



**"AS IF YOU WERE GOING  
TO THE ENEMY":**

BARRIERS IN ACCESS TO SOCIAL ASSISTANCE BENEFITS IN AUSTRIA

**AMNESTY  
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## GLOSSARY

<p><b>Basic Act on Social Assistance</b> (BAoSA, <i>Sozialhilfe-Grundsatzgesetz</i>)</p>	<p>This act is intended to harmonize social assistance systems across federal states. Due to its nature as a basic law, federal states are required to further specify its provisions for implementation at state level.</p> <p>Apart from a mandatory framework it also includes several optional provisions which gives federal states significant leeway when designing their implementing laws. According to the act, which came into force on 1 June 2019, the federal states were required to adopt such laws within seven Months.</p> <p>The baseline for assessing social assistance benefits is the income of a respective household.</p>
<p><b>Case Workers</b></p>	<p>In this briefing, the term ‘case workers’ is used referring to those employees working at social welfare offices and who process applications for social assistance benefits/ means-tested minimum income benefits.</p>
<p><i>Erfüllungsvorbehalt</i></p>	<p>The so-called <i>Erfüllungsvorbehalt</i> (reservation of implementation) states that a respective international treaty or instrument is not directly applicable within the state of Austria, even if this treaty has been ratified.</p>
<p><b>Hardship Clause</b></p>	<p>The hardship clause enables the federal states within their own discretion to also grant social assistance benefits to people who do not fall within the general scope of the Basic Act on Social Assistance if their livelihood and housing needs cannot be secured in any other way. The person concerned must be legally resident in Austria.</p>
<p><b>Labour Market Service (AMS)</b></p>	<p>The Labour Market Service is a provider of labour-market related services that assists both jobseekers and employers in matching candidates with employment openings. It offers jobseekers general support and assistance in their process, including by offering trainings and the payment of unemployment benefits.</p>
<p><b>Means-tested minimum income benefits</b> (<i>Bedarfsorientierte Mindestsicherung</i>)</p>	<p>Means-tested minimum income benefits are a financial support for people in emergency situations who are unable to cover their living expenses with their own resources. It is regulated differently in the individual federal states. The means-tested minimum income benefits system has been replaced by the Basic Act on Social Assistance.</p>
<p><b>Rent Subsidies/ Housing Subsidies</b> (<i>Wohnbauförderung</i>)</p>	<p>Housing or rent subsidies are a fiscal instrument to provide financial support for adequate, qualitative, and affordable housing. Housing subsidies are within the competency of the federal states and are anchored in regional legislation. The available financial support can entail loans, grants, or financial assistance.</p>
<p><i>Selbsterhaltungsunfähigkeit</i></p>	<p>This term is generally used in connection regarding financial support. Parents are obliged to (financially) support their children until they are capable of self-support or are capable of ensuring their own livelihood. This obligation can go beyond the age of maturity and will in some cases regarding people with disabilities.</p>

<i>Statistik Austria</i>	Statistik Austria is the national office for statistics. Its mandate is comprised of data collection and the publication of statistics in areas of public interest, such as economics, administration, media, and politics.
<b>Subsidiary Protection Status</b>	Subsidiary protection is complementary to the refugee status. Individuals will receive subsidiary protection if they cannot return to their country of origin or habitual residence because they face a real risk of serious harm.
<b>Social Assistance Benefits</b>	Social assistance benefits, similar to the means-tested minimum income benefits, are a financial support for people in emergency situations. Social assistance benefits derive from the Basic Act on Social Assistance and the respective federal implementation acts. Social assistance benefits replace the means-tested minimum income benefits in six out of nine federal states.

# "AS IF YOU WERE GOING TO THE ENEMY"<sup>1</sup>:

## BARRIERS IN ACCESS TO SOCIAL ASSISTANCE BENEFITS IN AUSTRIA

### SUMMARY

Social assistance benefits are the 'last social safety net' in Austria - that is, financial support for those who do not have other means or sufficient income to secure their livelihood. They are crucial for alleviating poverty in Austria. In 2019, the government of Austria introduced the so-called Basic Act on Social Assistance (hereinafter BAoSA) which led to many changes in Austria's non-contributory social security scheme.

Individuals applying for social assistance benefits experience various barriers in Austria. Against the backdrop of women with different backgrounds, such as women with disabilities, single parents and migrant women, experiencing a higher risk of poverty, this briefing analyses those barriers from a gender and intersectional perspective.

This briefing is based on 60 interviews with individuals having experience with social assistance benefits and experts in the field, and a comprehensive review of relevant secondary research, including General Comments of relevant UN Committees and academic papers on the subject.

This briefing illustrates how individuals who receive social assistance benefits experience shame and stigmatization which can increase the risks of non-take-up. Moreover, the briefing describes the first barrier faced by people accessing social assistance benefits under the BAoSA, namely the eligibility criteria. These criteria exclude individuals with subsidiary protection status and non-nationals who have not acquired a permanent residence status in Austria from accessing benefits under the Act. Whilst individuals with subsidiary protection status are eligible to receive some benefits under the so-called 'basic care' system; other non-nationals often have no access to social assistance at all, and must find paid employment immediately.

This briefing further outlines specific barriers in the application process. The complexity of the application process, which requires individuals to fill out application forms and to provide all relevant information and documents, leaves applicants overwhelmed and in need of support by Non-Governmental Organizations (hereinafter NGO). The complexity stems from several factors, including the use of formal language, language barriers and having to provide a number of documents. Women who are separated from their partners (i.e. divorce) or persons with disabilities who may be entitled to claim financial support from previous partners or family members are required to make a claim for financial support before receiving social assistance benefits, which causes potential stress on individuals receiving social assistance benefits. This requirement stems from the subsidiary nature of the social assistance scheme, requiring people to exhaust all other means of incomes and benefits.

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<sup>1</sup> Interview with Anna, 12 July 2023, in person

In light of Austria's human right obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the European Social Charter (rev.) to ensure that every person enjoys their right to social security, this briefing concludes with a number of recommendations. Amongst other things, Amnesty International Austria calls on the Austrian federal government to:

- Ensure that social assistance benefits are in line with Austria's human rights obligations under Article 9 ICESCR and Article 9 in conjunction with Article 2 ICESCR.
- Enact a legislation on social assistance benefits based on minimum rates that ensure a life in dignity.
- Urgently address the barriers faced by people who access social assistance benefits in Austria.
- Urgently take steps to address the negative public stigma on social assistance benefits.

A full list of recommendations can be found at the end of this briefing.

## METHODOLOGY

This briefing is based on desk and qualitative research, carried out between May 2023 and December 2023. It aims to analyse people's access to social protection in Austria by looking at the elements of eligibility and accessibility with respect to the social assistance scheme, i.e. the BAoSA. It is a follow up to Amnesty International Austria's first briefing on this issue – '*Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*' (in English: '*The Basic Act on Social Assistance in Austria: A Step Back for Human Rights*') – which was published in October 2023. This briefing found that the BAoSA does not comply with Austria's human rights obligations to guarantee the right to social security.<sup>2</sup>

### QUALITATIVE INTERVIEWS

Amnesty International Austria conducted semi-structured interviews with 19 people who have direct experience with social assistance benefits and means-tested minimum income benefits, either because they themselves were individuals receiving social assistance benefits/ means-tested minimum income benefits or because they sought the support but were excluded from receiving them or did not receive them due to other reasons. More specifically, six people had experience with the means-tested minimum income benefits and 11 with the social assistance benefits scheme. Two people interviewed never applied for social assistance benefits due to a lack of information in one case and a lack of a permanent residency in the other. People were approached through partner organizations.

Amnesty International aims to adopt an intersectional approach to its work. Out of the 19 individuals interviewed, 16 were women. The interviewees were located in the federal states of Lower Austria, Tyrol, Upper Austria and Vienna. At least five individuals had a migration background and at least four individuals Amnesty International Austria spoke to were women with disabilities. All individuals interviewed were over the age of 18. Amnesty International Austria prioritized conducting interviews with women. This is because in Austria poverty disproportionately affects women,<sup>3</sup> migrants,<sup>4</sup> and people with disabilities.<sup>5</sup> This is further highlighted by the fact that 51% of individuals receiving social assistance benefits or means-tested minimum income benefits are female in Austria.<sup>6</sup>

Amnesty International Austria researchers asked questions about people's experience with accessing social protection benefits, what barriers they faced, and any recommendations they had for the government to improve access. People were not asked whether they had adequate information about social assistance programs, since they were receiving these benefits. Therefore, no conclusion can be drawn regarding the availability of information regarding social assistance benefits.

Amnesty International Austria also interviewed 41 experts on social assistance benefits and poverty. Six of these were representatives of official (administrative) authorities. The Austrian Ombudsman Board and the Ombudswoman of Tyrol also provided written statements to Amnesty International Austria.

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<sup>2</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

<sup>3</sup> See for example Stadt Wien (City of Vienna), *Frauenarmut und Soziale Sicherheit* (Poverty in Women and Social Security), <https://www.wien.gv.at/menschen/frauen/stichwort/armut/>

<sup>4</sup> See for example, Armutskonferenz (Anti-Poverty Network), *Migration und Armut*, 2020, [https://www.armutskonferenz.at/media/armutskonferenz\\_diskussionspapier\\_migration\\_2020.pdf](https://www.armutskonferenz.at/media/armutskonferenz_diskussionspapier_migration_2020.pdf)

<sup>5</sup> See Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz (Federal Ministry of Social Affairs), *Österreichische Behindertenpolitik 2008-2016*, page 33

<sup>6</sup> Statistik Austria, *Mindestsicherung und Sozialhilfe 2022*, <https://www.statistik.at/statistiken/bevoelkerung-und-soziales/sozialeleistungen/mindestsicherung-und-sozialhilfe>



Interviews were either conducted in person, online or via telephone, as indicated throughout this briefing.

Everyone interviewed gave informed consent for what they shared to be a part of this briefing, in line with Amnesty International's policies. The briefing protects the identity of some of the individuals interviewed by using a pseudonym and other means to anonymize the individual, their location, nationality and any other identifying details, in accordance with their wishes.

Amnesty International Austria organized a consultation workshop on 12 October 2023 which was attended by three women having experience with social assistance benefits or means-tested minimum income benefits and three representatives from NGOs working with individuals experiencing poverty. All six participants provided feedback on both the key findings and recommendations of this briefing.

## **DESK RESEARCH**

The research for this briefing is based on both primary and secondary sources. Amnesty International reviewed official data published by *Statistik Austria*, the national office for statistics, and government reports as well as reports by the treaty bodies of relevant human rights treaties, such as the International Covenant for Economic, Social and Cultural Rights (ICESCR), the European Social Charta (rev.), the Convention on the Rights of Persons with Disabilities (UN CRPD) and the Convention on the Elimination of Discrimination against Women (UN CEDAW). In addition, the researchers referred to General Comments and Concluding Observations by relevant UN Committees, which are the bodies of independent experts mandated to monitor the implementation of the respective human rights instruments, as well as relevant academic papers.

## **REGIONAL FOCUS**

Amnesty International Austria researchers conducted interviews in four federal states: Lower Austria, Tyrol, Upper Austria and Vienna. Upper Austria and Lower Austria were chosen because they were among the first federal states to have introduced the relevant implementation acts on the BAoSA. Tyrol was chosen because it still has the means-tested minimum income benefits act in place; and Vienna because it generally still has the means-tested minimum income benefits act in place and only partially implemented the BAoSA.

## **GOVERNMENTAL RESPONSE**

On 21 November 2023, Amnesty International Austria sent emails to all federal states' regional governments requesting information in writing about issues covered in this briefing, including about the hardship clause and which measures are in place to assist applicants of social assistance benefits. In addition, Amnesty International Austria also sent emails to the Federal Minister for Social Affairs as well as the Federal Minister for Women's Affairs requesting information on the BAoSA. Amnesty International Austria has received responses from seven federal states, namely Burgenland, Carinthia, Lower Austria, Tyrol, Upper Austria, Vienna, and Vorarlberg. The organization also received written responses from both federal ministries which were addressed. The information provided by the relevant authorities, in particular from Upper Austria, Lower Austria and Vienna has been included in the briefing due to the briefing's focus and has been marked as such.

Furthermore, Amnesty International Austria also shared the main findings and recommendations of this briefing with the Federal Minister for Social Affairs and the federal states' governments of Lower Austria, Tyrol, Upper Austria and Vienna, giving them the possibility to comment on them on 26 January 2024. Amnesty International Austria shared the main findings with these listed authorities since the Federal Minister for Social Affairs is vested with the competence regarding the BAoSA and the four mentioned federal states have been the focus of analysis of this research. Amnesty International Austria received a written statement from the Federal Ministry of Social Affairs on 6

February 2024. The submitted statement was taken into account and reference was made to the relevant information in the report. Amnesty International Austria has not received any written statements from the four aforementioned federal states.

## **ACKNOWLEDGEMENTS**

Amnesty International Austria would like to express its gratitude to everyone involved in this briefing. In particular, we would like to thank everyone who kindly shared their stories and expertise with the researchers of this project. Without your insights and experiences, this briefing would not have been possible. We would also like to thank all organizations that so kindly supported with the interview process by reaching out to interview partners. We are grateful for their input and feedback on the briefing.

# 1. BACKGROUND

## BACKGROUND TO THE RESEARCH PROJECT

This briefing is part of a comprehensive body of work by Amnesty International Austria on *poverty & human rights*, which is aimed at promoting and strengthening awareness among the Austrian population and decision-makers on the links between poverty and human rights, and to ensure that all people are empowered to claim and exercise their economic, social and cultural rights. It contributes to Amnesty International Austria's national campaign '*Armut hat viele Gesichter*' ('Poverty has many Faces').

It is also part of Amnesty International Austria's overall strand of work on strengthening economic, social and cultural rights (ESC rights) on a national level. While Austria ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and is thus legally bound to ensure its implementation in national law, ESC rights are not guaranteed under the Austrian constitution, with the result that individuals cannot directly rely on ESC rights before national courts. People also cannot access the individual complaints mechanism under the Optional Protocol to the ICESCR, as Austria has not ratified it.

Amnesty International Austria is also an associate member of the Austrian Anti-Poverty Network (*Armutskonferenz*). The *Armutskonferenz* is a network of over 40 social organizations, educational and research institutions addressing causes, data and facts, strategies and measures against poverty and social exclusion in Austria. Amnesty International Austria and the *Armutskonferenz* have cooperated in the past on raising awareness amongst the public as well as political decision-makers on human rights-compliant approaches to addressing poverty.

This current briefing is part of a series published by Amnesty International Austria on the right to social security in Austria. The first briefing entitled '*Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*'<sup>7</sup> (in English: *The Basic Act on Social Assistance: A Step Back for Human Rights*) published in October 2023, analysed provisions of the BAoSA from a human rights perspective. This current briefing is a follow up to this analysis and focuses on whether social assistance benefits are accessible to those who should be able to claim them in Austria.

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<sup>7</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

## 1.1. POVERTY, GENDER, AND HUMAN RIGHTS IN AUSTRIA

*"The right to be free from poverty cannot be realized in isolation from individual and collective rights to substantive equality."*

- Working Group on Discrimination against Women and Girls <sup>8</sup>

Poverty is not simply a lack of income, but it affects the enjoyment of other human rights, such as the rights to housing, health, education, cultural life, or the freedom of expression.<sup>9</sup> In general, poverty is a multidimensional phenomenon affecting all aspects of life, and hence all human rights, as highlighted by the Special Rapporteur on Extreme Poverty.<sup>10</sup>

Poverty reduction and alleviation are human rights concerns, and states have obligations under instruments such as the International Covenant on Economic, Social and Cultural Rights and the European Social Charter (rev.) to take all appropriate steps to address the root causes of poverty in order for every individual to enjoy the full range of their human rights, such as the rights to highest attainable standard of health and adequate standard of living, right to education.

According to the most recent official available data, in 2022, 17.5% of all households in Austria faced a risk of poverty and social exclusion<sup>11</sup>, thus, affecting every seventh person living in Austria.<sup>12</sup> Among those, 2.3% of households were 'materially deprived', meaning that they lacked the necessary income for basic needs, such as rent, heating, warm meals, clothing, or the internet.<sup>13</sup> The most recent concluding observations on Austria by the UN Committee on Economic, Social and Cultural Rights (hereinafter CESCR) was issued in 2013. Already in 2013, the CESCR in its concluding observations on Austria raised concern that, in 2011, 12.6 % of all households were at risk of poverty and exclusion.<sup>14</sup>

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<sup>8</sup> Working Group on Discrimination against Women and Girls Calls for a Feminist Human Rights-Based Economy to Tackle the Disproportionate Representation of Women and Girls Living in Poverty Globally, [\(A/HRC/53/39\)](#), para 48, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/069/66/PDF/G2306966.pdf?OpenElement>

<sup>9</sup> See Amnesty International, „If housing was a human right, I would not live like this“: Barriers to accessing homeless services in Austria, EUR 13/5458/2022, <https://www.amnesty.at/media/9677/amnesty-report-wohnungs-und-obdachlosigkeit-oesterreich-april-2022-en.pdf> and Amnesty International, „Die Hitze ist genauso ein Killer wie die Kälte“: Wie Obdachlosigkeit die Gesundheit und das Leben der Menschen gefährdet, [https://cdn.amnesty.at/media/10241/amnesty\\_briefing-obdachlosigkeit-hitze-gesundheit.pdf?mode=pad&rnd=133119680160000000](https://cdn.amnesty.at/media/10241/amnesty_briefing-obdachlosigkeit-hitze-gesundheit.pdf?mode=pad&rnd=133119680160000000)

<sup>10</sup> See for example Special Rapporteur on extreme poverty and human rights, <https://www.ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights>

<sup>11</sup> Social exclusion refers to the situation of individuals being denied an equal access to social participation in a society and/or the lack of equal opportunities to partake. Social exclusion refers to marginalisation, i.e. being pushed to the margins of a society. Additional information regarding indicators for social exclusion, are available at the Ministry for Social Affairs [https://www.statistik.at/fileadmin/pages/338/NEUKennzahlen\\_zu\\_Lebensbedingungen\\_2021.pdf](https://www.statistik.at/fileadmin/pages/338/NEUKennzahlen_zu_Lebensbedingungen_2021.pdf)

<sup>12</sup> Statistik Austria, Armut (poverty) 2022, <https://www.statistik.at/statistiken/bevoelkerung-und-soziales/einkommen-und-soziale-lage/armut>

<sup>13</sup> Statistik Austria, Armut (poverty) 2022, <https://www.statistik.at/statistiken/bevoelkerung-und-soziales/einkommen-und-soziale-lage/armut>

<sup>14</sup> UN CESCR, Concluding Observations Austria 2013, E/C.12/AUT/CO/4, <https://www.refworld.org/docid/52d3df864.html>

## 1.2. WOMEN EXPERIENCE HIGHER RISKS OF POVERTY

Globally, women are disproportionately affected by economic and social marginalisation and poverty.<sup>15</sup> Reasons for this include unequal pay, gender-based violence and unequal distribution of care responsibilities, where women bear the majority of unpaid care work. This ultimately affects women's enjoyment of economic, social and cultural rights as well as their civil and political rights.<sup>16</sup> Therefore, there is a close link between poverty, gender and enjoyment of human rights.

