

# IMPLEMENTATION OF SELECTED OSCE HUMAN DIMENSION COMMITMENTS IN AUSTRIA

INDEPENDENT EVALUATION REPORT ON THE OCCASION  
OF THE AUSTRIAN OSCE CHAIRMANSHIP 2017

European Training and Research Centre for Human Rights and Democracy



**Publisher**

European Training and Research Centre for Human Rights and Democracy (ETC)

Elisabethstraße 50B

8010 Graz

Austria

[www.etc-graz.at](http://www.etc-graz.at)

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**Print**

Austrian Federal Ministry of the Interior

November 2017

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## List of Abbreviations

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AnhO	Verordnung der Bundesministerin für Inneres über die Anhaltung von Menschen durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes (Anhalteordnung)
AOB	Austrian Ombudsman Board
APT	Association for the Prevention of Torture
B-VG	Bundes-Verfassungsgesetz
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT	United Nations Committee against Torture
CC	Criminal Code (Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen, Strafgesetzbuch)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Committee on the Rights of the Child
CSCE	Conference on Security and Co-operation in Europe
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
ECTP	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EEC	European Economic Community
EO	Gesetz vom 27. Mai 1896, über das Exekutions- und Sicherungsverfahren (Exekutionsordnung)
ETC Graz	European Training and Research Centre for Human Rights and Democracy in Graz
EU	European Union
FRA	European Union Agency for Fundamental Rights
GeO der VA 2017	Geschäftsordnung der Volksanwaltschaft, ihrer Kommissionen, des Menschenrechtsbeirates und der Rentenkommission
GeV der VA	Geschäftsverteilung der Volksanwaltschaft, ihrer Kommissionen und des Menschenrechtsbeirates
GREVIO	Council of Europe Group of Experts on Action Against Violence Against Women and Domestic Violence

HeimAufG	Bundesgesetz über den Schutz der persönlichen Freiheit während des Aufenthalts in Heimen und anderen Pflege- und Betreuungseinrichtungen (Heimaufenthaltsgesetz)
HRAC	Human Rights Advisory Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
IGO	Interessenvertretung Gemeinnütziger Organisationen
IHRA	International Holocaust Remembrance Alliance
MARAC	Multi-Agency Risk Assessment Conference
MRB-alt	Menschenrechtsbeirat-alt
NAP	National Action Plan
NGO	Non-governmental organisation
NPM	National Preventive Mechanism
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	United Nations Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Co-operation in Europe
OSCE RFOM	Organization for Security and Co-operation in Europe Representative on Freedom of the Media
RAN	Radicalisation Awareness Network
SPG	Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei (Sicherheitspolizeigesetz)
SPT	United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
StGG	Staatsgrundgesetz vom 21. December 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder
StVG	Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen (Strafvollzugsgesetz)
UbG	Bundesgesetz vom 1. März 1990 über die Unterbringung psychisch Kranker in Krankenanstalten (Unterbringungsgesetz)
UCC	Uniform Commercial Code
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
VfSlg	Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes
ZARA	Zivilcourage und Anti-Rassismus-Arbeit



## Introduction to the Report

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In the context of the Austrian OSCE Chairmanship 2017, the European Training and Research Centre for Human Rights and Democracy in Graz (ETC Graz) was commissioned by the Republic of Austria to author an independent evaluation report on the implementation of selected OSCE commitments in Austria. Thereby Austria follows the practice introduced by the Swiss Chairmanship in 2014, which was continued by Serbia in 2015 and Germany in 2016. The following topics were selected for the report:

1. Prevention of torture and inhumane treatment of persons deprived of their liberty;
2. Hate crimes (ideologically motivated crimes), religious tolerance, extremism, and human rights education as an instrument for prevention;
3. Freedom of expression and assembly;
4. Prevention of violence against women, and victim protection in the case of domestic violence.

Aspects specific to migration were particularly considered in all subject areas as cross-cutting matters.

The choice of topics was made based on the existing OSCE commitments of Austria, with particular emphasis on the thematic priorities proposed by Austria as Chairmanship country, as well as timeliness and relevance to the Austrian discourse (daily political and especially also civil society); finally, also continuity with the topics selected by previous Chairmanships played a role. The credibility of Austria within the priorities proposed is crucial. Based on that, topics were chosen that were and still are of particular importance to the public and political discourse from a human rights perspective, which are focal points of the OSCE (particularly of the Office for Democratic Institutions and Human Rights, ODIHR), and offer available data relevant to the evaluation. The time period of the recent three years was determined for monitoring and evaluation.

For the evaluation report the authors employ the approach used by the United Nations Office of the High Commissioner for Human Rights (OHCHR) to assess respect, protection and fulfilment of human rights. In a first step, the major commitments of Austria were thereby analysed. The OSCE commitments are substantiated through international legal norms, for instance by norms of the United Nations (UN), the Council of Europe (CoE), and the European Union (EU), and their implementation in the national body of law is scrutinized (structural level). The second step concerns the concrete implementation of the legal framework by the Republic of Austria and its organs in relevant programmes and measures (process level). In a third step, the outcome level is evaluated. In this step, the

actual and practical realisation is scrutinized with the population as benchmark. This three-forged approach is also reflected in the structure of the individual chapters.

This independent evaluation report seeks to derive whether and to which degree the Republic of Austria lives up to its OSCE commitments through laws, legal practice, policies, measures, programmes, establishment and sustainability of relevant institutions, action plans, etc. **Thereby, this report is about state-run or state-initiated measures to implement the relevant commitments.** The report only considers civil society or private efforts insofar as these were commissioned by the Republic and its organs, or were substantially supported by them. Therefore, it is state structures and measures that are presented in this report. An evaluative statement on their effectiveness is certainly made at the end of each chapter. This evaluation primarily emerges through answering the question of which effects are recognisable for affected individuals or groups of persons whenever possible. However, it is always clearly stated whether the normative structure and the implementing procedures are in line with the respective commitments. The information was gathered from official reports, statistics, academic studies, available evaluation reports, state and shadow reports to international organisations, and through inquiries made to state and civil society institutions.

The evaluation of Chairmanship states goes back to the initiative by the *Civic Solidarity Platform*. Herby, the inclusion of civil society in the evaluation is fostered. The integration of the Austrian civil society was undertaken by the Austrian Ombudsman Board (AOB). Together with the Federal Ministry for Europe, Integration, and Foreign Affairs, information events on the Chairmanship and the “human dimension” of security and cooperation priorities were held for the evaluation process with ETC Graz. All civil society organisations known to the AOB were invited by the AOB to contribute to the selected topics with data and facts, deficits in implementation, good practices and recommendations. The responses of the first run-through of civil society involvement were included in the report and can be read in full in the Annex. In a second run-through, the complete draft of the report was again sent to all organisations by the AOB, with the request for statements and concrete recommendations on the implementation of selected commitments to be made to the Republic of Austria. These statements are included in the report with source references in separate sub-chapters.

# Topic 1: The Application of International Standards for the Prevention of Torture by the Austrian National Preventive Mechanism with a Focus on the Treatment of Prisoners

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## 1. Introduction

The OSCE is committed to the universal condemnation and eradication of torture and therefore pays close attention to the prevention of ill-treatment of persons deprived of their liberty. This holds true for countries where the OSCE maintains field operations, as well as for all OSCE participating states. Over the years, numerous politically binding commitments relating to the prevention of torture found entrance into the acquis of the “human dimension” of the OSCE’s comprehensive security concept. The OSCE and ODHIR particularly support the implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in the entire OSCE area.

Austria is under the legal obligation to prevent torture and other forms of ill-treatment and in this respect has ratified the three main international human rights instruments. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) entered into force in Austria on 28 August 1987,<sup>1</sup> the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) entered into force in Austria on 1 May 1989, and finally the OPCAT entered into force in Austria on 3 January 2013.<sup>2</sup> Following the legal obligations enshrined in these treaties, Austria submits state reports under the CAT and receives country visits from CPT. In order to fulfil the obligations set forth in the OPCAT, the AOB was designated as the National Preventive Mechanism (NPM) in July 2012. Since then, the NPM has monitored classical places of detention (such as correctional institutions, police stations and police detention centres), as well as less traditional places of detention (such as psychiatric institutions, hospitals, retirement and nursing homes, child and youth welfare facilities) all over Austria.<sup>3</sup> The establishment of a monitoring body on the domestic level complements the work of international and regional monitoring bodies, and constitutes the most recent initiative to prevent torture in places where persons are deprived of their liberty in Austria. For

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<sup>1</sup> Federal Gazette No. 492/1987.

<sup>2</sup> Federal Gazette No. 190/2012.

<sup>3</sup> Austrian Ombudsman Board, Preventive Human Rights Monitoring, <https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring>.

these reasons, the present study analyses the contribution of the NPM to torture prevention in Austria.

The OSCE commitments, *inter alia*, encourage States to observe internationally recognised standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners, and to implement the recommendations of relevant regional and international bodies, like of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).<sup>4</sup> Therefore, the study at hand focuses on the application of international standards for the prevention of torture by the NPM. Given that the OSCE commitments also emphasise the treatment of prisoners, the present chapter of the evaluation pays particular attention to the standards related to facilities of the penitentiary system, including facilities for the detention of mentally ill offenders.

The study begins with a brief overview of the OSCE commitments related to the prevention of torture (Section 2). Then, structural aspects of the Austrian NPM are analysed as the legal framework, the mandate, the institutional setup and composition of the NPM will be presented (Section 3). In a next step, formal and substantive aspects of the Austrian NPM's preventive work will be discussed with a focus on the standards applied by the NPM in order to protect and promote human rights (Section 4). Finally, outcome-related aspects of the NPM's work will be reviewed by looking at this body's (potential) impact and the results of its monitoring procedure (Section 5). This analysis is followed by an evaluation (Section 6) and recommendations by civil society organisations (Section 7).

## 2. OSCE commitments

The OSCE member states repeatedly committed themselves to the prevention of torture. Three main strands of commitments can be distinguished among the main documents adopted:

First, in the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 and in further meetings such as those held in Istanbul and Athens, the participating states expressed their commitment to recognise the prohibition of torture as non-derogable right and to promote legislation providing procedural and substantive safeguards and remedies to combat these practices.<sup>5</sup>

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<sup>4</sup> OSCE Office for Democratic Institutions and Human Rights, *The Fight against Torture: The OSCE Experience*, Warsaw, 2009, [osce.org/odihr/37968?download=true](https://www.osce.org/odihr/37968?download=true).

<sup>5</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, No. 16.3, [osce.org/de/odihr/elections/14304](https://www.osce.org/de/odihr/elections/14304); Istanbul Document, Istanbul, 19 November 1999, No.

Secondly, in the Vienna Meeting of 1989 and further meetings like in Copenhagen, Ljubljana and Athens, the participating States placed an emphasis on the accession to the CAT and on considering to accede to the OPCAT.<sup>6</sup>

Thirdly, the participating states committed themselves to uphold internationally recognized standards for the treatment of prisoners.<sup>7</sup> In Moscow, specifically, the participating States expressed that they will “treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person, and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees.”<sup>8</sup>

### 3. Structural aspects of the NPM

#### 3.1. Legal framework governing the work of the NPM

The Act on Implementing the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>9</sup> (OPCAT-Implementation Act) amended the Austrian Federal Constitution (B-VG)<sup>10</sup> and entrusted the AOB with the tasks of a NPM in 2012. The NPM thus has a legal foundation in the Austrian Constitution, more specifically in Article 148a (3) B-VG. Article 148h B-VG foresees that commissions shall be established to perform the tasks as foreseen in Art. 148a (3) B-VG, as well as the establishment of a Human Rights Advisory Council (HRAC) for consultation.

Apart from the provision in the Constitution, secondary rules on the Austrian NPM are laid down in sub-constitutional law. The Act on the AOB 1982<sup>11</sup> was amended by the OPCAT-Implementation Act and now includes a Section III on the “Protection and Promotion of Human Rights”. This Section regulates the details of the organisation, competences and work of the AOB and the commissions of the NPM, as well as of the HRAC. Two further

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21, [osce.org/mc/39569](https://www.osce.org/mc/39569); Document of the Seventeenth Meeting of the Ministerial Council, Athens, 1-2 December 2009, No. 2.1.3., [osce.org/mc/67621](https://www.osce.org/mc/67621).

<sup>6</sup> OSCE, Concluding Document of Vienna – The Third Follow-up Meeting, Vienna, 15 January 1989, No. 23.5, [osce.org/mc/40881](https://www.osce.org/mc/40881); OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, No. 16.2, [osce.org/de/odihr/elections/14304](https://www.osce.org/de/odihr/elections/14304); OSCE, Document of the Thirteenth Meeting of the Ministerial Council, Ljubljana, 5-6 December 2005, Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems, [ohchr.org/EN/Issues/Education/Training/Compilation/Pages/15DocumentoftheThirteenthMeetingoftheMinisterialCouncil,Ljubljana\(2005\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/15DocumentoftheThirteenthMeetingoftheMinisterialCouncil,Ljubljana(2005).aspx); OSCE Document of the Seventeenth Meeting of the Ministerial Council, Athens, 1-2 December 2009, No. 1, [osce.org/mc/67621](https://www.osce.org/mc/67621).

<sup>7</sup> Vienna 1989, 23.3.; OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 4 October 1991, No. 23 and 23.2, [osce.org/de/odihr/elections/14310](https://www.osce.org/de/odihr/elections/14310).

<sup>8</sup> OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 4 October 1991, No. 23, [osce.org/odihr/elections/14310](https://www.osce.org/odihr/elections/14310).

<sup>9</sup> Bundesgesetz zur Durchführung des Fakultativprotokolls vom 18 Dezember 2002 zum Übereinkommen der Vereinten Nationen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe – OPCAT-Durchführungsgesetz, Federal Gazette I No. 1/2012.

<sup>10</sup> Bundes-Verfassungsgesetz (B-VG), Federal Gazette I No. 194/1999.

<sup>11</sup> Bundesgesetz über die Volksanwaltschaft (Volksanwaltschaftsgesetz 1982 - VolksanwG), Federal Gazette No. 433/1982.

ordinances complement the legal basis of the Austrian NPM. On the one hand, there are Standing Rules of the AOB,<sup>12</sup> which lay down further details on the tasks, organisation, leadership, conduct of visits, decision-making and remuneration of the commissions of the NPM in paragraphs 16 to 24. On the other hand, the Act on the Allocation of Duties of the AOB,<sup>13</sup> specifies the distribution of tasks among the AOB, the commissions and the HRAC.

### 3.2. The preventive mandate of the NPM

Article 148a (3) B-VG provides the AOB with a threefold human rights monitoring mandate:

1. To monitor public and private institutions and facilities where individuals are or can be detained.
2. To monitor and concomitantly inspect executive bodies and officers of administrative authorities authorised to issue direct orders and carry out coercive measures.
3. To monitor and visit facilities and programmes designed to serve persons with disabilities.

§ 11 (1) Act on the AOB 1982 confirms this threefold mandate in sub-constitutional law. From the substantive point of view, the mandate of the AOB goes beyond the mandate provided for in the OPCAT, as Article 148a (3) 2 B-VG provides the AOB and its commissions with the mandate to monitor and inspect administrative authorities issuing direct orders or carry out coercive measures. The AOB also implements Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities (CRPD), as it is entrusted with the task of visiting facilities designed to serve persons with disabilities according to Article 148a (3) 3 B-VG with a view to prevent exploitation, violence and abuse. The AOB made clear that all tasks foreseen in Article 148a (3) are interrelated in practice. As the monitoring of places of detention is the focus of this study, a focus will be put on the mandate provided for in Article 148a (3) 1 B-VG in the following sections.

The main purpose of monitoring, according to Article 148a (3) 1 B-VG, is prevention, that is the reduction of risks of becoming a victim of a human rights violation for persons deprived of their liberty. The NPM's "findings help to identify deficits in the system based on individual cases, which could constitute a latent risk for human rights violations."<sup>14</sup> The definition of places of detention to be monitored in the course of Article 148a (3) 1 B-VG follows the definition provided in Article 4 OPCAT and in practice encompasses correctional

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<sup>12</sup> Geschäftsordnung der Volksanwaltschaft, ihrer Kommissionen, des Menschenrechtsbeirates und der Rentenkommission (GeO der VA 2017), Federal Gazette II No. 163/2017.

<sup>13</sup> Geschäftsverteilung der Volksanwaltschaft, ihrer Kommissionen und des Menschenrechtsbeirates (GeV der VA 2017), Federal Gazette II No. 434/2016.

<sup>14</sup> AOB, Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013, Vienna, 2014, p. 7, [volksanwaltschaft.gv.at/downloads/48h64/Austria\\_ReportonActivitiesofNPM\\_2013.pdf](https://www.volksanwaltschaft.gv.at/downloads/48h64/Austria_ReportonActivitiesofNPM_2013.pdf).

institutions, retirement and nursing homes, psychiatric facilities and crisis centres.<sup>15</sup> This monitoring is done all over Austria and on a routine basis.<sup>16</sup> This means that the AOB and its commissions examine around 4,000 institutions and facilities where persons are or can be deprived of their liberty, in order to protect and promote human rights.<sup>17</sup> The province of Vorarlberg set up a separate NPM that monitors places of detention under the competence of the province of Vorarlberg. Yet, the federal institutions in Vorarlberg, where persons are or may be deprived of their liberty, remain under the responsibility of the Austrian NPM.

Article 148c B-VG provides the AOB with the competence to issue recommendations for measures to be taken by the authorities of the highest administrative level. The authority concerned must then conform to these recommendations, or has to inform the AOB in writing about the reasons for not following the recommendations. Moreover, the AOB may suggest the amendment or adoption of laws according to § 7 (2) Act on the Austrian Ombudsman Board. Draft laws and draft decrees have to be submitted to the AOB for review as well. The AOB may also file ordinance appeals (*Verordnungsanfechtung*) at the Constitutional Court. In addition to the regular annual reports to the National Council and the Federal Council, as well as to the SPT, the AOB may also draft specially themed reports.<sup>18</sup>

According to § 14 Act on the Austrian Ombudsman Board, the HRAC is mandated to provide (legal) advice to the AOB, particularly when the AOB is deciding upon focus areas for monitoring (*Prüfeschwerpunkte*), prior to issuing determinations of maladministration (*Erstattung von Missstandsfeststellungen*), as well as regarding recommendations on uniform procedures and standards for monitoring.

The legal amendments introduced by the OPCAT-Implementation Act constitute the most profound expansion of the AOB's responsibilities since its establishment in 1977. While the AOB for a long time focused on the ex-post control of the public administration and reviewed individual complaints for that purpose, the AOB's mandate now includes preventive monitoring tasks. It was made clear by the Austrian NPM that the focus on prevention implies more than ex-post control of places of detention. The 2013 Report on the NPM, for instance, states that "[the] commissions consider it their duty to contribute to a strengthening of human rights standards at the visited institution and to advocate the protection and promotion of human rights across Austria."<sup>19</sup>

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<sup>15</sup> AOB, Report of the AOB 2013, May 2014, p. 9.

<sup>16</sup> AOB, Report of the AOB 2014, March 2015, p. 9.

<sup>17</sup> AOB, Report of the AOB 2013, May 2014, p. 9.

<sup>18</sup> Such a special report was adopted in respect to the facility for detention pending forced return in Vordernberg. AOB, Sonderbericht Anhaltezentrum Vordernberg, May 2015, [volksanwaltschaft.gv.at/downloads/1i6dp/SB\\_Vordernberg.pdf](http://volksanwaltschaft.gv.at/downloads/1i6dp/SB_Vordernberg.pdf).

<sup>19</sup> AOB, Report of the AOB 2013, May 2014, p. 26.

### 3.3. Institutional setup and composition of the NPM

The Austrian NPM is made up of the AOB and commissions. The HRAC is not part of the NPM, but has an advisory function.

The AOB consists of three members, one of which holds the annually rotating chairmanship. The members of the AOB are appointed for a term of six years, whereby re-election is possible once according to Article 148g B-VG. The AOB is elected by the National Council (Nationalrat) on the basis of an overall proposal, for which each of the three parties holding the most mandates in the National Council may propose a candidate. Only persons eligible for election to the National Council having, inter alia, knowledge in the area of human rights, may become a member of the AOB.

The present six commissions of the Austrian NPM are organised according to regional aspects. One commission has been set up for the provinces of Tyrol and Vorarlberg, one for Salzburg and Upper Austria, one for Styria and Carinthia, one for some districts of Vienna, one for the remaining districts of Vienna and some districts of Lower Austria, and finally one commission has been set up for Burgenland and the remaining districts of Lower Austria. This distribution of competences is in line with § 8 of the Act on the Allocation of Duties of the AOB. Each commission at present comprises at least eight members and a head of the commission. This way the legal requirement of having at least 42 commission members and additional heads for each commission, which is prescribed in § 12(1) Act on the AOB 1982 and § 18 Standing Rules of the AOB, is fulfilled.

The appointment of commission members requires a collegial decision by the AOB after a public tender and after hearing the HRAC and the heads of the commission in line with § 19 (2) Standing Rules of the AOB, and § 12 Act on the Austrian Ombudsman Board. Members of the regional commissions need to have the “required skills and knowledge”, whereby the law does not provide any details on what these requirements entail. When appointing commission members, the AOB has to strive for a gender balance and adequate representation of ethnic and minority groups, and should ensure an independent, multidisciplinary and pluralist composition. Commission members are appointed for a term of six years. After three years, half of all the commission members have to be re-appointed. Commission members may also be re-appointed. They all receive a remuneration for their activities, which is determined by the AOB.

Each commission is headed by a personality renowned in the field of human rights according to § 21 (1) Standing Rules of the AOB. The appointment of the heads of commissions also requires a collegial decision by the AOB after a public tender and a hearing by the HRAC in line with § 19 (1) Standing Rules of the AOB. § 13 (4) Act on the AOB 1982 provides that the heads of the commissions should coordinate their activities.



If required, the commissions may receive support from external experts or interpreters during their visits, as prescribed in § 22 (4) Standing Rules of the AOB.

The HRAC, which consults the Austrian NPM, is headed by a Chair and comprises 16 representatives and 16 deputy representatives of non-governmental organisations and the Federal Ministries. According to § 15 (2) Act on the AOB 1982, members of the HRAC need to have respective competence and expertise in the area of human rights. The Chair is a renowned personality in the area of human rights with outstanding knowledge of the organisation and functioning of the administration, and has scientific expertise in constitutional law. The AOB has to care for a balanced representation of the sexes, an appropriate representation of ethnic groups and minorities, and must ensure an independent, interdisciplinary and pluralistic composition of the HRAC. The members of the HRAC are appointed by the AOB according to § 15 (3) Act on the AOB 1982. For the appointment of a member and a substitute member, the AOB is bound to a proposal by each of the following Ministers: Federal Chancellor, Minister of the Interior, Minister of Justice, Minister for Health, Minister of Defence and Sports, Minister of Labour, Social Affairs and Consumer Protection, and the Minister for European and International Affairs. Seven non-governmental organisations, that are determined by the AOB, may also propose members and substitute members for the HRAC. The AOB is bound to these proposals. The Chair and Deputy of the HRAC are appointed by the AOB without being bound to any proposals.

#### **4. Procedural aspects of the NPM**

##### **4.1. Formal aspects of implementation**

###### **4.1.1. NPM budget**

The NPM is a separate cost unit within the budget of the AOB, exclusively dedicated to NPM activities. "The use of resources allocated to the work of the NPM is determined by the members of the AOB in consultation with the six commissions."<sup>20</sup> The budget provided for the NPM remained stable during the years 2014-2016. Expenditures in the amount of around €3,1 Mio have been budgeted for these years.<sup>21</sup> A budget of around €1,450,000 was used to remunerate the NPM heads and members of the commissions, members of HRAC, to cover travel expenses and compensation for preparing and following up on visits, remunerate employees working in the OPCAT sector, as well as for further activities, like workshops, supervisions and expert consultations.<sup>22</sup>

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<sup>20</sup> AOB, International Report 2014, p. 10 et seq.

<sup>21</sup> Information provided by the AOB in September 2017.

<sup>22</sup> AOB, Annual Report 2014, p. 12; AOB, Annual Report 2015, p. 18; AOB, Annual Report 2016, p. 18.

#### 4.1.2. NPM personnel

In 2012, the AOB was allocated 15 additional permanent positions for fulfilment of the new competences under OPCAT.<sup>23</sup> One of these positions has since then been abandoned.<sup>24</sup> The commissions of the Austrian NPM comprise at least eight members and a head of the commission. Initially, half of the members of each committee were appointed for three years, the other half were initially appointed for six years. This should help to keep internal knowledge within the NPM for when new members join after the ordinary term of office ends after six years. However in practice, numerous members changed also during the term of office.

#### 4.1.3. Number of NPM visits to detention facilities 2014-2016

From 2014 to 2016, the NPM conducted a total of 1,258 monitoring visits (2014: 356; 2015: 423; 2016: 479).<sup>25</sup> Out of these, a total of 321 monitoring visits were conducted in detention places of the penitentiary system and police detention centres (2014: 100; 2015: 116; 2016:105).<sup>26</sup> The vast majority of these visits remained unannounced, as only 22 out of the 321 visits were announced.<sup>27</sup>

#### 4.1.4. Average duration of NPM visits

In 2016, the average duration of a monitoring visit was 6.5 hours.<sup>28</sup>

### 4.2. Substantive aspects of implementation

#### 4.2.1. Standards applied by the NPM for its monitoring

This subsection investigates the extent to which the NPM implements the OSCE commitment to resort to internationally recognized standards when monitoring places of detention. It does so by examining the legal basis for applying preventive standards for monitoring and the related practice of the NPM. The section builds on the reports published in the project “Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms”.<sup>29</sup>

From a legal perspective it has to be noted that Article 148 a (3) B-VG mandates the NPM with the protection and promotion of “human rights”, without specifying which material standards have to be applied for monitoring places of detention. The Explanatory Notes to this provision explain that “international human rights standards” should be used for this purpose and explicitly refer to the standards of the SPT and CPT in this context.<sup>30</sup> The wording of the Explanatory Notes makes it clear that this reference to the SPT and the CPT

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<sup>23</sup> AOB, Annual Report 2012, p.13.

<sup>24</sup> AOB, Annual Report 2016, p. 19.

<sup>25</sup> AOB, Annual Report 2014, p. 11; AOB, Annual Report 2015, p. 17; AOB, Annual Report 2016, p. 16.

<sup>26</sup> AOB, Annual Report 2014, p. 11; AOB, Annual Report 2015, p. 17; AOB, Annual Report 2016, p. 16.

<sup>27</sup> AOB, Annual Report 2014, p. 11; AOB, Annual Report 2015, p. 17; AOB, Annual Report 2016, p. 16.

<sup>28</sup> AOB, Annual Report 2016, p. 14.

<sup>29</sup> The website of the project is available at [etc-graz.at/typo3/index.php?id=1327](http://etc-graz.at/typo3/index.php?id=1327).

<sup>30</sup> Erläuterungen zu Art. 1 Z 4 (Art. 148a (3) und Z 5 (Art. 148a (4) bis (6) neu) der Regierungsvorlage 1515 der 24. Gesetzgebungsperiode, [parlament.gv.at/PAKT/VHG/XXIV/II\\_01515/index.shtml](http://parlament.gv.at/PAKT/VHG/XXIV/II_01515/index.shtml).

is to be understood as a non-exhaustive list. § 21 (2) 7 Standing Rules of the AOB explains, that the heads of the commissions are tasked to submit the visiting protocols of the commissions to the AOB and make a human rights assessment considering national and international standards. Yet, from these specifications still no clear picture emerges of the standards to be applied by the NPM. Two principles seem to shape the existing scope for interpretation: On the one hand, the reference to “international human rights standards” and “international standards” in the Explanatory Notes and Standing Rules of the AOB makes it clear that the NPM’s preventive monitoring work does not merely build on standards to be found in national law. On the other hand, the reference to the standards of the SPT and the CPT makes it clear that the NPM can also base its monitoring on legally non-binding standards.<sup>31</sup> The NPM itself came to the conclusion that all norms and principles for the protection of human rights developed under international and domestic law should be taken into account.<sup>32</sup> From a legal perspective, the NPM also has the possibility to develop its own standards. The Explanatory Notes to the OPCAT-Implementation Act state that the relevant standards and criteria for the prevention of torture are to be developed together by the NPM commissions, the HRAC, as well as relevant experts and stakeholders.<sup>33</sup>

Overall, the legal framework thus mandates the NPM to use relevant international and national, legally binding and non-binding standards, as well as self-developed standards for its work.

In practice, the NPM uses a very wide range of standards. Firstly, the Austrian legal order provides the NPM with reference points for preventive recommendations. One example of this is the well-being of the child, anchored in the Federal Constitutional Law on the Rights of Children, to which the NPM gives priority consideration in the examination of youth welfare institutions. However, in practice, the NPM also draws up regulations<sup>34</sup> and decrees<sup>35</sup> as standards for its monitoring. Likewise, the findings of the Austrian courts are of relevance to the preventive work of the NPM, as the standards derived from them can be used for preventive human rights protection.<sup>36</sup>

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<sup>31</sup> See also Kucsko-Stadlmayer Gabriele, Die Volksanwaltschaft als „Nationaler Präventionsmechanismus“, in: Österreichische Juristen-Zeitung 20, 2013, pp. 913-921, [volksanwaltschaft.gv.at/downloads/5gm18/Die%20Volksanwaltschaft%20als%20Nationaler%20Pr%C3%A4ventionsmechanismus%20von%20Gabriele%20Kucsko-Stadlmayer.pdf](http://volksanwaltschaft.gv.at/downloads/5gm18/Die%20Volksanwaltschaft%20als%20Nationaler%20Pr%C3%A4ventionsmechanismus%20von%20Gabriele%20Kucsko-Stadlmayer.pdf).

<sup>32</sup> AOB, Prüfschema, Methodik und Veranlassungen der Volksanwaltschaft und ihrer Kommissionen, p.1, [volksanwaltschaft.gv.at/downloads/a58gi/Pr%C3%BCfschema%20-%20Methodik%20-%20Veranlassungen.pdf](http://volksanwaltschaft.gv.at/downloads/a58gi/Pr%C3%BCfschema%20-%20Methodik%20-%20Veranlassungen.pdf).

<sup>33</sup> Erläuterungen zu Art.1 Z 4 (Art. 148a (3)) und Z 5 (Art. 148a (4) bis (6) neu) der Regierungsvorlage 1515 der 24. Gesetzgebungsperiode, p. 5, [parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01515/index.shtml](http://parlament.gv.at/PAKT/VHG/XXIV/I/I_01515/index.shtml).

<sup>34</sup> See, for example, the regulation on the Wiener Kinder- und Jugendhilfegesetz, which includes concepts on the prevention of violence and sex education.

<sup>35</sup> See, for example, the decree according to which female inmates of prisons have to be brought to a gynaecologist within two weeks after the first detention hearing.

<sup>36</sup> See, for example, the judgement by the Supreme Court in respect to the separation of youth and adults in psychiatric establishments, 7Ob107/14g, 9 July 2014.

The NPM also uses international (legal) sources as standards. In its examinations, the NPM repeatedly refers to the comprehensive case law on Article 3 of the European Convention on Human Rights, developed by the European Court of Human Rights. Additionally, the NPM uses the “Beijing Rules”<sup>37</sup> adopted by the UN General Assembly, which include minimum standards for the juvenile institutions, as well as the “Bangkok Rules”<sup>38</sup> proposed by the United Nations Economic and Social Council (ECOSOC), which set standards for the treatment of women in detention. Further standards used by the NPM can be found in the results of the “Universal Periodic Review”<sup>39</sup> and the concluding remarks of the Austrian reports of relevant UN committees, in particular those of the UN Committee against Torture, the UN Committee on the Rights of the Child, and the UN Committee on the Protection of the Rights of Persons with Disabilities. The NPM also consults the reports of the UN Special Rapporteur on Torture as well as the European Prison Rules<sup>40</sup> adopted by the Committee of Ministers of the CoE and the opinions and recommendations of the CoE's Human Rights Commissioner.<sup>41</sup> Moreover, the exchange with NPMs of other States serves the development of standards.

In practice, the standards of experts and relevant expert bodies represent a further, substantial source for the NPM's preventive monitoring. The CPT is regarded as a leading body in this respect due to its accumulated expertise and many years of monitoring experience. The CPT has developed extensive standards in the area of traditional places of detention, in particular for prisons, police detention centres and psychiatric institutions.<sup>42</sup> The NPM refers to CPT standards in many of its work steps and results. Three types of references can be distinguished in practice: (1) the NPM refers directly to a CPT standard and uses it for its work; (2) the NPM refers to a CPT standard and develops it further, or substantiates it in the light of the situation found; (3) the NPM uses a CPT standard as the foundation for an analogous application of a standard.<sup>43</sup>

The NPM also builds on published (research) results by the SPT<sup>44</sup> and the Association for the Prevention of Torture (APT),<sup>45</sup> and derives preventive standards from

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<sup>37</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Adopted by General Assembly resolution 40/33 of 29 November 1985, [ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf](http://ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf).

<sup>38</sup> ECOSOC, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders; 45th Plenary Meeting, 22 July 2010, [un.org/en/ecosoc/docs/2010/res%202010-16.pdf](http://un.org/en/ecosoc/docs/2010/res%202010-16.pdf).

<sup>39</sup> OHCHR, Universal Periodic Review, [ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx](http://ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx).

<sup>40</sup> Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

<sup>41</sup> For the Opinions of the Commissioner for Human Rights see [coe.int/de/web/commissioner/opinions](http://coe.int/de/web/commissioner/opinions). For the Recommendation of the Commissioner for Human Rights see [coe.int/de/web/commissioner/recommendations](http://coe.int/de/web/commissioner/recommendations).

<sup>42</sup> CPT, Standards and Tools, [coe.int/en/web/cpt/standards](http://coe.int/en/web/cpt/standards).

<sup>43</sup> Markus Möstl, Siniša Pejić, Maddalena Vivona, Veronika Apostolovski, Renate Kicker, Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms – Research Paper 2, April 2017, p. 25 et seq.

<sup>44</sup> See SPT, Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment regarding the rights of persons institutionalized and treated medically without informed consent, CAT/OP/27/2, 26 January 2016.

them particularly for monitoring prisons. Likewise, the Istanbul Protocol,<sup>46</sup> the so-called ITHACA Toolkit<sup>47</sup>, as well as the “European Charter of the rights and responsibilities of older people in need of long-term care and assistance”<sup>48</sup> are used by the NPM. In addition, the NPM draws on scientific project results and expert opinions on special topics as standards.<sup>49</sup>

From June 1999 to June 2012, a Human Rights Advisory Board (Menschenrechtsbeirat-alt, MRB-alt) consulted the Federal Ministry of the Interior on aspects related to human rights. The MRB-alt also carried out inspections in the field of detention pending deportation and the Austrian police force. The MRB-alt published its recommendations, which are now taken into consideration by the NPM for its monitoring activities.<sup>50</sup> In terms of content, the overall 384 recommendations of the MRB-alt relate to, for example, health care and legal information in the area of detention pending deportation, the medical care of detained persons, the language usage of the security executive, as well as the minimum standards of arrest conditions.

The NPM also uses standards developed by pertinent professional groups.<sup>51</sup> The Quality4Children<sup>52</sup> standards are a prominent example in this respect, aiming at improving the general life situation and opportunities for development of children and young adults in alternative care. For monitoring facilities of the health care sector, the NPM also draws up its standards from non-binding guidelines of the Austrian Federal Institute of Public Health (Österreichisches Bundesinstitut für Gesundheitswesen),<sup>53</sup> “Consensus Statements” and standards of relevant professional groups, (such as psychiatry or psychology), as well as information from relevant medical guidelines<sup>54</sup> and guidebooks.<sup>55</sup>

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<sup>45</sup> APT Website, [www.apr.ch](http://www.apr.ch).

<sup>46</sup> OHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, HR/P/PT/8/Rev.1, [ohchr.org/Documents/Publications/training8Rev1en.pdf](http://ohchr.org/Documents/Publications/training8Rev1en.pdf).

<sup>47</sup> ITHACA Project Group, ITHACA Toolkit for Monitoring Human Rights and General Health Care in Mental Health and Social Care Institutions, 2010, [mdac.info/sites/mdac.info/files/ithaca\\_toolkit\\_english.pdf](http://mdac.info/sites/mdac.info/files/ithaca_toolkit_english.pdf).

<sup>48</sup> See [ede-eu.org/media/EN\\_European\\_Charter\\_Daphne.pdf](http://ede-eu.org/media/EN_European_Charter_Daphne.pdf).

<sup>49</sup> See for example, Universität Innsbruck, Gutachten über die aus dem UN-Übereinkommen über die Rechte von Menschen Behinderungen erwachsenden Verpflichtungen Österreichs, 2014, [sozialministerium.at/cms/site2/attachments/2/3/0/CH3434/CMS1450782156141/fakultaetsgutachten\\_plichten\\_ost\\_erreichs\\_2014.pdf](http://sozialministerium.at/cms/site2/attachments/2/3/0/CH3434/CMS1450782156141/fakultaetsgutachten_plichten_ost_erreichs_2014.pdf); Niederhametner, Petra, Verletzungen von Menschenrechten vermeiden: Prävention am Beispiel von Pflegeheimen und psychiatrischen Abteilungen, facultas Verlag, 2016.

<sup>50</sup> See Human Rights Commission, Empfehlungen des Menschenrechtsbeirats, [bmi.gv.at/408/Menschenrechtsbeirat/Empfehlungen/files/empfehlungen\\_gesamt\\_juni\\_2012.pdf](http://bmi.gv.at/408/Menschenrechtsbeirat/Empfehlungen/files/empfehlungen_gesamt_juni_2012.pdf).

<sup>51</sup> Markus Möstl, Siniša Pejić, Maddalena Vivona, Veronika Apostolovski, Renate Kicker, Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms – Research Paper 2, p. 18, April 2017.

<sup>52</sup> Projekt Q4C, Quality4Children Standards in der außerfamiliären Betreuung in Europa, [quality4children.ch/media/pdf/q4cstandards-deutschschweiz.pdf](http://quality4children.ch/media/pdf/q4cstandards-deutschschweiz.pdf).

<sup>53</sup> See website of the Austrian Federal Institute of Public Health, [www.goeg.at](http://www.goeg.at).

<sup>54</sup> See, for example, Federal Ministry of Health, Wissenschaftliche Aufbereitung für Empfehlungen „Ernährung im Alter in verschiedenen Lebenssituationen“, 2013, [bmgf.gv.at/cms/home/attachments/4/2/3/CH1048/CMS1382972406587/ernaehrungimalter\\_20131031.pdf](http://bmgf.gv.at/cms/home/attachments/4/2/3/CH1048/CMS1382972406587/ernaehrungimalter_20131031.pdf).

<sup>55</sup> See, for example, Fonds Soziales Wien, Demenz: Ratgeber für den Alltag, 2014, [http://fsw.at/downloads/broschueren/pflege\\_betreuung/DemenzRat.pdf](http://fsw.at/downloads/broschueren/pflege_betreuung/DemenzRat.pdf).

This list of standards shows which material sources are used by the NPM in practice to protect and promote “human rights” in the sense of Article 148 a (3) B-VG. The diversity of standards applied in practice reveals that the mandate to use “international human rights standards” for monitoring is interpreted in an extensive manner by the NPM. Regarding the legal quality of these standards, it is to be noted that these are partly legal, but to a very large extent not legally binding. However, in practice, distinctions based on the origin or binding nature of the standard do not make any discernible difference. Since there are only very few binding standards in many areas for the prevention of human rights violations, it is a clear advantage for the NPM to also use non-binding standards for its monitoring and assessments. The legally undoubtedly legitimate possibility to resort to a wide range of own, national, international, legally binding and legally non-binding standards, puts the NPM in a position to formulate adequate preventive recommendations for the different situations of detention including facilities of the penitentiary system.<sup>56</sup>

#### 4.2.2. When does the NPM apply standards for its monitoring?

The standards presented above are applied by the NPM in a number of working steps. The visiting committees use them to define a focus for their on-site visits and the preparation thereof. The standards are of even greater importance for the commissions in the preparation for the visiting protocols and in particular for the human rights assessment and the resulting proposals to the AOB. The visiting committees also use the standards, though to a lesser extent, for the formulation of concrete recommendations to the heads of institutions in the course of the final talks. The AOB uses the standards for the final assessment of the visiting reports submitted by the commissions. These standards are also important for the AOB, when confronting the ministries with the monitoring results of the NPM. If the protocols submitted by the visiting commissions do not already refer to standards, the AOB supplements such references in order to substantiate the recommendation for the ministries.<sup>57</sup>

#### 4.2.3. How does the NPM address substantive gaps in the standards?

If no relevant standards are applicable to a specific topic relevant to the NPM, the NPM elaborates its own standards. In the document „Prüfschema, Methodik und Veranlassungen der Volksanwaltschaft und ihrer Kommissionen“<sup>58</sup>, the AOB describes the way in which the NPM can set its own standards. This procedure provides that a head of a commission or the AOB may propose to draw up a joint draft of a recommendation pursuant to Article 148c B-VG for a specific case. This recommendation includes a “guiding principle” (Leitsatz), which

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<sup>56</sup> Markus Möstl, Siniša Pejić, Maddalena Vivona, Veronika Apostolovski, Renate Kicker, Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms – Research Paper 2, p. 20 et seq., April 2017.

<sup>57</sup> Ibid, p. 21 et seq.

<sup>58</sup> AOB, Prüfschema, Methodik und Veranlassungen der Volksanwaltschaft und ihrer Kommissionen, [volksanwaltschaft.gv.at/downloads/a58gi/Pr%C3%BCfschema%20-%20Methodik%20-%20Veranlassungen.pdf](https://www.volksanwaltschaft.gv.at/downloads/a58gi/Pr%C3%BCfschema%20-%20Methodik%20-%20Veranlassungen.pdf).

defines the human rights standard to be applied. The draft should then be submitted to the HRAC for consultation before it is then adopted by the members of the AOB. Then, the recommendation is submitted to the highest authorities of the administration. The recommendations and the guiding principle contained therein then become internally binding for the NPM and shall be taken into account for any future visits by the commissions. The HRAC has so far published 16 substantive comments.<sup>59</sup> In terms of content, many of these statements are in line with the “Empfehlungsliste der Volksanwaltschaft und ihrer Kommissionen”.<sup>60</sup> However, this list of recommendations is much more comprehensive than the comments of the HRAC and includes material standards, such as the constructional aspects of the facilities, living conditions, contact with the outside world, opportunities for education, work and employment, complaints management, the health care system, etc. Even if this has not been explicitly stated, it is to be assumed that the recommendation list represents the current “acquis” of the standards that are internally binding for the NPM. This list of recommendations is expanded and deepened in the light of new challenges and new insights gained by the NPM. New standards are first published in the annual reports and then incorporated into the updated version of the recommendation list. Through this publication, the institutions visited will also find an orientation on which standards the NPM bases its monitoring.<sup>61</sup>

Building on the standards contained in the annual reports of 2012 to 2016, the AOB published a brochure with preventive recommendations concerning retirement and nursing homes as well as facilities for people with disabilities. The AOB presented this brochure at a parliamentary enquête in 2017 on the future of care. The publication was also disseminated to relevant organisations running such facilities.<sup>62</sup>

## 5. Outcome-related aspects of the NPM

### 5.1. Assessments in reports by the CAT

The UN Committee against Torture (CAT) welcomes the designation of the AOB as NPM in its Concluding Observations on the sixth periodic report of Austria. Yet, it “regrets the lack of information provided on the action taken by the State party in response to the

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<sup>59</sup> HRAC, Stellungnahmen des Menschenrechtsbeirats, [volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/der-menschenrechtsbeirat#anchor-index-2445](http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/der-menschenrechtsbeirat#anchor-index-2445).

<sup>60</sup> AOB, Empfehlungsliste der Volksanwaltschaft und ihrer Kommissionen, [volksanwaltschaft.gv.at/downloads/34ck2/empfehlungsliste\\_201608\\_update.pdf](http://volksanwaltschaft.gv.at/downloads/34ck2/empfehlungsliste_201608_update.pdf).

<sup>61</sup> AOB, Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2015, Präventive Menschenrechtskontrolle, March 2016, p. 11, [volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf](http://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf).

<sup>62</sup> Stenographisches Protokoll, Parlamentarische Enquete des Bundesrates, 5 April 2017, [volksanwaltschaft.gv.at/downloads/ajaa9/Auszug%20Protokoll%20BR%20Enquete%20Pfleger%202017.pdf](http://volksanwaltschaft.gv.at/downloads/ajaa9/Auszug%20Protokoll%20BR%20Enquete%20Pfleger%202017.pdf). The brochure is available at: [volksanwaltschaft.gv.at/downloads/6qq48/praeventive\\_empfehlungen\\_pfleger\\_bandv.pdf](http://volksanwaltschaft.gv.at/downloads/6qq48/praeventive_empfehlungen_pfleger_bandv.pdf).

recommendations issued by this mechanism (art. 2).<sup>63</sup> The Committee thus recommended that Austria “should ensure the effective follow-up to and implementation of recommendations of the Austrian Ombudsman Board generated by its monitoring activities, in accordance with the guidelines on national preventive mechanisms of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see CAT/OP/12/5, paras. 13 and 38).”<sup>64</sup>

On the appointment procedure of the members of the AOB in general, the UN Committee against Torture expressed concerns “that the process for appointing the [Austrian Ombudsman] Board members, which is based on the nominations by the three strongest political parties in the Parliament, does not allow for formal public consultation and participation of all elements of civil society.”<sup>65</sup> Therefore, the Committee recommended that Austria “should take appropriate legal measures to expand and strengthen the mandate of the Austrian Ombudsman Board and ensure that the appointment process of its members is in full accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).”<sup>66</sup>

#### 5.2. Assessments in reports by the SPT

The SPT has not conducted a country visit to Austria thus far. Therefore, there are no reports and assessments available. Yet, the SPT has been involved in the early stages of the creation of the Austrian NPM, where they took part in a preparatory meeting organised by the Ministry of the Interior.<sup>67</sup>

Currently, the AOB is obliged to submit its Annual Reports on the activities as NPM to the SPT according to § 3 Act on the AOB 1982. Moreover, the AOB is allowed to maintain contact with the SPT, provide information to the SPT and hold meetings with the SPT.<sup>68</sup> The AOB’s annual report of 2014 indicates that meetings were held with the SPT representative responsible for Austria, as it was stated that the NPM received important hints for the reporting to the SPT in a personal meeting.<sup>69</sup>

#### 5.3. Assessments in reports by the CPT

In its 22<sup>nd</sup> General Report, the CPT devoted a chapter to the “Relations between the CPT and National Preventive Mechanisms”.<sup>70</sup> In this report, the CPT generally welcomes the establishment of “independent national structures that carry out visits on a regular basis to prisons, police establishments and the like” and mentions in particular the NPMs established

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<sup>63</sup> CAT, Concluding observations on the sixth periodic report of Austria, note 14.

<sup>64</sup> Ibid, note 15.

<sup>65</sup> Ibid, note 12.

<sup>66</sup> Ibid, note 13.

<sup>67</sup> SPT, First Annual Report - Annex VIII, CAT/C/40/2, p. 35.

<sup>68</sup> Bundesgesetz über die Volksanwaltschaft, Federal Gazette No. 433/1982, § 17.

<sup>69</sup> AOB, Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, p. 23, 2014.

<sup>70</sup> CPT, 22<sup>nd</sup> General Report of the CPT, CPT/Inf (2012)25, pp. 13 et seqq.



under the OPCAT in this regard.<sup>71</sup> The CPT highlighted in this context that national monitoring bodies can intervene more frequently and more rapidly than any international body. For the CPT, the NPMs are “natural partners”, as the effectiveness of efforts “to assist states in Europe to prevent torture and other forms of ill-treatment will in future depend to a large extent on the quality of the interaction between the Committee and these mechanisms”.<sup>72</sup> In its report on the 2014 visit, the CPT thus generally welcomed the establishment of the Austrian NPM.<sup>73</sup>

So far, the CPT conducted six periodic visits to Austria and the State agreed to the publication of all reports (1990, 1994, 2004, 2009, 2014). During its most recent visit in 2014, the CPT delegation held a meeting with representatives of the AOB. During this meeting, members of the AOB and two heads of the commissions informed the CPT about current deficits identified at places of detention, and exchanged their opinions on national and international standards for the protection of human rights.<sup>74</sup> The Austrian NPM’s Annual Report of 2014 also indicates that working meetings have been held with members of the CPT.<sup>75</sup> Apart from that, there is no mention of the NPM in CPT reports.

