

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Austria



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# Austria

## *Austrian Ombudsman Board*

### Impact of 2021 rule of law reporting

#### Impact on the Institution's work

Following the last ENNHRI Rule of Law Report the Austrian Ombudsman Board (AOB) started a reaccreditation process for an "A" Status in autumn 2021. Since the last accreditation, the mandate of the AOB has been considerably expanded and a bundle of competences as well as the focus on human rights protection now ensure sustainable human rights work and full compliance with the Paris Principles. Therefore, this year's due decision about the AOB's request is awaited with anticipation.

#### Follow-up initiatives by the Institution

Despite the difficult situation of the pandemic, the ombudsman's office was able to hold many meetings, participate in exchanges and cooperate with civil society organisations, local actors, state authorities and other stakeholders on important issues. In the following, a few examples of the meetings and activities organized or joined in 2021:

- On 12 January 2021, the Ombudsman Board in cooperation with the EU Fundamental Rights Agency (FRA) organised an exchange to shed light on human rights protection in Austria in times of Covid-19 and to discuss how the independence of national human rights institutions (NHRIs) can be strengthened. The European perspective was broadened by the Slovenian Ombudsman Peter Svetina and the head of the European NHRI Network (ENNHRI), Debbie Kohner. (1)
- On March 11th, 2021 Austrian Ombudsman and IOI General Secretary Amon welcomed Prof. Michael O'Flaherty, Director of the European Union Agency for Fundamental Rights (FRA) for a conversation. Besides discussions about cooperation between the FRA and the IOI as well as the Austrian Ombudsman Board and the topics dealt with included inter alia the rights situation with regard to the Covid19-pandemic, how to strengthen NHRI's in the EU, current developments and focuses of both institutions, the FRA and the IOI. (2)
- The Ombudsman for International Affairs, Werner Amon, who is also Secretary General of the International Ombudsman Institute (IOI), received the European

Ombudsman, Emily O'Reilly, at the premises of the Ombudsman Board for a joint exchange on October 12th, 2021. Both emphasised the importance of good cooperation and networking within the European Network of Ombudsmen (3).

- On Tuesday, 23 November 2021, Ombudsman Walter Rosenkranz welcomed a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), based at the Council of Europe in Strasbourg. The AOB-Experts used the opportunity to explain current developments in their respective fields of competence, to present initiatives of the Ombudsman Board and to point out current problem areas. Questions from the delegation on compliance with human rights standards in prisons, hospitals, care facilities and police inspectorates and detention centres were also answered (4).
- On the occasion of the visit to Austria of Dunja Mijatović, Commissioner for Human Rights of the Strasbourg-based Council of Europe, the Ombudsmen received a delegation from the Commissioner's office in Vienna on 15 December 2021. Ombudsman and Secretary General of the International Ombudsman Institute (IOI) Werner Amon reported on the planned expansion of the multilateral cooperation of the IOI, especially at the level of the United Nations. This was followed by an exchange on the main topics of Ms Mijatović's visit to Austria, "Women's rights and gender equality issues" and "Reception and integration of refugees, asylum seekers and migrants. The Ombudsman Board regularly receives the current office bearers of the Commissioner for Human Rights and cooperates closely with various committees of the Council of Europe that deal with human rights issues, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (5).
- The annual conference of the NPM Forum of the Council of Europe in 2021 addressed the role of the NPM in the effective implementation of judgments of the European Court of Human Rights and recommendations of the CPT. The thematic focus of the conference, in which the Austrian NPM participated, was on the problem of ill-treatment or allegations of ill-treatment by the police.
- The OSCE Office for Democratic Institutions and Human Rights (ODIHR) organised a training programme specifically for the Austrian NPM in the reporting period. The two-day training was dedicated to the use of direct coercion and the use of weapons as well as the use of teasers in prisons and by the police.
- The Austrian NPM is member of the South-East European NPM network (SEE NPM Network) and as such took part at two Meetings organized by the 2021's SEE NPM

Network Chair Serbia. The first one offered an exchange platform for NPMs conducting preventive control during the pandemic, which was also joined by representatives of the United Nations Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).