This is also reflected in the Austrian context. In 2022, 18% of women above the age of 18 years in Austria were at risk of poverty and social exclusion, of whom 3% experienced material deprivation.<sup>17</sup> In comparison, 16% of men above the age of 18 were at risk of poverty and social exclusion.<sup>18</sup> Moreover, the risk of experiencing poverty and social exclusion for women living in single-households was at 25% in 2022 (in comparison to men living in single-households, which was 21%).<sup>19</sup>

Various underlying causes, which are mainly of structural and societal nature, lead to this heightened risk. For example, in 2021, the gender pay gap – which compares the average gross hourly earnings of women and men in the private sector – remained at 18.8 % in Austria; and therefore, above the EU-27 average of 12.3 %, making Austria one of the countries with the highest gender-pay gaps in the EU.<sup>20</sup> According to *Statistik Austria*, around 33% of the gender pay gap in Austria can be traced back to gender-specific differences in the labour market, such as women being more likely to be employed in lower-paid occupations, such as the service sector.<sup>21</sup> Women are also more likely to be employed part-time: In 2022, the part-time rate (that is, “the number of all persons working part-time as a share of all employed.”<sup>22</sup>) for women was 50.7%. In contrast, the part-time rate for men was lower at 12.6%.<sup>23</sup>

In her report following her visit to Austria in 2021, the Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, observed that almost half of all employed women work part-time. She noted that this may be a result of women being the main carers at home, taking on care work for family members such as children or older relatives.<sup>24</sup> The Commissioner further highlighted the lack of

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<sup>15</sup> United Nations Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, 1 April 2014, A/HRC/26/39, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F26%2F39&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>16</sup> United Nations Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, 1 April 2014, A/HRC/26/39, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F26%2F39&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>17</sup> Statistik Austria, Armut 2022 (poverty), <https://www.statistik.at/statistiken/bevoelkerung-und-soziales/einkommen-und-soziale-lage/armut>

<sup>18</sup> Statistik Austria, Armut 2022 (poverty), <https://www.statistik.at/statistiken/bevoelkerung-und-soziales/einkommen-und-soziale-lage/armut>

<sup>19</sup> Statistik Austria, Armut- und Ausgrenzungsgefährdung, 2022, <https://www.statistik.at/statistiken/bevoelkerung-und-soziales/gender-statistiken/armuts-oder-ausgrenzungsgefaehrdung>

<sup>20</sup> European Commission, The gender pay gap situation in the EU, 2021, [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en)

<sup>21</sup> Statistik Austria, Gender pay gap remains above EU average in spite of slight decrease, 2023, <https://www.statistik.at/fileadmin/announcement/2023/03/20230303GenderStatistikEN.pdf>

<sup>22</sup> Statistik Austria, 2023, Part-time work, part-time rate

<sup>23</sup> Statistik Austria, Gender-Statistik, [https://www.statistik.at/fileadmin/pages/360/Infotext\\_Gender-Statistik\\_Erwerbstaetigkeit.pdf](https://www.statistik.at/fileadmin/pages/360/Infotext_Gender-Statistik_Erwerbstaetigkeit.pdf)

<sup>24</sup> Commissioner For Human Rights Of The Council Of Europe, *Report Following Her Visit To Austria From 13 To 17 December 2021*, 12 May 2022, CommDH(2022)10, para 96 - 100, <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/1680a6679a>

adequate childcare services, leaving many women with no choice but to take on the care work in the family.<sup>25</sup>

Older age, migration status or single parenthood can increase the risk of experiencing poverty for women. For example, the combination of women mainly working part-time and earning comparatively less than men, as well as women being the main caretakers within families, result in the stark gender pension gap, which is the percentage difference in pension income for women compared to men, of 34.4 % in 2022.<sup>26</sup>

A study commissioned by the Federal Ministry for Social Affairs found that single-parent-households – which are predominantly women-led households – are at higher risk of experiencing poverty and social exclusion than other households.<sup>27</sup> In 2019, for example, 46% of all single-parent households in Austria were at risk of poverty. According to this study, factors such as a lack of full-time employment for people in single-parent households as well as a rise of migrant single-parent households, which are both factors associated with higher risks of experiencing poverty, contribute to this high rate.<sup>28</sup>

Patrizia Dorn, a social worker at *lilawohnt*, an organization offering support to women experiencing homelessness, explained to Amnesty International Austria: “Women experience the highest levels of poverty, in part because of a lack of [financial] protection within the household or employment. Poverty has many faces and there are multiple measures to deal with poverty. What we can say, however, is: Poverty is female. Poverty is inherited, and poverty makes people lonely. And it is only exacerbated when there is no security of livelihood.”<sup>29</sup> Therefore, the Government of Austria should take into account a gender-perspective when analysing and responding to poverty.

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<sup>25</sup> Commissioner For Human Rights Of The Council Of Europe, *Report Following Her Visit To Austria From 13 To 17 December 2021*, 12 May 2022, CommDH(2022)10, para 100, <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/1680a6679a>

<sup>26</sup> Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz, Informationen ((Federal Ministry of Social Affairs) zum Equal Pension Day 2023, 2023, <https://www.sozialministerium.at/dam/jcr:cc01f446-2e3d-45c7-b07e-8d628f382c9a/Informationen%20Equal%20Pension%20Day%202023.pdf>

<sup>27</sup> Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz (Federal Ministry of Social Affairs), Karin Heitzmann und Astrid Pennerstorfer, *Armutsgefährdung und soziale Ausgrenzung von Ein-Eltern- Haushalten in Österreich*, 2021

<sup>28</sup> Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz, Karin Heitzmann und Astrid Pennerstorfer, *Armutsgefährdung und soziale Ausgrenzung von Ein-Eltern- Haushalten in Österreich*, 2021

<sup>29</sup> Interview with Patrizia Dorn, *lilawohnt*, 07 July 2023, in person

### 1.3. THE BASIC ACT ON SOCIAL SECURITY IS NOT CONSISTENT WITH AUSTRIA'S HUMAN RIGHTS OBLIGATIONS

*„Before, there was such a thing as a right to receive support. Now it's about charity, you have to beg for it.“*

- Johanna Reithner, Head of Volkshilfe FAIR<sup>30</sup>

Austria has various programs in place to realise the right to social security. These range from unemployment benefits, family benefits, maternity care, health care, to a pension system.<sup>31</sup> Most of these schemes are contributory and insurance-based, requiring individuals to contribute to these schemes. In addition, certain benefits, such as family benefits, are universal schemes. The social assistance benefits system discussed in this briefing is part of the non-contributory benefits in Austria. It is a targeted scheme based on individual financial need and is widely regarded as the so-called 'last social safety net' for individuals experiencing poverty.<sup>32</sup>

Prior to 2019, each federal state had its own means-tested minimum income benefits system in place. Whilst the means-tested minimum income benefits system varied from federal state to federal state, each of them had in common that the benefits were based on nationally set minimum rates where federal states could not go below the agreed upon amount.<sup>33</sup>

In 2019, the ÖVP-FPÖ<sup>34</sup> led government passed the BAoSA pursuant to Article 12 of the Austrian Constitution. This BAoSA replaced the so-called 15a-Agreement between the national government and the federal states (*Bundesländer* or *Länder*). It aimed to achieve greater harmonization of the social assistance systems among the federal states by providing a basic legislative framework for the social assistance system in Austria. Thus, the BAoSA set out to replace the regional means-tested minimum income benefits.

The BAoSA was introduced on 1 June 2019. The plan was that it would be implemented within seven months by all the federal states.<sup>35</sup> As of August 2023, only six of the nine federal states implemented the BAoSA in their respective regional legislations. These six federal states are Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria and Vorarlberg. Burgenland and Tyrol have yet to introduce the respective implementation acts; and Vienna implemented the BAoSA partly.<sup>36</sup>

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<sup>30</sup> Interview with Johanna Reither, 22 May 2023, online

<sup>31</sup> The ILO defines universal social protection floors as: "Social protection floors are nationally defined sets of basic social security guarantees that should ensure, as a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level." - see International Labour Organization, Social protection floor, <https://www.ilo.org/secsoc/areas-of-work/policy-development-and-applied-research/social-protection-floor/lang-en/index.htm>

<sup>32</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf\\_page\\_14](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf_page_14)

<sup>33</sup> See also [oesterreich.gv.at](https://www.oesterreich.gv.at/lexicon/M/Seite.9900223.html), Mindestsicherung, <https://www.oesterreich.gv.at/lexicon/M/Seite.9900223.html>

<sup>34</sup> The ÖVP-FPÖ coalition consisted of the Austrian People's Party (ÖVP), a Christian-conservative party, and the Freedom Party of Austria (FPÖ), a right-wing party.

<sup>35</sup> [oesterreich.gv.at](https://www.oesterreich.gv.at), Allgemeines zur Sozialhilfe/Mindestsicherung, <https://www.oesterreich.gv.at/themen/soziales/armut/3/2/Seite.1693914.html>

<sup>36</sup> Vienna has implemented part of the Basic Act on Social Assistance

## SOCIAL ASSISTANCE BENEFITS IN AUSTRIA

As mentioned above, six of the nine federal states – which are Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria and Vorarlberg – enacted implementation acts in full compliance with the BAoSA, and thus allowing individuals experiencing poverty to apply for social assistance benefits under the BAoSA and its respective implementation acts. Generally, every Austrian citizen and individuals with an equal status (see Chapter 4.1.) are eligible to apply for social assistance benefits, if their household-income is below the amount of what social assistance benefits would grant. In 2023, a single-household is entitled to a maximum of 1,054 Euros.<sup>37</sup> So any household with a lower income than this would be eligible for benefits under the BAoSA if they met the other eligibility criteria.

Since social assistance benefits are of a subsidiary nature, individuals are required to first claim any other benefits or services they are entitled to from other authorities and third parties, including family members in certain instances (see Chapter 4.3). Moreover, all disposable income will count towards assessing the need for these benefits, including the total income of a household, insurance-based incomes, such as unemployment benefits or financial support of relatives or previous partners.<sup>38</sup> For example, if a person living in a single-household is receiving unemployment benefits of 500 Euros, they may be entitled to top up their income with social assistance benefits under the BAoSA.

In Austria, social assistance benefits are a targeted scheme under the right to social security, meaning social assistance benefits will only be granted after the assessment of an individual need and fulfilment of eligibility criteria. Individuals will have to provide evidence of their income status. Furthermore, individuals are only entitled to apply for social assistance benefits if their assets are below 6.322 Euro.<sup>39</sup> Assets may include properties and vehicles – unless needed and used by the individual, those assets must be sold in order to obtain social assistance benefits.<sup>40</sup>

Persons may apply for social assistance benefits in person or online by filling out an application form and providing the authorities with all relevant information and documents necessary to assess a person's entitlement to social assistance benefits.

Furthermore, unless a person is exempt from this requirement due to, for example, having reached the official age for retirement or having childcare responsibilities, individuals receiving social assistance benefits will often have to meet further requirements in order to continuously receive those benefits. These requirements may include providing proof of a willingness to work as well as proof over attending German courses.

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<sup>37</sup> See Bundesministerium für Soziales, Arbeit, Gesundheit und Konsumentenschutz (Federal Ministry of Social Affairs), Anspruchsvoraussetzungen (Eligibility Criteria), <https://www.sozialministerium.at/Themen/Soziales/Sozialhilfe-und-Mindestsicherung/Anspruchsvoraussetzungen.html>

<sup>38</sup> However, certain benefits, such as family benefits, are explicitly excluded. See the Social Assistance Act, Section 7, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010649>

<sup>39</sup> See Bundesministerium für Soziales, Arbeit, Gesundheit und Konsumentenschutz (Federal Ministry of Social Affairs), Anspruchsvoraussetzungen (Eligibility Criteria), <https://www.sozialministerium.at/Themen/Soziales/Sozialhilfe-und-Mindestsicherung/Anspruchsvoraussetzungen.html>

<sup>40</sup> Section 7 of the BAoSA



## MEANS-TESTED MINIMUM INCOME BENEFITS

In comparison to the above-mentioned federal states, Tyrol, Burgenland and Vienna still provide means-tested minimum income benefits. Means-tested minimum income benefits too are subsidiary, however, one of the main differences to the social assistance benefits are the fact that means-tested minimum income benefits rely on minimum rates and standards instead of benefit caps, allowing federal states to provide more favourable benefits. Thus, whereas under the social assistance benefits a single-household may be entitled to a maximum of 1.054 Euros, individuals receiving means-tested minimum income benefits may receive a minimum of the same amount and can technically receive more in some circumstances. As an example, rent subsidies are not counted as an additional income for individuals receiving means-tested minimum income benefits. Therefore, a person could receive, both, rent subsidies and means-tested minimum income benefits in the federal states that have not implemented the BAoSA.

The BAoSA led to various changes in social assistance benefits, and these raise serious human rights concerns. For example, the BAoSA does not include poverty alleviation as a main objective and introduces maximum amounts of social assistance benefits per household (as opposed to a minimum amount, which was the case earlier).

Amnesty International's human rights analysis titled '*Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*' (in English: *The Basic Act on Social Assistance: A Step Back for Human Rights*) assessed how the introduction of the BAoSA has resulted in several human rights concerns.<sup>41</sup> For example, that the introduction of benefit caps is *prima facie* a retrogressive measure as it is a step back from the means-tested minimum income benefits scheme in place before.<sup>42</sup> Similarly, with the explicit exclusion of persons with subsidiary protection status and the five-year waiting period for non-nationals, the BAoSA does not guarantee a non-discriminatory access to social assistance benefits.<sup>43</sup> Thirteen experts interviewed by Amnesty International Austria have highlighted how the social assistance system has worsened since the introduction of the BAoSA.<sup>44</sup> For example, Barbara Bühler, coordinator of the regional poverty network in Lower Austria and social worker, explained to Amnesty International Austria: "The most serious and massive problem is the introduction of maximum amounts [of social assistance benefits]. The basic problem is that the standard rates are based on the maximum amounts, and these are divided into housing and living costs. That doesn't reflect the reality of life."<sup>45</sup>

Considering the differences between the means-tested minimum income benefits scheme and the BAoSA, Ilse Zapletal, member of the legal department of the *VertretungsNetz (Representation Network)*, explained to Amnesty International Austria the differences between the means-tested minimum income scheme and the BAoSA: "The means-tested minimum income scheme and the

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<sup>41</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

<sup>42</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

<sup>43</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

<sup>44</sup> See Interview with Sabine Kofler, 06 July 2023, online; Interview with Doris Pettighofer, 22 May 2023, in person; Interview with Alexander Leitner, 04 July 2023, online; Interview with Konstantin Prager and Janine Kroner, 12 May 2023, online; Interview with a social worker at a woman's shelter in Upper Austria (name anonymised due to safety reasons), 22 July 2023, online; Interview with Ulrike Oforha, 17 May 2023, online; Interview with Barbara Bühler, 17 May 2023, online; Interview with Karin Heitzmann, 27 July 2023, online; Interview with Ilse Zapletal, 01 August 2023, in person; Interview with Norbert Krammer, 27 July 2023, online; Interview with Josef Pürmayr, 02 August 2023, online; Interview with Michael Fuchs, 02 August 2023, in person

<sup>45</sup> Interview with Barbara Bühler, 17 May 2023, online

social assistance benefits scheme are as different as night and day. The BAoSA is also an example of what happens when social human rights are not enshrined in the constitution. You can see how quickly a system of relatively good protection can be destroyed for political reasons. The means-tested minimum income scheme was not perfect either, but the approach was clear: With the minimum income benefit which was based on an agreement in accordance with Article 15a of the Federal Constitution, a minimum level was agreed upon that people in a social emergency were entitled to and that could not be undercut. The formulated goal was to combat and prevent poverty. Less than ten years later, maximum rates were enshrined in the BAoSA, i.e. nothing more than that was allowed. This created a system that was unsuitable from the outset to adequately support people in times of crisis, for example during the pandemic, the energy crisis and high inflation.”<sup>46</sup>

Overall, the introduction of the BAoSA has not only left the social assistance system fragmented since not every federal state has enacted the respective implementation act and even the implementation acts can vary, but also marks a step back from the previous system. Taking into account the various deteriorations within the social assistance system, including the introduction of benefit caps as well as the introduced barriers in eligibility, Amnesty International Austria concluded that the BAoSA is not in line with Austria’s human rights obligations under Article 9 ICESCR, Article 9 in conjunction with Article 2 ICESCR and under Article 13 ESC (rev.).<sup>47</sup>

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<sup>46</sup> Interview with Ilse Zapletal, 01 August 2023, in person

<sup>47</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

## 2. AUSTRIA'S HUMAN RIGHTS OBLIGATIONS

*„Social assistance benefits should help those people who currently cannot cover their basic needs, such as housing, sleeping, eating and also participation in society - so that they do not slip into poverty.“*

– Social worker from a women's shelter in Linz<sup>48</sup>

Article 9 ICESCR guarantees the right to social security, stipulating that “State Parties to the present Covenant recognize the right of everyone to social security, including social insurance”. On a regional level, Article 12 and Article 13 of the European Social Charter (rev.) guarantee the rights to social security and to social and medical assistance, respectively. In addition, the right to social security is also guaranteed in other international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (UN CEDAW) and the Convention on the Rights of Persons with Disabilities (UN CRPD).<sup>49</sup>

The right to social security is indispensable for a life in dignity as it ensures that people enjoy protection from risks to loss of income during their whole life cycle, such as during sickness, unemployment and old age. It is closely linked to the enjoyment of other human rights, as also stipulated in Article 22 of the Universal Declaration of Human Rights.<sup>50</sup>

Regarding the right to social security, the CESCR stipulates in its General Comment No. 19 that “the right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) “lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents“.<sup>51</sup>

According to Article 2(1) ICESCR, states have the obligation to progressively realize the rights enshrined in the ICESCR. According to the CESCR, this principle of progressive realization “imposes an obligation on state parties to ‘move as expeditiously and effectively as possible towards this goal’”.<sup>52</sup> Additionally, any retrogressive measure “would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”.<sup>53</sup>

The CESCR further elaborates that while the rights enshrined in the Covenant are of progressive realization, state parties must ensure that core obligations are immediately implemented, including to:

- ensure minimum essential level of benefits “that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education;

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<sup>48</sup> Interview with a social worker from a women’s shelter in Linz (name withheld for privacy reasons), 22 June 2023, online

<sup>49</sup> The CRPD enshrines in Article 28 the right to social protection. Social protection and security may be used interchangeably. Article 11 (e) of the CEDAW foresees a right to social security.