#### 5.4. Results achieved by the NPM

##### 5.4.1. Impact of standards in practice

International standards for the prevention of torture and inhuman treatment are an important foundation for the monitoring visits and the resulting proposals for the NPM’s work. The following is a description of how the NPM can make international standards applied in line with OSCE commitments relevant in Austria. It thus describes the (potential) impact of the application of internationally recognized standards by the NPM on the domestic level concerning the treatment of prisoners.

##### 5.4.1.1. Guidance for the amendment/adoption of laws

The material content of international standards for the prevention of human rights violations can become legally binding in Austria.<sup>76</sup> The AOB has, if only to a very limited extent, the opportunity to contribute to the development of laws by suggesting a change or an enactment of laws in accordance with § 7 (2) of the Act on the AOB 1982. Suggestions of this kind require a collegial decision by the AOB according to § 1 (2) 5 of the Act on the AOB 1982 and the corresponding § 9 (1) 6 of the Standing Rules of the AOB. The commissions of

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<sup>71</sup> Ibid, pp. 15 et seqq.

<sup>72</sup> Ibid, p. 15.

<sup>73</sup> CPT, Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014, CPT/Inf (2015) 34, p. 13.

<sup>74</sup> AOB, Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014, p. 24.

<sup>75</sup> Ibid.

<sup>76</sup> Markus Möstl, Siniša Pejić, Maddalena Vivona, Veronika Apostolovski, Renate Kicker, Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms – Research Paper 2, April 2017, p. 35 et seq.

the NPM do not have a right to make such proposals. However, the monitoring results of the NPM can reveal urgent problem areas and serve the AOB as the starting point for suggestions for legal amendments. The implementation of such suggestions always requires a corresponding decision by the legislature. The NPM can, however, underline suggestions to amend or enact laws by pointing at the underlying problem areas through repeated monitoring visits, documenting them and annual reports to the National Council and the Federal Council. One example of this is the NPM's call for the establishment of a central register to document the nature, reason, and duration of any restrictions on freedom in hospitals and psychiatric institutions.<sup>77</sup> Moreover, the NPM proposed legislative measures to improve the detention of mentally ill offenders. In 2017, the Federal Ministry of Justice then proposed comprehensive reforms in a draft of the Detention of Mentally Ill Offenders Act (Maßnahmenvollzugsgesetz).<sup>78</sup>

Three legal amendments can be traced back to the work by the NPM:<sup>79</sup>

- The Austrian Child and youth welfare facilities will be included in the Nursing Home Residence Act (Heimaufenthaltsgesetz, HeimAufG) from 1 July 2018. This will allow for an independent monitoring by the resident representation (Bewohnervertretung) and a judicial review of measures restricting freedom.
- In July 2017, the province of Carinthia introduced an amendment to the Nursing Home Act (Heimgesetz) in order to be able to act more efficiently against illegal operators of retirement homes and nursing homes, as well as non-officially approved institutions for people with disabilities. Upper Austria announced a corresponding legal amendment.
- By an amendment to § 212 (2) Criminal Code (Strafgesetzbuch, CC) the entire staff of the medical and health professions can now be prosecuted for the abuse of their authority. In respect to the former legal situation, the NPM had claimed that abuses conducted by members of the medical-technical services shall not remain without criminal sanctions.

#### 5.4.1.2. Guidance for the formulation of regulations

International standards can also be used for the formulation of regulations (Verordnungen) and become legally binding this way.<sup>80</sup> The Federal Ministry of Health, the Federal Ministry of the Interior and the Federal Ministry of Justice regularly adopt regulations in the area of the

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<sup>77</sup> See AOB, Empfehlungsliste der Volksanwaltschaft und ihrer Kommissionen, p. 12 et seq. [volksanwaltschaft.gv.at/downloads/34ck2/empfehlungsliste\\_201608\\_update.pdf](https://volksanwaltschaft.gv.at/downloads/34ck2/empfehlungsliste_201608_update.pdf).

<sup>78</sup> Bundesministerium für Justiz, Zukunft: Maßnahmenvollzug, [justiz.gv.at/web2013/home/ministerium/gesetzentwerfe/entwurf\\_massnahmenvollzugsgesetz~2c94848a5d55ef0a015d883cd2b033e1.de.html](https://justiz.gv.at/web2013/home/ministerium/gesetzentwerfe/entwurf_massnahmenvollzugsgesetz~2c94848a5d55ef0a015d883cd2b033e1.de.html).

<sup>79</sup> Information provided by the AOB in September 2017.

<sup>80</sup> Markus Möstl, Siniša Pejić, Maddalena Vivona, Veronika Apostolovski, Renate Kicker, Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms – Research Paper 2, p. 36, April 2017.

NPM's work. The AOB, for example, set up a working group on the subject of "detention conditions", which develops suggestions for decrees on the regulation on the arrest of people by the security authorities and organs of the public security service (Anhalteordnung, AnhO). If such suggestions are taken up by the competent authorities, international standards serve as a material starting point for reforms introduced by the administration.<sup>81</sup>

#### 5.4.1.3. Guidance for judgements

Austrian (supreme) courts can use the (international) standards used by the NPM for their judgements. The Supreme Court already made reference to the recommendations made by the CPT and subsequently adopted by the NPM on the subject of psychiatric intensive care beds. However, a look at the jurisprudence of Austrian supreme courts also shows that such references are rare.<sup>82</sup>

#### 5.4.1.4. Guidance for the interpretation of national law

International standards and NPM recommendations based thereon may be used to interpret or concretize existing provisions of the Austrian legal system.<sup>83</sup> This is often the case when a recommendation is used by a competent ministry as a legal guideline for the institutions visited. Such a ministerial clarification of a provision of the Austrian legal order is generally applied in the form of decrees (Erläss). A significant decree that builds on the work of the NPM concerns the abolition of intensive care beds (so-called "net-beds"). In this decree, the Federal Ministry of Health, in accordance with the Federal Ministry of Justice, forbids the use of net-beds in psychiatric hospitals regulated by the Austrian Hospitalisation Act (Unterbringungsgesetz) and establishments regulated by the Nursing Home Residence Act.<sup>84</sup> The Federal Ministry of Health explains in the decree that the NPM, building on the work of the CPT, requested to ban such beds as a means of deprivation of liberty of patients. Such beds would not comply with European standards and were thus forbidden from 1 July 2015 onwards.<sup>85</sup> A working group on police detention centres within the Federal Ministry of the Interior used standards of the NPM when developing standards in respect to the furnishing of

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<sup>81</sup> Ibid.

<sup>82</sup> Ibid, p. 37 et seq.

<sup>83</sup> Ibid, p. 38 et seq.

<sup>84</sup> Bundesministerium für Gesundheit, Erläss zum Einsatz von psychiatrischen Intensivbetten in Einrichtungen nach dem UbG und HeimAufG, BMG-93330/0002-II/A/4/2014, 22 July 2014, [bmgf.gv.at/cms/home/attachments/1/5/1/CH1452/CMS1409905112109/erlass\\_netzbetten.pdf](http://bmgf.gv.at/cms/home/attachments/1/5/1/CH1452/CMS1409905112109/erlass_netzbetten.pdf).

<sup>85</sup> The decree only applies to establishments regulated by the Hospitalisation Act or the Nursing Home Residence Act. Thus, net-beds may still be used in child and youth welfare establishments. For this reason, the HRAC suggested in December 2015 to also close this protection gap. HRAC, Stellungnahme des Menschenrechtsbeirates zu „Rechtsschutz für Kinder und Jugendliche mit Behinderung bei altersuntypischen freiheitsbeschränkenden Maßnahmen“, 1 December 2015, [volksanwaltschaft.gv.at/downloads/124eh/Stellungnahme%20des%20MRB%20zu%20Rechtsschutz%20f%C3%BCr%20Kinder%20und%20Jugendliche%20mit%20Behinderung%20bei%20altersuntypischen%20freiheitsbeschr%C3%A4nkenden%20Ma%C3%9Fnahme\\_n.pdf](http://volksanwaltschaft.gv.at/downloads/124eh/Stellungnahme%20des%20MRB%20zu%20Rechtsschutz%20f%C3%BCr%20Kinder%20und%20Jugendliche%20mit%20Behinderung%20bei%20altersuntypischen%20freiheitsbeschr%C3%A4nkenden%20Ma%C3%9Fnahme_n.pdf).

<sup>85</sup> 142. Bundesgesetz, mit dem das Strafgesetzbuch, das Strafvollzugsgesetz, die Strafprozessordnung, das Jugendgerichtsgesetz 1988 und das Strafregistergesetz geändert werden, [ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2009\\_I\\_142/BGBLA\\_2009\\_I\\_142.html](http://ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_142/BGBLA_2009_I_142.html).

the cells, the possibilities of receiving visits, the organization of leisure activities and the possibilities of employment. Likewise, standards of the NPM contributed to the concretization of the Penitentiary System Act (Strafvollzugsgesetz, StVG).<sup>86</sup>

#### 5.4.1.5. De facto on-site effects

The NPM can also render international standards effective at the detention facilities visited by suggesting concrete measures to the head of the facility visited in the course of final talks. Although the international standards are not legally binding on the institutions, the standards seem to have a noteworthy effect. This includes, in particular, the awareness of the personnel of what can be done in specific cases to prevent human rights violations.<sup>87</sup>

#### 5.4.2. NPM recommendations implemented by the competent authorities

It is not possible to determine the precise number of NPM recommendations implemented by the competent authorities within the present evaluation, as this would require extensive resources.<sup>88</sup> The AOB estimates that there have been around 800 measures over the years.<sup>89</sup> Thus, hundreds of minor and major improvements could be made over the recent years according to the AOB. The following achievements were particularly well-perceived by the wider public:<sup>90</sup>

- The abolition of the net-beds by means of a ministerial decree.
- The clear delineation of the permissible tasks of private security companies in hospitals.
- The direct involvement of the AOB and NPM commissioners in the training of the police.
- A film project for health education in cooperation with FH Joanneum in Graz.
- An official and regular media cooperation on NPM topics with the newspaper "Wiener Zeitung".
- The planning and implementation of international NPM trainings by the International Ombudsman Institute.

Positive developments, which have taken place in implementation of the recommendations of the NPM can also be mentioned, particularly for facilities of the penitentiary system:<sup>91</sup>

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<sup>86</sup> Markus Möstl, Siniša Pejić, Maddalena Vivona, Veronika Apostolovski, Renate Kicker, Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms – Research Paper 2, p. 39, April 2017.

<sup>87</sup> Ibid.

<sup>88</sup> Information provided by the AOB in August 2017.

<sup>89</sup> Information provided by the AOB in September 2017.

<sup>90</sup> Information provided by the AOB in August 2017.

<sup>91</sup> Information provided by the AOB in August 2017.

- No medical experiments on detainees (a study could be stopped).
- Despite the still existing lack of medical doctors (especially in the juvenile psychiatric area) a specialist could be hired in the Gerasdorf prison.
- A cooperation between the Federal Ministry of Justice and the Ministry of Defence and Sports ended a long vacancy of a medical position.
- Qualitative improvement of the performance of the staff in the juvenile detention system.
- Four additional posts in the youth centre and evaluation of night services.
- Social pedagogical posts have been set up.

## 6. Evaluation

The central question of the present evaluation is whether the NPM resorts to internationally recognized standards when monitoring places of detention in Austria, and thus implements a key OSCE commitment related to the prevention of torture. In order to answer this question, structural, procedural and outcome-related aspects of the NPM were analysed. Overall, the analysis found that the Austrian NPM is well-grounded in the Austrian Constitution and sub-constitutional law. The legal provisions thoroughly lay down the mandate and the further conditions required for the work and functioning of the NPM. The three members of the AOB are appointed based on the nominations by the three strongest political parties in the Parliament. Critique was voiced in respect to this aspect of the composition of the AOB. The NPM implements its mandate with a constant budget and apparently sufficient personnel over the years 2014 to 2016. Within these circumstances, the NPM conducted an increasing number of monitoring visits during the evaluation period. Relevant international monitoring bodies did not voice any significant criticism in respect to the work done by the NPM in their reports.

In respect to a key OSCE commitment on the prevention of torture, namely the application of internationally recognized standards by the Austrian NPM, numerous conclusions can be drawn. Generally, preventive standards play a central role for the work of the NPM. In practice, the NPM applies various international but also national, binding and non-binding standards in order to achieve the purpose of preventing human rights violations in manifold detention situations. The regional monitoring commissions and the representatives of the AOB concerned decide in each individual case which standard appears appropriate to best serve the purpose of prevention. Both the legal foundations as well as its structural design, enable the NPM to apply internationally recognized standards.

In practice, the preventive standards fulfil two central functions for the NPM. On the one hand, they serve as a material point of reference in order to assess existing social realities and to propose appropriate preventive measures. In this respect, standards are an important instrument for risk assessment and risk minimization. On the other hand, internationally recognized standards serve the NPM to legitimize recommendations and proposals for the prevention of human rights violations addressed to the institutions visited and the competent authorities.

It could be shown that the Austrian NPM renders internationally recognized detention standards effective in Austria in various ways. The NPM constitutes a link between international standards and (partly binding) national measures to improve the human rights situation for people in detention.

## **7. Recommendations by Civil Society Organizations**

In the course of the announced reform of the detention system concerning mentally ill offenders, special consideration is to be put on questions of medical care and adequate accommodation. Educational and employment opportunities for prisoners, conflict regulation, as well as the training of social behaviour should be encouraged.<sup>92</sup>

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<sup>92</sup> Austrian Bar Association, statement of 20 June 2017.

## Topic 2: Hate-Crime, Religious Intolerance, Extremism and Preventive Human Rights Education Measures

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### 1. Introduction

This chapter is about hate crime, religious (in-)tolerance as well as different forms of extremism.<sup>93</sup> In Austria, these phenomena are often perceived as being separated from one another. However, in practice they lie closely together, insofar as their foundations come from the same attitudes and approaches. Through this dynamic they are mutually reinforcing and can often provoke each other. Discriminatory attitudes towards other people, often based on characteristics like skin colour or religion, are the starting point for derogatory behaviour, which can even lead to physical attacks. Also extremist thinking and behaviour is based on the feeling of supremacy towards other people. Yet, also those who are susceptible to radical tendencies often experience degradation through others. Here, the circle closes: it becomes clear that the aforementioned topics can only be considered in connection with one another when considering the question of how prevention can successfully take place.<sup>94</sup>

When it comes to this complex topic, it is important to acknowledge the question against whom these threats of hate crime, religious intolerance or extremism are directed. Are individual people or groups of people in focus because of their attributed “difference”, or is the threat directed at the state itself? Often it is not easy to distinguish one from the other. Nonetheless it plays an important role when it comes to prevention, intervention as well as sanctions regarding the identified problems.

This chapter focuses on the measures of the Austrian state, which serve the prevention of hate crime, religious intolerance, as well as different forms of extremism. Until now, it seems that preventative measures have been under-represented in Austria, or better said they are not coordinated with one another and were until now not presented in a coherent manner. The present chapter seeks to fill this gap and to thereby also answer the following questions:

Which role does the state take when it comes to prevention?

How is state protection ensured, as well as the protection of human rights?

Does the state live up to the requirements set by the OSCE standards?

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<sup>93</sup> The chapter is based on the ETC Occasional Paper No. 36 “Hassverbrechen, religiöse (In-)Toleranz und Extremismus in Österreich, sowie Maßnahmen der Menschenrechtsbildung in diesen Bereichen”, 2017.

<sup>94</sup> Zick Andreas, Küpper Beate, Hövermann Andreas, Die Abwertung der Anderen. Eine europäische Zustandsbeschreibung zu Intoleranz, Vorurteilen und Diskriminierung, Berlin, Friedrich-Ebert-Stiftung, 2011, [library.fes.de/pdf-files/do/07905-20110311.pdf](http://library.fes.de/pdf-files/do/07905-20110311.pdf).

This chapter furthermore addresses measures of repression and sanctions, insofar as they are connected with prevention measures.

Human rights education can serve as a prevention and intervention strategy, and is also beneficial when it comes to ending hate crime, religious intolerance and extremism. Through human rights education, one's own attitudes and approaches can be reflected upon, and alternative forms of behaviour can be tested. In the past years, Austria has seen a rise of human rights education offers and measures in certain areas – however, they are not well-coordinated and until now have not been presented in a comprehensive manner. This chapter tries to address and fill this gap. The focus thereby again lies on state measures, however also on offers from other civil society organisations are taken into account insofar as they occur upon request of the state, or with state funding. These measures will also be analysed according to their respective target groups (victims, offenders, particular professional groups, the broader public, etc.).

The justification for the choice of topics for this chapter is derived from the comprehensive relevant OSCE measures, the existing emphasis of the ODIHR, the priorities of the Austrian OSCE Chairmanship, as well as the relevance in the Austrian (daily political) discourse.

## **2. Relevant normative framework**

### **2.1. OSCE commitments**

The topics of hate crime, religious (in-)tolerance and extremism have long been on the OSCE agenda and have been translated into several commitments. However, due to recent developments, the emphasis has changed in the past years.

The ODIHR defines hate crimes as:

“Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people. To be considered a hate crime, the offence must meet two criteria: First, the act must constitute an offence under criminal law; second, the act must have been motivated by bias.

Bias motivations can be broadly defined as preconceived negative opinions, stereotypical assumptions, intolerance or hatred directed to a particular group that shares a common characteristic, such as race, ethnicity, language, religion, nationality, sexual orientation, gender or any other fundamental characteristic. People with disabilities may also be victims of hate crimes.

Hate crimes can include threats, property damage, assault, murder or any other criminal offence committed with a bias motivation. [...]”<sup>95</sup>

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<sup>95</sup> OSCE/ODIHR, Criminal offence + Bias motivation = Hate Crime, [hatecrime.osce.org/what-hate-crime](http://hatecrime.osce.org/what-hate-crime).



According to the International Holocaust Remembrance Alliance (IHRA), the following definition may be used to define anti-Semitism:

*“Anti-Semitism is a particular perception about Jews which can take the form of hatred towards Jews. Anti-Semitism is directed, in speech and action, towards Jewish or non-Jewish individuals, and/or their property, as well as against Jewish religious or community institutions.”<sup>96</sup>*

The key commitments of the OSCE are related to the protection against hate-crimes,<sup>97</sup> religious intolerance is dealt under "Combating Acts Motivated by Prejudice, Intolerance, and Hatred",<sup>98</sup> extremism under "Countering Violent Extremism and Radicalisation that Lead to Terrorism"<sup>99</sup> and Human Rights Education was dealt with in Ljubljana 2005.<sup>100</sup>

## 2.2. Legal framework in Austria

In the recent years, Austria has expanded its legal framework in the areas of hate crime, religious (in-)tolerance and extremism. These developments are still taking place at the time of writing.

### 2.2.1. Hate crime

Dangerous threats (gefährliche Drohung) are prohibited by § 107 CC. Defamation (Beleidigung) is prohibited by § 115 CC, if the defamation took place in public or in front of a large group of persons (around 10 persons).

A provision on hate speech is formulated in § 283 CC<sup>101</sup> on incitement to hatred in public (Verhetzung). Public incitement or bashing against a group of persons or a person belonging to such a group in public is punishable. This criminal law provision was amended in the beginning of 2016, now covering the criteria of 'race', colour of skin, language, religion or belief, nationality, decent or national or ethnic origin, gender, physical or mental disability, age or sexual orientation.

If crimes are ideologically motivated, this can lead to a more severe punishment, according to § 33 (1) 5 CC, which formulates aggravating factors (besondere Erschwerungsgründe).

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<sup>96</sup> International Holocaust Remembrance Alliance, Working Definition of Antisemitism, [www.holocaustremembrance.com/sites/default/files/press\\_release\\_document\\_antisemitism.pdf](http://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf).

<sup>97</sup> OSCE Human Dimension Commitments: Volume 1, Chapter 4.1.6, National Minorities pp. 163 et seqq.; Roma und Sinti, pp. 178 et seqq.

<sup>98</sup> OSCE Human Dimension Commitments: Volume 1, Chapter 5.3, pp. 208 et seqq.

<sup>99</sup> OSCE, Ministerial Declaration on Preventing and Countering violent Extremism and Radicalization that lead to Terrorism. MC.DOC/4/15, Belgrade 2015.

<sup>100</sup> OSZE, Decision No. 11/05 on Promoting of Human Rights Education and Training in the OSCE Area.

<sup>101</sup> Criminal Code, Federal law from 23. January 1974 on acts liable to judicial punishment (Strafgesetzbuch, CC).

The present legal framework on hate crime is in line with OSCE commitments in this regard. Further amendments are discussed at the moment, especially with regard to online hatred in social media.

### 2.2.2. Religious (in-)tolerance

Religious freedom and freedom of conscience have been protected in Austria since 1867 (Staatsgrundgesetz, StGG). In 2015, a new Islam law was introduced, containing rules on acknowledgment of Muslim religious communities and rights and obligations of already acknowledged religious communities.<sup>102</sup> In October 2017, the ban on full-face veiling entered into force, prohibiting veiling of human faces through clothing or other items.<sup>103</sup> Disparagement of a religion or religious convictions is prohibited by § 188 CC. This so called “blasphemy” paragraph especially focuses on religions, criminalizing the public disparagement of a religion or of religious convictions. In April 2017, the Federal Government (Bundesregierung) decided on taking approving notice of the IHRA working definition of anti-semitism.<sup>104</sup>

Although particularly the ban on full-face veiling was critically discussed in public, the Austrian legal framework is in line with OSCE commitments with regard to religious (in-)tolerance.

### 2.2.3. Extremism

Under the current Chairmanship of the OSCE, Austria has clearly emphasized its activities on combatting extremism and terrorism.<sup>105</sup> In this context, Austria can draw upon an existing legal framework, which is being expanded according to recent developments.

A provision on terrorist unions is laid down in § 278b CC, further defining terrorist crimes in § 278c CC. Leading a terrorist organisation is punishable, as well as being member of such organisations. Further relevant provisions in this context are the Security Police Act (Sicherheitspolizeigesetz, SPG)<sup>106</sup> as well as the Directive of the Federal Minister of the

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<sup>102</sup> Islamische Glaubensgemeinschaft Österreich and Alevitische Glaubensgemeinschaft in Österreich.

<sup>103</sup> Federal Law prohibiting the veiling of the face in public, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009892](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009892).

<sup>104</sup> Die Presse, Ministerrat beschließt “Arbeitsdefinition für Antisemitismus”, 25 April 2017, [diepresse.com/home/innenpolitik/5206583/Ministerrat-beschliesst-Arbeitsdefinition-von-Antisemitismus](http://diepresse.com/home/innenpolitik/5206583/Ministerrat-beschliesst-Arbeitsdefinition-von-Antisemitismus).

<sup>105</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Schwerpunkte des österreichischen Vorsitzes, [bmeia.gv.at/europa-aussenpolitik/sicherheitspolitik/osze-vorsitz-2017/schwerpunkte-des-oesterreichischen-vorsitzes/](http://bmeia.gv.at/europa-aussenpolitik/sicherheitspolitik/osze-vorsitz-2017/schwerpunkte-des-oesterreichischen-vorsitzes/); OSCE, Interview mit dem neuen Amtierenden Vorsitzenden der OSZE Sebastian Kurz, dem österreichischen Bundesminister für Europa, Integration und Äußeres, [osce.org/de/magazine/315436](http://osce.org/de/magazine/315436); Der Standard, OSZE: Vorsätze für den Vorsitz in Stürmischen Zeiten, 12 January 2017, [derstandard.at/2000050648086/OSZE-Vorsaetze-fuer-den-Vorsitz-in-stuermischen-Zeiten](http://derstandard.at/2000050648086/OSZE-Vorsaetze-fuer-den-Vorsitz-in-stuermischen-Zeiten); OE24, Professor ist Kurz' Mann gegen Terror, 12 January 2017, [oe24.at/oesterreich/politik/Professor-ist-Kurz-Mann-gegen-Terror/265221553](http://oe24.at/oesterreich/politik/Professor-ist-Kurz-Mann-gegen-Terror/265221553).

<sup>106</sup> Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei (Sicherheitspolizeigesetz – SPG), BGBl. Nr. 566/1991, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792).

Interior on special training for protection of the Constitution and fighting terrorism.<sup>107</sup> §§ 3a-3i National Socialism Prohibition Act 1947 (Verbotsgesetz 1947)<sup>108</sup> prohibit and criminalise any conduct linked to National Socialism, such as taking part in a National Socialist association.

The Austrian legal framework is in line with OSCE commitments.

#### 2.2.4. Human rights education

There is no explicit legal framework on human rights education in Austria at the moment, the plan to introduce a National Action Plan on Human Rights did not lead to results. In Austria, there are several initiatives in the area of human rights education, dealing with hate crime, religious (in-)tolerance and extremism. Human rights education in school is part of political education. For example, 300 workshops to foster preventative work at schools were held in the school year 2015/2016.<sup>109</sup> This initiative was started in reaction to current radicalization tendencies and will be offered again for all Austrian schools in the year 2017/2018.<sup>110</sup>

### 3. Implementation of international and national obligations

In the past years, many actions have been taken by the Austrian state to counter hate crime, religious (in-)tolerance and extremism. Many of the established initiatives are also preventative in character.

#### 3.1. Hate crime

Hate crimes are increasingly recognised in politics and among the public. On a ministerial level, particularly the Ministry of the Interior and the Ministry of Justice deal with the topic. In this context, the Ministry of the Interior hosted a symposium “when hate turns into crime” Several ministries took part to discuss measures against hate crimes, including heightened problem awareness, increasing protection for victims, improved cooperation between agencies and the civil society sector, the recognition of the “special needs” of hate crime victims, more elaborate legal measures, as well as information platforms for victims.<sup>111</sup>

Furthermore, in 2016 the National Parliament decided on concrete educational and training opportunities on hate crimes, as well as support services for victims. The Ministers of

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<sup>107</sup> Verordnung des Bundesministers für Inneres über die spezielle Ausbildung für Verfassungsschutz und Terrorismusbekämpfung.

<sup>108</sup> Verbotsgesetz 1947, StGBI. No. 13/1945,

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000207](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000207).

<sup>109</sup> Federal Ministry of Education, Bildung für De-Radikalisierung. Workshops zur Präventionsarbeit in Schulen, [erinnern.at/bundeslaender/oesterreich/e\\_bibliothek/ausstellungsprojekte/erlass-zu-bildung-fuer-de-radikalisierung-workshops-zur-praeventionsarbeit-in-schulen/Erlass\\_Bildung\\_fA1-4r\\_De\\_Radikalisierung.Workshops\\_zur\\_Praeventionsarbeit\\_in\\_Schulen.pdf](http://erinnern.at/bundeslaender/oesterreich/e_bibliothek/ausstellungsprojekte/erlass-zu-bildung-fuer-de-radikalisierung-workshops-zur-praeventionsarbeit-in-schulen/Erlass_Bildung_fA1-4r_De_Radikalisierung.Workshops_zur_Praeventionsarbeit_in_Schulen.pdf).

<sup>110</sup> Federal Ministry of Education, Politische Bildung – Erlass Juli/August 2017,

[politik-lernen.at/dl/mMsnJKJKoOoknJqx4KLJK/10\\_BMB-ERLASS\\_Juli.pdf](http://politik-lernen.at/dl/mMsnJKJKoOoknJqx4KLJK/10_BMB-ERLASS_Juli.pdf).

<sup>111</sup> White Ring, Wenn aus Hass Verbrechen werden, [weisser-ring.at/2017/02/19/wenn-aus-hass-verbrechen-werden/](http://weisser-ring.at/2017/02/19/wenn-aus-hass-verbrechen-werden/).

Justice and the Interior will report on the findings by May 2018.<sup>112</sup> Finally, the website of the Ministry of Justice shows a guest comment by Professor Dr. Susanne Riendl-Krauskopf from the University of Vienna, who wrote on hate crime in 2014.<sup>113</sup>

These occurrences clearly show that the topic of hate crime has been acknowledged increasingly in recent years. However, these developments are not representative of the complexity of the subject, nor of the adequate preventative mechanisms or sanctions. The situation is strikingly different when it comes to online hate crimes. Due to its increased presence and aggressiveness, hate crime on the Internet has become a relevant topic in Austria. Several processes and changes have occurred in the past years.

In part four of the new governmental programme 2017/2018 on “Security and Integration”, the combat against Internet hate crime is addressed. In this context, two decrees were passed:

- BMJ-S604.0001/0003-IV 3/2016 from 16 December 2016, on the establishment of specialised offices and prosecutors for extremist crimes, for more efficient cooperation with authorities inside and outside of Austria. These prosecutors had commenced work on 1 January 2017.
- BMJ-Pr232.00/0016-III 6/2017 from 5 April 2017, on the requirement of the Chief Prosecutor’s Office to report on the establishment of specialised offices for extremist crimes. Statements show that such offices have been established in most Prosecutors’ Offices.<sup>114</sup>

State Secretary Muna Duzdar announced the establishment of a reporting and support service for summer/autumn of 2017, to be active against hate postings in close cooperation with the specialised Prosecutor’s offices.<sup>115</sup> In September 2017, the support centre ZARA commenced its work with the centre #GegenHassImNetz (#AgainstOnlineHateCrime). The centre refers victims to relevant support services, checks whether postings require further legal prosecution, and seeks to help and support victims. This initiative is based on a project of the same name by the Chancellor’s Ministry from 2016, which raises awareness against discrimination, defamation and mobbing on the Internet and

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<sup>112</sup> Entschließung des Nationalrates vom 28.4.2016 141/E XXV. GP, [www.ris.bka.gv.at/Dokumente/Erlaesse/ERL\\_07\\_00\\_20160530\\_BMJ\\_S578\\_029\\_0006\\_IV\\_3\\_2016/ERL\\_07\\_00\\_0\\_20160530\\_BMJ\\_S578\\_029\\_0006\\_IV\\_3\\_2016.html](http://www.ris.bka.gv.at/Dokumente/Erlaesse/ERL_07_00_20160530_BMJ_S578_029_0006_IV_3_2016/ERL_07_00_0_20160530_BMJ_S578_029_0006_IV_3_2016.html).

<sup>113</sup> Federal Ministry of Justice, Hate Crime, Gastkommentar, [www.justiz.gv.at/web2013/home/justiz/aktuelles/aeltere\\_beitraege/2014/hate\\_crime\\_gastkommentar~2c94848b48ac03fd014909c8e3260622.de.html](http://www.justiz.gv.at/web2013/home/justiz/aktuelles/aeltere_beitraege/2014/hate_crime_gastkommentar~2c94848b48ac03fd014909c8e3260622.de.html).

<sup>114</sup> Response by the Ministry of Justice of 13 September 2017.

<sup>115</sup> Austrian Federal Chancellery, Muna Duzdar will gegen Hasspostings, Verschwörungstheorien und Fake News im Internet vorgehen, 25 January 2017, [bka.gv.at/-/spo-staatssekretarin-muna-duzdar-will-gegen-hasspostings-verschwörungstheorien-und-fake-news-im-internet-vorgehen-in-tiroler-tageszeitung-](http://bka.gv.at/-/spo-staatssekretarin-muna-duzdar-will-gegen-hasspostings-verschwörungstheorien-und-fake-news-im-internet-vorgehen-in-tiroler-tageszeitung-); Austrian Parliament, Nationalrat für stärkeres Vorgehen gegen Hass im Netz, 31 January 2017, [parlament.gv.at/PAKT/PR/JAHR\\_2017/PK0076/](http://parlament.gv.at/PAKT/PR/JAHR_2017/PK0076/).

seeks to open the floor for positive debate.<sup>116</sup> As part of the initiative, the Federal Chancellery developed ten tips to deal with hate postings.<sup>117</sup>

According to information given by the Ministry of Justice, a guideline on defamation and legal procedures is currently in development, based on decree BMJ-S215.001/0008-IV 1/2016.<sup>118</sup>

Aside from these very recent developments, Austria has seen a lot of positive changes happen in the past few years, which have led to more recognition of the issue. This includes:

- BMJ-S884.024/0014-IV/2016, the so-called “Facebook-decree”, establishing a government email-address to which hate posts can be sent, and are analysed by legal staff and according to Austrian national law within 24 hours.<sup>119</sup>
- The “Initiative against violence on the Internet”<sup>120</sup> carried out by various ministries, including un-bureaucratic reporting services, sensitization and trainings in the area of legal prosecution. Information is provided on incitement<sup>121</sup> and cyber mobbing<sup>122</sup>. The initiative has been partly implemented (see above).
- Based on the above initiative, the Ministry for Women and Health established a focal point on “Violence on the Internet”.<sup>123</sup> Ample material is available, as well as advice and information on reporting mechanisms.
- In 2016, the Green Book #DigitalCourage was published by President of the Federal Council, Mario Lindner, discussing various legal, ethical and societal aspects of hate crime on the Internet.<sup>124</sup>

Furthermore, several reporting and information services were established in Austria in the past years, and strengthened by the state in terms of staff and funding. This development clearly shows the acknowledgement of Internet hate crimes in Austria. However, the found initiatives fall into the area of “intervention” (that is, what can be done to make hate crimes visible) or “sanction”. Measures to ensure prevention are not comprehensively developed.

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<sup>116</sup> Austrian Federal Chancellery, #GegenHassimNetz, Veranstaltungen, [bundeskanzleramt.at/vernetzungs-und-workshoptag-gegenhassimnetz](http://bundeskanzleramt.at/vernetzungs-und-workshoptag-gegenhassimnetz).

<sup>117</sup> Austrian Federal Chancellery, 10 Tipps gegen Hass im Netz, [bka.gv.at/10-tipps-gegen-hass-im-netz](http://bka.gv.at/10-tipps-gegen-hass-im-netz).

<sup>118</sup> Response by the Ministry of Justice of 13 September 2017.

<sup>119</sup> Ibid.

<sup>120</sup> Federal Ministry of Justice, Initiative „Gewalt im Netz“. Gewalt im Netz – Umgang mit Hasspostings, [justiz.gv.at/web2013/home/buergerservice/initiative\\_gewalt\\_im\\_netz~2c94848a58059036015829b459e80b4b.de.html](http://justiz.gv.at/web2013/home/buergerservice/initiative_gewalt_im_netz~2c94848a58059036015829b459e80b4b.de.html).

<sup>121</sup> Federal Ministry of Justice, Verhetzung, [justiz.gv.at/web2013/home/buergerservice/initiative\\_gewalt\\_im\\_netz/verhetzung~2c94848a58059036015829b7601b0b55.de.html](http://justiz.gv.at/web2013/home/buergerservice/initiative_gewalt_im_netz/verhetzung~2c94848a58059036015829b7601b0b55.de.html).

<sup>122</sup> Federal Ministry of Justice, Cybermobbing, [justiz.gv.at/web2013/home/buergerservice/initiative\\_gewalt\\_im\\_netz/cyber-mobbing~2c94848a58059036015829bab6120b61.de.html](http://justiz.gv.at/web2013/home/buergerservice/initiative_gewalt_im_netz/cyber-mobbing~2c94848a58059036015829bab6120b61.de.html).

<sup>123</sup> Federal Ministry for Health and Women’s Affairs, Gewalt im Netz, [bmfg.gv.at/home/Frauen\\_Gleichstellung/Gewalt\\_gegen\\_Frauen/Gewalt\\_im\\_Netz/](http://bmfg.gv.at/home/Frauen_Gleichstellung/Gewalt_gegen_Frauen/Gewalt_im_Netz/).

<sup>124</sup> Federal Council, Grünbuch Digitale Courage, 2016, [www.parlament.gv.at/ZUSD/PDF/Gruenbuch\\_Digitale\\_Courage\\_Republik\\_Oesterreich\\_Bundesrat.pdf](http://www.parlament.gv.at/ZUSD/PDF/Gruenbuch_Digitale_Courage_Republik_Oesterreich_Bundesrat.pdf).

### 3.2. Religious intolerance

#### 3.2.1. Hate crimes based on religious intolerance

Many hate crimes are directed towards people of different faith, particularly against Muslims or Jews. Although racist elements are part of this discrimination, hate crimes towards Muslims or Jews tend to take place due to religious intolerance, rather than racist motives. Also warning against the consequences of religious intolerance, the Holocaust Memorial Day was held in January 2017.<sup>125</sup>

#### 3.2.2. Religious intolerance towards Muslims

In Austria, increased intolerance against Muslims can be perceived. From a state perspective, this includes regulations against Muslim dress codes, for example.

In the governmental programme for 2017/2018 “For Austria”, section four on “Security and Integration” mentions a ban on full-face veils.<sup>126</sup> This ban came into force in Austria on 1 October 2017. The law forbids the full-veiling (or veiling to become unrecognisable) of the face in public areas. It is based on the rationale that integration is based on interaction, which is necessary for peaceful co-existence. Through the ban, better participation in public life should therefore be enabled. Also the banning of headscarves has been discussed multiple times by the Austrian government.<sup>127</sup>

In Austria, religious intolerance is increasingly perceivable in public, as shown by several studies.<sup>128</sup> Nonetheless, only few state-run initiatives confront this process.

#### 3.2.3. Interreligious dialogue

Interreligious dialogue, which also serves as a mechanism to combat religious intolerance, has a long tradition in Austria.

Representatives of all 16 recognised religious communities in Austria were invited to an “interreligious dialogue” at the Federal Chancellery in March 2017, where also the (then still planned) ban on full-face veils was discussed.<sup>129</sup>

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<sup>125</sup> Vienna Online, Holocaust-Gedenktage, [www.vienna.at/holocaust-gedenktage-gedenkveranstaltung-und-die-warnung-vor-intoleranz/5116881](http://www.vienna.at/holocaust-gedenktage-gedenkveranstaltung-und-die-warnung-vor-intoleranz/5116881).

<sup>126</sup> Federal Republic of Austria, Für Österreich. Arbeitsprogramm der Bundesregierung 2017/18, p. 26.

<sup>127</sup> Die Presse, Integrationsexperte will Kopftuch-Verbot im öffentlichen Dienst, 5 January 2017, [diepresse.com/home/innenpolitik/5149817/Integrationsexperte-will-KopftuchVerbot-fuer-Staatsdiener](http://diepresse.com/home/innenpolitik/5149817/Integrationsexperte-will-KopftuchVerbot-fuer-Staatsdiener).

<sup>128</sup> Mauthausen Komitee Österreich, Studie: Toleranz wird in Österreich groß geschrieben – bei Religion scheiden sich die Geister, 27 April 2015, [mkoe.at/studie-toleranz-oesterreich-gross-geschrieben-religion-scheiden-geister](http://mkoe.at/studie-toleranz-oesterreich-gross-geschrieben-religion-scheiden-geister).; Halm Dirk, Sauer Martina, Muslime in Europa. Integriert, aber nicht akzeptiert?, [bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Studie\\_LW\\_Religionsmonitor-2017\\_Muslime-in-Europa.pdf](http://bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Studie_LW_Religionsmonitor-2017_Muslime-in-Europa.pdf); Chatham House, What do Europeans think about Muslim integration?, January 2017, [chathamhouse.org/expert/comment/what-do-europeans-think-about-muslim-immigration](http://chathamhouse.org/expert/comment/what-do-europeans-think-about-muslim-immigration); Der Standard, „Gefährliches Halbwissen“ über Islam stärkt Ablehnung, 20 June 2017, [derstandard.at/2000059547856/Gefaehrliches-Halbwissen-ueber-Islam-staerkt-Ablehnung](http://derstandard.at/2000059547856/Gefaehrliches-Halbwissen-ueber-Islam-staerkt-Ablehnung); Der Standard, Zwei Drittel fordern Stopp der Einwanderung aus muslimischen Ländern, 20 June 2017, [derstandard.at/2000059278682/StudieMehr-als-die-Haelfte-der-befragten-EU-Buerger-lehnen-muslimische](http://derstandard.at/2000059278682/StudieMehr-als-die-Haelfte-der-befragten-EU-Buerger-lehnen-muslimische).

<sup>129</sup> ORF, Interreligiöser Dialog im Kanzleramt, 21 March 2017, [religion.orf.at/radio/stories/2832514/](http://religion.orf.at/radio/stories/2832514/).

Beyond this, interreligious dialogue has been a mechanism against radicalisation for many years. The aforementioned dialogue was also held in 2014 on the topic of (de)radicalisation, following several anti-Semitic incidents.<sup>130</sup> Also in 2015, a symposium on an “Islam of European imprint: Muslims within society” was held together with young Austrian Muslims, renowned professors, Islam scholars, and experts from practice.<sup>131</sup>

Interreligious dialogues were also fostered by various cities and regions, including:

- Seestadt Vienna-Aspern, where several places of worship will come together on a “Campus of Religions”, including Christians, Muslims, Jews and Buddhists.<sup>132</sup>
- The Advisory Council for interreligious dialogue from the City of Graz, established in 2006 and comprising representatives from all state-recognised religious communities. The Council gives statements on peaceful co-existence of different religions in Graz.<sup>133</sup>

### 3.3. Extremism

Extremism refers to those individuals or groups who manifest attitudes against the state. This includes citizens rejecting public authority, as well as extremists on the political left and the political right. Also, people who engage in violent, religiously motivated extremism against individuals or locations are fundamentally directed against the Austrian state. The analysis of present measures and focal points shows that the different forms of extremism are considered separately from one another in Austria, rather than as a comprehensive phenomenon. Only few measures represent the recognition as complex subject matter.

- The governmental programme 2017/2018 in section four on “Security and Integration” mentions the surveillance of offenders and foresees custody or electronic tags.<sup>134</sup>
- A decree outlining guidance for activities against the state was passed on 30 August 2017, BMJ-Pr147.10/0218-III 2/2017.
- At the 2014 “conference on hate and defamation”, measures and possibilities to counter “hate and defamation” were discussed, as well as the effective

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<sup>130</sup> Kurier, Rezept gegen Radikalisierung, 28 August 2017, [kurier.at/politik/inland/interreligioeser-dialog-rezepte-gegen-radikalisierung/82.110.810](http://kurier.at/politik/inland/interreligioeser-dialog-rezepte-gegen-radikalisierung/82.110.810); Austria Presse Agentur, Bundeskanzler Faymann: Gemeinsam für ein friedliches Miteinander der Religionen, 25 August 2014, [ots.at/presseaussendung/OTS\\_20140825\\_OTS0148/bundeskanzler-faymann-gemeinsam-fuer-ein-friedliches-miteinander-der-religionen](http://ots.at/presseaussendung/OTS_20140825_OTS0148/bundeskanzler-faymann-gemeinsam-fuer-ein-friedliches-miteinander-der-religionen).

<sup>131</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Islamtagung 2015, [bmeia.gv.at/integration/veranstaltungen/veranstaltung/islamtagung-2015/](http://bmeia.gv.at/integration/veranstaltungen/veranstaltung/islamtagung-2015/).

<sup>132</sup> ORF, „Campus der Religionen“ in Seestadt nimmt Konturen an, 20 June 2015, [religion.orf.at/stories/2715822/](http://religion.orf.at/stories/2715822/); Vienna online, Jüdische Fahne am „Campus der Religionen“ in Wien-Aspern neu gehisst, 18 August 2015, [vienna.at/juedische-fahne-am-campus-der-religionen-in-wien-aspern-neu-gehisst/4425701](http://vienna.at/juedische-fahne-am-campus-der-religionen-in-wien-aspern-neu-gehisst/4425701).

<sup>133</sup> Graz, Interreligiöse Initiativen der Stadt Graz, [graz.at/cms/beitrag/10203674/7771635/Interreligioese\\_Initiativen\\_der\\_Stadt\\_Graz.html](http://graz.at/cms/beitrag/10203674/7771635/Interreligioese_Initiativen_der_Stadt_Graz.html).

<sup>134</sup> Federal Republic of Austria, Für Österreich. Arbeitsprogramm der Bundesregierung 2017/18, p. 23.

implementation of preventive measures.<sup>135</sup> Despite being focused on various forms of extremism, violent Jihadism dominated the discussions.

- The most recent human rights report of the city of Graz explicitly deals with different forms of extremism. Published by the Advisory Council on Human Rights of the City of Graz, recommendations include language sensitization among city government stakeholders, interreligious dialogue based on human rights, communal support services, training opportunities on political Islam, right-wing extremism and anti-democratic streams, as well as funds by the City to support educational efforts and effective, innovative educational measures fostering human rights, diversity, and non-discrimination.<sup>136</sup>

Although the close connection between various forms of extremism is not always recognised by the government, it is definitely subject of several research projects. Young persons are recruited for the IS and right-winged extremist groups according to similar patterns. Attention is centred on the fomenting of hatred and fear, the targeted creation of enemy images, as well as the play with emotions. It is also noticeable in the different extremist ideologies that their adherents mostly have a lack of knowledge about historical and current contexts of the direction to which they feel they belong. This realm must particularly be dealt with, making use of concrete educational and awareness-raising measures on de-radicalisation.<sup>137</sup>

### 3.3.1. Citizens rejecting public authority (“Staatsverweigerer”)

The Austrian state is increasingly confronted with movements against the state, including One People’s Public Trust, Freeman, Terranier, Sovereign Citizens or “Reichsbürger”. These groupings often actively question and act against the legitimacy of the state, or more concretely authorities enforcing the rule of law.<sup>138</sup> Members are often put under surveillance and monitored by Austrian authorities.<sup>139</sup>

Again, section four of the governmental programme 2017/2018 on “Security and Integration” foresees the establishment of separate elements of an offense on “activities against the state”.<sup>140</sup> Since 1 September 2017, § 246a CC has been enforced.<sup>141</sup>

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<sup>135</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Gipfel gegen HASS und HETZE, 14 October 2014, [bmeia.gv.at/integration/veranstaltungen/veranstaltung/gipfel-gegen-hass-und-hetze/](http://bmeia.gv.at/integration/veranstaltungen/veranstaltung/gipfel-gegen-hass-und-hetze/).

<sup>136</sup> Advisory Council on Human Rights of the City of Graz, Der Menschenrechtsbericht der Stadt Graz 2015, p. 100.

<sup>137</sup> ORF2, Extremisten von IS bis NS, REPORT, 11 July 2017.

<sup>138</sup> Parliamentary inquiry, 9 November 2016 (BMI-LR2220/1200-II/2016), [parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_10248/imfname\\_584592.pdf](http://parlament.gv.at/PAKT/VHG/XXV/AB/AB_10248/imfname_584592.pdf).

<sup>139</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, Wien, p. 55.

<sup>140</sup> Federal Republic of Austria, Für Österreich. Arbeitsprogramm der Bundesregierung 2017/18, p. 23.

<sup>141</sup> Heise online, Austria: Neues Gesetz gegen Staatsverweigerer, 24 May 2017, [heise.de/tp/features/Oesterreich-Neues-Gesetz-gegen-Staatsverweigerer-3723739.html](http://heise.de/tp/features/Oesterreich-Neues-Gesetz-gegen-Staatsverweigerer-3723739.html); Wiener Zeitung, Harter Schlag gegen Staatsverweigerer,



### 3.3.2. Religiously motivated and violent extremism/terrorism

Religiously motivated, violent extremism is frequently perceived as a threat in Austria. Since autumn 2014, the Federal Office for the Protection of the Constitution and Counterterrorism has assumed an abstract but heightened level of threat for Islamic terrorism in Austria. In its report “national risk analysis for Austria”, the Ministry of Finance found that also in Austria, structures and sympathisers of the Islamic-global Jihad exist. Investigations and criminal procedures have also shown activity in propaganda activities and social networks, or at the Jihad in Syria (“foreign fighters”).<sup>142</sup> When dealing with “returners”, Austria employs various instruments including the obligation to report at police offices, observations, as well as full-scale surveillance. At the end of 2016, 280 Jihadists were localised and put under surveillance.<sup>143</sup>

Austria has set many preventative measures over the past few years. In 2015, an Austrian group of the Radicalisation Awareness Network (RAN) was founded, where civil society organisations and authorities can exchange best practices on the prevention of radicalisation.<sup>144</sup> Similarly, the Federal Office for the Protection of the Constitution and Counterterrorism established an office for prevention, where measures for prevention and de-radicalisation are developed with a comprehensive, societal solution model. Currently, police officer trainings and sensitization events in prisons are being held and a programme for people who want to opt out is currently being developed.<sup>145</sup>

Connected with this, seven ministries and several organisations have come together to form a network to fight extremism, and to improve prevention mechanism. The Austrian-wide “Network for the Prevention of Extremism and De-Radicalisation” is coordinated by the Ministry of the Interior, and meets every eight weeks.<sup>146</sup>

Also on a state level several meetings, conferences and initiatives have taken place in Austria recently. This includes the OSCE Anti-Terrorism conference in Vienna in May 2017, which brought together over 500 guests and focused on the prevention on violent extremism and radicalisation of the youth. The conference was used as an exchange platform among different stakeholders. Simultaneously, the “Day for Civil Society” was held, where civil society organisations could gather information about the anti-terrorism

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20 April 2017, [wienerzeitung.at/nachrichten/oesterreich/politik/887132\\_Harter-Schlag-gegen-Staatenbund-Staatsverweigerer.html](http://wienerzeitung.at/nachrichten/oesterreich/politik/887132_Harter-Schlag-gegen-Staatenbund-Staatsverweigerer.html).

