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# Country Report Austria

A Status Quo

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GENDER-Net PLUS Call

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## i. List of Acronyms

ABGB	Allgemeines Bürgerliches Gesetzbuch/ General Civil Code
AGesVG	Anti-Gesichtsverhüllungsgesetz/ Anti-Face-Covering Act
AMS	Arbeitsmarktservice/ Unemployment Agency
ARTE	Association Relative à la Télévision Européenne
ÄrzteG	Ärztegesetz/Law on Doctors
AsylG	Asylgesetz /Asylum Act
AuslBG	Ausländerbeschäftigungsgesetz/ Act Governing the Employment of Foreigners
BFA	Bundesamt für Fremdenwesen und Asyl/ Federal Immigration and Asylum Service
BFA-VG	BFA-Proceedings Act
BIM	Ludwig-Boltzmann-Institut für Menschenrechte/ Ludwig Boltzmann Institute of Human Rights
BMI	Bundesministerium für Inneres/ Federal Ministry for Domestic Affairs
BMJ	Bundesministerium für Justiz/ Federal Ministry of Justice (former)
BMVRDJ	Bundesministerium für Verfassung, Reformen, Deregulierung und Justiz/ Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (current)
BMLV	Bundesministerium für Landesverteidigung/ Federal Ministry of Defence
CAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CGR	Geneva Contention on Refugees/Flüchtlingskonvention
EEA	European Economic Area
EFTA	European Free Trade Association
EIGE	European Institute for Gender Equality
EMN	European Migration Network
EO	Exekutionsordnung/Austrian Enforcement Regulation

EU	European Union
FGM/C	Forced Genital Mutilation and Cutting
FPG	Fremdenpolizeigesetz /Alien Police Act
FPÖ	Freiheitliche Partei Österreichs/Austrian Freedom Party
FRA	European Agency for Fundamental Rights
FrÄG	Fremdenrechtsänderungsgesetz/ Aliens Law Amendment Act
GBV	Gender-based violence
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
GVG-B	Grundversorgungsgesetz/Basic Care Act of 2015
IBEMA	Identification of potential trafficked persons in the asylum procedure
ICMPD	International Centre for Migration Policy Development
iVm	in Verbindung mit/combined with
HIS	Institut für Höhere Studien/ Institute for Advanced Studies
IKF	Institut für Konfliktforschung/ Institute of Conflict Research
ILGA Europe	International Lesbian, Gay, Bisexual, and Intersex Association Europe
IMAG	interministerielle Arbeitsgruppe/inter-ministerial working group
IntG	Integrationsgesetz/ Integration Act
IOM	International Organization for Migration
IPV	Intimate Partner Violence
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Inter, Queer +
MARACs	Multi-Agency Assessment Conferences
MENA	Middle East and North Africa
MS	Member State
NAG	Niederlassungs- und Aufenthaltsgesetz/Settlement and Residence Act
NAP	National Action Plan
ODIHR	OSCE's Office for Democratic Institutions and Human Rights
ÖIF	Österreichischer Integrationsfonds/Austrian Integration Funds
ÖVP	Österreichische Volkspartei /Austrian People Party
SPG	Sicherheitspolizeigesetz/ Security Police Act

SPÖ	Sozialdemokratische Partei Österreichs/Social Democratic Party Austria
StbG	Staatsbürgerschaftsgesetz/ Citizenship Act
StGB	Strafgesetzbuch/Criminal Code
StPO	Strafprozessordnung/ Conduct of Criminal Offence Procedure
UN	United Nations
UNDOK	Anlaufstelle zur gewerkschaftlichen Unterstützung UNDOKumentiert Arbeitender
UNHCR	United Nations High Commission for Refugees
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
WKO	Wirtschaftskammer/ Austrian Economic Chamber
WILPF	Women's International League for Peace and Freedom
WPS	Women, Peace and Security
ZARA	Zivilcourage und Anti-Rassismus Arbeit

# 1 Introduction

This country report aims at giving an overview of studies and reports on the current state around *gender-based violence (GBV)* against women migrants and refugees in Austria. Its purpose is twofold: First, it gathers and presents information on the issue and its embeddedness. Second, it aims at finding out the research lacunas for the research project at hand. The report presents a compilation of different information drawn from documents such as shadow reports on the Austrian implementation of international and European frameworks countering *GBV*, government and ministerial statistics as well as publications and studies by different governmental and non-governmental actors. It intends to illustrate the availability of infrastructure for women migrants and refugees, including perspectives of various actors who shape the political and discursive environment around this topic as well as some legal implications. In addition, it tries to shed light onto heavily debated and politicized issues and shall pointedly reveal shortcomings, which prevent women from increasing their resilience in their potentially vulnerable life situations.

*GBV* is violence directed against a person because of their gender. It includes any violation of a person's physical or psychological integrity, which is connected to the gender of the offended and offending person. It is an expression of unequal power relations (Hagemann-White 1992; Reid-Hamilton 2016). Forms of *GBV* may include *intimate partner violence (IPV)*, rape, sexual assault, human trafficking, and *female genital mutilation and cutting (FGM/C)*. These types of *GBV* are inextricably linked to forms of structural, cultural, i.e. discursive violence (Galtung 1969) such as patriarchal behavior or institutionalized racism, Antiziganism, sexism or ethnocentrism. Conditions like limited access to the labour market and health services reinforce these forms of violence (ibid.). Although the term *GBV* is rarely explicitly used in Austrian politics and media, we decide to speak of *GBV* in this country report as it highlights the use of violence against women and those who position themselves as such. Furthermore, it allows us to focus on expressions of violence in the intersections of gender, race and migration.

Like Mecheril et al. (2013), we understand migrants as subjects with agency as migration regimes and their legal status influences their opportunities for action (Mercheril et al. 2013). A clear distinction between the terms *refugee* and *migrant* is therefore apt to the respective country. Christopher Kyriakides refers to medial reception of migration and flight as he argues: "Although the migrant–refugee policy couplet seemingly mobilizes oppositional, contrary categories, they are better understood as complementary, interconnected and interdependent" (Kyriakides 2017: 934). Causes for migration and flight are therefore considered as

interdependent and reciprocal. In addition, there is a risk of reproducing power relations and simplification by the distinction of persons in two groups, i.e. (il)legalizing migration and making claims about the validity of a person to leave their home. Marlou Schrover and Deirdre M. Moloney propose that:

*“the typical binaries reflected in the scholarship, such as labour migrant and refugee, the West and the Rest, public and private spheres, equality versus difference, democratic versus authoritarian, deserving and non-deserving, and men and women, intersect more than these simple dichotomies suggest. Scholars should not uncritically reproduce dichotomies that are used in the public sphere” (Schrover and Moloney 2013: 256).*

Furthermore, it should be kept in mind that “there is a thin line that separates visibility from categorisation” (Schrover and Moloney 2013: 258).

Nevertheless, we need to take into account that a legal distinction between migrants and refugees exists and shapes access to rights, services and possibilities of refugees and migrants due to their official status. For Austria, a social scientific approach towards the term *migrant* differentiates between three groups. The first group is the so-called *foreign population*, i.e. without Austrian legal citizenship, followed by *population of foreign origin* who are registered as born outside of Austria but may have Austrian citizenship. The third group is defined as *population with migration background*. This group also comprises people whose parents were born outside of Austria (Rosenberger 2012). In addition, and with a different interpretation of the term, the classification of the *United Nations High Commission for Refugees (UNHCR)* states that there is no universally binding and adequate definition for the term *migrant*.

As for the term *refugee*, we refer to the *UNHCR* definition, categorizing refugees as a “person who is outside the country of his[/her] nationality, or if he[/she] has no nationality, the country of his[/her] former habitual residence, because he/she has or had well-founded fear of persecution by reason of his[/her] race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his[/her] nationality, or, if he[/she] has no nationality, to return to the country of his[/her] former habitual residence” (UNHCR 1950). On the basis of the *European Convention on Human Rights* the *Asylum Act 2005 (AsylG)* states the following: A person shall be granted *subsidiary protection* status if they are not granted asylum or the status was withdrawn and if deportation to their country of origin “would constitute a real risk of violation of Art. 2 or Art. 3 of the *European Convention on Human Rights* or of Protocol No. 6 or Protocol No.12 to the Convention or would represent for the alien as a civilian a serious threat to her/his life or person



as a result of arbitrary violence in connection with an international or internal conflict” (§ 8 Z 8 AsylG). Therefore, we consider the following categories/groups as relevant for this report.

- 1) Asylum Seekers,
- 2) People recognized as refugees
- 3) People with subsidiary protection status (humanitarian status)
- 4) Undocumented, stateless, people pending removal

We keep in mind that there are groups of people who legally classify neither as *refugees* nor as *migrants* in Austria. We try to include these in the category of undocumented or stateless migrants or refugees.

Due to the introduction of the *Protection against Violence Act* in 1997, Austria has enjoyed the status of an international role model in the field of protection against and prevention of violence against women (Schwarz-Schlöglemann 2017). However, recent reports have given insight into legal and policy gaps, which are yet to be filled, especially concerning *GBV* against women migrants and refugees (ibid.). Some of the most comprehensive and consistently critical documents on the implementation of gender equality in Austria are the 2012 and 2018 shadow reports by the NGO- and activist collective *Klagsverband* on the implementation of the *United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. It gives a reasonable overview on public policies taken to ensure gender equality, inter alia in the field of *GBV*. It attests that between 2000 and 2012, a comprehensive and coordinated political agenda to implement human rights of women, including migrant women and refugees, was not followed up on – despite repeated demands by NGOs involved with the *CEDAW* committee (Klagsverband 2018). In addition, and with some attention paid to gender and women migrants and refugees, the *Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)* shadow report (2016) on the implementation of the *Istanbul Convention to Prevent Violence against Women* assesses the Austrian governments’ efforts. Until today, there is no comprehensive *national action plan (NAP)* for gender equality, resulting in a lack of coherent federal framework on equality which may have ultimate effects on the implementation of federal policies on combatting all forms of *GBV*. The 2014 NAP countering violence against women was designed as an addition to the *first* and *second violence Protection Act* (“Gewaltschutzgesetze”) and in response to previous screenings to target specific forms of violence and increase victim protection.

From what our investigation shows so far and what some sources claim, the topic of *GBV* against women and especially migrant and refugee women has found relatively little attention

in policy, legal implementation and government programs since the implementation of the second *Protection against Violence Act* (Wolf 2018, Frauen:rechte jetzt! 2013a). Besides, there appears to be a lack of comprehensive data, analyses and statistics on GBV. In academia and practice, little information has been gathered on the specifically vulnerable life situations and respective consequences in which women migrants and refugees find themselves when coming to Austria from *European Union* (EU) and non-EU-countries, including information on access to services, support and protection. Amendments to the already restrictive migration and refugee law (Rosenberger 2012) by the late Austrian government have constrained access to services and infrastructure for refugees. Substantial changes in law and authorities' competences over the previous two to three years have led to significant financial restructuring. This had severe consequences for NGOs and civil society actors providing services, support and protection (Civil Society Index 2019).

Furthermore, NGOs such as *Peregrina*, collaborating in the above-mentioned shadow reports, heavily criticize Austrian “family-oriented women’s politics [sic!]” (Frauen: Rechte jetzt! 2013: 2) and have repeatedly demanded to reconceptualize the understanding behind *GBV* as an all-encompassing societal issue and, therefore, call for the introduction of political measures, which do not differentiate between *GBV* against migrants and refugees and Austrian citizens autochthonous Austrians (Frauen: Rechte jetzt! 2013). Some academic publications identify governments’ agendas as one crucial factor, which reinforce stereotypes and stigma of women and tend to be counterproductive the process of achieving gender equality and sustainably counter *GBV* (Mendel and Neuhold 2015, Wolf 2018). Measures derived from the implementation of the *NAP* of 2014 focuses mostly on male to female violence. In the context of same-sex/gender relationships, violence is barely addressed. From what we know until now, little attention in academia and practice has been paid to *GBV* resulting from hate crimes, homo-, bi- and transphobia and racist infringement and abuse, assaults by the police or the like. However, media and reports by *Zivilcourage und Anti-Rassismus Arbeit* (ZARA), document incidents – such as migrant women being spat on – almost daily in Austria (die Presse 2019b, taz 2019). These topics are not covered in any of the shadow of state reports and need to be looked at more carefully.

In recent years, organizations such as the *International Organization for Migration* (IOM), the European Migration Network or the *International Centre for Migration Policy Development* (ICMPD) published several comprehensive reports on subtopics on migration like migration law, return policies and access to services. While we can only extract bits and pieces from these reports to not exceed the limits of this country report, the reader is encouraged to access them.

The aspects of gender, *GBV* and migration are, if at all, marginally covered in most of these reports, which specialize on Austria (EMN 2016, EMN 2018).

Following this introductory outline of the problem, the subsequent chapters will present gender-sensitive demographic data on (migrants and) refugees before going into detail about forms of *GBV* and what some of the legal provisions include. A succeeding subchapter gives first insight into how *GBV* is discussed controversially in political discourse and media and a first academic contextualization. We then move on to the academic state of the art, introducing a selection of publications and alluding to the scattered availability of academic output in general. The following three chapters discuss legal frameworks on *GBV*, Austrian particularities regarding access to services and relevant actors in the field of *GBV*. As we will be conducting separate frame analyses of dominant narratives and public discourse, the final chapter introduces the reader to preliminary research agendas to be followed up on. We conclude with an overall assessment of the current situation of *GBV* in Austria. As this country report demonstrates a work-in-progress document and we touch upon topics which deserve an entire separate report, it does not claim to be exhaustive.

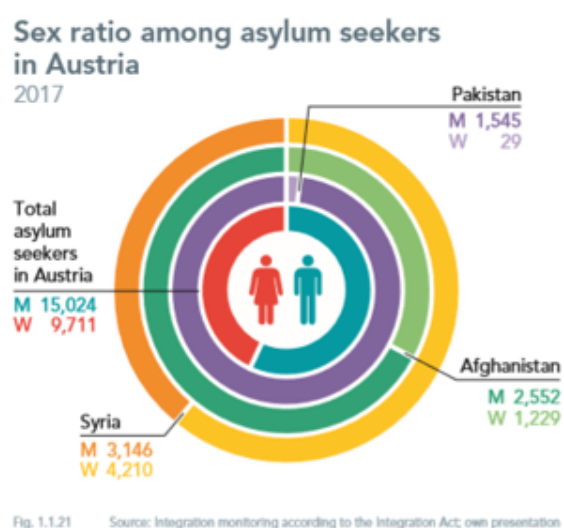
## 2 Gender-sensitive demographic indicators on women refugees and migration

Like several other European countries, the legal definition of who counts as a foreigner in Austria is very straightforward: “A foreigner is anyone who does not possess Austrian citizenship” (§ 2 Z 20a AsylG 2005). Regarding people who had to flee from their home countries, the Austrian law differentiates between three groups based on international law. An *asylum seeker* is defined as a foreigner who applied for international protection and is in the midst of ongoing asylum procedure (§ 2 Z 14 AsylG 2005). The procedure ends with a dismissal or adjudgment as *refugee* or someone who needs *subsidiary protection*. The forthcoming paragraphs outline available statistical data on current demographic indicators.

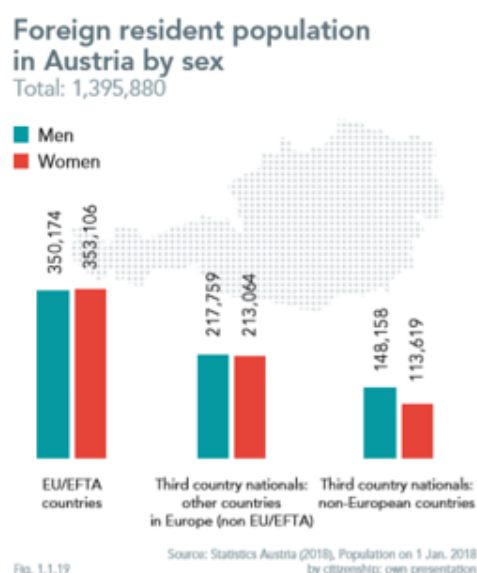
“On 1 January 2015 1.146 million foreign citizens resident in Austria were identified. This is 13.3 per cent of the total population. In comparison to the beginning of 2014 an increase of 80,000 foreign citizens has been registered” (EMN 2016: 28). In 2018, the gender ratio of asylum seekers, i.e. those in procedure was 60.36% men to 39.64% women (BMI 2019). In 2017, the gender ratio showed similar imbalance, with 61.44% being male applicants and 39.84 % female applicants (Figure 1). In 2015, 27.71% of applicants for international protection in Austria were female (GREVIO Shadow Report 2016). Nevertheless, it should be noted that while more female than male applicants fled from Syria (4210 compared to 3146 male

applicants), the gender ratio of Afghan nationals shows a proportion of 2:1 male applicants. From Pakistan, only 29 female and 1,545 males applied for asylum in Austria. To sum it up, the percentage of women among refugee applicants varies significantly according to countries of origin. As *Figure 1* shows, the country of origin could be a relevant factor for asylum approval in 2018. The ratio of 90 percent of applicants from Syria is considerably higher than for Nigerian applicants where only two percent of the applicants received a positive decision on asylum. In 2018, the highest numbers of asylum seekers came from Syria, Afghanistan and Iran (2019). Third-country nationals were mostly from Syria, Afghanistan and Serbia. Out of those, 41.5 % of women had a title for indefinite stay, 5.5% awaited decisions on their application for asylum, 22.1 % received a limited status or a temporary title to stay and about 23.5 % possessed any other kind of title, e.g. refugee status, seasonal work etc.