<sup>50</sup> United Nations, Universal Declaration of Human Rights, Article 22

<sup>51</sup> CESCR General Comment No. 19, UN Doc E/C.12/GC/19, 2008, para 2

<sup>52</sup> CESCR, General Comment 3, para 9

<sup>53</sup> CESCR, General Comment 3, para 9; According to the General Comment No 3 of the CESCR „ The Committee notes that the phrase “to the maximum of its available resources” was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.” (para13) Thus, state parties are obliged to allocate adequate resources to ensure a progressive realization as well as guarantee the core obligations set forth in the Covenant.

- ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;
- take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups;
- monitor the extent of the realization of the right to social security.<sup>54</sup>

The CESCR also very strongly presumes that the Covenant prohibits retrogressive measures taken in relation to the right to social security. If any retrogressive measures are taken, there needs to be a reasonable justification, a prior comprehensive examination of alternatives, genuine participation of affected groups and an independent review of the measures at the national level, all of which must be proven by the state in question.<sup>55</sup> The CESCR will particularly look at whether the measure taken is directly or indirectly discriminatory and/ or will have a sustained impact on the realization of the right to social security or if an individual or group is deprived of access to the minimum essential level of social security.<sup>56</sup>

Lastly, the CESCR recognizes that state parties may adopt different systems covering the right to social security, including insurance-based schemes. However, in its General Comment No 19, the CESCR also highlights the need for state parties to introduce non-contributory schemes “since it is unlikely that every person can be adequately covered through an insurance-based system.”<sup>57</sup> Moreover, Article 13 ESC (rev.), namely the right to social and medical assistance, sets out that the only criterion for receiving benefits should be “individual need”.<sup>58</sup>

#### **WOMEN'S HUMAN RIGHT TO SOCIAL SECURITY**

Intrinsically linked to the right to social security, is the principle of non-discrimination and equality (Articles 2(2) and 3 ICESCR). In this respect, Article 11(e) UN CEDAW guarantees the right to social security for all women. Yet, women still face barriers in the enjoyment of their right to social security. In 1995, the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, places a commitment on all state parties to review their social security systems “with a view to placing individual women and men on an equal footing, at every stage of their lives”.<sup>59</sup>

Considering existing inequalities between men and women, the CESCR stated in its General Comment No 16 that “in implementing article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.”<sup>60</sup>

However, persistent gender inequalities in the labour market directly affect women’s social protection coverage. Globally, labour force participation of women is lower due to unequal access to education, training and an unequal distribution of care responsibilities within a household. Furthermore, not taking into account the needs of women in the design of social security schemes might risk increasing the challenges women face in this respect, and consequently might lead to further inequalities.<sup>61</sup> For

<sup>54</sup> CESCR General Comment No. 19, para 59

<sup>55</sup> CESCR General Comment No. 10, para 42

<sup>56</sup> CESCR General Comment No.19, para 42

<sup>57</sup> CESCR General Comment No. 19, para 4

<sup>58</sup> Karin Lukas, *The Revised European Social Charter, An Article by Article Commentary*, 2021, p 186

<sup>59</sup> United Nations, Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, A/CONF.177/20/Rev.1, paras 58(o) and 106(d),

<https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>

<sup>60</sup> General Comment No 16, para 8

<sup>61</sup> See also Amnesty International, “If housing was a human right, I wouldn’t live like this” – Barriers to accessing homeless assistance services in Austria, Index Number: EUR 13/5458/2022, 2022, <https://www.amnesty.org/en/documents/eur13/5458/2022/en/>

example, where households are targeted instead of individual women, intra-household dynamics are often neglected which influences women's access to resources.<sup>62</sup>

Therefore, to ensure equal access to social security benefits, those systems must take into consideration sociocultural contexts affecting women and must be designed in a way that do not exacerbate existing inequalities.<sup>63</sup>

Taking into consideration that women are not a homogenous group, social security systems must also account for the fact that women with different life circumstances and from different background may have specific needs. This is in particular highlighted in Article 28 (2) (b) UN CRPD which reads that State Parties must ensure "access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programs and poverty reduction programs".

Austria is a state party to all the above-mentioned human rights instruments, including the ICESCR<sup>64</sup>, UN CEDAW<sup>65</sup>, UN CRPD<sup>66</sup> as well as the ESC (rev.)<sup>67</sup> and consequently obliged to respect, protect and fulfil the right to social security. As a state party, Austria is responsible for ensuring that all actions and omissions of any state organ or division, including federal and local governments, are consistent with human rights obligations.<sup>68</sup>

As outlined in Amnesty International Austria's first analysis on the right to social security, although economic, social and cultural rights are not enshrined in the Austrian constitution, Austria has committed itself to guarantee these human rights by ratifying a number of relevant international treaties and conventions, first and foremost the ICESCR and the European Social Charter (rev.).<sup>69</sup> Being a state party, Austria has the obligation to use the maximum available resources to achieve the full realization of the rights set out in it. It is also noteworthy that despite having enacted an 'Erfüllungsvorbehalt' (reservation to its execution on national level) in its national legislation that prevents courts and administrative bodies from implementing it directly, in accordance with Article 27 Vienna Convention on the Law of Treaties, Austria remains bound to the implementation of all rights set forth in the ICESCR.<sup>70</sup>

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<sup>62</sup> United Nations Department of Economic and Social Affairs, *Chapter I: Social protection and social progress in 2018 Report on the World Social Situation*, p 18-19, <https://www.un.org/development/desa/dspd/world-social-report/2018-2.html>

<sup>63</sup> United Nations Department of Economic and Social Affairs, *Chapter I: Social protection and social progress in 2018 Report on the World Social Situation*, p19, <https://www.un.org/development/desa/dspd/world-social-report/2018-2.html>

<sup>64</sup> Ratification date 10 September 1978, UN Human Rights Treaty Bodies, Ratification Status by country, Austria, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN)

<sup>65</sup> Ratification date 31 Mar 1982, UN Human Rights Treaty Bodies, Ratification Status by country, Austria, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN)

<sup>66</sup> Ratification date 26 September 2008, UN Human Rights Treaty Bodies, Ratification Status by country, Austria, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN)

<sup>67</sup> Austria ratified the European Social Charter on 29/10/1969 and the Revised European Social Charter on 20/05/2011, accepting 76 of the Revised Charter's 98 paragraphs. See Council of Europe, Austria, <https://www.coe.int/en/web/european-social-charter/austria>

<sup>68</sup> CESCR, General Comment No. 4, para 12

<sup>69</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf)

<sup>70</sup> United Nations, Vienna Convention on the Law of the Treaties, 1969: Article 27 stipulates that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty"

### 3. FEELING “LIKE A SCROUNGER”: STIGMA AS A BARRIER TO ACCESSING SOCIAL ASSISTANCE BENEFITS

*“They [social welfare offices] make you feel like a misfit, like a scrounger.”*

– Anna, who has experience with means-tested minimum income benefits<sup>71</sup>

Poverty, being more than a lack of income, is often coupled with further marginalization, social exclusion and stigmatization.<sup>72</sup> This stigmatization can be reinforced by public narratives on poverty.<sup>73</sup> Public comments by prominent public figures reinforce the notion that poverty is a sign of personal failure rather than rooted in wider structural causes, which exacerbates the stigmatization of poverty. As an example, in a recently leaked video, the current Austrian Chancellor Karl Nehammer suggested that it is up to the individual to overcome poverty: “If I do not have enough money, then I will work more.”<sup>74</sup> Similarly, the former Austrian Chancellor Sebastian Kurz stated that it “is not a good development if more and more people have no work and are dependent on means-tested minimum income benefits”.<sup>75</sup> His coalition partner and former Vice-Chancellor Heinz-Christian Strache stated that the political intention behind the BAoSA was to stop “[t]he immigration into the social system.”<sup>76</sup> Instead of protecting people’s economic and social rights and ensuring they are treated with respect and dignity, such statements by political leaders risk reinforcing the negative stereotyping and stigmatization of people living in poverty.

#### 3.1. PEOPLE FEEL SHAME ACCESSING SOCIAL ASSISTANCE BENEFITS

*“Even when they are theoretically eligible to receive social protection benefits and even where the benefits of applying outweigh the costs, individuals face crippling initial obstacles when attempting to engage with social protection systems. These hurdles include ... stigmatization when engaging with public administrations.”*

– Special Rapporteur, Olivier De Schutter<sup>77</sup>

<sup>71</sup> Interview with Anna, 12 July 2023, in person

<sup>72</sup> See OHCHR, Guiding Principles on Extreme Poverty and Human Rights, p 2, [<https://www.ohchr.org/en/special-procedures/sr-poverty/guiding-principles-extreme-poverty-and-human-rights>]

<sup>73</sup> This well-known political slogan in Austria has been used in its form just recently by the Minister for Labour and Work, Martin Kocher, see Parliament Österreich, *Arbeitsminister Kocher: Leistung muss sich lohnen*, 2023, [https://www.parlament.gv.at/aktuelles/pk/jahr\\_2023/pk0354](https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk0354) or Salzburger Nachrichten, Nehammer äußert sich nach Aufregung um Burger-Video: “Ich stehe dazu, dass sich Leistung lohnen muss”, <https://www.sn.at/politik/innenpolitik/aufregung-nehammer-video-mcdonalds-burger-mahlzeit-146039113>, accessed 02 October 2023

<sup>74</sup> Die Presse, Kein warmes Essen für Kinder? Nehammer verweist auf McDonald’s, <https://www.diepresse.com/17705415/kein-warmes-essen-fuer-kinder-nehammer-verweist-auf-mcdonalds>, accessed 28 September 2023

<sup>75</sup> ORF, Kurz und Strache attackieren Wien, <https://orf.at/stories/3107221/>

<sup>76</sup> Kurier, *Neue Sozialhilfe: Worauf sich die Bundesregierung einigen konnte*, [Neue Sozialhilfe: Worauf sich die Bundesregierung einigen konnte | kurier.at, 28.11.2018](https://kurier.at/28.11.2018)

<sup>77</sup> Report to the Human Rights Council, Non-take-up of rights in the context of social protection, Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, 2022, A/HRC/50/38, para 56, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>, para 43

The stigmatization and negative stereotyping of people living in poverty and people accessing social assistance benefits not only impacts their dignity but can affect how comfortable people feel in accessing social protection schemes and therefore claiming their rights. This is exacerbated when politicians and public figures use their platform to affirm such negative stereotypes, instead of creating a more supportive environment for people to be able to access their rights.

Amnesty International Austria spoke with 17 people who had applied for support through Austria's social assistance system. The Special Rapporteur has noted in his report, "shame and stigma are frequently underreported".<sup>78</sup> Despite this stigma, seven interview partners mentioned feeling ashamed, embarrassed or otherwise reluctant to access benefits<sup>79</sup>. For example, **Susi\***, a 60-year-old woman currently receiving social assistance benefits, told Amnesty International Austria:

*"I was self-employed for more than 30 years, then I suffered a heart attack, was ill for a long time, and had to close the business. For a long time, I lived off my savings. My friend submitted the application for me when I no longer had any means... I never thought it would affect me... It can happen to anyone, very quickly. Everyone has to be aware of that...I would never have applied for social assistance benefits on my own accord, the reason for that is pride and above all shame.... The biggest problem is pride, the shame. It's humiliating when you're already at the social welfare office and then you are also being sent to Caritas [Austria, an NGO offering support and other forms of aid to people in need in Austria]."<sup>80</sup>*

As outlined in the chapter above, poverty is usually rooted in structural causes where the failures of effective human rights-compliant approaches to poverty prevention and elimination become evident. Those structural causes, coupled with individual risks during the life cycle can lead to individuals experiencing poverty and needing to access social protection schemes, crucial to ensure an adequate standard of living. **Lara\***, a 36-year-old woman explained to Amnesty International Austria how she felt, knowing that social assistance was the only remaining option because of the lack of alternatives due to her disability:

*"I got into the situation [of receiving social assistance benefits] because of my autoimmune disease. At that time there was nothing for me, no vocational training or work and I fell through the pension system. I had no income... I know it as social assistance benefits, then means-tested minimum income benefits, and now social assistance benefits again...If we hadn't needed the social assistance benefits for essentials like filling the fridge, I wouldn't have wanted to apply for it because it's a bad feeling...It's not a nice feeling. You don't like having to go beg for money. It's like that with all the authorities. You're a petitioner and you're always forced to justify yourself.... And then there's also this stigma: who or what is a beneficiary of social assistance benefits? That's not nice. Many say it's only lazy people who receive social assistance benefits. I have even raised awareness in my own circle of acquaintances and shown that this is not the case...The dependency is terrible. This arbitrariness of the authorities... What would be really*

<sup>78</sup> Report to the Human Rights Council, Non-take-up of rights in the context of social protection, Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, 2022, A/HRC/50/38, para 56, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>

<sup>79</sup> Interview with Susi (name has been changed), 14 June 2023, in person; Interview with Hanna (name has been changed), 15 June 2023, in person; Interview with Anna, 12 July 2023, in person; Interview with Lara (name has been changed), 20 July 2023, in person; Interview with Sandra, 28 July 2023, in person; Interview with Lisa (name has been changed), 31 July 2023, in person; Interview with Nina (name has been changed), 10 August 2023, in person

<sup>80</sup> Interview with Susi (name has been changed), 14 June 2023, in person

*important: see the individual people who are living with it. I would like to be rid of this bad feeling. I have the feeling that I have done something wrong. They always question everything and inquire about every detail. Take the pressure out. Means-tested minimum income benefits [was] a nicer word than social assistance. It makes a difference in the mind. Means-tested minimum income benefits sound more like solidarity as if people were being taken along. Social assistance sounds like something you beg for. There's the image in your head: there's the normal working-class society and there's the rest.”<sup>81</sup>*

In another interview, **Anna**, a 61-year-old woman, explained to Amnesty International Austria how it felt as a single mother of four having to find suitable employment, and to access social assistance when she needed it:

“I had outbursts of rage and tears. I've already told those around me, but it was such a shock, such a low blow. ‘Why me? People who are ill receive these benefits!’ ... Then when I no longer needed means-tested minimum income benefits, it was such a relief to no longer be dependent on them ... I block out that time. I just don't want to remember it. ... At the [social welfare] office, I experienced an insane amount of shaming, you were treated badly when applying. My daughter [when she was in the situation of being eligible] didn't even apply for it because there was so much aggression at the offices. We were afraid to go there...The [people working there] were incredibly unfriendly, they said things like: ‘There's nothing for you, go work more.’ But I have four children, two of them have disabilities, I couldn't go back to work or work more.”<sup>82</sup>

Additionally, a previous report of Amnesty International has shown how the lack of an approach to addressing poverty that is rooted in human rights leaves individuals feeling like petitioners rather than rights-holders.<sup>83</sup> This is underlined by the fact that in Austria, economic, social and cultural rights are not constitutionally enshrined leaving individuals unable to claim their rights before courts.<sup>84</sup> In his 2022 report, the Special Rapporteur on extreme poverty noted that “states can and must do more to reduce the stigma and shame faced by potential recipients of social protection benefits”, adding that “most importantly perhaps, social protection should be enshrined as a human right, an entitlement rather than a favour or charity. Considering that stigma will be lower where claimants are seen as entitled to their benefits, States should ensure that social protection is perceived by administrations and other public institutions as a right that each person is entitled to receive”.<sup>85</sup>

### **3.2. THE BASIC ACT OF SOCIAL ASSISTANCE INCREASES STIGMATIZATION AND FEELINGS OF SHAME**

*" You don't dare say it. Everyone thinks you are a social parasite. I don't like to say it."*

– Hanna\*, a 57-year-old woman receiving social assistance benefits.<sup>86</sup>

<sup>81</sup> Interview with Lara (name has been changed), 20 July 2023, in person

<sup>82</sup> Interview with Anna, 12 July 2023, in person

<sup>83</sup> See Amnesty International, *„If housing was a human right, I would not live like this“: Barriers to accessing homeless services in Austria*, EUR 13/5458/2022, <https://www.amnesty.at/media/9677/amnesty-report-wohnungs-und-obdachlosigkeit-oesterreich-april-2022-en.pdf>

<sup>84</sup> Amnesty International, *“If housing was a human right, I would not live like this”- Barriers to accessing homeless assistance services in Austria*, 2022, <https://www.amnesty.org/en/documents/eur13/5458/2022/en/>

<sup>85</sup> Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, *Non-take-up of rights in the context of social protection* (A/HRC/50/38), 19 April 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/322/17/PDF/G2232217.pdf?OpenElement>

<sup>86</sup> Interview with Hanna (name has been changed), 15 June 2023, in person



Amnesty International Austria has identified two main key issues related to the BAoSA and its stigmatizing effects: the in-kind benefits and the disciplining tone of the Act. Interview partners shared with Amnesty International Austria that – in comparison to the previous system – these add to feelings of shame among individuals receiving social assistance benefits.