<sup>142</sup> Federal Ministry of Finance, Nationale Risikoanalyse Österreich, 2015, p. 26-28.

<sup>143</sup> Kurier, Polizisten im Visier der IS-Terrormiliz, 20 September 2016, [kurier.at/chronik/oesterreich/syrien-rueckkehrer-polizisten-im-visier-der-is-terrormiliz/220.175.092](http://kurier.at/chronik/oesterreich/syrien-rueckkehrer-polizisten-im-visier-der-is-terrormiliz/220.175.092).

<sup>144</sup> Federal Ministry of the Interior, Terrorismusbekämpfung, 22 February 2016, [bmi.gv.at/news.aspx?id=57334162557A696E4842513D](http://bmi.gv.at/news.aspx?id=57334162557A696E4842513D).

<sup>145</sup> Die Presse, Der Kampf gegen Extremismus soll effizienter werden, 2 August 2017, [diepresse.com/home/panorama/oesterreich/5262758/Der-Kampf-gegen-Extremismus-soll-effizienter-werden](http://diepresse.com/home/panorama/oesterreich/5262758/Der-Kampf-gegen-Extremismus-soll-effizienter-werden).

<sup>146</sup> Ibid.

conference.<sup>147</sup> Besides that, further activities in Austria include the #Youth Talks at the Foreign Ministry in January 2017,<sup>148</sup> and publication of the folder “Islam may not be abused for war and terror” published by the Islamic religious community in Austria together with the Foreign Ministry.<sup>149</sup>

On the city level, particularly the capital Vienna with its Expert\_Forum on the Network on De-Radicalisation and Prevention is active, and has presented 27 interdisciplinary recommendations on actions to deal with extremism in 2016, including concrete measures for the short- and long-term combatting of extremism.<sup>150</sup> In addition, the Integration Forum Vienna hosted a workshop on “Radicalisation and Extremism” in 2017.<sup>151</sup>

### 3.3.3. (De-)Radicalisation in the penitentiary system

The Austrian penitentiary system is considered as an area in which radicalisation can, on the one hand, take place among inmates getting into contact with radicalised persons, and on the other hand is an area where de-radicalisation of already radicalised people should take place in an effort to release them from prison. Prevention and de-radicalisation are topics currently very present on the ministerial level.

For this, the Ministry of Justice established a task force “De-radicalisation in the penitentiary system” in 2015, consisting of 13 experts. In this context a symposium on de-radicalisation approaches was held in 2015, where various measures were discussed. Since its establishment, the task force has continuously developed concrete solutions for the prevention of radicalisation, and de-radicalisation mechanisms. In addition, the Ministry of Justice has since 2016 cooperated closely with the organisation DERAD, who hold workshops in Austrian justice authorities on political education and social theory. This cooperation is part of a comprehensive package from the year 2016, encompassing measures in security, training measures also for justice officers, internal guidelines as well as support offers.<sup>152</sup>

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<sup>147</sup> Federal Ministry for Europe, Integration and Foreign Affairs, OSZE Anti-Terrorismkonferenz 2017 in Wien, 23 May 2017, [bmeia.gv.at/europa-aussenpolitik/sicherheitspolitik/osze-vorsitz-2017/aktuelles/2017/osce-counter-terrorism-conference-2017-in-vienna/](https://bmeia.gv.at/europa-aussenpolitik/sicherheitspolitik/osze-vorsitz-2017/aktuelles/2017/osce-counter-terrorism-conference-2017-in-vienna/).

<sup>148</sup> Federal Ministry for Europe, Integration and Foreign Affairs, “Radikalisierte Jugendliche: Opfer oder Täter” #YouthTalks17, 26 January 2017, [bmeia.gv.at/das-ministerium/presse/aussendungen/2017/01/radikalisierte-jugendliche-opfer-oder-taeter-youthtalks17/](https://bmeia.gv.at/das-ministerium/presse/aussendungen/2017/01/radikalisierte-jugendliche-opfer-oder-taeter-youthtalks17/).

<sup>149</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Der Islam darf nicht für Krieg und Terror missbraucht werden!, [bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Integration/Publikationen/Islamfolder\\_TUERK\\_final\\_ANSICHT.PDF](https://bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Publikationen/Islamfolder_TUERK_final_ANSICHT.PDF).

<sup>150</sup> Child and Youth Advocacy, 27 Maßnahmen gegen Extremismus, <https://kja.at/site/27-massnahmen-gegen-extremismus/>; Childen and Youth Advocacy, Zwei Jahre Netzwerk für Deradikalisierung & Prävention und Empfehlungen des „Expert\_Forum“, [kja.at/site/files/2017/02/Medienpapier\\_Expertforum1.pdf](https://kja.at/site/files/2017/02/Medienpapier_Expertforum1.pdf).

<sup>151</sup> Austria Integration Fonds, Workshop „Radikalismus und Extremismus“, 22 August 2017, [integrationsfonds.at/themen/beratung/wien/detail/article/workshop-radikalismus-und-extremismus-termin-wien/](https://integrationsfonds.at/themen/beratung/wien/detail/article/workshop-radikalismus-und-extremismus-termin-wien/).

<sup>152</sup> Federal Ministry of Justice, Justizministerium kooperiert bei der De-Radikalisierung im Strafvollzug ab sofort mit dem Verein DERAD, [justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen\\_2016/justizministerium-kooperiert-bei-der-de-radikalisierung-im-strafvollzug-ab-sofort-mit-dem-verein-derad-2c94848a511b962e01532ca53ed464a8.de.html](https://justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen_2016/justizministerium-kooperiert-bei-der-de-radikalisierung-im-strafvollzug-ab-sofort-mit-dem-verein-derad-2c94848a511b962e01532ca53ed464a8.de.html).

The Ministry of Justice also cooperates with the organisation NEUSTART to support already radicalised or sympathising inmates with a Jihadi background after their release from prison. For this, intensive individual support is offered and new possibilities for action are developed.<sup>153</sup> NEUSTART has 40 specially trained experts all over Austria, who support persons accused or sentenced according to § 278b - 278f CC.<sup>154</sup>

#### 3.4. Monitoring and support centres

When it comes to hate crime, religious intolerance and extremism, Austria has introduced a variety of offices offering support and advice and/or monitoring, as well as some who also offer trainings and human rights education.

For example, the Federal Office for the Protection of the Constitution and Counterterrorism is also the reporting centre for activities re-engaging in National Socialist ideology (“Wiederbetätigung”).<sup>155</sup> At this centre, problematic Internet content can be reported – similarly as in the reporting centre Stopleveline, which deals with issues of child-pornography (§ 207a CC) or other forbidden content on the Internet.<sup>156</sup> Similarly, the Federal Office has also established a reporting centre for extremist and radical videos.<sup>157</sup>

The Ministry of Education emphasises “youth and extremism – help in crisis situations”<sup>158</sup> in its priorities, having developed a folder and training opportunities.<sup>159</sup> Also educational psychological support centres are open at the Ministry, which organise trainings and direct support at schools in difficult situations.<sup>160</sup>

Also the Support Centre Extremism (“Beratungsstelle Extremismus”), funded by the Ministry for Families and Youth, has been acting as a contact point for radicalised youth and their immediate social circles since 2014. A hotline, in addition to 395 service centres in Austria offer free and anonymous support. If necessary and consented to, information is forwarded to the police.<sup>161</sup>

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<sup>153</sup> Neustart, Arbeit mit radikalisierten Klientinnen und Klienten mit dschihadistischem Hintergrund, [neustart.at/at/files/pdf/infoblatt\\_dschiadismus\\_5\\_dez2015.pdf](http://neustart.at/at/files/pdf/infoblatt_dschiadismus_5_dez2015.pdf).

<sup>154</sup> Response by the Ministry of Justice of 13 September 2017.

<sup>155</sup> Federal Ministry of the Interior, Meldestelle bei NS-Wiederbetätigung, [bmi.gv.at/205/ns.aspx](http://bmi.gv.at/205/ns.aspx).

<sup>156</sup> Stopleveline, Meldestelle gegen Kinderpornografie und Nationalsozialismus im Internet, [stopline.at/home/](http://stopline.at/home/).

<sup>157</sup> Federal Ministry of the Interior, Meldestelle extremistische und radikale Videos, [www.bmi.gv.at/205/videos.aspx](http://www.bmi.gv.at/205/videos.aspx).

<sup>158</sup> Federal Ministry of Education, Jugend und Extremismus, [bmb.gv.at/schulen/service/jugendundextremismen.html](http://bmb.gv.at/schulen/service/jugendundextremismen.html).

<sup>159</sup> Federal Ministry of Education, Jugend und Extremismus. Hilfe in Kriesensituationen, [bmb.gv.at/schulen/service/jugendundextremismen\\_folder.pdf?5te935](http://bmb.gv.at/schulen/service/jugendundextremismen_folder.pdf?5te935).

<sup>160</sup> Schulpsychologie Bildungsberatung, Aktuelle Herausforderung: „Dschihadistischer Extremismus“, [schulpsychologie.at/extremismus](http://schulpsychologie.at/extremismus).

<sup>161</sup> Federal Ministry of the Interior, Verfassungsschutzbericht, 2016, p.15, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf](http://bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf).

Finally, the Ministry of Foreign Affairs has confirmed the 2015 establishment of a hotline against discrimination and intolerance in order to help victims of racial, ethnical or religious discrimination to their rights.<sup>162</sup>

In civil society, the organisations DERAD,<sup>163</sup> the Styrian Anti-Discrimination Office,<sup>164</sup> and the Support Centre #GegenHassimNetz by ZARA<sup>165</sup> take an active role in combatting de-radicalisation and in offering preventive mechanisms. DERAD for example is also part of the “Radicalisation Awareness network” of the European Commission and offers workshops for Austrian justice authorities. The Styrian Anti-Discrimination Office acts as a primary contact point, clearing-house, support and monitoring office for incidents of hate crime in Styria, which can be reported personally, online,<sup>166</sup> or through the specifically developed BanHate App.<sup>167</sup> Finally, the service established by ZARA (#AgainstOnlineHatecrime) offers the possibility to report hate postings and cyber mobbing online.<sup>168</sup>

#### 4. Success in implementation

##### 4.1. Hate crime

Hate crimes have been documented in Austria for several years. In this context, the ODIHR Report (Hate Crime Reporting Austria) has documented 395 reports of hate crime in Austria in 2015.<sup>169</sup> However, hate crimes are often not prosecuted or prevented adequately.

Austria’s positive developments are shown in the 2015 Report by the European Commission against Racism and Intolerance (ECRI):

“The authorities are in the process of improving the criminal law provisions against racism and intolerance. They also consider ratifying the Additional Protocol to the Convention against Cybercrime. According to the 2013 government platform, the enforcement of the right to equal treatment will be evaluated and a new legislative proposal aims at extending the protection against discrimination. Since 2012, the AOB has an explicit mandate, vested in the constitution, to examine complaints on violation of human rights on the part of public authorities. The police and prosecution services have invested considerable resources in investigating hate speech and intensified human rights training for their staff. In autumn 2014, an inter-ministerial summit on combating hate speech took place and the

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<sup>162</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Hotline gegen Diskriminierung und Intoleranz, [bmeia.gv.at/integration/hotline-gegen-diskriminierung/](http://bmeia.gv.at/integration/hotline-gegen-diskriminierung/). Confirmation by the Federal Ministry for Europe, Integration and Foreign Affairs of 15 September 2017.

<sup>163</sup> DERAD, <http://derad.at/>.

<sup>164</sup> Anti-Discrimination Office Styria, Was macht die Antidiskriminierungsstelle Steiermark?, [antidiskriminierungsstelle.steiermark.at/cms/ziel/72108866/DE/](http://antidiskriminierungsstelle.steiermark.at/cms/ziel/72108866/DE/).

<sup>165</sup> ZARA, Beratungsstelle #GegenHassimNetz, [www.zara.or.at/index.php/archiv/10363#more-10363](http://www.zara.or.at/index.php/archiv/10363#more-10363).

<sup>166</sup> Anti-Discrimination Office Styria, Meldeformular, [antidiskriminierungsstelle.steiermark.at/cms/ziel/74232723/DE/](http://antidiskriminierungsstelle.steiermark.at/cms/ziel/74232723/DE/).

<sup>167</sup> Anti-Discrimination Office Styria, Aktueller Bericht der Antidiskriminierungsstelle Steiermark mit neuem Hoch an gemeldeten Fällen, [www.antidiskriminierungsstelle.steiermark.at/cms/ziel/72108800/DE/](http://www.antidiskriminierungsstelle.steiermark.at/cms/ziel/72108800/DE/).

<sup>168</sup> ZARA, Die Beratungsstelle #GegenHassimNetz startet heute!, 15 September 2017, [zara.or.at/index.php/archiv/10363#more-10363](http://zara.or.at/index.php/archiv/10363#more-10363).

<sup>169</sup> OSCE, Hate Crime Reporting. Austria, [hatecrime.osce.org/austria](http://hatecrime.osce.org/austria).

government has run several campaigns towards a balanced debate on migration and foreigners. In response to an ECRI recommendation, the Austrian Press Council was re-established in 2010. Some media have played an important role in combating hate speech and Google has introduced rules for removing online hate speech.”<sup>170</sup>

Beyond this, the legal changes in Austria have shown first results, for example six convictions have been carried out in the area of “cyber mobbing” since this has officially become an offense in 2016. According to the corresponding § 107c CC, 413 cases were brought forward to prosecution, 29 thereof leading to a lawsuit.<sup>171</sup>

Primarily, such cases of hate crime are documented through various studies conducted by ZARA, who has documented over 1,000 racist incidents in 2016, 31% thereof occurring online, 20% in the public space and 16% in the access to goods and services. 50% of cases were reported by witnesses, and 30% by victims themselves.<sup>172</sup>

When it comes to hate crime in Styria, the first hate crime study by the Anti-Discrimination Office in Styria showed that among 1,112 interviewed persons with migratory background, 39% had been discriminated against because of their ethnicity, religion or skin colour. The report found that approximately about 4,100 hate crimes occur in Styria annually, including verbal as well as physical attacks.<sup>173</sup>

#### 4.1.1. Hate crime against LGBTI persons

Also people who are part of the LGBTI community are often victims of hate crimes. Research shows that these persons are more likely to experience hate crimes, and are often victims of targeted attacks.

In a study conducted by GayCops Austria in 2015, around 5% of all Austrian LGBTI are victims of physical assault per year, which equates to over 17,000 cases annually and makes up over half the reported incidents of physical assault in Austria. Particularly young men are affected.<sup>174</sup> Also the study “Queer in Vienna”, conducted by the Vienna Anti-Discrimination Office for Same-Sex and Transgender Lifestyles has shown that among 3,191 participants, 79% had experienced verbal harassment in public spaces. A quarter of participants had become victim of sexual harassment or violence, and 20% had been

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<sup>170</sup> European Commission against Racism and Intolerance, ECRI Report on Austria, 2015, [coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf](https://coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf).

<sup>171</sup> Parliamentary inquiry: [parlament.gv.at/PAKT/VHG/XXV/J/J\\_11361/imfname\\_582922.pdf](https://parlament.gv.at/PAKT/VHG/XXV/J/J_11361/imfname_582922.pdf); reply to the inquiry: [parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_10882/imfname\\_618226.pdf](https://parlament.gv.at/PAKT/VHG/XXV/AB/AB_10882/imfname_618226.pdf).

<sup>172</sup> ZARA, Rassismus Report 2016, p. 12, [www.zara.or.at/wp/wp-content/uploads/2017/03/ZARA\\_Rassismus\\_Report\\_2016\\_web\\_fin.pdf](https://www.zara.or.at/wp/wp-content/uploads/2017/03/ZARA_Rassismus_Report_2016_web_fin.pdf).

<sup>173</sup> Anti-Discrimination Office Styria, Steiermark: Rassismus in einer neuen Art von Brutalität, [antidiskriminierungsstelle.steiermark.at/cms/beitrag/12455367/128816132](https://antidiskriminierungsstelle.steiermark.at/cms/beitrag/12455367/128816132).

<sup>174</sup> IG Soziologie, LGBTI Gewalterfahrungen Umfrage. Eine Studie zu Hassverbrechen in Österreich, 2015, p. 3 et seq. [drive.google.com/file/d/0BxT0rn9KKc5ebTF4OHlYa2xfSFk/view?pli=1](https://drive.google.com/file/d/0BxT0rn9KKc5ebTF4OHlYa2xfSFk/view?pli=1).

attacked verbally. Reporting of such incidents is rare, as is the seeking of help from support centres.<sup>175</sup>

#### 4.1.2. Deleting of illegal online content

In the past years, Austria has initiated several projects dealing with the deletion of illegal online content. A clear improvement can be seen in comparison with prior years. In 2016, the organisation ZARA investigated the obligation of IT firms to delete online content for the first time. It was found that with 11%, Austria was under the European average of 28%.<sup>176</sup> In a second monitoring conducted in 2017,<sup>177</sup> ZARA found that the practice of deletion has greatly improved in Austria, now reaching 76.1%.

#### 4.2. Religious (in-)tolerance

In Austria, 16 churches and religious communities are officially recognised.<sup>178</sup> Nonetheless, societal rejection is often experienced particularly by members of the Islamic or Jewish faith communities due to their religious beliefs.

##### 4.2.1. Anti-Semitism

In the year 2016, the city of Vienna found that the majority of religious devaluation among youth took place towards Jews, whereas Christian and Muslim youth perceived each other primarily as neutral or positive. Based on surveying 401 young people, it was found that in particular Muslim youth seem to have strong prejudice towards Jews.<sup>179</sup> Yet, it has to be noted that the attitude of the young persons interviewed cannot be considered as representative for the entire Viennese youth: the persons interviewed mainly stem from socially weak milieus and most of them were in need of special care. Fittingly, a report by the European Union Agency for Fundamental Rights (FRA) on Anti-Semitism found that in the year 2015, there had been 41 anti-Semitic cases reported in Austria compared to 58 and 37 in the years 2014 and 2015, respectively.<sup>180</sup>

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<sup>175</sup> City of Vienna, "Queer in Wien". Stadt Wien Studie zur Lebenssituation von Lesben, Schwulen, Bisexuellen, Transgender-Personen und Intersexuellen (LGBTIs), [wien.gv.at/menschen/queer/pdf/wast-studie-ergebnisse.pdf](http://wien.gv.at/menschen/queer/pdf/wast-studie-ergebnisse.pdf).

<sup>176</sup> ZARA, Ergebnisse der ZARA Monitoring der Löschraktionen illegaler Online-Hetze, [zara.or.at/index.php/archiv/9835#more-9835](http://zara.or.at/index.php/archiv/9835#more-9835).

<sup>177</sup> ZARA, Positives Resultat der Überprüfung der Löschraktionen illegaler Online-Hetze: Löschrategie für Österreich bei 76,1%, [zara.or.at/index.php/archiv/10219#more-10219](http://zara.or.at/index.php/archiv/10219#more-10219).

<sup>178</sup> Austrian Federal Chancellery, Gesetzlich anerkannte Kirchen und Religionsgesellschaften, [help.gv.at/Portal.Node/hlpd/public/content/82/Seite.820015.html](http://help.gv.at/Portal.Node/hlpd/public/content/82/Seite.820015.html).

<sup>179</sup> City of Vienna, Jugendliche in der offenen Jugendarbeit. Identitäten, Lebenslagen und abwertende Einstellungen, 2016, [wien.gv.at/freizeit/bildungjugend/pdf/studie-1.pdf](http://wien.gv.at/freizeit/bildungjugend/pdf/studie-1.pdf) and [wien.gv.at/freizeit/bildungjugend/pdf/studie-2.pdf](http://wien.gv.at/freizeit/bildungjugend/pdf/studie-2.pdf).

<sup>180</sup> European Union Agency for Fundamental Rights (FRA), Antisemitism – Overview of data available in the European Union 2005–2015, 2016, [fra.europa.eu/en/publication/2016/antisemitism-overview-data-available-european-union-2005-2015](http://fra.europa.eu/en/publication/2016/antisemitism-overview-data-available-european-union-2005-2015).

#### 4.2.2. Islamophobia

In the past years several studies, building on increasing Islamophobia and religious intolerance towards Muslims in Austria, several studies have been conducted.

In a 2015 survey on “how tolerant are Austrians”, among 1,000 interviewees it was found that the majority of Austrians are indeed prejudiced towards Muslims. 65% of Austrians would for example have a problem with someone in the family converting to Islam.<sup>181</sup> Similarly, research conducted by the Bertelsmann Foundation in 2017 showed that Islamophobia among Austrians is in fact the highest in Europe, as confirmed by Chatham House.<sup>182</sup> 28% of the Austrian population do not want Muslim neighbours, and two thirds support a total immigration stop from Muslim countries.<sup>183</sup>

The rising public intolerance towards Muslims is also reflected in the SETA Report Austria 2016. This report focuses particularly on the areas of politics (in particular in connection with current election campaigns), the media and the public space.<sup>184</sup>

However, degrading attitudes are not only shown through public opinion, but also through statistics on harassment and attacks. Oftentimes, (perceived) members of the Muslim community are victims of such incidents.

The reporting and support centre “Islamophobia and Anti-Muslim Racism” annually publishes a report. In 2016, it was shown that Islamophobic attacks had risen by 62% compared to the year before, constituting 253 attacks. 98% of victims were women and 18% of attacks happened online.<sup>185</sup>

The labour market is particularly disadvantageous especially towards Muslim women, both during the application process and during employment.<sup>186</sup> According to a case brought

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<sup>181</sup> Mauthausen Komitee Österreich, Studie: Toleranz wird in Österreich groß geschrieben – bei Religion scheiden sich die Geister, 27 April 2015, [mkoe.at/studie-toleranz-oesterreich-gross-geschrieben-religion-scheiden-geister](http://mkoe.at/studie-toleranz-oesterreich-gross-geschrieben-religion-scheiden-geister).

<sup>182</sup> Chatham House, What do Europeans think about Muslim integration?, January 2017, [chathamhouse.org/expert/comment/what-do-europeans-think-about-muslim-immigration](http://chathamhouse.org/expert/comment/what-do-europeans-think-about-muslim-immigration); Der Standard, „Gefährliches Halbwissen“ über Islam stärkt Ablehnung, 20 June 2017, [derstandard.at/2000059547856/Gefaehrliches-Halbwissen-ueber-Islam-staerkt-Ablehnung](http://derstandard.at/2000059547856/Gefaehrliches-Halbwissen-ueber-Islam-staerkt-Ablehnung); Der Standard, Zwei Drittel fordern Stopp der Einwanderung aus muslimischen Ländern, 20 June 2017, [derstandard.at/2000059278682/StudieMehr-als-die-Haelfte-der-befragten-EU-Buerger-lehnen-muslimische](http://derstandard.at/2000059278682/StudieMehr-als-die-Haelfte-der-befragten-EU-Buerger-lehnen-muslimische).

<sup>183</sup> Nachrichten.at, Die Ablehnung des Islam ist in Österreich am stärksten, 25 August 2017, [nachrichten.at/nachrichten/politik/innenpolitik/Die-Ablehnung-des-Islam-ist-in-OEsterreich-am-staerksten;art385,2659812](http://nachrichten.at/nachrichten/politik/innenpolitik/Die-Ablehnung-des-Islam-ist-in-OEsterreich-am-staerksten;art385,2659812); Halm, Dirk; Sauer Martina, Muslime in Europa. Integriert, aber nicht akzeptiert?, [bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Studie\\_LW\\_Religionsmonitor-2017\\_Muslime-in-Europa.pdf](http://bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Studie_LW_Religionsmonitor-2017_Muslime-in-Europa.pdf).

<sup>184</sup> Farid Hafez, Islamophobia in Austria: National Report 2016, in: Enes Bayraklı, Farid Hafez, European Islamophobia Report 2016, Istanbul, SETA, 2017, [islamophobiaeurope.com/wp-content/uploads/2017/03/AUSTRIA.pdf](http://islamophobiaeurope.com/wp-content/uploads/2017/03/AUSTRIA.pdf).

<sup>185</sup> Dokustelle Islamfeindlichkeit und antimuslimischer Rassismus, Antimuslimischer Rassismus Report, 2016, p. 32 et seq.

<sup>186</sup> Ibid; Weichselbaumer Doris, Discrimination against Female Migrants Wearing Headscarves, IZA DP No. 10217, 2016, [ftp.iza.org/dp10217.pdf](http://ftp.iza.org/dp10217.pdf).

to the Supreme Court in 2016, despite constituting discrimination, dismissal from one's job due to wearing a headscarf is constitutional.<sup>187</sup>

Also among youth, research by the City of Vienna in 2016 found that discrimination among Muslim youth is particularly wide-spread. 51% of those asked reported having been discriminated against due to their religious affiliation – the majority of interviewees were Muslim.<sup>188</sup>

According to the Netzwerk Muslimische Zivilgesellschaft, the ban on full-face veiling resulted in a withdrawal of Muslim women from society, increased harassments or even more victims of hate crimes, as strangers pull down the headscarves of Muslim women in public. The purpose of the law, namely to allow interaction between Muslim women and the majority society, thus failed according to the Netzwerk Muslimische Zivilgesellschaft.<sup>189</sup>

This section clearly shows that anti-Muslim attitudes are prevalent among Austrians. Large parts of the Austrian population have prejudice towards Muslims and these attitudes often prevent Muslims from participating in society fully. Particularly when it comes to co-existence, the labour market and public space, Muslims are victims of discrimination, and verbal and physical harassment.

#### 4.3. Extremism

##### 4.3.1. Right-wing extremism

Right-wing extremism in its various forms is defined as an “action jeopardising democracy” by the 2016 Report on State Security and is therefore considered an activity against the state. Since 2015, increased efforts have been made in investigating offences with motives related to asylum.<sup>190</sup>

Already in 2015 large quantities on protests, blockades, spontaneous gatherings and demonstrations could be observed. In the centre of these stood the concerns of “true patriots” and “concerned citizens”. These actions observably continued in 2016 and revolved around asylum and refugee issues, constituting a very open form of racist and xenophobic aggression also reflected on the Internet. The main issues for right-wing protests seemed to be new asylum regulations, asylum accommodation regulations and asylum seekers.<sup>191</sup>

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<sup>187</sup> Supreme Court, 9ObA117/15v, [ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20160525\\_OGH0002\\_009OBA00117\\_15V0000\\_000](https://ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20160525_OGH0002_009OBA00117_15V0000_000).

<sup>188</sup> City of Vienna, Jugendliche in der offenen Jugendarbeit. Identitäten, Lebenslagen und abwertende Einstellungen, 2016, [wien.gv.at/freizeit/bildungjugend/pdf/studie-1.pdf](https://wien.gv.at/freizeit/bildungjugend/pdf/studie-1.pdf) and [wien.gv.at/freizeit/bildungjugend/pdf/studie-2.pdf](https://wien.gv.at/freizeit/bildungjugend/pdf/studie-2.pdf).

<sup>189</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 15 November 2017.

<sup>190</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2015, p. 43, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2015.pdf](https://bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2015.pdf).

<sup>191</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 34, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf](https://bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf).



In 2016, 1,313 right-wing extremist, xenophobic or racist, Islamophobic, anti-Semitic or unspecified offences were reported, compared to 1,156 reported in 2015. 61.3% of the offences in 2016 could be investigated and cleared, compared to 65.1% the year before.

Several cases of “Wiederbetätigung” were reported (3,124 in 2016),<sup>192</sup> as well as 1,156 incidents of right-wing extremist and racist criminal offences<sup>193</sup>, and several increases of defamation, dangerous threats and physical assault.<sup>194</sup>

The Right-Wing Extremism Report, published in 2016, showed that between 2010 and 2015 the number of reported incidents has doubled<sup>195</sup> – mostly incidents are violations of the law prohibiting re-engagement in National Socialist activities, closely followed by property damage and defamation.<sup>196</sup> The report clearly shows that right-wing extremism has been a very serious phenomenon in Austria and has been on the rise just as cases of prosecution and sanctioning have been.

#### 4.3.2. Left-wing extremism

Left-wing extremism is considered by the Report on State Protection as a danger for public peace, rule of law, and security.<sup>197</sup>

As an example for the likelihood for violence of the left-wing extremist scene, the autonomous fractions present at protests against the “New Right” can be considered. In 2016, 2,000 civil society and left-wing affiliated counter-demonstrators protested against 900 “new right” protesters – the confrontation ended with property damage, physical injuries, as well as several arrests. 53 persons were reported to the police, and 10 people were arrested.<sup>198</sup>

In 2016, a total of 383 offences with apparent left-wing motivation could be recorded and 463 incidents were reported according to provisions laid down in the CC. 52% of these offences could be investigated and cleared. During the course of left-wing extremist prosecution, 83 persons were reported in 2016, 21 of them women and 6 of them youth.<sup>199</sup>

When it comes to the Presidential election which took place in 2016, 178 offences were reported in connection with left-wing motivations, including against election campaign material, poster stands and other objects associated with the FPÖ, the Austrian Freedom

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<sup>192</sup> Ibid, p. 12.

<sup>193</sup> Mauthausen Komitee Österreich, Rechtsextremismus melden, [www.mkoe.at/rechtsextremismus-melden](http://www.mkoe.at/rechtsextremismus-melden).

<sup>194</sup> Parliamentary inquiry, 4 November 2016, (10662/J-NR/2016), [parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_10201/imfname\\_583620.pdf](http://parlament.gv.at/PAKT/VHG/XXV/AB/AB_10201/imfname_583620.pdf); Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p.12.

<sup>195</sup> Grüner Club, Rechtsextremismusbericht 2016, 31 May 2016, p. 15, [gruene.at/themen/demokratie-verfassung/rechtsextremismus-bericht-2016-straftaten-verdoppelt](http://gruene.at/themen/demokratie-verfassung/rechtsextremismus-bericht-2016-straftaten-verdoppelt).

<sup>196</sup> Ibid, p. 16.

<sup>197</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 12.

<sup>198</sup> Ibid, p. 19.

<sup>199</sup> Ibid, p. 20.

party. This means that over 46% of left-wing motivated offences recorded in 2016 fall into this category.<sup>200</sup>

#### 4.3.3. Religiously motivated extremism

The number of Jihadists in Austria is small, yet considered dangerous. According to the Federal Office for the Protection of the Constitution and Counterterrorism, 296 Austrian-born persons are known who were actively taking part in Jihad in Syria and Iraq. At the end of 2016, 280 could be localised in Austria and were put under surveillance by the authorities.<sup>201</sup> However, this number is shrinking due to consequent penal prosecution and sentencing of suspects.<sup>202</sup>

The fact that there are people living in Austria who are ideologically close to extremist Islamic content is shown by a study conducted by the City of Vienna with youth. Out of the 401 surveyed youth, 27% showed positive feelings towards extremely religious people who are willing to go to war for their faith. These youth also saw the West as the “suppressor” and agreed that Islam has to be protected with violence.<sup>203</sup> These findings are also reflected by a study conducted by the Ministry for Foreign Affairs, which found that there also exist highly fundamental tendencies amongst Muslims in Austria.<sup>204</sup> Additionally, the Ministry for Foreign Affairs published a study on Muslim groups in Austria and their attitudes.<sup>205</sup> The study encompassed Muslims with various backgrounds on different social topics. The results showed that different groups had strongly different opinions – the larger the distance of interviewees to their religion, the more tolerant their attitudes.

From 2014 to 2017, the aforementioned “Support Service Extremism” was contacted 2,399 times. In over 40% of cases brought to the service the questions were about religiously motivated extremism, general predisposition to violence and intercultural questions.<sup>206</sup>

At the moment (as of June 2017) 63 inmates are in Austrian prison due to their participation in terrorist associations.<sup>207</sup> Thereby, the number of sentences according to §§ 278b et seq. CC has doubled since 2015. For (apparent) Jihadists in Austrian prisons,

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<sup>200</sup> Ibid, p. 20.

<sup>201</sup> Kurier, Polizisten im Visier der IS-Terrormiliz, 20 September 2016, [kurier.at/chronik/oesterreich/syrien-rueckkehrer-polizisten-im-visier-der-is-terrormiliz/220.175.092](http://kurier.at/chronik/oesterreich/syrien-rueckkehrer-polizisten-im-visier-der-is-terrormiliz/220.175.092).

<sup>202</sup> Federal Ministry of the Interior, Mehr extremistisch motivierte Straftaten in Österreich, <http://bmi.gv.at/news.aspx?id=574D5562546C56584E4A343D>.

<sup>203</sup> City of Vienna, Jugendliche in der offenen Jugendarbeit. Identitäten, Lebenslagen und abwertende Einstellungen, 2016, [wien.gv.at/freizeit/bildungjugend/pdf/studie-1.pdf](http://wien.gv.at/freizeit/bildungjugend/pdf/studie-1.pdf), [wien.gv.at/freizeit/bildungjugend/pdf/studie-2.pdf](http://wien.gv.at/freizeit/bildungjugend/pdf/studie-2.pdf) and [wien.gv.at/freizeit/bildungjugend/pdf/studie-3.pdf](http://wien.gv.at/freizeit/bildungjugend/pdf/studie-3.pdf).

<sup>204</sup> Austrian Integration Fonds, Forschungsbericht „Muslimische Gruppen in Österreich“, 2017, [integrationsfonds.at/publikationen/forschungsberichte/forschungsbericht-muslimische-gruppen-in-oesterreich/](http://integrationsfonds.at/publikationen/forschungsberichte/forschungsbericht-muslimische-gruppen-in-oesterreich/).

<sup>205</sup> Ibid.

<sup>206</sup> Support Service Extremism, May 2017, [www.beratungsstelleextremismus.at/wp-content/uploads/2017/06/Bilanz-Beratungsstelle-Extremismus\\_Dez\\_14\\_Mai\\_17.pdf](http://www.beratungsstelleextremismus.at/wp-content/uploads/2017/06/Bilanz-Beratungsstelle-Extremismus_Dez_14_Mai_17.pdf).

<sup>207</sup> ORF Steiermark, Dschihadismus: Deradikalisierung im Gefängnis, 14 June 2017, [steiermark.orf.at/news/stories/2848980/](http://steiermark.orf.at/news/stories/2848980/).

special security measures are taken and particular support services are offered.<sup>208</sup> The Institute for Legal and Criminal Sociology surveyed 39 former inmates with Jihadi background about their imprisonment, their motives and their ideology. Employees of prisons, experts, justice officers and NGO employees working in prison were interviewed as well. It was found that most Jihadists are in fact not radicalized in prison but beforehand, and did not have criminal records beforehand. The results also showed that de-radicalising measures, including anti-violence training and political education through experts, for example from the NGO DERAD, seem to work.<sup>209</sup> In this context, for example the organization NEUSTART is currently (in August 2017) supporting 51 persons with special services and legal support.<sup>210</sup>

The analysis shows that among people living in Austria, there are indeed those who are conservative, and those who approve of tendencies and attitudes glorifying violence. Particularly in the case of young people, these attitudes can be observed although it cannot clearly be said that these people will end in terrorist scenes. However, the group of “real” terrorists in Austria is small, under surveillance and also prosecuted.

#### 4.3.4. Citizens rejecting public authority (“Staatsverweigerer”)

The number of citizens rejecting public authority in Austria is still on the rise. The Federal Office for the Protection of the Constitution and Counterterrorism is aware of around 3,000 people who are affiliates of a grouping against security, justice and financial institutions. A social media analysis has shown that about 15,000 further people are potential activists or at least sympathizers. In addition, another 7,000 people are active in vital forums criticizing the system, and the legal system. These also include now retired public and civil servants.<sup>211</sup> Violent behaviour of citizens rejecting public authority has until now mostly occurred in the context of resisting state violence.<sup>212</sup> In this context, 26 people were arrested in 2017, who were part of the so-called “State Union of Austria” (“Staatenbund Österreich”).<sup>213</sup>

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<sup>208</sup> Federal Ministry of Justice, Radikalisierung im Strafvollzug: Justizminister Brandstetter setzt auf Know-How von internationalen Experten, 23 August 2015, [justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen\\_2015/radikalisierung\\_im\\_strafvollzug\\_justizminister\\_brandstetter\\_setzt\\_auf\\_know-how\\_von\\_internationalen\\_experten~2c94848b4cb2b0d4014ce5c7cc380f05.de.html](https://www.justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen_2015/radikalisierung_im_strafvollzug_justizminister_brandstetter_setzt_auf_know-how_von_internationalen_experten~2c94848b4cb2b0d4014ce5c7cc380f05.de.html).

<sup>209</sup> Vienna Online, Terrorismus: Weitere Maßnahmen zur Deradikalisierung in Justizanstalten nötig, 31 January 2017, [vienna.at/terrorismus-weitere-massnahmen-zur-deradikalisierung-in-justizanstalten-noetig/5122513](https://www.vienna.at/terrorismus-weitere-massnahmen-zur-deradikalisierung-in-justizanstalten-noetig/5122513); Hofinger Veronika, Schmidinger Thomas, Endbericht zur Begleitforschung Deradikalisierung im Gefängnis, Wien, 2017, [irks.at/assets/irks/Publikationen/Forschungsbericht/Endbericht\\_Begleitforschung\\_2017.pdf](https://www.irks.at/assets/irks/Publikationen/Forschungsbericht/Endbericht_Begleitforschung_2017.pdf).

<sup>210</sup> Response by the Ministry of Justice of 13 September 2017.

<sup>211</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 55, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf](https://www.bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf).

<sup>212</sup> Parliamentary inquiry, 9 November 2016 (BMI-LR2220/1200-II/2016), [parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_10248/imfname\\_584592.pdf](https://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_10248/imfname_584592.pdf).

<sup>213</sup> Heise Online, Österreich: Neues Gesetz gegen Staatsverweigerer, 24 May 2017, [heise.de/tp/features/Oesterreich-Neues-Gesetz-gegen-Staatsverweigerer-3723739.html](https://www.heise.de/tp/features/Oesterreich-Neues-Gesetz-gegen-Staatsverweigerer-3723739.html); Wiener Zeitung, Harter Schlag gegen Staatsverweigerer, 20 April 2017, [wienerzeitung.at/nachrichten/oesterreich/politik/887132\\_Harter-Schlag-gegen-Staatenbund-Staatsverweigerer.html](https://www.wienerzeitung.at/nachrichten/oesterreich/politik/887132_Harter-Schlag-gegen-Staatenbund-Staatsverweigerer.html).

Since 1 September 2017, the offence “subversive movements” (“Staatsfeindliche Bewegung”), § 246a CC, has been in force. Herein the founders of such movements are punishable with up to two years of imprisonment; supporters are punishable with up to one year of imprisonment.<sup>214</sup> The establishment of this provision was foreseen in the governmental programme 2017/2018 in section four on “Security and Integration”.<sup>215</sup>

In order to counteract the registering of unlawful demands in the registry of the US State Washington (Uniform Commercial Code, UCC), the aforementioned Ministry provides a template for applying for deletion from the UCC, which according to the Ministry of Justice is 100% successful when applied for.<sup>216</sup> The Ministry of the Interior further stated that the implementation of the “Malta Masche” is a two-step process which has involved several dozen public and private employees in the first step, and in the second step has led to the filing of a claim due to a UCC entry in Malta. This claim has been filed in Germany, but not in Austria.<sup>217</sup>

## 5. Human Rights Education on hate crime, religious (in-)tolerance and extremism

### 5.1. International and national obligations

The following documents were considered as a foundation for human rights education emphasising hate crime, religious (in-)tolerance and extremism:

- National Action Plan on Right-Wing Extremism
- National Action Plan on Integration
- 50 Point Plan on the Integration of those entitled to Asylum

The **National Action Plan on Right-Wing Extremism** is not available to the public; it encompasses a series of staff development and training measures on current forms of right-wing extremism. Additionally a comprehensive, preventative effort is made together with the executive, in intensified cooperation with the judiciary, science and civil society to develop information material for specific target groups. The implementation of this NAP was started in December 2013 and is to be understood as a comprehensive, goal and effect-oriented endeavour to combat right-wing extremism. It can be considered a positive development in respect to security.<sup>218</sup>

In the **National Action Plan on Integration** relevant formulations on human rights education can be found at various points. Therein, “different forms of racism, extremism,

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<sup>214</sup> Ibid.

<sup>215</sup> Republik Österreich, Für Österreich. Arbeitsprogramm der Bundesregierung 2017/18, 2017, p. 23, [archiv.bundeskanzleramt.at/DocView.axd?CobId=65201](http://archiv.bundeskanzleramt.at/DocView.axd?CobId=65201).

<sup>216</sup> Response by the Ministry of Justice of 13 September 2017.

<sup>217</sup> Response by the Ministry of the Interior of 8 September 2017.

<sup>218</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 15, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf](http://bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf); as well as [parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_05080/imfname\\_447105.pdf](http://parlament.gv.at/PAKT/VHG/XXV/AB/AB_05080/imfname_447105.pdf).

defamation and discrimination of people with migratory background, are directed against the state and its values, and therefore must be combatted consequently”.<sup>219</sup> Activities against this must therefore be enforced,<sup>220</sup> legal provisions encouraged, including communication and equality measures, particularly the Law on Equal Treatment.<sup>221</sup> In school classes, projects and measures should be taken to combat prejudice, racism and discrimination, and to combat against systematic intolerance.<sup>222</sup> Interreligious dialogue is also to be fostered.<sup>223</sup> In 2016 and 2017 in the framework of the focal point “Rule of Law and values”, a total of 48 integration projects were conducted, making up a total of €2.5 Million in funding. These were about topics like religious intolerance, religiously motivated and violent extremism, terrorism and human rights education.<sup>224</sup>

Similar points are emphasised in the **50-Point-Action-Plan for the Integration of People who were granted Asylum or Subsidiary Protection**. Pedagogical measures and intervention mechanisms should be introduced to encourage reflection about one’s own behaviour – this can include community service.<sup>225</sup> Additionally, the prevention of radicalisation is mentioned in a separate point, stating that a number of measures with a comprehensive societal approach is needed to prevent radicalisation tendencies on all levels – in this context; a counter-narrative must be created which deconstructs the foundational ideology. Particularly the activities of organisations with Islamistic background must be closely monitored and acted against.<sup>226</sup> Measures against racism, anti-Semitism and Islamophobia are mentioned in a separate point: the images about uncontrolled immigration that are being transported in the media lead to open racism towards refugees as well as particular groups in society. Therefore, measures against racism in general, as well as anti-Semitism and Islamophobia in general must be intensified with the means of the state. Beyond that, also increased dialogue with Abrahamic religious would be useful to emphasise collective values, rather than separating ones.<sup>227</sup>

## 5.2. International materials

There exist several international materials, which can be drawn upon for relevant human rights education.

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<sup>219</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Nationaler Aktionsplan Integration, 2010, p. 24, [bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Integration/NAP/Bericht\\_zum\\_Nationalen\\_Aktionsplan.pdf](http://bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/NAP/Bericht_zum_Nationalen_Aktionsplan.pdf).

<sup>220</sup> Ibid, p. 25.

<sup>221</sup> Ibid, p. 26.

<sup>222</sup> Ibid, p. 18.

<sup>223</sup> Ibid, p. 36.

<sup>224</sup> Response by the Federal Ministry for Europe, Integration and Foreign Affairs of 15 September 2017.

<sup>225</sup> Federal Ministry for Europe, Integration and Foreign Affairs, 50-Punkte Plan zur Integration von Asylberechtigten und subsidiär Schutzberechtigten in Österreich, 2015, p. 10, [bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Integration/Publikationen/Integrationsplan\\_final.pdf](http://bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Publikationen/Integrationsplan_final.pdf).

<sup>226</sup> Ibid, p. 18.

<sup>227</sup> Ibid, p. 19.

## OSCE/ODIHR

- OSCE/ODIHR, Guidelines on Human Rights Education for Human Rights Activists, 2013.<sup>228</sup>

These guidelines present approaches to be adopted when planning or implementing education programmes for human rights activists, related to six key areas: the human rights-based approach to human rights education; core competencies; curricula; teaching and learning processes; evaluation; and development and support for trainers. The guidelines also offer a list of key resources to assist in planning, implementing and evaluating human rights education for human rights activists.

- OSCE/ODIHR, Guidelines on Human Rights Education for Law Enforcement Officials, 2012.<sup>229</sup>

The document presents approaches to be adopted when planning or implementing human rights education for law enforcement personnel related to six key structural areas: the human rights-based approach to human rights education; core competencies; curricula; training and learning processes; evaluation; and professional development and support of educational personnel.

- OSCE/ODIHR, Guidelines on Human Rights Education for Secondary School Systems, 2012.<sup>230</sup>
- OSCE/ODIHR, Human Rights Education in the School Systems of Europe, Central Asia and North America. A Compendium of Good Practice, 2009.<sup>231</sup>

## UNESCO

- UNESCO, A Teacher's Guide on the Prevention of Violent Extremism, 2016.<sup>232</sup>
- UNESCO, Preventing violent extremism through education. A guide for policy-makers, 2017.<sup>233</sup>

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<sup>228</sup> OSCE/ODIHR, Guidelines on Human Rights Education for Human Rights Activists, 2013, [osce.org/odihr/105050?download=true](https://osce.org/odihr/105050?download=true).

<sup>229</sup> OSCE/ODIHR, Guidelines on Human Rights Education for Law Enforcement Officials, 2012, [osce.org/odihr/93968?download=true](https://osce.org/odihr/93968?download=true).

<sup>230</sup> OSCE/ODIHR, Guidelines on Human Rights Education for Secondary School Systems, 2012, [osce.org/odihr/93969?download=true](https://osce.org/odihr/93969?download=true).

<sup>231</sup> OSCE/ODIHR, Human Rights Education in the School Systems of Europe, Central Asia and North America. A Compendium of Good Practice, 2009, [osce.org/odihr/39006?download=true](https://osce.org/odihr/39006?download=true).

<sup>232</sup> UNESCO, A Teacher's Guide on the Prevention of Violent Extremism, 2016, [unesdoc.unesco.org/images/0024/002446/244676e.pdf](https://unesdoc.unesco.org/images/0024/002446/244676e.pdf).

<sup>233</sup> UNESCO, Preventing violent extremism through education. A guide for policy-makers, 2017, [unesdoc.unesco.org/images/0024/002477/247764e.pdf](https://unesdoc.unesco.org/images/0024/002477/247764e.pdf).

## Council of Europe

- Council of Europe, Guidelines for prison and probation services regarding radicalisation and violent extremism, 2016.<sup>234</sup>
- Council of Europe, Teaching Controversial Issues, 2015.<sup>235</sup>
- Council of Europe, Bookmarks, 2015.<sup>236</sup>

### 5.3. Austrian educational materials

In the past years, various institutions have developed a plethora of materials on the topics of hate crime, religious (in-)tolerance and extremism to be used in class with students. The Forum on Political Education,<sup>237</sup> BAOBAB, Global Learning<sup>238</sup>, and the Centre POLIS<sup>239</sup> have all developed various materials in the past years. Many of these focus on sensitization and the building of competencies in dealing with hate speech on the Internet and make use of new forms of media in order to bridge the gap between those learning, and those who are learned about.

### 5.4. Offers for specific professional groups

Several learning and training opportunities exist for members of various professional groups.

#### 5.4.1. Police/judiciary

In the past years, many offers have been developed for stakeholders in the police and the judicial system, particularly when it comes to the topics of diversity, dealing with specific groups, and most recently on recruitment and (de-)radicalization.