By 2017, 55% of women migrants from EU-member states had Romanian, Hungarian or German citizenship.



*Figure 1 Graphical Representation to gender ratio by asylum applicants (Integrationsbericht 2018)*



*Figure 2 Foreign resident population in Austria sorted by gender (Integration Report 2018: 28)*

About 18% of Austria's residents do not possess the country's citizenship. Residents in Austria without Austrian citizenship show a balanced gender ratio (Figure 2). With 703,280, second-country nationals are the biggest group of people without citizenship (BMI 2019). For the majority of migrants, one of the most significant reason to migrate to Austria is family reunion under the *Settlement and Residence Act (NAG)*. In the previous seven years, about a third of immigration from third-countries took place to reunite families (EMN 2016). There are fewer known figures regarding family reunification under the *Asylum Law (AsylG)*. For 2016, about 7,000 people estimated to have joined family members with an asylum status (ibid.).

### 3 GBV in Austria

This chapter lays out forms of *GBV* against women migrants and refugees, which either constitute a criminal offence and/or have received particular political attention in Austria. There are several types of *GBV*, which enjoy relatively more attention in the political discourse, policy briefs, legal frameworks and public realm compared to other forms. Some forms of *GBV* are covered or made a subject of discussion by government bodies, others by NGOs and civil society exclusively. The majority of state measures countering *GBV* address male-to-female violence in Austria. In addition, the *GREVIO shadow report* (2016) and organizations active in the fight against hate crimes attempt to drive more attention towards same-sex/gender relationships and violence against members of the *Lesbian, Gay, Bisexual, Transgender, Inter, Queer + (LGBTIQ+)*-community or motivated by racism.

#### 3.1 Types of *GBV*

The availability of data on *GBV* in Austria is limited. This might have different reasons, ranging from protecting victims to political disinterest. So far, data contains little gender disaggregation. Even less information is available for *GBV* against *LGBTIQ+* (migrants and refugees). According to the Gender Equality Index of the *European Institute for Gender Equality (EIGE)*, which was last published in 2017, **20% of women in Austria reported to have been subject to physical and/or sexual violence**. This is 13% lower than the EU-average (33%) (EIGE Gender Equality Index 2017). The *Österreichische Prävalenzstudie zur Gewalt an Frauen und Männer* shows that 74.2% of the women interviewed and 27.2% of the men interviewed have experienced sexual harassment (ÖIF 2011). Sexual violence affected 29.5% of women and 8.8% of men (ÖIF 2011). Only a small number of sexual harassment and violence cases are reported to the police. Criminal statistics only represent a small amount of the cases of violence (ÖIF 2011). Supposedly, the dark figure is very high.

Figure 3 below illustrates the overall situation of experience of violence against women. This is one of the only more comprehensive studies, provides statistical data on the prevalence of violence, published by the *European Union Agency for Fundamental Rights (FRA)*. The following section presents information regarding some types of *GBV*, relevant numbers of complaints and conviction rates between 1990 and 2016.

- In Austria, **one out of five women (20%)** has indicated **experience of physical and/or sexual violence** since the age of 15
- **One out of eight women (12%)** has indicated to have experienced physical violence **by their partners** since the age of 15
- **One out of 17 women (6%)** has indicated to have experienced **sexual violence by their partners since the age of 15**
- **One out of 25 women (4%)** has indicated to have experienced **sexual violence by an unknown person**
- **More than one out of three women (38%)** has indicated experience of **psychological violence by their (former) partners**
- **Almost one out of three** of all people interviewed in this survey (**31%**) experience **physical, sexual or psychological violence before the age of 15 by an adult perpetrator (parents, relatives)**
- **One out of 20 girls experiences (5%) sexual violence** by an adult perpetrator
- **One out of almost seven women (15%) have been victim of stalking since the age of 15**
- **More than one out of three women (35%)** has experience **sexual harassment** since the age of 15
- **Only out of six women (16%)** reports the heaviest violent experiences in their own partnership to the police, but much more women -one out of 8 (12%)- reports such experiences if the perpetrator is unknown.
- **Most women (82%)** find it acceptable if doctors routinely asks about certain injuries if they have been caused by violence
- Currently in Austria, **one in eight victims of domestic violence does not know where to get help**, aside from the police
- **One in five women has recently seen or heard campaigns on violence against women in Austria.** This implies that **Austria ranks lowest**, behind Germany and the Czech Republic.

Figure 3 GREVIO Shadow-Report, Data from the Survey on violence against women European Union Agency for Fundamental Rights (FRA 2014)

### 3.1.1 Rape

#### Vergewaltigung § 201 StGB

		1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Meldungen <sup>5</sup>	Bis 2011 nur Verurteilungen n. strafsatzbest. Norm	533	493	555	552	553	514	470	486	513	535
Verurteilungen		104	115	124	157	139	130	112	110	129	108
Verurt.-quote		19,5%	23,3%	22,3%	28,4%	25%	25,3%	23,8%	22,6%	25,1%	20,2%

	2000	2001	2002 <sup>6</sup>	2003	2004	2005	2006	2007	2008	2009
Anzeigen	536	574	625	604	687	678	700	710	693	779
Verurteilungen	115	118	102	129	114	108	121	111	86	113
Verurt.-quote	21,4%	20,5%	16,3%	21,3%	16,6%	15,9%	17,3%	15,6%	12,4%	14,5%

Vergew. § 201	2010	2011	Ab 2012 sämtliche Verurteilungen	2012	2013	2014	2015	2016	2017	
Anzeigen	875	977		883	920	839	826	899	817	
Verurteilungen	116	96 <sup>7</sup>		102 <sup>8</sup>	140 <sup>9</sup>	126 <sup>10</sup>	117 <sup>11</sup>	109 <sup>12</sup>	107 <sup>13</sup>	
Verurt.-quote	13,2%	9,8%		11,6%	15,2%	15%	14,2%	12,1%	13,1%	

aus: Seith 2009 (Quelle: Bundesministerium für Justiz.); Haller (2012); BMJ: Sicherheitsbericht 2012. Bericht über die Tätigkeit der Strafjustiz.; BMI: Kriminalitätsbericht 2012.; Auskunft des BKA zu angezeigten Fällen 2013; BMI: Kriminalitätsbericht 2014; BMI: Kriminalitätsbericht 2015; Statistik Austria (2014/2015/2016/2017/2018): Gerichtliche Kriminalstatistik 2013/2014/2015/2016/2017; Auskünfte des BMI zu den Anzeigenstatistiken 2016, 2017;

Figure 4 Conviction rates concerning rape (Notruf Beratung für vergewaltigte Frauen und Mädchen Wien 2018:6)

Figure 4 shows that the number of reported cases of rape varies between 470 (1996) and 977 (2011). In the 1990s and in the early 2000s, conviction rates were higher than in the last years. The last time the conviction rate exceeded the 20%-mark was in 2003 with 21.3%. Since then the conviction rates vary from 17.3% to 9.8%. In 2011, conviction rate was with 9.8% at the lowest which makes it the year in which the highest numbers of cases were reported.



### 3.1.2 Sexual harassment and public sexual acts

#### Sexuelle Belästigung und öffentliche geschlechtliche Handlungen § 218

		2001	2002	2003	2004	2005	2006	2007	2008	2009
Anzeigen	Bis 2011 nur Verurteilungen n. strafsatzbest. Norm	27					1038	1083	1111	1154
Verurteilungen		32	44	36	48	55	64	68	87	69
Verurt.-quote							6,1%	6,2%	9,6%	5,9%
	2010	2011	Ab 2012 sämtliche Verurteilungen	2012	2013	2014	2015	2016	2017	
Anzeigen	1130	1366		1489	1337	1330	1228	1918	1759	
Verurteilungen	69	87		70 <sup>28</sup>	105 <sup>29</sup>	108 <sup>30</sup>	105 <sup>31</sup>	138 <sup>32</sup>	169 <sup>33</sup>	
Verurt.-quote	6,1%	6,3%		4,7%	7,8%	8,1%	8,5%	7,2%	9,6%	

BMI: Sicherheitsberichte 2010, 2011, 2012. Berichte über die Tätigkeit der Strafjustiz.; BMI: Sicherheitsberichte 2006, 2007, 2010: Kriminalitätsberichte.; BMI: Kriminalitätsbericht 2012; Auskunft des BKA zu angezeigten Fällen 2013; BMI: Kriminalitätsbericht 2014; BMI: Kriminalitätsbericht 2015; Statistik Austria (2014/2015/2016/2017/2018): Gerichtliche Kriminalstatistik 2013/2014/2015/2016/2017; ; Auskünfte des BMI zu den Anzeigenstatistiken 2016, 2017

Figure 5 Conviction rates sexual harassment and public sexual acts (Notruf Beratung für vergewaltigte Frauen und Mädchen Wien 2018:9)

For the years before 2006, no statistical data regarding the number of reports of sexual harassment is available. Therefore, the conviction rates cannot adequately be determined. Figure 5 shows that the conviction rates differ slightly over the years. In 2008 and 2017, the conviction rate peaked at 9.6%. With 4.7%, the lowest point was reached in 2012. The number of reports increased over the years with a small variation. No clear trend can be discerned regarding the conviction rates. They are low and vary between 4.7% in 2012 and 9.6% in 2008 and 2017. It is striking that sexual harassment and sexual acts in public are combined statistically. This makes differentiation between crimes that harm a person and an administrative offense where two or more people may be involved voluntarily less clear.

### 3.1.3 Sexual Coercion

#### Geschlechtliche Nötigung § 202 StGB

		2001	2002	2003	2004	2005	2006	2007	2008	2009
Anzeigen	Bis 2011 nur Verurteilungen n. strafsatzbest. Norm	499	490	14	291	320	368	345	275	260
Verurteilungen		29	34	38	43	30	36	43	21	20
Verurt.-quote		5,8%	6,9%		14,7%	9,3%	9,7%	12,4%	7,6%	7,6%
	2010	2011	Ab 2012 sämtliche Verurteilungen	2012	2013	2014	2015	2016	2017	
Anzeigen	281	326		332	264	249	248	282	288	
Verurteilungen	30	28		61 <sup>15</sup>	52 <sup>16</sup>	34 <sup>17</sup>	51 <sup>18</sup>	48 <sup>19</sup>	52 <sup>20</sup>	
Verurt.-quote	10,6%	8,5%		18,4%	19,7%	13,7%	20,6%	17%	18,1%	

aus: Haller 2012, S.67; BMI: Kriminalitätsbericht 2002.; BMI: Sicherheitsbericht 2010. Kriminalität 2010.; BMI: Sicherheitsbericht 2012. Bericht über die Tätigkeit der Strafjustiz.; BMI: Kriminalitätsbericht 2012.; Auskunft des BKA zu angezeigten Fällen 2013; BMI: Kriminalitätsbericht 2014; BMI: Kriminalitätsbericht 2015; Statistik Austria (2014/2015/2016/2017/2018): Gerichtliche Kriminalstatistik 2013/2014/2015/2016/2017; Auskünfte des BMI zu den Anzeigenstatistiken 2016, 2017

Figure 6 Conviction rates sexual coercion (Notruf Beratung für vergewaltigte Frauen und Mädchen Wien 2018:7)

No reliable statistical data is available concerning the reported cases of sexual coercion for the year 2003. The lowest point was reached in 2011 with 5.8%. With some statistical outliers, the trend towards higher conviction rates can clearly be seen in this table. Table 6 reveals that there has been a gradual increase in conviction rates since 2012. With an exception in 2014, the conviction rates from 2012 to 2017 were 17% or higher. However, it should be noted, that also the number of reports is lower than in the beginning of the statistical returns in 2001 and 2002.

### 3.1.4 Sexual Abuse

#### Sexueller Missbrauch einer wehrlosen/ psychisch beeinträchtigten Person § 205 StGB

		2001	2002	2003	2004	2005	2006	2007	2008	2009
Anzeigen	Bis 2011 nur Verurteilungen n. strafsatzbest. Norm	21	58	58	107	88	115	129	155	131
Verurteilungen		15	6	15	15	11	21	19	13	20
Verurt.-quote			10,3%	25,8%	14%	12,4%	18,2%	14,7%	8,3%	15,2%

	2010	2011		2012	2013	2014	2015	2016	2017	
Anzeigen	157	184	Ab 2012 sämtliche Verurteilungen	176	159	188	173	201	194	
Verurteilungen	24	25		24 <sup>22</sup>	20 <sup>23</sup>	25 <sup>24</sup>	32 <sup>25</sup>	27	28 <sup>26</sup>	
Verurt.-quote	15,2%	13,5%		13,6%	12,6%	13,3%	18,5%	13,4%	14,4%	

BMI: Sicherheitsberichte 2006, 2007. Kriminalität.; BMJ: Sicherheitsberichte 2010, 2011, 2012: Berichte über die Tätigkeit der Strafjustiz.; BMI: Kriminalitätsbericht 2012.; BMI: Kriminalitätsbericht 2014; BMI: Kriminalitätsbericht 2015; Auskunft des BKA zu angezeigten Fällen 2013; Statistik Austria (2014/2015/2016/2017/2018): Gerichtliche Kriminalstatistik 2013/2014/2015/2016/2017; ; Auskünfte des BMI zu den Anzeigenstatistiken 2016, 2017

Figure 7 Conviction rates sexual abuse of a defenceless/mentally impaired person (Notruf Beratung für vergewaltigte Frauen und Mädchen Wien 2018: 8)

In 2002, the lowest point of conviction rates was reached with 10.3%. In 2003, the rate peaked with 25.8%. The year with the highest conviction rate is also a year with low reports. Since 2003, the conviction rates have been varying between 12.4% and 18.5%. Over the years, an increase of reports can be observed. The number of complaints ranges of 58 (2003 and 2004) to 201 (2016).

### 3.1.5 Violation of sexual self-determination

In 2016, the statutory offence of violation of sexual self-determination was introduced with the implementation of the § 205a in the *Criminal Code (StGB)*. Since then, a criminal behaviour contrary to a person's sexual self-determination is punishable. Criteria for this criminal offense are met if someone takes advantage of a plight or intimidates the other person or if sexual



intercourse or an action that is comparable is carried out against the will of a person (Abs 1). This statement of facts can apply to crimes committed as part of a e.g. anti-emitic or racist assault.

#### Verletzung der sexuellen Selbstbestimmung § 205a

	2016	2017								
Anzeigen	83	133								
Verurteilungen	6 <sup>34</sup>	12 <sup>35</sup>								
Verurt.-quote	7,2%	9%								

Statistik Austria (2017/2018): Gerichtliche Kriminalstatistik 2016/2017; Auskünfte des BMI zu den Anzeigenstatistiken 2016, 2017

Figure 8 Conviction rates violation of sexual self-determination (Notruf/Beratung für vergewaltigte Frauen und Mädchen Wien 2018:8)

### 3.1.6 Forced Genital Mutilation and Cutting (FGM/C)

Under the heading *Tradition and Violence against Women*, the Ministry for Women and Health published a policy brief on FGM/C in early 2017. Just like its predecessor, the recent Austrian government qualifies FGM/C as “gender-specific” and “tradition-related violence” (Federal Ministry for Health and Women 2017). Before the publication of these policy briefs, the National Council (one of the two houses in the Austrian Parliament) under its president Barbara Prammer issued a NAP in cooperation with the *African Women’s Organization Vienna* on Combatting FGM/C for the years 2012-2015. The NAP was part of the EU-funded project *Daphne* which 15 Member States participated in (Austrian Presse Agentur 2008). Any type of FGM/C is illicit and is considered a crime within but also outside of Austria, e.g. on a trip abroad, against citizens or residents. Since 2007, a Viennese interdisciplinary working group under the lead of the *Program for Women’s Health* has been discussing the issues regarding prevention and care for affected women. This group has produced a number of informative documents and material, such the short movie “Nein zur Genitalbeschneidung” [No to genital mutilation] in five languages. There is no comprehensive statistical data on trials since the topic has only relatively recently received increased political attention and separate data is on this issue is not gathered (Der Standard 2017a). It is paramount to mention that FMC/C cannot be attributed to one single religious practice or tradition within one ethnic group. Please see 3.2 for a more extensive discussion on terms used for GBV in the realm of “culture- or tradition-specific” violence.

