

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Austria, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Austria, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

AUSTRIA REVIEW

Justice System

➤ *Quality of justice*

In its 2020 concluding observations, the UN Committee on the Rights of the Child urged Austria to provide systematic training on how to investigate and prosecute complaints of cyberbullying and grooming in a child- and gender-sensitive manner that respects the privacy of the victim ([CRC/C/AUT/CO/5-6](#), para 25b).

In its 2019 concluding observations, the UN Committee on the Elimination of Discrimination against Women recommended Austria to further strengthen legal training and capacity-building programmes on the Convention, the Optional Protocol, the Committee's jurisprudence, the Committee's general recommendations and on the strict application of criminal law provisions on gender-based violence against women and on gender-sensitive investigation procedures ([CEDAW/C/AUT/CO/9](#), para 11, 22, 23).

In its 2018 Concluding observations, the UN Committee on Enforced Disappearances noted that no specific training to judges, members of the security forces and prison staff on the relevant provisions of the Convention in terms of its article 23 was currently provided. The Committee recommended Austria to ensure that all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and

other court officials of all ranks, receive appropriate and regular training on the provisions of the Convention ([CED/C/AUT/CO/1](#), para 22, 23).

➤ ***Administration of child justice***

In its 2020 concluding observations, the UN Committee on the Rights of the Child welcomed the reform of the Juvenile Courts Act in 2015, while expressing concern over the increased number of children in detention. The Committee recommended Austria to start working towards a time limit of 30 days for children in pretrial detention and ensure that the circumstances under which such a time limit can exceptionally be extended is clearly defined in law. Secondly, the Committee recommended to continue to promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, non-custodial sentences for children, such as probation or community service ([CRC/C/AUT/CO/5-6](#), para 42).

Other institutional issues related to checks and balances

➤ ***The process for preparing and enacting laws***

In its 2020 concluding observations, the UN Committee on the Rights of the Child noted the 2013 amendment to section 138 of the Austrian Civil Code, in particular the inclusion of a twelve-point checklist with statutory criteria for safeguarding the best interests of the child, and the establishment of a monitoring board. The Committee urged Austria to carry out impact assessments of proposed laws in a consistent manner in all legislative processes, and to establish compulsory processes for ex ante and ex post impact assessments of all laws and policies relevant to children on the realization of the right of the child to have his or her best interests taken as a primary consideration ([CRC/C/AUT/CO/5-6](#), para 18).

In its 2018 concluding observations, the UN Committee on Enforced Disappearances noted with appreciation that the Constitution provided layers of procedural guarantees regarding the invoking of emergency measures, and that the State party has never resorted to such emergency measures. However, the Committee was concerned that domestic law did not specifically provide for the non-derogability of the prohibition of enforced disappearance under any exceptional circumstances. Therefore, the Committee recommended that Austria considers taking legislative measures to specifically incorporate into domestic law the non-derogability of the prohibition of enforced disappearance, in line with article 1 (2) of the Convention for the Protection of All Persons from Enforced Disappearance ([CED/C/AUT/CO/1](#), para 10, 11).

The Committee also expressed concern that the Federal Government was authorized to adopt an emergency decree in the case of an influx of asylum seekers and that, as a result, special procedures, such as a fast-track asylum procedure at the borders, may be introduced in order to maintain public order. It recommended Austria to ensure the principle of non-refoulement and to consider incorporating into its national legislation a prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance ([CED/C/AUT/CO/1](#), para 20, 21).

➤ ***Independent authorities***

In its 2020 concluding observations, the UN Committee on the Rights of the Child welcomed measures introduced to strengthen the national human rights institution. It noted however that the Austrian Ombudsman Board does not have a specific mandate relating to children's rights. The Committee further recommended Austria to take measures to ensure full compliance with the Paris Principles ([CRC/C/AUT/CO/5-6](#), para 12).

In its 2019 concluding observations, the UN Committee on the Elimination of Discrimination against Women expressed concern about the appointment of the members of the Austrian Ombudsman Board by the three main political parties in the parliament and that such an appointment process continued to raise issues regarding their independence, as reflected by its accreditation as a B status national human rights institution by the Global Alliance of National Human Rights Institutions. (See [CEDAW/C/AUT/CO/9](#), para 16, 17). The Committee recommended Austria to ensure an independent appointment process for the members of the Austrian Ombudsman Board, provide it with sufficient human, technical and financial resources to implement its mandate to promote and protect women's rights and engage with the CEDAW Committee during its reviews of Austria. It also encouraged Austria to comply and seek accreditation for A status from the Global Alliance of National Human Rights Institutions ([CEDAW/C/AUT/CO/9](#), para 16, 17).

In its 2018 concluding observations, the UN Committee on Enforced Disappearances noted that the Austrian Ombudsman Board is also the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the Committee expressed concern over the limited mandate of the Board with regard to allegations of abuse by law enforcement officials. Moreover, the Committee noted with concern the reported lack of formal public consultation and of participation by civil society during the nomination and appointment process. The Committee encouraged Austria to expand the mandate of the Austrian Ombudsman Board accordingly ([CED/C/AUT/CO/1](#), para 8, 9).