Since 2001, the Ministry of the Interior has cooperated closely with the Anti-Defamation-League (ADL). Together, the training A WORLD OF DIFFERENCE® was developed, aiming to foster a prejudice-free attitude of Austrian security executives through special measures in the security academy. Human rights education is now a compulsory part of the programme. This cooperation is the biggest of its kind in Europe and was also introduced as a “best practice example” at the OSCE. Until 2013, about 7,500 executive officials had taken part in the training.<sup>240</sup>

<sup>234</sup> Council of Europe, Guidelines for prison and probation services regarding radicalisation and violent extremism, 2016, [wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282016%291249/10.2&Language=lanEnglish&Ver=app&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](http://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282016%291249/10.2&Language=lanEnglish&Ver=app&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

<sup>235</sup> Council of Europe, Unterrichten kontroverser Themen, 2015, [rm.coe.int/16806cb5d5](http://rm.coe.int/16806cb5d5).

<sup>236</sup> Zentrum POLIS und Europarat, Bookmarks. Bekämpfung von Hate Speech im Internet durch Menschenrechtsbildung (Bookmarks. Fighting Hate Speech in the Internet through Human Rights Education), 2016, [politik-lernen.at/dl/nkOMJMJJKomIKlJqx4kJK/Bookmarks\\_GesamtohneCover.pdf](http://politik-lernen.at/dl/nkOMJMJJKomIKlJqx4kJK/Bookmarks_GesamtohneCover.pdf).

<sup>237</sup> Forum Politische Bildung, Religion und Politik, 2013, [politischebildung.com/pdfs/izpb37-gesamtausgabe.pdf](http://politischebildung.com/pdfs/izpb37-gesamtausgabe.pdf).

<sup>238</sup> BAOBAB, Global Learning in Class, Konflikte, 2015, [baobab.at/images/doku/glu\\_konflikte\\_end.pdf](http://baobab.at/images/doku/glu_konflikte_end.pdf).

<sup>239</sup> Zentrum POLIS und Europarat, Bookmarks. Bekämpfung von Hate Speech im Internet durch Menschenrechtsbildung, 2016, [politik-lernen.at/dl/nkOMJMJJKomIKlJqx4kJK/Bookmarks\\_GesamtohneCover.pdf](http://politik-lernen.at/dl/nkOMJMJJKomIKlJqx4kJK/Bookmarks_GesamtohneCover.pdf).

<sup>240</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Sicherheitsakademie, [bmi.gv.at/cms/BMI\\_SIAK/5/4/2/start.aspx](http://bmi.gv.at/cms/BMI_SIAK/5/4/2/start.aspx).

A similar training for police officers exists since 2008 called INNEN.SICHER, organized by the Ministry for the Interior. The goal of the project is to sensitise police officers to human rights. Civil society stakeholders cooperate closely with ministry officials, practitioners and a multi-disciplinary team of human rights experts. The results and insights of such trainings are closely incorporated into current police work. The current focal points include networking between police and public, complaint management, and the culture of control within the police.<sup>241</sup>

The Federal Office for the Protection of the Constitution and Counterterrorism opened a separate office for prevention in 2016, which develops measures for prevention and de-radicalisation in light of comprehensive, societal goal-setting. Other activities until now have included the schooling of police officers, as well as leaver's programmes for radicalized persons together with NEUSTART, DERAD and the Support Service Extremism.<sup>242</sup> Since 2014, another intensive focal point has been the sensitization of police officers around radicalization and recruitment.<sup>243</sup> Also in terms of the penitentiary system a complex package of measures has been developed by the Ministry, which are supported by the Institute for Legal and Criminal Sociology.<sup>244</sup> Also in the foundational trainings for penitentiary officers, dealing with radicalised and extremist inmates has been put onto the agenda with a specific educational design and concrete measures developed by practitioners.<sup>245</sup> This focal point is reflected in various training opportunities given by the Ministry, which include expert lectures on sensitization for members of the justice system,<sup>246</sup> featuring also Islam experts<sup>247</sup> and specific lectures on present issues surrounding radicalisation in Austria.<sup>248</sup>

In each Austrian correctional facility, two responsible officials are elected who receive special schooling and training in the area of radicalisation. These officers then function as communication officers and act as connecting points to terrorism experts in the Federal Offices for Protection of the Constitution. They also take on the role of supporters in relevant

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<sup>241</sup> Federal Ministry of the Interior, [innensicher.at/](http://innensicher.at/); Austria Presse Agentur, Dialogplattform „Polizei.Macht.Menschen.Rechte“ soll strategisches Ziel sein, 17 March 2016, [www.ots.at/presseaussendung/OTS\\_20160317\\_OTS0286/dialogplattform-polizeimachtmenschenrechte-soll-strategisches-ziel-sein](http://www.ots.at/presseaussendung/OTS_20160317_OTS0286/dialogplattform-polizeimachtmenschenrechte-soll-strategisches-ziel-sein).

<sup>242</sup> Die Presse, Der Kampf gegen Extremismus soll effizienter werden, 2 August 2017, [diepresse.com/home/panorama/oesterreich/5262758/Der-Kampf-gegen-Extremismus-soll-effizienter-werden](http://diepresse.com/home/panorama/oesterreich/5262758/Der-Kampf-gegen-Extremismus-soll-effizienter-werden).

<sup>243</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 74, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf](http://bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2016.pdf).

<sup>244</sup> Federal Ministry of Justice, Justizministerium kooperiert bei der De-Radikalisierung im Strafvollzug ab sofort mit dem Verein DERAD, 29 February 2016, [justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen\\_2016/justizministerium\\_kooperiert\\_bei\\_der\\_de-radikalisierung\\_im\\_strafvollzug\\_ab\\_sofort\\_mit\\_dem\\_verein\\_derad~2c94848a511b962e01532ca53ed464a\\_8.de.html](http://justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen_2016/justizministerium_kooperiert_bei_der_de-radikalisierung_im_strafvollzug_ab_sofort_mit_dem_verein_derad~2c94848a511b962e01532ca53ed464a_8.de.html).

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> Federal Ministry of Justice, Überblick: Maßnahmen zur De-Radikalisierung im Strafvollzug, 2016; available at [www.justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen\\_2016/justizministerium\\_kooperiert\\_bei\\_der\\_de-radikalisierung\\_im\\_strafvollzug\\_ab\\_sofort\\_mit\\_dem\\_verein\\_derad~2c94848a511b962e01532ca53ed464a8.de.html](http://www.justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen_2016/justizministerium_kooperiert_bei_der_de-radikalisierung_im_strafvollzug_ab_sofort_mit_dem_verein_derad~2c94848a511b962e01532ca53ed464a8.de.html)



questions at their own institutes.<sup>249</sup> The Karlau correctional facility in Graz, for example, also offers additional employee trainings on radicalisation tendencies.<sup>250</sup>

#### 5.4.2. Politics/administration

Very few offers are currently available for those in politics and administration. MA17 – Integration and Diversity Vienna has opened the training platform WERKSTATT.WIEN in 2015, which supports the City of Vienna in its endeavours, for example through a conference held on extremism prevention and re-socialisation in 2015.<sup>251</sup> Those working at the school psychological service centres at the Ministry of Education also regularly have the opportunity to attend trainings on extremism and radicalisation.<sup>252</sup>

#### 5.4.3. Pedagogical professions/multipliers

Oftentimes those working closely with young people are confronted with hate crime, religious (in-)tolerance and extremism. Many training offers exist for these professions. These include lectures, workshops and trainings for multipliers held by the Service Centre Extremism, which focus on critical diversity, right-wing extremism, religiously motivated extremism, anti-discrimination, etc. The modules are taught according to the needs of the participants.<sup>253</sup> Also DERAD provides offers for pedagogues and students, consisting of modules on Jihadism and Salafiyaa, reasons for the radicalisation of young Muslims, prevention, and de-radicalisation.<sup>254</sup> The Donau-University Krems offers a training course on Neo-Salafistic Islamism and teaches about the historical development of ideology, militant Neo-Salafism and Jihadism, and approaches these subjects from a psychological and psycho-analytical point of view.<sup>255</sup> Further organisations which offer workshops, lectures and training modules include ZARA,<sup>256</sup> the Austrian Muslim Youth,<sup>257</sup> Sapere Aude,<sup>258</sup> Stoppt die Rechten!,<sup>259</sup> the PH Vienna,<sup>260</sup> the Viennese Network on De-radicalisation and Prevention<sup>261</sup>, and many more.

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<sup>249</sup> Ibid.

<sup>250</sup> ORF Steiermark, Dschihadismus: Deradikalisierung im Gefängnis, 14 June 2017, [steiermark.orf.at/news/stories/2848980/](http://steiermark.orf.at/news/stories/2848980/).

<sup>251</sup> Werkstatt Wien, Extremismusprävention und Resozialisierung – Prozessorientierte Maßnahmen, 23 November 2015, [koordinationsstelle.at/wp-content/uploads/2015/11/fortbildung\\_ma17\\_extremismuspraevention\\_nov2015.pdf](http://koordinationsstelle.at/wp-content/uploads/2015/11/fortbildung_ma17_extremismuspraevention_nov2015.pdf).

<sup>252</sup> Schulpsychologie Bildungsberatung, Aktuelle Herausforderung: „Dschihadistischer Extremismus“, [schulpsychologie.at/extremismus](http://schulpsychologie.at/extremismus).

<sup>253</sup> Service Centre Extremism, Fortbildungen, [beratungsstelleextremismus.at/info-expertise/fortbildungen/](http://beratungsstelleextremismus.at/info-expertise/fortbildungen/).

<sup>254</sup> DERAD, Bildungsangebot, [derad.at/bildungsangebote.html](http://derad.at/bildungsangebote.html).

<sup>255</sup> Donau University Krems, Neo-Salafistischer Islamismus. Grundlagen - Analyse – Prävention, [donau-uni.ac.at/de/studium/neo-salafistischer-islamismus/index.php](http://donau-uni.ac.at/de/studium/neo-salafistischer-islamismus/index.php).

<sup>256</sup> ZARA, Trainingsmodule. Kinder, Jugendliche und Schulklassen, [zara-training.at/angebote/](http://zara-training.at/angebote/).

<sup>257</sup> Muslim Youth Austria, Extremismus und De-/Radikalisierung, [mjoe.at/workshops/extremismus-de-radikalisierung/](http://mjoe.at/workshops/extremismus-de-radikalisierung/).

<sup>258</sup> Sapere Aude, Fortbildung: „Extremismus und Postpolitik“, [sapereaude.at/fortbildung-extremismus-und-postpolitik](http://sapereaude.at/fortbildung-extremismus-und-postpolitik); Sapere Aude, Deradikalisierung durch Sensibilisierung, [sapereaude.at/sites/default/files/Arbeitsbehelf%20Deradikalisierung%20durch%20Sensibilisierung.pdf](http://sapereaude.at/sites/default/files/Arbeitsbehelf%20Deradikalisierung%20durch%20Sensibilisierung.pdf).

<sup>259</sup> Stoppt die Rechten, Weiterbildungsangebote, [stopptdierechten.at/see/weiterbildungsangebote-von-stoppt-die-rechten/](http://stopptdierechten.at/see/weiterbildungsangebote-von-stoppt-die-rechten/).

<sup>260</sup> Pädagogische Hochschule Wien, SCHÜLF-Fortbildungsveranstaltungen zum Thema De-Radikalisierung, [phwien.ac.at/files/ibg/schuelf/SCHLF%20Folder.pdf](http://phwien.ac.at/files/ibg/schuelf/SCHLF%20Folder.pdf).

Particularly the Viennese Network on De-Radicalisation and Prevention has trained over 6,000 multipliers since its establishment in 2014.<sup>262</sup> Topics like the Holocaust, anti-Semitism and racism are also dealt with by the organisation [www.erinnern.at](http://www.erinnern.at).<sup>263</sup>

#### 5.4.4. Those active in interreligious dialogue

When it comes to the fostering of inter-religious dialogue, Austria is well-equipped. There are several measures and training opportunities available. For example, the Donau-University Krems offers a Master course on Interreligious Dialogue, focusing on the traditional and current relationships between Judaism, Christianity and Islam.<sup>264</sup> Also the training course “Building bridges” by the Salzburg Platform for Human Rights together with the Protestant-methodical Church in Salzburg, the Catholic Actions in Districts and the Labour Market, Komment and the Austrian Muslim Youth focuses on interreligious dialogue.<sup>265</sup>

#### 5.5. Offers for offenders/those at risk, students/youth

Also those who are offenders or considered at risk for hate crime, religious (in-)tolerance and extremism should have the opportunity to profit from human rights education measures. Particularly in their case it is vital to put the topics considered into context. There are several institutions in Austria which provide programmes for offenders. Additionally, there are also several offers for young people or students interested in curricular or extracurricular activities.

##### 5.5.1. Offenders/those at risk

The Office for Prevention at the Federal Office for Protection of the Constitution and Counterterrorism has been working on a specific programme for radicalised “leavers” since 2016. These are implemented by the organisations NEUSTART, DERAD and the Support Service Extremism.<sup>266</sup>

For prison inmates, particularly (supposed) Jihadists, special security measures are taken, as well as concrete support mechanisms offered. For example in the correctional facility Graz Karlau, those considered particularly susceptible to radical ideology are included in specific programmes for their social and labour time – this aims to prevent radicalisation

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<sup>261</sup> Children and Youth Advocacy Vienna, Netzwerk Deradikalisierung und Prävention, <https://kja.at/site/praevention/netzwerk-deradikalisierung-praevention/>.

<sup>262</sup> Children and Youth Advocacy Vienna, Zwei Jahre Netzwerk für Deradikalisierung & Prävention und Empfehlungen des „Expert Forum“, [kja.at/site/files/2017/02/Medienpapier\\_Expertforum1.pdf](https://kja.at/site/files/2017/02/Medienpapier_Expertforum1.pdf).

<sup>263</sup> Erinnern, Seminare, Lehrgänge, Rundgang Wien, Tagungen, [erinnern.at/bundeslaender/oesterreich/aktivitaeten](http://erinnern.at/bundeslaender/oesterreich/aktivitaeten).

<sup>264</sup> Donau University Krems, Interreligiöser Dialog: Begegnung von Juden, Christen und Muslimen, [donau-uni.ac.at/de/studium/interreligioeser-dialog/](http://donau-uni.ac.at/de/studium/interreligioeser-dialog/).

<sup>265</sup> Platform Human Rights, Lehrgang 2016 Brücken bauen. Lehrgang für christlich-muslimische Zusammenarbeit, [menschenrechte-salzburg.at/fileadmin/menschen/user/veranstaltungen/2016\\_10\\_01\\_Bruecken\\_Bauen\\_Folder.pdf](https://menschenrechte-salzburg.at/fileadmin/menschen/user/veranstaltungen/2016_10_01_Bruecken_Bauen_Folder.pdf).

<sup>266</sup> Die Presse, Der Kampf gegen Extremismus soll effizienter werden, 2 August 2017, [diepresse.com/home/panorama/oesterreich/5262758/Der-Kampf-gegen-Extremismus-soll-effizienter-werden](http://diepresse.com/home/panorama/oesterreich/5262758/Der-Kampf-gegen-Extremismus-soll-effizienter-werden).

due to not having anything to do.<sup>267</sup> Karlau also hosted human rights training sessions for inmates since 2016, which were conducted by the ETC Graz.

Outside of prisons, also students and young people have the opportunity to participate in special de-radicalisation trainings. DERAD for example offers a workshop “Peace potentials and human diversity versus unity and glorification of violence”.<sup>268</sup> The organisation “Not in God’s Name” engages those practicing martial arts to help youth directly involved in radicalised scenes.<sup>269</sup> The organisation JUKUS has hosted a project since 2017, which offers participation for young people by creating critical spaces to reflect on own attitudes to anti-Semitism and racism.<sup>270</sup> Finally, Mothers Without Borders/SAVE: Mothers Educate Against Racism in Vienna – constituting a rarely acknowledged stream in anti-terror interventions – have trained participants to approach their children in an understanding manner, and to offer them a counter-rhetoric. Mothers learn to react in time, if they perceive their children to be in danger. Participants in the programme are taught to offer alternatives to violent extremism to their children.<sup>271</sup>

#### 5.5.2. Curricular and extracurricular workshops for students and youth

At the moment there are many curricular and extra-curricular training opportunities available for students and young people, which focus on varying aspects of human rights education with emphasis on hate crime, religious (in-)tolerance and extremism.

As previously mentioned, the Ministry for Education has supported workshops for all school types and sectors, which are conducted in schools across Austria. These workshops focus on democracy-building, de-radicalisation, diversity, inclusion and interculturality to civil courage and social learning. They put a particular focus on pedagogical prevention efforts.<sup>272</sup> Most workshops were conducted in Vienna and Lower Austria, and will be continued throughout Austria during the school year 2017/2018.

The organisation DERAD also offers school workshops on political extremism, Salafism and Jihadism for students, as well as for young people with and without a migratory

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<sup>267</sup> ORF Steiermark, Dschihadismus: Deradikalisierung im Gefängnis, 14 June 2017, [steiermark.orf.at/news/stories/2848980/](http://steiermark.orf.at/news/stories/2848980/).

<sup>268</sup> DERAD, Bildungsangebote, <http://derad.at/bildungsangebote.html>.

<sup>269</sup> Profil, Gegen Radikalisierung: In den Turnsaal statt an die Front, [www.profil.at/oesterreich/kamfsport-radikalisierung-jugend-k%C3%A4mpfen-8007251](http://www.profil.at/oesterreich/kamfsport-radikalisierung-jugend-k%C3%A4mpfen-8007251)

<sup>270</sup> Erinnern, Projekt: Vorurteile überwinden. Präventive Sensibilisierungsarbeit mit Jugendlichen mit und ohne Migrationsbiographie zum Schwerpunkt Antisemitismus/Rassismus“, [erinnern.at/bundeslaender/steiermark/institutionen-projekte/projekt-2017evorurteile-ueberwinden.-praeventive-sensibilisierungsarbeit-mit-jugendlichen-mit-und-ohne-migrationsbiographie-zum-schwerpunkt-antisemitismus-rassismus201c](http://erinnern.at/bundeslaender/steiermark/institutionen-projekte/projekt-2017evorurteile-ueberwinden.-praeventive-sensibilisierungsarbeit-mit-jugendlichen-mit-und-ohne-migrationsbiographie-zum-schwerpunkt-antisemitismus-rassismus201c).

<sup>271</sup> Response by the Federal Ministry of Europe, Integration and Foreign Affairs of 15 September 2017, Project funded by NAP.I; Der Standard, Mütterschulen gegen Extremismus werden in Österreich etabliert, 2 March 2015, [derstandard.at/2000012366941/Muetterschulen-gegen-Extremismus-werden-in-Oesterreich-etabliert](http://derstandard.at/2000012366941/Muetterschulen-gegen-Extremismus-werden-in-Oesterreich-etabliert).

<sup>272</sup> Federal Ministry of Education, Bildung für De-Radikalisierung. Workshops zur Präventionsarbeit in Schulen, [bmb.gv.at/schulen/unterricht/prinz/pb\\_deradikalisierung.html](http://bmb.gv.at/schulen/unterricht/prinz/pb_deradikalisierung.html); Zentrum Polis, „Selbstbewusste Kinder und Jugendliche brauchen keine destruktiven Ideen“, [politik-lernen.at/dl/ltLoJKJKonnKKJqx4KJK/Pr\\_sentation\\_Ergebnisse.pdf](http://politik-lernen.at/dl/ltLoJKJKonnKKJqx4KJK/Pr_sentation_Ergebnisse.pdf).

background.<sup>273</sup> ZARA conducts workshops on hate on the Internet and civil courage,<sup>274</sup> and the Initiative Zusammen:Österreich has developed a particular curriculum for schools incorporating migrants sharing their personal stories and experiences with integration.<sup>275</sup> Further organisations that offer workshops for young people are the Catholic Youth of Austria,<sup>276</sup> the Mauthausen Komitee,<sup>277</sup> the Documentation Archive of Austrian Resistance,<sup>278</sup> as well as the Children- and Youth Advocacy of Salzburg.<sup>279</sup>

The analysis clearly shows that in Austria there are currently many offers available in terms of human rights education, which focus on hate crime, religious (in-)tolerance and extremism. Particularly the police and judicial officials, teachers and multipliers are reached by these opportunities. There are also a lot of offers for offenders/those at risk and young people. However, persons falling outside this scope are often not reached. Additionally, it is noticeable that there are many similar offers and there seems to be little coordination among the different educational initiatives.

## 6. Evaluation

The central questions of the present evaluation are whether the broad field of preventing and sanctioning extremism is firstly, understood by the Austrian authorities in its full range, and secondly, whether measures of specific human rights education are recognized by the authorities as an effective means of prevention. Furthermore, the analysis asks whether these preventive measures are implemented systematically and if sanctions are accompanied by educative measures.

The normative structure provided by the Austrian criminal law to address phenomena of extremism are in place, where further developed and specified recently and are deemed sufficient to cope with the analysed types of extremism. This is stated to be in line with the respective identified OSCE commitments.

The Austrian Government has started a variety of initiative to fight and to prevent extremism within the last three years. The analysis revealed that most forms were addressed by governmental initiatives. However, the overall approach appears un-systematic and not holistic. Approaches to counter different forms of extremism vary a lot, while the social and

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<sup>273</sup> DERAD, Bildungsangebote, [derad.at/bildungsangebote.html](http://derad.at/bildungsangebote.html).

<sup>274</sup> ZARA, Trainingsmodule. Kinder, Jugendliche und Schulklassen, <http://zara-training.at/angebote/>.

<sup>275</sup> Zusammen:Österreich, [zusammen-oesterreich.at/startseite/](http://zusammen-oesterreich.at/startseite/).

<sup>276</sup> Catholic Youth Austria, Interreligiöse Schulworkshops – Die Ausbildung, [katholische-jugend.at/blog/Veranstaltung/interreligioese-schulworkshops-die-ausbildung/](http://katholische-jugend.at/blog/Veranstaltung/interreligioese-schulworkshops-die-ausbildung/).

<sup>277</sup> Zivilcourage Trainieren, [zivilcourage.at/home](http://zivilcourage.at/home).

<sup>278</sup> Dokumentationsarchiv des österreichischen Widerstands, Bildungsangebote, [doew.at/erkennen/vermittlung/bildungsangebote](http://doew.at/erkennen/vermittlung/bildungsangebote).

<sup>279</sup> Children and Youth Advocacy Salzburg, Tournaround – gegen Hass und Vorurteile, [kija-sbg.at/home/projekte/uebersicht/artikel/turnaround-gegen-hass-und-vorurteile.html](http://kija-sbg.at/home/projekte/uebersicht/artikel/turnaround-gegen-hass-und-vorurteile.html).

individual root-causes do not, as was stated by experts repeatedly. This understanding has its foundations in historic developments. While Jihadism is mainly seen in the light of terrorism, right-wing extremism is dealt with under the prohibition of NS activities and propaganda. Even though, the Austrian government observed and prosecuted right-wing extremism, the focus of preventive measures under the title of “de-radicalization” only targets Muslims.

Human rights education in Austria is still a domain of civil society engagement rather than a governmental driven field. Its contribution to prevention is not denied, however, regarded mainly as to be implemented in the framework of formal school education.

Manifestations of extremism in Austria can best be counted in the field of hate-crimes and hate-speech. Complaints mechanisms as well as respective studies and surveys reveal a significant increase of such offences over the last three years.

## **7. Recommendations by Civil Society Organizations**

### **Clear statement against racism and discrimination**

- There is the need for a clear statement by the state against racism and discrimination. For this, we recommend poster campaigns, different events, and the initiation of cooperation networks.<sup>280</sup> The state shall not communicate an Islamophobic attitude, particularly not in new legislation.<sup>281</sup>
- Establish mandatory training courses relating to standing up against intolerance and discrimination, particularly for police officers, public officials and teachers.<sup>282</sup>

### **Sensitization of the public and state authorities**

- The Austrian Police shall participate in OSCE trainings in respect to the sensitization on hate crimes.<sup>283</sup> Establishing a police unit or federal point of contact with specifically trained and sensitized staff would be welcome.<sup>284</sup>
- The report on state protection by the Federal Office for the Protection of the Constitution by the Ministry of the Interior should use the term “Islam hostility” (“Islamfeindlichkeit”) instead of “Islamophobia”. In German, “Phobie” is more understood to mean “an extreme fear against something”. However, an attack is an active incident and not only an “attitude”, which is why “Islamophobia” does not

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<sup>280</sup> DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus, statement of 20 June 2017.

<sup>281</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 15 November 2017.

<sup>282</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 20 June 2017.

<sup>283</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 15 November 2017.

<sup>284</sup> Ibid.

concretely capture the essence of the phenomenon, and why we pledge for the use of “Islam hostility”.<sup>285</sup>

- Persons with prejudice are likely to feel supported by the negative choice of words used by political and media discourses in turning their Islamophobic or anti-Muslim attitude into violence.<sup>286</sup> A sensitization concerning the entire society, as well as comprehensive anti-racism trainings are necessary on all levels of the public. It is particularly important to start early and to conduct workshops and sensitization efforts on anti-racism in schools, with the support of the state.<sup>287</sup>
- Awareness efforts shall be made in cooperation with Muslim organisations.<sup>288</sup>
- Establish an annual civil courage prize, for example for particular services or private individuals.<sup>289</sup>

### **Improve the Austrian educational system**

- The standing of human rights education shall be improved in the Austrian educational system. Pedagogues play a central role in this context by transferring knowledge and values and also supporting the ability to gain valuable competencies. They also act as role models and contact persons. Therefore, pedagogues must be equipped with the necessary didactics and methods to offer a comprehensive and coherent human rights education.<sup>290</sup>
- Curricula and school books should include human rights education and thus content on anti-discriminatory and anti-racist education.<sup>291</sup>
- Antidiscrimination workshops are required. Such workshops shall ideally be held by persons, who have been discriminated against in order to report on their first-hand experience.<sup>292</sup>
- The offers in terms of (mandatory) further education and trainings for teachers on human rights and human rights education at pedagogical higher education institutions must be further developed. The competent Ministry should provide (financial) incentives so that pedagogical higher education institutions can offer more and more comprehensive, standardised, and all-encompassing offers (for example full courses)

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<sup>285</sup> DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus, statement of 20 June 2017.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

<sup>288</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 20 June 2017.

<sup>289</sup> DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus, statement of 20 June 2017.

<sup>290</sup> IGO - Interessenvertretung Gemeinnütziger Organisationen, statement of 21 June 2017.

<sup>291</sup> Ibid.

<sup>292</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 15 November 2017.

on human rights education, and can make use of civil society organisations as cooperation partners and experts.<sup>293</sup>

- The expansion of state-run project funding in the area of human rights education is necessary and should enable NGOs working in the educational area in this field to expand and deepen their services. Through this, Austrian schools can be reached as a whole and in a sustainable manner.<sup>294</sup>

### Recording of hate crimes

- Technical measures must be implemented for the recording and documentation of all cases of hate crimes.<sup>295</sup>
- In order to document cases of hate crimes, they must be recognized as such. The topic already needs to be dealt with in-depth in the foundational training of the executive branch. For those police officers already in service, ongoing and mandatory trainings should be offered.<sup>296</sup>
- Austria has signed up to collect data related to hate crime – here there must be sensitised key players who have access to the separate communities, who collect data in order to raise awareness – otherwise incidents will not be reported!<sup>297</sup>
- According to § 33 (1) 5 CC, racist motives are reasons that render incidents more severe. Due to this, the rate of investigations is to be increased, and in the case a racist incident is suspected, a special form of treatment should be employed.<sup>298</sup>
- In some of the documented cases the motive is not recognizable at a first glance. Still, it is to be highlighted that more indicators should be taken into account in the respective cases, to improve the investigation of motives. The methods need to be developed more in order to categorise unclear cases.<sup>299</sup>

### Prosecution of crimes

- The Austrian legislation against hate crimes shall be applied more often.<sup>300</sup>
- Incidents motivated or initiated by hate should be more severely punished. The power and consequences of words are not to be underestimated.<sup>301</sup>
- Racist election campaigns shall be punished.<sup>302</sup>

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<sup>293</sup> IGO - Interessenvertretung Gemeinnütziger Organisationen, statement of 21 June 2017.

<sup>294</sup> Ibid.

<sup>295</sup> WEISSER RING Verbrechensopferhilfe, statement of 21 June 2017.

<sup>296</sup> Ibid.

<sup>297</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 20 June 2017.

<sup>298</sup> WEISSER RING Verbrechensopferhilfe, statement of 21 June 2017.

<sup>299</sup> DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus, statement of 20 June 2017.

<sup>300</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 15 November 2017.

<sup>301</sup> DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus, statement of 20 June 2017.

- MediaWatch: We recommend analyses by ethical commissions and punishments when violations occur.<sup>303</sup>
- Free newspapers and media outlets which increase hostile attitudes during campaigns should be removed from public transport.<sup>304</sup>

### **Recognise victims**

- Victims of hate crimes shall be recognised as being in “need of special protection”. § 66a Criminal Procedure Code should be extended, so that victims of hate crime have access to rights on protection and sparing.<sup>305</sup>

### **Establish/support structures and contacts**

- It is suggested to establish a reporting office for anti-Muslim racism.<sup>306</sup>
- Contact partners should be established at Ministries. This shall improve the exchange and the close cooperation between the government and NGOs.<sup>307</sup>

### **Provide financing**

- Sufficient funding of victim protection organizations has to be ensured. The support of victims of criminal offences, particularly victims of hate crimes cannot be left to the sole responsibility of civil society engagement.<sup>308</sup>
- The state shall support active civil society organisations that work in the area of anti-racism.<sup>309</sup>

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<sup>302</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 20 June 2017.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid.

<sup>305</sup> WEISSER RING Verbrechenopferhilfe, statement of 21 June 2017.

<sup>306</sup> DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus, statement of 20 June 2017.

<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

<sup>309</sup> Netzwerk Muslimische Zivilgesellschaft, statement of 20 June 2017.



## Topic 3: Freedom of Expression and Freedom of Assembly

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### 1. Explanation of the topics selected

Freedom of expression and the right to freedom of assembly have been chosen for analysis for the present evaluation for several reasons: First, they are a focus area of the OSCE. Correspondingly, the ODIHR is highly active in promoting and monitoring the implementation of respective human dimension commitments and guidelines. Second, in the last years hate speech and the incitement to hatred online and offline have evolved as major issues of concern not only within Austria, but also within the whole OSCE region. Third, Austria has been very active in protecting the right to freedom of expression and the right to freedom of peaceful assembly in the Austrian Constitution and in specific domestic legislation.<sup>310</sup> Accordingly, Austria has announced the promotion and protection of the right to freedom of opinion and expression, media freedom and the safety of journalists' as key priorities in the field of human rights.<sup>311</sup>

The rising numbers of asylum seekers and migrants in 2015, as well as the latent perception of impending terrorist attacks have contributed to open manifestations of racism, intolerance and xenophobia in public discourses taking place online and offline. The political and social climate in Austria seems to be growing more tolerant of expressions, which fuel and exploit often undefined fears about identity loss, and national and social security. These expressions are tolerated irrespective of the validity of their content, thus constituting what can be called "fake news". These current developments have been challenging the Austrian state in finding a balance between protecting the right to freedom of expression and peaceful assembly as cornerstones of democratic societies, and simultaneously preventing the abuse of these rights, manifested through incitement to hate, racism, and discrimination.

Various international human rights bodies have confirmed the topicality of the issue in recent reports on Austria. In its latest report, the ECRI noted that racist or xenophobic discourses were widespread and further on the rise on the Internet and on social media. ECRI expressed concern about hate-motivated public statements made by representatives of political parties in the context of political speeches and campaigns, as well as about

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<sup>310</sup> For further details on the legislative framework see below at 2.2.

<sup>311</sup> OSCE, Statement by Austria on Freedom of Expression, Media Freedom, Safety of Journalists, 26 September 2013, [osce.org/odihr/105650](https://www.osce.org/odihr/105650).

xenophobic contents produced and re-produced by traditional media.<sup>312</sup> Similarly, the Independent Expert on Cultural Rights was disturbed by “instances of hate speech by politicians, targeting members of minorities, migrants, asylum-seekers, refugees and persons of African origin”.<sup>313</sup> The Committee on the Rights of the Child (CRC) expressed its concerns about “instances of hate speech by politicians, and manifestations of Neo-Nazism, racism, xenophobia and related intolerance towards migrant communities, refugees, asylum seekers and persons of certain ethnic backgrounds, and their impact on children belonging to these groups.”<sup>314</sup> The Committee on the Elimination of Racial Discrimination (CERD) regretted “the use of inflammatory language by politicians during election campaigns that vilifies and promotes prejudices against persons of minority ethnic origins in the State party” and the “reports of racist advertisements in the media, particularly relating to housing and employment opportunities that require applicants to be “Austrians only”.”<sup>315</sup>

Considering these reports, the issue of hate speech, which penetrates the public and political sphere in Austria, justifies the self-standing analysis of the topic - separating it from the evaluation of hate crimes in Austria in Chapter 2. Hate speech as such is criminalized under Austrian law due to its particular content. Even though hate speech is a crime, it is not a hate crime *senso strictu*.<sup>316</sup> In contrast to hate crimes, hate speech lacks the criminal base offense, since the mere speech is not criminalized once its content was removed.<sup>317</sup> On the contrary, free speech is particularly protected and restrictions only justified under limited circumstances.

Hate speech creates an environment conducive to further hate crimes, which according to the numbers provided by the Austrian Ministry of the Interior, are increasing but remain under-reported, as pointed out by experts and civil society.<sup>318</sup> It is, however, not only hate speech that spurs intolerance and discrimination within a society. Recently, the phenomenon of “fake news”, i.e. the spreading of disinformation or propaganda by state or non-state actors, designed to mislead the recipients of the information, has gained

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<sup>312</sup> European Commission against Racism and Intolerance, Report on Austria. Edited by Council of Europe, 2015, (CRI(2015)34), paras 33, 36 and 38, [coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf).

<sup>313</sup> UN Human Rights Council, Report of the Independent Expert in the field of Cultural Rights, Ms. Farida Shaheed Mission to Austria, 2012, (5-15 April 2011) (A/HRC/20/26/Add.1), para. 86.

<sup>314</sup> UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic report of Austria, 2012, adopted by the Committee at its sixty-first session (17 September – 5 October 2012) (CRC/C/AUT/CO/3-4), para. 24, [docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsykrHee8tArE5cEO48WRQ1h00IjH5ZHteHxrVM46praz7ndI8XubFOR97nr3JMbpBzvFvWTZ9k84Eo09PjCCLg1mElzcd16khois6p90u%2FG7](https://www.docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsykrHee8tArE5cEO48WRQ1h00IjH5ZHteHxrVM46praz7ndI8XubFOR97nr3JMbpBzvFvWTZ9k84Eo09PjCCLg1mElzcd16khois6p90u%2FG7).

<sup>315</sup> UN Committee on the Elimination of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Austria, 2012, adopted by the Committee at its eighty-first session (6-13 August 2012) (CERD/C/AUT/CO/18-20), paras 12 and 15.

<sup>316</sup> OSCE/ODIHR, Hate Crime Laws - A Practical Guide. 2009, p. 25, [osce.org/odihr/36426](https://www.osce.org/odihr/36426).

<sup>317</sup> Ibid.

<sup>318</sup> European Commission against Racism and Intolerance (ECRI), Report on Austria. Edited by Council of Europe (CRI(2015)34), para. 17, 2015, [coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf).

considerable attention. In March 2017, in a joint declaration by the OSCE Representative on Freedom of the Media (OSCE RFOM) and her counterparts from other international and regional organizations, questions related to “fake news” and how restrictions on presumably “wrong” information relate to freedom of expression and information were addressed.<sup>319</sup>

The right to freedom of expression is fundamental for democratic societies. Thereby, it is closely connected to the right to freedom of peaceful assembly, which ensures that all members of a society, without any discrimination, can express their opinions together with others.

In Austria, the right to freedom of peaceful assembly is enshrined in various legal instruments, as explained in detail below. Its protection as a fundamental right is not only well-established, but its necessity also well-recognized. However, the developments described above, the intensification of the political discourse, and the undefined yet perceived threat of the Austrian liberal democratic system collapsing, has also had an impact on the debates surrounding the right to freedom of assembly.

Whereas the core of the right to freedom of assembly remains uncontested as such, assemblies are often perceived as a harmful disturbance disrupting public order and peace, instead of as a legitimate expression of concern and political opinion. The tensions between the right to freedom of assembly and the protection of the rights and freedoms of others – e.g. those who live, visit, work, trade and carry out business at locations particularly affected by assemblies – became reflected in recent calls for “assembly zones”, i.e. spatially determined areas where assemblies can take place without interfering with the rights of non-involved people. In various cities, political representatives made respective applications to the city councils.<sup>320</sup> However, not only economic interests fuelled the debate on restrictions of the right to freedom of assembly. The eruption of violence during demonstrations against the “Akademikerball”<sup>321</sup> and various violent incidents during anti- and pro refugee demonstrations in the last years<sup>322</sup>, supported calls for restricting the right to freedom of assembly in the name of public security and public order. In the run-up of the Turkish constitutional-referendum in April 2017, the debate got heated when discussions on stage bans for Turkish

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<sup>319</sup> OHCHR, OAS, AU, OSCE Representative on Freedom of Media, Joint Declaration on Freedom of Expression and Fake News, Disinformation and Propaganda, 3 March 2017, File number FOM.GAL/3/17, [osce.org/fom/302796?download=true](https://osce.org/fom/302796?download=true).

<sup>320</sup> Stadt Wien, [www.wien.gv.at/infodat/ergli](http://www.wien.gv.at/infodat/ergli); Stadt Wien, 7 March 2017, [wien.gv.at/ma08/infodat/2017/pgl-01281-2017-0001-kvp-gat.pdf](http://wien.gv.at/ma08/infodat/2017/pgl-01281-2017-0001-kvp-gat.pdf).

<sup>321</sup> Kurier, Der Wiener Akademikerball: Warum? Wieso? Wozu?, 3 February 2017, [kurier.at/chronik/wien/was-ist-der-wiener-akademikerball-warum-die-aufregung-warum-demonstrationen-was-sagt-alexander-van-der-bellen-dazu/244.585.847](http://kurier.at/chronik/wien/was-ist-der-wiener-akademikerball-warum-die-aufregung-warum-demonstrationen-was-sagt-alexander-van-der-bellen-dazu/244.585.847). Der Standard, Akademikerball: Ausschreitungen in Innenstadt, 25 January 2014, [derstandard.at/1389858188394/Akademikerball-Grosses-Polizeiaufgebot-bei-Demonstrationen](http://derstandard.at/1389858188394/Akademikerball-Grosses-Polizeiaufgebot-bei-Demonstrationen); Die Presse, Thema: Akademikerball, [diepresse.com/home/innenpolitik/1552050/Akademikerball](http://diepresse.com/home/innenpolitik/1552050/Akademikerball).

<sup>322</sup> Die Presse, Flüchtlinge: Festnahmen bei Demo am Brenner, 3 April 2016, [diepresse.com/home/innenpolitik/4959179/Fluechtlinge\\_Festnahmen-bei-Demo-am-Brenner](http://diepresse.com/home/innenpolitik/4959179/Fluechtlinge_Festnahmen-bei-Demo-am-Brenner).

politicians promoting constitutional changes in Turkey reached the political sphere and ultimately contributed to a reform of the Austrian Assembly Act.<sup>323</sup>

## 2. Freedom of expression, hate speech and fake news

### 2.1. OSCE commitments

In the Helsinki Final Act 1975, OSCE participating states expressed their commitment to respect human rights and fundamental freedoms, and to promote and encourage their effective exercise.<sup>324</sup> With the 1990 Copenhagen document, participating states reaffirmed that everyone has the right to freedom of expression and the right to communication, including the freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and regardless of frontiers. States further admitted

“[...] the exercise of this right [the freedom of expression] may be subject only to such restrictions as are prescribed by law and are consistent with international standards.”<sup>325</sup>

The Budapest Document in 1994 further reaffirmed the fundamental character of the right to freedom of expression as basic component of a democratic society.<sup>326</sup>

Aside from the general recognition of the right to freedom of expression, the OSCE in its activities has placed emphasis on the freedom of media, the protection of journalists, and the free flow of information. The essential and influential role of the media was already emphasized in the Helsinki Final Act 1975<sup>327</sup> and was subsequently specified in subsequent documents. For instance, the Moscow Document 1991 reaffirmed the right of the media “to collect, report and disseminate information, news and opinions” and participating states committed themselves “to refrain from any restrictions to restrain the rights of the media if they are not prescribed by law and in accordance with international standards.”<sup>328</sup>

In recognition of these commitments and to strengthen their effective implementation and effectiveness of concerted action by the participating states, the OSCE RFOM was

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<sup>323</sup> Die Presse, Gesetz gegen türkische Auftritte, 8 March 2017, [diepresse.com/home/innenpolitik/5179955/Gesetz-gegen-tuerkische-Auftritte](http://diepresse.com/home/innenpolitik/5179955/Gesetz-gegen-tuerkische-Auftritte); Der Standard, Bis zum Referendum keine Auftritte türkischer Politiker im Ausland, 21 March 2017, [derstandard.at/2000054560929/Bis-zum-Referendum-keine-Auftritte-tuerkischer-Politiker-im-Ausland](http://derstandard.at/2000054560929/Bis-zum-Referendum-keine-Auftritte-tuerkischer-Politiker-im-Ausland).

<sup>324</sup> CSCE, Helsinki Final Act. Declaration on Principles Guiding Relations between Participating States, Helsinki, 1975, p. 6, [osce.org/helsinki-final-act?download=true](http://osce.org/helsinki-final-act?download=true).

<sup>325</sup> CSCE, Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 1990, para. 9.1 [osce.org/odihr/elections/14304?download=true](http://osce.org/odihr/elections/14304?download=true).

<sup>326</sup> CSCE, Budapest Document 1994. Towards a Genuine Partnership in a new Era, 1994, para. 36, [osce.org/mc/39554?download=true](http://osce.org/mc/39554?download=true).

<sup>327</sup> CSCE, Helsinki Final Act. Declaration on Principles Guiding Relations between Participating States, Helsinki, 1975, p. 42, [osce.org/helsinki-final-act?download=true](http://osce.org/helsinki-final-act?download=true).

<sup>328</sup> CSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, para. 26, [osce.org/odihr/elections/14310?download=true](http://osce.org/odihr/elections/14310?download=true).

established in 1997 by Council Decision No. 193.<sup>329</sup> Since its establishment, the OSCE RFOM has observed media developments in participating states and has supported them in following their commitment to freedom of expression and freedom of the media. The OSCE RFOM has an early warning function and should provide

“[...] rapid response to serious non-compliance with OSCE principles and commitments by participating States in respect of freedom of expression and free media”.<sup>330</sup>

## 2.2. Human rights framework for freedom of expression and hate speech

This section briefly outlines the Austrian international obligations regarding the protection of freedom of expression, while simultaneously addressing hate speech. Emphasis is placed on exceptions, which allow of expression to be restricted on legitimate grounds.

At the level of the UN freedom of expression is guaranteed by various international human rights treaties that Austria is party to, including Art 19 Universal Declaration on Human Rights (UDHR), Art 19 International Covenant on Civil and Political Rights (ICCPR),<sup>331</sup> and Art 5 International Convention on the Elimination of Racial Discrimination (ICERD).<sup>332</sup>

All norms provide for freedom of expression to be considered as a norm, rather than as an exception. They protect the expression of all forms of viewpoints, even those that may shock, disturb or offend deeply held views and beliefs of others. Still, a restriction of the right may be necessary under certain circumstances, as provided for by human rights treaties.<sup>333</sup>

Accordingly, Art 19 (3) ICCPR stipulates that any restriction of the freedom of expression must be provided for by law and must be imposed in a proportional manner for the respect of the rights or reputations of others, and for the protection of national security, of public order, or of public health or morals.

In addition, international human rights law explicitly prohibits certain forms of expression. According to Art 20 ICCPR, any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, shall be prohibited by law.

At the level of the CoE, Art 10 European Convention on Human Rights (ECHR) remains the incontrovertible reference point for the protection of freedom of expression at the regional level, and enjoys constitutional rank in Austria.<sup>334</sup> Art 10 (2) ECHR defines the

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<sup>329</sup> OSCE, Council Decision No. 193 on the Mandate of the OSCE Representative on Freedom of Media, 5 November 1997, File number PC.DEC/193, [osce.org/pc/40131?download=true](https://www.osce.org/pc/40131?download=true).

<sup>330</sup> Ibid, para. 3.

<sup>331</sup> Austria has ratified the ICCPR in 1978.

<sup>332</sup> Austria has ratified the ICERD in 1972.

<sup>333</sup> UN General Assembly, International Covenant on Civil and Political Rights, 1966, United Nations, Art 19 (3), [ohchr.org/Documents/ProfessionalInterest/ccpr.pdf](https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf).

<sup>334</sup> Austria has ratified the ECHR in 1958. The ECHR enjoys constitutional rank and is directly applicable.

criteria for restricting freedom of expression. Such restrictions must be prescribed by law, must be necessary in a democratic society, and be in the interests of national security and public order.

Hate speech has been defined by the CoE Committee of Ministers' Recommendation No. R (97) 20, which specifies "hate speech" as "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."<sup>335</sup> Drawing on this definition in its case law, the European Court of Human Rights (ECtHR) has excluded certain forms of expressions from the protection of Art 10 ECHR in cases when they can be considered as incitement to ethnic or national hatred, racial discrimination or to religious intolerance, as negationism and revisionism, or where comments represent a threat to the democratic order. Furthermore, the Court has found cases not protected under Art 10 ECHR, including apologies of violence and incitement to hostility, the circulation of homophobic leaflets, the condoning of terrorism and war crimes, the denigration of national identity, the display of a flag with controversial historical connotations, and insults of state officials.<sup>336</sup>

The European Social Charter<sup>337</sup> and the Framework Convention for the Protection of National Minorities<sup>338</sup> both contain measures aimed at protecting against all forms of discrimination and promoting full and effective equality between persons belonging to minority groups, and the majority population. Furthermore, the Additional Protocol to the Convention on Cybercrime, related to the Prosecution of Acts of Racist and Xenophobic Nature through Computer Systems, is of importance concerning the dissemination of hate messages online. State parties to the Protocol are obliged to adopt such legislation criminalizing *inter alia* acts of a racist and xenophobic nature committed through computer systems. Austria has so far not ratified the Protocol.

Further policy instruments dealing with hate speech include: Recommendation (97) 21 on the Media and the Promotion of a Culture of Tolerance; the Declaration of the Committee of Ministers on Freedom of Political Debate in the Media; Resolution 1510 (2006) on Freedom of Expression and Respect for Religious beliefs; and Recommendation 1805 (2007) on Blasphemy, Religious Insults and "Hate Speech" against Persons on Grounds of their Religion.

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<sup>335</sup> Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on "Hate Speech", 30 October 1997, Appendix to Recommendation No. R (97) 20, [rm.coe.int/1680505d5b](http://rm.coe.int/1680505d5b).

<sup>336</sup> European Court of Human Rights, Hate Speech - Fact Sheet, 2017, [echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://echr.coe.int/Documents/FS_Hate_speech_ENG.pdf).

<sup>337</sup> Austria has ratified the European Social Charter in 1969 (revised in 2011).

<sup>338</sup> Austria has ratified the Framework Convention in 1998.

At EU level, Art 11 Charter of Fundamental Rights of the European Union (CFREU), which has constitutional rank in Austria, enshrines the right to freedom of expression. Council Framework Decision 2008/913/JHA of 28 November 2008 on combatting certain forms and expressions of racism and xenophobia by means of criminal law is of particular importance regarding hate speech. The Framework Decision defines hate speech as “publicly inciting to violence or hatred”<sup>339</sup> and calls for its consequent criminalization and penalization by means of criminal law.<sup>340</sup> Member states were obliged to transpose its provision into national law by 28 November 2010.<sup>341</sup>

### 2.3. Domestic legislation

In Austria, the right to freedom of expression and its various components are encompassed by the broader term “Kommunikationsfreiheiten” (“freedoms of communication”). Freedom of expression does thereby not only include the right to express one’s opinion, but also the right to receive information by the free media. On the level of constitutional law, the right to freedom of expression is protected by Art 13 StGG, Art 10 ECHR and Art 11 CFREU.

Art 10 ECHR<sup>342</sup> must be understood in light of the affirmation by the ECtHRs, that freedom of expression

“[...] constitutes one of the essential foundations of [...] a society, one of the basic conditions for its progress and for the development of every man.”<sup>343</sup>

As has been noted, freedom of expression is the norm rather than the exception, and Art 10 ECHR is the benchmark for assessing this. Restrictions may only occur within the limits of Art 10 (2) ECHR, stipulating that restrictions must be prescribed by law, must be necessary in a democratic society, and in the interests of national security and public order.

