



AMNESTY INTERNATIONAL AUSTRIA STATEMENT UPR PRE-SESSION OF AUSTRIA

December 2020

Amnesty International's complete submission for the UN Universal Periodic Review of Austria is available at <https://www.amnesty.at/news-events/amnesty-analyse-fuer-die-universal-periodic-review/>

Your Excellencies,
Distinguished delegates,
Ladies and gentlemen,

Human rights challenges continue to persist in Austria. For instance, there is a continuous failure to establish an independent mechanism to effectively investigate allegations of ill-treatment by the police. Women's shelters continue to lack sufficient financial and human resources and Austria has yet to give full effect to the International Covenant on Economic, Social and Cultural Rights in national legislation.

In my statement, I will focus on the situation of refugees and asylum-seekers and I will highlight the following key concerns: the quality of asylum proceedings, the situation of rejected asylum-seekers and persons entitled to subsidiary protection status.

Notably, while the total number of asylum applications continued to decline since 2015,¹ the government pursued a more restrictive policy vis-à-vis asylum-seekers and refugees, thereby violating their human rights.

Quality of asylum proceedings

The deterioration of the quality of asylum proceedings becomes especially apparent, when underlining that in 2019, approximately 45 per cent of appealed decisions were annulled or altered by a court in second instance.

In February 2020, the government terminated existing contracts with civil society organizations that have been providing legal counselling to asylum-seekers up to now based on the federal act BGBl. I No 53/2019. As of January 2021, the so-called Federal Agency for the Provision of Care and Support will take over this function in addition to representing asylum-seekers in first and second instance.

In this respect, it is concerning that this newly established agency is embedded in the organizational structure of the Ministry of Interior – as is the authority deciding in asylum proceedings in first instance. This is predetermined to create situations of conflict of interest, where eventually, the national asylum system will oversee itself. This might lead to

¹ In 2019, there were a total of 12.886 asylum applications, compared to 88.340 asylum applications in 2015.

repercussions on the fairness of asylum procedures and ultimately on the right to seek and enjoy asylum.

Situation of rejected asylum-seekers

Since 2015, the government exacerbated its policy to return rejected asylum-seekers, even to countries where a deportation constitutes a violation of the principle of *non-refoulement* – such as in the case of Afghanistan. In 2019, 235 individuals were deported to Afghanistan. Notably, during the COVID-19-pandemic, deportations and forced returns continued to take place and the access to legal counselling by persons held in pre-deportation detention was restricted.

In June 2019, 17 individuals went on a hunger strike to protest the remote location and poor housing conditions of a return centre in Tyrol. This hunger strike lasted 46 days and eventually prompted an inquiry by the Ministry of Interior. Subsequently, 15 recommendations were adopted – one year later, the majority of those is still awaiting full implementation.

Furthermore, Austria's humanitarian admission programme ended in 2017 without any further political commitment. In spring 2020, Austria refused to relocate asylum-seekers from the Greek Islands and the Minister of Interior issued an edict that impeded submitting an asylum claim at the border by requiring a valid health certificate.

Situation of persons entitled to subsidiary protection status

Persons entitled to subsidiary protection status do not enjoy the same rights as refugees, in particular as regards the access to family reunification and social assistance – despite the fact that both are in need of international protection. This was also criticised by the UN.

Moreover, the Fundamental Law on Social Assistance BGBl. I No 41/2019 that was adopted in 2019 included a provision that pre-conditioned access to social aid benefits to a person's employability at the Austrian job market, linking it further to the existence of sufficient and relevant language skills. Another provision stipulated reductions of social aid benefits in inverse correlation with the number of children living in a household. The Constitutional Court of Austria declared both provisions unconstitutional. However, the provision that foresees that persons entitled to subsidiary protection status are only eligible to core elements of social aid benefits that do not exceed the level of social assistance granted to asylum-seekers remains in force.

Concluding, Amnesty International therefore calls on the government of Austria to:

- Repeal Sections 2 (1) 2 and 24 (1) of the Federal Act on the Establishment of a Federal Agency for the Provision of Care and Support in order to ensure independent legal assistance;
- Refrain from forcibly returning anyone to countries where there is a risk of *non-refoulement* or torture and ill-treatment;
- Reinststate its humanitarian admission programme;
- Revise Section 35 (2) of the Asylum Act in line with international human rights law and grant the right to family reunification without undue restrictions, in particular to unaccompanied minors;
- Repeal Section 4 of the Fundamental Law on Social Assistance in light of the principle of non-discrimination.

Thank you for your attention and I look forward to your questions.

