

Austria

Austrian Ombudsman Board (AOB)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Austrian NHRI was re-accredited with B status in May 2011. The SCA underlined the importance of a clear, transparent and participatory selection process to ensure the pluralism and independence of an NHRI. Also, the SCA encouraged the NHRI to seek a broader human rights mandate and to continue its engagement with civil society organisations at the national and regional levels.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Since the last Re-accreditation in 2011 the Federal Constitution of Austria was amended and, since July 2012, the AOB has also been responsible by order of the Federal Constitution for protecting and promoting compliance with human rights as part of the UN mandate. Since then, the AOB along with its commissions has been monitoring all institutions in which liberty is being or may be deprived or restricted (as National Protection Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture (OPCAT)). It also examines the institutions and programmes for people with disabilities according to Art. 16.3 of the UN Convention on the Rights of Persons with Disabilities (CRPD), as well as the exercise by the administration of direct authority and the use of force, particularly during deportations and demonstrations.

At the same time, a Human Rights Council was set up by the Federal Constitution to advise the AOB. Half of the members of the Human Rights Advisory Council consist of representatives of NGOs, which guarantees a continuous cooperation with Civil Society Organisations and NGOs.

The latest amendment to the mandate of the AOB occurred when the National Council unanimously resolved to entrust the AOB with the compensation for victims of abuse in children's homes. Since July 2017, there has thus been an independent Pension

Commission at the AOB, which acts as an umbrella organisation according to the Pensions for Victims of Children's Homes Act. This Act stipulates that those affected receive a monthly pension as soon as they reach the regular pensionable age or retirement. The Pension Commission is chaired by one of the three members of the AOB and also includes representatives of organisations for the support of victims.

References

- AOB legal framework:
 - Federal Constitution of Austria, Chapter VIII, Article 148a., Ombudsman Board and Art. 148h; Federal Ombudsman Act, § 7 (3), § 11. (1) and § 15. (1)
- Pension Commission:
 - AOB Annual Report 2017, p.20
Legal provision: § 15 Pensions for Victims of Children's Homes Act

Functioning of justice systems

With the establishment of administrative courts in Austria in 2014 the legal protection for people living in Austria was actually extended.

No evidence was found of systemic issues affecting the functioning of justice systems and its constitutional guarantees.

Corruption

Concerning whistleblowing, there is no specific act on the protection of whistle-blowers in Austria.

As regards the AOB, the institution can start investigations on its own initiative. In addition, guarantees exist to ensure respect of privacy and data protection within the functions of the AOB, including as regards personal data of complainants and the secrecy of correspondence between inmates and the AOB, which cannot be the object of control by eg. prison management.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

With the beginning of the first ministerial decisions (Erlässe), a multitude of emergency measures both on federal as well as regional level was adopted relating to nearly all aspects of life.

All these acts and regulations had an immediate impact on fundamental rights, such as the right to private life, free movement etc., because the right to life and right to health was, and still is, given priority.

As AOB, we were informed about all these measures immediately and checked them for their proportionality. In this regard, special importance was and is given to the fact that all measures were and are adopted for a finite time only (no unlimited timeframes).

There is no lack of access to court in Austria. Overall, the access was in fact made easier, because deadlines relevant for access to remedies (such as appeals) were extended. The independent judges could continue with those cases it deemed urgent. In the meantime, the courts are back on track for normal handling of cases.

Most important challenges due to COVID-19 for the NHRI's functioning

AOB manages to uphold the delivery of services to citizens.

Although access to institutions (e.g hospitals) has become more difficult, the benefit of the AOB is that as Ombudsman Board we still receive individual complaints and therefore know about the immediate effects the measures have on the individuals. Exercising this ex-post control will also prove valuable to inform the preventive work of the AOB.