The subsequent section refers to two instances in which restrictions of freedom of expression might be considered legitimate: firstly, incitement to hatred according to § 283 CC; secondly, the prohibition of “Wiederbetätigung” under the National Socialism Prohibition Act 1947.

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<sup>339</sup> Council of the European Union, Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, File number OJ L 328/55, Art 1, [eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33178](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33178).

<sup>340</sup> Ibid, Arts 3 and 8.

<sup>341</sup> Ibid, Art 10 (1).

<sup>342</sup> Art 10 ECHR reads: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>343</sup> European Court of Human Rights, Case of Handyside v. the United Kingdom, 7 December 1976, case number Application no. 5493/72, para. 49.

### 2.3.1. § 283 Criminal Code: “Verhetzung”

“Hate speech” *senso strictu* is criminalized under § 283 CC (“Verhetzung”). The latest amendment to § 283 CC introduced a new offence and new aggravating elements. According to § 283 (1) CC three offences are punishable, namely

1. the public incitement to violence directed at a church or religion, or at an individual or member of a group based on one’s race, skin colour, language, religion or ideology, nationality, ethnic or national origin, sex, physical or mental disability, age or sexual orientation;

2. the public incitement intended to offend the human dignity of those affiliated with a group based on the criteria mentioned under § 283 (1) 1 CC, to create a contemptuous picture in public opinion or to degrade them; and

3. the public approval, denial, gross belittlement or justification of internationally or nationally recognized instances of genocide, crimes against humanity, war crimes and the crime of aggression and other crimes as defined by §§ §§ 321 to 321f as well as § 321k CC<sup>344</sup> against a group or a member of a group according to § 283 (1) 1 CC, if these acts are done in a way that might incite violence or hate against such a group or a member of such a group.

Offenders can be sentenced to a prison sentence of up to two years in case a violation is found by a Court.

The term “incitement to hatred” has been interpreted as an “appeal to hate and contempt, based on an appeal to emotions”<sup>345</sup> and encompasses statements which are meant to evoke the direct decision in somebody to apply violence or to execute the specific violent act called for.<sup>346</sup> § 283 (1) 2 CC criminalizes public incitement intended to offend the human dignity, to create a contemptuous picture in public opinion, or to degrade a specific group.<sup>347</sup> “Degrading” has been interpreted as “to claim a contemptuous characteristic or

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<sup>344</sup> Till the latest reform the Austrian legislation did not foresee a criminal provision regarding the offence of public condoning, denial or gross trivialisation of genocide, crimes against humanity and war crimes.

<sup>345</sup> „[...] eine in einem Appell an Gefühle und Leidenschaften bestehende tendenziöse Aufreizung zum Hass und zur Verachtung“; 15 Os 203/98; 28 January 1999.

<sup>346</sup> Beyrer Michael, Birklbauer Alois, Sadoghi, Alice, “Zu Gewalt auffordern” - “jede Äußerung, die darauf gerichtet ist (zumindest einem) in anderen unmittelbar den Entschluss zur Vornahme der bezeichneten Handlung hervorzurufen”, Strafgesetzbuch: Praxiskommentar, Linz, proLIBRIS, 2017, p. 447.

<sup>347</sup> Beyrer Michael, Birklbauer Alois, Sadoghi Alice, “verächtlich machen“, in: Strafgesetzbuch: Praxiskommentar, Linz, proLIBSRIS, 2017, p. 447.



attitude of someone”<sup>348</sup> or “to accuse somebody of dishonorable or immoral behaviour which is suitable to belittle or decry somebody according to public opinion.”<sup>349</sup>

§ 283 (2) CC includes two aggravation grounds scaling the threat of punishment up to three years, if the incitement or insults are disseminated by media, e.g., as printed materials or broadcasted, or even up to five years if the incitement leads to an actual incident of assault against an individual or a group.<sup>350</sup>

### 2.3.2. National Socialism Prohibition Act 1947

Due to Austria’s special responsibilities regarding World War II, the Holocaust and the *woebegone* experience that speech and word not only have the capacity cause hate and fear, but can ultimately lead to the disruption of a society, the understanding prevails that certain restrictions on freedom of expression are required to protect the rights of others, fundamental values, and the democratic order. Accordingly, the National Socialism Prohibition Act 1947 (*Verbotsgesetz 1947*) was adopted in 1947 as a constitutional act, criminalizing all forms of “*Wiederbetätigung*” (re-engagement in National Socialist activities).

§§ 3g and h National Socialism Prohibition Act 1947 prohibit all expressions inspired by National Socialist ideology, or which deny, grossly minimize, approve, or seek to justify the National Socialist genocide or any other National Socialist crime against humanity in a publication, a broadcasting medium or any other medium publicly and in any other manner accessible to a large number of people.<sup>351</sup>

The ECtHR in its jurisprudence found that these restrictions of the freedom of expression are necessary in a democratic society,<sup>352</sup> since the exercise of freedom of expression cannot be the

“[...] basis for activities which are contrary to the text and spirit of the Convention and which, if admitted, would contribute to the destruction of the rights and freedoms set forth in the Convention”.<sup>353</sup>

### 2.3.3. Other relevant norms relevant for hate speech

§ 107c (1) 1 CC was introduced by amendment 2015 to address forms of hate speech online. Accordingly, the criminal offence of “*cybermobbing*” is committed if a person is publicly defamed via a computer system over a longer period, in a way that his or her way of

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<sup>348</sup> Beyrer Michael, Birklbauer Alois, Sadoghi Alice, “*zeihen (=behaupten) einer verächtlichen Eigenschaft oder Gesinnung*”, in: *Strafgesetzbuch: Praxiskommentar*, Linz, proLIBRIS, 2017, p. 197.

<sup>349</sup> Beyrer Michael, Birklbauer Alois, Sadoghi Alice, “*Beschuldigen eines unehrenhaften oder gegen die guten Sitten verstoßenden Verhaltens, das geeignet ist, ihn in der öffentlichen Meinung verächtlich zu machen oder herabzusetzen*”, in: *Strafgesetzbuch: Praxiskommentar*, Linz, proLIBRIS, p. 197.

<sup>350</sup> § 283 CC.

<sup>351</sup> Compare §§ 3 g and h National Socialism Prohibition Act 1947.

<sup>352</sup> European Court of Human Rights, *Case of Hosnik v. Austria*, 18 October 1995, case number Application no. 25062/94.

<sup>353</sup> *Ibid.*

living is affected.<sup>354</sup> A prison sentence up to one year or a fine up to 720 daily rates can be imposed, and in case of suicide caused by “cyber-mobbing”, the offender can be sentenced with imprisonment of up to three years.<sup>355</sup>

§ 115 (1) CC covers forms of insults, as well as physical and verbal abuses of individuals with a threat of punishment not exceeding three months, or a fine of 180 daily rates. Whereas offences under § 115 CC are no *ex officio* acts, § 117 (3) CC stipulates that if the insults are made specifically on racist grounds listed in § 283 (1) CC, the public prosecutor must initiate investigations and proceedings with the authorization of the victim, with the latter not bearing the potential legal costs in such cases.

The so-called “blasphemy” paragraph, § 188 CC, especially focuses on religions, criminalizing the public disparagement of a religion or of religious convictions, with a maximum prison sentence of 6 months or a fine of up to 360 daily rates.

#### 2.4. Hate speech as a national policy priority

Hate speech became a topic of priority in the last years. To give effect to the aforementioned legal framework, a set of policy measures and initiatives has been adopted and emphasis has been placed specifically on two fields of action: awareness raising, and the adoption of legislative measures and prosecution of hate speech.

##### 2.4.1. Measures aimed at awareness-raising

Austria has been actively supporting and promoting international campaigns related to hate speech, like the “No Hate Speech Movement” initiated by the CoE in 2012, aimed at mobilising young people to speak up for democracy and human rights online.<sup>356</sup>

To promote the objectives of this campaign,<sup>357</sup> various initiatives were introduced and/or supported by the Austrian government and the Austrian parliamentary institutions. A national committee “No Hate Speech”<sup>358</sup> was founded, composed of a variety of institutions including the Federal Chancellery and eight Federal Ministries.<sup>359</sup> In line with the commitment to spread the objectives of the campaign, the Federal Ministry for Families, the Federal Ministry of Education and the Austrian Parliament supported the translation of the CoE

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<sup>354</sup> § 107c CC.

<sup>355</sup> Ibid.

<sup>356</sup> Council of Europe, No Hate Speech Youth Campaign, [coe.int/en/web/no-hate-campaign](http://coe.int/en/web/no-hate-campaign).

<sup>357</sup> There are raising awareness and sensitize the public on the issue of hate speech, discuss causes of hate speech, reducing the acceptance of the phenomenon and as a consequence combat racism, discrimination and sexism online.

<sup>358</sup> Federal Ministry for Families and Youth, Nationales Komitee "No Hate Speech", [bmfj.gv.at/jugend/lebensqualitaet-miteinander/nohatespeech/komitee\\_nohatespeech.html](http://bmfj.gv.at/jugend/lebensqualitaet-miteinander/nohatespeech/komitee_nohatespeech.html); CounterACT, Aktiv gegen Hass und Hetze im Netz, [counteract.or.at/](http://counteract.or.at/), operated by ZARA is an implementation partner of the national No Hate Speech committee.

<sup>359</sup> Federal Ministry of Education, Federal Ministry for Europe, Integration and Foreign Affairs, Federal Ministry of Families and Youth, Federal Ministry for Health and Women's Affairs, Federal Ministry of Justice, Federal Ministry of Agriculture, Forestry, Environment and Water Management, Federal Ministry for Transport, Innovation and Technology, Federal Ministry for Science, Research and Economy.

Manual “Bookmarks” to German, which promotes the fight against hate speech through human rights education.<sup>360</sup>

The Austrian Parliament has been actively engaged in the “No Hate Speech” campaign since 2015. The “Demokratiewerkstatt”, initiated by the Austrian Parliament as a learning institution aimed at familiarising children between 8 and 14 with topics related to democracy and parliamentarianism, focused its 2015 programme explicitly on the “No Hate Speech” campaign and offered various workshops dealing *inter alia* with mobbing and social media.<sup>361</sup>

“Hate Speech” has furthermore been defined as a priority by the president of the Federal Council for the second half of 2016. To raise awareness and to provide the greater public and policy makers with necessary background knowledge on hate speech in the digital environment, the Federal Council organised an Enquête on hate speech in November 2016. To inform discussions and as basis of the Enquête, the “Grünbuch Digitale Courage” was published, compiling contributions by academic experts, civil society organizations and the media sector. It had the objective to encourage people to become active and address hate speech in their own digital surroundings.<sup>362</sup>

The state secretary for diversity, public services and digitalisation in the Austrian Federal Chancellery in summer 2016 initiated the campaign “#GegenHassImNetz” (#AgainstOnlineHatecrime) as a reaction to the rising numbers of hate speech postings online.<sup>363</sup> The campaign addresses civil society, encouraging people to address and respond to hate speech online. To provide the users with an adequate toolkit countering hate speech, the initiative suggests ten “tips” how to deal with and respond to online postings spreading hate and violating the rights of others. The campaign was accompanied by a workshop organised by the state secretary in November 2016, aimed at bringing together relevant stakeholders to exchange views and develop strategies to counter hate speech online.<sup>364</sup> Additionally, the civil society platform “CounterAct – Aktiv gegen Hass und Hetze im Netz” has been supported by the state secretary for diversity, public services and digitalisation.<sup>365</sup>

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<sup>360</sup> Council of Europe, No Hate Speech Campaign, [coe.int/en/web/no-hate-campaign/bookmarks/-/connexions](http://coe.int/en/web/no-hate-campaign/bookmarks/-/connexions).

<sup>361</sup> Austrian Parliament, EU-Unterausschuss des Nationalrats: Parlamentskorrespondenz Nr. 156, 21 February 2017, [parlament.gv.at/PAKT/PR/JAHR\\_2017/PK0156/](http://parlament.gv.at/PAKT/PR/JAHR_2017/PK0156/).

<sup>362</sup> Republik Österreich Bundesrat, Federal Council, Grünbuch Digitale Courage, 2016 [parlament.gv.at/ZUSD/PDF/Gruenbuch\\_Digitale\\_Courage\\_Republik\\_Oesterreich\\_Bundesrat.pdf](http://parlament.gv.at/ZUSD/PDF/Gruenbuch_Digitale_Courage_Republik_Oesterreich_Bundesrat.pdf).

<sup>363</sup> Austrian Federal Chancellery, 10 Tipps gegen Hass im Netz, [bundeskanzleramt.gv.at/10-tipps-gegen-hass-im-netz](http://bundeskanzleramt.gv.at/10-tipps-gegen-hass-im-netz).

<sup>364</sup> Austrian Federal Chancellery, #GegenHassimNetz. Veranstaltungen, [bundeskanzleramt.gv.at/vernetzungs-und-workshoptag-gegenhassimnetz](http://bundeskanzleramt.gv.at/vernetzungs-und-workshoptag-gegenhassimnetz).

<sup>365</sup> ZARA, Plattform CounterACT! - Aktiv gegen Hass und Hetze im Netz geht online, 11 January 2017, [zara.or.at/index.php/archiv/9875](http://zara.or.at/index.php/archiv/9875).

#### 2.4.2. Measures in the legislative process and the prosecution of hate speech

Next to campaigns aimed at providing civil society with tools to respond to and address hate speech, the Austrian government also placed emphasis on exploring further legislative possibilities to combat hate speech and radicalization and to develop preventive strategies.

In October 2014, the Federal Ministry for Europe, Integration and Foreign Affairs, the Federal Ministry of Justice and the Federal Ministry of the Interior organized the joint inter-ministerial “Summit against Hate and Hatred”. The summit sought to provide a platform based on expert opinions to discuss potential means to fight the spreading of hate and hatred,<sup>366</sup> an initiative that has been positively noted by ECRI in its 2015 Austria Report.<sup>367</sup>

This discourse on adequate legal reactions to hate speech, combined with explicit recommendations made by international human rights bodies like ECRI,<sup>368</sup> informed the reform of § 283 CC in 2015. The amendment passed in 2015 significantly broadened the scope of § 283 CC by erasing the previous requirement of a “broad public” (150 persons) and replacing it by “many people” (30 persons) to assess the committing of a violation.<sup>369</sup> Second, by referring to “Aufstacheln zu Hass” (incitement to hatred) instead of “hetzen”, § 283 CC complies better with international norms.<sup>370</sup> Third, the personal scope was considerably expanded since protected groups are defined positively as well as negatively.<sup>371</sup> Accordingly, § 283 CC extends to insults made against persons belonging to a specific group, but also encompasses insults made against people not belonging to a specific group. By acknowledging both situations, the legislator responded to calls made by the 2016 National Action Plan for Integration<sup>372</sup> to adopt legislation to address incidents of hatemongers preaching against faithless persons (“Hasspredigten”). Foreigners are now also protected from insults by the national majority group.<sup>373</sup>

These efforts to address hate speech and “Wiederbetätigung” by means of criminal law are supported by concrete steps in the judicial system, and also the broader public.

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<sup>366</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Gipfel gegen HASS und HETZE, 14 October 2014, [bmeia.gv.at/integration/veranstaltungen/veranstaltung/gipfel-gegen-hass-und-hetze/](http://bmeia.gv.at/integration/veranstaltungen/veranstaltung/gipfel-gegen-hass-und-hetze/).

<sup>367</sup> European Commission against Racism and Intolerance (ECRI), Report on Austria. Edited by Council of Europe (CRI(2015)34), 2015, p. 9, [coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf](http://coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf).

<sup>368</sup> In its fourth report ECRI recommended Austria to bring its criminal law in line with General Policy Recommendation No 7. See ECRI, Report on Austria (fourth monitoring cycle), 2 March 2010.

<sup>369</sup> Erläuterungen zu § 283 StGB der Regierungsvorlage Strafrechtsänderungsgesetz, 689 der Beilagen XXV. GP, p. 41, [www.parlament.gv.at/PAKT/VHG/XXV/II\\_00689/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXV/II_00689/index.shtml).

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> Federal Ministry for Europe, Integration and Foreign Affairs, Nationaler Aktionsplan für Integration, 2011 p. 26, [bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Integration/NAP/Bericht\\_zum\\_Nationalen\\_Aktionsplan.pdf](http://bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/NAP/Bericht_zum_Nationalen_Aktionsplan.pdf).

<sup>373</sup> Erläuterungen zu § 283 StGB der Regierungsvorlage Strafrechtsänderungsgesetz, 689 der Beilagen XXV. GP, p. 41, [www.parlament.gv.at/PAKT/VHG/XXV/II\\_00689/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXV/II_00689/index.shtml).

Accordingly, a reporting desk (“Meldestelle”) for hate postings was established at the Federal Chancellery and took up its work in the first half of 2017.<sup>374</sup> This “Meldestelle” is foreseen to work closely together with five special prosecutors, still to be appointed, but whose area of work will specifically focus on hate crime, including hate speech. Since 1 January 2017, ten of the biggest public prosecution offices have defined hate speech as special competence.<sup>375</sup>

Furthermore, Austria has invested considerable resources to ensuring adequate responses to cases of “Wiederbetätigung”. In 2010 the Ministry of the Interior established a special task force at the Federal Office for the Protection of the Constitution and Counterterrorism to investigate the National Socialist related web-site “Alpen-Donau-Info”. The investigations by the task force ultimately led to the prosecution and condemnation of several site-managers and readers, as has also been positively remarked by the 5<sup>th</sup> ECRI report on Austria.<sup>376</sup> The Ministry of Interior has further installed a helpdesk for “Wiederbetätigung” encouraging people to report anonymously about national socialist postings or comments online.<sup>377</sup> In 2013 a “National Action Plan Right Wing Extremism” not available to the public became operational, focusing on increased cooperation within the Federal Ministry of the Interior, education and advanced training, and resources and prevention.<sup>378</sup> Information on the concrete measures foreseen by the National Action Plan is not publicly available, except for a list published in 2015 of 192 so-called “Staatschutzsensoren”, specifically trained members of the police.<sup>379</sup>

Legislation is one of the approaches promoted and supported by Austria to invoke responsibilities of providers, i.e. of particular online platforms, for content inciting hate speech.<sup>380</sup> In May 2016, the European Commission together with Facebook, Twitter, YouTube and Microsoft (“the IT companies”), adopted a code of conduct including a series of (self-) commitments to combat the spread of illegal hate speech online in Europe.<sup>381</sup> Austria has been a fierce supporter of corresponding EU proposals although acknowledging that Code of Conducts and non-binding self-commitments are not sufficient in this regard.

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<sup>374</sup> ZARA, *Rassismus Report 2016*, 2016, p. 68, [zara.or.at/wp/wp-content/uploads/2017/03/ZARA\\_Rassismus\\_Report\\_2016\\_web\\_fin.pdf](http://zara.or.at/wp/wp-content/uploads/2017/03/ZARA_Rassismus_Report_2016_web_fin.pdf).

<sup>375</sup> Ibid.

<sup>376</sup> European Commission against Racism and Intolerance (ECRI), *Report on Austria*. Edited by Council of Europe (ECRI(2015)34), 2015, para. 40, [coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf](http://coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-V-2015-034-ENG.pdf).

<sup>377</sup> Federal Ministry of the Interior, Federal Office for the Protection of the Constitution, [bmi.gv.at/cms/bmi\\_verfassungsschutz/meldestelle/](http://bmi.gv.at/cms/bmi_verfassungsschutz/meldestelle/).

<sup>378</sup> See Parliamentary inquiry, [www.parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_05080/imfname\\_447105.pdf](http://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_05080/imfname_447105.pdf).

<sup>379</sup> Ibid, p. 4.

<sup>380</sup> European Parliament News, *Hate speech and fake news: remove content, impose fines, foster media literacy?*, 5 April 2017, [europarl.europa.eu/news/en/press-room/20170329IPR69072/hate-speech-and-fake-news-remove-content-impose-fines-foster-media-literacy](http://europarl.europa.eu/news/en/press-room/20170329IPR69072/hate-speech-and-fake-news-remove-content-impose-fines-foster-media-literacy).

<sup>381</sup> European Commission, *Code of Conduct on Countering Illegal Hate Speech Online*, [ec.europa.eu/justice/fundamental-rights/files/hate\\_speech\\_code\\_of\\_conduct\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf).

## 2.5. Combating hate speech and “Wiederbetätigung” in practice

In 2016, ZARA, the leading anti-racism organization in Austria, recorded 1,107 cases of racist incidents compared to 31% or 390 cases related to hate speech online.<sup>382</sup> In 2015, 234 cases have been reported related to hate speech online, compared to 136 cases in 2014.<sup>383</sup>

The increasing number of hate speech cases reported to civil society organizations reflects the increasing awareness for hate speech. This is also supported by the numbers of submissions received by the governmental help desks. For instance, in 2015 the help desk National Socialism received 3,913 submissions, compared to 3,354 submissions in 2014 (increase 16.7%).<sup>384</sup> In 2016 numbers, slightly regressed with 3,124 received submissions.<sup>385</sup> Also the executive and judiciary have been active in dealing with cases related to racism, hate speech, and “Wiederbetätigung”.<sup>386</sup>

The Report on State Security 2016 shows Austrian security authorities registered a total of 1,313 right-wing extremist, xenophobic/ racist, Islamophobic, anti-Semitic, and unspecified or other criminal acts, in the course of which relevant offences were reported to the authorities. This meant a 13.6% increase compared to 2015.<sup>387</sup> In 2016, 380 out of these reported cases concerned hate speech incidents according to § 283 CC, compared to 282 reported hate speech cases in 2015.<sup>388</sup> According to information by the Federal Ministry of Justice, in total 673 cases related to § 283 CC have been pending in 2016. In total, 52 convictions have been spelled out, whereas these convictions also relate to cases filed before 2016.<sup>389</sup>

With regard to “Wiederbetätigung” according to the National Socialism Prohibition Act 1947, 953 cases have been reported in 2015, compared to 884 cases in 2016.<sup>390</sup> According to the Ministry of Justice, in 2015 there have been 71 convictions on the basis of § 3a et seq. National Socialism Prohibition Act 1947.<sup>391</sup>

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<sup>382</sup> ZARA, Rassismus Report 2016, 2016, p. 12, [zara.or.at/wp/wp-content/uploads/2017/03/ZARA\\_Rassismus\\_Report\\_2016\\_web\\_fin.pdf](http://zara.or.at/wp/wp-content/uploads/2017/03/ZARA_Rassismus_Report_2016_web_fin.pdf).

<sup>383</sup> Ibid, p. 22.

<sup>384</sup> Bundesministerium für Inneres, Verfassungsschutzbericht 2015, p. 40, [bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2015.pdf](http://bvt.bmi.gv.at/401/files/Verfassungsschutzbericht2015.pdf).

<sup>385</sup> Bundesministerium für Inneres, Verfassungsschutzbericht 2016, p. 13, [bmi.gv.at/205/files/Verfassungsschutzbericht\\_Jahr\\_2016.pdf](http://bmi.gv.at/205/files/Verfassungsschutzbericht_Jahr_2016.pdf).

<sup>386</sup> It must be noted that due to the usual length of procedures the numbers available with regard to convictions does not correspond to actual pending trials in the respective year. Additionally, it has to be taken into account that not all of the convictions are already effective in law.

<sup>387</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 77, [bmi.gv.at/205/files/Verfassungsschutzbericht\\_Jahr\\_2016.pdf](http://bmi.gv.at/205/files/Verfassungsschutzbericht_Jahr_2016.pdf).

<sup>388</sup> Ibid, p. 83.

<sup>389</sup> Not all cases were reported in 2016, but already in previous years.

<sup>390</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 83, [bmi.gv.at/205/files/Verfassungsschutzbericht\\_Jahr\\_2016.pdf](http://bmi.gv.at/205/files/Verfassungsschutzbericht_Jahr_2016.pdf).

<sup>391</sup> Federal Ministry of Justice, Sicherheitsbericht 2015. Bericht über die Tätigkeit der Strafjustiz, 2016, p. 47 [justiz.gv.at/web2013/home/justiz/daten\\_und\\_fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html](http://justiz.gv.at/web2013/home/justiz/daten_und_fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html). No data for 2016 is available yet.

## 2.6. Fake news and freedom of expression

Next to hate speech, the dissemination of “fake news” disinformation ranks prominently in the current debate on freedom of expression.

### 2.6.1. OSCE process

In March 2017, the OSCE RFOM, together with other freedom of the media representatives of international organizations, passed a declaration on freedom of expression and “fake news”, disinformation and propaganda.<sup>392</sup>

The text of the declaration reflects the slightly ambiguous relation between the spread of “fake news” as means to mislead a population, and the protective scope of the right to freedom of expression including the right to “incorrect” statements that must not be prohibited by adopting general prohibition clauses. The declaration reaffirms that the right to impart information is not limited to “correct” statements, while acknowledging that this aspect of freedom of information does not justify the dissemination of knowingly or recklessly “fake news”.

In line with OSCE commitments, the declaration calls on states with the positive obligation to promote free, independent and diverse communications to avoid restricting freedom of expression, highlighting that general prohibitions on the dissemination of fake news “[...] are incompatible with international standards for restrictions on freedom of expression [...] and should be abolished.”<sup>393</sup>

### 2.6.2. Legal situation and debate concerning fake news in Austria

Until the last reform, § 276 CC considered the prevalence of “fake news” – more precisely “the dissemination of false and disquieting rumours” – as a criminal offence. It foresaw a prison sentence of up to six months or a fine of 360 daily rates, if a person intentionally spread rumours of which he or she knew the falsehood, and if these rumours were suitable to disquiet a large group of people, thereby threatening the public order. In case one of the aggravation grounds (e.g. the criminal act caused a severe or lasting disruption of the public, or a severe economic damage) a maximum penalty up of to three years of imprisonment could be imposed. The objective of the provision was to protect national public peace.<sup>394</sup> However, the scope of the criminal offence was very narrowly defined, as it required the

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<sup>392</sup> OHCHR, OAS, AU, OSCE Representative on Freedom of Media, Freedom of Expression and “Fake News”, Disinformation and Propaganda, File number FOM.GAL/3/17, 3 March 2017, [osce.org/fom/302796?download=true](https://osce.org/fom/302796?download=true).

<sup>393</sup> Ibid.

<sup>394</sup> Plöchl Franz, § 283 Verhetzung, in: Höpfl/Ratz (eds.), Wiener Kommentar zum Strafgesetzbuch, Wien, Manz Verlag Wien, 2013.

intentional dissemination and awareness (“Wissentlichkeit”) regarding the falsehood of the rumours spread.<sup>395</sup>

With the latest reform of the CC in 2015 § 276 CC was repealed and ceased enforcement from 1 January 2016 on. The reason for repealing the provision was its lack of relevance. According to the Federal Ministry of Justice, there have been no convictions in the last 20 years under § 276 CC, rendering it unnecessary.<sup>396</sup> Under the current CC, the dissemination of fake news or intentional disinformation and propaganda may still be penalized under § 264 CC. However, § 264 CC is limited to the dissemination of false news related to an election or a referendum. Accordingly, if false information is publicly spread and suitable to cause somebody to abstain from the right to vote or to exercise the right to vote in a certain way, the offender can be sentenced with six months’ imprisonment or a monetary penalty of 360 daily rates.

In Austria, the political debate surrounding the criminalization of “fake news” dissemination is torn between the recognition that false information may negatively influence the democratic discourse, and the strong commitment to protect freedom of expression as it is also reflected in the Report on State Security 2016.<sup>397</sup> Whereas the discourse on how to deal with “fake news” is still ongoing, awareness-raising and the sensitization of the broader public have been considered crucial.<sup>398</sup> The Committee for European Affairs of the Federal Council has in this regard highlighted the need to foster media competences and media education.<sup>399</sup>

Despite the lack of an explicit provision criminalizing the spread of false statements, Austrian Courts increasingly had to deal with cases related to the dissemination of wrong information. Generally, § 111 CC encompasses situations when false statements can harm the reputation of individuals’ reputations and privacy. Additionally, according to § 9 Media Act each natural or legal person (authority) not only generally affected by facts published in a periodical medium product, is entitled to request publication of a response free of charge, unless such a response is not true or its publication must be excluded for other reasons. Such a response must concisely state to what extent the information published is incorrect or incomplete, and the respective reason. It must either state the correct facts contrasting the

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<sup>395</sup> Ibid.

<sup>396</sup> Nationalrat, Regierungsvorlage Strafrechtsänderungsgesetz, Erläuterungen, revised 689 der Beilagen XXV. GP, p. 40, [parlament.gv.at/PAKT/VHG/XXV/II/I\\_00689/index.shtml](http://parlament.gv.at/PAKT/VHG/XXV/II/I_00689/index.shtml).

<sup>397</sup> Federal Ministry of the Interior, Verfassungsschutzbericht 2016, p. 56 et seq., [bmi.gv.at/205/files/Verfassungsschutzbericht\\_Jahr\\_2016.pdf](http://bmi.gv.at/205/files/Verfassungsschutzbericht_Jahr_2016.pdf).

<sup>398</sup> Republik Österreich Parlament, Menschenrechtsausschuss: Neues Erwachsenenschutzgesetz kann mit breiter Unterstützung rechnen, 17 January 2017, [parlament.gv.at/PAKT/PR/JAHR\\_2017/PK0032/](http://parlament.gv.at/PAKT/PR/JAHR_2017/PK0032/).

<sup>399</sup> EU Committee of Parliaments Federal Council, Beratungen des EU-Ausschusses des Bundesrates, Code of conduct on countering illegal hate speech online, 2017, p. 14, [www.parlament.gv.at/PAKT/VHG/BR/IV-BR/IV-BR\\_00108/fname\\_623802.pdf](http://www.parlament.gv.at/PAKT/VHG/BR/IV-BR/IV-BR_00108/fname_623802.pdf).



published ones, add an essential item to the published facts, or otherwise refer directly to the facts as published and state what was published in a wrong or misleading way.

### 3. Freedom of assembly

#### 3.1. OSCE commitments

Together with freedom of expression and freedom of media, the right to assemble peacefully is fundamental for democratic processes within liberal societies, guaranteeing informed decision-making processes and exchange of ideas. The OSCE participating states have reaffirmed the importance of the freedom of peaceful assembly in various documents, including *inter alia* the 1990 Copenhagen Document stating “everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”<sup>400</sup> Subsequent documents reiterate the commitments by OSCE participating states such as the Ministerial Declaration on the Occasion of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights in 2008.<sup>401</sup> According to its mandate, ODIHR supports participating states in the implementation of their human dimension commitments.<sup>402</sup> ODIHR has been particularly active in monitoring the adherence of participating states to their commitments related to the freedom of assembly,<sup>403</sup> by *inter alia* monitoring public assemblies across the OSCE area and issuing Guidelines on Freedom of Peaceful Assembly.<sup>404</sup>

#### 3.2. International legal framework on the freedom of assembly

The right to freedom of assembly is included in all major international and regional human rights instruments Austria is party to.<sup>405</sup> According to the OSCE Guidelines on Freedom of

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<sup>400</sup> CSCE, Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 1990, para. 9.2, [osce.org/odihr/elections/14304?download=true](https://www.osce.org/odihr/elections/14304?download=true).

<sup>401</sup> OSCE, Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (Helsinki Document), 5 December 2008, File number MC.DOC/2/08, p. 2, [osce.org/mc/35476?download=true](https://www.osce.org/mc/35476?download=true).

<sup>402</sup> CSCE, Helsinki Document, 1992, paras 5-6, [osce.org/mc/39530?download=true](https://www.osce.org/mc/39530?download=true).

<sup>403</sup> OSCE, Report. Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, 2012, [osce.org/odihr/97055?download=true](https://www.osce.org/odihr/97055?download=true); OSCE, Report. Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, 2014, [osce.org/odihr/132281?download=true#\\_blank](https://www.osce.org/odihr/132281?download=true#_blank); OSCE, Report. Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, 2016, [osce.org/odihr/289721?download=true](https://www.osce.org/odihr/289721?download=true).

<sup>404</sup> OSCE, ODIHR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 25 October 2010, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>405</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, Art 20; UN General Assembly, International Covenant on Civil and Political Rights, 23 March 1976, Arts 21 and 22; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 04 January 1969, Arts 4 and 5; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 3 September 1981, Art 7c.; UN General Assembly, Convention on the Rights of the Child, 02 September 1990, Art 15.

Peaceful Assembly,<sup>406</sup> the right to freedom of assembly should be enjoyed without regulation as far as possible, and a presumption of this right should be explicitly established by law.<sup>407</sup>

Generally, the right to freedom of assembly is granted to everybody without discrimination, in spite of national laws possibly providing for certain restrictions regarding the notification of assemblies by foreigners. The right to freedom of assembly enshrines a negative obligation of states to refrain from violating the rights to individuals involved in an assembly, including the obligation to prohibit assemblies on a general basis. Additionally, states have a positive obligation to ensure an environment for the enjoyment of the right to freedom of assembly. It is therefore the primary obligation of states to put legislation, procedures and mechanisms in place, ensuring that the right to freedom of assembly can be enjoyed in practice, and is not undermined by unduly restrictive or lengthy bureaucratic procedures.<sup>408</sup> The duty to ensure effective enjoyment of the right to freedom of assembly includes the obligation to protect peaceful assemblies from interferences of third parties, including counter-demonstrations and *agents provocateurs* aiming at disrupting or dispersing an assembly.<sup>409</sup> Importantly, only peaceful assemblies are protected under human rights law. Whether an assembly is peaceful depends on the intentions of the organizers as well as the conduct of the participants.<sup>410</sup>

### 3.3. National legislation for the protection of the freedom of assembly

The right to freedom of assembly is guaranteed by three different provisions in the rank of constitutional law in Austria, namely Art 12 StGG, Art 11 ECHR, and No. 3 of the decision by the Provisional National Assembly 1918. According to Art 10 (1) 7 B-VG, the Federation has powers of legislation and execution regarding the right of association and assembly.

Art 12 (2) StGG foresees that the implementation of the right to freedom of assembly, its modalities and its scope must be further defined by law. For this purpose, the Austrian Assembly Act (Versammlungsgesetz) has been adopted in 1953 stipulating and defining the rights of individuals to assemble peacefully.

What constitutes an “assembly” has not been defined by law, except that the Austrian Assembly Act exempts “events for public amusement, wedding processions, traditional festivals or parades, funerals, processions, pilgrimages, or any other assembly or parade

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<sup>406</sup> OSCE, ODHIR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 25 October 2010, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>407</sup> Ibid, para. 30.

<sup>408</sup> Ibid, para. 2.2.

<sup>409</sup> Ibid, para. 4.4.

<sup>410</sup> OSCE/ODHIR, Handbook on Monitoring Freedom of Peaceful Assembly, 2011, p. 13, [osce.org/odihr/82979?download=true](https://www.osce.org/odihr/82979?download=true).

that is carried out as part of a legally permitted rite, provided it is carried out in the traditionally established way.”<sup>411</sup>

In its jurisprudence, the Austrian Constitutional Court applied a rather restrictive interpretation of the criteria for an assembly. Accordingly, the Constitutional Court defined only those gatherings of people, which aim to bring the attendees to a joint action (debate, discussion, demonstration, etc.) in a way as to create a certain association and/or common agreement among the attendees as assemblies in terms of Art 1 Assembly Act. When assessing whether a gathering qualifies as an assembly, the purpose and the form of appearance (i.e. the amount of attendees, the length, etc.) should be taken into account.<sup>412</sup>

Importantly, the Basic Act of 1867 only grants the right to freedom of assembly to citizens, since Art 12 stipulates that “Austrian nationals have the right of assembly and to constitute associations”. According to § 8 Assembly Act, foreigners are not allowed to act as organizers, stewards or leaders of assemblies. The Assembly Act does not define foreigners nor has the Constitutional Court conclusively clarified whether EU and European Economic Community (EEC) citizens are also encompassed by the term foreigner.<sup>413</sup>

Due to the topicality of the debates surrounding the right to freedom of assembly and the reform of the Austrian Assembly Act, the subsequent analysis will focus on two major legal aspects: the requirement of prior notification, and the reasons for interdicting and resolving an assembly. The legal provisions will be described considering respective OSCE commitments, whereas particular reference will be made to the OSCE Guidelines on Freedom of Assembly. In June 2015, OSCE/ODHIR monitoring missions assessed two assemblies in Austria and the corresponding report was published in 2016.<sup>414</sup> The subsequent analysis will include the findings of the OSCE/ODIHR mission, partly opposing them, as well as legislative changes introduced afterwards.

### 3.3.1. Notification

The OSCE Guidelines on Freedom of Assembly state that under international human rights law, it is not necessary for domestic law to require advanced notification about an assembly since in open societies many types of assemblies do not warrant any form of official regulation. Accordingly, prior notification should only be required where it enables the state

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<sup>411</sup> § 5 Assembly Act.

<sup>412</sup> Continuous case law by the Constitutional Court, see VfSlg. 12161/1989. In case the gathering does not have the aim of bringing the attendees to a joint action they are considered events (Veranstaltungen) falling under the competence of the “Länder” according to Art 15 B-VG.

<sup>413</sup> OSCE/ODIHR, Monitoring of Freedom of Assembly in Selected OSCE Participating States, 2016, para. 57, [osce.org/odihr/289721](https://www.osce.org/odihr/289721); Eigner Franz, Keplinger Rudolf, Versammlungsrecht. Praxiskommentar, Linz, proLIBRIS, August 2015, p. 203.

<sup>414</sup> OSCE/ODIHR, Monitoring of Freedom of Assembly in Selected OSCE Participating States, 16 December 2016, [osce.org/odihr/289721](https://www.osce.org/odihr/289721).

“[...] to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.”<sup>415</sup>

The UN Special Rapporteur on Freedom of Assembly and Association has further specified that

“[n]otification should not be expected for assemblies that do not require prior preparation by State authorities, such as those where only a small number of participants is expected, or where the impact on the public is expected to be minimal.”<sup>416</sup>

If a state by means of legal provision foresees notification, the OSCE Guidelines stress that it should not take the form of a request for permission, but rather as notice of intent and that the notification process should not be onerous or bureaucratic. Particularly the period of notice should not be unnecessarily lengthy, but only allow adequate time for the authorities to make necessary preparations.<sup>417</sup> The case law of the Austrian Constitutional Court is in line with these recommendations, prohibiting that assemblies must undergo a permission procedure while allowing the notification requirement.<sup>418</sup>

§ 2 (1) Assembly Act requires notification to the competent authorities<sup>419</sup> prior to the planned assembly<sup>420</sup> and this notification is free of charge.<sup>421</sup> The notification must indicate the purpose, the place and time of the assembly.<sup>422</sup> These requirements have been further broadened by the Austrian Courts and notifications must include also the modalities of the undertaking, i.e. whether banners, megaphones or other things will be used during the assembly.

According to § 2 (2) Assembly Act, upon receipt of the notification, the competent authority must immediately issue a receipt acknowledging that timely notification has been submitted. This provision and correlating practice corresponds with the OSCE Guidelines on

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<sup>415</sup> OSCE, ODIHR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 2010, para. 4.1, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>416</sup> UN General Assembly, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 04 February 2016, (A/HRC/31/66), para. 21.

<sup>417</sup> OSCE, ODIHR, Venice Commission, Guidelines on Freedom of Peaceful Assembly, Second Edition, 2010, para. 4.1, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>418</sup> VfSlg. 11.651/1988. The Austrian Constitutional Court prohibited the requirement of authorization on the basis of No. 3 of the Decision of the Provisional National Council demanding the legislative to respect the “full” freedom of assembly.

<sup>419</sup> According to § 16 Assembly Act, the competent authority is, depending on the location of the assembly either the state police department or the district administrative authority.

<sup>420</sup> In case an assembly takes place in a public traffic area the competent traffic police authorities have to be notified about the assembly as well according to § 86 Road Traffic Act (Straßenverkehrsordnung).

<sup>421</sup> § 2 (2) Assembly Act.

<sup>422</sup> § 2 (1) Assembly Act.

Freedom of Assembly<sup>423</sup> and has been highlighted as good practice by the OSCE/ODHIR monitoring report on freedom of assembly in selected OSCE participating states.<sup>424</sup>

Until a reform of the Assembly Act in 2017, competent authorities had to be notified at least 24 hours prior to the intended assembly.<sup>425</sup> The OSCE Guidelines on Freedom of assembly specify that the

“[...] period of notice should not be unnecessarily lengthy (normally no more than a few days prior to the event), but should still allow adequate time for the relevant state authorities to plan and prepare (for example, by deploying police officers, equipment, etc.), for the regulatory body to give a prompt official response to the initial notification, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged.”<sup>426</sup>

The Guidelines continue that

“[w]hile laws may legitimately specify a minimum period of advance notification for an assembly, any maximum period for notification should not preclude advance planning for assemblies. When a certain time limit is set out in the law, it should only be indicative.”<sup>427</sup>

In May 2017, a reform of the Assembly Act was adopted *inter alia* prolonging the period of notification to 48 instead of 24 hours. In the explanation report to the legislative proposal, the extension of the notification period was justified by reference to the preparation time required for the competent authorities in order to put in place necessary arrangements to protect public order, public safety and the rights and freedoms of others, thereby avoiding interdictions of notified assemblies.<sup>428</sup> Since the reform in 2017, an extended period of notification of one week applies to assemblies where foreign state representatives or representatives of international organizations participate.<sup>429</sup> The extension of the notification period has triggered considerable protest by civil society organizations, reflected in more than 20 responses during the evaluation procedure, criticizing the extension as an undue burden aimed at preventing people to exercise their right to freedom of assembly.<sup>430</sup> Contrarily, responses by the executive sector, particularly by the state police departments as competent authorities for assemblies, welcomed the extension of the notification period with reference to the better administration and preparation of assemblies.<sup>431</sup>

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<sup>423</sup> OSCE, ODHIR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 25 October 2010, para. 117, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>424</sup> OSCE/ODHIR, Monitoring of Freedom of Assembly in Selected OSCE Participating States, 16 December 2016, p 107, [osce.org/odihr/289721](https://www.osce.org/odihr/289721).

<sup>425</sup> § 2(1) Assembly Act.

<sup>426</sup> OSCE, ODHIR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 25 October 2010, para. 116, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>427</sup> Ibid.

<sup>428</sup> Explanation Report to the proposal to reform the Assembly Act, p. 3, available online at [parlament.gv.at/PAKT/VHG/XXV/A/A\\_02063/imfname\\_624902.pdf](https://parlament.gv.at/PAKT/VHG/XXV/A/A_02063/imfname_624902.pdf).

<sup>429</sup> § 2 (1a) Assembly Act.

<sup>430</sup> Austrian Parliament, Ausschussbegutachtung, [parlament.gv.at/PAKT/VHG/XXV/AUA/AUA\\_00005/](https://parlament.gv.at/PAKT/VHG/XXV/AUA/AUA_00005/).

<sup>431</sup> Ibid.

Closely connected to notifications is the issue of spontaneous assemblies and protests, often taking form of counter-demonstrations. The OSCE Guidelines on Freedom of Assembly provide that states have the positive duty to protect counter-demonstrations even if the assembly in question espouses an unpopular view.<sup>432</sup> Spontaneous assemblies organized in response to some occurrence, incident or another assembly, most likely do not meet the legal requirements for the notification of an assembly, and “should be lawful and regarded as expectable rather than exceptional feature of a healthy democracy”.<sup>433</sup>

The Austrian Law does not foresee any specific regulations of spontaneous assemblies. However, the continuous case law by the Constitutional Court recognizes that spontaneous assemblies are protected by the right to freedom of assembly and fall within the application of the Austrian Assembly Act, even though being exempted from the requirement for prior notification.<sup>434</sup> Generally, the number of spontaneous assemblies in Austria is relatively low with 67 spontaneous assemblies in 2015 and 63 spontaneous assemblies in 2016.<sup>435</sup>

According to § 19 Assembly Act, any infringements of the provisions of the Assembly Act must be punished by with arrest up to 6 weeks or a monetary fine of up to €720 by the competent administrative authority. This includes the organizer’s duty to notify the authority about an assembly. Importantly, failure to notify the competent authorities about an assembly does not provide grounds to prohibit or dissolve an assembly, since according to the ECtHR “an unlawful situation does not justify an infringement of freedom of assembly.”<sup>436</sup>

In this regard the ECtHR has further emphasized that “[...] in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without an illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.<sup>437</sup>

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<sup>432</sup> OSCE/ODHIR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 25 October 2010, para. 33, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>433</sup> Ibid, para. 117.

<sup>434</sup> See VfSlg. 19.528/2011.

<sup>435</sup> Information received from the Federal Ministry of the Interior.

<sup>436</sup> European Court of Human Rights, Case of Oya Ataman v. Turkey, 5 March 2007 case number Application no. 74552/01, para. 39.

<sup>437</sup> European Court of Human Rights, Bukta and Others v. Hungary, 17 October 2007, Application no. 25691/04, para. 36.

### 3.3.2. Interdiction and resolution of an assembly

The right to freedom of assembly is no absolute right. However, OSCE participating states are committed to ensuring that restrictions placed on the right are prescribed by law and are consistent with international human rights standards.<sup>438</sup>

According to Austrian law, the right to freedom of assembly can be limited on local, material or personal grounds. Generally, in Austria, if an assembly is held against the provisions of the Assembly Act, it can be interdicted or dissolved. A lawful assembly might be dissolved by the competent authority, if the circumstances during the actual assembly change and illegal incidents take place that render the assembly a threat to public order.<sup>439</sup> If the assembly is declared dissolved by the competent authorities, participants must immediately leave the place of the location. If they refuse to do so, the competent authorities may apply means of enforcement to dissolve the assembly.<sup>440</sup>

#### - Local restrictions

Regarding local restrictions, § 7 Assembly Act provides that during an assembly of the National Council, the Federal Council, the Federal Assembly, or one of the state parliaments, assemblies are prohibited within a radius of 300 meters of the venue (“Bannmeile”).<sup>441</sup>

According to § 7a Assembly Act an assembly (spontaneous or notified) taking place at the same time and place, or within the so called “safety zone” (Schutzbereich) with a radius of 50 meters surrounding a legitimate assembly, is prohibited. The provision defines a “safety zone” as the protected area for an assembly to take place without disruptions by counter-demonstrations or assemblies - so that the right to freedom of expression can be enjoyed and exercised freely.<sup>442</sup> If the competent authorities deem it necessary, the “safety zone” may be extended to a maximum of 150 meters to separate two assemblies.<sup>443</sup>

Generally, Art 11 (2) ECHR provides that restrictions of the right to freedom of assembly must be

“[...] necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”<sup>444</sup>

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<sup>438</sup> CSCE, Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 1990, [osce.org/odihr/19394?download=true](https://www.osce.org/odihr/19394?download=true).

<sup>439</sup> § 13 Assembly Act.

<sup>440</sup> § 14 Assembly Act.

<sup>441</sup> § 7 Assembly Act.

<sup>442</sup> § 7a Assembly Act.

<sup>443</sup> § 7a (2) Assembly Act.

<sup>444</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 04 October 1950, Art 11 (2) ECHR.

Within the margin of Art 11 (2) ECHR, according to § 6 Assembly Act the competent authority may prohibit an assembly, if its purpose violates criminal laws or the assembly as such poses a threat to public security or the public good.<sup>445</sup> In 2016 in total 37 notified assemblies were interdicted, the same number of interdictions as in 2015.<sup>446</sup>

- **Material restrictions**

Generally, content-based restrictions on assemblies should be avoided, as speech and other forms of expression enjoy protection under provisions guaranteeing the right to freedom of expression. Therefore, according to the OSCE Guidelines on Freedom of Assembly, “[...] the regulation of public assemblies should not be based upon the message they seek to communicate.”<sup>447</sup>

However, content-based restrictions can be justified if main messages of the assembly would amount to intentional incitement to violence, or messages advocating national, racial or religious hatred that constitutes incitement to discrimination or violence (“hate speech”).

§ 6 (1) Assembly Act foresees that the competent authorities shall prohibit an assembly if the purpose of the latter violates criminal law, or the assembly poses a threat to public security or the public good. Importantly, the decision about whether an assembly is prohibited must be based on objective grounds not only relating to the intentions of the organizer, but also to the factual circumstances.<sup>448</sup>

Violations of criminal law justifying the interdiction of an assembly encompass, for instance, violations of § 285 CC criminalizing the frustration and disturbance of a legitimate assembly. Furthermore, assemblies whose purpose would be violating § 283 CC (Verhetzung) or the National Socialism Prohibition Act 1947 must be interdicted on the basis of § 6 Assembly Act.