- Since 2014, the Austrian NPM has been a partner in a programme for the exchange of experiences between NPMs in German-speaking countries (Germany, Austria, Switzerland - D-A-CH for short). Within the framework of this D-A-CH network, the National Agency for the Prevention of Torture in Germany invited to an exchange of experiences in Berlin in 2021.
- The AOB also cooperates bilaterally with Universities, experts and other stakeholders that are preoccupied with human rights and other topics with regard to the AOBs work. In 2021 an expert of the AOB and a Member of the NPM commissions, for example, contributed with a Speech about the work of the NPM with focus on the mandate to accompany and police during operations and manifestations and examine them, to the „Human Rights Clinic“, a project called into live by the department for public and penal law of the University of Bern. Moreover, the Austrian NPM was also represented in the yearly conference on health-promotion in incarceration which was dedicated to the topic „Deprivation of liberty in times of Covid-19 - challenges and opportunities“. The Austrian NPM gave a presentation on the special problems of migrants in law enforcement.

### *References*

- (1) [https://volksanwaltschaft.gv.at/artikel/Staerkung-unabhaengiger-Nationaler-Menschenrechtsinstitutionen-und-Menschenrechtsschutz-in-Zeiten-von-Covid-19?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Staerkung-unabhaengiger-Nationaler-Menschenrechtsinstitutionen-und-Menschenrechtsschutz-in-Zeiten-von-Covid-19?topic_type=archiv)
- (2) [https://volksanwaltschaft.gv.at/artikel/Direktor-der-Agentur-fuer-Grundrechte-der-EU-zu-Besuch-bei-Volksanwalt-Amon?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Direktor-der-Agentur-fuer-Grundrechte-der-EU-zu-Besuch-bei-Volksanwalt-Amon?topic_type=archiv)
- (3) [https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Amon-trifft-die-Europaeische-Buergerbeauftragte-Emily-O-Reilly?topic\\_type=aktuelles&archiv=0](https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Amon-trifft-die-Europaeische-Buergerbeauftragte-Emily-O-Reilly?topic_type=aktuelles&archiv=0)
- (4) [https://volksanwaltschaft.gv.at/artikel/Austausch-mit-dem-Europaeischen-Komitee-zur-Verhuetung-von-Folter?topic\\_type=archiv&archiv=2021](https://volksanwaltschaft.gv.at/artikel/Austausch-mit-dem-Europaeischen-Komitee-zur-Verhuetung-von-Folter?topic_type=archiv&archiv=2021)
- (5) [https://volksanwaltschaft.gv.at/artikel/Besuch-der-Menschenrechtskommissarin-des-Euoparats-in-der-Volksanwaltschaft?topic\\_type=archiv&archiv=2021](https://volksanwaltschaft.gv.at/artikel/Besuch-der-Menschenrechtskommissarin-des-Euoparats-in-der-Volksanwaltschaft?topic_type=archiv&archiv=2021)

Regarding the information given without sources, we refer to the soon to be published annual reports of the AOB. All the AOBs reports are published on our website:

<https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse/berichte-an-den-nationalrat-und-bundesrat>

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Austrian NHRI was last reaccredited with B-status in May 2011 (1).

At that occasion, the Sub-Committee on Accredited (SCA) found that the legislation at the time did not make specific provision for a broad mandate to protect and promote human rights, while acknowledging that the institution already interpreted its mandate widely, beyond maladministration issues. The SCA also encouraged the institution to develop regular and systematic working relations with civil society organisations. The Austrian NHRI was also recommended to advocate for a selection and appoint process that is clear, transparent and participatory, in line with the requirements under the UN Paris Principles and SCA's General Observations.

Due to several relevant developments that have taken place since the SCA's review, which was over a decade ago, the Austrian NHRI has applied for reaccreditation in order to demonstrate its compliance with the UN Paris Principles. Some of these developments are outlined below. The SCA will review the Austrian NHRI in March 2022.

### References

- (1) [https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)

### Regulatory framework

The Austrian Ombudsman Board continues to function on the constitutional basis. The AOB enjoys full independence, which is granted within the constitution (Article 148a para 6 Austrian Constitution). Moreover, it has received an increase in staff as well as in budget.

The national regulatory framework applicable to the institution has not changed since the 2021 ENNHRI Rule of Law Report. The AOB is being recognized and accredited as Ombudsinstitution as well as NHRI and NPM. The Austrian NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling and awareness raising. The mandate does not include the NHRI's engagement in strategic litigation before the courts.

