_00612/fname_751626.pdf); Addendum to Protocol, AB 612 BGBl. No. XXVI. GP, p 3, available at [https://www.parlament.gv.at/PAKT/VHG/XXVI/II\\_00612/fname\\_751626.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/II_00612/fname_751626.pdf)

- Develop a national human rights action plan in line with OHCHR guidelines<sup>62</sup> that sets concrete and measurable objectives and ensures meaningful participation of civil society;
- Ensure that the Austrian Ombudsman Board fully complies with the Paris Principles and has sufficient human and financial resources to perform its role independently.

#### NON-DISCRIMINATION

- Ensure equal protection from all forms of discrimination, including by harmonising national legislation and extending its scope to include protected grounds, such as age, religion and belief, sexual orientation, and gender identity, in particular in the context of access to goods and services;
- Ensure that the prosecution and the police have adequate resources, tools and skills to effectively identify and investigate hate crimes and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and are provided with adequate training in this respect;
- Collect disaggregated data on hate crimes at all levels, including reporting, investigation, prosecution and sentencing, while ensuring data protection and regular reviews to assist in the development of policies to combat hate crimes.

#### RIGHTS TO PRIVACY AND FREEDOM OF EXPRESSION

- Refrain from enacting any legislation that would allow for backdoor access to encrypted communications;
- Implement adequate legislation in line with international human rights law to address advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence as well as violence and abuse online;
- Strengthen support for those that have experienced violence and abuse, including online, and invest in capacity building and training of law enforcement bodies and respective public awareness raising campaigns.

#### RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

- Repeal Sections 2(1)2 and 24(1) of the Federal Act on the Establishment of a Federal Agency for the Provision of Care and Support in order to ensure adequate and independent legal assistance;
- Revise Section 35(2) of the Asylum Act in line with international human rights law and grant the right to family reunification without undue restrictions, in particular to unaccompanied minors;
- Refrain from forcibly returning anyone to countries where there is a risk of *non-refoulement* or where they would be at risk of torture or other ill-treatment as defined under international human rights law;
- Reinstate humanitarian admission programmes in cooperation with UNHCR.

#### SOCIAL SECURITY

- Give full effect to the ICESCR in national legislation;
- Repeal Section 4 and revise Section 5 of the Fundamental Law in light of the principle of progressive realisation and non-discrimination.

#### JUSTICE SYSTEM INCLUDING DETENTION

- End prison overcrowding by ensuring prisons are provided with adequate financial

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<sup>62</sup> Office of the United Nations High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action*, 29 August 2002, <https://www.ohchr.org/Documents/Publications/training10en.pdf>

resources to fulfil their aim of rehabilitation and social reintegration, and consider alternatives to detention;

- Reform the preventive measures of detention in accordance with international standards and take into account the recommendations made by the working group in 2015 and the draft law on Detention of Mentally-Ill Defenders of 2017;
- Improve the quality of psychiatric assessments in the context of preventive measures of detention by developing common criteria and standards for such assessments;
- Refrain from accommodating offenders with mental illness in correctional institutions; specific therapeutic centres meet the psychiatric needs more adequately; and avoid preventive measures of life-long detention;
- Refrain from adopting laws that establish administrative detention for the protection of public security, and ensure that detainees are charged with a recognizable criminal offence and tried in accordance with international standards, or released;
- Ensure that persons under criminal investigation are promptly and effectively informed about procedural safeguards, notably the right to legal assistance.

#### **POLICE ACCOUNTABILITY**

- Establish an independent and effective investigations and complaints mechanism to address allegations of torture and other ill-treatment and other forms of abuse by the police; ensure it has a broad and strong mandate and fully complies with international law and standards and effectively engages with civil society in the process;
- Ensure that all allegations of human rights violations by police officers are effectively investigated and appropriately prosecuted and that victims have full access to remedy and reparation;
- Require all police officers to wear individual identification badges;
- Amend Section 35 (1) subparagraph 2 lit (a) of the Security Policy Act to ensure that police officers do not carry out identity checks in a discriminatory manner and provide adequate training to prevent ethnic profiling.

#### **WOMEN'S AND GIRLS' RIGHTS**

- Ensure survivors of sexual violence and abuse have unrestricted access to women's shelters and provide adequate financial and human resources to women's support services, including for effective victim protection;
- Repeal the reporting obligation for medical professionals in the Protection against Violence Act and ensure medical and health professionals are adequately trained to provide necessary support and information about reporting;
- Ensure full and non-discriminatory access to affordable and safe abortion medical services, including post-abortion care, for all persons concerned and remove any remaining barriers in accessing abortion services, including by fully decriminalising abortion in the Criminal Code;
- Repeal the Federal Law on the Prohibition of Face Covering in Public and consider repealing Section 43a of the School Education Act.

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

## CONTACT US



[info@amnesty.org](mailto:info@amnesty.org)



+44 (0)20 7413 5500

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