### 3.1.7 Forced Marriage

In 2015, a reform of the *Penal Code* led to the introduction of forced marriage as a stand-alone offence. It is considered a criminal act liable to public prosecution. Hence, apart from the victim, any third party can report to the police if they suspect forced marriage to have taken place or about to be performed. Anyone involved in performing, arranging or supporting forced marriage acts against the law and can be punished.

A report issued in 2017 as part of the series *Tradition and Violence against Women*, identifies forced marriage as one of the crucial topics, which migrant women and refugees need to be protected from. According to NGOs like *Orient Express*, however, few policy measures were taken by the government to adapt to the needs of people who sought help when under threat of being or already forcefully married to another person. The government released funds to open a number of emergency flats as well as a federal coordinating office *Obstruction and Forced Marriage*. Still, Selda Yücel from *Orient Express* states that these measures do not suffice and more financial resources need yet to be allocated to those services (Klagsverband 2018). There is lack of information and training for schools, police, judicial and medical personnel that allow a comprehensive understanding and assessment of individual situations of affected persons (ibid.). As with *FGM/C*, there is little data to be found on this topic. Orient Express expects about 5,000 girls to be at risk to get married forcibly in Austria in 2019 (ibid.). Please see 3.2 for a more extensive discussion on terms used for *GBV* in the realm of “culture- or tradition-specific” violence.

### 3.1.8 Femicides

This topic received an overwhelming amount of attention during the winter of 2018/19 in the media and in political discussions. The discursive role migrants and refugees played and which frames were used to explain the relatively large amount of femicides is yet to be analyzed. We assume that the death of a migrant woman and/or killings by a man with migration background are overrepresented in the media.

According to the *GREVIO shadow report* (2016) about 20 to 30 women are killed by their (ex)partners annually. So-called “honour killings” are illegal in Austria and are prosecuted even if are performed outside of Austrian territories against residents and citizens. Despite political attention and politicization of the topic coupled with anti-migration sentiments this topic has received in the recent years, only fragmentary data on convictions is available. Please see 3.2

for a more extensive discussion on terms used for *GBV* in the realm of “culture- or tradition-specific” violence.

### **3.1.9 Intimate-Partner Violence and domestic violence**

IPV is – in most cases – addressed as an act towards women by men in Austria. It is therefore conceptualized in a heteronormative understanding of partnership-. Figures show that about 25 - 30 % of women seeking help at *centers providing protection against violence* (*Gewaltschutzzentren*) are migrant women (Mayrhofer and Schwarz-Schlöglmann 2017). The numbers are even higher for women’s shelters. These shelters provide ad-hoc protection to women who escaped violent relationships in their families (see 5.2 for more information).

The topic of *IPV* received a relatively high level of attention compared to other forms of violence. Analyses show that campaigns, policy measures etc. frame *IPV* a “woman’s problem” and tend to individualize the issue (Wolf 2018). Like in many European countries, *IPV* is conceived of a marital, private issue society should not interfere with. Alongside goes a notion of victim blaming, i.e. making the woman responsible for occurred violence. In the context of migration and flight, there is a tendency of rooting the problem of *IPV* in family structures or culturally specific, traditional role conceptions (do Mar Castro Varela and Dhawan 2016). Hence, this generalizing analysis implies that the issue is of higher relevance to families with migration background but should not be addressed as a societal problem in general. As Schwarz-Schlöglmann states correctly “factors which increase the risk of domestic violence are the same in any relationship, no matter if it is in the context of migration or not. That is, patriarchal power structures with gender-specific hierarchies of subordination or superordination are most significant in this context” (Schwarz-Schlöglmann 2017: 162, author’s translation).

### **3.1.10 Human Trafficking**

The *task force Human Trafficking* appears to be one of the most continuous working groups in the area of *GBV*. First implemented in 2004, the task force presents a regular working plan and a final report every three to four years. It is part of inter alia a more internationally oriented policy towards implementing the *United Nations Security Council Resolution Women, Peace and Security (UNSCR)* 1325 ff. (see chapter 4.3). The concomitant project *Identification of potential trafficked persons in the asylum procedure (IBEMA)* initiated training sessions for judges and counselors of several administrative bodies (incl. asylum, legal advice on asylum etc.) in cooperation with *UNHCR*, the *IOM*, the federal criminal police office, the NGO *LEFÖ*,

the *Men's Health center* and the children's protection center *Drehscheibe* (Ministry for Women and Health 2017). Furthermore, the centre *Anlaufstelle zur gewerkschaftlichen Unterstützung UNDO* *Kumentiert Arbeitender (UNDOK)* for undocumented workers was established in 2013 to assure unionist support for victims of trafficking (Ministry for Women and Health 2017).

Over the past years, more people have received compensation after having been trafficked in Austria (La Strada 2018). However, receiving compensation requires the confiscation of assets of the offenders. Following compensation payments for trafficked and abused Latin American girls in Austria in 2018, *La Strada* - a European network of NGOs working to counter human trafficking - expounds, "vulnerability to human trafficking is dynamic and context-specific. The abuse of a position of vulnerability has to be looked at as a linkage of factors, including not only class or formal education, but also gender, age and residency status" (La Strada 2019). Furthermore, the roots for human trafficking are characterized in the following way: "root causes can be found in all three stages of the trafficking process: (1) in countries of origin (e.g. poverty, unequal gender relations, traditional social structures), (2) during the migration process (e.g. lack of safe and legal migration opportunities) and (3) in the countries of destination (e.g. demand for cheap and easily exploited labour and repressive policies towards undocumented migrants)" (La Strada International 2013). Since trafficking often operates in an international field, these offenders are hard to track down which complicates legal prosecution.

Looking at the gender ratio of trafficked persons, women (49%) and girls (21%) are overrepresented in comparison to men (18%) and boys (12%) (UNODC 2014). Most of the detected female victims of trafficking were sexually exploited (79%). The majority of male victims were trafficked for forced labour (83%) (UNODC 2014). Austria is both a transit and a destination country for human trafficking (United States Department of State 2018). In 2000, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* was opened for signature (UN 2003). Three years later, it was put into force (UNODC 2014: 51). Compared to other countries, Austria's conviction rates are between low and average. Figure 9 shows the number of lawsuits and actual convictions of known and unknown offenders of human trafficking. This survey was conducted on 173 countries. In 2003, two thirds of these countries lacked a regulatory framework regarding human trafficking. Today, only 5% of the 173 countries do not have specific legislation for trafficking. However, legislative implementation did not lead to a major increase in conviction rates as was expected. In 2014, 146 of the countries criminalized all forms of trafficking, such as sexual exploitation, organ removal and forced labour (UNODC 2014). Nevertheless, the conviction rates are still very

low on a global scale (UNODC 2014). NGOs, like *LEFÖ* – a NGO specializing in the support of refugee women and trafficked women – call for the Austrian government to acknowledge that trafficking occurs in a multi-layered internationally operating system, which cannot be solely tackled by acting on a national level (Frauen: Rechte jetzt 2013).

FIG. 28: Number of convictions recorded per year, share of countries, 2010-2012

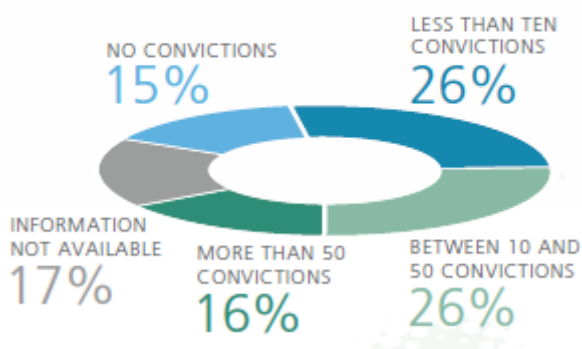


Figure 9 Conviction rates of 128 countries (UNODC 2014: 54)

**Tabelle 19: Menschenhandel – Verfahren und Urteile**

Verfahren	2011	2012	2013	2014	2015	2016	Gesamt
Anzeigen gegen bekannte TäterInnen	24	30	66	61	51	34	266
Anzeigen gegen unbekannte TäterInnen	7	5	6	8	11	12	49
<b>Anzeigen gesamt</b>	<b>31</b>	<b>35</b>	<b>72</b>	<b>69</b>	<b>62</b>	<b>46</b>	<b>315</b>
Urteile	2011	2012	2013	2014	2015	2016	Gesamt
Freisprüche	2	0	5	2	5	0	14
Verurteilungen	1	2	2	29	2	5	41
<b>Urteile insgesamt</b>	<b>3</b>	<b>2</b>	<b>7</b>	<b>31</b>	<b>7</b>	<b>5</b>	<b>55</b>

Anmerkung: im jeweiligen Berichtsjahr angefallene Verfahren wegen Verdachts auf Menschenhandel.

Auswertung Verfahrensautomatisierung Justiz; Anfall sowie Verurteilungen und Freisprüche §104a StGB 05/2011 bis 07/2016

Figure 10 “Human Trafficking – Law suits and convictions” (Federal Ministry of Justice, 2016)

Despite counter-trafficking action plans being one of the most consistent undertakings in the realm of *GBV*, practice shows that trafficked women are often criminalized (Frauen: Rechte jetzt! 2013). One of the reasons for that is the lack of regulated mechanisms to acknowledge women as victims (ibid.). Although § 104a *StGB* categorizes human trafficking as a crime, its implementation is still incomplete. According to *LEFÖ*, judicial, police and medical personnel is not sufficiently trained to deal with individual victims and cases, which is due to lack of budgetary resources. According to the ninth report on to the UN on *CEDAW*, the government reacted towards shortcomings and increased the number of lawyers and judges specialized on

the issue of trafficking (Ministry for Women and Health 2017<sup>1</sup>). Despite the 2012 ruling of the *Austrian Supreme Court of Justice*, declaring that prostitution is not a “violation of moral principles” anymore, practice shows that perceptions and the implementation of these changes have not had significant impact on attitudes, esp. of judicial personnel, towards the topic (Klagsverband 2018).

For refugees, *LEFÖ* expresses concerns that women and girls who experienced economic exploitation, physical abuse, etc. during their flight to Austria live under the threat of being deported to the country of origin or another EU country according to the *Dublin III regulations* (Klagsverband 2018). According to *LEFÖ*’s assessment, increasingly restrictive migration politics complicate the identification of trafficked women since many victims are deported before they can make use of their rights as a victim of trafficking (ibid.). Until 2013, Article 69a of the *NAG* concluded that trafficked persons have a right to receive a residence permit for special protection to allow for the prosecution of offenders. Nevertheless, practice showed that those permits took several months to be issued, resulting in people having limited to no access to health services etc. This was especially relevant for third-country nationals. Today, § 57 of the *Asylum Act* (in BGBl I 2017/145) “victims or witnesses of human trafficking or cross-border prostitution for the purpose of guaranteeing the prosecution or the enforcement of civil-law claims” (EMN 2016: 55). It permits people a limited stay of one year. Prosecution and trials are directly connected to statements of the victim, which may put the person under emotional and psychological stress. If proceedings are closed due to whatever reason, victims are not entitled to receive a residence permit. Therefore, no legal protection from expulsion exists (only 30-day mark with no legal basis) and their access to service is bound to a lawsuit.

While the Ministry for Women and Health (2017) describes access to employment for victims of trafficking with third-country nationality as easier compared to Austria’s previous *CEDAW*-screening in 2011, *LEFÖ* calls for unconditional protection, access to services (psychosocial and health but also employment) and security for trafficked persons to make use of their rights (Klagsverband 2018, *Frauen: Rechte jetzt!* 2013). Recent financial constraints have arisen since government changed in 2017. The previously mentioned NGO *UNDOK* recently raised concerns about their financial situation. Although Beate Harting-Klein, minister for social affairs between 2017 and 2019, assured financial security to the NGO, they currently face cuts

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<sup>1</sup> Following elections in the fall of 2017, the Ministry for Women and Health was renamed Ministry for Women, Family and Youth.

of about half their budget from previous years (UNDOK 2018). According to their official statement, their work has been severely restrained as a result.

### **3.1.11 Violence motivated by Racism, Antisemitism, Antiziganism (*hate crime*)**

Detecting intersections of forms of discriminations is vital to a holistic understanding of the roots of *GBV*. Certain groups in society face specific forms of discrimination due to their belonging to a religious or ethnic group but also simply because of their skin colour, clothing or religious symbols. Following an intersectional approach, we attempt to briefly illustrate these forms of discrimination and their occurrence in Austria.

The *OSCE's Office for Democratic Institutions and Human Rights (ODIHR)* defines *hate crimes* as “criminal acts motivated by bias or prejudice towards particular groups of people” (ZARA 2018: 36). ZARA expanded the definition in accordance with the Austrian criminal law. In Austria, hate crimes are legally categorized as statements of fact, including threats (§ 107 StGB), insults (§ 115 StGB) and bodily harm (§§ 83, 84, 85, 86, 87 StGB). Therefore, the working definition states that hate crimes are directed “towards a church or religious community or any other group of people or members of such a group of people defined according to existing or non-existing criteria of race, skin, colour, language, religion or ideology, nationality, descent or national or ethnic origin, gender, physical or mental disability, age or sexual orientation explicitly due to their affiliation to this group” (ibid.).

## **Racism**

Studies, like the *FRA* report *Being Black in the EU* (2018), show that the topic of racism-induced violence is highly significant to Austria. Therefore, although most of the data below is not gender-specific, it is especially important to shed light onto this issue when looking at Austria.

The *FRA* study of 2018 gives mostly negative insight into the situation for Black people living in Austria and portrays a similar picture as statistics by “an organisation active in the fight against racism in Austria, show below (FRA 2018). People of African descent live under particularly high risk of experiencing racist violence in Austria. Within a 12-month period in which the survey was taken. Austria shows the highest rate of racist violence compared to the other 11 European states. Every second participant in the study of African descent knows of friends or family members who have been verbally insulted. Here, Austria scores first and second when it comes to physical attacks against close friends and family members.

Unemployment rates and experienced racist discrimination are some of the highest in Austria among the cohort interviewed for the study (ibid.).

In 2018, 1920 racist incidents encountered with authorities were reported to ZARA (ZARA 2019). Most of the incidents reported took place on the internet (ZARA 2019). Hate crime on the web is disproportionally directed towards women. Eight of 10 times the person reporting the incident was not the victim self (ZARA 2019: 12). Only eight of the 82 reported cases of racist incidents by members of the police were formalized (ZARA 2019: 13).

Police violence and racial profiling is a major problem in Austria, despite the last being illegal according to the EU Commission's policy recommendation by the Council against Racism and Intolerance (2007). "Overall, 2 % of all people of African descent interviewed experienced a racist physical assault by a police officer in the five years preceding the survey. Respondents in Austria indicate the highest prevalence (5 %) – when compared to all other target groups and countries surveyed (incl. non-European countries)" (FRA 2018: 21). The lowest level of trust towards the police with people of African descent is found in Austria. Sixty-six percent of the most recent and disproportionately high occurring police checks encountered by respondents were perceived as racist assaults (ibid). Compared to other states, this is exceptionally high. Racial profiling is an extremely relevant topic for people with migration background and their daily lives, which needs to be actively approached by authorities and/or state measures.

Negative experience with the police may keep many people, including women, from reporting to the police. This experience is not restricted to Austria but could possibly be identified along the way to Austria and potentially at Austrian borders.