The AOBs competence to investigate individual complaints as well as to conduct ex-officio investigations is enshrined in Art 148a item 1 & 2 of the Federal Constitution. According to Art 148a (4) Federal Constitution anyone may complain to the Ombudsman Board about an alleged delay by a court in the performance of a procedural act to the Ombudsman Board, if she/he is affected by it. If the AOB identifies a grievance or for another reason deems it necessary to make a recommendation to the bodies entrusted with the supreme administrative functions of the Confederation. Article 148c of the Federal Constitution stipulates that, the organ concerned shall either comply with these recommendations and inform the Ombudsman Board thereof or give reasons in writing why the recommendation has not been complied with. Furthermore, it grants the AOB the power to file a motion for the setting of a time limit aimed at eliminating the default of a court in specific cases (Art. 148a par. 4 Federal Constitution) as well as suggest measures of official supervision. Moreover, the AOB can recommend legislative reforms (Article 7 (2) Austrian Ombudsman Act 1982 (Volksanwaltschaftsgesetz). Another way the AOB is contributing to justice for individuals is preventive; through its right to comment on any proposed draft legislation or ordinance (Article 1 (2) item 4 Austrian Ombudsman Act 1982). For these purposes, all drafts must be forwarded to the AOB in a timely fashion (Article 7 (1) Austrian Ombudsman Act 1982). Additionally, the AOB has the right to apply to the Constitutional Court for a review of the lawfulness of administrative ordinances Article 139 (1) items 5 & 6 Federal Constitution). According to Art 148a (5) The Ombudsman Board is also be responsible for participating in the handling of petitions and citizens' initiatives submitted to the National Council.

Since 2012, Article 148a (1) Federal Constitution explicitly enshrines a broad human rights mandate of the AOB. Additionally, the AOB and its Commissions act as National Preventive Mechanism pursuant to OPCAT and Independent Authority pursuant to CRPD. Moreover, the AOB houses the Commission pursuant to the Pensions for Victims of Children's Homes Act (HOG) tasked with the investigation of abuse cases for the award of a so-called home victim's pension. Since the enactment of the Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) in July 2017, the Pension Commission [Rentenkommission] has its seat at the AOB. The Pension Commission deals with the granting of pensions under this law to those people who have not yet been recognized as victims of violence and who suffered violence between 1945 and 1999 in a care home, foster family, hospital, psychiatric institution or a sanatorium. The same applies to persons who were victims of an act of violence in a private institution, provided that they were referred to it by a youth welfare agency. The commission's task is to examine whether the prerequisites for granting a pension have been met. Subsequently, it is responsible for submitting a proposal for a comprehensibly justified, coherent written recommendation of

the College (meaning of the three members) of the AOB to the decision-maker (§ 15, para. 1, HOG). These recommendations are another means by which the AOB assists individuals in obtaining their rights.

### **References**

- (1) Federal Constitution (mentioned here: Artikel 148a bis 148j des Bundes-Verfassungsgesetz, B-VG), available online:  
<https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000138/B-VG%2c%20Fassung%20vom%2018.05.2021.pdf> (German) and  
[https://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html) (bilingual);
- (2) Austrian OMBUDSMAN Act (Volksanwaltschaftsgesetz, Federal Law Gazette No. 433/1982), available online:  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000732>
- (3) Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl:  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009898>

### **Enabling and safe space**

The relevant state authorities have good awareness of the Austrian Ombudsman Board's mandate, independence and role of the NHRI, also because of the 45 years of activity of the AOB and the high level of recognition of the AOB among the civic society.

The AOB can recommend legislative reforms (Article 7 (2) Austrian Ombudsman Board Act 1982) and has the right to comment on any proposed draft legislation or ordinance (Article 1 (2) lit 4 Austrian Ombudsman Act 1982). For these purposes, all drafts must be forwarded to the AOB in a timely fashion (Article 7 (1) Austrian Ombudsman Act 1982). Additionally, the AOB has the right to apply to the Constitutional Court for a review of the lawfulness of administrative ordinances (Article 139 (1) items 5 & 6 Federal Constitution). Moreover, Article 148b. (1) of the Federal Constitution stipulates that, all organs of the federation, the provinces, the municipalities and the municipal associations and other self-governing bodies shall support the Ombudsman Board in the performance of its duties. Meaning that they have to allow the AOB to inspect files and to provide the necessary information upon request. Official secrecy does not exist vis-à-vis the Ombudsman Board.