In assessing whether an assembly should be prohibited according to § 6 (1) Assembly Act the competent authorities are bound by Art 11 (2) ECHR. The same applies to assemblies prohibited on grounds of protecting public security or the public good. When assessing whether an assembly may endanger public security or the public good, the competent authorities must balance the interest of the participants of the assembly, with the public interest.

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<sup>445</sup> § 6 Assembly Act.

<sup>446</sup> Information received by the federal Ministry of the Interior. No information was available on why the notified assemblies have been interdicted.

<sup>447</sup> OSCE, ODIHR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 25 October 2010, para. 94, [osce.org/odihr/73405](https://www.osce.org/odihr/73405).

<sup>448</sup> RGSIG 78/1875 and Constitutional Court B491/03, 30 June 2004.



With the latest reform, § 6 Assembly Act was amended by para. 2, which introduced the possibility to prohibit assemblies organized for supporting political activities of third state nationals, in case these activities are contrary to internationally recognized principles of law and customs, international obligations, democratic principles or the foreign policy interest of Austria.<sup>449</sup>

According to Art 16 ECHR, state parties to the Convention are allowed to impose restrictions on political activities of third country nationals. However, these restrictions must be within the limits of Art 10 (2) ECHR and may only be imposed on activities that directly affect the political process.<sup>450</sup> The explanations to the Assembly Act mention the formation of a new political party and its activities, or the participation in elections, as two examples for direct political activities.<sup>451</sup> However, § 6 (2) Assembly Act falls short of explicitly referring to activities directly affecting political processes.

Assemblies as an expression of political activities to influence political processes in third states may only be prohibited, if they stand in contrast to international obligations such as human rights obligations deriving from the ECHR, or other principles of law and custom recognized by the international community, including Austria. When assessing whether an assembly should be prohibited on these grounds, the competent authority must consider whether the political process the assembly supports aims at the destruction of any of the rights enshrined in the ECHR.<sup>452</sup>

Importantly, according to § 16 (2) Assembly Act, the Federal Government is the competent authority deciding on prohibiting assemblies falling under § 6 (2) Assembly Act, if the participation of state representatives of third states was notified by representatives of international organizations or other subjects of international law.<sup>453</sup> In practice, the Federal Ministry for the Interior will be responsible for informing the government about an assembly that might fall under the ambit of Art 6 (2) Assembly Act.<sup>454</sup>

#### - **Personal restrictions**

Contrary to §§ 6 and 7 Assembly Act, §§ 9 and 9a Assembly Act restrict the participation of individuals in an assembly. Persons who cover or hide their faces with clothing or any other objects in order to prevent being recognized in connection with the assembly, or carry objects on their body which by nature serve to prevent the ascertaining of a person's identity,

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<sup>449</sup> § 6 (2) Assembly Act.

<sup>450</sup> European Court of Human Rights, *Perinçek v. Switzerland*, 15 October 2015, case number Application no. 27510/08, para. 122.

<sup>451</sup> Compare the explanations to the reform of the Assembly Act, available online at [parlament.gv.at/PAKT/VHG/XXV/A/A\\_02063/imfname\\_624902.pdf](http://parlament.gv.at/PAKT/VHG/XXV/A/A_02063/imfname_624902.pdf).

<sup>452</sup> Compare Art 17 ECHR and p. 4 of the explanations to the reform of the Assembly Act.

<sup>453</sup> § 16 (2) Assembly Act.

<sup>454</sup> Federal Ministry of the Interior, *Grundsatzentwurf Versammlungsgesetz 1953*, 24 May 2017, GZ BMI-VA2200/0110-III/3/2017, p. 7.

may not participate in an assembly (Vermummungsverbot).<sup>455</sup> Additionally, persons who carry a weapon may not participate in an assembly, and persons who carry objects on their body, which in consideration of circumstances only serve to commit violence against people or objects, are also excluded from participation.<sup>456</sup>

Violations of § 9 Assembly Act may lead to the interdiction or resolution of an assembly, if necessary to uphold public order and security. In case the organizers from the beginning explicitly called on participants to cover their faces, the assembly may be interdicted on the basis of § 6 (1) Assembly Act.<sup>457</sup> In case organizers tolerate participants covering their faces, the assembly might be dissolved according to § 13 Assembly Act, if necessary to uphold public order and security, and if the resolution of the assembly would be proportionate.<sup>458</sup> If the organizers do not tolerate and confront acts illegal under the Assembly Act immediately<sup>459</sup>, the competent authorities must enforce the prohibition under § 9 Assembly Act by removing the persons concerned, while refraining from dissolving the whole assembly. Persons violating § 9 Assembly Act, may in accordance with § 19 Assembly Act, be held accountable by the competent administrative authority and violations may be punished with an arrest for up to six weeks or a fine of up to €720. If somebody participates in an assembly covering his or her face and carries a weapon or any other object as per § 9a Assembly Act, he or she may be sentenced to imprisonment up to six months or a fine of up to 360 daily rates. In case of recurrence, the person shall be punished by imprisonment for up to one year or a fine of up to 360 daily rates.<sup>460</sup>

#### 3.4. The implementation of the freedom of assembly

The Austrian legal framework acknowledges the protection of the right to freedom of assembly and its importance for vivid democratic societies, and therefore reflects the international commitments Austria has in this regard.

Regarding the supervision of the implementation of the Freedom of Assembly, especially the AOB is in charge. In 2012 the AOB and its six commissions, acting as NPM under OPCAT, was provided *inter alia* with a mandate to monitor direct orders and coercive measures carried out by the administration. This involves the monitoring of police operations during assemblies, in particular demonstrations applying to the behaviour of police officers during the manifestations.<sup>461</sup> The objective of these competences is to ensure that the right to freedom of assembly is respected by the authorities involved. Each year the relevant findings

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<sup>455</sup> § 9 (1) Assembly Act.

<sup>456</sup> § 9a Assembly Act.

<sup>457</sup> Violations of criminal laws in particular § 19 Assembly Act and public security.

<sup>458</sup> § 13 Assembly Act.

<sup>459</sup> Compare e contrario § 11 Assembly Act.

<sup>460</sup> § 19a Assembly Act.

<sup>461</sup> Austrian Ombudsman Board, Preventive Human Rights Monitoring, [volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring](http://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring). For a detailed description of the AOB see [volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring](http://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring). See also Chapter 1 on the National Prevention Mechanism.

are published in a report by the AOB to the National Council and the Federal Council.<sup>462</sup> Since 2012, the NPM has monitored assemblies on a regular basis.<sup>463</sup>

Generally, ODHIR in its monitoring report has positively remarked the good co-operation between the municipalities, the police and organizers of assemblies, and how assemblies are dealt with in practice.<sup>464</sup>

The subsequent section will highlight some issues about the practical implementation of assemblies.

#### - **Notifications**

In case the notification of an assembly does not fulfil all requirements, the competent authority in practice informs the applicant about the missing information, to enable the organizers to adapt their notification before interdicting the assembly. Generally, neither OSCE commitments nor human rights instruments foresee that possible traffic disturbances or disturbances of the economic life within an area where assemblies frequently take place, are legitimate grounds justifying restrictions, let alone interdictions of assemblies.<sup>465</sup> Giving priority to such considerations when examining the notifications of an assembly would most likely undermine the full enjoyment of the right to freedom of assembly. Correlated requests to modify, for instance, the assembly route to ensure minimum disturbances, may qualify as undue limitations of the right to freedom of assembly.<sup>466</sup> In Austria, after balancing the expected disturbances with the interests of the organizers of the assembly and the right to freedom of assembly in light of the principle of proportionality, the competent authorities suggest alternative routes, if possible, and try to reach a compromise with the organizers of an assembly.<sup>467</sup> So far, attempts to install specific “assembly zones” have not been implemented.

#### - **Restrictions (“safety zones”)**

The OSCE/ODHIR 2016 monitoring report on freedom of assembly recommended that no automatic restrictions should be in place, which automatically prevent simultaneous assemblies or counter-demonstrations within sight and sound of each other. Instead, restrictions should be narrowly tailored with an emphasis on the state’s duty to facilitate and

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<sup>462</sup> Austrian Ombudsman Board, Berichte und Prüfergebnisse, [volksanwaltschaft.gv.at/berichte-und-pruefergebnisse#index-lead](https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse#index-lead).

<sup>463</sup> According to its annual report in 2013 37 assemblies and events; in 2014 47 assemblies and events; in 2015 45 assemblies and events; in 2016 43 assemblies and events whereas 35 have been demonstrations. Compare the annual reports 2013-2016 available at <https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse#anchor-index-1583>.

<sup>464</sup> OSCE/ODIHR, Monitoring of Freedom of Assembly in Selected OSCE Participating States (April 2015 – July 2016), 16 December 2016, para269, [osce.org/odihr/289721](https://osce.org/odihr/289721).

<sup>465</sup> OSCE, ODHIR, Venice Commission, Guidelines on Freedom of Peaceful Assembly. Second Edition, 2010, para. 80, [osce.org/odihr/73405](https://osce.org/odihr/73405). For legitimate interdiction grounds see below.

<sup>466</sup> OSCE/ODIHR, Monitoring of Freedom of Assembly in Selected OSCE Participating States (April 2015 – July 2016), 16 December 2016, para. 167, [osce.org/odihr/289721](https://osce.org/odihr/289721).

<sup>467</sup> Information provided by the Provincial Police Directorate Styria.

protect each assembly.<sup>468</sup> Correspondingly, in practice, in defining the radius of the “safety zone” and in assessing whether an assembly takes place within the “safety zone” around another assembly, the competent authorities may not make their decision to dissolve the counter-demonstration merely based on spatial arguments. Instead, they must take the purposes of the two assemblies into consideration and whether a disruption of the first assembly is intended by the second assembly taking place at the same time or within the prescribed “safety zone”.<sup>469</sup>

#### - **Access to assemblies by the NPM**

In its 2014 report, the NPM complained that the monitoring commissions were generally informed about police operations, including police operations taking place during assemblies at a very late stage, often impeding the commissions to exercise their monitoring functions.<sup>470</sup> Consequently, the NPM and the Federal Ministry of the Interior renegotiated the “Notification Decree”, also reinterpreting the term “assembly” in order to ensure that the NPM is informed on time about major assemblies likely to have a human rights dimension.<sup>471</sup> Still, in 2015 the NPM reported that despite the commitments by the Federal Ministry of the Interior, commissions were on various occasions only notified on short notice about an assembly taking place.<sup>472</sup>

#### - **Conduct of the police during assemblies**

Over the years, the NPM has in particular criticized that the police on several occasions have rather contributed to the escalation of assemblies, instead of de-escalating critical situations. According to the NPM, this was mainly due to the lack of sufficient personal resources on the side of the police and technical equipment not suitable for large demonstrations.<sup>473</sup> Additionally, certain practices by the police such, as the encirclement of the crowd (“Kesselbildung”) have been criticized.<sup>474</sup> The NPM has issued a set of recommendations in this regard. Generally, the overall assessment of the findings of the NPM shows that the police has been responsive to the criticism by the NPM. The so-called 3D model<sup>475</sup> (dialogue,

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<sup>468</sup> OSCE/ODIHR, Monitoring of Freedom of Assembly in Selected OSCE Participating States (April 2015 – July 2016), 16 December 2016, paras 109 and 178, [osce.org/odihr/289721](https://www.osce.org/odihr/289721).

<sup>469</sup> Federal Ministry of the Interior, Gundsatzterlass Versammlungsgesetz 1953, 24 May 2017, GZ BMI-VA2200/0110-III/3/2017.

<sup>470</sup> Austrian Ombudsman Board, Annual Report on the activities of the Austrian National Preventive Mechanism (NPM) 2014, 2014, p. 141, [volksanwaltschaft.gv.at/downloads/76su3/Report%20on%20the%20activities%20of%20the%20NPM%20-%202014.pdf](https://www.volksanwaltschaft.gv.at/downloads/76su3/Report%20on%20the%20activities%20of%20the%20NPM%20-%202014.pdf).

<sup>471</sup> Ibid.

<sup>472</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism (NPM), 2017, p. 27, [volksanwaltschaft.gv.at/downloads/5cII6/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](https://www.volksanwaltschaft.gv.at/downloads/5cII6/NPM%20Bericht%202016_EN_FINAL_2.pdf).

<sup>473</sup> This point of criticism in particular refers to a lack of sufficient technical gadgets to ensure fast personal identity controls. Furthermore, in some instances announcements by the police for instance with regard to the dissolution of an assembly could just not be heard by participants. See for instance the annual report 2016.

<sup>474</sup> Criticism has been raised in particular in the context of Akademikerball manifestations.

<sup>475</sup> In German: Dialogue, Deeskalation und Durchsetzung.

de-escalation and enforcement), which places dialogue at the forefront of policing of all public assemblies, has been improved and is applied in a coherent manner.<sup>476</sup>

#### **4. Evaluation**

The central question of the analysis is whether the freedom of expression and freedom of assembly in Austria are in line with the respective OSCE commitments.

Both rights are deeply grounded in the Austrian legal system, granted as constitutional rights. The analysis focused on the possible restrictions provided by law. Firstly, the prohibition of hate-speech was under scrutiny, and secondly the recent restriction concerning the freedom of assembly. The CC was recently amended in order to improve the protection against hate and hate-speech. The amendments in this field were triggered by international legal developments, international critique and critics by NGOs in Austria. The restrictions of the freedom of expression concerning hate-speech are first of all compliant with the respective requirements of ODIHR. Furthermore, they were recognised as necessary in a democratic society and finally, are not in conflict with the ECHR. Concerning the freedom of assembly, the introduced restrictions were heavily criticised, both as being unnecessary and unjustified. The amendments were based on security efforts rather than civic freedoms.

#### **5. Recommendations by Civil Society Organizations**

Already before the amendment of the Law on Freedom of Assembly in April 2017, the Interessenvertretung Gemeinnütziger Organisationen (IGO) developed several recommendations for action for a better protection of the freedom of assembly in Austria:

- Strengthening of knowledge about relevance and meaning of freedom of assembly in the civil society sector, in security authorities, as well as in the whole population
- Explicit adaptation of the Law on Assembly to the requirements of the ECHR (which means the retraction of the amendment from 2017)
- Modification of laws which potentially criminalise civil society engagement
- Adequate timely complaint mechanisms in the case of unlawful prohibitions of assemblies, based on the accelerated proceedings at constitutional courts in Germany).
- Complaints mechanisms low in risk against participants of protests affected by disproportionate measures

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<sup>476</sup> Ibid.

- Guarantee of the possibility to identify police officers through identification numbers on uniforms, as is the case in Germany
- Systematic anchoring of the principle of de-escalation in the preparation and implementation of operations during assemblies
- Reduction of liability risks for organisers of assemblies in the case of possible damages, which took place without intent and without culpable negligence.<sup>477</sup>
  
- When it comes to broad security measures, the principle of proportionality is to be maintained according to the Austrian Bar Association. Complete instructions on assembly or the ceasing of assemblies can only be ultima ratio. Furthermore, there must be a clear difference between assemblies and events.<sup>478</sup>
  
- SOS Mitmensch explained that the Law on Freedom of Assembly in its current form does not require restrictions. It offers a proven foundation for the important law on freedom of assembly, which is based on the rule of law and vital for a functioning democracy. The law on freedom of assembly was fought for viciously. It is part of the fundamental elements of our democracy. It is an extremely important law, particularly because it is sometimes annoying, annoying for those in power. The restriction and the reduction of democratic rights already in small amounts is a dangerous thing. Such a restriction, such a reduction of democratic rights takes place when notification periods are extended, expulsion zones are established and highly problematic, vague paragraphs are decided upon, which open the door for political arbitrariness in the prohibition of assemblies. It is vital to fight against these beginnings.<sup>479</sup>

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<sup>477</sup> IGO - Interessenvertretung Gemeinnütziger Organisationen, statement of 20 June 2017.

<sup>478</sup> Austrian Bar Association, statement of 20 June 2017.

<sup>479</sup> SOS Mitmensch, statement of 21 June 2017.

## Topic 4: Protection and Support for Victims of Domestic Violence

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### 1. Explanation of the topic selected

The topic of domestic violence has been chosen for this report as it represents the most frequently occurring form of gender-based violence in Austria.<sup>480</sup> Domestic violence in this context is defined as it is in the Istanbul Convention:

“[...] “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.<sup>481</sup>

This chapter thereby does not focus on or include other forms of gender-based violence, like sexist hate speech, female genital mutilation or sexual violence exercised by a non-partner. It does however include topics like forced marriage, as it occurs within the family or domestic unit.

The Austrian government was one of the first worldwide to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence on 14 November 2013.<sup>482</sup> The government founded an inter-ministerial working group, which developed a National Action Plan on the Protection of Women against Violence (NAP) in 2014.<sup>483</sup> The NAP has the purpose of implementing the Istanbul Convention and confirms that violence exercised by a close person or an intimate partner is indeed the most frequently occurring kind of violence against women.<sup>484</sup> Just as outlined in the Istanbul Convention, the activities foreseen in the NAP focus mainly on preventing gender-based violence (including domestic violence), and contributing to combatting violence against women by conducting in-depth research and collecting data. It foresees measures in the areas of data collection, awareness raising, increased and more focused research on gender-based and domestic violence, all to be implemented between 2014 and 2016. A

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<sup>480</sup> European Union Agency for Fundamental Rights, Violence against women: an EU wide survey. Report, Vienna, 2014, [fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report](http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report).

<sup>481</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, 12 April 2011, Art 3 (b), [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c).

<sup>482</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, 12 April 2011, [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c).

<sup>483</sup> Federal Ministry for Education and Women's Affairs, Nationaler Aktionsplan zum Schutz von Frauen vor Gewalt. Maßnahmen der österreichischen Bundesregierung 2014-2016, Vienna, 2014, [bmgf.gv.at/cms/home/attachments/9/9/2/CH1553/CMS1481105369959/nap.pdf](http://bmgf.gv.at/cms/home/attachments/9/9/2/CH1553/CMS1481105369959/nap.pdf).

<sup>484</sup> Ibid.

report on the implementation of measures foreseen in the NAP will be available in autumn 2017.<sup>485</sup>

In order to supplement upcoming or existing monitoring reports, this report shall focus on (immediate) protection measures and victim support currently present in Austria. Measures to prevent domestic violence, raise awareness and identify data needs will not be assessed in this report. Rather, the focus will be put on immediate protection measures against repeat and secondary victimization, as well as the role of victim support services in this matter. One cross-cutting topic has been identified and will be considered in every section, namely the accessibility of protection measures and support services for vulnerable groups (including victims with disabilities or care needs, ethnic minorities, victims with an insecure/irregular settlement status and socially disadvantaged victims).

The present chapter is guided by the following research questions:

- How does Austria express its commitments to eliminate all forms of violence against women and to protect victims of gender-based violence?
- Which measures are applied for these measures to be successfully implemented?
- How accessible are these measures to victims of gender-based violence (including vulnerable groups)?

## **2. OSCE human dimension commitments related to violence against women**

In its efforts to combat threats to human security, the OSCE has put a focus on the prevention of gender-based persecution, violence and exploitation. This commitment is expressed in several documents and decisions,<sup>486</sup> the most relevant ones being:

- Sofia 2004 (Decisions: Annex to Decision No. 14/04, 2004 OSCE Action Plan for the Promotion of Gender Equality)<sup>487</sup>
- Ljubljana 2005 (Decisions: Decision No. 15/05 on Preventing and Combating Violence against Women)<sup>488</sup>

The elimination of all forms of violence against women is crucial in promoting gender equality.<sup>489</sup> The ODIHR thereby prioritises efforts to prevent and combat gender-based violence. Its main areas of focus lie in strengthening legislation and policy frameworks, as

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<sup>485</sup> Ibid.

<sup>486</sup> OSCE/ODIHR, OSCE Human Dimension Commitments Volume 1 Thematic Compilation, Warsaw, 2010, p. 242; OSCE/ODIHR, OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition), 12 October 2012, p. 242, [osce.org/odihr/76894](https://www.osce.org/odihr/76894).

<sup>487</sup> Ibid, p. 243.

<sup>488</sup> Ibid, pp. 243-245.

<sup>489</sup> OSCE, Permanent Council Decision No. 638 - 2004 OSCE Action Plan for the Promotion of Gender Equality, 02 December 2004, p. 9, [osce.org/pc/14713](https://www.osce.org/pc/14713).



well as in capacity building among law enforcement authorities and the judiciary. Further, the priorities aim at increasing the awareness of security-sector personnel.<sup>490</sup>

Particularly the 2004 OSCE Action Plan for the Promotion of Gender Equality contains commitments on combatting gender-based violence, which were also discussed at the Second Gender Equality Review Conference in Vienna. The Conference took place within the framework of the Austrian OSCE Chairmanship 2017 and sought to network key stakeholders, to discuss the progress made in implementing the 2004 Action Plan, and therein to foster targeted activities in the three OSCE security dimensions. One thematic session was dedicated to the combatting of gender-based violence, whereby a special focus was put on national mechanisms, particularly those which implement existing commitments, like the Istanbul Convention.<sup>491</sup>

### 3. Institutional and legal framework

This section briefly elaborates on the relevant international obligations as well as the national legislation relevant to combatting domestic violence in Austria.

#### 3.1. International obligations

In the following, international treaties which explicitly contain duties related to protection and support for victims of (domestic) violence are addressed. Treaties and Directives dealing with gender equality on a more general level (such as the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW) or include gender equality as a cross-sectional matter, are explicitly excluded from scrutiny.

#### - **Council of Europe Convention on preventing and combating violence against women and domestic violence**<sup>492</sup>

According to Article 2 of this Convention, the guidelines apply to all forms of violence against women - particularly domestic violence, which affects women disproportionately. All signing parties are encouraged to apply the Convention to all victims of domestic violence and to pay particular attention to female victims of gender-based violence.

Austria was one of the first countries to ratify the Istanbul Convention on 14 November 2013, which entered into force on 1 August 2014. Following this commitment, Austria also took part in the first baseline evaluation procedure by the CoE Group of Experts

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<sup>490</sup> ODIHR, Gender Equality & Women's Rights, Warsaw, p. 5, [osce.org/odihr/303541?download=true](https://www.osce.org/odihr/303541?download=true); OSCE, ODIHR and Gender Equality, [osce.org/odihr/103449?download=true](https://www.osce.org/odihr/103449?download=true).

<sup>491</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, 12 April 2011, [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c).

<sup>492</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence and explanatory report, Istanbul, 2011, [bmg.cms.apa.at/cms/home/attachments/1/7/4/CH1573/CMS1467384168858/uebereinkommen\\_des\\_europarat\\_26193.pdf](https://www.bmg.cms.apa.at/cms/home/attachments/1/7/4/CH1573/CMS1467384168858/uebereinkommen_des_europarat_26193.pdf).

on action against violence against women and domestic violence (GREVIO). A Governmental Report<sup>493</sup> based on a survey as well as an NGO Shadow Report<sup>494</sup> were already submitted for analysis – the final GREVIO report on the implementation of the Istanbul Convention in Austria should thus be available in September 2017.<sup>495</sup>

The Istanbul Convention underlines two basic principles: firstly, victims' rights are most relevant in all measures taken to combat (gender-based) violence. Secondly, the measures are to be implemented by means of an effective collaboration of all relevant facilities, institutions and organisations.<sup>496</sup>

Several chapters of the Istanbul Convention are of particular relevance when it comes to the support and protection of victims of domestic violence, in particular Chapter IV (protection and support), Chapter VI (investigation, prosecution) and Chapter VII (migration and asylum).

- **EU Directive 2012/29/EU of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime**<sup>497</sup>

Just as all EU Member States, also Austria was obliged to transpose the standards of the above-mentioned Directive into national law by 16 November 2015 according to the guidelines provided by the European Commission. As set forth by the Directive, Member States are obliged to forward data on how victims have accessed their rights to the Commission by November 2017.<sup>498</sup> According to Article 29 of the Directive, the European Commission shall then submit a report to the European Parliament and the CoE, assessing the extent to which the Member States have abided by the measures outlined in the Directive.<sup>499</sup>

The following chapters and articles of Directive 2012/29/EU are relevant for the thematic focus on combatting domestic violence, supplementing the relevant chapters from the Istanbul Convention: Chapter 2 - Provision of information and support (Art. 9 – Support from victim support services), Chapter 4 - Protection and specific needs (Art. 19 – Right to

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<sup>493</sup> Federal Ministry for Health and Women's Affairs, GREVIO 1. Staatenbericht Österreich, 2016, Vienna, [bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio\\_1\\_staatenbericht\\_oesterreich\\_august\\_20161.pdf](http://bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio_1_staatenbericht_oesterreich_august_20161.pdf).

<sup>494</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>495</sup> Council of Europe, Provisional timetable for the first (baseline) evaluation procedure: 2016-20 (rev 29/06/2017), [coe.int/en/web/istanbul-convention/timetable](http://coe.int/en/web/istanbul-convention/timetable).

<sup>496</sup> Article 7.2 of the Istanbul Convention.

<sup>497</sup> European Union, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 14 November 2012, [eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN).

<sup>498</sup> Ibid, Art. 27-28.

<sup>499</sup> Ibid, Art. 29.

avoid contact, Art. 22 – Individual assessment, and special measures adopted in criminal proceedings (Art. 23, 24).

### 3.2. National legislation in Austria

Even before the Istanbul Convention entered into force and Directive 2012/29/EU was to be transposed into national law, Austria had already implemented legislation on victim support. A detailed description of the existing legislation is beyond the scope of this chapter. However, the Federal Ministry for Health and Women's Affairs provides an overview about the basic legal provisions and support services available to victims of domestic violence.<sup>500</sup>

In terms of procedural law, the Criminal Procedure Reform Act (Strafprozessreformgesetz; Federal Gazette No. I 19/2004) was the largest package of legislative measures, which introduced and extended the support measures available to crime victims in Austria. Accompanying measures were incorporated by the Criminal Procedure Amendment Act 2005 (Strafprozessordnungs-Novelle 2005; Federal Gazette No. I 119/2005), the Accompanying Law to the Criminal Reform Act (Strafrechtsreformbegleitgesetz; Federal Gazette No. I 93/2007) and the Criminal Law Amendment Act 2008 (Strafrechtsänderungsgesetz 2008; Federal Gazette No. I 109/2007). This comprehensive package incorporated several procedural rights of victims, including the right to gain insight into the public prosecutor's files; to participate in certain procedural steps; to obtain information rights throughout the proceedings; certain rights to file petitions.

Several other legal amendments were introduced in the course of the ratification of the Istanbul Convention and the transposition of Directive 2012/29/EU. For example, the ratification of the Istanbul Convention led the Austrian government to develop a National Action Plan to protect women against violence and to set up an inter-ministerial working group on the protection of women against violence. As Directive 2012/29/EU was transposed, several legal amendments were introduced, in particular measures to prevent secondary victimization. An example of this includes creating an entitlement to an early assessment of special needs.

#### 3.2.1. Information and support

The Criminal Procedure Code introduces three types of victims in § 65, namely a) victims of violence and sexual violence (Gewaltopfer und Sexualopfer); b) relatives of victims of homicide (Tötungsoffer) and c) other victims (sonstige Opfer). These three types of victims enjoy differing rights and levels of protection.<sup>501</sup>

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<sup>500</sup> Federal Ministry for Health and Women's Affairs, Domestic violence, [bmgf.gv.at/home/EN/Women\\_Equality/Domestic\\_Violence](http://bmgf.gv.at/home/EN/Women_Equality/Domestic_Violence).

<sup>501</sup> Eigner Franz; Dillinger Walter, Opfer, Beschuldigte und neue Rechte, in: Öffentliche Sicherheit, 1-2/07, 2007, [bmi.gv.at/magazinfiles/2007/01\\_02/files/stporeform\\_2.pdf](http://bmi.gv.at/magazinfiles/2007/01_02/files/stporeform_2.pdf).

According to § 66 (1) of the Austrian Criminal Procedure Code (Strafprozessordnung), victims of sexual violence, relatives of victims of homicide, and other victims of violence have the right to legal representation; to receiving a written confirmation of their statement; to access their case file; to be informed about their main rights before the interrogation; to be updated on the progress in the proceeding; to interpretation services when being informed about their main rights before the interrogation; to take part in an adversary interrogation of witnesses and suspect; to participate during the main trial and to pose questions on suspect offender, witnesses and experts; to be heard on their entitlements and to claim for the continuation of a proceeding terminated by the prosecution.

According to § 66a (1) 5 of the Criminal Procedure Code, victims with special protection needs (i.e. victims of domestic violence) have the right to be informed about the release of the offender from prison, or in the case the suspect offender escaped from detention awaiting trial.<sup>502</sup>

According to § 66 (2) of the Criminal Procedure Code, victims of gender based violence and relatives of victims of homicide are to be granted psycho-social and legal assistance upon request and as far as this assistance is needed to facilitate the fulfilment of their processual rights.<sup>503</sup> Psycho-social assistance includes preparing victims for the proceeding and the emotional burdens it may entail, as well as accompanying victims to and at interviews during the investigative proceeding and the main trial. The legal assistance encompasses counselling and representation through a lawyer. The Federal Ministry of Justice commissions suitable facilities to offer psycho-social and legal assistance services to those victims entitled to those services (according to § 65 1 lit. a or b Criminal Procedure Code), or after assessing the relevant legal pre-conditions.

### 3.2.2. Protection against repeat victimization

The security police (Sicherheitspolizei) impose protection measures in cases of domestic violence. These measures are regulated in § 38a of the Security Police Act (Sicherheitspolizeigesetz, SPG) and mainly consist of banning the offender from the residence and imposing a prohibition to return (“Wegweisung” and “Betretungsverbot”). These are measures to remove the “endangering person” (Gefährder) rather than removing the “victim” from the collective residence, thereby signalling to the “endangering person” that they are being held accountable for what they did. The security police officers are obliged to interfere in an objective, competent and sensitive manner in order to de-escalate the situation in question. The police are obliged to notify the prosecution about all initial suspicions for criminal offences.

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<sup>502</sup> Strafprozessrechtsänderungsgesetz I 2016 (Federal Gazette No. I 26/2016), §§ 70 Abs. 1, 172 Abs. 4, 177 Abs. 5, 181a).

<sup>503</sup> § 66 (2) Criminal Procedure Code.

According to § 38 SPG, the police are authorized to block an “endangering person” (Gefährder) from the place where a threat has taken place. § 38a SPG specifically deals with emergency barring orders for protection against violence, and authorizes the police to banish the offender from the vulnerable person’s residence and its immediate surroundings in the case of threat. What constitutes the “immediate surroundings” of the residence is defined individually. When a minor is involved in the case, an emergency barring order is valid for 50 meters around a school or care facility, for a period of 14 days. The emergency barring order is composed of several joint measures, including taking away the “endangering person’s” keys to the residency, informing them on the scope of the order, offering them to get their necessities from the residency (accompanied by an officer) and informing them about alternative accommodation facilities. Furthermore, the victim has to be informed about the ways to apply for a preliminary injunction (einstweilige Verfügung) and that a Protection against Violence Centre must be informed about the case, which then contacts the victim and offers help.<sup>504</sup>

### 3.2.3. Protection against secondary victimization

Measures for protecting victims of domestic violence were strengthened in national legislation by two reform packages: the Act for the Protection from Violence (Gewaltschutzgesetz, Federal Gazette No. 759/1996) and the Second Act for the Protection from Violence (Zweites Gewaltschutzgesetz, Federal Gazette No. I 40/2009). The first protects victims of domestic violence from the offender through emergency barring orders and prohibitions to return. The second introduces psychosocial assistance services to be valid also for civil proceedings and protective rules in relation to personal data and witness statements.

The Criminal Procedure Amendment Act 2016 (Strafprozessrechtsänderungsgesetz 2016, Federal Gazette No. I 26/2016), inter alia, implements Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime. Thereby, a newly introduced provision (§ 66 a Criminal Procedure Code as of 1 June 2016) acknowledges victims with “special protection needs” (besondere Schutzbedürftigkeit). Victims’ needs are to be assessed as quickly as possible relating to age, mental (seelisch) or health status, as well as concrete circumstances of the offence in question, for example:

- persons violated in their sexual sphere and self-determination,
- persons subject to violence in apartments (Gewalt in Wohnungen),

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<sup>504</sup> Kiem Manuela, Gewalt im häuslichen Bereich – Welche Rolle hat die Polizei?, in: Österreichisches Institut für Menschenrechte (ed.), Newsletter Menschenrechte, 1/2017, pp. 4-5.

- minors are considered to be victims with special protection needs in any case.<sup>505</sup>

Within this framework, also victims of gender-based violence are considered as victims with special protection needs. § 66a of the Criminal Procedure Code regulates the special protection needs of victims and thereby implements Art. 22 of Directive 2012/29/EU.

Victims with special protection needs must be informed about their “normal” victim’s rights by the police, according to § 66 and § 67 of the Criminal Procedure Code. In addition, they also need to be informed about their specific victims’ rights according to § 66a (2) Criminal Procedure Code. Victims with special protection needs enjoy the following specific rights according to the Criminal Procedure Code, which help avoid secondary victimization during the criminal procedure:

- To claim for being interviewed by a person of the same sex (if possible).
- To refuse answering questions, that target the intimate or private sphere of life – unless absolutely necessary for the case.
- To request a gentle interrogation in the investigative proceeding and in the main trial.
- To request the exclusion of the public from the main trial.
- To be informed immediately by the authorities in case of release of the offender or milder means of punishment.<sup>506</sup>
- To be informed in case of escape from prison by the prosecution.
- To have a person of trust while being interrogated.

If any of the above-listed special protection measures are not granted despite being requested by the victim, the law enforcement authorities are obliged to provide a justification.

#### 3.2.4. Compensation of damages

Victims of violence, who are either Austrian citizens or victims of human trafficking, are entitled to financial compensation according to the Victims of Crime Act (Verbrechensopfergesetz).<sup>507</sup>

Victims, who join a criminal proceeding as a private party, have extended rights to actively participate in the proceeding; furthermore, they may have claims for compensation to be advanced directly in the criminal proceeding. In theory, such a scenario is possible for all compensation claims. If there is sufficient evidence, the criminal court must adjudicate on all

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<sup>505</sup> European Union Agency for Fundamental Rights, Victims of crime in the EU: the extent and nature of support for victims, Vienna, 2015, [fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims](http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims).

<sup>506</sup> Victims with specific protection needs are to be informed by the prosecution (if the offender was not in custody) or by the criminal police (if the offender is in custody). Other types of victims may request the information from the authorities.

<sup>507</sup> Victims of Crime Act (Bundesgesetz vom 9 Juli 1972 über die Gewährung von Hilfeleistungen an Opfer von Verbrechen, Verbrechensopfergesetz - VOG), Federal Gazette No. 288/1972.

civil law claims. According to §§ 67 and 366 Criminal Procedure Code, the criminal court is obliged to assess the damages done.<sup>508</sup>

In case the evidence is not sufficient, the victim must initiate a civil court proceeding. However, the criminal court may consider further evidence insofar as no substantial delays are caused to the ending of the proceeding.

### 3.3. Critical assessment

Protection against Violence Centres can be considered as experts for the needs of victims of (domestic) violence. They also have expertise on how such victims' needs can be effectively addressed through legislative measures. Building on their expertise, the following section assesses victim protection measures in Austria with a focus on the implementation of the relevant EU Directive and the Istanbul Convention.<sup>509</sup>

#### 3.3.1. Protection against repeat victimisation

Emergency barring orders may be imposed for the victim's residency and – in case of endangered children endangered – schools and care facilities. However, the victim's workplace is not foreseen in these protective measures. Consequently, victims depend on employers for protection. This however implies that victims need to out themselves as victims of domestic violence at the workplace. Alternatively, they can apply for a preliminary injunction at the district court. Several experiences of counselling at Protection against Violence Centres provide ample evidence that this restricted scope of emergency barring orders, as currently foreseen in the law, causes practical problems for victims.<sup>510</sup>

Another critical point is that there are no effective procedures foreseen for a smooth flow of information between the security authority (in charge of emergency barring orders) and the civil court (in charge of preliminary injunctions). The flow of information does not work effectively in practical terms, for example the court informs the police via mail, rather than fax, about the outcome of applications for preliminary injunctions. The mail route is unpredictable in terms of time, and cannot be considered fully safe. A police notification about the application outcome is mandatory and a precondition for the extension of the emergency barring order (until the preliminary injunction is imposed). If this information mechanism for example between police and court does not work efficiently, the consequence is a protection gap between the two kinds of protection measures offered by legislation. In such cases, a victim can be unprotected and not be aware of this, as the application for a preliminary injunction was sent on time, but may not have been received. At the same time, the "endangering person" may not be informed about the prolongation of the emergency

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<sup>508</sup> Response by the Federal Ministry of Justice to an information request, received on 4 July 2017.

<sup>509</sup> Gewaltschutzzentrum Steiermark, Reformvorschläge 2017, Graz, 2017, [gewaltschutzzentrum-steiermark.at/aktuelles-presse/taetigkeitsberichte-reformvorschlaege/reformvorschlaege-2017](http://gewaltschutzzentrum-steiermark.at/aktuelles-presse/taetigkeitsberichte-reformvorschlaege/reformvorschlaege-2017).

<sup>510</sup> Ibid, p. 54.

barring order, as the mail route may have taken too long. The district courts have no deadline for sending the final decision on a preliminary injunction to the “endangering person”.<sup>511</sup> Considering this lack of quick communication channels and the unforeseen problems that may be caused, experts recommend making use of electronic ways of communication.

In the case protection measures are violated by the “endangering person”, the punishments can be considered very mild, too mild to be fully effective. According to § 84 Security Police Act, the violation of a barring order (according to § 38 Security Police Act) is to be punished with a fine of up to €500. According to experts in victim support, fines in fact do not act as a deterrent for offenders. Again, there are inconsistent regulations for the execution of preliminary injunctions. Furthermore, a victim might be punished for violating an emergency barring order in case they “allow” the offender to establish contact. This ruling is perceived by victim protection centres as highly problematic, as the vast majority of victims only “allow” this contact because they are under massive pressure or affected by threats coming from the offender.<sup>512</sup>

### 3.3.2. Victims with insecure/irregular residence

According to § 27 (2) of the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz), victims of domestic violence may be granted a “residence permit special protection” (Aufenthaltsberechtigung besonderer Schutz) under certain circumstances. Such circumstances are for example the imposition of a preliminary injunction, forced marriage, or female genital mutilation. In practice however, many of those affected - (primarily) women - are economically dependent on their spouse. This is either because they came to Austria in the framework of a family reunification, or because they have no access to the labour market because of childcare obligations or structural discrimination. Consequently, these women are hardly likely to apply for a preliminary injunction or an emergency barring order - rather they will remain living with their spouses in order to secure their livelihoods.<sup>513</sup>

## 4. Implementation level: State’s policies and measures to protect and support

On 26 August 2014, a National Action Plan on the Protection of Women against Violence (NAP)<sup>514</sup> was developed by an inter-ministerial working group “Protection of Women against

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<sup>511</sup> Ibid, pp. 55 et seqq.

<sup>512</sup> Gewaltschutzzentrum Steiermark, Reformvorschläge 2017, Graz, 2017, pp. 51 et seqq., [gewaltschutzzentrum-steiermark.at/aktuelles-presse/taetigkeitsberichte-reformvorschlaege/reformvorschlaege-2017](http://gewaltschutzzentrum-steiermark.at/aktuelles-presse/taetigkeitsberichte-reformvorschlaege/reformvorschlaege-2017).

<sup>513</sup> Ibid, pp. 104 et seqq.

<sup>514</sup> Federal Ministry for Education and Women’s Affairs, Nationaler Aktionsplan zum Schutz von Frauen vor Gewalt. Maßnahmen der österreichischen Bundesregierung 2014-2016, Vienna, 2014, [bmgf.gv.at/home/Frauen\\_Gleichstellung/Gewalt\\_gegen\\_Frauen/Nationaler\\_Aktionsplan\\_zum\\_Schutz\\_von\\_Frauen\\_vor\\_Gewalt\\_2014\\_2016](http://bmgf.gv.at/home/Frauen_Gleichstellung/Gewalt_gegen_Frauen/Nationaler_Aktionsplan_zum_Schutz_von_Frauen_vor_Gewalt_2014_2016).



Violence" (Schutz von Frauen vor Gewalt). This was done in response to the ratification of the Istanbul Convention.<sup>515</sup>

The NAP contains various activities to be implemented between 2014 and 2016 in the areas of coordination of political measures, prevention of violence against women, victim support, activities in the area of victim protection, investigation, prosecution, procedural law, as well as measures in European and international cooperation. A report by the Federal Ministry of Health and Women's Affairs on the implementation of these measures will be available by the end of 2017.<sup>516</sup>

Austria and Monaco were the first two countries which were assessed by a base-line evaluation on the implementation of the Istanbul Convention. The evaluation was based on a rather detailed questionnaire. The findings are available in the Austrian report to GREVIO, which was prepared by the Federal Ministry for Health and Women's Affairs in collaboration with other Federal Ministries, the provinces and selected civil society organisations.<sup>517</sup>

The GREVIO committee also invited NGOs and civil society organisations to provide reports on the implementation of the Istanbul Convention in Austria. GREVIO considers the NGO Shadow Report as a supplement to the State Report.<sup>518</sup> It was criticised that the measures were not adequately resourced.<sup>519</sup> The evaluation report further suggests inclusive measures that do make the Austrian services (shelters included) better accessible to vulnerable groups, such as asylum-seekers, women with disabilities, mental illness, economically dependent women or drug addicts.<sup>520</sup>

The following sections will provide an overview about the state's policies and measures to protect and support victims of domestic violence, as outlined in the NAP. This will be structured along the different steps in the procedure, beginning with the identification of victims (emergency hotlines), immediate protection measures (bans and shelters), support and guidance through the proceeding (information and prevention of secondary victimization), and finally restitution.

As previously stated – Austria already implemented many protection measures before the ratification of the Istanbul Convention. Therefore, most important measures will be

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<sup>515</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence and explanatory report, Istanbul, 2011, [rm.coe.int/168046031c](http://rm.coe.int/168046031c).

<sup>516</sup> Information provided by the Federal Ministry of Health and Women on 27 June 2017.

<sup>517</sup> Federal for Health and Women's Affairs, GREVIO 1. Staatenbericht Österreich, 2016, Vienna, [bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio\\_1\\_staatenbericht\\_oesterreich\\_august\\_20161.pdf](http://bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio_1_staatenbericht_oesterreich_august_20161.pdf).

<sup>518</sup> Council of Europe, Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, GREVIO Baseline Evaluation Report Austria, Strasbourg, Council of Europe, 27 September 2017, [bmgf.gv.at/cms/home/attachments/1/1/6/CH1573/CMS1506417636916/grevio\\_baseline\\_evaluation\\_report\\_austria\\_barrier\\_free.pdf](http://bmgf.gv.at/cms/home/attachments/1/1/6/CH1573/CMS1506417636916/grevio_baseline_evaluation_report_austria_barrier_free.pdf)

<sup>519</sup> Ibid, pp. 14 et seqq.

<sup>520</sup> Ibid, pp. 32, 48.

addressed, irrespective of whether the implementation was motivated by the Istanbul Convention or the EU Directive or not.

#### 4.1. Emergency hotlines

Different helplines are available to victims of various types of violence in Austria. The hotline for victims of domestic violence is the women's helpline (Frauenhelpline).<sup>521</sup> It was set up by the Austrian Association of Women's Shelters in 1998. It is cost-free for callers and available around the clock, constituting a low-threshold contact point for all victims of crime and their relatives. The hotline can offer emotional support to women who have been directly or indirectly affected by a crime. The telephone crisis intervention also immediately arranges emergency measures if necessary and offers clearing services to callers, i.e. arranging referrals to other supporting organizations on behalf of the victim. Since 2013, the emergency hotline has also been accessible to deaf callers. The services provided by the women's helpline are available in German, English, Bosnian/Serbian/Croatian, Arab, Russian and Turkish – all languages are available on demand, but not completely funded by the Ministry. In general, the helpline is funded by the Ministry of Health and Women's Affairs in the context of a three-year funding contract.<sup>522</sup> However, this funding is not secured - there is no regulation for it in the federal law, and a change in government could easily mean that the women's helpline may be abolished.<sup>523</sup>

#### 4.2. Protection against repeat victimisation

There are two kinds of victim protection measures available to victims in cases of acute domestic violence:

- security police measures including barring orders - whereby the victim remains in the residency
- victim shelters - whereby the offender remains in the residency

##### 4.2.1. Barring and eviction orders imposed by the police

The police play a key role in adopting barring and eviction orders; they are tasked with the "prognosis" of endangerment in cases of domestic violence. Risk assessment takes place on site and consists of evaluating the circumstances which constitute a violation of the "endangered person's" life, health or freedom.

In the case the police do not assume "endangerment" by a certain person, no further measures are applied. In case "endangerment" is assumed, the police must initiate security

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<sup>521</sup> Verein Autonome Österreichische Frauenhäuser, Frauenhelpline, [frauenhelpline.at](http://frauenhelpline.at).

<sup>522</sup> Federal Ministry for Health and Women's Affairs, GREVIO 1. Staatenbericht Österreich, Vienna, 2016, p. 37, [bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio\\_1\\_staatenbericht\\_oesterreich\\_august\\_20161.pdf](http://bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio_1_staatenbericht_oesterreich_august_20161.pdf); Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 57, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>523</sup> Ibid.

police measures and inform a Protection against Violence Centre. According to § 38a SPG, the police must assess the alleged “endangerment” “based on specific facts” (aufgrund bestimmter Tatsachen); a previous attack is clearly an indication for adopting protective measures, for example.

The development and implementation of a standardised tool for risk assessment is foreseen in the NAP for 2014 and 2015. The Ministry responsible is the Federal Ministry of the Interior in coordination with the Federal Ministry of Justice.<sup>524</sup>

The psychological services of the Federal Ministry of the Interior have developed a standardised tool for risk assessment in cases of domestic violence, called “SALFAG”. SALFAG is based on international risk-assessment tools and is tailored to correspond to the guidelines set forth in the Austrian legislation. SALFAG has been applied as a pilot project in Vienna, Upper Austria and Vorarlberg in 2014, was evaluated and further developed in 2015, and finally released for use in the whole of Austria in 2016<sup>525</sup>.

The NGO Shadow Report to GREVIO of September 2016 alleges that SALFAG has not yet been tested and evaluated in research. The report further criticizes that SALFAG was not specifically developed to assess lethal risk, as would be required by the Istanbul Convention.<sup>526</sup> According to the Federal Ministry of the Interior and in response to the report, the SALFAG is still in a developmental stage and the implementation strongly depends on technical issues.<sup>527</sup>

The Federal Ministry of the Interior reported that different tools are available for risk assessment. Also select NGOs (Protection against Violence Centres, as well as counselling Centres) use further specific tools.<sup>528</sup> The Viennese Intervention Centre together with the Viennese police started to implement a standardised risk-assessment tool in Vienna in 2010, called Multi-Agency Risk Assessment Conference (MARAC). After a pilot phase, the MARAC is now being implemented in Vienna and consists of the following measures:

- the MARAC steering group, tasked with improving the protection of violence victims.  
The group meets four times a year;

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<sup>524</sup> Federal Ministry for Education and Women’s Affairs, Nationaler Aktionsplan zum Schutz von Frauen vor Gewalt. Maßnahmen der österreichischen Bundesregierung 2014-2016, Vienna, 2014, p. 13, [bmgf.gv.at/home/Frauen\\_Gleichstellung/Gewalt\\_gegen\\_Frauen/Nationaler\\_Aktionsplan\\_zum\\_Schutz\\_von\\_Frauen\\_vor\\_Gewalt\\_2014\\_2016](http://bmgf.gv.at/home/Frauen_Gleichstellung/Gewalt_gegen_Frauen/Nationaler_Aktionsplan_zum_Schutz_von_Frauen_vor_Gewalt_2014_2016).

<sup>525</sup> Federal Ministry for Education and Women’s Affairs, GREVIO 1. Staatenbericht Österreich, Vienna, 2016, p. 56, [bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio\\_1\\_staatenbericht\\_oesterreich\\_august\\_20161.pdf](http://bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio_1_staatenbericht_oesterreich_august_20161.pdf).

<sup>526</sup> Association of Austrian Autonomous Women’s Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 80, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>527</sup> Information received from the Federal Ministry of the Interior on 8 September 2017.

<sup>528</sup> Written response by the Federal Ministry of the Interior to an information request, provided on 27 June 2017.