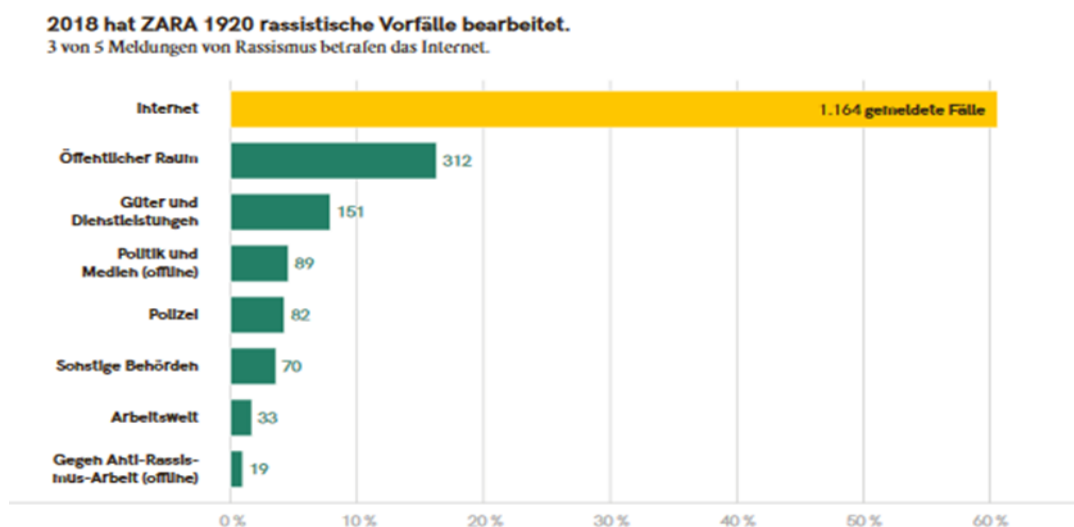


Figure 11 Reported racist incidents (ZARA 2019)



## Anti-Semitism and Antiziganism

Anti-Semitism and Antiziganism constitute forms of discrimination, which occur on a regular basis against people living in Austria. The *Forum against Anti-Semitism* and *Romano Centro* publish annual reports, which mostly cover incidents that occurred over the previous year. The reports work illustrate how these forms of discrimination permeate all areas of life, including the police, job market, the media, politics etc. The *Romano Centro*'s Antiziganism report (2018) states that one of the most persistent forms of prejudice against Roma comes with the idea that social problems are attributed to "their" cultural specificities (Romano Centro 2018). Another issue concerns the denigration of racist/antiziganist verbal insults by authorities, teachers and the like (ibid.)

In the year of 2017, 503 incidents of anti-Semitic nature were reported. Compared to 2016, that is an increase by 26 cases (Antisemitismusbericht 2017). The authors expect the dark figures to be much higher. In 2017, the *Austrian Council of Ministers* agreed upon a coherent definition of anti-Semitism.

Just as ZARA, both institutions offer support for people who have experienced xenophobia, anti-Semitism or Antiziganism. All of these institutions may establish contacts to organizations which specify on legal or psychological support. The organizations cooperate with each other to allow people who witnessed hate crimes to access different forms of support. Apart from the annual reports on hate crimes, these institutions are active voices in political education and politics of remembrance and stand in close cooperation with e.g. Shoah and Porjamos memorials or networks that remember victims of racist crimes (e.g. the Omofuma case<sup>2</sup>).

### 3.2 Public and academic discussion on "Cultural or tradition-specific violence"

The term "cultural violence" is highly potent and frequently used in Austrian politics and public debate. Some governmental actors construe the existence or occurrence of some of the above presented forms of *GBV* in connection with the term. Oftentimes, political / legal and policy measures address the protection of migrant and refugee women but do not identify structural reasons and/or take steps to increase supportive infrastructure. We will discuss its prevalence in a future frame analysis of policy documents and media coverage. However, the contextualization here is important, as it is a widely used phrase under which different types of violence – allegedly culturally informed – are subsumed. According to Mendel and Neuhold (2015), the term "cultural violence" can be traced back to political discursive development

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<sup>2</sup> For more information on the Omofuma Case, see Chukwujekwu, E. O. (2011): *The last journey of Marcus Omofuma: an account of prison experience*. Bloomington, Ind.: iUniverse.

around 2004 under the influence of political actors (see more on this in chapter 3 and below). We leave the term in quotation marks since it implies that violence in general and specific types of violence can be attributed to people belonging to certain ethnic or cultural groups.

Apart from the fact that there is no scientific proof for these assumptions, we refrain from using frames or categories, which have been politically instrumentalized to justify racist and restrictive migration politics (Mendel and Neuhold 2015). They (re)produce and reinforce stereotypes and the discourse on “the Other” (Sauer 2011) which we decisively reject. Despite our critical stance on the term “cultural violence”, we chose to cover forms of violence, which allegedly fall under this category to illustrate their political saliency and to highlight the lack of resources and/or the imbalance of attention towards them. Added value of migrant-specific data should be an issue of further discussion. NGOs, scientists and activists have repeatedly asked policy makers and government to step back from measures, which tackle violence against autochthonous Austrians and migrants and refugees separately (e.g. Mendel and Neuhold 2015; Wolf 2018; Logar 2017, Schwarz-Schlöglmann 2017). Whether *GBV* should be addressed according to special needs of specific groups or in a more general manner is a central question with regards to effective implementation on the one hand and reproduction of essentialist narratives on the other. However, we can establish the fact that violence is relevant to and a crucial topic for any part of society, regardless of people’s class, ethnicity, gender, sex and religious beliefs. Consequently, there is need for a careful conceptualization of the term violence and *GBV* in the context of refugees and beyond, like Sauer (2011) suggests.

This chapter has shown that on a political and legal level, measures against various type of *GBV* have been taken. While some forms of *GBV* have qualified as criminal offence for more than 20 years others were only recently added to the catalogue of statement of facts. A significant number of legal provisions were introduced to guarantee protection for any victim of violence; others specifically target victim protection of women. Some reforms lay ground for the introduction of statements of facts to counter *GBV* against women migrants and refugees, especially (e.g. *FGM/C*). Previous Austrian governments undertook comparably remarkable efforts to counter human trafficking in and around Austria. On the other hand, violence motivated by racism and other forms of hate crime – either verbally or physically, by authorities or individuals – appears to be an issue, which requires further research and policy measures. This would include the analysis of other, intersecting forms of violence. It is, above all, pivotal to recognize the intersections of different forms of *GBV* and allow for these issues to be visible and reflected upon.

## 4 Academic State of the Art

Academic contributions in the field of *GBV* in general, but especially *GBV* against women migrants and refugees exist but tend to be scattered for the Austrian context. A first screening of available academic contributions in alignment with the shadow reports confirms that there has been little systematic and comprehensive research on *GBV* against refugee and migrant women, and on specific forms of *GBV* in Austria in general. Research teams around Sieglinde Rosenberger have contributed with a large body of research on aspects of migrant and asylum specific to the Austrian case, ranging from deportation and related protests to discourse on Muslim women and the veil to social policies as tools to control migration (Atac and Rosenberger 2018). Several publications look at exclusionary mechanisms of the Austrian migration regime in the context of youth, age, race and religion (see for example Limacher, Mattes and Novak 2019). However, these studies only peripherally touch upon the topic of physical forms of *GBV*. We may consider this body of scholarship under a broader concept of *GBV* as illustrated in the introduction.

Rainer Loidl presents an overview of the current situation of research on domestic violence in Austria (Loidl 2013). He states that the degree of institutionalization of this kind of research is still low and the research corpus relatively small (ibid). Nevertheless, one of the most important contributors in the field has been the *Institute for Conflict Research (IKF)*. With a variety in topics, the institute has been providing research on violence against women, by adolescents, men and the police but also on victims-oriented work with offenders, empowerment of women who experienced violence and on sexual offences since 1993. Other studies included violence against people with disabilities, sexual harassment of young men and women in training or at work and the economic costs of violence. Furthermore, the institute carried out the accompanying study on the introduction of the *Protection against Violence Act*. This was followed up by an evaluation of the implementation of the Act (IKF 2019). Many research institutes contribute commissioned research funded by the government or ministries. Implicit interest of state actors as constituents should be kept in mind when assessing these publications. The EU as well as the Ministry for Domestic Affairs, the Ministry for Europe, Integration and Foreign Affairs and the Ministry for Women and Health provided funding for several studies and publications over the last years.

Short descriptions of a selection of some relevant studies and academic publications can be found below.

**Mendel, I. und Neuhold, Petra (2015): Feminismus und Antirassismus – another unhappy marriage? Der Diskurs um „kulturelle Gewalt“ und die Möglichkeiten transnationaler feministischer Solidarität. *Feministische Studien: Zeitschrift für interdisziplinäre Frauen- und Geschlechterforschung*, 33 (1), 38-54.**

**Title: Feminism and Anti-racism– another unhappy marriage? The discourse on “cultural violence” and the chances of transnational feminist solidarity.**

Taking a more postcolonial and materialistic stance on Austrian migration and integration politics, Mendel and Neuhold heavily criticize the discursive development on violence, women and migration, linking conservative, pseudo-feminist patterns of argument with the justification for a more repressive and restrictive migration regime in and around Austria since 2004. They identify the “culturalization of sexist violence which was intertwined with the topic of women (i.e. equality) and integration” (author’s translation, Mendel and Neuhold 2015: 39) to be discursively used to locate the problem of violence and sexism “outside” of the “Austrian” population. The consequential “instrumentalization of violence in conjunction with culture therefore justifies certain forms of institutional and state violence against women and racist migration politics” (ibid: 40). The Austrian state acts as a protector in his paternal role and stages himself as a liberator of women. Violence should, however, not be regarded as a given cultural tradition of “the Other” but should be analyzed in the context of racist violence exercised by the state.

A postcolonial analysis highlights that enlightenment and values such as democracy, social justice and some sort of liberal feminism are, from a Eurocentric perspective, understood as completed processes. It ignores the colonial context within which the enlightenment emerged. This explains the simplicity at which e.g. a “regressive Islam” can be identified as something unwanted in Austria.

**Why do emancipation and women’s rights represent western fundamental values, while daily sexism and assaults are not regarded as inherent to „Western culture “?**

From a similar perspective, postcolonial and feminist scholars do Mar Castro Varela and Dhawan (2016) address the question whether the “migrant woman” needs to be rescued from *GBV*. By comparing German and Austrian discourses, they discuss “the pivotal feminist issues of gendered violence, vulnerability, and agency and the concomitant dilemmas that emerge when addressing the problem of gendered and sexualized violence particularly in migrant and refugee communities” (do Mar Castro Varela and Dhawan 2016: 14).

Sauer (2011) has contributed to corpus of scholarship on *GBV* with similar publications, where she analyzes the discourse and political measures against “culture-specific” *GBV* against

migrant women, such as *FGM/C* and forced marriage. Consequently, *culturalizing* this term leads to an immediate individualization of the issue, which ignores structural factors of social inequality, economic dependence and restrictive legal provisions on residence (ibid.). She emphasizes that these factors are crucial to the creation of vulnerable situations and environments in which *GBV* can develop (ibid.). Therefore, she calls for a re-contextualization of the term by understanding these forms of violence in the nexus of class, ethnicity, nationality and feminist conceptualizations that go beyond the perspective of patriarchal submission by accounting for the structural implications of these forms of discrimination (ibid.). These contributions align and interlink with publications from earlier decades by Ruth Wodak and Bernd Matouček. They explored the discourse on the “foreign” in Austria in which they extrapolate on racist implications these narrative constructions can have (Wodak and Matouček 1993).

**Ammer et al. (2013): *Krieg und Folter im Asylverfahren. Eine psychotherapeutische und juristische Studie*. Studienreihe des Ludwig-Boltzmann-Institute for Human Rights, 28, Universität Graz: Neuer wissenschaftlicher Verlag.**

**Title: War and Torture in the asylum process. A psychotherapeutic and legal study.**

“In the life of a refugee, experiencing torture constitutes a decisive caesura. The sense of powerlessness during torture can lead to profound psychological changes, which question the usual, day-to-day life with all its values and attitudes. Traumata caused by torture can therefore exceed the immediate life-threatening experience. If a victim of violence manages to find their way to and finally arrive in Austria – usually on highly dangerous paths – they find themselves in not solely legal situations of insecurity. This book is the result of a study, in which the situation of refugees in the Austrian asylum system were analyzed from a psychotherapeutic and legal perspective, exemplified by 14 individual stories. On psychotherapeutic level, the focus lies on the ramifications of the asylum system on the situation of refugees as well as the consequences of trauma and psychotherapy on the asylum procedure.

The legal perspective on the other hand is concerned with the topics of identification of people as victims of violence within the asylum procedure, the Dublin-regulations and the assessment of credibility of the victim’s story. In addition, the authors discuss the access of refugees to medical, psychological and psychotherapeutic care in the recipient country Austria and the role of International Criminal and Civil Law.”

*Translation of blurb by Madita Erdmann.*

**Mayrhofer, M and Schwarz-Schlöglmann (eds.) (2017): *Gewaltschutz. 20 Jahre Gewaltschutzgesetz und Gewaltschutzzentren/Interventionsstellen*. Wien: Verlag Österreich.**

**Titel: 20 years of Protection against Violence Act and Centers for Protection against violence/ Intervention-centers.**

“The *Protection against Violence Act* entered into force in 1997 and became a role model for similar legal provisions in Europe and beyond. 20 years of this act and congruent Centers for Protection against Violence testifies for a revolutionary development in the field of countering violence against women, domestic violence and violence in relationships, violence in the social environment and stalking. The attention paid towards the victim as well as the implementation of victims’ rights und its protection in the administrative and judicial processes constitute milestones in the history of this Act. This edited volume gives an overview on the respective fields of law, in which these accomplishments have found expression and in which prevention, victim’s support and protection have been expanded continuously. This work presents a state of the art, analysis and insight into the implementation and practice of protection against violence in Austria and alludes to where the authors identify potential and requirements” (translation of blurb by author).

In chapter eleven, Schwarz-Schlöglmann emphasizes specificities to necessary infrastructure and legal implications to ensure protection against and prevention of violence in the context of migration and flight. She states that there is lack of policy for protecting people in these vulnerable situations. She expects that refugees are in need of psychological support in their mother language. For people who had to flee, victim support is less accessible and there are more barriers, which impede seeking help. Reasons for that can be distressing experience with authorities in their home country or in countries of transit. Also, if they did not apply for asylum on their own, reporting a person that their status is dependent upon could have severe consequences for their asylum claim. To sum up, while Austria was an example for victim protection against violence in the 1990s and the early 2000s, backlog exists concerning victims who experienced violence and have a migration or flight biography. Women who travelled alone as well as unaccompanied minors and traumatized persons are considered to have lived in especially vulnerable life situations (Schwarz-Schlöglmann 2017).

**Wolf, B. (2018): Gender-based violence in discourse. A comparative study on anti-violence communication initiatives across Europe, in Austria and Spain. *Anàlisi*, 59, 1-27.**

- a. Study of anti-violence campaigns and portrayal in the media
- b. Austria: image of the heteronormative “Austrian women” is used, diversity of women is often not shown
- c. Austrian national campaigns focus on IPV
- d. No systemic and structural analysis of causes for IPV
- e. No analysis of patriarchal structures embedded in society
- f. IPV is not understood as a problem embedded in societal context
- g. IPV is a “cultural” or a “private/personal women’s problem”
- h. According to studies on IPV and public relations, a “lack of knowledge, persistent misconceptions and the desire for more media coverage” (7) remains
- i. Victimization and physical violence are dominant in campaigns (explicit depiction of violence)
- j. Survivors are silenced, do not appear in empowering role, passive positions

**Johanniter-Unfall-Hilfe in Österreich (2016): Handbuch zur Prävention von geschlechtsbasierter Gewalt in der Arbeit mit Geflüchteten. *Johanniter Initiative gemeinsam gewaltfrei*.**

**Title: Handbook to prevent GBV in the context of work with refugees.**

Although the handbook is not a classic academic publication, it is worth mentioning it for the following reasons. The book gives a thorough overview on what forms of GBV can occur during the work with refugees. It does not only address the identification of abuse but also helps social workers etc. to approach the topic more carefully.

It introduces the reader to different potentially conflictual areas. It looks at violence against women but also transgender and homosexual migrants and refugees as well as work with men to prevent violence. In addition, a template sheet for identification of physical and psychological abuse is attached to the appendix.

This handbook is unique in Austria. Working with provisions of the *Istanbul Convention*, *CEDAW* and *UNHCR*, it makes sure to fulfill international standards. However, it does not discuss or address the topic of GBV by authorities towards refugees.