In case the AOB issues a formal recommendation, the body concerned must either comply with these recommendations within eight weeks and notify the Ombudsman Board thereof or give reasons in writing why the recommendation has not been complied with (Article

148c Federal Constitution in conjunction with Article 6 Austrian Ombudsman Act 1982). However, the AOB does not have any means of coercion to enforce this. It uses, however, reporting and awareness raising to draw attention to the maladministration and non-response of administrative authorities.

Due to its position in the constitutional structure, the Austrian NHRI enjoys complete independence and protection from interference hence there are no specific, additional measures introduced to protect the NHRI, heads of institution and its staff against threats and harassment. According to the Federal Constitution, the AOB is an auxiliary body of the National Council and is assigned to the legislative state function. This means that the AOB due to its status as a legislative body is independent of the entire state administration, the federal government and the governments of the Laender (provinces). Article 148a, para. 6 of the Federal Constitutional Law underlines that “the Austrian Ombudsman Board is independent in the exercise of its duties”. The AOB is not subject to any instructions, neither from administrative, judicial nor legislative bodies. Although the members of the AOB are elected by the Austrian National Council (Article 148g, para. 2, Federal Constitutional Law), the three members (Ombudspersons) are not accountable to parliament. According to Article 148g, para. 6, Federal Constitutional Law, the members of the AOB have the same legal liability as the members of the Federal Government. A member may also not be voted out of office by the National Council or the parliament (Landtag) of one of the Laender (provinces). For the performance of their duties, the three Ombudspersons are solely subject to legal liability before the Constitutional Court. (Article 141, para. 1, lit. e, Article 142, para. 2, lit. b, Article 148g, para. 6, Federal Constitutional Law ; §§ 72 et seq., Constitutional Court Law).

### **References**

- (1) <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000138/B-VG%2c%20Fassung%20vom%2018.05.2021.pdf> (German)  
[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.html) (bilingual)

### **Developments relevant for the independent and effective fulfilment of the NHRIs’ mandate**

The Austrian Ombudsman Board fulfils the criteria set out in the Paris Principles relating to the Status of National Institutions, Article 2, as the AOB through the amendment of the Federal Constitutional Law in 2012 has been given “a mandate as broad as possible” which is set forth in a constitutional text, which clearly specifies the AOB’s composition and spheres of competence, but also additional features mentioned as essential requirements under G.O.1.1 in GANHRI’s General Observations of the Sub-Committee on Accreditation.

The crucial amendment the Parliament made in 2012 specifically enshrined the mandate of the AOB to protect and promote human rights in constitutional law (Article 148a, paras. 1 to 3, Federal Constitutional Law). In addition, according to the then newly introduced Article 148a, para. 3, Federal Constitutional Law, in order to protect and promote human rights, the AOB in cooperation with the newly established expert commissions, was, firstly, designated as National Preventive Mechanism (NPM) to monitor places of detention under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Secondly, the AOB and the expert commissions were given the role to monitor the conduct of executive authorities entitled to exercise direct administrative command and coercive power and thirdly, they got the responsibility to monitor facilities and programmes for people with disabilities under Article 16, para. 3, UN Convention on the Rights of Persons with Disabilities (CRPD). With this reform of the Austrian Constitution, the AOB was firmly constitutionally anchored as National Human Rights Institution (NHRI). Since then, the AOB, which has always considered human rights work as an important part of its activities, has an explicit human rights mandate enshrined in constitutional law. In 2017, another essential amendment to the Constitution was made, as the constitutional provision § 15, Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) was introduced and, in order to implement this law, the Pension Commission was established by the AOB. Thus, in fall 2021 the AOB applied for an A-Status GANHRI re-accreditation in fall 2021 and is currently waiting for the decision.

In April 2021, the AOB announced a novation with regard to the NPM and its commissions: a separate nationwide commission, which is set up alongside the six regional commissions already in place, audits starting July 2021 the prisons and the correctional system. The six regional commissions continue to inspect old people's and nursing homes, facilities for people with disabilities, psychiatric institutions, facilities for children and youths accommodated by foreigners, barracks and police facilities. Police operations during demonstrations, border controls and deportations also fall under their control competence (1).