Section 7 (7) of the BAoSA requires individuals to “provide information and documentation concerning their income and wealth situation”. It also foresees that individuals have to “immediately notify the authorities on any changes in this respect, at the latest within a month”.<sup>87</sup> In addition, Section 9 of the Act requires the federal states to implement an “effective control mechanism” to “periodically review the income and wealth situation of beneficiaries of social assistance in light of the legality of the benefits”; and its paragraph 2 foresees “the enforcement of effective and deterrent sanctions in light of the unlawful receipt of benefits”.<sup>88</sup>

Ten experts Amnesty International Austria spoke to pointed out the stigmatizing effect the introduction of the BAoSA has had.<sup>89</sup> For example, Ilse Zapletal from *VertretungsNetz*, an organization representing adults with disabilities, told Amnesty International Austria that in her view “the new social assistance scheme is based on the old strategies of poverty management and disciplining the poor.” She explained that “this is intended not only to create pressure on individuals receiving social assistance benefits, but also to exert competitive pressure on those currently employed. The language and structure of a law are important. A law can create solidarity and understanding. The BAoSA does neither. The first half of the act explains what I have to do and what I have to be or who I am not allowed to be, and only then does it talk about concrete help. People should not be given money, but primarily receive benefits in kind. The sanctions must not only be effective, but also dissuasive. The BAoSA paints a picture of humanity that in no way does us justice.”<sup>90</sup>

Michael Fuchs from the European Centre for Social Welfare Policy and Research shared with Amnesty International Austria that the introduction of the BAoSA led to a deterioration in the social security scheme in Austria and is still negatively framed and connotated: “The reintroduction of social assistance benefits is also a psychological deterioration for people. It is once again framed with stigmatization and generally makes people feel ashamed, and the typical views on welfare recipients do the rest.”<sup>91</sup>

Furthermore, the BAoSA foresees benefits both in cash and in-kind, whereas in-kind benefits for accommodation are preferred by authorities, as a result of which they transfer benefits for rent to the landlords directly.<sup>92</sup> This not only means that landlords are aware of whether their tenants are receiving social assistance benefits, it also might impede the chances of finding a rental in the first place. Moreover, authorities’ preference for in-kind benefits can lead to further stigmatization and feelings of shame as it may reinforce the assumption that individuals receiving social assistance benefits themselves might not have the capacity to regulate their income and expenditures. **Lara\*** summarised how this policy can leave individuals receiving social assistance benefits as incapable:

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<sup>87</sup> Section 7 (7) Basic Act on Social Assistance

<sup>88</sup> Sections 9 (1) and (2) Basic Act on Social Assistance

<sup>89</sup> Interview with Martin Schenk, 08 August 2023, in person; Interview with Michael Fuchs, 02 August 2023, in person; Interview with Barbara and Katharina (name has been changed), 01 September 2023, online; Interview with Katharina Heitzmann, 27 July 2023, online; Interview with Doris Pettighofer, 22 May 2023, in person; Interview with Ulrike Oforha, 17 May 2023, online; Interview with Barbara Bühler, 17 May 2023, online; Interview with Alexander Leitner, 03 July 2023, online; interview with Johanna Reithner, 22 May 2023, online

<sup>90</sup> Interview with Ilse Zapletal, 01 August 2023, in person

<sup>91</sup> Interview with Michael Fuchs, European Centre for Social Welfare Policy and Research, 02 August 2023, in person

<sup>92</sup> See Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Sozialhilfe-Grundsatzgesetz (BAoSA), BGBl. I Nr. 41/2019, Section 3 (5), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010649>

“I don't get the full amount of social assistance benefits transferred to my account to do what I have to do with the money. Instead, the rent is transferred directly to the landlord. You are again declared as incapable... And the landlord automatically knows that you receive social assistance benefits. ... There are some aspects that make you wonder: Has anyone thought about this?”<sup>93</sup>

### 3.3. RISK OF NON-TAKE UP AS A RESULT OF EXISTING STIGMATIZATION

Stigmatization of individuals eligible for social assistance benefits by politicians, public officials and society increases the risk that individuals, despite being eligible to social assistance benefits, might decide to not apply for social assistance benefits because of their fear of experiencing stigmatization and shame.<sup>94</sup> This phenomenon is known as primary non-take-up.<sup>95</sup> Six experts told Amnesty International Austria that they were aware of instances where individuals chose to not apply for benefits in Austria because they felt ashamed or were somehow afraid of the stigma.<sup>96</sup> They noted, for example, that in rural areas stigmatization due to a lack of anonymity can effectively deter people from submitting an application for social assistance benefits.<sup>97</sup>

In an interview with Barbara Bühler, the social worker explained: “Social welfare leads to stigmatization. The number of people who would be entitled to social assistance benefits but do not apply is a problem. In expert circles, we speak of the “non-take-up rate”... But you can only estimate the figures, it is difficult to grasp. I have also experienced this in my work as a social worker, because people try to exhaust all other options first.”<sup>98</sup>

Non-take-up is a prevalent phenomenon and affects social security schemes in several countries.<sup>99</sup> In Austria, comprehensive and current data on non-take-up is missing. However, according to a study in 2020 on the non-take-up of means-tested minimum income benefits, approximately 30% of all households eligible for means-tested minimum income benefits did not apply for them. Reasons for the non-take up were manifold, but include, inter alia, information costs, administrative costs as well as social and psychological costs, such as stigmatization.<sup>100</sup> Thus, stigmatization can be one of the reasons as to why individuals choose not to claim social assistance benefits. Whilst no data is available as yet with respect to the introduction of the BAoSA and respective non-take-up rates, in interviews with Amnesty International Austria, experts suggest that the non-take-up rate has risen since 2020.

Michael Fuchs from the European Centre for Social Welfare Policy and Research and co-author of the study on non-take-up in Austria suggested in interview with Amnesty International Austria researchers that non-take-up rates might have gone up again with the introduction of the BAoSA: “Needs-tested benefits practically always have the problem of non-take-up: they are often stigmatized, you have to submit an application, disclose a lot, and in Austria the accessibility of benefits also varies from district

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<sup>93</sup> Interview with Lara (name has been changed), 20 July 2023, in person

<sup>94</sup> Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, *Non-take-up of rights in the context of social protection (A/HRC/50/38)*, 19 April 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/322/17/PDF/G2232217.pdf?OpenElement>

<sup>95</sup> A/HRC/50/38, para 6, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>

<sup>96</sup> Interview with Konstantin Prager and Janine Kroner, AMS, 12 May 2023, online; Interview with Barbara, 01 September 2023, online; interview with Nicole Keplinger-Sitz, miteinander, 10 August 2023, in person; interview with Sabine Kofler, 06 July 2023, online, Interview with Stefan Hindinger, mosaik, 12 October 2023, online

<sup>97</sup> See for example Interview with Michael Fuchs, 02 August 2023, in person or Fuchs, M., Hollan, K., Gasior, K., Premrov, T. & Scoppetta, A. (2020). Falling through the social safety net? Analysing non-take-up of means-tested minimum income benefit and monetary social assistance in Austria, *Social Policy and Administration*, 54(5): 827-843

<sup>98</sup> Interview with Barbara Bühler, 17 May 2023, online

<sup>99</sup> A/HRC/50/38, para 58, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>

<sup>100</sup> Fuchs, M., Hollan, K., Gasior, K., Premrov, T. & Scoppetta, A. (2020). Falling through the social safety net? Analysing non-take-up of means -tested minimum income benefits and monetary social assistance in Austria, *Social Policy and Administration*, 54(5): 827-843

to district. Access can be kept low-threshold, for example by enabling online applications, and in larger cities there is also support from NGOs. In rural areas, however, it is generally more difficult, there is less anonymity, and the distances are also longer.”<sup>101</sup>

The Special Rapporteur on Extreme Poverty and Human Rights, Olivier De Schutter, highlighted concerns with respect to high non-take-up rates, as they undermine the effectiveness of the social security system by failing to reach those in need of the services. Second, it may lead to psychological affects, “including an increased sense of insecurity, as well as feelings of helplessness, isolation, depression and even suicide”<sup>102</sup>. Other consequences also include the erosion of trust in the state and most importantly, increased poverty and inequality within a society.<sup>103</sup>

According to the Special Rapporteur “states can and must do more to reduce the stigma and shame faced by potential recipients of social [security] benefits.” He further lists as one of the solutions the introduction of universal protection schemes and more importantly, enshrining social security as a human right.<sup>104</sup> As outlined, the fear of stigma and shame can be a barrier for individuals when accessing social assistance benefits.

Where social protection systems use forms of targeting to reach people, state parties must ensure that the methods applied “do not lead to further segregation or stigmatization.”<sup>105</sup> Additionally, the Special Rapporteur highlighted the need for officials to understand social protection schemes as human rights that individuals are entitled to rather than those being mere charitable handouts. “Considering that stigma will be lower where claimants are seen as entitled to their benefits, States should ensure that social protection is perceived by administrations and other public institutions as a right that each person is entitled to receive.”<sup>106</sup>

## 4. BARRIERS IN LAW AND PRACTICE TO ACCESSING SOCIAL ASSISTANCE BENEFITS

In general, the element of accessibility includes the coverage of all persons without discrimination on any ground prohibited under Article 2 ICESCR, namely “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>107</sup> Any “qualifying conditions for benefits must be reasonable, proportionate and transparent”.<sup>108</sup> As a state party to the ICESCR, Austria has to guarantee everyone’s right to social security without discrimination. This means, amongst other things, that Austria has to ensure that social security schemes are accessible to everyone without discrimination on any prohibited grounds such as gender, disability, ethnicity or location.<sup>109</sup>

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<sup>101</sup> Interview with Michael Fuchs, European Centre for Social Welfare Policy and Research, 02 August 2023, in person

<sup>102</sup> A/HRC/50/38, para 22, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>

<sup>103</sup> *ibid*

<sup>104</sup> A/HRC/50/38, Para 57 and 58, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>

<sup>105</sup> Magdalena Sepúlveda and Carly Nyst, The Human Rights Approach to Social Protection, <https://www.ohchr.org/sites/default/files/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>

<sup>106</sup> A/HRC/50/38, para 58, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5038-non-take-rights-context-social-protection-report-special>

<sup>107</sup> ICESCR, Article 2 (2), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>108</sup> CESCR General Comment No. 19, para 24

<sup>109</sup> Social Protection – Human Rights, Standards of Accessibility, Adaptability and Acceptability, <https://socialprotection-humanrights.org/framework/principles/standards-of-accessibility-adaptability-and-acceptability/>

According to the UN Committee on Economic Social and Cultural Rights, accessibility further entails the following aspects:<sup>110</sup>

- a. Coverage: All persons should be covered by the social security system, especially those belonging to disadvantaged and marginalized groups, without discrimination.
- b. Eligibility: Criteria must be reasonable, proportionate and transparent.
- c. Affordability: This element applies to social security programs where contributions are required.
- d. Participation and information in a clear and transparent manner
- e. Physical access: Benefits must be provided in a timely manner and beneficiaries must have physical access to receive benefits and information with particular attention afforded to persons with disabilities, migrants and persons living in remote areas.

According to the United Nations Research Institute for Social Development (UNRISD) and the former United Nations Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda, these standards imply that states must refrain from creating administrative obstacles that hinder people's access to social security schemes, including complex application forms and excessively formal language.<sup>111</sup> In addition, the obligation to ensure non-discrimination requires that states ensure that women and men enjoy their right to social security on an equal basis, and states must address specific any barriers women face in enjoying their right to social security.<sup>112</sup>

However, as this chapter will demonstrate, in Austria, social assistance benefits are not accessible to every person due to barriers in law and in practice.

#### **4.1. RESTRICTIVE ELIGIBILITY CRITERIA**

With regard to the social assistance benefits scheme in Austria, the first barrier in accessing these benefits can be found in the law itself: Section 4 BAoSA stipulates specific eligibility criteria. Generally, the law foresees that only Austrian citizens, persons with an asylum status as well as non-Austrian nationals who have been permanently and legally residing in Austria for at least five years, are entitled to social assistance benefits under the BAoSA. This results in the exclusion of specific groups of people from the full range of social assistance benefits provided by the BAoSA.

##### **INDIVIDUALS WITH SUBSIDIARY PROTECTION STATUS ARE EXCLUDED**

The BAoSA treats individuals with subsidiary protection status differently to refugees. Whilst refugees, meaning individuals with asylum status, are entitled to social assistance benefits, individuals with subsidiary protection status are excluded by law. Section 4 of the Basic Act foresees that persons entitled to subsidiary protection status are only eligible to 'core elements' of social assistance benefits, which do not exceed the level of assistance granted to asylum-seekers. Thus, persons with subsidiary protection status are de facto only eligible to the so-called "basic care" ('*Grundversorgung*'), which are the same benefits asylum seekers receive during their asylum procedure. They are not entitled to the full range of social assistance benefits, to which refugees are entitled.

In addition, due to the different implementation of the Basic Act on Social Assistance in the federal states, this exclusion of individuals with subsidiary protection status is not applicable in all nine federal states. For instance, in Vienna, Tyrol and Burgenland – three federal states that have not (fully) implemented the Basic Act on Social Assistance – individuals with subsidiary protection status are still

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<sup>110</sup> CESCR General Comment No 19, paras 23 ff

<sup>111</sup> Social Protection and Human Rights, *Standards of Accessibility, Adaptability and Acceptability*, <https://socialprotection-humanrights.org/framework/principles/standards-of-accessibility-adaptability-and-acceptability>

<sup>112</sup> See Beijing Declaration and Platform for Action, <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> and CEDAW General Recommendation No 27

eligible to receive means-tested minimum income benefits. Therefore, depending on the location of a person with subsidiary protection status, this person might receive benefits that do not exceed the level of basic care, or this person might receive means-tested minimum income benefits. Ultimately, this situation leads to differential treatment among individuals with subsidiary protection status within Austria.

### **SUBSIDIARY PROTECTION STATUS**

Subsidiary protection is a temporary protection status for persons who do not qualify as refugees but cannot nonetheless be returned to their country of origin because of the risks they would face there. This status may be given to a third-country national or a stateless person after demonstrating “that the person concerned, if returned to their country of origin, or in the case of a stateless person to their country of former habitual residence, would face a real risk of suffering serious harm”, as defined in Art. 15 of Directive 2011/95/EU (Recast Qualification Directive).<sup>113</sup>

Serious harm is defined as the risk of suffering “(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.”<sup>114</sup>

Josef Pürmayr, managing director at *Sozialplattform Oberösterreich*, a network consisting of 43 member organizations, all of which are active in the social sector, spoke to Amnesty International Austria researchers about the problem that individuals with subsidiary protection face. In particular, the fact that individuals with subsidiary protection status are explicitly excluded from receiving social assistance benefits and therefore, only receive benefits under the basic care which are lower in amount, is concerning “[t]hey really live in precarious circumstances in the basic care system. They [the basic care system] have lower standards...For example, in Upper Austria, they [individuals with subsidiary protection status] are also excluded explicitly from receiving social assistance benefits - there is this hardship clause [a clause allowing federal states granting social assistance benefits at their own discretion] based on private law that allows payments to be made to people who do not meet the requirements, but this regulation is still not applicable to beneficiaries of subsidiary protection in Upper Austria.”<sup>115</sup>

Karina\*, a counsellor in Upper Austria working at an organization offering support to migrants, told Amnesty International Austria about some challenges people with subsidiary protection status face: “Regarding the alternatives in Upper Austria: They [the people with subsidiary protection status] work immediately. But those who have a difficult time are single women or women who have fled alone or are divorced. They are then dependent on [family and friends who welcome them and support them].”<sup>116</sup>

According to the CESCR “differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society.”<sup>117</sup> In its General Comment 20, the CESCR stated that nationality and migration status are prohibited grounds of discrimination, saying “[t]he ground of nationality should

<sup>113</sup> European Commission, definitions, subsidiary protection, [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/subsidiary-protection\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/subsidiary-protection_en)

<sup>114</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 15, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0083>

<sup>115</sup> Interview with Josef Pürmayr, 02 August 2023, online

<sup>116</sup> Interview with Karina (name has been changed) Upper Austria, 03 August 2023, online

<sup>117</sup> CESCR General Comment No. 20, para 13, E/C.12/GC/20

not bar access to Covenant rights ... The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation “.<sup>118</sup>

The exclusion of people with subsidiary protection status from eligibility for full social assistance benefits under the BAoSA is differential treatment, based on their nationality and/or migration status. Refugees and people with subsidiary protection status are in equivalent situations in Austria: refugees and persons with subsidiary protection status cannot be returned to their countries of origin due to the risks upon return.<sup>119</sup> Not only are individuals with subsidiary protection status granted an international protection status, but also, in practice, they rely on their international protection status for as long as refugees do.<sup>120</sup>

In such a context, it does not appear that the aims of differentiating between these two groups in terms of their access to social security is legitimate, or ‘for the purpose of promoting general welfare in a democratic society’, as per the CESCR’s observations.<sup>121</sup> According to the explanatory notes to the BAoSA, the reasons for the exclusion of individuals with subsidiary protection status is to “reduce incentives for foreigners who are not eligible to asylum to migrate to Austria in order to apply for social assistance benefits”.<sup>122</sup> In other words, this group is excluded from equal access to social protection because the government wants to deter foreigners who do not qualify for refugee status from coming to the country to benefit from its welfare system. Given states have obligations to provide international protection from refoulement to all individuals who would be at real risk of serious human rights violations in their countries, whether they qualify for refugee status or not, creating a distinction in levels of social protection based on refugee status with the purpose of deterring entry, cannot be considered a legitimate purpose.