Due to its uniqueness, the handbook gained attention on a practical, i.e. different camps run by various NGOS, and on a municipal level like the City of Vienna. A number of researchers, lawyers and social workers who had worked with refugees suffering multiple forms of *GBV* in 2015/2016 developed it.

Members of Klagsverband (2018) and Frauen: Rechte jetzt! (2012 and 2013) have voiced the lack of comprehensive statistical and analytical publications on *GBV* in general but especially in the context of migration and asylum (e.g. regarding women's health). One reason for this patchwork rug may be financial dependence of research institutes on governmental budgets, the lack of statistics and the overall lack of political interest in the topic of *GBV* against refugee women.



## 5 Regulatory Framework and its gendered implications

### 5.1 Overview on migration and asylum regulations

Migrant and asylum regulations differ regarding the citizenship a person has (European/EFTA citizen or third country). Another distinction is on the ground on which people want/have to live in Austria (i.e. work, international protection, study). Furthermore, it is of relevance how long they want to or are allowed to stay (temporary or long-term residence permit). The following figure gives an overview on different residence permits (excluding refugees).

Residence permit type	Entitlements
Red-White-Red Card	temporary settlement with restricted access to the labour market, for one year
Red-White-Red Card Plus	temporary settlement with unrestricted access to the labour market, for three years
EU Blue Card	temporary settlement with restricted access to the labour market, for two years
Settlement Permit	temporary settlement with restricted access to the labour market, for a maximum of three years
Settlement Permit without Employment	temporary settlement without employment possibilities, for a maximum of three years
Settlement Permit Dependant	temporary settlement without access to the labour market, for a maximum of three years
Permanent Residence EU	permanent settlement with unrestricted access to the labour market, for five years
Family Member <sup>a</sup>	family members of Austrian nationals, for a maximum of three years, with the possibility of subsequently obtaining the residence title Permanent Residence EU
Temporary Residence Permit	temporary residence for a specific purpose; several subcategories, issued for one year, this includes the Residence Permit Plus and Residence Permit for Individual Protection, which can be issued based on humanitarian grounds

Source: own compilation, based on EMN (2015, p.32, Table 4).

Figure 12 Residence permits (Josipovic et al.2018: 29)

In 2016, 56.5% of total immigration were EU citizens or citizens of states falling under the realm of the *European Free Trade Association (EFTA)*. Therefore, they were the major group of migrants. Figure 13 shows the number of people without Austrian citizenship clustered according to their residence titles.

	Men	Women	Total	In %	Women in %
Permanent Residence EU	131,303	125,547	256,850	56.5	48.9
Red-White-Red Card Plus	47,434	48,705	96,139	21.1	50.7
Family Members	16,100	22,898	38,998	8.6	58.9
Residence Permit	12,875	14,111	26,986	5.9	52.3
Permanent Residence Family Member	7,957	9,224	17,181	3.8	53.7
Former Settlement Certificate	5,141	4,694	9,835	2.2	47.7
Settlement Permit	2,608	4,226	6,834	1.5	61.8
Red-White-Red Card	1,151	522	1,673	0.4	31.2
EU Blue Card	196	96	292	0.1	32.3
<b>Total</b>	<b>224,765</b>	<b>230,023</b>	<b>454,788</b>	<b>100.0</b>	<b>50.6</b>

Source: Statistics by the BM.I; own calculation.

Figure 13 Residence titles of people without Austrian Citizenship, 2016 (Josipovic et al. 2018: 8)

Josipovic et al. describe this figure as follows: “In 2016, there were almost 450,000 active residence titles. The most important category refers to ‘permanent residence EU’ [...] This title allows for an unlimited stay and access to the labour market and is available after five years of permanent residence in Austria. The Red-White-Red Card and Red-White-Red Card Plus, which were designed and implemented to attract skilled workers, made up 21.5% of the residence titles, and again there is an equal share of men and women in the quantitatively more important Red-White-Red Card Plus scheme. Other residence titles include those for family members and more temporary forms of permits” (Josipovic et al. 2018: 8). The Red-White-Red card can only be applied for from outside of Austria (Asylkoordination 2018)

Different special regulations are relevant for the various groups of migrants and refugees (IOM 2015):

- For Asylum Seekers the *Asylum Act 2005*
- Residence permits for longer than six months: *Settlement and Residence Act (NAG)*
- Entry permits for less than six months: *Aliens Police Act (FPG)*

In addition, other legal aspects concerning migration and asylum are governed in e.g. the *Integration Act (IntG)*, the *Citizenship Act (StbG)*, the *Act Governing the Employment of Foreigners (AuslBG)* (EMN 2015).

With regards to international protection, the following categories can be distinguished:

- 1) *Asylum Seekers*: people who applied for international protection
- 2) People recognized as *refugees*: people who were granted asylum based on the Geneva Convention
- 3) *People with subsidiary protection status/humanitarian title*: people who were granted subsidiary protection according to § 8 Abs 1 *AsylG*. One legal prerequisites are an

application for asylum which was denied and “if the alien’s rejection at the border, removal or deportation to his country of origin would constitute a real risk of violation of Art. 2 or Art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict” (§ 8 Abs 1 Z 2 AsylG; English version). Person, which was granted to stay for humanitarian reasons or holding a humanitarian residence title (EMN 2015). Eurostat defines them as follows: “a person covered by a decision granting authorisation to stay for humanitarian reasons under national law concerning international protection, taken by administrative or judicial bodies during the reference period. It includes person who are not eligible for international protection as currently defined in the first stage legal instruments, but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments. Examples of such categories include persons who are not removable on ill health grounds and unaccompanied minors” (Eurostat 2019).

- 4) With *stateless and undocumented individuals*, a fourth category is introduced in this country report. It strongly overlaps with the already presented ones. A person who is *stateless* has no citizenship. The group of stateless persons is very diverse and intersections with the already stated categories make a strict distinction difficult: “While some stateless persons are refugees, others are not and, in some cases, remain stateless despite being born and living all their lives in one country” (UNHCR 2017). The data on statelessness in Austria is limited: “In general, the situation of stateless persons in Austria is not well documented and there is limited awareness of the problem. The available statistics and data do not provide a comprehensive overview of the problem due to limitations in their scope and collection” (UNHCR 2017). The categories of *stateless* and *undocumented* people are not mutually exclusive. With the term undocumented we define rejected asylum-seekers, people with invalid visa as well as people who had entered the Austrian border without documents and stayed unregistered. Rosenberger and Ataç use the term *irregular migrants* to describe this group of migrants (Ataç and Rosenberger 2019). This group includes third-country nationals as well as for example Croatians who will not have the whole access to the labour market until 2020. As mentioned above, different categories of permits exist in Austria. Some of them do not include labour market access or only restricted one. The result of the restrictions for third-state citizens are that migrants work in informal sectors or as pseudo self-

employment. Taking this in account, people without access to the labour market are in vulnerable position and are often faced with difficulties to get their rights (Stern 2017).

As already stated, another way a person can come to Austria permanently is through family reunification. In these cases, their status depends on the status of the sponsor. Family reunification based on the *AsylG* applies to those people who may receive subsidiary protection and have a right to asylum. More information on this issue is given in chapter 4.2.

Category	Entry conditions	Length of permit	Movement conditions	Family reunion	Withdrawal/removal
<b>Asylum Seekers</b>	Lodge asylum claim on arrival	Not applicable.	May be restricted to specific areas in host <i>Member State</i> (MS). Detention permitted (public order or “legal reasons”). Must report address and changes	Not guaranteed. Where family members in country, MS to ensure “family unity” as far as possible.	No lodging claim. Breaching accommodation or reporting rules.

<b>Subsidiary Protection</b>	Recognition as person facing “real risk of serious harm.”	1-year renewable. on renewal permit for 2 years	Not specified.	Spouse and minor children. MS may admit other first-degree relatives and partners. Integration conditions for children over 12. Appropriate accommodation, sickness insurance, and resources.	Protection reasons cease to exist. Reasonable grounds of “danger to security”/community of MS.”
<b>Refugee</b>	Recognition of “well-founded fear of being persecuted”	3 years renewable.	Not specified.	As for subsidiary protection. Maybe confined to relations predating entry.	As for subsidiary protection.

<b>Family Member</b>	Spouse and minor children. MS may admit other first-degree relatives and partners. Integration conditions for children over 12. Appropriate accommodation, sickness insurance, and resources.	1 year minimum. Otherwise tied to length of permit held by sponsor. Renewable . Autonomous permit after 5 years.	Not specified. Tied to sponsor	Not unless they have autonomous status from their own sponsor.	If sponsor's residence ends. May be granted autonomous permit in case of divorce, widowhood, etc. "Bogus" or polygamous marriages.
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Figure 14 Carmel and Paul 2013: 64f

After this short description of different asylum and migrant titles, the following figure (Figure 15) aims to give an overview on developments of migration and asylum law in Austria. For the period of 1993 to 2015, this table shows important alterations of the Austrian Aliens law:

Evolution of the Austrian Aliens Law (1993–2015)	Attempts to manage migration more efficiently through creating several “channels of immigration”, new advisory bodies, targeted legislation and major administrative restructuring	1993	Aliens Act which tightened up regulations regarding the entry and residence of aliens
		1993	Residence Act signals the start of a controlled immigration system
		1997	New Aliens Act, known as “Integration Package” due to focus on promotion of integration instead of new immigration
		1998	Principle “integration before citizenship” was also introduced into the amendment of the Citizenship Act
		2002	Amendments to the Aliens Act: compulsory “integration courses”
		2003	Amendments to the Asylum Act: acceleration of the asylum proceedings
		2005	Aliens Law Package 2005: comprehensive legislative reform to implement EU directives and strengthen measures against irregular immigration
		2007	Integration Platform established
		2007	Asylum Court established; replaces the Independent Federal Asylum Review Senate
		2009	Amendments to Asylum Act introduce residence location restrictions for asylum-seekers and tightened custody pending deportations
		2010	National Action Plan for Integration adopted on the basis of the Integration Platform
		2011	Aliens Law Package 2011: Points-based Red-White-Red Card introduced to facilitate immigration of highly qualified migrants; replaces previous quota system
		2011	State Secretariat for Integration supported by an Advisory Board on Integration and an Expert Council for Integration established
		2014	Federal Office for Immigration and Asylum established; replaces Federal Asylum Office
		2014	Asylum Court dissolved; competences transferred to Federal Administrative Court

		2014	Integration agendas transferred from Interior Ministry to Foreign Ministry; name change to Federal Ministry for Europe, Integration and Foreign Affairs reflects new competences
		2014	Migration Council for Austria established to devise a comprehensive immigration strategy for Austria
		2015	Amendment to the Rights of Aliens Act 2015: harmonization with the recast of the Reception and Procedures Directive

Source: Fassmann/Reeger, 2008: 24 (modified and extended).

Figure 15 „Development of the Austrian Asylum and Migration System“ (EMN 2017:27f)

Since 2015, further changes to the migration and asylum laws were made (ARTE 2018a). In 2016, the Amendment Act modified the *Asylum Act*, *Aliens Police Act* and the *BFA-Proceedings Act (BFA-VG)* (Josipovic and Reeger 2018: 43). In addition, the Austrian lawmaker newly introduced the *Austrian Recognition and Assessment Act* (EMN 2017). Also, in the following year, the *IntG* as well as the *Integration Year Act* and the *2017 Act Amending the Aliens law* were adopted. For example, language, norms and values and integration courses were implemented through modifications of the *IntG* (EMN 2018). These regulations affect people with asylum or subsidiary protection status. The *European Migration Network (EMN)* refers to Szymanski (2017) by the enumeration of the following regulations: “the introduction of as assigned area of residence for asylum seekers and, under certain circumstances, for other persons in cases of a return decision or order of removal from the country. Other changes include the possibility of issuing a return decision despite protection against removal, the increase of the normal maximum period of detention pending removal, and an expanded scope of entry bans imposed due to criminal offences or suspicion of individuals having a close relationship with an extremist or terrorist group” (EMN 2018: 7).

Also, in 2017, an *anti-face-covering law* (“*Anti-Gesichtsverhüllungsgesetz*” – *AGesVG*) was decided on and pronounced (Josipovic/Reeger 2018: 51). § 1 *AGesVG* claims that the aim of the law is the promotion of integration as it is inter alia directed towards women wearing the Burkha/Chador. To exemplify, in Zell am See alone about 60 reports were filed with the police.

In 2018, the *Act Amending the Aliens Law 2018* was passed. Through these changes, once again the asylum law was revised (EMN 2019). With this act, more possibilities were introduced for



the initiation of an asylum status withdrawal procedure. “Among the amendments most commented on were the authorization to seize cash and analyse storage media held by asylum seekers and the extension from six to 10 years of the residence period required of persons granted asylum in order to be granted Austrian citizenship” (EMN 2019: 14)

If compared internationally, Austrian criteria for family unification and naturalization are some of the strictest and most expensive ones (Huddleston et al. 2011). For third-country nationals, most application process run on the basis of the NAG.

## **5.2 Gender- specific refugee regulations: status, asylum and titles**

The *Geneva Convention on Refugees (CGR)* of 1951 and 1954, respectively, did not implement gender as a reason for flight. The conception of an ‘atypical refugee’ was heavily masculinized and there was “little awareness that women could be refugees” (Schrover and Moloney 2013: 258). It only includes persecution because of race, religion, nationality or belonging to a social group or in cases of political persecution. According to § 20 *AsylG* questioning of the same-sex is required, if an asylum seeker states, that they experienced offences against their sexual self-determination. This requirement needs to be matched, unless the person was informed about this right and declines it. In proceedings where the likelihood is high of the refugee being a victim of violence or suffering of a mental disorder, particular attention to the needs of the asylum seeker should be paid to (§ 30 *AsylG*). Therefore, training courses to the topics of traumatization and interculturality and are part of the basic and advanced training of employees of the Federal Office for Immigration and Asylum. These courses focus on how to identify and act on asylum seekers who are “particularly vulnerable” (CEDAW 2017). Until 2004, persecution because of sexual orientation was not regarded as a claim for asylum in the EU. The *Council Directive 2004/83/EC* and its subsequent the *Directive 2011/95/EU* changed this (ILGA Europe 2016: 1). The second Directive states that also gender identity should be taken into consideration. The *International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe (ILGA Europe)* is an international NGO umbrella organization, which aims at improving human rights regardless of sexual orientation and gender identity for everyone. They criticize that an introduction and adoption of EU-wide measures is pivotal to ensure the protection of rights of *LGBTIQ+* asylum seekers. Every year, ILGA Europe publishes an index on the situation of *LGBTIQ+* regarding “Equality & Non-Discrimination”, “Family”, “Hate crime & Hate speech”, “Legal gender recognition & Bodily Integrity” as well as “Civic Society Space” and “Asylum”. In Austria, the Index of 2019 reports that with regard to intersex there is a lack of law and policy measures. Furthermore, while government implemented laws on sexual orientation, policies or other positive measures were regarded as insufficient by *ILGA*

(ILGA 2019a). In the *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Austria* covering the period of January to December 2018 of *ILGA Europe*, a major part is dedicated to the situation of LGBTI refugees (ILGA Europe 2019b). In this review, *ILGA* criticizes two cases in which the Austrian authorities rejected asylum claims of gay men. In both cases, the officials justified their decision arguing that their behaviour i.e. the way they walk or dress was not “gay” enough. Therefore, they claimed that the men were only “acting gay” (ILGA Europe 2019b). As mentioned above, persecution on the grounds of sexual orientation or gender can be subsumed under “belonging to a social group” or due to “political reasons”. This is also mirrored in the national jurisdiction. Only in second instance, gender-specific reasons for flight may occasionally be recognized. There is lack of recognition that persecution because of gender and sexual identity can be highly dangerous and deadly for individuals (Kassai 2015). The *Directive 2011/95 EU* states that also gender specific acts and physical, mental or sexual violence can be acts of persecution. Furthermore, discriminatory prosecution can be defined as persecution (Article 9 Abs 2a-f). These can classify a person as *refugee* within the meaning of Article 1A of the *Geneva Convention*. Article 10 of the *Directive 2011/95/EU* declares that the situation in the country of origin needs to be considered for the assessment if the sexual orientation of the person establishes a membership of a social group that is under persecution (Article 10 Abs 1d).