Apart from that, it has to be said that the constitutional legislator is responsible for the AOB and that the constitution guarantees the AOB complete independence. Due to the far-reaching mandate, the AOB can act entirely in accordance with the Paris principles.

## References

- (1) [https://volksanwaltschaft.gv.at/artikel/Volksanwaltschaft-Präventive-Menschenrechtskontrolle-neu-aufgestellt?topic\\_type=archiv&archiv=2021](https://volksanwaltschaft.gv.at/artikel/Volksanwaltschaft-Präventive-Menschenrechtskontrolle-neu-aufgestellt?topic_type=archiv&archiv=2021)

## Human rights defenders and civil society space

With regard to the situation of human rights defenders and civil society space in Austria, the Austrian NHRI politely refers to the soon to be published annual reports of the AOB, where identified shortcomings, concerns, positive observations as well as AOB's recommendations will be presented. The AOB not only functions as an ombudsman institution, but also functions as NHRI, NPM, HOG and holds a mandate in accordance with the CRDP. Since 2014, the report has been presented in two separate volumes. The first volume deals with the control of the public administration and essentially includes the audit procedures concerning the federal ministries. The second volume covers, in particular, the preventive tasks to be fulfilled since 1 July 2012 by the Ombudsman Board and the commissions appointed by it in the context of their activities as a National Preventive Mechanism (NPM) in implementation of the Optional Protocol to the UN Convention against Torture and as a control body under the UN Convention on the Rights of Persons with Disabilities. They cover cases of maladministration, shortcomings as well as positive perceptions, investigation and thematic focal points, recommendations, legal opinions, follow up on the reaction of authorities as well as information's about projects, held events, conferences joined, statistics, international involvement etc. Moreover, they comprise the impact of the pandemic on the situation of human rights, the actions of the authorities and the AOBs work. In these, you will please find a detailed list of our monitoring activities and observations as well as recommendations to the legislator as well as to public authorities.

## References

- The reports will be published on the AOBs website:  
<https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse/berichte-an-den-nationalrat-und-bundesrat>

## Checks and balances

The Austrian Ombudsman Board notes that a comprehensive assessment of the impact of the pandemic on the system of checks and balances in Austria is not yet possible, as the pandemic is still ongoing and new measures to address the situation are being continuously enacted. The discussion about the legality of restrictions to fundamental

rights and freedoms is a prominent one. The AOB is very engaged to help ensure that these are not disproportionately restricted and that action of public authorities complies with the rule of law in times of crisis. The AOB follows all the developments closely and precisely reports all observations and any possible emerging concerns. On this matter, we also kindly refer to the AOBs 2021 reports (to be published soon), in which, the current situation, concerns, and recommendations of the AOB in connection with checks and balances system will be presented in detail.

One example of the maladministration criticised by the AOB in the upcoming report is the long duration of proceedings in immigration law cases. In the last two years, the number of complaints in this area has risen sharply. The AOB has been pointing out deficiencies in the implementation of the law on non-refoulement and residence the Municipality Department for Immigration and Citizenship of Vienna, and recommends faster and more uniform procedures. Besides that, due to the pandemic, there was an increased need for information and protection due to new and rapidly enforcing rules, which the AOB had to meet. It was often not clear which rules applied when, where and to what extent. Short-term changes in the legal situation can be unsettling. Authorities and competent bodies that were supposed to provide information and create legal certainty were overloaded and sometimes difficult to reach. This was problematic, for example, in the case of unclear segregation and quarantine measures. Another concern was, that it was hardly possible to measure the exact goals and effects of measures and thus to check their proportionality. However, the AOB is involved in the legislative process and has provided expertise within the scope of its mandate on this issue.

In Austria, too, there is a considerable number of opponents of the measures and restrictions imposed to handle the crisis and thus protests are increasing. An insight into the findings of the AOB concerning checks and balances in times of the pandemic is already available in the special Covid-19 report of 2020 (1).