- the MARAC teams,<sup>529</sup> tasked with organizing case-conferences to exchange information about risk factors and deciding on security measures for victims in high risk situations;
- the MARAC coordination, conducted by the Viennese Intervention Centre.

The steering group discusses issues, such as the effective implementation of preliminary injunctions (and sanctions in case these are violated); data protection; dealing with mentally ill threatening parties; European protection measures; security checks of residencies after emergency barring orders; and improving the information flow between police and prosecution. The MARAC teams consist of victim support services, police, youth welfare offices, shelters, and probation services. They meet regularly and discuss problematic and challenging cases, building on the exchange of their professional experiences on factors of risk and endangerment. Together, a safety-plan is developed with the victim always being the starting point of any action.<sup>530</sup>

So far, the MARAC has only been implemented in Vienna. However, the NAP does foresee a pilot implementation of the MARAC in two further Austrian provinces, which also includes designated scientific supervision. The Federal Ministry of the Interior is responsible for this implementation to occur between 2014 and 2016.<sup>531</sup> According to the Ministry, the implementation of the tool is in fact still in process and not yet fully accomplished.<sup>532</sup>

The security authority must be notified immediately after an emergency barring order has been adopted. The order must be assessed by the authority within 48 hours of receipt and can be repealed in the case it is not justified. In such a case, the vulnerable person must be notified immediately verbally or in written form (delivery in person) about the repeal of the emergency barring order. Contrastingly, in case the emergency barring order is justified, a “preventive legal instruction” may be carried out, summoning the “endangering person” to the police and instructing them about legally conformist behaviour. Considering elderly victims of violence in need of care, it has to be noted that the protection against violence law protects victims of domestic violence independent of their relationship to the attacker. Therefore, also children, caregivers, neighbours, cohabitants can be banished.<sup>533</sup> The barring order cannot be extended to the workplace of the victim, as pointed out previously.<sup>534</sup>

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<sup>529</sup> Currently, there are two such teams in Vienna (Team South and Team West).

<sup>530</sup> Wiener Interventionsstelle gegen Gewalt in der Familie, Partnerschaften gegen Gewalt. Leitfaden zum Aufbau multi-institutioneller Bündnisse und Fallkonferenzen zur Verhinderung von schwerer und wiederholter Gewalt, Morden und Mordversuchen im Bereich Gewalt an Frauen und häusliche, Vienna, 2015, [interventionsstelle-wien.at/marac-leitfaden](http://interventionsstelle-wien.at/marac-leitfaden).

<sup>531</sup> Federal Ministry for Education and Women’s Affairs, Nationaler Aktionsplan zum Schutz von Frauen vor Gewalt. Maßnahmen der österreichischen Bundesregierung 2014-2016, Vienna, 2014, p. 13, [bmgf.gv.at/cms/home/attachments/9/9/2/CH1553/CMS1481105369959/nap.pdf](http://bmgf.gv.at/cms/home/attachments/9/9/2/CH1553/CMS1481105369959/nap.pdf).

<sup>532</sup> Information provided by the Federal Ministry of the Interior on 8 September 2017.

<sup>533</sup> Federal Ministry of Labour, Social Affairs and Consumer Protection, Gewaltschutz für ältere Menschen. Befragung von Expertinnen und Experten über Möglichkeiten und Hindernisse bei der Umsetzung gesetzlicher

Furthermore, a few days after an emergency barring order was imposed, the victim is summoned to a meeting with a specifically trained officer in order to discuss the existing protection measures, and the possible need for further measures to be implemented. About 480 such specifically trained officers are available in Austria.<sup>535</sup>

In case the “endangering person” still shows up at the residency, the victim must inform the police immediately. The police will then banish the offender again and may impose a financial penalty of up to €360. In cases of repeated violations of the emergency barring order, detention may also be imposed. The police have the duty to monitor the compliance with the order at least once within the first three days after it is imposed. The emergency barring order lasts for a total of 14 days and may be prolonged in case the victim applies for a preliminary injunction up to the time the decision on the application has been made (to four weeks at maximum). The court must inform the security police about the application for a preliminary injunction. As already pointed out, this does not work always effectively, particularly if the way of mail is used for this form of communication.<sup>536</sup>

The emergency barring order takes two weeks – verification of compliance by the police is foreseen within a couple of days. Within the two weeks of order validity, the victim needs to apply for a preliminary injunction at the district court of residence, with the support of the Protection against Violence Centres.

The preliminary injunction can be imposed for period of up to a year. § 382e Enforcement Code (Exekutionsordnung, EO) regulates the general protection against violence and § 382b EO regulates the protection against violence in residencies (domestic violence). In such cases, the emergency barring order is extended for further two weeks.

Victims may apply to both types of injunction together or separately - an emergency barring order is not a precondition for a preliminary injunction. Still, there are several preconditions for the application of a general preliminary injunction:

- The applicant is affected by physical violence, threatened by physical violence or affected by massive psychological violence.

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Regelungen in Österreich, Vienna, 2015, p. 58, [sozialministerium.at/cms/site/attachments/9/9/1/CH3434/CMS1451924208875/soziale-themen\\_seniorinnenpolitik\\_gewaltschutz\\_gesetze.pdf](https://www.sozialministerium.at/cms/site/attachments/9/9/1/CH3434/CMS1451924208875/soziale-themen_seniorinnenpolitik_gewaltschutz_gesetze.pdf).

<sup>534</sup> Written response by the Federal Ministry of the Interior to an information request, provided on 27 June 2017.

<sup>535</sup> Federal Ministry for Health and Women's Affairs, GREVIO 1. Staatenbericht Österreich, Vienna, 2016, [bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio\\_1\\_staatenbericht\\_oesterreich\\_august\\_20161.pdf](https://www.bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio_1_staatenbericht_oesterreich_august_20161.pdf).

<sup>536</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 18, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](https://www.taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

Additional preconditions for a preliminary injunction for the protection against violence in residencies:

- The offender and the victim live together
- The victim needs the residency for daily life (independent of whom the residency is owned by)

The applicant must bring forward evidence (Bescheinigungsmittel) to prove violence. This can for example be testimonies at the police, doctors' certificates, pictures, documentations of previous injuries, witnesses' testimonies, police records, or similar.<sup>537</sup>

The victim (or their legal representative) must apply for a preliminary injunction at the District Court of the place of residence. The court may request the offender to comment on the application. Furthermore, the court may summon the victim for a hearing, to which a person of trust may be brought along. In the case of language-barriers, interpretation is available and is paid for by the court if the victim has low/no income. The court is obliged to decide on the application of the preliminary injunction as quickly as possible. In case no emergency barring order has yet been adopted, the victim must also apply for the immediate execution of the preliminary injunction and for the immediate notification on the execution at court.<sup>538</sup> In case of a violation of the preliminary injunction, a financial penalty is imposed and in case of repeat violation, the offender might be detained.

#### 4.2.2. Shelters

In case the victim does not want to involve the police or does not feel safe despite an emergency barring order or a preliminary injunction, they may flee to a women's shelter. The victim (and their children) may stay at the shelter until they feel safe to move back to their initial residency, or have found a new one. Women's shelters are financed and provided by the governments of the Austrian provinces.<sup>539</sup> Women without income may live there free of charge; others are requested pay a small share of their income. At the shelter, the victims have access to counselling and therapy, as well as have the opportunity to discuss their situation in a calm and safe manner. This way, an adequate course of action can be decided in a de-fused environment. There is a wide range of staff working at women's shelters, whose offers include: psychosocial counselling; guidance and support; help in overcoming trauma; attendance in finding new work and accommodation; basic legal counselling; support in enforcing victims' rights and the rights of their children; support in the development of plans for the future; preparation for the life after living in the shelter; psycho-social assistance

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<sup>537</sup> Gewaltschutzzentrum Niederösterreich. Zentrum für Operschutz und Gewaltprävention, Behördliche Wegweisung, Betretungsverbot, einstweilige Verfügung, Infofolder, 2009, [gewaltschutzzentrum.at/noe/download/wegweisung\\_verfuegung.pdf](http://gewaltschutzzentrum.at/noe/download/wegweisung_verfuegung.pdf).

<sup>538</sup> Ibid.

<sup>539</sup> Frauenhäuser Steiermark, [frauenhaeuser.at/ueber-uns/die-entstehung-der-frauenhaeuser.html](http://frauenhaeuser.at/ueber-uns/die-entstehung-der-frauenhaeuser.html).

service (psychosoziale Prozessbegleitung) for the women at the shelter; accompaniment to court, the police and other facilities. The shelters also operate a 24/7 telephone counselling hotline available to victims.<sup>540</sup>

Evidence shows that there is a definite need for crisis shelters available to women and girls affected by “honour crimes” and forced marriage.<sup>541</sup> In Austria, there is only one crisis shelter in Vienna, which offers accommodation for up to eight young women (aged between 16 and 24 years) from all over Austria plus two extra beds in case of emergencies.<sup>542</sup>

The NAP on the protection of women against violence foresees an evaluation of the pilot phase, an adaption of the concept if needed, as well as the implementation of a crisis shelter as a regular service, available to those who need it.<sup>543</sup> However, information on the implementation of these services will not be available before the end of 2017. So far, it has been confirmed by the Federal Ministry that there is one such emergency shelter implemented in Vienna, which stands for all of Austria – the Orient Express.<sup>544</sup> According to the Ministry, also the Caritas Association DIVAN offers counselling to women, who are (likely to be) affected by “honour crimes” and forced marriage. In emergency cases, accommodation can also be offered to victims in the care facilities of the Caritas.<sup>545</sup> The counselling services has been confirmed by an interviewed member of the Caritas Association DIVAN, but the opportunity to provide the victims with accommodation in the facilities of the Caritas could not be confirmed.<sup>546</sup>

The NGO Shadow Report assesses the funding of these shelters as being insecure “patchwork funding”, rather consisting of core funding. According to the report, funding is very often based on a system of daily rates (however some of these daily rates are only funded if the clients are entitled to minimum benefits).<sup>547</sup> This constitutes a grave accessibility problem. This issue has also been incorporated in the GREVIO evaluation report.<sup>548</sup>

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<sup>540</sup> Ibid.

<sup>541</sup> ETC Graz, Developing Directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016 [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).

<sup>542</sup> Orient Express, Shelter for Girl and young Women affected and threatened by forced marriage, [orientexpress-wien.com/en/we\\_for\\_women/crisis\\_shelter/](http://orientexpress-wien.com/en/we_for_women/crisis_shelter/).

<sup>543</sup> Federal Ministry for Education and Women’s Affairs, Nationaler Aktionsplan zum Schutz von Frauen vor Gewalt. Maßnahmen der österreichischen Bundesregierung 2014-2016, Vienna, 2014, p. 11, [bmgf.gv.at/cms/home/attachments/9/9/2/CH1553/CMS1481105369959/nap.pdf](https://bmgf.gv.at/cms/home/attachments/9/9/2/CH1553/CMS1481105369959/nap.pdf).

<sup>544</sup> Orient Express, Beratungs- Bildungs-, und Kulturinitiative für Frauen, [orientexpress-wien.com/](http://orientexpress-wien.com/).

<sup>545</sup> Written response by the Federal Ministry for Women and Health to an information request on 27 June 2016.

<sup>546</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).

<sup>547</sup> Association of Austrian Autonomous Women’s Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 55, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](https://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>548</sup> Council of Europe, Secretariat of the monitoring mechanism of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, GREVIO Baseline Evaluation Report Austria, Strasbourg, Council of Europe, 27 September 2017,

#### 4.3. Support offered by protection against violence centres

Austria was one of the first countries to implement the so called “proceeding support/process support” (Prozessbegleitung) for victims of violence in 2005. The main purpose of these services is to support victims of violence during the criminal proceeding, in order to avoid secondary victimisation and re-traumatisation. These services aim at preventing the victim from feeling victimised again during the criminal court procedure itself, but this time by the public authorities.<sup>549</sup>

Protection against Violence Centres are commonly victim support services, which are specialized towards victims of domestic violence and stalking. They intervene into violent relationships by getting into contact with victims after the police have acted against the “endangering person” through eviction and barring orders (according to § 38a Security Police Act). The intervention through the Protection against Violence Centres includes the following activities to support the victim after the threat has occurred: development of a crisis or security plan together with the victim; legal and psychosocial support for the victim; the coordination of the intervention process; and referral to other organisations and experts if necessary. Victims of domestic violence, who benefit from a security police protection measure, are referred to Protection against Violence Centres by the police. It is only for this particular kind of violence that there exists an explicit referral procedure. Independent of whether or not the victim approves of this, the police will forward data to the Protection against Violence Centre, who then are obliged to pro-actively contact the victim. Services are then offered either via telephone or via mail. This procedure has been implemented as a supporting measure to the protection against violence act. In case of written contact, a personal letter is sent to the victim introducing the services of the support centres, and offering a booklet of information. The victim is therefore given the opportunity to refuse contact and services. In case they do refuse, the support service will offer to get in touch and help the victim later on. According to a Protection against Violence Centre, about 50% of their clients are referred to them by the police, the other 50% turn to the support services out of their own initiative before they report to the police.<sup>550</sup> Despite this, victim support services are available to domestic violence victims regardless of their willingness to report or if an emergency barring order has been imposed. This ruling meets the standards outlined in EU Directive 2012/29/EU, Article 8. Furthermore, these services are available to victims of domestic violence for free – independent of income and property.

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[bmgf.gv.at/cms/home/attachments/1/1/6/CH1573/CMS1506417636916/grevio\\_baseline\\_evaluation\\_report\\_austria\\_barrier\\_free.pdf](http://bmgf.gv.at/cms/home/attachments/1/1/6/CH1573/CMS1506417636916/grevio_baseline_evaluation_report_austria_barrier_free.pdf)

<sup>549</sup> Platz Eva, Prozessbegleitung besonders schutzbedürftiger Opfer, Strafverteidigung – Neue Herausforderungen, in: Journal für Strafrecht 2, 2006, p. 39.

<sup>550</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016, p. 32, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](http://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).



According to the NGO Shadow Report to GREVIO, some victim protection centres have a high case-load and can only provide short-term crisis support. For example, the Intervention Centre Vienna is obliged by contract to serve 5,800 victims of domestic violence and stalking annually. 25 full-time staff members are foreseen to provide this service, which totals on average 5.9 hours per victim per year. Yet another survey of 2016 reveals that some victim support services face challenges in having all of their work reimbursed and in being able to provide for all service hours that are necessary. It seems that in reality, they need to either limit service hours, or must turn down supporting clients. Furthermore, the members of support services state that public funding does not cover all travel expenses (which are particularly necessary when dealing with victims in rural areas) and they do not cover the costs for other important tasks, like outreach, public relations, or the cooperation with other actors to improve services.

The Federal Ministry of Justice has implemented guidelines for the billing of psycho-social and legal assistance services, according to the catalogue of services in the respective domains. These guidelines are rather detailed and explain transparently the kinds of efforts, costs and service hours funded by the Federal Ministry of Justice. There exists no limit for support hours in criminal proceedings. When it comes to psycho-social assistance services in the civil court proceedings, services costing up to €800, or in the case of entitlement to litigation services, costs of up to €1,200 are funded. The Federal Ministry of Justice also funds travel expenses supporting victims who live more than 20 kilometres away from the next responsible support service (the distance to the victim's residency, women's shelter or similar is equally funded). Furthermore, the Federal Ministry of Justice funds 15% of all costs as overhead costs in addition to all funded service costs and cash expenditures.

The purpose of the legal services is to counsel the victim on the legal procedure and to legally representing the victim, which includes claiming for the victims' entitlements. The purpose of the psychological services is to prepare the victim for both reporting at the police and also the legal proceeding. This support includes all details, like potential questions of the prosecutor and the defence lawyer, the burdens associated with the trial, and the prospective outcome. It is the victim support services who are in charge of providing psychosocial and legal victim assistance. The amount of and concrete kind of support is agreed upon taking into consideration the victims' needs and current situation. During the extension of the Second Protection against Violence Act, psycho-social assistance was extended to also encompass the civil court procedure (if connected to the criminal procedure). Thereby, only victims who have used psycho-social and legal assistance during the criminal procedure are entitled to legal support services in the civil procedure. The maximum costs of psycho-social assistance in a civil proceeding covered per person are €800 or €1,200 for those using legal

aid. Initially, the scope legal services should have also been extended, however this was ultimately skipped.

The standards for adequate service provision, issued by the Federal Ministry of Justice, include the required qualifications and other prerequisites service providers must be able to offer. These include: basic qualification and training on psychosocial support; counselling competence in training and practice on women-specific issues; knowledge about forms of gender-based violence; basic knowledge about legal procedures; gender knowledge; networking competence; the ability to communicate and to develop; time-flexibility; readiness to attend vocational training and further trainings; as well as permanent supervision. The Federal Ministries of Justice, Family, Women, Interior and the Federal Chancellery are obliged to offer these trainings by providing the financial means.<sup>551</sup>

The Federal Ministry of Justice has published a manual on their given funding of legal and psychosocial assistance services, based on the aforementioned catalogue outlining existing legal and psychosocial assistance services. It includes very detailed provisions and thereby makes the process of service provision transparent.<sup>552</sup> In terms of quality control, the funding contracts between the Federal Ministry of Justice and the service providers refer to these standards<sup>553</sup>.

#### 4.4. Protection against secondary victimization

Secondary victimisation refers to the feeling of being victimised again during the criminal proceeding, but by the public authorities or other actors of the criminal justice system. One of the main purposes of the psycho-social and legal support services as outlined above is the prevention of and protection against this secondary victimisation.<sup>554</sup>

During the implementation of the EU Victim's Directive 2012/29/EU, an additional means to prevent secondary victimization was created: § 66a of the Criminal Procedure Code transposes the EU Victim's Directive 2012/29/EU into national legislation on the level of procedural rights.

Victims with special protection needs (such as victims of domestic violence) are not simply added to other categories of victims. Rather, a subjective right to an assessment of special protection needs by the police was established, which must be conducted as early as possible. The police are obliged to document the outcome of this assessment in the instructions on victims' rights.

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<sup>551</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).

<sup>552</sup> Bundesministerium für Justiz, Handbuch Prozessbegleitung. Leitfaden für die Abrechnung von Leistungen nach dem Leistungskatalog für Prozessbegleitung, Vienna, 2017 [opferhilfe.justiz.gv.at/dateien/Handbuch\\_PB.pdf](https://opferhilfe.justiz.gv.at/dateien/Handbuch_PB.pdf).

<sup>553</sup> Information provided by the Federal Ministry of Justice on 13 September 2017.

<sup>554</sup> Platz Eva, Prozessbegleitung besonders schutzbedürftiger Opfer, Strafverteidigung – Neue Herausforderungen, in: Journal für Strafrecht 2, 2006, p. 39.

The police do not report any problems with this in practice. Police officers report carrying out this assessment based on the criteria set out in the law<sup>555</sup> and then proceed to explain the available protection measures to the victim. The victims then select what they need. Police officers reported that this assessment does not take a lot of time and resources.<sup>556</sup>

Another indicator for the state's commitment to prevent secondary victimization in the criminal justice system is whether the public prosecution has implemented a specific competence for domestic violence. Public prosecutors with special trainings in dealing with cases of domestic violence are available in the majority of the Austrian prosecution offices.<sup>557</sup> Furthermore, at district courts and first instance courts, proceedings on domestic violence and sexual offences must be assigned to the same departments. The Austrian Supreme Court has implemented a specific professional committee for family law matters, which in its scope also deals with cases of domestic violence.<sup>558</sup>

## **5. Impact on (potential) victims: accessibility and effectivity of services**

This section addresses how the state's policies, measures and implemented (funded) services are effectively available to rights holders. It also investigates the accessibility thereof to different people with different needs.

### **5.1. Effectivity of protection measures**

A study was carried out to assess how accessible and effective protection measures (emergency barring orders and preliminary injunctions) are for persons with specific needs.<sup>559</sup> The study distinguishes specific needs related to the macro-level, meso-level and micro-level.

Specific needs at the macro level refer to structural discrimination experienced for example by victims with irregular or insecure residence status. In cases where the victim leaves an abusive relationship, the residence status and permit of these victims – (mainly) women – becomes insecure. Although residency may be granted to victims of abusive (or criminal) partners, this type of residency is usually only valid for a year. Later on, victims must meet the same requirements as other victims, including the requirement on economic independence. In particular migrant victims of domestic violence (who entered the country in

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<sup>555</sup> Victims of sexual violence, domestic violence, minor victims and the criteria: age, mental health condition, kind and circumstances of the offence.

<sup>556</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).

<sup>557</sup> Information provided by the Federal Ministry of Justice on 13 September 2017.

<sup>558</sup> Federal for Health and Women's Affairs, GREVIO 1. Staatenbericht Österreich, Vienna, 2016, p. 43 et seq., [bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio\\_1\\_staatenbericht\\_oesterreich\\_august\\_20161.pdf](https://bmg.cms.apa.at/cms/preview/attachments/1/7/4/CH1573/CMS1467384168858/grevio_1_staatenbericht_oesterreich_august_20161.pdf).

<sup>559</sup> Amesberger Helga, Haller Birgitt, SNaP. Polizeiliche und gerichtliche Schutzanordnungen bei Gewalt in engen sozialen Beziehungen – die Situation von Frauen mit spezifischen Bedürfnissen, Länderbericht Österreich, Wien, 2016, [ikf.ac.at/pdf/Bericht\\_Oesterreich\\_101016.pdf](https://ikf.ac.at/pdf/Bericht_Oesterreich_101016.pdf).

the context of family reunification or as asylum seekers) are affected by this discrimination at the structural level and thus have related specific needs.

The aforementioned study understands specific needs at the meso-level mainly as needs related to communication barriers. These barriers can arise due to disability, learning difficulties, language barriers or mental illness. In practice, the police – who are called in emergency cases of domestic violence – seem to rather want to speak with the children and sometimes with the offender to find out what has happened. This may lead to a misinterpretation of the need for protection measures. Interpreters are not available for all languages immediately; this is a problem especially for victims of violence in refugee homes. Another characteristic entailing specific needs is related to social bonds in migrant communities, religious communities or disability communities. Social control is very strong in such communities and can cause silence in victims of violence, in order to avoid stigmatization, exclusion, or other community sanctions. In some migrant communities, the victim might be blamed for bringing “internal community issues” to law enforcement authorities.<sup>560</sup> Dependent victims also manifest specific needs and if these are not met, victims hardly have access to protection measures. For example, persons with disabilities or care needs who are victimized by their caregivers hardly have access to protection measures, especially if they are isolated and live in remote or rural areas. However, even if they do manage to call the police, protection measures may only be imposed if the victim is in hospital. In case victim and endangering persons live in the same care facility, the endangering person is mostly transferred to another department or floor, where it is highly likely they become violent against other people. This seems to occur when aggression is due to mental illness (dementia). In these cases, protection measures (emergency barring orders) are not effective, but there are lacking resources to provide separate rooms and/or facilities for the people in question.

Finally, the study defines accessibility barriers at the micro level as related to personal features, like for example the fear of reporting, bad experiences and/or shame, or a lack of trust in law enforcement authorities. Cultural aspects also play a role, especially among female victims, who often have a perception of normality and that they “deserve” to be treated in a certain way. Oftentimes they do not dare to refuse the will of their husbands. Experts working closely with refugee support services emphasise many offenders stating they are “entitled” to be violent towards their wives, as this is a normal phenomenon of their culture. Thus, an alternative to imposing an emergency barring order in nursing or refugee homes is to impose a ban to enter the residency in the first place. According to the findings of

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<sup>560</sup> Ibid, pp. 19 et seqq.

the study, this method is often applied as a preliminary measure preceding the emergency barring order, as it is low threshold and does not demand the involvement of the police.<sup>561</sup>

Yet another group of victims encompasses victims of police officers, who also manifest restricted access to protection and support in cases of domestic violence or violence occurring during a police operation. Those who become victims of domestic violence by police officers fear to report and are reluctant to give testimony, as they fear not being believed by the colleagues of those they are reporting against. This is particularly relevant in rural areas where anonymity is an issue, but is also well reported in urban areas. The NGO Shadow Report to GREVIO recommends to therefore increasing the share of women in the police force.<sup>562</sup>

#### 5.1.1. Enhancing accessibility of emergency barring orders

One of five Austrian women (20%) has experienced physical and/or sexual violence since the age of 15. Another 13% have experienced physical and/or sexual violence by their partners (current or former) since the age of 15.<sup>563</sup>

In 2016, the Austrian police imposed 8,367 emergency barring orders and 8,261 in 2015. In 2010, the collection of data on violations of barring orders was ceased. The last available report shows that in 2010, 770 of 6,759 emergency barring orders were violated.<sup>564</sup>

A research project reveals different types of barriers in accessing these protection orders, which affect women with special needs related to the macro-, meso- and micro-level.<sup>565</sup> The researchers recommend awareness-raising and training programmes targeted towards the police, relating in particular to women with specific needs as those outlined above. Police officers were found to have a lack of knowledge and experience when it comes to dealing with women who are disabled, for example. Thereby, it emerged that there needs to be a difference made in acknowledging visible specific needs (physical disabilities, communication barriers), and invisible needs (e.g. mental illnesses, irregular residence status), which require interpretation and close attention by the police officer. Particularly when it comes to meeting the latter needs, police officers often experience severe challenges.

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<sup>561</sup> Ibid, pp. 26-28.

<sup>562</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 9, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>563</sup> European Union Agency for Fundamental Rights, Violence against Women: an EU wide survey. Results at a glance, 2015, p. 18, [fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-results-glance](http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-results-glance).

<sup>564</sup> Wiener Interventionsstelle gegen Gewalt in der Familie, Tätigkeitsbericht 2016, Vienna, 2017, pp. 73-78, [interventionsstelle-wien.at/taetigkeitsberichte-der-wiener-interventionsstelle](http://interventionsstelle-wien.at/taetigkeitsberichte-der-wiener-interventionsstelle).

<sup>565</sup> Amesberger Helga, Haller Birgitt, SNaP. Polizeiliche und gerichtliche Schutzanordnungen bei Gewalt in engen sozialen Beziehungen – die Situation von Frauen mit spezifischen Bedürfnissen, Länderbericht Österreich, Wien, 2016, [ikf.ac.at/pdf/Bericht\\_Oesterreich\\_101016.pdf](http://ikf.ac.at/pdf/Bericht_Oesterreich_101016.pdf).

This is a crucial insight, as empirical evidence indicates that women with all types of disabilities are at higher risk of being affected by violence in the sphere of close contacts. Despite this, the template used by the police to impose an emergency barring order in the case of violence does not contain any indicators of endangerment related to disabilities or mental illnesses.<sup>566</sup> Therefore, specific needs of the (female) victim are neither assessed nor documented.<sup>567</sup> Elderly persons and their needs are encompassed by the protection against violence laws and the protection measures included therein. However, protection measures are not effective in practice if mutual dependencies exist. In such cases, the offender is most often a caregiver, or the victim is economically/physically dependent due to age. Protection shelters are also not suitable for elderly victims or those with specific care needs. Such victims are often referred to nursery homes.<sup>568</sup>

In order to meet these challenges identified, the authors of the research study recommend raising awareness within the police force, enhancing cooperation and networking efforts with disability organisations, experts and victim support services, in order to improve the likelihood of victims to report to the police. Particularly victims with special protection needs are too often afraid of not being trusted by the police.<sup>569</sup> However, the documentation of special needs due to mental or physical disabilities or the residence status is not in-line with data protection guidelines and it is thus not recommended. Nonetheless, experts agree that victim protection has a clear priority over non-discrimination and data protection.<sup>570</sup>

A possible means to raise awareness for the special needs of (female) victims would be the inclusion of disabled persons/migrants/organizations representing those with special needs into the activities of the political-conceptual level. For example, they should be included when developing campaigns and National Action Plans, and be able to voice their particular concerns and needs. The authors of the study furthermore suggest adopting an intersectional approach, encompassing the integration of disability issues into the work of the Protection against Violence Centres, and the integration of violence issues into the work with the disabled, respectively. Trans-professional networks allow for fast and effective actions and adequate, early protection for victims.

The integration of peers into mechanisms on the protection against violence is of equally high importance. Similarly, the integration of protection against violence experts into

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<sup>566</sup> Ibid, p. 59.

<sup>567</sup> Ibid, p. 26.

<sup>568</sup> Federal Ministry of Labour, Social Affairs and Consumer Protection, Gewaltschutz für ältere Menschen. Befragung von Expertinnen und Experten über Möglichkeiten und Hindernisse bei der Umsetzung gesetzlicher Regelungen in Österreich, Vienna, 2015, p. 58, [sozialministerium.at/cms/site/attachments/9/9/1/CH3434/CMS1451924208875/soziale-themen\\_seniorinnenpolitik\\_gewaltschutz\\_gesetze.pdf](https://sozialministerium.at/cms/site/attachments/9/9/1/CH3434/CMS1451924208875/soziale-themen_seniorinnenpolitik_gewaltschutz_gesetze.pdf).

<sup>569</sup> Ibid, p. 62.

<sup>570</sup> Ibid, p. 64.

refugee homes and homes for the disabled is recommended. Institutions for people with disabilities, hospitals, and nursing homes must work closely with the police in order to facilitate reporting, identification, and protection of victims of violence. The authors further recommend developing standards for dealing with cases of violence in institutions.

Finally, in order to meet the specific needs and concerns related to disabilities, migration, insecurity and economic disadvantage, it was found to be necessary to offer peer-counselling.<sup>571</sup>

#### 5.1.2. Accessibility of shelters

In Austria, there are 30 shelters, most of them in cities. Altogether, they offer room for 766 women and children. However, Austria would need 834 places to fulfil the minimum standards set forth by the Istanbul Convention. From a quantitative point of view, 68 places are missing, especially shelters in rural areas where mobility and anonymity are restricted.<sup>572</sup>

The NGO Shadow Report shows that female migrants and refugees, particularly undocumented and asylum-seeking women, face barriers in accessing shelters in the nine Austrian provinces. This is due to administrative/financial regulations, for example local governments that fund women's shelters do not admin or fund undocumented/asylum-seeking women. Only in Salzburg and Tyrol there are no restrictions for asylum-seeking women's to access shelters.<sup>573</sup> In all other provinces, shelters receive funding only for those women entitled to minimum social benefits. Women in irregular residence situations are particularly vulnerable and at the same time are not protected by the state. They can only be supported by shelters with the help of private donations.<sup>574</sup>

Furthermore, female asylum-seekers covered by the federal care (Bundesbetreuung), only have access to a single shelter with 240 places (in Traiskirchen, Lower Austria).<sup>575</sup> This is not in line with the Istanbul Convention, which recommends avoiding discrimination based on migrant status (including undocumented migrants).

Another issue raised in the Shadow Report is that of accessibility and information about shelters. Shelter operators seemingly do not have adequate funding to carry out information or public relation campaigns to spread knowledge about (access to) their services. Consequently, victims (especially those with no Internet access) have little or no

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<sup>571</sup> Ibid, pp. 67-69.

<sup>572</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 54, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>573</sup> Die Grünen, Grüner Frauenbericht 2016, Vienna, 2016, p. 30, [gruene.at/themen/frauen-gleichbehandlung/frauenbericht-2016-politik-muss-umdenken](http://gruene.at/themen/frauen-gleichbehandlung/frauenbericht-2016-politik-muss-umdenken). The 2017 Report does not address this issue.

<sup>574</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 7, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>575</sup> Die Grünen, Grüner Frauenbericht 2016, Vienna, 2016, p. 30, [gruene.at/themen/frauen-gleichbehandlung/frauenbericht-2016-politik-muss-umdenken](http://gruene.at/themen/frauen-gleichbehandlung/frauenbericht-2016-politik-muss-umdenken).

knowledge about these services. This affects primarily non-German speaking women, those with disabilities, women in rural areas, and the elderly.<sup>576</sup>

Despite this, migrant women are over-represented in women's shelters: on average, more than 50% of shelter inhabitants are migrants. Only an estimated 2% are asylum-seekers.<sup>577</sup> In 2015, 353 women and children had to be turned away from women's shelters due to of lacking resources.<sup>578</sup>

## 5.2. Access to victim support services

Different barriers can occur in accessing the services provided to victims of domestic violence. These include information barriers (not knowing about free services), geographic or spatial barriers (no barrier free services or services in close proximity), and communication barriers (language barriers, communication barriers due to disabilities).

In cases of domestic violence, information barriers hardly exist as a referral mechanism is linked to emergency barring orders. Yet, in cases of domestic violence where no barring order is imposed, the police are not obliged to refer victims to support services, but only to inform them about their existence. As previously mentioned, victim support services focused on domestic violence report that 50% of clients are referred by the police directly, the other 50% find their own way after being informed by personal contacts, the Internet or other centres or therapists.<sup>579</sup>

In Austria, geographic barriers are addressed through support services existing in all of the nine Austrian provinces, both in urban and often also in rural areas. Consequently, there are nine Intervention Centres in Austria, one in each capital. In addition, there exist 58 counselling services for women in the provinces. The centres are mostly located in bigger cities and not so much in rural areas, where there are no easy transport options.<sup>580</sup>

In terms of communication barriers, all victim support services are barrier-free, as in Austria this is a requirement to receive public funding. Services are offered on the services' own premises; therefore, home visits are not conducted. Victims living in remote areas without means of transport might face accessibility problems. Still, telephone or Internet counselling is available. All victim support services cooperate closely with translation services, encompassing the main languages spoken in Austria, as well as sign language.

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<sup>576</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 45, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).

<sup>577</sup> Ibid, p. 94.

<sup>578</sup> Ibid, p. 55.

<sup>579</sup> Haller Birgitt, Hofinger Veronika, Pohn-Weidinger Maria, Studie zur Prozessbegleitung, Institut für Konfliktforschung, Wien, 2007, p. 61, [ikf.ac.at/pdf/IKF-prozessbegleitung.pdf](http://ikf.ac.at/pdf/IKF-prozessbegleitung.pdf).

<sup>580</sup> Association of Austrian Autonomous Women's Shelters, AÖF, Domestic Abuse Intervention Centre Vienna, Austrian NGO-Shadow Report to GREVIO, Vienna, 2016, p. 49, [taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht\\_2016.compressed.pdf](http://taraweb.at/wp-content/uploads/2017/05/GREVIO-Schattenbericht_2016.compressed.pdf).



Furthermore, video translation is provided in case needed. Therefore, also barriers to communication are catered to and can be overcome. Still, they must be improved upon in terms of accessibility by victims who may not be mobile.<sup>581</sup>

Victims who make use of psycho-social and legal assistance services have a better standing in criminal proceedings. This may not influence the outcome of the proceeding, as this is also not the intended purpose. However, victims' rights and entitlements are more likely to be met and secondary victimization is more likely to be prevented if victim support services are made use of. Victim support services can be interpreted as monitoring bodies of police behaviour.<sup>582</sup>

The cooperation between victim support services and the police has improved considerably since support services have become available and implemented. Support services provide police officer trainings on issues like victims' rights or secondary victimization. These trainings have a positive impact on police behaviour towards victims, support services, and the likelihood of empowering victims to make use of support services when reporting instances of violence.<sup>583</sup> Similar effects have been reported in connection to judges and prosecutors: criminal court staff is less likely to perceive the legal and – particularly – the psycho-social assistance services as bothersome, but rather as professional helpers who contribute to successfully closing the case.<sup>584</sup>

## 6. Evaluation

When it comes to victim protection, particularly in cases of domestic violence, Austria is traditionally perceived as a good practice country. The findings of the compilation for this chapter can confirm this perception, despite having identified some shortcomings. The protection measures and also the referral mechanisms work effectively in particular for victims of domestic violence. Some experts even say that victims of domestic violence are the group of victims “best protected” in Austria. The majority of support services and protection measures were implemented before the ratification of the Istanbul Convention and the transposition of EU Directive 2012/29/EU. To conclude, the questions posed at the beginning of this chapter will be answered directly.

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<sup>581</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf); Frauen beraten Frauen, Onlineberatung, [frauenberatenfrauen.at/](https://frauenberatenfrauen.at/).

<sup>582</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz 2016, p. 67, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).

<sup>583</sup> Ibid, pp. 67 et seqq.

<sup>584</sup> ETC Graz, Developing directive-compatible practices for the identification, assessment and referral of victims. National Report Austria, Graz, 2016, [victimspractices.eu/wp-content/uploads/2017/02/NR\\_Austria.pdf](https://victimspractices.eu/wp-content/uploads/2017/02/NR_Austria.pdf).

- How does Austria express its commitments to eliminate all forms of violence against women and to protect victims of gender-based violence?

Austria's commitment is expressed through the ratification of the Istanbul Convention on 14 November 2013, and its entry into force on the 1 August 2014. Austria was one of the first countries to ratify the Convention and to undergo the baseline-evaluation by GREVIO. Additionally, Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime of 25 October 2012 had to be transposed by the Member States by 16 November 2015. Austria has done so with a series of measures.

- Which measures are applied in order to implement these commitments?

Austria has implemented a variety of measures. For the purpose of this conclusion, only those falling into the period of 2014-2017 will be addressed. The Criminal Procedure Amendment Act 2016 (Strafprozessrechtsänderungsgesetz 2016, Federal Gazette No. I 26/2016) inter alia implements Directive 2012/29/EU. It foresees the entitlement to an early and individual assessment of "special protection needs", which victims of gender-based violence are to. It implements Art. 22 of the Directive 2012/29/EU. Many other measures foreseen by the Directive (such as victim support services) were already implemented in Austria beforehand. Following the entry into force of the Istanbul Convention, an inter-ministerial working group was founded and tasked with the development of a National Action Plan on the Protection of Women against Violence. The NAP foresees measures in coordination of services and data collection; specific measures/legal amendments to improve prevention, protection and support; as well as European and international cooperation. The implementation period for the NAP is 2014 to 2016, and a report on this will be available in autumn 2017. The Austrian government was one of the first countries to undergo a baseline evaluation by GREVIO. A detailed questionnaire was answered on issues regarding the Istanbul Convention. Several ministries, including the Federal Ministry for Health and Women's Affairs, as well as civil society organisations were involved in this evaluation process. The NGO Shadow Report to GREVIO identifies clear room for improvement when it comes to the implementation of victims' information rights, the effective granting of rights, as well as the resources of service providers and coordinating Ministries.

- How accessible are these measures to victims of domestic violence?

Austria can be considered as being an advanced country when it comes to the support of victims of (domestic) violence. The referral mechanisms from the police to victim protection services work very effectively in cases of domestic violence. Yet, there is room for improvement when it comes to the accessibility of protection and support measures to all types of victims, particularly those with specific needs. The literature review and research carried out for this evaluation shows that particularly vulnerable groups of women either

cannot access or cannot make fully use of services provided. While victim support services, the police and the courts have adopted measures to remove communication barriers, barriers for dependent victims still exist. Such victim dependency can be economic (when the “endangering person” provides financially and impedes on the victim’s full use of protection measures like injunctions or barring orders). Despite these shortcomings, the accessibility of support services and protection measures is overall given to victims of domestic violence.

### **7. Recommendations by Civil Society Organizations**

No specific recommendations have been provided for this report by Civil Society Organizations.

# ANNEX: Contributions Provided by Civil Society Organisations

## Contributions on Topic 1

Name of Civil Society Organization

**Österreichischer Rechtsanwaltskammertag (ÖRAK)**

Expertise and focus

Interest representation for lawyers

### A. Data and facts

Austria invests high sums into the healthcare of detainees. In 2016, a total of 86,241 Million Euros was spent. In 2011, the costs were at 70,326 Million Euros. In the past year, the cost per capita was 9.791,21 Euros. In 2011, it was 7.997,04 Euros. (Source: APA0246 5 CI 0182 II)

### B. Problems and deficits

Last year, 663 complaints were made by detainees of Austrian justice authorities, 89 of which were about medical care (APA0545 5 CI 0122 II 663). Particularly the prison in Stein showed grave deficits (including lack of psychological care). This was also already considered and criticized by the Council of Europe (APA0002 5 CI 0401 II). In addition, a further problem is the increasing propensity to violence of detainees. In 2015, there were 148 attacks on prison staff; in 2016, there were even 200 attacks (APA0016 5 CI 0335 II).

### C. Good practice

The planned increase of human resources in prisons, as well as the efforts made relating to the occupation of inmates. Working together with detainees is a fundamental requirement of re-socialization. At this point, it also makes sense to emphasize the right to a defender which is also granted to the accused. During the implementation of the EU Directive on the right of access to a lawyer in criminal proceedings, the stand-by-duty of a lawyer during the criminal procedure was explicitly enshrined legally and newly composed by the ÖRAK in cooperation with the Federal Ministry of Justice.

The stand-by-duty of Austrian lawyers gives those who have been detained, and those who are presented for immediate interrogation the opportunity to come into contact with a defender as early as during the first interrogation, as well as upon arrival in the prison and during the (first) imposition of imprisonment on remand. Furthermore, the possibility to make use of this stand-by-duty is valid for those who were arrested in Austria and whose extradition (according to the Law on Extradition and Mutual Assistance) or transfer (according to the Law on Judicial Cooperation in Criminal matters with Member States of the European Union) is ordered by European Arrest Warrant issued by an Austrian justice authority. The legal stand-by-duty has increasingly been used since the beginning of the year and acts as an important instrument to ensure the rights of detainees.

### D. Recommendations

In the course of the announced reform of the detention system concerning mentally ill offenders, special consideration is to be put on questions of medical care and adequate accommodation. Educational and employment opportunities for prisoners, conflict regulation, as well as the training of social behaviour should be encouraged.

## Name of Civil Society Organization

**Dr. Daniela Cravos, General practitioner**

## Expertise and focus

General Practice for many people with multiple disabilities, who require a high level of support

## A. Data and facts

20% of all those detained in Austria are people with multiple disabilities, who require a high level of support. Even if they are subject to a mild sentence, no organization who works with the disabled can be found to care for them and support them. People with multiple disabilities can never leave detention, contrary to others who are detained, as they need a psychiatric statement to give them a new chance. For this, special organizations would be needed where those affected could be occupied in day care or shared accommodation. However, due to the fact these people are not accepted by the current organizations, they remain in detention. There, they are immobilized and do not have access to the necessary therapies and support measures. Often those affected do not speak the language, or only do so rudimentarily, or who have the capacity of a small child and therefore would have to be equipped with necessary toys, for example.

## B. Problems and deficits

Those people with multiple disabilities in detention are not supported adequately based on their stage of development. Often they are not capable of speaking the language and can only say "Mama" or nothing at all. Untrained staff members do not understand the signals of a person with multiple disabilities, and therefore aggressions towards the self and towards others are likely.

## C. Good practices

People with multiple disabilities, who are in need of a high level of care, shall not be put in detention.

## Contributions on Topic 2

Name of Civil Society Organization

**DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus**

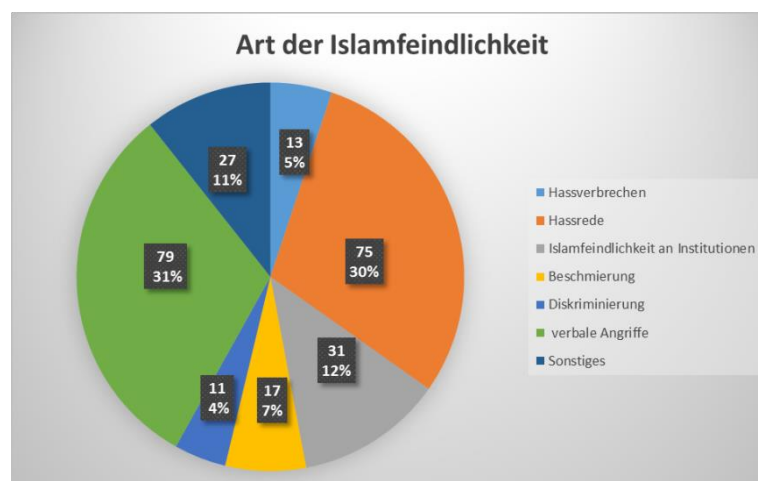
Expertise and focus

Documentation of anti-Muslim racism (“Anti-Muslim Racism Report”), Islamophobia, anti-Muslim racism, hate crime, discrimination, empowerment of women, educational work, support for victims of racism, referrals to established governmental and non-governmental specialized institutions, protection of minorities, and freedom of religion.

### A. Data and facts

The new Anti-Muslim Racism 2016 report was presented on 27 March 2017. In the year 2016, a total of 253 Islamophobic or anti-Muslim racist incidents were documented. In the year before, there were 156 cases. The DOKUSTELLE can therefore report an increase of 62% in the year 2016.

- The 253 cases are composed of: 79 verbal attacks (31%), 75 incidents of hate speech (30%), 31 on Muslim organizations and organizations fighting Islamophobia (12%), 27 other (11%), 17 smearing incidents (7%), 13 hate crimes (5%) and 11 cases of discrimination (4%).



- As also shown in the previous year, anti-Muslim racism primarily affects women (98% of incidents).
- In total, 13 incidents of hate crime, 5 of which were directed at Muslim organizations (prayer houses, unions, etc.) and 8 at people. All 8 people affected by hate crime are women and recognizable as Muslim due to their clothing. In 62% of cases, Islamophobic attacks take place in the (half-) public: attacks while walking by, in public transport, etc. Attacks were most common in the week of 4 December: 10 verbal attacks, thus more than 1/8 of all verbal attacks in the year 2016.
- The second most common form of Islamophobia was found on the Internet, with 18% of all cases
- Three of the four attacks on Muslim prayer houses took place during the fasting month of Ramadan.
- When it comes to civil courage, the documented cases show that
  - o In the case of verbal/physical attacks, civil courage was shown and enacted in 30% and 50% of cases, respectively
  - o Compared to last year, the likelihood of showing civil courage remained the same

## B. Problems and deficits

The official numbers provided by authorities on hate crimes with an Islamophobic motive, and the numbers provided by civil society organizations are far apart! (1:8). Potential reasons are: non-reporting by the victims (due to lack of trust or feeling that “it won’t do anything”), non-sensitized staff (documentation not done properly regarding motive, partly also refusal to accept report by victim – a woman needed to insist for 20 minutes for a report to be made)), reporting of a racially motivated crime not possible directly at the police (only physical assault, etc.)

DOKUSTELLE has operated for 2.5 years and has no knowledge of § 33 (1) 5 CC ever being invoked. In cooperation conversations with established staff, who have been active in anti-racism work for many years, it could be found that “In my 30 years of work I have never seen § 33 (1) 5 CC be invoked”.

Some of the concerns of the Muslim community have become noticeable to politicians (like #MuslimBanAustria Demo, where in three days almost 4,000 multi-ethnic and multi-religious participants were mobilized for the right to women’s self-determination). This protest was mentioned by the State Secretary for Integration on a TV talk show as an “interest articulation of Muslims”, but any possibilities for personal exchange or articulation was neither possible beforehand or afterwards.

## C. Good practices

The exchange between DOKUSTELLE and the minorities department of the police is to be mentioned.

The existing 33% likelihood of enacting civil courage can still be strengthened.

Since the last year there have been more cooperations between different civil society and/or anti-racist platforms, institutions, organizations, who have collectively positioned themselves against various forms of racism.

In cases of anti-Muslim or Islamophobic incidents, DOKUSTELLE is increasingly becoming the “contact person” for media representatives and journalists.