Currently, options to reach Austria as a refugee in a legal and secure way are limited (Rosenberger/Müller 2019). Austria’s geographic, i.e. landlocked location in Europe and the EU and the *Dublin-III-regulation*, under which Member States can deport refugees who have registered in other EU countries before and the closure of legal ways to Europe have had significant influence on the numbers of refugees coming to Austria. As of now, people cannot seek asylum at Austrian embassies and therefore, cannot come to Austria if in possession of a refugee status. Another residence permit is required for crossing the borders of the EU “legally”. At Austrian airports, special regulations apply.<sup>3</sup> According to § 17 Abs 1 *AsylG*, international protection can only be claimed towards safety authorities on Austrian territory (IOM 2015). Asylum can only be claimed at Austrian borders, unless a spouse/child/civil partner already resides in the country (family reunification). Another way in which refugees may receive asylum exists via resettlement programs. According to *UNHCR*, the USA and Canada receive most of the resettlement-refugees when compared to other countries. Same applies to Northern European countries which have a tradition of participating in resettlement programs. Between 2013 and 2017, Austria participated in three resettlement programs for

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<sup>3</sup> For further information, we recommend to look at §§31ff *AsylG* 2005.

Syrian refugees in cooperation with *UNHCR*. Currently, there are no resettlement programs with Austria (UNHCR 2019).

Frequent reforms and continuous restrictions of the migration and asylum law have made it increasingly complicated to come to and stay in Austria. Between 2010 and 2016 alone, the *NAG* was revised 12 times, the *Aliens Police Act* (FPG) eleven times, the *Asylum Act* eight times and the *Austrian Act Governing Employment of Foreign Nationals* four times (Knapp 2016: 2). In 2016, the *Ministry of Internal Affairs* initiated a campaign to restrict laws on migration further. Refugees with subsidiary protection can only apply for family unification after a minimum of three years; obstacles to be granted asylum increases and are limited in time and the coalition government of *Social Democrats* (SPÖ) and *Austrian People's Party* (ÖVP) launched campaigns abroad to quite literally scare people off. One of the most prominent ones could be found in some Afghan cities. Slogans like “No asylum in Austria on the grounds of economic reasons!”, “No income, no family unification!”, “Asylum only for a limited time in Austria!” aimed at reducing the numbers of Afghan refugees attempting to come to Austria. These posters were translated into Farsi, Pashtun and English (BMI 2016). Although it was the Ministry of Domestic Affairs under ÖVP-leadership that launched the campaign, the use of colour on the posters showed striking similarity with those of the right-wing *Freedom Party* (FPÖ), which by then was not a part of government but was gaining in popularity.

**Table 2.1** Critical junctures in policies concerning deportation, reception and possibility to stay for asylum seekers in Austria since the 1990s

	Deportation	Reception	Possibility to Stay
Policies	1990 <i>Aliens Police Act</i> (FrPolG): Expulsion	2004 <i>Basic Welfare Support Agreement</i> : Regulation of joint action of the federal government and provinces for the reception and temporary provision of asylum seekers	1991 <i>Asylum Act</i> : Limited residence permit (cornerstone for subsidiary protection status)
	1991 <i>Asylum Act</i> : Safe third-country regulation	2014 BFA <i>initial reception centers</i> (Erstaufnahmestellen)	1997 <i>Aliens Act</i> : Residence permit on humanitarian grounds in cases of exceptional circumstances ( <i>ex officio</i> )
	1997 <i>Asylum Act</i> : <i>Dublin Convention</i>	2015 <i>Aliens Law Amendment Act</i> : Right to intervene ( <i>Durchgriffsrecht</i> )	2005 <i>Asylum Act</i> : Subsidiary protection
	2003 <i>Amendment to the Asylum Act</i> : <i>Dublin II</i>		2009 <i>Amendment to the Asylum Act 2005</i> , <i>Aliens Police Act 2005</i> , and <i>Settlement and Residence Act</i> ( <i>Bleiberechtsregelung</i> ): Residence permit on humanitarian grounds (upon application)
	2005 <i>Aliens Legislation Package</i> : Acceleration of asylum procedures; <i>Qualification Directive</i> to establish common grounds within the EU to grant protection; facilitation of detention pending deportation		2009 <i>Aliens Law Amendment Act</i> : <i>Toleration</i> ( <i>Duldung</i> )
	2009 <i>Aliens Law Amendment Act</i> (FrÄG): Tightened regulations regarding detention, appeals, and subsequent appeals		
	2015 <i>Aliens Law Amendment Act</i> : Possible disallowance of appeals against a dismissal decision on an asylum application		
	2016 <i>Amendment to the Asylum Act 2005</i> , <i>Aliens Police Act 2005</i> , and <i>BFA-Procedural Act</i> : Limit on the right of residence to 3 years ( <i>temporary asylum</i> )		

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*Figure 16 Critical Junctures in policies concerning deportation, reception and possibility to stay for asylum seekers in Austria since 1990 (Merhaut and Stern 2019)*

### 5.3 Legal framework on violence

In 1996, the *First Protection against Violence Act* was implemented. According to Mayrhofer and Schwarz-Schlöglmann (2017), we can consider the now 22-year old legal framework a revolutionary societal achievement. As feminist groups and civil society pushed for legal foundations to protect individuals from domestic and other forms of violence, Austria's victim protection was internationally accredited for its progressive legal and policy measures. It included expulsion- and prohibition-to-return orders for cases of domestic violence in the Austrian *Security Police Act* (SPG). Birgitt Haller also stresses the point that empowerment of the victims is crucial. Therefore, the intervention centers and centers against domestic violence are important for their protection. The first Protection against Violence Act was an important accomplishment. However, especially the justice system had troubles recognizing violence as violence (Haller 2005: 372)<sup>4</sup>. In 2009, the *Second Protection against Violence Act* modified criminal law, criminal procedure law und civil procedure law. In 2014, former minister of justice Dr. Beatrix Karl implemented a working group to reform the Austrian criminal code. Legal alterations were made in conformity with the *NAP* and the *Istanbul Convention*. The following table (Figure 13) is built upon the first and second *Protection against Violence Act* of 1997 and 2009. It shows some of the most important juridical developments regarding the legal framework on violence from 2012 to 2018:

Year	Legal policy/programme	Form of Violence (coding)	Target groups (coding)	Source
2012  <b>Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012</b>	In 2016, Implementierung der Richtlinie (RL), auch bekannt als "Opferschutzrichtlinie". Die RL etabliert Mindeststandards in Bezug auf die Rechte und den Schutz von Opfern von Verbrechen.	- (nicht genauer definiert)	Verbrechen sopfer	
2013  <b>Law of 2013 amending law governing sexual offences</b>	Erhöhung des Strafausmaßes bei sexueller Nötigung in schweren Fällen § 202 Abs 2 StGB (schwerer Fall = wenn Nötigung als Folge schwere	Sexuelle Nötigung	-	StGB

<sup>4</sup> Still, victims find themselves e.g. not being believed, taking seriously, or made other bad experiences at court (Amesberger and Haller 2016).

	Körperverletzung iSd §84 Abs1 StGB hat; eine Schwangerschaft oder besondere Erniedrigung/Qual zugefügt wurde) -> von 5-15 statt 1-10 Jahren bzw. im Fall des Todes der sexuell genötigten Person auf 10-20 (zuvor 5-10 Jahre)			
	Reformulierung von § 205 StGB -> neue Unterteilung eingeführt -> neu gefasster Abs 1 betrifft Beischlaf oder eine dem Beischlaf gleichzusetzende Handlung (doppelter Strafraum in diesem Fall) im Unterschied zu Abs 2, der TB in diesem Abs ist bereits bei einer geschlechtlicher Handlung (die nicht dem Beischlaf gleichzusetzen ist) erfüllt	Sexueller Missbrauch	wehrlose oder psychisch beeinträchtigte Person	StGB
	Neufassung von 206 Abs 3 (Schwerer sexueller Missbrauch von Unmündigen) -> zu bestrafen nach § 206 Abs 3 StGB: nicht nur schwerer Missbrauch bei Schwangerschaft oder schwerer Körperverletzung, sondern auch „wenn die unmündige Person durch die Tat längere Zeit in einen qualvollen Zustand versetzt oder in besonderer Weise erniedrigt wird“  Neufassung von § 206 Abs 4: Ersetzen von „besteht die geschlechtliche Handlung nicht in der der Penetration mit einem	(schwerer) sexueller Missbrauch	Minderjährige	StGB

	Gegenstand“ durch „wird die unmündige Person durch die Tat weder längere Zeit hindurch in einen qualvollen Zustand versetzt noch in besonderer Weise erniedrigt“			
	Gleiche Veränderungen parallel zu §206 Abs 3 und Abs 4 auch bei §207 Abs 3 und 4 StGB	Sexueller Missbrauch	Minderjährige	StGB
2013 <b>Kindschafts- und Namensrechts-Änderungsgesetz 2013</b>	§ 138 ABGB definiert welche Kriterien zur Beurteilung einer Gefährdung des Kindeswohls heranzuzuziehen sind; § 138 Z 7 hält nun auch fest, dass zur Sicherstellung des Kindeswohls die „Vermeidung der Gefahr für das Kind, Übergriffe oder Gewalt selbst zu erleiden oder an wichtigen Bezugspersonen mitzuerleben“ notwendig ist	Erlebte oder miterlebte Gewalt	Minderjährige	(Schwarz-Schlöglmann, 2018: 11) ABGB
2013 <b>Novelle des SPG 2013</b>	Einführung der Möglichkeit BV auch auf die Betreuungseinrichtungen von Kindern auszuweiten + unverzügliche Meldung ans Jugendamt und Betreuungseinrichtungen durch Polizei wurde eingeführt	-	Minderjährige	(Schwarz-Schlöglmann, 2018: 11)
	Einführung Verwaltungsstrafe bei Missachtung von Gewaltschutz EV (§§ 382b, 382e und 382g EO) von 500€ (oder Ersatzfreiheitsstrafe	-	-	(Schwarz-Schlöglmann, 2018: 11) EO
2014 <b>1 August</b>	Inkrafttreten von Istanbul-Konvention	All forms of violence against women	Frauen und Mädchen	

2014 <b>26 August</b>	Beschluss des NAP zum Schutz von Frauen vor Gewalt 2014-2016		Frauen	
2015 <b>Jugendgericht sänderungsge setz (JGG- ÄndG 2015)</b>	Unter Strafe ist zu stellen, wer Körperverletzung auf eine Weise begeht die mit Lebensgefahr verbunden ist (§ 84 Abs 5 Z1 StGB)	Grievous bodily harm (GBH)	-	StGB
2015 <b>STGB Reform through Strafrechtsän derungsgesetz 2015 (Commencem ent 1 January 2016)</b>	Erweiterung der besonderen Erschwerungsgründe (§ 33 StGB) (Umsetzung von Art. 46 Istanbul-Convention)	Erschwerungsgr und einer strafbaren vorsätzlichen Handlung liegt vor, wenn Opfer und Täter in einem Naheverhältnis stehen/standen oder ein Autoritätsverhältnis vorliegt (strafbare Handlungen generell)	Betroffene von Gewalt im sozialen Nahbereich	(Riezler, 2017); StGB
	Erweiterung des Tatbestandes der Gefährlichen Drohung (§§ 74, 107 StGB)	Gefährliche Drohung: Neuer TB durch Erweiterung auf Fälle in denen mit dem „Zugänglichmachen, Bekanntgeben oder Veröffentlichen von Tatsachen oder Bildaufnahmen“ gedroht wird, das umfasst daher auch Drohungen Nacktfotos einer Person zu veröffentlichen	-	StGB
	§106a StGB Schaffung eines eigenen TB - Zwangsheirat (zuvor Subsumierung unter §	Zwangsheirat wird definiert als Heirat welche durch Gewalt, eine gefährliche	Not defined; people who are victims of forced marriage	StGB

	206 StGB als schwere Nötigung)	Drohung oder mit der Drohung des Entzug/Abbruch der familiären Kontakte <sup>5</sup>		
	§ 107a StGB Erhöhung des Strafraumen der beharrlichen Verfolgung auf 3 Jahre (Abs 3)	Stalking	Betroffene von Stalking, welche Suizidversuch oder Suizid begangen haben	StGB
	§107c StGB Einführung des TB “Fortgesetzte Belästigung im Wege einer Telekommunikation oder eines Computersystems)“	Cyber-Stalking - > Nach StRÄG ist es als Dauerdelikt konzipiert, nach Riezler sei fraglich wie die Anwendung der Gerichte stattfindet (Riezel 2017).	-	StGB
	§ 205a StGB Implementierung des TB „Verletzung der sexuellen Selbstbestimmung“	Sexuelle Gewalt (wenn keine Gewalt, kein Freiheitsentzug oder gefährliche Drohung vorliegt aber der „Beischlaf“ oder eine Handlung die diesem gleichzusetzen ist gegen den Willen der Person vollzogen wurde (Abs 1)	-	StGB
	§ 218 StGB Erweiterung des TB der sexuellen Belästigung auf „intensive Berührung einer der Geschlechtssphäre zuzuordnenden Körperstelle“ (§ 218 Abs	Sexuelle Belästigung	-	StGB



	1a StGB) -> Divergenz zwischen nationalem und internationalem: Art 40 der Istanbul Konvention umfasst nicht nur körperliche sondern auch verbale, nonverbale Formen der sexuellen Belästigung (Riezler 2017).			
<b>2016</b>  <b>StPO Reform durch Strafprozessrechtsänderungsgesetz, Inkrafttreten: 1 June 2016</b>	Erweiterung des Opferbegriffs auf Personen, deren Abhängigkeit ausgenutzt wird (§ 65 Z1 lit1 StPO)	Menschenhandel, Vernachlässigung von Minderjährigen	Unmündige, wehrlose Personen; Opfer von Menschenhandel	StPO
	§ 66 a StPO führt "besonders schutzbedürftige Opfer" als neue Opfergruppe ein	Sexuelle Gewalt, Gewalt an Minderjährigen, Häusliche Gewalt	Besonders schutzbedürftige Opfer (als solche definiert sind Opfer häuslicher Gewalt, Kinder und Personen deren sexuelle Integrität und Selbstbestimmung verletzt wurde)	(Schwarz-Schlöglmann, 2018: 12) StPO
	Ehestmögliche, individuelle Überprüfung ob besondere Schutzbedürftigkeit vorliegt; Rechte, die mit dem Status von besonderer Schutzbedürftigkeit verbunden sind: 1) Recht auf Einvernahme von einer Person des gleichen Geschlechts, 2) Recht auf Verweigerung der Beantwortung einzelner Fragen, 3) Recht auf schonende Einvernahme (kontradiktatorische) (§§	Sexuelle Gewalt, Häusliche Gewalt, aber auch andere Gewaltformen können umfasst sein	Individuelle Fallüberprüfung, gesetzlich festgelegt als besonders schutzbedürftig sind: Opfer deren sexuelle Integrität und Selbstbestimmung verletzt wurde,	StPO

	165, 250 Abs 3 StPO), 4) Recht das Verfahren unter Ausschluss der Öffentlichkeit stattfinden zu lassen (§ 229 StPO), 5) Informationsrecht über die Freilassung des Gefährders, 6) Recht auf Anwesenheit einer Vertrauensperson bei der Vernehmung		Minderjährige, Opfer von häuslicher Gewalt (gemeinsame Wohnung)	
	Opfer haben nun das Recht auf eine schriftliche Anzeigebestätigung (§§ 66 Abs 1 Z 1a iVm 80 Abs 1 StPO)	Nicht genauer definiert	(Opfer einer Straftat)	StPO
<b>2016</b>  <b>Präventionsnovelle 2016</b>	Erweiterung § 38a SPG: Für Betreuungseinrichtungen kann eigenständiges BV verhängt werden	Häusliche Gewalt, Gewalt gegen Minderjährige	Opfer von häuslicher Gewalt + Minderjährige	(Schwarzschlöglmann, 2018: 12) SPG
	Überarbeitung des § 38b SPG durch Schaffung einer Meldeverpflichtung zur Normverdeutlichung zur Auferlegung für einen „Menschen, der einen gefährlichen Angriff gegen die sexuelle Integrität und Selbstbestimmung oder einen gefährlichen Angriff unter Anwendung von Gewalt begangen hat, und von dem aufgrund bestimmter Tatsachen anzunehmen ist, er werde künftig gefährliche Angriffe begehen“	Sexuelle Gewalt	Betroffene gemäß § 205 StGB (Angriff auf sexuelle Integrität und Selbstbestimmung)	(Schwarzschlöglmann, 2018: 13) SPG
	Ergänzung § 67 Abs 1 SPG: Schaffung der Möglichkeit die DNA zu ermitteln, wenn die Person verdächtigt wird eine Straftat durch die Verletzung der sexuellen Integrität und Selbstbestimmung begangen zu haben	Sexuelle Gewalt	Personen, deren sexuelle Integrität und Selbstbestimmung verletzt wurde	(Schwarzschlöglmann, 2018: 13) SPG

2017 <b>StGB Novelle 2017</b>	Ergänzung des § 3 StGB Notwehr: Aufnahme von Angriff auf die <i>sexuelle Integrität und Selbstbestimmung</i> in den Katalog der rechtfertigenden Notwehrgründe	Sexuelle Gewalt	Personen, die sich gegen einen Angriff auf die sexuelle oder körperliche Autonomie wehren	(Leukauf et al., 2019)
	Erweiterung des § 218 StGB (Sexuelle Belästigung) um Abs 2a und 2b -> Verabredung mit anderen Menschen zur sexuellen Belästigung von wem (Höchststrafmaß 1-2 Jahre)	Sexuelle Belästigung	-	(Leukauf et al., 2019) StGB
	Aufhebung des § 207a Abs 5 Z1 StGB; Vor der Aufhebung war straffrei nach Abs 1 und Abs 3 wenn „eine pornographische Darstellung einer mündigen minderjährigen Person von sich selbst herstellt, besitzt, oder einem anderen zu dessen eigenen Gebrauch anbietet, verschafft, überlässt, vorführt oder sonst zugänglich macht“	Pornographische Präsentation/Ma terial von Minderjährigen	Minderjähri ge	StGB
	Einfügung von § 212 Abs 3, Begehung sexuelle Belästigung iSd § 218 StGB unter den Umständen des § 212 Abs 1 oder 2 (Missbrauch eines Autoritätsverhältnis) Strafmaß: bis zu einem Jahr Freiheitsstrafe oder Geldstrafe zu 720 Tagessätze	Sexuelle Belästigung durch Autoritätsperson en	Personen, die durch eine Autoritätspe rson sexuell belästigt wurden	StGB

Figure 17 Development of Legal Framework on Violence; own representation

In 2014, a reform of the *StGB* applied renewals in the protection of victims based on the Istanbul Convention. *The Directive on the Protection of Victims of Crime (Directive 2012/29/EU* of the European Parliament and of the Council) was implemented through the

reformation of the *Conduct of Criminal Offence Procedure (StPO)* 2016. Wording in the *StGB* is gender-neutral and does not mention *GBV*.