### **References**

- (1) <https://volksanwaltschaft.gv.at/downloads/60q2/PB%2044%20Covid-19%202020.pdf>

### **NHRIs as part of the system of checks and balances**

Since 1920, the Austrian constitution has embedded a strong system of checks and balances. Since 1977, this has been supplemented by the establishment of the AOB, using soft law. Not least because of the high level of acceptance, the mandate of the AOB has been considerably expanded since 1977. The Parliament made a crucial amendment in 2012 (now Section 9 of the Federal Constitutional Law), in which it endowed the AOB with

a broader human rights mandate. The mandate of the AOB to protect and promote human rights was specifically enshrined in constitutional law (Article 148a, paras. 1 to 3, Federal Constitutional Law).

In addition, according to the then newly introduced Article 148a, para. 3, Federal Constitutional Law, in order to protect and promote human rights, the AOB in cooperation with the newly established expert commissions, was, firstly, designated as National Preventive Mechanism (NPM) to monitor places of detention under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Secondly, the AOB and the expert commissions were given the role to monitor the conduct of executive authorities entitled to exercise direct administrative command and coercive power and thirdly, they got the responsibility to monitor facilities and programmes for people with disabilities under Article 16, para. 3, UN Convention on the Rights of Persons with Disabilities (CRPD). With this reform of the Austrian Constitution, the AOB was firmly constitutionally anchored as National Human Rights Institution (NHRI). In 2017, another essential amendment to the Constitution was made, as the constitutional provision § 15, Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) was introduced and, in order to implement this law, the Pension Commission was established by the AOB.

### **References**

- Federal Constitution (mentioned here: Artikel 148a bis 148j des Bundes-Verfassungsgesetz, B-VG), available online at <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000138/B-VG%2c%20Fassung%20vom%2018.05.2021.pdf> (German) and [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1930\\_1/ERV\\_1930\\_1.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.html) (bilingual);
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### **Functioning of the justice system**

In view of the AOB, in 2021 there were no specific laws, measures or practices that had impeded access to justice in Austria.

It is worth mentioning, though, that the majority of complaints Austrian NHRI received concerned the penitentiary system the detention of mentally ill offenders. The AOB for many years has been advocating for a legislative reform regarding prison system to ensure

respect for mentally ill offenders' rights. Nevertheless, the AOB reflects on the functioning of the justice system in Austria in the soon-to-be published the Austrian Ombudsmen Board's Annual Report.

### **References**

- [https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Amon-fordert-Reform-des-Massnahmenvollzugs?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Amon-fordert-Reform-des-Massnahmenvollzugs?topic_type=archiv)
- [https://volksanwaltschaft.gv.at/artikel/Wie-ist-es-um-den-Massnahmenvollzug-in-oesterreich-bestellt?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Wie-ist-es-um-den-Massnahmenvollzug-in-oesterreich-bestellt?topic_type=archiv)

## **Impact of measures taken in response to COVID-19 on the national rule of law environment**

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection**

In order to get the rising number of infections under control, numerous restrictions in private and public life were also necessary in 2021. At the same time, these restrictions entailed massive encroachments on human rights, which were not always proportionate. For example, people in institutions were sometimes more restricted in their fundamental rights and personal freedom than the rest of the population. In almost all places where people are deprived of their liberty, from old people's homes to institutions or residential communities for people with disabilities, to prisoners and migrants in police detention centers, personal liberties have been disproportionately curtailed: visiting hours were cut or reduced to a minimum, exposing these groups of people to severe isolation. Similarly, other measures, such as bans on sports for detainees, the cancellation without replacement of daily programs as well as prohibition of interaction with other persons in appropriate facilities for elderly and disabled persons and persons in detention centers, have led to a disproportionate reduction in personal freedoms.

Fortunately, the criticism of the Commission's acting as NPM was often taken into account, so that in the course of the crisis the criticized conditions in various institutions improved. As an NHRI, the Austrian Ombudsman Board pays particular attention here to ensuring that the restriction measures are proportionate and limited in time. It is important to avoid a habituation effect. The AOB also uses its weekly television program as well as press releases to repeatedly address this issue and to inform about developments.

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

2021 still was shaped by the Covid-19 Pandemic, subsequently so was the functioning and work of the AOB. In February 2021, neither personal consultations could take place, nor the regular consultation days of the ombudsmen held due to the necessary distance rules. Complaints and concerns could of course still be submitted in writing, by letter, e-mail or online form. If people preferred to present their complaint in person, the ombudsmen offered telephone consultations (1).