This issue has reached Austrian courts before. While the Austrian Constitutional Court did not find an illegitimate differential treatment between refugees and individuals with subsidiary protection status with respect to the means-tested minimum income benefits in Lower Austria,<sup>123</sup> the Austrian Supreme Court stipulated in a case concerning a civil law matter, that despite the different protection status granted to them, individuals with subsidiary protection status in practice require the same length of protection as refugees, as their situation is similar due to the fact that both are in need of international protection and that they are likely to require that status for a similar amount of time.<sup>124</sup>

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<sup>118</sup> CESCR, General Comment No. 20, E/C.12/GC/20, para 30

<sup>119</sup> UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, February 2018, <https://www.refworld.org/docid/5a7835f24.html>, p 33

<sup>120</sup> UNCHR, *UNHCR-Analyse des Entwurfs für ein Sozialhilfe-Grundsatzgesetz*, 2019, <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/01/Analyse-des-Entwurfs-f%C3%BCr-ein-SozialhilfeGrundsatzgesetz.pdf>, p. 3

<sup>121</sup> Article 4, ICESCR

<sup>122</sup> Explanatory Notes on the Basic Act on Social Assistance (104/ME XXVI. GP - Ministerialentwurf – Erläuterungen), p 4, [https://www.parlament.gv.at/dokument/XXVI/ME/104/fname\\_724090.pdf](https://www.parlament.gv.at/dokument/XXVI/ME/104/fname_724090.pdf)

<sup>123</sup> Austrian Constitutional Court, E 3297/2016, 28.06.2017, Austrian Constitutional Court, G 164/2019-25, G 171/2019-24, 12.12.2019; In its judgement concerning the exclusion of a person with subsidiary protection status from receiving means-tested minimum income benefits in Lower Austria, the Austrian Court of Constitution reasoned that the differences in “the factual and resulting legal status between persons entitled to asylum and persons entitled to subsidiary protection are sufficient to justify different treatment in terms of social benefits.” In particular, in its judgement, it was reasoned that individuals with subsidiary protection status only enjoy a temporary right of residence – unlike refugees. See also:

[https://www.vfgh.gv.at/medien/Mindestsicherung\\_NOe\\_Subsidiaer\\_Schutzberechtigte.de.php](https://www.vfgh.gv.at/medien/Mindestsicherung_NOe_Subsidiaer_Schutzberechtigte.de.php)

<sup>124</sup> OGH 19.10.2010, 10 Ob 46/10b, 23.10.2012, 10 Ob 35/12p, 26.02.20213, 10 Ob 4/13f, 10.05.2016, 10 Ob 6/16d, 20.02.2018, 10 Ob 70/17t, vom 13.09.2018, 10 Ob 28/18t and 13.09.2018, 10 Ob 73/18k cited from UNHCR, *UNHCR-Analyse des Entwurfs für ein Sozialhilfe-Grundsatzgesetz*, 2019, p 3, <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/01/Analyse-des-Entwurfs-f%C3%BCr-ein-SozialhilfeGrundsatzgesetz.pdf>

In a case concerning advances on maintenance or alimony payments from the state, the Austrian Supreme Court

Therefore, considering that both refugees and individuals with subsidiary protection status are in similar situations with respect to their need for international protection from *refoulement*, the exclusion of individuals with subsidiary protection status from social assistance benefits constitutes a discriminatory treatment. The sole justification for this differential treatment appears to be based on the idea that the exclusion of individuals with subsidiary protection status will reduce incentives for migration, based on the aims of this legislation as stated by the government, leaving concerns about whether it can be considered to have a legitimate aim.<sup>125</sup> Thus, the exclusion of individuals with subsidiary protection status can be considered discriminatory and not in line with Article 9 in conjunction with Article 2 (2) ICESCR.<sup>126</sup>

### **NON-NATIONALS BELOW A SPECIFIC LENGTH OF STAY ARE EXCLUDED BY LAW**

People who are unable to access social assistance benefits due to the five-year permanent and legal residence requirement, face higher risks of financial dependence, remaining in exploitative relationships and general hardship in securing one's livelihood, as experts elaborated to Amnesty International Austria.

According to Section 4 of the Basic Act non-Austrian nationals, who have been lawfully and permanently residing in Austria for less than five years, are excluded from social assistance benefits.<sup>127</sup> This group is excluded also from receiving benefits under basic care, potentially leaving individuals in a precarious situation with potentially no income. In situations where individuals cannot rely on social security programmes or other means to secure their livelihood and subsistence, risks of taking up a precarious or exploitative employment rise.<sup>128</sup> Furthermore, lack of income to secure one's livelihood increases the risk of women of not leaving abusive relationships.<sup>129</sup> Similarly, the UN CEDAW Committee recognised the relationship between social and economic rights and violence against women, as stated in their General Recommendation No. 19: "Lack of economic independence forces many women to stay in violent relationships."<sup>130</sup>

**Malaika\***, a single mother and non-Austrian national living in Lower Austria, who has been excluded from social assistance due to not fulfilling the criteria of residency at the time of the interview, told Amnesty International Austria researchers about her situation: "I have two children... I work part-time because of my children. We live alone... After my [second] maternity leave, I quickly looked for and found a job, so I have money again. It took me three months [to find a job], and in between I only got 600 euros from AMS [unemployment benefits] ... I got a little help from acquaintances and asked them to help me. I didn't get social assistance benefits either... I don't know why I don't get social assistance benefits. Maybe it is because of my residence permit, but I don't understand... Maybe next

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dismissed the appeal of a child's right to advances on maintenance on the ground that the mother and child only had a 'humanitarian right to stay' (*humanitäres Bleiberecht*) which was different to refugees and individuals with subsidiary protection status who are in a comparable situation. See: OGH I 10 Ob 6/16d I 10.05.2016, <https://www.ogh.gv.at/entscheidungen/entscheidungen-ogh/kein-unterhaltsvorschuss-fuer-ein-kind-aus-der-mongolei-mit-humanitaerem-bleiberecht-in-oesterreich/>

<sup>125</sup> See 104/ME XXVI. GP – Ministerialentwurf – Erläuterungen, p.4

<sup>126</sup> In addition, the current BAoSA raises serious concerns regarding its alignment with the EU Directive 2011/95/EU, in particular with Article 29 (2) of the Directive which stipulates that any restrictions placed upon persons with subsidiary protection status must be the same as for nationals. See Amnesty International, page 17, [amnesty report das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte oktober-2023.pdf](https://www.amnesty.org/~/media/Files/Documents/EUR/2023/10/20231020_Austrian%20Social%20Security%20Law%20Report.pdf)

<sup>127</sup> Section 4 (1) stipulates "In addition, social assistance may only be granted to permanently resident aliens who have actually and legally resided in Austria on a permanent basis for at least five years.

<sup>128</sup> European Parliament, Policy Department, Precarious Employment in Europe: Patterns, Trends and Policy Strategies, 2016, p 20, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/587285/IPOL\\_STU\(2016\)587285\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/587285/IPOL_STU(2016)587285_EN.pdf)

<sup>129</sup> See European Commission, Francesca Bettio and Elisa Ticci, Violence Against Women and Economic Independence

<sup>130</sup> CEDAW General Recommendation No 19, para. 23

year I will get social assistance benefits because of my residence permit... At the moment it is difficult.”<sup>131</sup>

People working to support non-nationals in Austria also shared similar concerns in interviews with Amnesty International Austria. A social worker at a women’s shelter in Upper Austria, who encounters a lot of women who are not eligible anymore since the implementation of the BAoSA, was particularly concerned about this situation: „Social assistance benefits should be for people who cannot cover their and their children’s basic needs. It does not serve this purpose at the moment. It should not be that people in Austria are completely without means. It is necessary for these people to have the possibility to [first secure their livelihoods]. They should not have to return to violent relationships because of existential problems. Often they have two or three children - it is not possible to take care of all that.”<sup>132</sup> Sabine Kofler from *Frauen helfen Frauen Innsbruck* described the requirements for non-nationals to Amnesty International Austria researchers: “The five-year rule is madness. During this time people have to look for a job, learn German, etc. How are they supposed to do that without money?!”<sup>133</sup>

According to the European Committee of Social rights “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.”<sup>134</sup> The European Committee of Social Rights previously stated 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....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.”<sup>135</sup> In its report on Austria, “the European Committee on Social Rights further reiterates that despite the introduction of the possibility to waive the five-year residence in accordance with international obligations, most federal states have not introduced respective changes.”<sup>136</sup>

### **THE “HARDSHIP CLAUSE” IS NOT AN ADEQUATE SOLUTION**

In order to alleviate the dire living situation for individuals who are legally excluded from social assistance benefits, a so-called hardship clause was introduced by an amendment to the Basic Act, adopted by parliament in June 2022.<sup>137</sup> Section 6 (2) of the BAoSA provides that „ legislation by the federal state may, on the basis of private law, ensure the livelihood and housing needs of persons who do not belong to the group of persons entitled to benefits under section 4(1) of the BAoSA, if they are lawfully resident in the territory of the Federal Republic. Social assistance may only be provided insofar as the subsistence and housing needs are not or cannot be secured otherwise and this is indispensable to avoid particular hardship.” Reference is also made to Section 3 (5) BAoSA, which prioritises benefits in-kind over cash-benefits.

This hardship clause allows federal states and their relevant offices to decide on a case-by-case basis whether individuals who do not have the means to secure their livelihood and who do not meet the eligibility criteria set forth by law to claim social assistance benefits, will be granted social assistance

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<sup>131</sup> Interview with Malaika (name has been changed), 08 September 2023, via telephone

<sup>132</sup> Interview with a social worker in a women’s shelter in Linz (anonymous), 22 June 2023, online

<sup>133</sup> Interview with Sabine Kofler, Frauen helfen Frauen Innsbruck, 06 July 2023, online

<sup>134</sup> European Committee of Social Rights, Conclusions 2021, Austria, March 2022, p. 37, <https://rm.coe.int/conclusions-2021-austria-en/1680a5d9e8>

<sup>135</sup> European Committee of Social Rights, Conclusions 2021, Austria, March 2022, p. 37-38, <https://rm.coe.int/conclusions-2021-austria-en/1680a5d9e8>

<sup>136</sup> European Committee of Social Rights, Conclusions 2021, Austria, March 2022, p. 38, <https://rm.coe.int/conclusions-2021-austria-en/1680a5d9e8>

<sup>137</sup> BGBl. I Nr. 78/2022; <https://www.oesterreich.gv.at/themen/soziales/armut/3/2/Seite.1693914.html>



benefits of any kind, be it one time off or for an extended period of time. One important requirement, however, is a lawful residence in Austria. Yet, there is no implementation obligation for the federal states and an enforceable legal claim remains reserved for the groups named in Section 4 (1) of the BAoSA. Moreover, no general ‘right’ to assistance through the hardship clause exists and granting such assistance lies within the discretion of the social welfare offices.<sup>138</sup>

Amnesty International asked the federal governments how many applications had been made under the hardship clause and how many times people had been granted access to benefits under the hardship clause, after it had been introduced. Up until the end of 2023, since the introduction of the hardship clause in December 2022, Lower Austria granted 109 out of 134 applications.<sup>139</sup> In comparison, while Upper Austria did not provide information on the total number of applications, they granted 39 applications from 1 January 2022 until 30 July 2023 that were made under the hardship clause.<sup>140</sup> Furthermore, Vienna has introduced a hardship clause regardless of the BAoSA and according to the written information, between 70 to 90 persons relied on the hardship clause.<sup>141</sup> In the information provided by Tyrol, the question regarding the hardship clause was answered by highlighting that the BAoSA has not been implemented in Tyrol.<sup>142</sup>

As there is no legal right to being granted benefits under the hardship clause and the decision lies in the discretion of the federal states, it cannot be regarded a sufficient replacement to a general entitlement to these benefits. Ulrike Oforha, social worker and team lead at Caritas in Lower Austria, said to Amnesty International: „Since there is no legal entitlement to it [the hardship clause], the only other option for people is to work. This applies especially to people who have been [living] here for a long time [and have not fulfilled the requirement of permanent residency], and in particular older people or people who are ill who cannot work anymore.”<sup>143</sup>

Another social worker\* who works with women affected by homelessness in Upper Austria, described the concerns with regard to the lack of social and financial security very clearly. She highlighted how, in particular women were affected by the lack of social security: „The alternative, if you are excluded, is to go to work. People are then often in very precarious jobs, they have to take everything. For example, at a cleaning company, they have to clean several buildings in Linz, but the travelling time in between is not counted as working time. Or the working hours are not compatible with the children. But the women have to accept it, there are no other options.”<sup>144</sup>

**In its General Comment, the CESCR states that every person has a right to social security and that “States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers, minority groups, refugees, asylum-seekers, internally displaced persons, returnees, non-nationals.”<sup>145</sup>**

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<sup>138</sup> According to the BAoSA, individuals may only claim the hardship clause under ‘private law’, meaning it is left to the discretion of both parties, the applicant and the social welfare office.

<sup>139</sup> See information provided in written form by the federal government of Lower Austria, Department for Social Affairs, 15 December 2023

<sup>140</sup> See information provided in written form by the federal government of Upper Austria, Department for Social Affairs, 13 December 2023

<sup>141</sup> See information provided in written form by City of Vienna, Magistratsabteilung 40 (Departement for Social Affairs), 01 December 2023

<sup>142</sup> See information provided in written form by the federal government of Tyrol, Department for Social Affairs, 26 January 2024

<sup>143</sup> Interview with Ulrike Oforha, 17 May 2023, online

<sup>144</sup> Interview with a social worker working with people experiencing homelessness, 13 July 2023, online.

<sup>145</sup> CESCR General Comment No. 19, para 31

States further have the obligation under Article 2 (2) ICESCR to ensure that all people can enjoy the provisions set forth in the Covenant without discrimination, including direct and indirect discrimination.

In addition, whereas enjoy a certain discretion when it comes to the treatment of non-nationals, they still have to ensure that all persons under their jurisdiction can enjoy their human rights. In its General Comment No 19, the CESCR highlighted in connection to the qualification periods or other requirements for non-nationals that these have to be proportionate and reasonable.<sup>146</sup> The European Committee on Social Rights also stated that additional conditions imposed on non-nationals, such as a certain period of legal residence might constitute an “excessive length of residence” which may be in breach of Article 13 ESC (rev.), in particular regarding the equality of treatment between nationals and non-nationals.<sup>147</sup> Therefore, the requirements of a five-year residence not only raises concerns regarding the possibility of being excessive, it also constitutes a barrier for non-nationals when wanting to access social assistance benefits.’

The right to social security further entails the element of coverage, meaning that all persons should be covered under social assistance systems.<sup>148</sup> However, in its previous conclusion, the European Committee of Social Rights concluded that Austria is not in conformity with Article 13 (1) ESC (rev.) on the grounds that “the right to the adequate level of social assistance is not guaranteed for all persons in need; in some *Länder* [federal states] non-EEA nationals, lawfully resident are subject to a length of residence requirement of five years to be entitled for social assistance.”<sup>149</sup> The Committee further stipulates that the current social assistance benefits system cannot guarantee that everyone in need has full access to the scheme. The European Committee therefore found that the right to an adequate level of social assistance is not guaranteed for all persons in need.<sup>150</sup>

Concluding with respect to the eligibility criteria provided by law, there is on the one hand a discriminatory treatment of individuals with subsidiary protection status and on the other hand, the lengthy qualification period for non-nationals that might be considered excessive lead to the conclusion that Austria’s BAoSA is not in line with its human rights obligations under Article 9 as well as Article 13 (1) ESC (rev.).

#### **4.2. ADDITIONAL BARRIERS TO ACCESSING SOCIAL ASSISTANCE BENEFITS**

If an individual falls within the general scope of those who are eligible under law for social assistance benefits, they then have to undergo an application process in order to access the benefits.<sup>151</sup> Individuals applying for social assistance benefits must provide documents needed for the assessment of whether or not social assistance benefits will be granted. In practice, this situation leaves many individuals accessing social assistance benefits overwhelmed not only by the initial complex application process but also by having to meet stipulated conditions.

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<sup>146</sup> CESCR General Comment No. 19, para 37

<sup>147</sup> Karin Lukas, *The Revised European Social Charter, An Article by Article Commentary*, 2021, p 190

<sup>148</sup> CESCR General Comment No. 19

<sup>149</sup> European Committee of Social Rights, Conclusions of the European Committee of Social Rights 2021 concerning Austria (Thematic group Health, social security and social protection), p 32, <https://rm.coe.int/conclusions-2021-austria-en/1680a5d9e8>

<sup>150</sup> European Committee of Social Rights, Conclusions of the European Committee of Social Rights 2021 concerning Austria (Thematic group Health, social security and social protection), p 37ff, <https://rm.coe.int/conclusions-2021-austria-en/1680a5d9e8>

<sup>151</sup> Similar requirements apply for the means-tested minimum income benefits.

## PROCESS OF SUBMITTING THE APPLICATION FORMS

Applications for social assistance benefits need to be submitted at any district or municipal administration, or social welfare offices. Besides submissions in person, applicants also have the option to mail all necessary documents or to apply online by sending the application form via email.

The length of the application form varies; for example, in Tyrol, the application form consists of five pages whereas in Lower Austria it consists of nine pages and includes a checklist for all documents that need to be provided with the application.<sup>152</sup> The information requested ranges from personal data, such as age to specifics about the person's housing situation, employment status and income status. Accompanying this form, individuals also have to provide documents with proof of this information.

Due to health risks, many offices restricted physical access and contact during the height of the COVID-19 pandemic. Concerns about the accessibility of offices remain. Barriers in accessibility are particularly concerning regarding individuals who encounter difficulties in filling out applications forms or understanding the requirements, as the direct physical contact with responsible officers is limited. Furthermore, concerns also arise in regard to individuals who may not have access to digital applications or who may struggle with online applications.

In interviews with Amnesty International, people raised several concerns about the complexity of the application process. Specifically, interview partners said they struggled with the formal language of the application form, and faced challenges ensuring that the application form is filled out correctly and all required documents are provided in time. As a result, individuals often rely on the support of NGOs and social workers in order to be able to access social assistance benefits and to avoid delays in accessing them.

For example, Barbara Bühler, coordinator of the regional poverty network in Lower Austria and social worker, highlighted her concerns when access to offices is limited: "Accessibility to district offices is also a problem. The COVID-19 pandemic restricted a lot of access to governmental offices, and that was the case with administration offices such as district administrations. I have the impression that this [the restriction] has not been taken back. Often, clients want to hand in the applications in person, for example at the reception. Now we often get feedback that this is no longer possible. You can no longer get in or there is a security guard, and you can only drop the applications in the mailbox. It's difficult with the opening hours and there are hardly any office or consultation hours or days. It was already difficult before, and now it's even more difficult. With the complex application [form and process], people get desperate and don't even hand in the applications."

**Lisa\***, a 69-year-old woman who is receiving social assistance benefits, confirmed to Amnesty International Austria that it is not possible to have in-person contact with case workers and that it has been more difficult since the COVID-19 pandemic.<sup>153</sup> In another interview, **Klaudia**, a peer supporting people with disabilities shared the experiences of her late friend who had received social assistance benefits, telling Amnesty International Austria researchers that in her opinion, it is practically impossible to contact the responsible case workers [at the social welfare office] in person.<sup>154</sup> This was confirmed in another interview, where Amnesty International researchers were told that physical access to social welfare offices highly depends on the office itself.<sup>155</sup>

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<sup>152</sup> See for example Application forms: Sozialhilfe nach dem NÖ SAG, [https://www.noel.gv.at/noel/Sozialhilfe/NOE\\_Sozialhilfe\\_Ausfuehrungsgesetz.html](https://www.noel.gv.at/noel/Sozialhilfe/NOE_Sozialhilfe_Ausfuehrungsgesetz.html) and Antragsformulare Mindestsicherung Tirol, <https://www.tirol.gv.at/gesellschaft-soziales/soziales/mindestsicherung/antragsformulare-mindestsicherung/> accessed 25 August 2023

<sup>153</sup> Interview with Lisa (name has been changed), 31 July 2023, in person

<sup>154</sup> Interview with Klaudia, 10 August 2023, in person

<sup>155</sup> Interview with Bettina (name has been changed), 31 July 2023, in person

When physical access and support at welfare offices are limited, the role of NGOs, in particular social organizations, offering support to individuals aiming to access social assistance benefits becomes crucial. Ulrike Oforha, a social worker at Caritas in Lower Austria supporting individuals with filling in the application forms for social assistance benefits, told Amnesty International that the application form itself is a challenge for social workers because it is "very difficult to fill out" and you have to provide a lot of documents.<sup>156</sup> In another interview, Stefan Hindinger, head at *mosaik*, an organization offering support to individuals experiencing homelessness, highlighted that "the application for social assistance benefits has deteriorated. Clients would not be able to do it on their own. They need our assistance."<sup>157</sup>

## LANGUAGE BARRIERS

The difficulty of the application process is exacerbated by the fact that the language used is very formal and technical. In particular, for individuals who are not fluent in German, this can be an additional barrier. Laura Ströbel, an integration consultant at Diakonie Tirol, a social organization of the protestant church, noted: "Language barriers are a challenge. There is no easy language, everything is formulated in a very complex manner."<sup>158</sup> In some federal states, for instance in Lower Austria, information on social assistance benefits can be found in 'simplified language'. The form itself, however, remains standardised.