A *Third Protection against Violence Act* is now under review. On 15 May 2019, the Federal Ministry of Constitutional Affairs, Reforms, Regulation and Justice (BMVRDJ) introduced a consultation draft in the National Council. To give some examples, the document suggests higher penalties for the statement of facts rape and stalking. In addition, *FGM/C* should be declared a bodily harm with serious ramifications for the victims, such as severe long-term consequences and harm (BMVRDJ 2019). Through changes to the political landscape in Austria, a transitional government was implemented. The former government parties, the FPÖ and ÖVP introduced a private bill in summer 2019. It is likely that the National Council (i.e. Parliament) will decide on and pronounce this reform on the legal framework on violence on 25 September 2019 (ORF 2019). Already in advance, experts criticize the reform suggestions. The feminist and social worker Rosa Logar stated to the newspaper *Der Standard* that new amendments should focus on higher conviction rates instead of increasing penalties (Der Standard 2019a). To increase conviction rates and victim support, an improvement of training for judicial and executive personnel is necessary (Logar 2017: 115f). In 2011, *Multi-Agency Risk Assessment Conferences (MARACs)* were introduced as settings in which executive, judicial and victim support agents had discussed high-risk-violence-cases (Logar 2017: 12). Logar points out that often representatives of the criminal justice system did not take part in these conferences. They justified their absence with their obligation to objectivity (Logar 2017: 112). A good cooperation of justice, executive and victim support is necessary for preventing serious acts of violence. The former government abolished the *MARACs* (Der Standard 2019a). In 2019, these case conferences were announced to be reintroduced. However, if, implemented, now the police would have the sole competence for requesting these case conferences. If an institution for victim protection e.g. a violence protection center sees someone in great danger, he/she cannot request an interdisciplinary meeting in this kind of setting. In addition, Logar demands more resources and the introduction of a multi-institutional model to ensure victim-support (Der Standard 2019a). Riezler (2017) criticizes that there is need of implementation of a separate category of psychological threats and violence in order to comply with Art. 27 of the *Istanbul Convention*.

Apart from these politically highly salient legal reforms, other measures of the previous years can be found below. Some regulatory frameworks are explicitly directed towards women migrants and refugees. In most cases, however, the law in the field of protection against violence applies to any person residing in Austria.

## Refugees and Asylum Seekers

Legal frameworks on violence in the context of refugees are inextricably linked to the dynamic and rapid changes in the *Asylum Act*. § 57 Abs. 1 Z 3 of the *Asylum Act* allows for victims of violence with a residence permit to receive *special protection*. If they file for divorce or separate from their family, their right on to remain in Austria is preserved. However, women refugees often do not declare personal reasons for asylum when they apply with their family. This can pose a threat to their status or title if they decide to leave their spouse (Schwarz-Schlöglmann 2017). If a person, in most cases a woman, takes this step and receives an independent title, they face strict requirements regarding German classes, integration agreement, proof of employment etc. This bares additional challenges if a person has little to no social network to lean on, carries responsibility for one or more children and tries to escape a violent relationship or family situation (Schwarz-Schlöglmann 2017). Due to lack of information, refugee women often are not aware of their rights. If they are, they tend not to file a complaint with the police due to shame, distrust with authorities etc. (ibid.).

*FGM/C* may be considered persecution under the *Asylum Act* if there is a lack of willingness and/or ability of the country of origin to protect the claimant. According to the Austrian counter-*FGM/C* platform *stopFGM*, about 20 women that were under the threat of *FGM/C* have already received asylum. Two women, the report states, have received asylum after having undergone *FGM/C* (Kija 2017). According to the law, individuals can be accused and convicted if they belong to the group of a) perpetrator, i.e. conducting *FGM/C*, b) parents who give permission to someone to perform *FGM/C*, c) doctors, d) anyone who assists or helps in performing *FGM/C* (Ministry for Women and Health 2017).

## Migrants

Migrant cases of *IPV* and domestic violence fall under the *NAG* if legal prosecution affects their status. According to § 27 3 *NAG*, a person is able to receive a residence permit in the case of domestic violence (§ 27 Abs 3 Z 2) or forced marriage (§ 27 Abs 3 Z 1 *NAG*). This rule applies only if the victim reports the experienced violence within a month (§ 27 Abs 4 *NAG*). If a person is at risk of becoming a victim of (domestic) violence or has been assaulted already, recent changes to the *NAG* have made it easier for migrants who derived their title from EEA-citizens' titles, i.e. their spouse, to receive an independent residence (§ 54 Abs 5 Z 4 *NAG*). However, this status can only be received if a restraining order against the offender is issued by the police. As indicated before, many people with migration background experience interaction with Austrian police officers as negative (FRA 2018). Women are less likely to approach the

authorities for help directly when having experienced e.g. racial profiling (GREVIO Shadow Report 2016). As mentioned before, it is elusive who decides on when the person is at risk and, therefore, when and how a decision is made, how other forms of dependency, especially economic, are achieved. Victims of domestic violence may receive access to the job market as laid out by the *Bundeshöchstzahlüberlastungsverordnung*.

#### **5.4 Implementation of Art. 60 Gender-based asylum claims *Istanbul Convention***

Much of the implemented violence-related legal frameworks on national level are derived from international binding and non-binding recommendations, directives and regulations. The Council of Europe and EU play an important role in the advancement of victim protection in Austria (Riezler 2014). The Austrian government ratified the *Istanbul Convention* on 14 November 2013, which came into effect on 1 August 2014. As indicated before, the implementation of the *CEDAW* and *Istanbul Convention* has been rather selective, i.e. partially successful since Austria's first screening in 2007 and 2016 respectively, while simultaneously gaps are yet to be filled in the field of *GBV* against women refugees. According to the *Istanbul Convention*, women refugees are especially vulnerable in the context of flight. The convention holds the state accountable for providing women with sufficient infrastructure and protection. This includes women who have been structurally and legally excluded from access to accommodation and who are restricted in their autonomy regarding security and protection (Schwarz-Schlöglemann 2017).

With reference to Art. 60 – Gender-Based Asylum Claims – of the *Istanbul Convention*, “GREVIO welcomes the highly developed and efficient system of welcoming and processing the claims of asylum-seekers in Austria. It nevertheless invites the Austrian authorities to ensure that all women arriving as asylum-seekers are ensured the possibility of being interviewed on their own and that all those concerned in the processes (interviewers, interpreters, lawyers) receive adequate training on the questions of gender-based persecution and gender-based violence (proposal 45, paragraph 212)” (Comment by Ministry for Women and Health on GREVIO's recommendations 2017:31). In the ministry's response, criticism on this issue is recognized while attention is drawn to limited budgetary funds under which the Ministry had to work during 2015/16. As laid out in the *Istanbul Convention*, women refugee's residence title should not be dependent upon her spouses if she decides to file for divorce or separate (ibid.). Furthermore, by signing the Convention states commit to standardizing *GBV* as persecution with reference to the *Geneva Convention of Refugees*. In the case of suspicion of *GBV*, investigative interviews are required to take place with the help of a same-sex translator.

On EU-level, “according to Art. 22 *EU Reception Conditions Directive* (2013/33/EU), Member States are obliged to assess special protection needs of vulnerable persons within reasonable time. According to Art. 21 *EU Reception Conditions Directive*, victims of different forms of [GBV] (rape, sexual exploitation, human trafficking, and female gender mutilation) are defined as applicants with special reception needs” (GREVIO Shadow Report 2016:93). Access to women’s shelters and secluded women-only areas within reception centers is therefore indispensable. If violence against women occurs in a shelter, the accommodation provider should consult a doctor with the affected person (Schwarz-Schlöglmann 2017). Moreover, the doctor’s obligation to notify authorities pursuant to § 54 Abs 4 *ÄrzteG* is given in cases of serious violence or if there are grounds to suspect that a person can not protect their interests individually and is being harassed, neglected or sexual abused. Even if counseling and assistance services are available and known, it is often especially difficult to seek help for women refugees.

The NAP on the *Protection of Women against Violence* between 2014-2016, which was drafted as a consequence of ratifying the *Istanbul Convention* “does not explicitly address all forms of violence against women as covered by the Convention” (GREVIO Shadow Report 2016:14). An inter-ministerial working group (“*Interministerielle Arbeitsgruppe*” – *IMAG*) on violence against women concluded their work on the implementation of the NAP by late 2018.

## **National Action Plans on the protection of women against violence (2014-2016)**

### **Six pillars to counter violence against women**

1. Interlocking political measures and data collection
2. Prevention,
3. Protection and support,
4. Substantive law,
5. Investigations, prosecution and protection provisions, and
6. European and international collaboration.

### **Furthermore, measures included**

- awareness raising measures regarding gender-based violence and the existing support systems for teachers and school children;
- the development of curricula for psychosocial and legal court assistants for victims of violence;
- efforts to integrate “recognising and preventing violence against women” into the training curricula of health and nursing care professions;
- the establishment of an interdisciplinary and nationwide Working Group on Victim-Oriented Work with Perpetrators;
- the establishment of an early support system

## 5.5 Spotlight: Women, Peace and Security UNSCR (2000)

The implementation of the by the *United Nations Security Council Resolution on Women, Peace and Security (WPS) (UNSCR 1325 2000)* is important in this context due to the following reasons. It does not only affect women and their security but has an impact on Austrian foreign policy decisions and staffing, her involvement in development work and post-conflict regions and in creating infrastructure to prevent *GBV* in respective areas. Conflict-related migration has become especially relevant in previous years with spiraling conflicts in Syria and the political instability in the *Middle East & North Africa (MENA)* region as well as Afghanistan. In 2016, the Austrian government was especially keen on strengthening related agreements to ‘regulate’ migration towards Europe with e.g. Turkey but also other North African and Sub-Saharan-African states (Republik Österreich 2016). Furthermore, the Ministry of Defense (BMLV) and the Austrian military was involved in border security, supporting the federal police, and transport and supply of goods during the years of 2016 (Bundesheer 2019). Special political focus was put on the question of security, migration and borders. Furthermore, it addresses human trafficking as an issue of international scale and relevance. The *WPS UNSCR* is, therefore, not only effective in abroad missions of the Austrian forces but also applies to national politics which include measures of security.

### **Austrian National Action Plan Women, Peace and Security 2012:**

*“The most important **objectives of the National Action Plan** are as follows:*

- *Increasing the representation of women as well as enhanced consideration of the objectives defined in Resolution 1325 in training activities for international peace operations;*
- *Strengthening the participation of women in peace promoting and conflict resolving activities, especially by promoting local peace initiatives by women and increasing the share of women in decision-making positions in international and European organisations;*
- *Preventing gender-specific violence and protecting the needs of women and girls within the scope of peace missions, humanitarian operations and in camps for refugees and internally displaced persons (IDPs).*

Source: Federal Ministry for European and International Affairs (2016): Revised National Action Plan on Implementing UN Security Council Resolution 1325 (2000).



Austria received rather positive reactions to her implementation of *NAPs* on *WPS* by the *CEDAW shadow report* of 2012. The state implemented a first *NAP* on *WPS* in 2007, in which one of the early concerns of the *NAP* on *WPS* was the matter of human trafficking. In 2006/7, an inter-ministerial working group addressing *WPS* 1325 on a (non-) governmental level was initiated by the Ministry for European and International Affairs. A *NAP* on *WPS* was introduced in 2007. In her time as a temporary member of the UN Security Council between 2009 and 2010, Austria was active on an international and national level. The *NAP*'s revision took place in 2010 and 2011 after an international conference on the Resolution in Vienna. Ever since, the government has been publishing annual evaluation reports which document the progress of the resolution's implementation.

In its recent revision of 2019, the UNSCR 2467 strengthens the role of *CEDAW* and makes it legally more relevant on a human-rights level, i.e. brings it closer to a legally binding document by referring to it in the Preamble (Chinkin and Rees 2019). This is relevant for Austria as the *Common Recommendation No. 28* of the *CEDAW*-committee concludes that states are equally responsible for ramifications of their politics that affect people living outside of the state's territories. In other words, Austria carries responsibility to follow coherent politics inside and outside her territories to remove forms of discrimination against women where the country is involved in every which way. As the interconnection between *CEDAW* and *UNSCR 2467* (2019) is reinforced, Austria might have to revisit her implementation in the upcoming years.

A crucial point to Austrian foreign politics and their ramifications are small arms and their high export numbers. *UNSCR 2242* explicitly declares small arms as constraints to women's security and a catalyst for *GBV* in (post-)conflict zones (UNOAD 2015). Small Arms Survey (2014) lists Austria under the top 15 small-arms exporters in the world. Studies have shown that there is a strong connection between small arms and *GBV* but also the reproduction of conceptions of militarized masculinities, armed violence and *GBV* (see e.g. Cohn 2013 or Sjoberg 2010).

Despite commendable actions taken by previous governments, civil society actors like the *Women's International League for Peace and Freedom (WILPF)* emphasize the lack of implementation and the focus on topics, which reinforce stigma, stereotypes, while neglecting e.g. disarmament as an implicit solution to violent conflicts and, therefore, related migration. Furthermore, a separate budget should be allocated to the implementation and expansion of the *WPS UNSCR*. "Critical issues of concern [for Austria] include preventing gender-specific violence and protecting the needs of women and girls within peace missions, humanitarian

operations, and in camps for refugees and the internally displaced” (Peace Women and WILPF 2019).

This chapter has given the reader an overview of the current legal and regulatory developments around migration, refugee and asylum law but also frameworks around *GBV*. It attempted to break down some of the international obligations under which Austria stands and how previous governments translated these into national law and policy. While the *Act on Protection against Violence* and its successors present a continuous and at times liberal framework, changes to the law in the context of asylum and migration have made it increasingly complicated to keep track of the current state. While the issue of domestic violence and *IPV* are some of the most prominent forms of *GBV* which are considered by the law, a more holistic conception of *GBV* is only marginally visible. Future research may extrapolate on the intersections of discourse around “culture-specific” forms of violence and its influence on legal frameworks and policy.