Since the need for control deemed necessary by the NPM, especially in times of the pandemic and the associated restrictions on freedom of movement, a lot of engagement from the Austrian NPM granted successful monitoring within the second year of the pandemic. In total, the commissions carried out 570 inspections in the reporting year, of which 541 were carried out in facilities and 29 during police operations. This exceeded the number of visits and observations in 2018, 2019 and 2020. In addition to their visit and observation activities, the commissions also held 13 round-table discussions with institutions and their superior departments. In 351 visits to facilities, the commissions found it necessary to complain about the human rights situation. In 210 inspections (190 facilities and 20 of 29 police operations), on the other hand, there were no complaints at all. Overall, the commissions found deficiencies in 63% of the inspections. The AOB also took advantage of a window of facilitated COVID 19 protection measures and conducted an exchange of experience with the commissions. At this exchange, the sites were presented in the development of the audit priorities and, in particular, the newly appointed commission members were thus able to gain an in-depth insight into the individual areas of control activity. The perceptions from the activities of the commissions and the recommendations derived from them are presented at the end of the respective chapter of the 2021 NPM report.

### References

- (1) [https://volksanwaltschaft.gv.at/artikel/Die-Volksanwaelte-sind-nach-wie-vor-persoendlich-fuer-Sie-da-ab-sofort-ueber-telefonische-Sprechtage?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Die-Volksanwaelte-sind-nach-wie-vor-persoendlich-fuer-Sie-da-ab-sofort-ueber-telefonische-Sprechtage?topic_type=archiv)

The list of all recommendations since 2012:

[www.volksanwaltschaft.gv.at/empfehlungsliste](http://www.volksanwaltschaft.gv.at/empfehlungsliste)

## Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Austrian NHRI took further action to address problematic issues raised. The AOB took part in numerous meetings and exchange with other actors concerning this matter (the list

of such meetings is presented in the chapter on the impact of 2021 Rule of Law Reporting – follow-up initiatives by the institution). Initiatives and follow up research and reports regarding will be able to be found in the AOBs reports. In the following, some examples of how the AOB used press releases and other forms of media appearance to raise awareness and draw attention to matters deemed urgent:

- In May 2021 Ombudsman Achitz used his appearance on the TV-Show "eingeschenkt" as well as a following press-release to address mistakes made in Corona-Policy. He stated that the AOB has pointed out to the authorities that it is not appropriate to issue regulations at 10 pm that come into force at midnight the next day. Neither the police, who are supposed to enforce the rules, nor the people who are supposed to abide by them know what applies. This leads to lack of acceptance of the rules and sometimes unduly restricts fundamental rights and freedoms (1).
- In March 2021 Ombudsman Amon used a press release to draw attention to grievances in the prison "Stein", where, after the appearance of a Covid-Cluster in the facility, the Ombudsman deemed an ex-officio investigation necessary requested the Federal Minister of Justice to explain the measures taken and to inform the Ombudsman Board how the prison intends to contain the spread of the virus (2).
- On January 20, Ombudsman Achitz issued a press statement addressing shortcomings in the allocation of corona aid. Many people who became unemployed during the Corona pandemic received a one-time payment of 450 euros in spring as an "unemployment bonus" in addition to their unemployment assistance. However, many participants in courses for unemployed or vocational rehabilitation measures did not receive anything. "They are just as blameless for their situation as others who lost their jobs because of the Corona pandemic, and they need financial support just as badly. But because of technical details they have fallen over for the unemployment bonus," explained Ombudsman Bernhard Achitz. The Ombudsman Board confronted the Ministry of Labour with this and has now received a pleasing answer, said Achitz: "The Ministry assures that those affected will not only be taken into account in the next 'one-off payment'. They will also receive the unemployment bonus for the spring (3).
- In February 2021 the AOB published criticism about the inaction after the AOB has identified grievances with the Corona Family Hardship Fund (Corona-Familienhärtefond) which was introduced since the pandemic hit families with low incomes especially hard. However self-employed people only received the full

amount of support when the loss of income could be calculated by means of a tax assessment - i.e. only in the following year. Moreover, there was nothing about this in the support guidelines. Subsequently, the Ombudsmen sent a so-called "collegial maladministration assessment" to the regarding ministers. The Government largely ignored the criticism. However, they at least want to provide better information about the rules applied. The government also does not want to change the fact, criticised by the Ombudsmen, that there is no legal entitlement to the family hardship fund. Nevertheless, in the same press release Ombudsman Achitz was able to share good news as well: The AOB had also criticized fact that the government had not complied with EU law when it transferred benefits only to accounts at Austrian banks. The recommendations of the AOB have been heard in the meantime, now payments are also made to accounts in other EU countries (4).