Against the backdrop that in person contact to case workers at the social welfare services is restricted and that in-house translators are generally either not available or in some offices restricted to video calls, migrants and people who are not fluent in German may experience specific and additional barriers when applying for social assistance benefits; with the result that they often have to rely on friends or family members for support and translation. **Tanja\***, a 30-year-old woman who receives means-tested minimum income benefits and supports women claiming mean-tested benefits, told Amnesty International Austria that she wished the language used would be easier so that applicants for the social assistance benefits could understand what they are signing.<sup>159</sup>

Amnesty International Austria asked the federal governments in writing what type support is provided to people when filling in forms, and in particular to individuals who are not native German speakers. According to the written information received, in Vienna information regarding the application process for means-tested minimum income benefits is available online in nine languages. Furthermore, according to this response, applicants for means-tested minimum income benefits may visit social welfare offices without prior appointments in order to receive direct support in filling in the forms. Moreover, for non-native speakers video translation is available and plans for the future are in place to offer application forms in different languages.<sup>160</sup> In comparison, in Lower Austria, according to the written information provided to Amnesty International Austria, if individuals seek direct contact with case workers, the option of making an appointment during opening hours exists.<sup>161</sup> Individuals can also receive consultation from social workers. Regarding the question of available support for individuals who are non-native-speakers, Amnesty International Austria received the information that here too support from case workers and social workers is available on site. Further, information in simple language is available on the website. However, Amnesty International Austria received no

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<sup>156</sup> Interview with Ulrike Oforha, 17 May 2023, online

<sup>157</sup> Interview with Stefan Hindinger, 12 October 2023, online

<sup>158</sup> Interview with Laura Ströbel, 08 August 2023, online

<sup>159</sup> Interview with Tanja (name has been changed), 05 September 2023, online

<sup>160</sup> See information provided in written form by City of Vienna, Magistratsabteilung 40 (Departement for Social Affairs), 01 December 2023

<sup>161</sup> See information provided in written form by the federal government of Lower Austria, Department for Social Affairs, 15 December 2023

specific information regarding options of translations.<sup>162</sup> Moreover, information provided from Upper Austria highlighted the availability of almost 70 social organizations and NGOs which provide individuals support when applying for social assistance benefits.<sup>163</sup> According to the information provided from Tyrol, the federal government aims to improve information regarding social services, as well as assistance and support services. With respect to the accessibility of means-tested minimum income benefits, individuals can receive counselling directly at the offices and direct contact to case workers is possible. In addition, according to the information provided, translation services are available upon need.<sup>164</sup>

The Federal Ministry for Social Affairs also responded to Amnesty International Austria's letter providing the following information: "The accessibility of information, knowledge of entitlements and ways of applying are crucial to ensuring that those affected claim the benefits to which they are entitled. Whether this "accessibility" is supported by the removal of bureaucratic, financial and language barriers is primarily a question of implementation (federal states). Within its own sphere of influence, the [Federal Ministry for Social Affairs] pays particular attention to the communication of content... Furthermore, the Federal Ministry of Social Affairs, Health and Consumer Protection also exchanges information with the federal states on enforcement issues by sharing and discussing good practices."<sup>165</sup>

## **THE NUMBER OF DOCUMENTS**

In addition to the application form, applicants to social assistance benefits are required to submit several documents which provide proof of, inter alia, their identity, financial and familial situation. Six women and one man interviewed by Amnesty International remarked that the number of documents that needed to be provided in order to submit one's application for social assistance constitutes a challenge.<sup>166</sup> This may even prolong the application process if individuals do not have all the required documents at hand and need to organize them first. A prolongation of the application process also means a prolongation of the period where individuals will receive no social assistance benefits.

As the stories in the section below demonstrate, people who spoke with Amnesty International Austria highlighted three particular challenges around the number of documents requested. First, five interview partners said that there are costs when gathering the necessary documents. This seemed particularly true with respect to bank statements which are requested on a regular basis. This adds to the already existing stress level a person experiences in this context.<sup>167</sup> Second, six people described difficulties in obtaining the necessary documentations, and especially for people who migrated to Austria and where the required documents were only available in their country of birth.<sup>168</sup> Third, five

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<sup>162</sup> See information provided in written form by the federal government of Lower Austria, Department for Social Affairs, 15 December 2023

<sup>163</sup> See information provided in written form by the federal government of Upper Austria, Department for Social Affairs, 13 December 2023

<sup>164</sup> See information provided in written form by the federal government of Tyrol, Departement for Social Affairs, 26 January 2024

<sup>165</sup> See information provided in written form by the Federal Ministry for Social Affairs, 14 December 2023

<sup>166</sup> See Interview with Anna, 12 July 2023, in person; Interview with Lara (name has been changed), 20 July 2023, in person; Interview with Tanja\*, 05 September 2023, online; Interview with Bettina (name has been changed), 31 July 2023, in person; Interview with Janine (name has been changed), 31 July 2023, in person; Interview with Sandra, 28 July 2023, in person; Interview with Mo (name has been changed), 31 July 2023, in person

<sup>167</sup> Interview with Mo (name has been changed), 31 July 2023, in person; Interview with a social worker (name withheld), 10 August 2023, in person; Interview with a social worker (name withheld), 07 July 2023, online; Interview with Nina\* (name has been changed), 10 August 2023, in person; Interview with Tanja (name has been changed), 05 September 2023, in person

<sup>168</sup> Interview with a social worker (name withheld), 10 August 2023, in person; Interview with Anna, 12 July 2023, in person; Interview with Mo (name has been changed), 31 July 2023, in person; Interview with Lara (name has been changed), 20 July 2023, in person; Interview with Janine (name has been changed), 31 July 2023, in person; Interview with Sabine Kofler, 06 July, online

interview partners explained how there was limited support in terms of collecting and filling in these documents.<sup>169</sup> As a result, people applying for benefits said they felt more stressed and in some cases, missed deadlines to submit certain documents due to this feeling of stress, which meant that their access to benefits was delayed.

First-time applicants must provide all relevant documents such as an official identification document, rental contract, personal documents regarding the status of marriage or divorce, citizenship certificate, proof of assets and income, bank statements of the last three months and statements of any income. Individuals with non-Austrian citizenship also have to submit their current residency status and birth certificates of their parents as well as their certificate of citizenship. Additionally, a confirmation of registration as a jobseeker with the Austrian Labour Market Service (AMS) is a prerequisite for social assistance.

In addition, eligible individuals for social assistance benefits, who are already registered at the AMS, have to comply with the requirements of both offices, such as the social welfare office and the AMS, as **Bettina\***, a 56-year-old woman receiving social assistance benefits in Upper Austria told Amnesty International: “Yes, I have always received both [social assistance benefits and unemployment benefits]. You always have to submit all documents to both services, they both sometimes want the same thing. I do believe that they are in contact with each other, but still, I have to bring the same documents to them”.<sup>170</sup>

Furthermore, the required documents may not only cause individuals feeling discouraged but may also cost money in organizing them. In an interview with Amnesty International, **Mo\*** who received social assistance benefits at the time of the interview, told the researchers that the requirements by the social welfare offices, such as having to sell his car as it counts as an asset or the number of documents needed, left him discouraged to re-apply for social assistance benefits: “The first time, the application was very difficult. There is a lot of control over what you spend your money on. I had to hand in pay slips for the whole family...The social welfare office wanted me to sell the car<sup>171</sup>. But I can't sell it, I have a 50% disability and I need the car to get around because I can't walk much. And I still have had to always give a current assessment [for my car] but that costs money... and in addition, the children's school attendance certificates, the integration course, the German courses, and so on ... I then decided for myself not to apply for social assistance benefits anymore because the effort is too high, it's too complicated. They always want to know everything; you have to provide documents all the time. I lose 800 Euros a month because of it, but it's way too complicated.”<sup>172</sup>

Even in cases where individuals have been receiving social assistance benefits for years, the requested information and documents can be challenging. **Bettina\***, a 56-year-old woman living in Lower Austria, shared with Amnesty International Austria her experience with the application process: “I have been receiving social assistance benefits for several years now...They [the social welfare offices] have become much stricter with the documents now. You always have to look closely to see if everything is alright. But there is always something not right, you always have to send something, or things get lost. Once I even had to send the same things twice. I always send the application and the documents by fax.”

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<sup>169</sup> Interview with Tanja (name has been changed), 05 September 2023, in person; Interview with Lisa (name has been changed), 31 July 2023, in person; Interview with Bettina (name has been changed), 31 July 2023, in person; Interview with Janine (name has been changed), 31 July 2023, in person; Interview with Sandra, 28 July 2023, in person

<sup>170</sup> Interview with Bettina (name has been changed), 31 July 2023, in person

<sup>171</sup> Individuals receiving social assistance benefits are not allowed to possess assets over a certain value. Thus, a is also considered an asset, allowing caseworkers to request individuals receiving social assistance benefits / means-tested minimum income benefits to sell them unless there is proof as to why the car is needed.

<sup>172</sup> Interview with Mo (name has been changed), 31 July 2023, in person

Furthermore, migrants may risk additional barriers to social assistance benefits. These barriers may arise when required documents need to first be organized in their country of origin. These documents may be identification documents, divorce certificates or birth certificates. Depending on the country of origin, organising these documents potentially also prolongs the application process further as they are a prerequisite to apply for social assistance benefits in Austria.<sup>173</sup> In addition, here too, individuals may potentially face extra costs for organizing those documents – either due to them having to travel to their country of origin or due to administrative costs.

Certain difficulties in organizing documents remain even after the first-time application. These documents particularly concern bank statements as individuals are requested to submit bank statements of previous months on a regular basis set forth by the social welfare office on a case-by-case basis. Bank statements will be requested periodically as it indicates potential changes in the financial situation of individuals. As regards bank statements, seven interviewees pointed out that collecting bank statements can be challenging due to the lack of access to Internet banking.<sup>174</sup> “The application for social assistance benefits is an impertinence. You have to enclose everything and copy everything. If you can't do it from home, you have to do it at the bank - but there you have to apply for it separately and you pay a handling fee, of 10-15 cents per piece of paper. This always costs 5 to 6 euros, and it takes a few days for the application to be processed.” said **Nina\***, a 51-year-old-woman receiving social assistance benefits.<sup>175</sup>

**Tanja\***, a 30-year-old woman, shared a similar concern:

*“There are many documents that you have to submit. For example, bank statements, if you are with [a specific bank], then they have to get them from Vienna and then it takes a long time for them to get them. They take an inordinate amount of time. It is difficult. I'm afraid to miss the deadlines [set forth by the social welfare office to submit requested documents] because then you have to reapply and that takes a long time again. I am afraid because I have two children and then no money. The bank statements also cost money. Imagine you don't have a cent, then you have to gather the money. I have to submit it every three months and then hope that it works out.”<sup>176</sup>*

Furthermore, since the income of the whole household will count towards social assistance benefits, persons living in shared flats or with families will be requested to provide documents and information on everyone living in the household. This can lead to several challenges and even cause added stress within families, as **Lara\***, a 36-year-old woman living with a disability, shared with Amnesty International researchers: “Social assistance benefits were bad when I lived with my family. You have to rely on the cooperation of your family. You also have to submit your family's bank statements and income statements for the last three months. That's not nice, that's such an intimate information. I'm already uncomfortable with that. Even with my own... Because you don't have privacy anymore. That leads to friction. You have to run after the documents and explain why you need it. And the others don't need it at all, but I need the social assistance benefits. That's a shame. There were arguments, and that's not nice.”<sup>177</sup>

<sup>173</sup> See for example interview with a social worker in Upper Austria (anonymized), 10 August 2023, in person

<sup>174</sup> Interview with Thomas Scherthaner, Verein für Obdachlose Innsbruck, 31 August 2023, in person; Interview with Sabine Kofler, 06 July, online; Interview with Social Worker in Upper Austria, 10 August 2023, in person; Interview with Josef Pürmayr, 02 August 2023, online; Interview with Tanja (name has been changed), 05 August 2023, online; Interview with Nina (name has been changed), 10. August 2023, in person

<sup>175</sup> Interview with Nina, 10 August 2023, in person

<sup>176</sup> Interview with Tanja, 05 September 2023, in person

<sup>177</sup> Interview with Lara (name has been changed), 20 July 2023, in person

In another example regarding the complexity of the application process, having to exhaust all other options of financial support also applies to rent subsidies. Rent subsidies are benefits granted by another governmental office to support individuals with low-incomes with their housing costs. Therefore, individuals are required to apply for this rent subsidy first, before they can claim benefits under the BAoSA, which can further prolong the time before social assistance benefits are received. This situation has also been flagged by the Regional Court of Audit of Upper Austria as “inefficient and not citizen friendly”<sup>178</sup>. In its report, it highlights the fact that despite having different requirements and aims, individuals receiving social assistance are required to apply for both without enjoying the rent subsidy.<sup>179</sup> In his report, the Regional Court of Audit of Upper Austria further points out that “recipients of social assistant benefits are obliged to apply for rent subsidies. The granting of a rent subsidy to an individual receiving social assistance benefits therefore only has the effect of shifting payments from one public body to another without bringing any advantage to the beneficiary... In the opinion of the LRH [Regional Court of Audit of Upper Austria], this is neither an efficient practice of administration nor citizen-friendly.”<sup>180</sup>

Due to the complexity of the application process, various social organizations and non-governmental organizations offer assistance to individuals wanting to submit an application form for social assistance benefits. Since there is a lack of comprehensive support at social welfare offices, in many cases the support offered by NGOs is essential for individuals aiming to receive social assistance benefits. These NGOs not only offer support with filling out application forms, but also with organizing the requested documents, and may even be the first instances individuals will be made aware of the possibility of claiming social assistance benefits. **Janine\***, a 36 year-old-woman who has experience with homelessness shared with Amnesty International how she perceived the support by a social worker: “It would have been difficult otherwise... I would not have been able to do it on my own”.<sup>181</sup>

### **4.3. GROUP-SPECIFIC BARRIERS IN ACCESSING SOCIAL ASSISTANCE BENEFITS**

In addition to the bureaucratic and complex application process, specific barriers exist for specific groups of individuals. Accessing social assistance benefits may be harder for individuals with multiple and intersecting marginalized identities, such as their gender, disability, migration background.

#### **PEOPLE WITH DISABILITIES**

In general, persons who are excluded from the labour market due to their disability and lack any other forms of income can apply for social assistance benefits under the BAoSA. These individuals face the same application process described previously, meaning they have to fill in the existing application forms and provide all relevant documents. However, individuals with disabilities may face specific and additional challenges when applying for social assistance due to how the issue of ‘maintenance’, that is stipulated in the Austrian General Civil Code, is enforced when they apply for social assistance benefits, and the principle of subsidiarity that is inherent to social assistance in Austria.

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<sup>178</sup> Landesrechnungshof Oberösterreich [Regional Court of Audit of Upper Austria], *Förderungen im Bereich der Wohnbeihilfe des Landes OÖ*, [https://www.lrh-ooe.at/Mediendateien/Berichte2022/IP\\_Wohnbeihilfe\\_Bericht\\_signed.pdf](https://www.lrh-ooe.at/Mediendateien/Berichte2022/IP_Wohnbeihilfe_Bericht_signed.pdf)

<sup>179</sup> Landesrechnungshof Oberösterreich [Regional Court of Audit of Upper Austria], *Förderungen im Bereich der Wohnbeihilfe des Landes OÖ*, [https://www.lrh-ooe.at/Mediendateien/Berichte2022/IP\\_Wohnbeihilfe\\_Bericht\\_signed.pdf](https://www.lrh-ooe.at/Mediendateien/Berichte2022/IP_Wohnbeihilfe_Bericht_signed.pdf), p 16-17

<sup>180</sup> Landesrechnungshof Oberösterreich, *Förderungen im Bereich der Wohnbeihilfe des Landes OÖ*, [https://www.lrh-ooe.at/Mediendateien/Berichte2022/IP\\_Wohnbeihilfe\\_Bericht\\_signed.pdf](https://www.lrh-ooe.at/Mediendateien/Berichte2022/IP_Wohnbeihilfe_Bericht_signed.pdf), para 9.4.

<sup>181</sup> Interview with Janine (name has been changed), 31 July 2023, in person



## ENTITLEMENT TO MAINTENANCE

Sections 231 to 234 of the Austrian General Civil Code foresee the entitlement to maintenance for children as well as parents that ought to be provided by next of kin. Provisions set forth in the Austrian General Civil Code apply to every person living in Austria (Section 1). The most common scenario is that parents are obligated to provide maintenance for their children, as long as the children are not able to sustain themselves. Generally, this covers all needs with respect to living— either in-kind or in-cash. If those obligations are not met, individuals may even enforce this legal obligation by courts.<sup>182</sup>

This provision of maintenance remains as long as an individual, for example, a child is considered incapable of self-support (“*selbsterhaltungsunfähig*”).<sup>183</sup> While there is no legal definition of ‘Selbsterhaltungsunfähigkeit’, it is generally considered as „[t]he ability to support oneself. This means, parents must generally provide maintenance for their children until they are able to support themselves. A child is capable of self-support if they are able to cover all of their own needs from their own income that is appropriate to their living conditions. This point in time can also occur after reaching the age of majority (e.g. due to further [tertiary] education).”<sup>184</sup> In other words, parents can be obliged to legally support their children even after they are 18 years old. Whether a person is capable of self-support [or not] must always be assessed on a case-by-case basis.<sup>185</sup>

Section 3 BAoSA, which lays down the general principles of social assistance benefits, states that “social assistance benefits are subsidiary and are only to be granted to the extent that the need cannot be covered by the beneficiary's own resources or by benefits from third parties to which the beneficiary is entitled to and which are obtainable.”<sup>186</sup> Furthermore, Section 7 BAoSA clarifies that „[s]ocial assistance benefits are to be made dependent on the person claiming these benefits pursuing needs-covering claims against third parties, unless this is obviously futile or unreasonable”, for example, if it is apparent that the parents do not have enough income to support their children financially. It further states: “The admissibility of directly necessary support remains unaffected. The claims may also be transferred to the competent institution for the purpose of pursuing them.”<sup>187</sup>

Consequently, when assessing an individual's eligibility to social assistance benefits, the issue of maintenance as stipulated in the Austrian General Civil Code becomes relevant. The provision of maintenance by immediate family is considered a ‘third-party benefit’ to which the individual is entitled. Therefore, authorities will require an applicant for social assistance benefits to pursue any other claims/ entitlements, including from family members, where possible. However, this has a disproportionate negative impact on individuals with disabilities – and in particular those who are assessed as “incapable of self-support”, often creating additional barriers for them.