## D. Recommendations

In order to work against not only anti-Muslim racism but also against all forms of discrimination and racism, we find the following to be important:

- We pledge for the report of the Federal Office for the Protection of the Constitution by the Federal Ministry of the Interior to use the term “Islam hostility” (“Islamfeindlichkeit”) instead of “Islamophobia”. In German, “Phobia” is more understood to mean “an extreme fear against something”. However, an attack is an active incident and not only an “attitude”, which is why “Islamophobia” does not concretely capture the essence of the phenomenon, and why we pledge for the use of “Islam hostility”.
- In some of the documented cases the motive is not recognizable at a first glance. Still, it is to be highlighted that more indicators should be taken into account in the respective cases, to improve the investigation of motives. In this context the methods need to be developed more in order to categorize unclear cases.
- According to § 33 (1) 5 CC, racist motives are reasons that render incidents more severe. Due to this, the rate of investigations is to be increased, and in the case a racist incident is suspected, a special form of treatment should be employed.
- Establishing a reporting office for anti-Muslim racism
- We would like to have an open discussion about the categorization of racially motivated tasks as “offences” (having cans thrown, pulling at the headscarf, etc.), as such cases are occurring more often

- A sensitization concerning the entire society, as well as comprehensive anti-racism trainings are necessary, particularly on all levels of the public (for instance, functionaries in the public space, institutions, employees in public transport, security forces, etc.). It is particularly important to start early and to conduct workshops and sensitization efforts on anti-racism in schools, with the support of the state. In addition, when it comes to the training of teachers, a relevant training is to be planned.
- There is the need for a clear statement and appearance of the state against racism and discrimination. For this, we recommend poster campaigns, different events, and the initiation of cooperation networks.
- Furthermore, in this context also the encouragement of civil courage is to be mentioned. We see this as having high relevant and also see it as a goal worth achieving by society. As a basis also an annual civil courage prize can be considered, for example for particular services of private individuals
- Additionally, also the importance of lobbying is to be underlined. A further step is the establishment of contact partners, for example in Ministries. This shall lead to the support of an exchange and the close cooperation between the government and NGOs.
- The cooperation and solidarity with anti-racism efforts are also an important symbol in the fight against all forms of racism. The governmental support of civil society anti-racism work is also an important means of support in this area.
- It is recommended for organizations to start early with educational efforts and interventions, before racism takes the form of violence. Also the state plays a large role in this. Incidents motivated or initiated by hate should be more severely punished. The power and consequences of words are not to be underestimated.
- Prejudicial persons are likely to feel supported by the negative choice of words used by political and media discourses in turning their Islamophobic or anti-Muslim attitude into violence. The sensitization and a critical usage of terms and with language in general are necessary.

Name of Civil Society Organization

### **Interessenvertretung Gemeinnütziger Organisationen (IGO)**

Expertise and focus

IGO works for the protection and improvement of political, legal and economic framework conditions for NPOs. These include democratic space, in which civil-society activity can happen without any restrictions. Furthermore, laws and regulations, which facilitate or complicate the work of NPOs. Moreover, taxes and tariffs, that are charged to NPOs by private and public institutions.

#### **A. Data and facts**

The prevention of hate-related crimes and actions motivated by prejudice, intolerance and hate one the one hand can be achieved through educational efforts at schools, and on the other hand outside of schools in youth centres, organizations, and communities as places where opinions are built. This is also valid for the prevention and combat against violent extremism and radicalization, which both lead to terrorism.

Since the school year 2016/2017 political education has been offered for students from the sixth grade onwards (2. Grade AHS and Neue Mittelschule/NMS). However, this is not a separate subject but is taught via one of the mandatory subjects, history. Human rights education in this case is an element within political education.



## B. Problems and deficits

As interest representation we can observe that human rights organizations in Austria often work under very precarious financial conditions. This leads to their potential not fully being used in terms of preventing hate crimes, intolerance and extremism. With more resources for all those actors in human rights education, more can be achieved.

The inclusion of human rights education through the mandatory modules within political education is not sufficient. Human rights education in addition to knowledge transfer also focuses on the improvement of skills, and the reflection about attitudes and approaches of people, and thereby includes democracy-strengthening, anti-discriminatory and anti-racist educational efforts. These encourage participation and civil courage, and strengthen the understanding for diversity, equality, integration, and inclusion. It is vital to anchor these contents into the teaching curriculum, as well as into teacher trainings in a targeted manner. In order to ensure human rights education is provided to its full extent, more time and resources must be made available to all those involved.

At the moment the teachers need to deal with material and didactic implementation themselves. Although teaching material does exist, it is not available for all types of schools, all grades, and if so there is too little.

## C. Good practices

On the occasion of the 24<sup>th</sup> session of the UN Human Rights Council, the report of the UN High Commissioner for Human Rights refers to the investigation of Human Rights Education Associates, a global network for human rights education. They find a lack of systematic integration of human rights education in the formal educational sector of many countries. For the third phase of the UN World Program for Human Rights Education they recommend:

*"[...] to continue targeting areas covered by the first and second phases with renewed efforts throughout the schooling sector, where human rights education and human rights training for teachers should be made mandatory [...] stresses also a consensus among the contributors on the need for close cooperation among governmental and non-governmental actors and for cross-fertilization between formal and non-formal education methodologies and approaches [...]"*<sup>585</sup>

The significance of human rights education, democracy education and political education in Austria – therefore the entire spectrum from anti-discrimination efforts to civil courage – should be strengthened in close cooperation with civil society organizations. This means better structural anchoring, as well as the support of project work in this area.

A view to Switzerland shows that strengthened human rights education offers are highly acclaimed among future teachers. The Luzern Teacher Academy has offered a specialization course on "human rights education" since 2008, which is mandatory thematic day on human rights for students in the first term. Additionally, there is an impulse week on human rights education or on a topic relevant to human rights.<sup>586</sup>

## D. Recommendations

### Strengthen long-term project efforts

Next to knowledge transfer, human rights education seeks to strengthen the skills and reflection about attitudes and approaches of people. Here, NGOs often have accumulated knowledge over decades, which they can transfer via project work at schools. Particularly educational projects that are envisioned over a longer period of time are often not

<sup>585</sup> Report of the Office of the United Nations High Commissioner for Human Rights submitted pursuant to Human Rights Council resolution 21/14, entitled "World Programme for Human Rights Education", operative paragraph 6. Views of States, national human rights institutions and other relevant stakeholders on the target sectors, focus areas or thematic human rights issues for the third phase of the World Programme for Human Rights Education. 26 June 2013.

<sup>586</sup> Also see: [www.phlu.ch/dienstleistung/zentrum-menschenrechtsbildung/ausbildung/](http://www.phlu.ch/dienstleistung/zentrum-menschenrechtsbildung/ausbildung/).

realizable by NGOs themselves – especially if they don't only target knowledge and skills, but also support decision-making capacities – such projects are in need of financial support by the state.

Therefore an offensive and targeted expansion of state-run project funding in the area of human rights education is necessary, which enables NGOs working in the educational area in this field to expand and deepen their services. Through this, Austrian schools can be reached as a whole, and in a sustainable manner.

### Strengthening the human rights competencies of teachers

It is central – taking into account sustainability and the strengthening of human rights education – to improve the subject's standing in the Austrian educational system. In this, pedagogues play a central role by transferring knowledge and values and also supporting the ability to gain valuable competencies. They also act as role models and contact persons. Therefore, pedagogues must be equipped with the necessary didactics and methods to be able to offer a comprehensive and coherent human rights education.

The Baseline Study on human rights education in post-secondary institutions in Austria, which also evaluated the lecture offers at pedagogical institutions in Austria, shows that only few human rights specific or human rights relevant topics (like integration, racism, social responsibility, diversity) are covered in lectures.

The didactics and methods of human rights education and political education also hardly play a role in the training or in the later practice of teachers. As no systematic education for teachers exists for these thematic fields, a lack of quality is inevitable. Teachers are often overstrained in practice, for example when it comes to combatting racism in the daily life in schools, to address situations adequately, or to consider freedom of expression in their own school context, rather than only in far-away countries.

As is the case for other thematic areas, also for human rights the following stands true: without adequately trained and educated teachers and without enough time, no qualitatively high education can be provided.<sup>587</sup> Therefore, also the teaching curricula, timetables and school books need to have content on human rights education and touch on anti-discriminatory and anti-racist content.

Particularly the pedagogical higher education institutions play a central role in the training and education of those teaching. Human rights education and political education must be strengthened in those institutions, as well as at universities. In-depth lectures on human rights education (didactics and methods) should increasingly be offered in mandatory or elective courses. Lectures on the topic of human rights generally and/or with specific reference to the social arenas of school (human rights friendly teaching and learning) should be mandatory for all students at teaching institutions and all those studying to become a teacher at university. For example, at the beginning phases of the study and/or in the course "human sciences" at the pedagogical institutions. At the same time, also the taught didactics and methods of human rights education, as well as the definition of content and topic-related competencies must be developed in close cooperation with experts from the field.

A survey within the Baseline Study on human rights education showed that the majority of the asked teachers at universities and pedagogical teaching institutions wish for "stronger attention to human rights relevant content" and point out "the interest also from the side of the students, for which a relevant anchoring in the curriculum would be necessary."<sup>588</sup> Also the authors of the study point out, that human rights topics are currently very under-represented in curricula and those teaching mostly teach human rights content out of their

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<sup>587</sup> Also see Interessengemeinschaft Politische Bildung: POSITIONSPAPIER zur Politischen Bildung an Österreichs Schulen, Beschluss der Generalversammlung vom 26. Feber 2010, [http://igpb.apps-1and1.net/wp-content/uploads/2015/05/Positionspapier\\_Schulisch\\_26.2.2010.pdf](http://igpb.apps-1and1.net/wp-content/uploads/2015/05/Positionspapier_Schulisch_26.2.2010.pdf).

<sup>588</sup> ETC Graz for BMWF: Baseline Study zur Menschenrechtsbildung an den postsekundären Institutionen Österreich, pp 32-34, Graz, Juli 2012.

own initiative.

Also the offers in terms of (mandatory) further education and trainings for teachers on human rights and human rights education at pedagogical higher education institutions must be further developed. The BMUKK should provide (financial) incentives to that pedagogical higher education institutions can offer more and more comprehensive, standardised, and all-encompassing offers (for example full courses) on human rights education, and can make use of civil society organizations as cooperation partners and experts.

Name of Civil Society Organization

**Netzwerk Muslimische Zivilgesellschaft**

Expertise and focus

Empowerment of women, anti-racism (Islamophobia/xenophobia...), networking of Muslim organizations and NGOs, activism, standing against populism, awareness work for a democracy-friendly Austria.

#### A. Data and facts

The Anti-Muslim Racism report 2016 of the DOKUSTELLE shows a record of 253 Islamophobic or anti-Muslim racist incidents. In the year before, it was 156 cases. Therefore, an increase of 62% can be shown. See comment by DOKUSTELLE on Topic 1.

#### B. Problems and deficits

Taking into account the rise of hate crimes against the Muslim minority in Austria, the following challenges can be identified:

##### - inadequate recording/support

The DOKUSTELLE has recorded and documented (on a pro bono basis!) incidents of Islamophobic nature for two years. Also ZARA documents racist incidents.

Next to the cases mentioned, a very high dark number is assumed: particularly cases of discrimination due to religious affiliation to Islam, in the area of the labour market or at public institutions (for example schools, kindergartens, authority buildings etc.) are widespread, but not adequately recorded phenomena.

##### - Lack of sensitization efforts

The efforts in terms of sensitization towards anti-discrimination is hardly noticed: therefore, for example experiences of racism are barely made visible at schools, while Muslim students and youth are often portrayed as a homogenous group prone to violence and extremism.

##### - The effect of Islamophobic discourses and/or narratives

The long-existent right-wing-populist tradition in Austria, which has increasingly included Islamophobic tendencies in the past years, the difficulty has arisen that most media discourses held on Islam often come with narratives that lead to the rise of hate crimes in daily life. For example:

- September – Increase of incidents as reported by DOKUSTELLE – during this time not only the ban on the “Burkini” was discussed via media and politics, but also the ban on the veil.
- The third-highest number of documented incidents was in December. Here, verbal incidents predominated. The presidential election took place at the same time.
- Islamic attacks/global events – the simple people are the ones who “must suffer”, if something happens somewhere in the “name of Islam”. Collective

fault and scapegoating leads to mechanisms of exclusion.

- Borders between Islam and Islamism become blurry

General scepticism and suspicion, as well as discrimination are legally embedded (see Islam law, governmental provisions on clothing and bans). This has the consequence that state institutions, which should deal with anti-discrimination, end up being discriminatory themselves. Thus, there is no trust in state institutions, no help can be expected as legal offices for equal treatment, the civil defenders, etc. General culture of bans and discrimination are strengthened through laws and these already oppose existing anti-discrimination laws. A feeling of unease and helplessness spreads.

- Multiple affectedness and “alienation”

- Intersectionality: Sexism and anti-Muslim racism; hostility towards refugees and anti-Muslim racism
- „Alienation“ of the Muslim population in Austria
- Development and anchoring of certain narratives about “the Muslims” – not willing to integrate, hostile towards women, prone to violence, hostile or possibly fighting against Europe values, etc.

- Populism fosters racism/racism fosters extremism

Certain forms of extremism are not seen in connection with one another. Increasing right-wing extremism or religious extremism that is prone to violence is a consequence of experiences with racism and processes of alienation -> both are consequences of a collective, media-influenced perception about “Islam”

- Freedom of expression vs propaganda

In relation to Muslims, the media discourse has taken on levels of propaganda: as an example on 7 May 2017 a private television channel screened a discussion about the ban on veils at schools – however, many of the students wear the veil out of free will. A generalized prohibition is a grave interference into the private sphere and is therefore not in accordance with human rights. In this show, which also has the questionable name “In the name of the people”, the majority population decides about the fundamental rights of a minority via a televised election. (over 80% voted for a ban)

- Hurdles when reporting hate crime

Next to the documentation and reporting of hate crimes, the challenge for those affected is evident in practice within the structures at the police: when an incident relating to hate crime is reported, an officer is legally obliged to document and report it as such, and to call for any further investigations – not only in cases of grave bodily harm. However, in practice there seems to be little knowledge about how to deal with hate crimes. Additionally, it is difficult for victims as they themselves can become liable to punishment if they take pictures or videos of perpetrators as evidence during the attack.

### C. Good practices

- OSCE Training of civil society organizations, for example concerning the definition or when it comes to support mechanisms for hate crime
- Day of Crime Victims (Press conference at the Federal Ministry of the Interior – civil society organizations are allowed to be present)

#### D. Recommendations

- Support of active, civil society organizations that work in the area of anti-racism
- Intensify the dialogue between civil society organizations and OSCE
- Recruit active and sensitized contact persons of the OSCE for Austria
- Lacking resources of NGOs; development of a fund that investigates law for unconstitutionality when it comes to adherence to human rights, and further takes these to trial at the European Court for Human Rights
- Unequal treatment in the labour market – quota rules for minorities (for example to ensure that origin, skin colour, veil etc. is not an obstacle)
- Austria has signed up to collect data related to hate crime – here there must be sensitized key players who have access to the separate communities, who collect data in order to raise awareness and do preliminary work – otherwise incidents will not be reported!
- To fight against stereotypes; awareness and sensitization work relating to Islamophobia and hegemonic xenophobic media discourses. Mandatory training courses relating to standing up against intolerance and discrimination, particularly among police officers, public officials, teachers, etc. Internal trainings within police structures relating to hate crimes
- Awareness efforts in cooperation with Muslim organizations
- MediaWatch: analyses of ethical commissions and punishments when violations occur
- Free newspapers and media outlets which increase hostile moods during campaigns – remove them from public transport
- Baiting in politics and propaganda: punishments of racist election campaigns

#### Name of Civil Society Organization

#### **Österreichischer Rechtsanwaltskammertag (ÖRAK)**

#### Expertise and focus

Interest representation for lawyers

#### A. Data and facts

According to the Report on Constitutional Protection 2016, religiously motivated Islamic extremism and terrorism is still the largest threat for Austrian domestic security. At the end of the year 2016, 296 “Foreign Fighters” from Austria were known. 141 people within Austria showcased the domestic threat potential: 90 returners and 51 who were prevented from leaving Austria to join the Jihad (APA0302 5 II 0607 CI/AI).

#### B. Problems and deficits

As a reaction to the fear of terror, in Austria several surveillance laws were enacted: the Police Law on State Protection, the Law on Police Cooperation, etc.

The Austrian authorities now have comprehensive permission which inhibits the fundamental rights and rights to freedom of individual citizens. However, the latest events for example in London are representative of the fact that the protection against such attacks is not fully possible through such surveillance measures. Also in Israel, where there are overwhelming surveillance measures, attacks and criminal offences nonetheless cannot be prevented.

### C. Good practices

In the previous year, the Federal Ministry for the Protection of the Constitution and Fight against Terrorism founded an office for prevention, which is working on setting up a program for leavers of violent extremism. In penal institutions sensitization workshops were held, as these institutions are often breeding ground for radicalization processes. Particularly in this area, also police officers received training. (APA0302 5 II 0607 CI/AI)

### D. Recommendations

According to a survey conducted by „Der Spiegel“ ([www.spiegel.de/netzwelt/web/islamistischer-terror-in-europa-unsere-sicherheit-ist-eine-inszenierung-a-1150015.html](http://www.spiegel.de/netzwelt/web/islamistischer-terror-in-europa-unsere-sicherheit-ist-eine-inszenierung-a-1150015.html)), most of the identified perpetrators associated with the most recent terror attacks were already known to authorities as being prone to violence. The threat therefore mostly comes from those who are already known. Rather than a generalized surveillance of citizens without occasion, terrorism must be combatted in a targeted manner.

#### Name of Civil Society Organization

**WEISSER RING Verbrechenopferhilfe, Gemeinnützige Gesellschaft zur Unterstützung von Kriminalitätsoffern und Verhütung von Strafsachen**

#### Expertise and focus

Support of victims of crimes

### A. Data and facts

From the side of the state, in Austria there are too few numbers being documented, which could give information about the number of criminal offences motivated by prejudice. An indicator for this are the reports and sentences based on “Incitement § 283” – beyond that the background of crimes based on prejudice cannot be captured by criminal statistics.

§ 283 CC was amended in the year 2015 and newly reset, and is suitable to convict offences, which correspond to hate crime with a penalty. Beyond that, the possibilities in the penal code as well as the possibilities of statistical recording are severely limited.

Corresponding to § 283 (1) 1 CC, with the amendment of the criminal code the “aggravating circumstances” of § 33 5 CC were newly formulated. It is now an „aggravating circumstance“ if a perpetrator has acted based on fascist, xenophobic or other particularly objectionable motivations, particularly those which are against a group of people as mentioned in § 283 (1) 1, or against a member of such a group due to affiliation.

There are no numbers about the use of this “aggravated circumstance” in practice, the experience of victim support organizations suggests that this “aggravated circumstance” is barely used by the judiciary in practice.

The WEISSE RING is a victim support organization that is open to all victims of criminal offences in Austria. Since 2016, the WEISSE RING has had a focus on support efforts for the victims of hate crime. It is integral to advise victims and to be available, and not only to be available to individual groups or maintaining and to not only foster good contacts and networking to vulnerable groups. The experiences of the recent years show that it is a challenge to find the voice of victims of hate crimes, as several different groups are affected who are primarily connected through a collective experience and the heightened risk of victimization. The WEISSE RING, as recognized and general victim support organization thereby also has the goal of representing the concerns of victims of hate crimes.

In 2016, the WEISSE RING supported 48 victims of hate crimes. Most of them became victims due to their ethnic origin; the majority of offences took place due to (Muslim) religious affiliation and in connection to the political election campaign for the Presidential Election.

There were also offences committed by right-wing extremist groups against people due to their political conviction.

The WEISSE RING offers crisis intervention and psychological and judicial support to all victims. Victims of criminal offences are furthermore offered psycho-social and legal procedural support. This means support during the criminal proceeding for the victim, completely cost-free and financed through the Federal Ministry of Justice.

## B. Problems and deficits

### - Lack of data

As previously shown, there is a lack of meaningful data collections from the state on hate crime. Only reporting or sentencing numbers on the criminal offence of “incitement”, which sanctions hate crimes against defined groups with particular discriminatory characteristics. However, no statement can be made about how many instances of bodily harm, dangerous threats or property damage were committed with a motive of hate. The “aggravated circumstance” reasoning of § 33 Z 5 StGB is not statistically recorded or analysed. Without a solid basis, no statements can be made about the extent of hate crime and its development.

### - “Special need for protection“ of victims of hate crime

In the year 2016, the EU Directive 2012/29/EU about minimum standards on the rights, the support and the protection of victims of criminal offences was implemented. The EU Directive foresees particular groups of criminal offences as being recognized as “particularly in need of protection”, this also includes victims of hate crimes. However, it unfortunately did not succeed to anchor this particular need of protection of victims of hate crimes in the criminal procedural code. The particular need of protection for example leads to the fact that victims do not need to make statements in the presence of their perpetrator in a criminal proceeding. Despite many efforts, victims of hate crimes are not entitled to these particular protection and sparing rights.

### - Lacking funding of victim support organizations

Victim protection organizations, which support victims of hate crimes, are only funded to not sufficient extent by the state. The WEISSE RING could not be able to fulfil its tasks without help by civil society and donations.

### - Lacking sensitization of criminal prosecution authorities, lacking cooperation

The experience of victim protection organizations shows that many victims make use of support measures too late, for example only when the criminal proceeding has already been terminated, when psychological symptoms are already developed into post-traumatic stress disorder, or if the claims have already been barred. Only in individual cases are cases referred directly to victim support organizations by prosecution authorities. It can only be feared that the majority of victims of hate crimes are not recognized as such, and that their particular needs are ignored.

## C. Good practices

### - Awareness raising

The National Council in connection with the amendment on the criminal procedural code has decided on concrete educational and training measures on hate crimes, as well as on information about advisory and support measures for victims of hate crimes for judicial and executive staff. The Ministers of Justice and the Interior are asked to report on this by May 2018 (see decision of the National Council from 28.4.2016 141/E XXV. GP)

### - Public relations

On 22 February 2017 the WEISSE RING organized an expert event on „hate crime“ together with the Federal Ministry of the Interior. This event was opened and visited by the Ministers of Justice, Interior, Employment, Social policy and Consumer Protection, Family and Youth,

as well as representatives from the Federal Ministry for Women's Affairs and the State Secretary for Public Services, Digitalization and Integration.

- Initiatives against hate speech

In the National Council, an Enquete on "Digital Courage" was held with large resonance in the expert audience. In 2016, the State Secretary for Public Services, Digitalization and Integration put into prospect a campaign against hate on the Internet and a support centre against hate on the Internet. The Federal Ministry for Family and Youth has also started activities with the support of the campaign by the Council of Europe and a National Committee against "hate speech".

#### D. Recommendations

We would like to recommend:

- The secured recording and documentation of all cases of hate crimes. For this, corresponding technical measures must be implemented for the recording of reports and sentencing.
- Stronger sensitization of criminal prosecution authorities. In order to recognize and document cases as hate crimes, they must be recognized as such. In the foundational training of the executive branch, the topic already needs to be dealt with in-depth. For those police officers already in service, ongoing and mandatory trainings should be offered. Corresponding projects were already developed, but not yet implemented by the Federal Ministry of the Interior.
- The recognition of the "need for special protection" of victims of hate crimes. Based on this § 66a Criminal Procedure Code should be extended, so that also victims of hate crime have access to rights on protection and sparing.
- Sufficient funding of victim protection organizations. The support of victims of criminal offences, particularly victims of hate crimes – this cannot be left to the sole responsibility of civil society engagement.

Name of Civil Society Organization

**SOS Mitmensch**

Expertise and focus

Human rights, anti-racism, integration policy

A. Data and facts

[www.sosmitmensch.at/musliminnen-und-islam-30-fragen-und-antworten](http://www.sosmitmensch.at/musliminnen-und-islam-30-fragen-und-antworten)



## Contributions on Topic 3

Name of Civil Society Organization

### **DOKUSTELLE – Dokumentations- und Beratungsstelle Islamfeindlichkeit und antimuslimischer Rassismus**

Expertise and focus

Documentation of anti-Muslim racism (“Anti-Muslim Racism Report”), Islamophobia, anti-Muslim racism, hate crime, discrimination, empowerment of women, educational work, support for victims of racism, referrals to established governmental and non-governmental specialized institutions, protection of minorities, and freedom of religion.

#### A. Data and facts

Anti-Muslim Racism report 2016: 75 incidents recorded (30% of total) are hate speech.

#### B. Problems and deficits

- The main problem is the use of the terms Islam-Islamic (Muslim mosque, Islamic mosque) – the majority population is not aware of the grave differences between them. It is particularly difficult in the case of speeches which explicitly talk about Islamists, but also make references to Muslims and the Koran (or similar). This often implies a (wrong) connotation between Islamism and Muslims/the Koran.
- If the primarily right-wing politicians mention that not all Muslims are a certain way, everything that was talked about before loses its “official hate speech character” – however, the images created are generalized and remain with the target group, relating to all Muslims.
- Evident re-engagement in National Socialist activities, as well as hate speech cases that have become popular in the media, are ceased and not prosecuted criminally. (erg carnival in Maissau) – This leads to several people losing trust in the state of law.

#### C. Good practices

- Establishing the reporting office “hate speech”
- Revision and adaptation of paragraph on sedition to the needs of today (1.1.2016)

Name of Civil Society Organization

### **Interessenvertretung Gemeinnütziger Organisationen (IOG)**

Expertise and focus

IOG works for the protection and improvement of political, legal and economic framework conditions for NPOs. These include democratic space, in which civil-society activity can happen without any restrictions. Furthermore, laws and regulations, which facilitate or complicate the work of NPOs. Moreover, taxes and tariffs, that are charged to NPOs by private and public institutions.

#### A. Data and facts

### **Freedom of Association and the Right to Peaceful Assembly**

Despite the many critical statements of various institutions, also including the IOG, some of its member and also members of the Constitutional Service of the Chancellor’s office – the National Council on 26th April 2017 decided on an amendment to the Law on Freedom of Assembly, and therefore also decided on the restriction of freedom of assembly.

### Extension of the period of notice from 24 to 48 hours

The extension of the period of notice to one week in the case of “intentional participation of representatives of foreign states, international organizations and other subjects of international law”.

The possibility is given to terminate an assembly, which “serves the political activity of third-state nationals and the foreign policy interests, recognized international legal foundations and customs, or runs counter to international legal obligations, or the democratic fundamental values of the Republic of Austria”.

The establishment of “protection areas”, or as some call them “expulsion zones”. The authorities can define a zone of maximum 150 meters around an assembly, within which another assembly is forbidden.

The amendment is available at:

[www.parlament.gv.at/PAKT/VHG/XXV/A/A\\_02063/imfname\\_624902.pdf](http://www.parlament.gv.at/PAKT/VHG/XXV/A/A_02063/imfname_624902.pdf)

### B. Problems and deficits

§2 paragraph 1: Change of the period of notice from 24 to 48 hours lead to more legal insecurity for civil society and executive. The executive branch is more likely to restrict assemblies with an extension of the period of notice to 48 hours, in which none of the circumstances explained in Art 11 Abs 2 ECHR is evident.

§2 paragraph 1a: Equally as problematic is the change of period of notice to a week in the case of the “intentional participation of representatives of foreign states, international organizations and other subjects of international law”. Legal grey areas are opened up due to unclear terminology.

§6 paragraph 2: The content related interpretation and assessment of assemblies opens the doors for arbitrariness by the state, and is therefore highly questionable from a democratic point of view.

§7a: The establishment of so-called „protection areas“ can

- prevent the occurrence of legitimate counter assemblies close in terms of time and location
- lead to the reporting of apparent assemblies which seek to spatially drive out an assembly

A comprehensive account of our points of criticism can be read here:

[www.parlament.gv.at/PAKT/VHG/XXV/SN/SN\\_00490/fname\\_628753.pdf](http://www.parlament.gv.at/PAKT/VHG/XXV/SN/SN_00490/fname_628753.pdf)

### D. Recommendations

Already before the amendment of the Law on Freedom of Assembly in April 2017, the IGO developed several recommendations for action for a better protection of the freedom of assembly in Austria:

- Strengthening of knowledge about relevance and meaning of freedom of assembly in the civil society sector, in security authorities, as well as in the whole population
- Explicit adaptation of the Law on Assembly to the requirements of the EMRK (which means the retraction of the amendment from 2017)
- Modification of laws which potentially criminalize civil society engagement
- Adequate timely complaint mechanisms in the case of unlawful prohibitions of assemblies, based on the accelerated proceedings at constitutional courts in Germany).
- Complaints mechanisms low in risk against participants of protests affected by

disproportionate measures

- Guarantee of the possibility to identify police officers through identification numbers on uniforms, as is the case in Germany
- Systematic anchoring of the principle of de-escalation in the preparation and implementation of operations during assemblies
- Reduction of liability risks for organizers of assemblies in the case of possible damages, which took place without intent and without culpable negligence.

Name of Civil Society Organization

**Österreichischer Rechtsanwaltskammertag (ÖRAK)**

Expertise and focus

Interest representation for lawyers

#### B. Problems and deficits

This year the Law on Freedom of Assembly was restricted due to an amendment to the law. Taking into account the events in connection with the election behaviour of foreign governmental politicians, this is an example of an ad hoc legislation, which is too broad and limits the right to freedom of assembly.

The period of notice for the registration of an assembly is now 48 hours. The period of notice to register an assembly takes one week, if the participation of a representative of a foreign state or an international organization is planned. The law sees the possibility to cease the assembly if this “serves the political activity of third-state nationals and the foreign policy interests, recognized international legal foundations and customs, or runs counter to international legal obligations, or the democratic fundamental values of the Republic of Austria”.

The Austrian authorities have a significant margin of discretion in this case. Therefore, there is a lack of adequate protection against arbitrariness.

#### D. Recommendations

When it comes to broad security measures, the principle of proportionality is to be maintained. Complete instructions on assembly or the ceasing of assemblies can only be ultima ratio. Furthermore, there must be a clear difference between assemblies and events.

Name of Civil Society Organization

**SOS Mitmensch**

Expertise and focus

Human rights, anti-racism, integration policy

#### A. Data and facts

Statement by SOS Mitmensch on the restriction of the Law on Freedom of Assembly: [www.sosmitmensch.at/dl/qqqpJKJKlomJqx4KJK/Stellungnahme\\_SOS\\_Mltmensch\\_zum\\_Ver\\_sammlungsgesetzesentwurf\\_11042017.pdf](http://www.sosmitmensch.at/dl/qqqpJKJKlomJqx4KJK/Stellungnahme_SOS_Mltmensch_zum_Ver_sammlungsgesetzesentwurf_11042017.pdf)

With the restriction in the Law on Freedom of Assemblies steps were taken in the direction of reducing democratic rights and tightening Austrian democracy. The exercise of the important right to demonstrations is made more difficult. The reduction of democracy, even to a small extent, is a dangerous thing. Demonstrations may sometimes be inappropriate and annoying,

but they are an important component of a functioning democracy, in which also inappropriate and annoying political forms of expression may take place, as long as they do not violate the criminal code. It is vital to protect the high good of freedom of assembly with all vehemence.

## B. Problems and deficits

### §2 paragraph 1: Extension of the period of notice from 24 to 48 hours

The extension of the period of notice for political assemblies from 24 to 48 hours implies a problematic tightening of the Law on Freedom of Assembly. In some cases it will be not possible anymore to react to political events that occur on the short-term, and to hold a correctly registered assembly. Because of these measures, there will be more unregistered demonstrations which operate in a legal grey zone. A sensible politics would attempt to prevent exactly that. SOS Mitmensch is against the extension of the period of notice from 24 to 48 hours.

### §2 paragraph 1a: Extension of the period of notification from 24 to 168 hours in the case of the "intentional participation of representatives of foreign states, international organizations and other subjects of international law"

Also the extension of the period of notification from 24 to 168 hours in the case of the „intentional participation of representatives of foreign states, international organizations and other subjects of law“ implies a problematic tightening of the Law on the Freedom of Assembly. For example members of international organizations should have the possibility to participate in assemblies organized on the short-term. SOS is against the massive extension of the period of notice in the case of Extension of the period of notification from 24 to 168 hours in the case of the "intentional participation of representatives of foreign states, international organizations and other subjects of international law".

### §6 paragraph 2: Prohibition paragraph on the participation of "the participation of politically active third-state nationals in assemblies, which run counter to foreign policy interests"

"An assembly which serves the political activity of third-state nationals and the foreign policy interests, recognized international legal foundations and customs, or runs counter to international legal obligations, or the democratic fundamental values of the Republic of Austria" may be ceased.

Also the third-state nationals living in Austria should be able to participate in the political happenings in Austria and participate in assemblies. Democracy lives off participation and the expression of opinion. The prohibition paragraph is very vague and opens the door for the arbitrariness of the government. Who decides what constitutes "foreign policy" interests and which activities are to be categorized as "political activities"? For example, under a blue-black government (coalition between Freedom Party and People's Party), what will the "foreign policy" interests be? Will it then not be able anymore to demonstrate against populist and fascist tendencies in the domestic and foreign realm, because this runs counter to "foreign policy" interests and the participation of third-state nationals is categorized as being "political"? SOS Mitmensch speaks against the vague and dangerous prohibition paragraph.

### §7a: Expulsion zones of up to 150 Meters

The protection of a lawful political assembly is important. At the same time, it must also be possible to organize counter-assemblies close by for example to take a stance against baiting assemblies. An example is the anti-asylum assembly of the FPÖ (Freedom Party) in June 2015 directly next to the asylum quarters in Wien Erdberg. Fewer than 20 meters away from the FPÖ assembly there was a peaceful counter-assembly, which signalled to the asylum seekers accommodated in the asylum quarters, that there was clear disagreement with anti-asylum baiting.

If there had been an expulsion zone of 150 meters, only the anti-asylum agitators would have stood next to the asylum quarters and the counter-assembly would be far away and not visible for the insecure inhabitants of the asylum quarter. Beyond that, there is the danger that through the planner minimum distance between assemblies there can be a large-scale

displacement of assemblies due to the registration of fake assemblies. Therefore, SOS Mitmensch speaks for the protection of assemblies, but against the expulsion zones foreseen in the draft of the law.

#### D. Recommendations

[www.sosmitmensch.at/dl/qppqJKJKlomJqx4KJK/Stellungnahme\\_SOS\\_Mltmensch\\_zum\\_Versammlungsgesetzesentwurf\\_11042017.pdf](http://www.sosmitmensch.at/dl/qppqJKJKlomJqx4KJK/Stellungnahme_SOS_Mltmensch_zum_Versammlungsgesetzesentwurf_11042017.pdf)

The Law on Freedom of Assembly in its current form does not require restrictions. It offers a proven foundation for the important law on freedom of assembly, which is based on the rule of law and vital for a functioning democracy.

The law on freedom of assembly was fought for viciously. It is part of the fundamental elements of our democracy. It is an extremely important law, particularly because it is sometimes annoying, annoying for those in power.

The restriction and the reduction of democratic rights already in small amounts is a dangerous thing.

Such a restriction, such a reduction of democratic rights takes place when period of notices are extended, expulsion zones are established and highly problematic, vague prohibition paragraphs are decided upon which open the door for political arbitrariness in the prohibition of assemblies.

It is vital to fight against these beginnings.

Name of Civil Society Organization

**Österreichischer Journalisten Club**

#### B. Problems and deficits

Professional secrecy (Amtsverschwiegenheit) according to § 46 BDG 1979 significantly hampers the freedom of reporting and is a relic from the time of Maria Theresa and conflicts with the idea of the European law on freedom of information-

The executive applied § 38a SPG as a means of pressure against journalists who want to report about police action. This is particularly blatant every year in January, when the Viennese police declare half of the city center to be a restricted area on the occasion of a ball and journalists can only work under police surveillance. The rights that the SPG generally grants to the executive are increasingly being used extensively by the executive.

## Contributions on Topic 4

Name of Civil Society Organization

**Dr. Daniela Cravos, General practitioner**

Expertise and focus

General Practice for many people with multiple disabilities, who require a high level of support

### A. Data and facts

People with multiple disabilities and a high need for support, like for example autists with a high need for support, are not accepted into day care centres or housing groups in Austria, because they are difficult to support. Due to this, they need to stay in their families. To support them on a part-time basis, many parents for decades have stayed at home with their severely disabled adult children.

### B. Problems and deficits

The people with multiple disabilities and a high need for support have no places in day care structures and cannot be supported adequately at home. Due to this boredom and not satisfying living situation, impulsive break-outs can happen, for example by autists. With the parents who are left alone and overstrained, situations of mutual violence develop. Some parents lock their adult children with multiple disabilities away into a room. Who protects these helpless victims? Who supports them? Even in the case of a report to the police, the people with multiple disabilities stay with these parents, as there are no alternative places for living.

### C. Good practices

- There is a lack of adequate living and housing places for people with multiple disabilities in Austria.
- It is urgent that crisis centres for autists in life crises are established.
- At the moment around 30 autists with a high need for support in Vienna have been waiting for a living or workshop space for years.
- 12 autists with a high need for support have waited for a workshop place in Vienna for 1-3 years.

Name of Civil Society Organization

**Association of Austrian Autonomous Women's Shelters, AÖF & Domestic Abuse Intervention Centre Vienna, IST**

Link to full NGO Shadow report on the implementation of the Istanbul Convention in Austria:  
[www.interventionsstelle-wien.at/download/?id=GREVIO-Schattenbericht\\_2016.pdf](http://www.interventionsstelle-wien.at/download/?id=GREVIO-Schattenbericht_2016.pdf)

Name of Civil Society Organization

**Österreichischer Rechtsanwaltskammertag (ÖRAK)**

Expertise and focus

Interest representation for lawyers

### C. Good practices

A training program has been offered by the Lawyer's Academy (AWAK) in cooperation with

the Federal Ministry of Justice for judicial and psycho-social support for proceedings, to also give lawyers comprehensive knowledge in this area.

The EU Guideline on victim protection was already implemented in Austria to a large degree in the past. With the amendment to the law on the criminal proceeding in 2016, more measures were introduced to improve the legal standing of victims: the expansion of the term “victim”, the introduction of the need for special protection of particular groups of victims, the admission of the quick establishment of the need for special protection during a proceeding.

Name of Civil Society Organization:

**Verein BEHINDERTENOMBUDSMANN**

Expertise and focus

Advice and support for people with disabilities

A. Data and facts

Not adhering to the UN convention by the judiciary as well as by institutions, authorities and agencies.

B. Problems and deficits

People with disabilities are handled like produce, and services funded by the state are implemented in an insufficient state or not at all! Contact with persons of trust is often prohibited, even with trustees. Instead of supporting parents with learning disabilities, their children are taken away and the parents are unnecessarily harassed by the authorities at high costs! The power of some groups in institutions has reached a counter-productive and costly size.

C. Good practices

Good cooperation with relatives, as it is normal in hospitals and when seeing doctors, works. It is the best check to see that also the support is alright. What works can also get through an unannounced check.

D. Recommendations

Instead of covering up mistakes, problems must be talked about and solved. The anonymous surveying of those people in need of support and care, and those who are disabled who are kept in institutions would show weak points and prevent scandals! The disabled person and the solving of problems must always be in the centre of efforts.

## Additional and Cross-cutting Comments

Name of Civil Society Organization

### **Ludwig Boltzmann Institut für Menschenrechte**

Please find below a selection of relevant studies and statements by the Ludwig Boltzmann Institute for Human Rights:

On the topic of the prevention of torture and the National Preventive Mechanism:

Study on enhancing the impact of National Preventive Mechanisms (May 2015), <http://bim.lbg.ac.at/en/story/news/study-enhancing-impact-national-preventive-mechanisms-published>

On the topic of asylum, migration and integration:

National Report - ASSESS: Integration of vulnerable migrant groups (March 2015) (German), [http://bim.lbg.ac.at/sites/files/bim/attachments/national\\_report\\_ii\\_austria-de.pdf](http://bim.lbg.ac.at/sites/files/bim/attachments/national_report_ii_austria-de.pdf)

ASSESS Report April 2014 (German), [http://bim.lbg.ac.at/sites/files/bim/attachments/national\\_report\\_i\\_-\\_austria-de.pdf](http://bim.lbg.ac.at/sites/files/bim/attachments/national_report_i_-_austria-de.pdf)

Statement by the BIM on the draft amendment to the Alien's Law 2017 (German), <http://bim.lbg.ac.at/de/artikel/aktuelles/stellungnahme-des-bim-zum-entwurf-betreffend-fremdenrechtsaenderungsgesetz-2017>

Statement on the planned changes to the Asylum Law (2016) (German), <http://bim.lbg.ac.at/de/artikel/aktuelles/stellungnahme-zur-geplanten-anderung-des-asylgesetzes>

Statement on the draw of a federal law with which the Asylum Law 2005 is changed (2015), <http://bim.lbg.ac.at/de/artikel/aktuelles/stellungnahme-zum-entwurf-eines-bundesgesetzes-dem-asylgesetz-2005-geaendert-wird>

IM Position Nr. 10 | 2017: German courses for asylum seekers – is a change made due to country of origin justified? (German), <http://bim.lbg.ac.at/de/publikation/stellungnahmen-gutachten/bim-position-nr-10-2017-deutschkurse-fuer-asylsuchende-unterscheidung-nach-dem-herkunftsstaat-gerechtfertigt>

BIM Position Nr. 9 | 2017: On the labour program of the state concerning hobbles of “threateners” as well as “Return Centres” (German), <http://bim.lbg.ac.at/de/publikation/aktuelle-publikationen-stellungnahmen-gutachten/bim-position-nr-9-2017-zum-arbeitsprogramm-regierung-betreffend-fussfesseln-fur-gefahrderinnen-sowie-ruckkehrzentren>

BIM Position Nr. 7 | 2016: Women and Girls in Flight (German), <http://bim.lbg.ac.at/de/artikel/bim-position-nr-7-2016-frauen-maedchen-flucht>

BIM Position Nr. 6 | 2015: Human rights obligations in the current refugee situation (German), <http://bim.lbg.ac.at/de/artikel/aktuelles/bim-position-nr-6-2015-menschenrechtliche-verpflichtungen-aktuellen-fluechtlings-situation>



## Name of Civil Society Organization

**Wiener Institut für Internationalen Dialog und Zusammenarbeit (VIDC)**

The fair play initiative at the Viennese Institute for International Dialogue and Cooperation (VIDC) is currently conducting three projects:

- Our Game for human rights (formerly „Nosso Jogo“), considerably funded by the ADA: conducted jointly with, but not only, Südwind, Dreikönigsaktion and Frauensolidarität. It is the goal of the project to raise awareness for human rights violations in the framework of large-scale sporting events, and to use the medium of sporting events to sensitize people to the adherence to human rights and to connect with our international networks (on the UN and EU level) in dialogue with decision-makers. The topics in the past years were: labour rights, expulsions, police violence as well as women's and children's rights. With an eye on the soccer world cup in Russia, the focal points will be on employment rights, anti-discrimination as well as freedom of expression and assembly. [www.nossojogo.at](http://www.nossojogo.at)
- Sports and human rights: considerably funded by BMLVS: the centre of this project is a working group which is coordinated by fair play-VIDC, with all relevant Austrian sports associations as members, including the Austrian Football Association (ÖFB), the Austrian Paralympic Committee (ÖPC), the National Sports Organization (BSO) and many more. The goal of the project is to find Austrian standpoints in international debates around human rights violations, and to collectively develop human rights principles for sports and sporting events in Austria [www.fairplay.or.at/projekte/menschenrechte/](http://www.fairplay.or.at/projekte/menschenrechte/)
- Sport Welcomes Refugees, considerably funded by Erasmus+, EC: implemented collectively with four international partners from Germany, Italy, Portugal, Hungary, Finland, Ireland and Greece. It is the goal to develop suggestions for the best possible inclusion of migrants into sporting structures and organizations. <http://sportinclusion.net/>

The respective projects are not decidedly tailored towards the Austrian focal points in the framework of the OSCE Chairmanship (prevention of torture, religious intolerance, freedom of expression and assembly, and victims of domestic violence), but there are still central connecting points on topics like migration and integration.

## Name of Civil Society Organization

**Austrian Helsinki Association – For Human Rights and International Dialogue (AHA)**

Statement to the Austrian Self-Evaluation Process and Choice of topics, Vienna, 17 November 2017.

- The annual Self-Evaluation Report, based on the initiative of the Civic Solidarity Platform, was assumed by the European Training and Research Center (ETC) Graz in 2017. The overall preparation process was vigilantly followed by representatives of the Non-Governmental Organization Austrian Helsinki Association – For Human Rights and International Dialogue (AHA) from the start. AHA took part in various meetings, organized by the Austrian OSCE Taskforce as well as the Austrian Ombudsman Board in order to discuss the process, aim and purpose of such a Self-Evaluation as well as to provide an update for Austrian Civil Society Representatives. According to AHA, civil society's longstanding, experienced and faceted expertise was meant to be harnessed in order to accomplish an extensive Self-Evaluation Report. Due to this fact, AHA's representatives feel obliged to contribute to the further development of future Self-Evaluation Processes, prepared in the framework of the annual OSCE Chairmanship, by providing recommendations.

- The tender for the Self-Evaluation Report was released on January 2nd 2017 and subsequently ETC Graz was awarded with the assignment in the beginning of March. Thereafter at the end of April, at a meeting, announced by the Austrian OSCE Task Force, representatives of the Austrian Civil Society were informed about the self-evaluation process. The four topics of the report – 1) Prevention of Torture and Inhumane Treatment of prisoners, 2) Hate-Crime, Religious Intolerance, Extremism and Preventive Human Rights Education Measures, 3) Freedom of Expression and Freedom of Assembly, and 4) Protection and Support for Victims of Domestic Violence – were already decided upon and presented. Worth mentioning here is that civil society itself was not involved in the selection of the priority topics.
- Although the process intended to be participatory, a lack of significant steps was observable, most importantly the opportunity for civil society representatives to comment on the report along the process of the report preparation. The Civic Solidarity Platform's (CSP) Coordination Committee and Austrian CSP members, ZARA – Zivilcourage und Anti-Rassismus-Arbeit and the Austrian Helsinki Association – For Human Rights and International Dialogue (AHA), called upon the Austrian Federal Ministry for Europe, Integration and Foreign Affairs and emphasized the importance of ensuring the possibility of directly commenting on the report as well as adding statements to the annex of the report. It was positively perceived by AHA, ZARA as well as the CSP that the emphasized suggestions were taken well into consideration and the process was adapted thereafter.
- Nevertheless, the communication and distribution of information among the Austrian civil society landscape concerning the aim of the Self-Evaluation Report and the possibility to contribute was little throughout the entire process. AHA continuously enquired clarification on the Self-Evaluation Process and information on the exact time frame, mechanisms for comments and the opportunity for statements, from the institutions, responsible for outreach activities – ETC Graz and the Austrian Ombudsman Board. Retrospectively it seems the distribution of respective responsibilities was unclear.
- On October 13th the Draft of the Self-Evaluation Report was distributed and November 17th was set as the respective deadline, giving civil society slightly more than a month to prepare comments and recommendations, a time span which could be enough for such a contribution, whereas it seems worth-mentioning that it is necessary for a manifold of civil society organizations to create the capacity for such an undertaking well in advance, as most organizations have to deal with limited capacities and resources. Additionally, AHA recognized the need to partly function as an intermediary, as certain civil society representatives within AHA's network were not reached by the dissemination of various information as well as the actual distribution of the Self-Evaluation Report draft.
- Civil society representatives were invited to participate in a Round Table on June 23rd in order to be able to contribute to the report and discuss relevant issues. 15 organizations participated in this meeting. Unfortunately, a significant period of time was entirely committed to the sheer explanation of the purpose and process of the Self-Evaluation Report itself instead of devoting the time to the possibility of contributing and phrasing recommendations or the topics themselves.
- The report itself was based on the methodology and technique of desk research. While it is appreciable that civil society was invited to provide input by submitting a form, covering the four chosen topics, it is worth mentioning that a lack of the inclusion of topic relevant reports and analysis published by civil society representatives and the direct consulting of topic-related civil society experts is perceivable. Directly contacting a wider range of civil society organizations with explicit fields of expertise on a variety of human rights issues, conducting problem-centered questionnaires and directly consulting civil society experts might have a

positive impact on the amplitude of future Self-Evaluation Reports and might increase the number of contributions to the report.

- The aforementioned statement leads to the listing of the following recommendations:
  - The respective institute needs to be provided with sufficient time to conduct qualitative, methodological approaches, to prepare the report itself and for setting up the self-evaluation process, in order to ensure the participation of civil society from the very beginning.
  - A funded coordinator within civil society should be appointed to coordinate the cooperation between entrusted institutes and CSOs in order to ensure that enough time and space are given for CS contributions to the self-evaluation process.
  - Adequate information about the purpose of the self-evaluation process should be distributed among civil society organizations in beforehand.
  - Appropriate mechanisms should be introduced to facilitate the possibility for civil society representatives to prepare statements/comments, as capacities and resources are limited.
  - Clear communication needs to be ensured when it comes to the distribution of responsibilities and tasks among involved institutions and organizations.
  - A more transparent and inclusive qualitative research methodology in order to, among other things, include a broader civil society engagement is recommendable.
  - Civil society experts and relevant publications with a focus on human dimensions, such as the rule of law, securitization, rights of minorities and specifically vulnerable or disadvantaged groups and individuals, victimization, sustainable development, refugees, asylum and integration, racism and discrimination, anti-Semitism, antiziganism, homophobia and anti-Muslim hatred and so forth, should be consulted for such an endeavour.