- Moreover, the Human Rights Advisory Board issued comprehensive statements both on the basis of submissions by the AOB and on its own initiative. One based on submissions by the AOB: Supplementary questions on violations of the obligation to wear mouth and nose protection and to keep a distance at meetings (5), and another based on own initiative: Children and adolescents in institutions during the pandemic period (6).

## References

- (1) [https://volksanwaltschaft.gv.at/artikel/Soziale-Menschenrechte-in-die-Verfassung?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Soziale-Menschenrechte-in-die-Verfassung?topic_type=archiv)
- (2) [https://volksanwaltschaft.gv.at/artikel/Covid-Cluster-in-Justizanstalt-Stein-Volksanwalt-Amon-leitet-amtswegiges-Pruefverfahren-ein?topic\\_type=archiv](https://volksanwaltschaft.gv.at/artikel/Covid-Cluster-in-Justizanstalt-Stein-Volksanwalt-Amon-leitet-amtswegiges-Pruefverfahren-ein?topic_type=archiv)
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- (5) [https://volksanwaltschaft.gv.at/downloads/2ubou/Stellungnahme%20des%20MRB\\_Verst%C3%B6%C3%9Fung%20gegen%20die%20Pflicht%20zum%20Tragen%20eines%20Mund-Nasenschutzes%20und%20Versammlungsrecht%20-%2013.01.2021.01](https://volksanwaltschaft.gv.at/downloads/2ubou/Stellungnahme%20des%20MRB_Verst%C3%B6%C3%9Fung%20gegen%20die%20Pflicht%20zum%20Tragen%20eines%20Mund-Nasenschutzes%20und%20Versammlungsrecht%20-%2013.01.2021.01)
- (6) <https://volksanwaltschaft.gv.at/downloads/6qr9c/Stellungnahme%20des%20MRB%20zur%20Einhaltung%20von%20Menschenrechten%20bei%20Kindern%20und%20J>

[ugendlichen%20in%20Einrichtungen%20w%C3%A4hrend%20der%20COVID-19-Pandemie.pdf](#)

The special Covid-19 report 2020 issued by the AOB provides a first insight into the range of restrictions and the recommendations the AOB gave consequently, in the first year of the pandemic:

[https://volksanwaltschaft.gv.at/downloads/164qi/PB%2044%20Covid-19%202020\\_BF.pdf](https://volksanwaltschaft.gv.at/downloads/164qi/PB%2044%20Covid-19%202020_BF.pdf)

### **NHRI's recommendations to national and regional authorities**

The Austrian NPM is recommending more and qualified personal and better working conditions in nearly all facilities dealing with health. In this field the pandemic must not be used as a justification for the lack of care. In order to ensure dignified and good care for people in old people's homes, institutions for the disabled, psychiatric institutions and hospitals, more staff and resources are indispensable.

### **Other relevant developments or issues having an impact on the national rule of law environment**

The AOB's Ombudsman Achitz continuously campaigns for an inclusion of social human rights in the constitution. In Austria rights to housing, care for sick and old people, working rights etc. are stipulated on the basis of simple laws which can be abolished easily, thus there is a need to introduce them into the constitution, which also would make them more enforceable. Moreover, granted social rights also contribute to the enforcement of political rights. Since the agenda of the government includes the resumption of the catalogue of fundamental rights, the occasion to bring that topic to the table would be given. As many effects of the Corona pandemic have a much more drastic impact on people at risk of poverty than on the wealthy, an implementation of those rights could also ensure better protection for potential coming crisis.

### **References**

- [https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Achitz-Soziale-Menschenrechte-in-die-Verfassung?topic\\_type=aktuelles&archiv=0](https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Achitz-Soziale-Menschenrechte-in-die-Verfassung?topic_type=aktuelles&archiv=0)
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