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<sup>182</sup> Oesterreich.gv.at; Allgemeines zum Unterhalt,

[https://www.oesterreich.gv.at/themen/steuern\\_und\\_finanzen/unterhalt/Seite.530100.html](https://www.oesterreich.gv.at/themen/steuern_und_finanzen/unterhalt/Seite.530100.html)

<sup>183</sup> This determination is usually made by a doctor in connection to applications for increased family benefits (*‘erhöhte Familienbeihilfe’*). See also oesterreich.gv.at, Erhöhte Familienbeihilfe,

[https://www.oesterreich.gv.at/themen/menschen\\_mit\\_behinderungen/kindheit\\_und\\_behinderung/1/Seite.1220330.html](https://www.oesterreich.gv.at/themen/menschen_mit_behinderungen/kindheit_und_behinderung/1/Seite.1220330.html)

<sup>184</sup> Oesterreich.gv.at, Selbsterhaltungsunfähigkeit, <https://www.oesterreich.gv.at/lexicon/S/Seite.992447.html>

<sup>185</sup> Oesterreich.gv.at, Selbsterhaltungsunfähigkeit, <https://www.oesterreich.gv.at/lexicon/S/Seite.992447.html>

<sup>186</sup> Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Sozialhilfe-Grundsatzgesetz, Fassung vom 23.03.2023, Section 3(3),

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010649&FassungVom=2023-03-23>

<sup>187</sup> Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Sozialhilfe-Grundsatzgesetz, Fassung vom 23.03.2023, Section 7(2)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010649&FassungVom=2023-03-23>

If a person living with a disability is declared “*selbsterhaltungsunfähig*” (“incapable of self-support”), due to the subsidiary principle of the BAoSA, they are required to claim their maintenance (in form of financial support) from their parents first. This is also the case even when individuals with disabilities have reached legal age, that is, they are no longer legally considered as a child.<sup>188</sup>

This requirement of having to first file for maintenance applies unless this claim is “obviously futile or unreasonable”. Exceptions from this general principle include, for example, when parents receive social assistance benefits themselves, or parents live in another country, which will render financial support claims unreasonable. The assessment of whether those claims are futile or unreasonable lies within the discretion of social welfare offices.

As these two terms are undefined and therefore subject to interpretation, the social welfare offices have a great deal of discretion when assessing whether any legal action is futile or unreasonable. If a social welfare office deems a claim to be either futile or unreasonable, individuals applying for social assistance benefits will be exempt from making such claims. However, if not, individuals will be required to put such a claim for maintenance forward and will have to provide proof that such a claim has been made.

In an interview with Amnesty International Austria, Ilse Zapletal, a member of the legal department of the *VertretungsNetz*, pointed out that for this group of people there is only “a segregated employment opportunity in day care facilities. They are not paid a wage, but only pocket money -between €35 and just under €100 per month - which is not enough to cover their living costs. Apart from the statutory accident insurance, the activity does not result in any social security cover - health insurance, unemployment insurance, pension insurance. This means that even if people with disabilities who are considered incapable of supporting themselves continue to work throughout their lives, they remain dependent on social assistance benefits. They will not be able to leave this situation on their own. The classification of a person with a disability as “unable to support themselves” predetermines their life in poverty and financial dependence. It is not uncommon for their parents to fall into the poverty trap with them.”<sup>189</sup>

This overall situation creates a dynamic of dependence between adults with disabilities and their parents. Amnesty International spoke to three women who have experienced the stress of being faced with the situation of having to file a claim against their family members in court, so they can provide the necessary documents for the social assistance benefits. Unless claims for financial support against family members were submitted, these individuals were told they would not receive social assistance benefits. This was also the case for **Lara\***, a 36-year-old woman with disabilities, who explained:

„In 2018 there was a negative decision, so it took me more than six months to receive the negative decision [where my application for social assistance benefits got declined]. At that time there was no money. And no money means no money. Then, after years, it was decided through the legal process that a lawsuit against my parents would be unsuccessful. Because they were in debt themselves. I was classified as a child incapable of self-support.” She further added how this affects her ability to live an autonomous life: “I was declared a child even though I was over 30 years old. So, at that time, I was denied social assistance benefits because they said I had to make a financial claim against my parents for child support. If I was in a partnership, then I would have to [file a claim for financial

<sup>188</sup> According to the written statement by the Federal Ministry of Social Affairs, which was provided on 6 February 2024, topics such as “the obligation to pursue legal action (in particular maintenance entitlements) ... are not new features of the Basic Act on Social Assistance, but were already part of the relevant provincial legislation before that.”

<sup>189</sup> Interview with Ilse Zapletal, 01 August 2023, in person

support and] sue my partner for alimony or I would get the reduced contribution because his income would be counted. So, I am not allowed to determine my own relationships – because of my disability. My financial situation and health situation put a strain on my personal environment. There is no such thing as a self-determined life.”<sup>190</sup>

As mentioned previously, under the General Civil Act, children can also be asked to provide maintenance towards their parents in similar circumstances, that is, where a parent is considered ‘incapable of self-support’. Section 234 General Civil Act also stipulates that children can be obligated to provide maintenance for their parents if their parents cannot secure their livelihood otherwise.<sup>191</sup> In an interview with **Nina\***, a 51-year-old woman with disability, shared with Amnesty International Austriaresearchers that she was requested to file a claim for financial support from her daughter and because of this she had not received any social assistance benefits at the time of the interview. She added: “I signed a waiver [that I will not be making a claim against my daughter]. If it has an impact on social assistance benefits, then I have to do something.”<sup>192</sup> In another interview, **Lisa\*** shared with the researchers that she was requested to make a claim for maintenance against her children as well.<sup>193</sup>

Since the social welfare offices enjoy a certain degree of discretion when it comes to enforcing the prerequisite of maintenance claims, experts and individuals directly affected by this situation told Amnesty International Austria that this situation particularly arises in some federal states that have also introduced the respective Implementation Acts on Social Assistance, in particular Lower Austria and Upper Austria.<sup>194</sup>

Furthermore, individuals with disabilities who are declared as “incapable of self-support” may be more likely to live with family members as they face higher barriers in being able to secure their own livelihood and, thus, to afford housing themselves. Consequently, this raises additional barriers for individuals with disabilities in accessing social assistance benefits, as the assessment of social assistance benefits is based on a household’s income, that is the total income of individuals living in the same household will determine whether or not an individual with disabilities is eligible for social assistance benefits. This too creates situations of dependence on the family.

However, this is not the same case across the country. In comparison to Lower Austria and Upper Austria, who have both implemented the respective Implementation Acts, in Vienna, once a person has reached the age of 25, they will be regarded their own individual household, despite living with other people in the same household and will therefore receive means-tested minimum income benefits irrespective of the household income, and thus, allowing for more financial independence.<sup>195</sup>

Both, the ICESCR and the UN CRPD call for non-discriminatory access to social security programs. Article 28 UN CRPD, which guarantees the right to an adequate standard of living and right to social

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<sup>190</sup> Interview with Lara (name has been changed), 20 July 2023, in person

<sup>191</sup> Bundesrecht konsolidiert: Allgemeines bürgerliches Gesetzbuch (Austrian Civil Code) Section 234, Fassung vom 16.01.2024,

<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622&FassungVom=2024-01-16&Artikel=&Paragraf=234&Anlage=&Uebergangsrecht=>

<sup>192</sup> Interview with Nina (name has been changed), 10 August 2023, in person

<sup>193</sup> Interview with Lisa (name has been changed), 31 July 2023, in person

<sup>194</sup> See for example Interview with Ilse Zapletal, 01 August 2023, in person; Interview with Lisa (name has been changed), 31 July 2023, in person; Interview with Lara (name has been changed), 20 July 2023, in person; Interview with Nina (name has been changed), 10 August 2023, in person

<sup>195</sup> Compare Wiener Mindestsicherungsgesetz, Section 7 (2)

security for people with disabilities.<sup>196</sup> Further, Article 5 UN CRPD enshrines the principle of equality and non-discrimination and recognizes that “all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law”<sup>197</sup>. Article 5 UN CRPD and the principle of non-discrimination also extends to indirect discrimination where a specific law might seem neutral on the surface but has indirect and “disproportionate impact on particular groups.”<sup>198</sup>

Whereas the BAoSA places the requirement of having to exhaust all claims of financial support onto everyone applying for social assistance benefits, this affects individuals with disabilities disproportionately, often requiring adults with disabilities to file claims against their family before they can access social assistance benefits. This situation mainly derives from the provisions laid down in the General Civil Act, and how these provisions are applied when implementing the BAoSA. This can lead to delays in being able to access benefits, and can also impact the autonomy of a person with disability, as they have to financially claim against their family before, they can access benefits from the state.

In addition, requiring adults with disabilities to file claims against their parents before they can access social protection raises concerns under Article 28 UN CRPD, as the Convention obligates states to introduce benefits that “reduce the potential tension between the needs of persons with disabilities and the needs of their families.”<sup>199</sup> Barriers to social assistance benefits may also create barriers to financial independence for individuals with disabilities; thus, also affecting their autonomy.

## **WOMEN WHO SURVIVED GENDER-BASED VIOLENCE**

### **ENTITLEMENT TO SPOUSAL MAINTENANCE**

After a divorce or a dissolution of a civil partnership, former partners may have a right to maintenance. The legal basis for maintenance is the General Civil Act, in particular Section 747.<sup>200</sup> Furthermore, the same act also stipulates the right to child maintenance, which refers to the “maintenance obligation of parents towards their children. Both parents have equal rights and obligations towards their children.”<sup>201</sup>

Section 7 of the BAoSA further requires individuals to claim financial support by ex-partners in cases of divorce and separation. This too derives from the subsidiary nature of social assistance and the legal requirement to exhaust all potential options for income or financial support. This subsidiary nature is also reflected in the respective implementation acts of the federal states. For example, Section 14 (3) of the Implementation Act on Social Assistance in Upper Austria clearly states that “Social assistance benefits are only to be granted if the person claiming these benefits is pursuing claims against third parties that cover their needs, provided this is not obviously futile or

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<sup>196</sup> UN CRPD, Article 28, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

<sup>197</sup> UN CRPD, Article 5, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

<sup>198</sup> Jessica Lynn Corsi, *Art.5 Equality and Non-Discrimination*, in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, edited by Bantekas et al., 2018

<sup>199</sup> Kevin Cremin, *Art. 28 Adequate Standard of living and Social Protection*, in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, edited by Bantekas et al., 2018

<sup>200</sup> Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Allgemeines bürgerliches Gesetzbuch, Fassung vom 15.01.2024, Section 747,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>

<sup>201</sup> Oesterreich.gv.at, Arten von Unterhaltsleistungen,

[https://www.oesterreich.gv.at/themen/familie\\_und\\_partnerschaft/alleinerziehung/5/Seite.490510.html](https://www.oesterreich.gv.at/themen/familie_und_partnerschaft/alleinerziehung/5/Seite.490510.html)

unreasonable.”<sup>202</sup> Whilst there are differences in practice depending on the social welfare office, in practice this requirement leads to applicants of social assistance benefits to either make a claim for financial support against their ex-partners or, in the most extreme case, even sue them. In such situations, where relationships are already under pressure, being required to make a claim against an ex-partner adds further difficulties for persons affected. **Lisa\***, a woman with disability told Amnesty International Austria: “I had to sue my ex-husband for alimonies after the divorce...I felt very bad that had to sue him. I got sick after that...I feel bullied. The social welfare office always asks for something new.”<sup>203</sup>

Requirements to make a claim against ex-partners for alimonies specifically arise when the couple has had children. Doris Pettinghofer, director of the Austrian Platform for Single Parents, summarised in an interview with Amnesty International Austria: “When it comes to social assistance benefits, the rule is: the family, the private [sphere] comes first. That's just difficult.”<sup>204</sup>

If there is a de facto separation, however, the ex-partner is still registered at the same address as the other person, the income of the whole household, meaning including the income of the ex-partner, is taken into account for the assessment of the total amount of social assistance benefits. If the income of the ex-partner is higher than the amount of social assistance benefits which the whole household would be entitled to, it will be likely that social assistance benefits cannot be claimed.<sup>205</sup> Furthermore, before all circumstances considering the household and income have been sorted out, individuals will not know how much or if any social assistance benefits can be claimed, leaving a sense of uncertainty when considering a separation. In addition, a person will only know if they receive social assistance benefits at all and to what extent when all potential claims against ex-partners are put forward and the total income of a household has been sorted or is clear.

Barbara Bühler summarized this concern as follows: “The household constellation is also a problem in situations of separation or divorce. If you are going through a separation but are still registered together, the woman can be forced into a dependent relationship. This is difficult and can lead to tensions. This makes any autonomy and separation more difficult or impossible. All financial support/alimonies must first be sorted out before you can receive social assistance. However, obtaining such a document is difficult and time-consuming. It is also particularly difficult for women with children and those living in violent relationships.”<sup>206</sup>

These legal prerequisites are particularly challenging for women, who survived gender-based violence, as a social worker\*, working at a women’s shelter in Upper Austria explained to Amnesty International: “When documents are being left behind by women or when they are not handed out by the perpetrator, then it is difficult to get or re-organise them. These women survive a situation of violence, they usually come to us in the night, and they leave quickly and only take the necessities with them.”<sup>207</sup> She further pledged that social assistance benefits should be granted first and without too many requirements to allow individuals to secure their livelihood immediately. She further elaborated that women securing their livelihoods independently is important in allowing women to exit abusive relationships: “They should not have to go back into a situation of domestic violence just because of

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<sup>202</sup> See

Landesrecht konsolidiert Oberösterreich: Gesamte Rechtsvorschrift für Oö. Sozialhilfe-Ausführungsgesetz, Fassung vom 12.01.2024, Section 14,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=20001049>

<sup>203</sup> Interview with Lisa (name has been changed), 31 July 2023, in person

<sup>204</sup> Interview with Doris Pettighofer, 22 May 2023, in person

<sup>205</sup> See specifically Section 7 BAoSA,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010649>

<sup>206</sup> Interview with Barbara Bühler, 17 May 2023, online

<sup>207</sup> Interview with a social worker (name is being withheld due to safety reasons), 22 June 2023

problems ensuring their livelihood. This is especially a concern regarding migrant women who are not yet eligible to apply for social assistance benefits.”

Martin Pruckner, a social worker at a municipal office in Lower Austria, explained to Amnesty International Austria researchers that in the worst-case scenario – and this does not only apply to women who are survivors of gender-based violence – women waive their entitlements to social assistance benefits because they would rather not get into contact with their ex-partners: “It also happens that people waive their entitlements to social assistance benefits: In the case of women, if it is really very problematic [situation] and they no longer want to have anything to do with the ex-husband; in the case of children, it is often because they don't want to sue their parents.”<sup>208</sup>

## **WOMEN WITH CHILDCARE RESPONSIBILITIES**

Section 3 (4) BAoSA states that “social assistance benefits shall be made conditional on the permanent willingness to use one's own labour power and on an active, labour market-related performance by the beneficiaries unless this Federal Act provides for exceptions.” Therefore, individuals deemed “fit for work” are obliged to prove their willingness to work and to pursue job offers.

The requirement of “willingness to work” is elaborated in the regional implementation legislations of the Basic Act, as the requirement to register with the Labour Market Service (AMS), regardless of whether individuals are entitled to and receiving unemployment benefits, and to comply with the requirements set forth in the Unemployment Insurance Act. In practice, individuals have to attend regular appointments with the AMS, provide proof of a set amount of job applications and take on a job offer as long as it is deemed reasonable. An employment offer will be considered reasonable when the remuneration is appropriate, if it is appropriate to the physical abilities of the unemployed person and if the distance to the job is also within a commute time of two hours for a full-time job.<sup>209</sup>

The regional implementation acts also specify who is exempted from these requirements, for example, individuals having reached the age of retirement; persons who take on the care work for children below the age of three or when no suitable childcare, such as a place at a kindergarten, can be arranged.<sup>210</sup> Additionally, children who are in school or persons in vocational training are also exempt as well as “individuals affected by invalidity [that is occupational incapacity or disability]”.<sup>211</sup>

Other than those who are exempt, individuals must be ‘employable’, meaning a person has to be ‘available to the job market’. This requirement is also placed upon persons with children over the age of three years. In an interview with AMS Tyrol, they explained to Amnesty International Austria that, until the child has reached the age of 15, the AMS will take childcare responsibilities into account: “Generally speaking, for a woman with childcare responsibilities [for a child under the age of 10 years old], that's a minimum of 16 hours of employability [per week] ... The AMS can further clarify with the municipalities whether childcare options for more than 16 hours would be available. If, for example, there is an adequate childcare place for 20 hours a week available then the expected 16 hours for ‘employability’ must be extended to 20 hours a week. In the countryside, it can be more difficult, even if there are improvements [regarding childcare options] and initiatives. And in the urban area it can also be expensive to find a childcare place.”<sup>212</sup>

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<sup>208</sup> Interview with Martin Pruckner, 09 August 2023, in person

<sup>209</sup> Arbeitslosenversicherungsgesetz (Unemployment Insurance Act) 1977, Section 9 (2):

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008407>

<sup>210</sup> See for example <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001239>, Section 9 (7)

<sup>211</sup> See for example Gesamte Rechtsvorschrift für NÖ Sozialhilfe-Ausführungsgesetz, Version 25.09.2023, Section 9 (7), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001239>

<sup>212</sup> Interview with AMS Tyrol, 14 September 2023, online

Whilst the lack of adequate kindergarten places in Austria is part of a wider debate<sup>213</sup>, this issue coupled with the fact that it is generally women taking on childcare duties<sup>214</sup>, often places greater responsibilities on women, meaning they risk facing sanctions [penalties in the form of benefit deductions] regarding their social assistance benefits or unemployment benefits in cases where they are unable to accept an employment offer due to their caring responsibilities.

Individuals not meeting these requirements will face sanctions, that is, reductions in the benefits they receive. Individuals who receive unemployment benefits may face cuts in their unemployment benefits and their social assistance benefits will also be affected. Individuals not receiving any unemployment benefits, but solely social assistance benefits will also face – in most cases - temporary cuts. Those cuts are temporary and last as long as individuals do not comply with the requirements set forth by the social welfare offices or the AMS. However, the sanction system is not uniform throughout Austria. For example, whereas the Implementation Act on Social Assistance in Lower Austria foresees initial cuts of 50%<sup>215</sup> when individuals do not meet the requirements, e.g., refuse a job offer, in Vienna the initial cut will only be 25%<sup>216</sup> of the total amount of means-tested minimum income benefits. When noncompliance persists, the percentage of the cut will gradually increase to 50% and later 75%. Individuals may face a cut for at least a month or for as long as they do not comply with the requirements.

In an interview with Amnesty International Austria, Thomas Schernthaner, a social worker in Tyrol, summarised the issue as follows: “The social welfare office urges women with children over the age of three to actively look for a job, to write applications, etc. This often affects women receiving AMS benefits. This also often concerns AMS recipients who top up their income [with social assistance benefits/means-tested minimum income benefits]. So, the requirements of the AMS are no longer enough, one needs additional applications for the social welfare office. Women also have to pay for childcare, which is not financially viable. In the summer, I had 2 cases where the AMS even stated that no places had to be found in the summer because there were none. But the social welfare office didn't care, they still had to make an effort [and meet the requirements of finding a place]. So, the social welfare office is stricter than the AMS.”<sup>217</sup>

## **MIGRANT WOMEN**

According to Sections 16 lit c), d) of the Integration Act, individuals receiving social assistance benefits who are refugees and migrants have to fulfil various obligations aimed at integration and learning German, which are laid out in the Austrian Integration Act. Both the Integration Act and the BAoSA reference each other. According to the Integration Act, individuals with refugee status and subsidiary status have to complete a so-called value- and orientation course and attend German language courses aimed at acquiring a German level of B1.<sup>218</sup>

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<sup>213</sup> While kindergarten places are being expanded, there is a lack of sufficient and appropriate places - especially in rural areas. See for example: Markus Kaindl and Rudolf Karl Schipfer, *Familien in Zahlen 2022*, [https://www.oif.ac.at/fileadmin/user\\_upload/p\\_oif/FiZ/FiZ\\_2022.pdf](https://www.oif.ac.at/fileadmin/user_upload/p_oif/FiZ/FiZ_2022.pdf)

<sup>214</sup> See for example Stadt Wien, Unbezahlte Arbeit: Doppelbelastung für Frauen, <https://www.wien.gv.at/menschen/frauen/stichwort/arbeit/unbezahlt.html> and Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, EU-Project: Men and Reconciliation of Work and Family: Supporting the Path to Gender Equal Distribution of Parental Leave and Working Time, 2018, p8ff, [https://www.sozialministerium.at/dam/jcr:3d7d630f-e8ed-4175-9980-fe4183c69558/180501\\_endbericht\\_en.pdf](https://www.sozialministerium.at/dam/jcr:3d7d630f-e8ed-4175-9980-fe4183c69558/180501_endbericht_en.pdf)

<sup>215</sup> See Implementation Act on Social Assistance in Lower Austria: NÖ Sozialhilfe-Ausführungsgesetz, 25.09.2023, Section 11, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001239>

<sup>216</sup> See Viennese Means-tested Minimum Income Benefits Act: Wiener Mindestsicherungsgesetz (WMG), 25.09.2023, Section 15, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001239>

<sup>217</sup> Interview with Thomas Schernthaner, 31 August 2023, in person

<sup>218</sup> Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Integrationsgesetz (in English Integration Act), see for example Section 7 (2) and Section 12,

According to Sections 16c and 16d Integration Act, these obligations are part of the conditions for individuals accessing social assistance services and non-compliance will result in sanctions. This requirement may also place more stringent burdens on some groups. For example, similar to the challenges women with childcare responsibilities experience regarding employability, childcare responsibilities may also present difficulties when attending these courses.<sup>219</sup>

As demonstrated, people need to fulfil several criteria to access social assistance benefits depending on their individual circumstances. For example, persons deemed fit for work must be registered as job seekers and meet the criteria of employability. Parents, especially women with childcare responsibilities may face barriers to meet those conditions. According to CEDAW, state parties are obligated to ensure equality and non-discrimination. Therefore, when designing social protection schemes, including non-contributory social assistance programs, they should consider the differing experiences women face throughout their life cycle, such as childcare responsibilities, in order to ensure women's right to social protection as set forth in Article 11 (e).

Given that only persons experiencing poverty are eligible to social assistance benefits, any cuts or delays in receiving social assistance benefits can negatively affect individuals in their day-to-day lives. Therefore, the United Nations Economic and Social Commission for Asia and Pacific – which is one of the five regional commissions of the United Nations - has even stated that sanctions for individuals receiving social assistance benefits due to non-conformity with requirements raises concerns about these requirements in the first place, and even questions the value of them as they may run “counter to the purpose of social protection programs as those who fail to comply with the conditions are often the most marginalized and vulnerable.”<sup>220</sup>

The requirements to access benefits can also contribute to further stigmatization and shame. According to the Special Rapporteur on Extreme Poverty “shame and stigma are particularly important where conditionalities are attached to the provision of social protection, since the implicit (and sometimes quite explicit) narrative underlying such conditionalities is that recipients should be disciplined into improving their behaviour.”<sup>221</sup> In his report, he further stipulates: “The design and enforcement of welfare programs that impose conditionalities on beneficiaries typically characterize claimants as an “underclass” who lack a work ethic, are involved in crime and choose irresponsible lifestyles... such programs convey a stigmatizing discourse targeted at the individual rather than their surrounding economic and social context and shame and stigma are underreported”.<sup>222</sup>

As this chapter has demonstrated, the current application process raises serious concerns about the accessibility of the social assistance benefits scheme in line with Article 9 ICESCR, highlighting the particular challenges faced by women, migrants and persons with disabilities.

According to human rights law, information on how to access social protection measures should be accessible to all people.<sup>223</sup> Furthermore, state parties must ensure that all persons have access to social security schemes and special attention must be given to people who generally face marginalisation and discrimination, including people with disabilities, women, and non-nationals. The application process must be designed in a way that is manageable for all – meaning that support should be provided for individuals applying for social assistance benefits.

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<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009891&FassungVom=2017-12-31>

<sup>219</sup> Interview with Tanja [work space is not declared due to privacy concerns], 05 September 2023, online

<sup>220</sup> United Nations ESCAP, *How to Design Inclusive Social Protection Systems*, 2018, p7-8, <https://www.socialprotection-toolbox.org/files/documents/Social-Protection-module-2.pdf>

<sup>221</sup> A/HRC/50/38, para 55

<sup>222</sup> A/HRC/50/38, Non-take-up of rights in the context of social protection - Report of the Special Rapporteur on extreme poverty and human rights, para 55

<sup>223</sup> CESCR GC No. 19, paras 23 and 29



In sum, the Austrian system of social assistance contains various barriers which hinder people from effectively realising their right to social security. Already the Special Rapporteur highlighted that “increased complexity entails considerable transaction costs and reduces take-up by eligible claimants.”<sup>224</sup> As this chapter has demonstrated, the restrictive criteria to access benefits through the social assistance system under the BAOSA, combined with the complexities in the application process, can deter or exclude individuals who should be able to access these benefits, particularly people from marginalized groups, thus risking a non-realization of their right to social security.

## 5. CONCLUSION AND RECOMMENDATIONS

This briefing has described the many challenges and barriers that individuals, especially women, in Austria face in law and in practice when accessing social assistance benefits in Austria.

Austria must take urgent measures to address these barriers and ensure that individuals can fully access their right to social security. This includes all people living in Austria, including women, women with childcare responsibilities, women living with disabilities, and migrant women.

The current situation is aggravated by the state not giving full effect to the right to social security and other economic, social and cultural rights in the national legal framework. Social security is therefore, still perceived as charity and not a right and this contributes to the negative public perception and stigmatization of people who are eligible to social assistance benefits. This exacerbates the shame and stigmatization experienced by individuals receiving social assistance and can effectively hinder people from claiming their rights and entitlements. The reservation of execution (*Erfüllungsvorbehalt*) on the ICESCR prevents courts and administrative bodies from applying the Covenant directly and adds to the challenges stemming from a lack of enshrining the right to social security in national law. This reservation however does not free Austria from its obligations under the ICESCR as laid down in Article 27 of the Vienna Convention on the Law of Treaties stipulating that a party “may not invoke the provisions of its national law as justifications for its failures to perform a treaty”. The non-ratification of the Optional Protocol to the ICESCR - which provides an individual complaints mechanism for persons to claim their rights at international level - creates an additional challenge to legal recourse for the right to social security in Austria.

This briefing elaborates on the various barriers in law and in practice individuals face when accessing social assistance benefits. Already the restrictive eligibility criteria provided in the BAOSA constitute the first barrier for people to effectively accessing social assistance benefits. Some individuals are excluded from benefits: individuals with subsidiary protection status and non-nationals that have no permanent residency status. The so-called “hardship clause” which allows federal states to grant benefits to non-nationals on a case-by-case basis is not an adequate alternative, as there is no legal entitlement to it, and consequently, its provision lies within the discretion of each federal state.

Barriers also remain when people are eligible for social assistance benefits. Information gathered by Amnesty International Austria through the interviews and research for this briefing, highlight the complexity of the application processes. The application form is accompanied by numerous documents which – depending on circumstances – can become difficult to obtain. In particular, women and women with children living in separation might experience trouble obtaining documents from their ex-partners.

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<sup>224</sup> Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, Non-take-up of rights in the context of social protection, A/HRC/50/38, para 25

Further challenges arise for particular groups. Individuals with disabilities or women who are separated from their partners can be asked to file claims against their family members for financial support, before they are eligible for benefits under the BAoSA. Individuals who are deemed 'fit to work' by authorities and migrants face additional requirements when applying for social assistance benefits, such as meeting all requirements regarding job applications and finding childcare when applicable. When these conditions are not met, the amount of the social assistance benefits will be reduced, which risks people experiencing and living in precarious financial situations.

Therefore, despite Austria's well-developed social security system, the social assistance benefits - due to their very restrictive criteria cause barriers for individuals in need for social assistance benefits and can effectively hinders them from accessing the scheme.

The right to social security is a human right. As also stressed by the UN Special Rapporteur, framing social assistance as a human right is the first step for people to effectively enjoying their human right to social security.<sup>225</sup>

**THEREFORE, AMNESTY INTERNATIONAL AUSTRIA CALLS ON THE AUSTRIAN GOVERNMENT AND PARLIAMENT TO:**

- Introduce a new national legislation on social assistance benefits that is in accordance with Austria's human rights obligations under Article 9 ICESCR and Article 13 ESC (rev.), and that ensures a life in dignity and social participation.
  - Ensure that the process of redesigning the social assistance benefits system actively engages with relevant civil society actors and individuals who are directly affected by the legal provisions, in line with human rights law and standards.
- Until the introduction of a new legislation, urgently revise the existing Basic Act on Social Assistance (BAoSA) to ensure that any social assistance benefits program entails the following elements:
  - Its objectives should reflect the realization of all components of the right to social security, in particular, include the objective of reducing inequality and protecting people from poverty and ensuring a life of dignity and with social participation
  - Ensure benefits under the BAoSA are adequate to allow people to enjoy an adequate standard of living, including by re-introducing minimum rates for social assistance benefits.
  - Ensure that all people can access benefits under the law, free from discrimination, including individuals with subsidiary protection status, women and people with disabilities.
  - Reviewing the requirements set forth in the Act stipulating to make financial claims before third parties with the aim to remove the de facto requirements on people with disabilities and women in separation having to make a claim for maintenance family members or former partners;
  - Introduce an explicit exemption in Section 7 BAoSA for adults with disabilities having to claim financial support from family members in order to access social assistance benefits.
  - Review the waiting period for non- nationals to ensure that non-nationals enjoy their right to social security on an equal basis and are not required to wait for excessively long periods before they can access social assistance.
  - Ensure regular monitoring and review of existing regulations, in particular as regards the adequacy of benefits for a life in dignity and in terms of realizing the right to social security.

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<sup>225</sup> A/HRC/50/38, para. 58

- Ensure that this monitoring facilitates and ensures a meaningful participation of rights-holders and other relevant stakeholders such as civil society organizations working in this sector.

**Further, Amnesty International Austria calls on the Federal Ministry of Social Affairs, Health, Care and Consumer Protection to<sup>226</sup>:**

- Take steps to counter stigmatization of individuals receiving social assistance benefits and to minimize the non-take up rate and to address any measures that may lead to stigmatization and consequently, non-take up of social security benefits, including:
  - Monitoring the non-take up rate on a regular basis;
  - Publicly advocating for a human right to social security, for example, through a public awareness campaign and training of all case workers and individuals involved in the delivery of social assistance benefits;
  - Adopting measures to combat the negative public narrative on social assistance benefits,
- Urgently address the barriers faced by people accessing social assistance benefits in Austria, including by
  - Reviewing the BAoSA in light of the complexity of the application process and the available support to individuals aiming to access social assistance benefits with the goal of ensuring effective and timely access to those benefits;
  - Reviewing the requirements set forth in the Act stipulating to make financial claims before third parties with the aim to remove the de facto requirements on people with disabilities and women in separation having to make a claim for maintenance family members or former partners;
  - Reviewing the requirements tied to individuals receiving social assistance benefits having to provide proof of their willingness to work, with a view to providing some degree of flexibility including in cases for women with childcare responsibilities;
  - Conducting a review of the barriers people face while accessing benefits under the BAoSA, keeping in mind the specific needs of marginalized groups. This should be done in a manner consistent with human rights, and with the participation of groups affected.
- Review the social assistance benefits system with a view to ensuring the right to social security for everyone as envisioned in international human rights law and political commitments.

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<sup>226</sup> According to the written statement of the Federal Ministry of Social Affairs provided on 6 February 2024, the federal government only has the role of the legislator, "which prevents it from conducting training courses for employees of the executing agencies." The statement also states that the Ministry of Social Affairs is in an ongoing dialogue with various NGOs in order to "obtain evidence-based information about the everyday lives and bureaucratic hurdles of people receiving social assistance".

**AS ALREADY RECOMMENDED IN PREVIOUS BRIEFINGS<sup>227</sup>, AMNESTY INTERNATIONAL AUSTRIA FURTHER CALLS ON THE AUSTRIAN GOVERNMENT TO:**

- Ensure that the ICESCR, to which Austria is a state party, is effectively incorporated into national law, including by
  - Removing the reservation on the national implementation of the ICESCR (*Erfüllungsvorbehalt*); and
  - Reviewing the Austrian “catalogue of fundamental rights” with a view to incorporating economic, social and cultural rights in the Austrian constitutional law.
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- Take urgent steps to ensure that the rights enshrined in the ICESCR are enforceable through domestic courts in Austria; in particular ensure that all victims of violations of the right to social security access to effective remedy, including domestic judicial remedy;
- Take urgent action to implement the recommendations made by the UN Committee on all forms of Discrimination against Women including enforcing equal pay for work of equal value and closing the gender pay gap, as well as addressing discrimination against women in the workplace particularly focusing on the needs of women belonging to disadvantaged groups.

**IN ADDITION, AMNESTY INTERNATIONAL AUSTRIA CALLS ON ALL REGIONAL GOVERNMENTS OF THE NINE FEDERAL STATES TO TAKE STEPS TO ENSURE THAT EVERYONE CAN ENJOY THEIR RIGHT TO SOCIAL SECURITY BY:**

- Taking steps to effectively reduce barriers in accessing social assistance benefits / means-tested minimum income benefits, particularly for marginalised and disadvantaged groups, including by:
  - Reviewing the availability of support at social welfare offices with the goal of ensuring that people can access social assistance benefits/ means-tested minimum income benefits;
  - Offering information on social assistance benefits/ means-tested minimum income benefits in various languages and non-formal language as well as ensuring support to applicants in all social welfare offices;
  - Removing the requirements on people with disabilities and women in separation having to make a claim for maintenance family members or former partners for financial support;
  - Reviewing the requirements tied to individuals receiving social assistance benefits having to provide proof of their willingness to work, particularly, in cases for women with childcare responsibilities;
  - Ensuring adequate training for all case workers assessing applications social assistant benefits with a view to ensuring a harmonized implementation of the respective Implementation Acts on Social Assistance benefits and a respectful contact between case workers and individuals receiving social assistance benefits;
  - Conducting a review of the barriers people face, keeping in mind the specific needs of marginalized groups. This should be done in a manner consistent with human rights, and with the participation of groups affected.

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<sup>227</sup> Amnesty International, *Das Sozialhilfe-Grundsatzgesetz in Österreich: Ein Schritt zurück für die Menschenrechte*, Oktober 2023, [https://www.amnesty.at/media/11264/amnesty\\_report\\_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf](https://www.amnesty.at/media/11264/amnesty_report_das-sozialhilfe-grundsatzgesetz-in-oesterreich-ein-schritt-zurueck-fuer-die-menschenrechte-oktober-2023.pdf) or Amnesty International, „*If housing was a human right, I would not live like this*”: Barriers to accessing homeless services in Austria, EUR 13/5458/2022, <https://www.amnesty.at/media/9677/amnesty-report-wohnung-und-obdachlosigkeit-oesterreich-april-2022-en.pdf>

**WITH A VIEW TO THE UPCOMING NATIONAL PARLIAMENTARY ELECTIONS IN 2024, AMNESTY INTERNATIONAL AUSTRIA  
URGES ALL ELECTORAL PARTIES TO:**

- Commit to a social assistance benefits/ means-tested minimum income benefits scheme that is in line with human rights standards and Austria's human rights obligations, including the introduction of minimum rates and the commitment to ensure a life of dignity and social participation for all within Austria's jurisdiction;
- Commit to ensuring that economic, social and cultural rights will be incorporated into Austria's constitution; by e.g. including this goal in a new government's work of program.

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

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