## 6 Access to services for refugees and migrants

Access to services and related regulations have changed rapidly over the past years and especially after 2015. This chapter sheds light onto access to some of the relevant infrastructure that have improving effects on refugee's and migrant's potentially vulnerable life situations. Chapter 6.1 is closely intertwined with regulatory frameworks outlined in chapter 5. While some services are equally (in)accessible to migrants and refugees, we illustrate a few differences in accessibility between these two groups. Despite its date of publication in 2015, the Migration Integration Policy Index gives a sound overview of access to services for migrants and refugees in Austria.<sup>6</sup>

### 6.1 Refugees

Based on the *Basic Care Act of 2015* (“*Grundversorgungsgesetz*” – *Bund 2005 – GVG-B 2005*), it depends on a person's status or title (as outlined in chapter 5.1) to what kind of services they may have access and for how long. The following table gives an overview of the civic rights based on European law. The rights depend on the category a person belongs and therefore shapes the possibilities to access services.

**Table 9: Overview of important rights and duties for applicants of international protection and upon a positive outcome**

	Status	Rights/ Guarantees	Duties
<b>Stage I: Admissibility procedure</b>	Tolerated (Green Procedure Card)	- Protection from forced return	- Cooperation - Stay within municipality
<b>Stage II: Substantive procedure</b>	Asylum applicant (White Card for Temporary Residence)	- Basic Welfare Support - Health insurance - Access to housing market - Only charitable work or apprenticeship	- Cooperation - Place of residence within the province of Basic Welfare Support
<b>Stage III: Positive decision</b>	Beneficiary of Asylum (Convention passport)	- 3 years of legal residence - Social Insurance (including Needs-Based Minimum Benefit and health insurance) - Access to labour market	- Civic integration programs
	Subsidiary Protection (Grey Card for Persons Eligible for Subsidiary Protection)	- 1 year of legal residence - Social Insurance (including Needs-Based Minimum Benefit and health insurance) - Access to labour market	- Civic integration programs
	Humanitarian title (for example, Residence Permit Plus)	- 1 year of legal residence - Social Insurance (including Needs-Based Minimum Benefit and health insurance) - Access to labour market	- Civic integration programs

Figure 18 “Overview of important rights and duties for applicants of international protection and upon a positive outcome” (RESPOND 2018:38)

Although these are general indicators, access to financial assets, services and support infrastructure varies across Austria due to executive competences of federal states. “Refugees who apply for social support in the form of the *needs-based minimum benefit system*

<sup>6</sup> Please see Migration Integration Policy Index <http://mipex.eu/austria> for further information.

(“*bedarfsorientierte Mindestsicherung*”) are not on equal terms with nationals anymore in Upper Austria and Lower Austria. The benefits are guided by the substantially lower monthly basic care for asylum seekers (€365) whereas the poverty line in Austria is at approximately €1,000 per person. Nationals receive €914, while refugees receive €520, including a bonus of €155 granted when they take part in integration measures such as language courses. In Styria, benefits can be cut up to 25% already for small misdemeanours, e.g. missing an appointment. In Vorarlberg, benefits can be cut when refugees do not adhere to the integration agreement which they have entered since January 2016, e.g. by refusing to attend a language course. Since April 2016 people granted subsidiary protection have been excluded from the needs-based minimum benefit system in Lower Austria, contrary to Article 29 of the recast Qualification Directive. Even before the reform, this group was only entitled to basic care benefits in some federal provinces” (ECRE 2016: 13f.).

### 6.1 Spotlight: The situation of ‘non-removed’ rejected asylum-seekers

The situation of rejected asylum-seekers who cannot be deported due to human rights or practical reasons is especially precarious (Rosenberger et al. 2018). Gibney (2008: 149) introduced the term “deportation gap” to describe the gap between negative asylum decision and effective deportations. People who are part of this group do not possess a legal status and have only limited access to social rights. Access is only given under certain conditions: 1) need of help, 2) need for protection and 3) assistance in the deportation process (Rosenberger et al. 2018). Especially, the obligation to cooperate is hardly matched since it is not clear how this cooperation should look like and the refugees are obligated to show their willingness to cooperate (Ataç 2019). If these conditions are fulfilled, non-removed rejected asylum-seekers have the right to receive accommodation (in a special facility/reception center), medical help and access to education for minors under 16 years. Since 2017, new regulations through the *Fremdenrechtsänderungsgesetz* 2018 (FRÄG 2018) led to the introduction of *return centers* and a cut in payments (Rosenberger et al. 2018).

Jahr	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Asylanträge	12 841	15 821	11 012	14 416	17 413	17 503	28 064	88 340	42 285	24 735
Drittstaatangeh. mit Ausweisebe- scheid	8 870	10 625	11 050	8 250	8 160	10 085	k.A.	9 910	11 850	8 850
Negativer Be- scheid (letztins- tanzlich)	16 255	21 660	19 425	16 695	17 850	17 125	3 440	8 440	14 145	29 315
Abschiebung	5 855	6 410	6 335	5 225	4 695	6 790	2 480	5 275	6 095	6 115
Deportation Gap/ Jahr	3 015	4 215	4 715	3 295	3 465	3 295	k.A.	4 635	5 755	2735

Quelle: Zusammenstellung auf der Grundlage von EUROSTAT Daten.<sup>9</sup>

Figure 19 „Deportation gap in Österreich“ (Rosenberger et al. 2018: 3)

## 6.2 Migrants and people without Austrian citizenship

In Austria, a state-mandated health insurance exists. The permit shapes the situation for people and their access to rights.. The following figure presents the access to rights of law in the member states of the European Union:

Status- gruppen/ Rechtsdi- mensionen	EU-Bürger Innen	Drittstaatsangehörige		Familien- angehörige	Asylwer- berInnen	Irreguläre MigrantInnen
		hoch qualifiziert	niedrig qualifiziert/ temporär			
Zugang zum Terri- torium	Personenfrei- zügigkeit	Quoten- und Punkte- systeme (Kriterien wie Bildungsabschluss)	Quotensysteme und/ oder bilaterale Ab- kommen	Quotensysteme (Kriterien wie Verwandschafts- grad, Alter)	internationale Schutzbe- stimmungen; sichere Dritt- staatenregelung	-
Ökono- mische Rechte	freier Zugang; Beschränkung durch Über- gangsregelungen	tendenziell unbe- schränkte Mobilität	keine/geringe Mobilität	Sofort oder nach einem Jahr	beschränkter Zugang (erschwerter Ar- beitsmarktzugang)	kein bzw. informeller Zugang
Soziale Rechte	weitgehend Staatsbürger- Innen gleich- gestellt	gekoppelt an Erwerbs- tätigkeit sowie Aufent- haltssicherheit	kaum/beschränkt	gekoppelt an Status der Familienangehö- rigen, Erwerbstätig- keit und Aufenthalts- sicherheit	beschränkt, z. T. separate Sozialsysteme	kein bzw. beschränkter Zugang
Aufent- halts- sicher- heit	weitgehend uneinge- schränkt	statusabhängig, in der Regel gewährleistet nach Erfüllung von Kriterien	kaum	abhängig vom Status der Familienangehö- rigen und der Erfül- lung von Kriterien	kaum bzw. große Variationsbreite von prekärer bis sicheren Status	keine bzw. durch Regu- larisierung
Politische Rechte	beschränktes Wahlrecht	kein Wahlrecht; betriebliche Mitbestimmungsrechte	kein Wahlrecht; beschränkte betriebliche Mitbestimmungsrechte	kein Wahlrecht	kein Wahlrecht	kein Wahlrecht

Figure 20\_Status groups and dimension of law in the EU member states (Ataç and Rosenberger 2013:41)

## 6.3 Reception and accommodation in 2015/16

While municipalities and federal governments have increased the numbers of refugee shelters in 2015, many of them have been shut down after numbers of refugees decreased. Depending on the state, women refugees may reside in gender-disaggregated accommodation (Rosenberger and Müller 2019).

“For family members who arrived in the framework of family unification and receive Basic Care as asylum seekers, there is no satisfactory solution if the person with refugee status does not have a suitable private flat. The family may be separated until the status is granted, because recognised refugees can no longer live in the Basic Care centre. It is also problematic that provinces such as Styria refrain from granting any basic care to asylum seekers in the family reunification process” (ECRE 2016: 78).

According to the *GREVIO* shadow report, Austria received heavy criticism for her reception conditions (2016). Ever since, these have improved. However, “due to a lack of identification of special reception needs, e.g. of victims of [GBV], during the admissibility procedure, cases are underreported and identification is difficult, once the case was referred to the local provinces” (ibid: 93). The report states: “both at ... federal and provincial level, there are very few facilities for single women, female heads of households and [S] GBV survivors. At ... federal level, in Austria’s largest federal reception center Traiskirchen [primary reception center], single women and female heads of households are accommodated in a separate building with additional support provided by special care workers and psychologists” (ibid: 94). “In bigger facilities of NGOs, separated rooms or floors are dedicated [to] single women. There may also be floors for families. The protection of family life for core family members is laid down in the law of the federal provinces” (ECRE 2016: 78). For a limited period, some refugee-specific accommodation such as the one in Vienna, housed women exclusively. However, primary accommodation facilities were generally overwhelmed with the sheer size of refugees in 2015 and gender-appropriate secluded areas were rarely provided.

Several NGOs offer support in the field of housing. In urban areas such as Vienna, it has become difficult to find affordable and appropriate apartments due to shortage in funding for community housing. Recently, the City of Vienna introduced a regulation, which makes people eligible for funded housing only if they have spent five consecutive years in Vienna and were registered as residents. Therefore, newly arriving people now face higher obstacles to find affordable accommodation. This forced refugees and migrants to live in overpriced shared rooms, leaving them in precarious living conditions (Der Standard 2017b). The Viennese *Integrationshaus*, for example, provides women refugees and unaccompanied minors with accommodation, which is supervised by social workers. Today, the closure of borders across Europe finds expression in reduced numbers of people staying in facilities run by NGOs or on municipal level.

## 6.4 Housing

Welfare organizations and social services, such as NGOs or Church-affiliated organizations, provide people in need of support with a variety of offers in the realm of housing and rent. These include the *Caritas*, *Volkshilfe Österreich* or the *Diakonie* with chapters in most of the federal states.

To exemplify, in Vienna, the *Wohndrehscheibe* of the *Volkshilfe Vienna*, a welfare organization funded by inter alia the City of Vienna, aids with permanent housing for refugees and migrants. Since June 2018, the *Wohndrehscheibe* offers workshops to any institution confronted with the issue of finding affordable housing for refugees and migrants in Vienna, such as schools and temporary housing facilities for refugees.

According to the annual report by *Volkshilfe Wien* on women migrants' and refugees' access to the housing market (2018), women and especially those with migration background face financial barriers when searching for an apartment. As decisions in favour of a new tenant are often made based on a person's income, women tend to receive a lease less often due to lower income when compared to men.

Women refugee's claims for housing have halved in the year of 2018 compared to 2016. The *Volkshilfe Wien* (2018) draws a connection between the reduction of asylum seekers and refugees coming to Austria and those able to apply and look for housing.

## 6.5 Legal Support

The issue around legal support in Austria has become highly complex for refugees, especially after 2015. On an individual level, information on the changes of rights of asylum seekers and refugees has been increasingly confusing. The pace of processing people's requests can vary between weeks and years, which can generate a high level of frustration among applicants. Time limits on appeals, fear of deportation, legal language and lack of German skills to understand official documents may have an intimidating effect on the applicants. Until recently, NGOs and local administrative bodies offered legal assistance. NGO's work have been restrained due to restructuring of government bodies and their competences (see 7.2 for further information).

## 6.6 Employment

When it comes to statistics on employment and health, there is barely any differentiation between women migrants and refugees. Concerning integration into the labour market, policy mainly focuses "on encouraging migrants to quickly acquire a sound command of the German

language at an early stage in order to promote swift labour market integration, in particular with the goal of enabling them to support themselves” (Bassermann 2018: 25). In previous years, emphasis was put on conveying newly arrived migrants and refugees certain “cultural” “values of the Austrian society” (ibid.). This approach supposedly aimed “at increasing the number of third-country women and girls participating in the labor market, according to an expert of the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection” (ibid). In the 9<sup>th</sup> Report on the implementation of CEDAW, the Austrian government appreciates “intersectional multiple forms of discrimination” when speaking of gender, religion and employment (Ministry for Women and Health 2017: 34). The commission on equality equally recognized this assessment. However, concrete initiatives to counter this explicit interpretation of discrimination cannot be identified in the report. According to the shadow report by Frauen: Rechte jetzt! (2012), migrant and refugee women experience individual and structural discrimination concerning their employment and payment situation.

### Arbeitslosenquote nach Staatsangehörigkeit und Geschlecht 2017, in Österreich

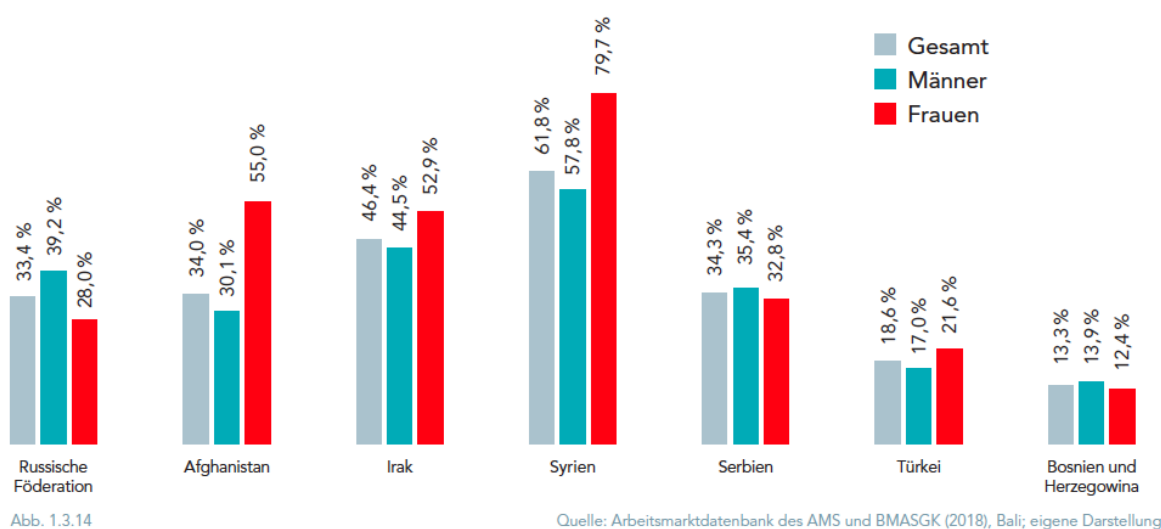


Figure 21 Unemployment rate according to citizenship and gender in Austria 2017 (BMEIA 2018: 49)

### Women Migrants

According to the recent Chamber of Labour (Arbeiterkammer) report on women’s employment in Upper Austria (Arbeiterkammer Oberösterreich 2018), migrant women are disadvantaged when it comes to labour market integration and unemployment rates. They are at higher risks of becoming unemployed compared to men with and without Austrian nationality (ibid.). They have an annual median net income of €16,700, which is €3,800 less than Austrian women do, despite them often coming to Austria as highly qualified workers (ibid.).



While German migrants and those from Bosnia-Herzegovina display the largest groups of women migrants, standards of living and employment vary with respect to country of origin. This is especially related to discrimination in the labour market (ibid.). Discriminating segregation occurs horizontally and vertically. This has crucial consequences for access to social security services. Especially less educated and migrants with low income are socially deprived of services, security and protection and exposed to the risk of poverty. Only 57% of migrant women born outside Austria are employed which constitutes 11% less than women born in Austria (Frauen: rechte jetzt! 2013). For a survey on labour force, about 27% of women with migration background claimed to be over qualified for their jobs (Arbeiterkammer Oberösterreich 2018).

Women migrants are especially affected by strict regulations when it comes to employment and social security. “In general, access to the labour market for migrant women is difficult. On a structural level, horizontal as well as vertical labour market segregation and the unequal legal access criteria to the Austrian labour market impact on migrant women’s position in the labour market” (Frauen: Rechte Jetzt 2013: 7). Women with low income and low levels of education are even more exposed to these discriminatory effects.

The 2002 amendment to the *Aliens Act* of 1997 introduced a residence certificate, which can be issued after five years of permanent residence in Austria, permitting the resident unlimited access to employment. Ever since, new immigrants and those residing in Austria since 1998 are obliged to take German language classes. The Act states that if these conditions remain unfulfilled, the person is confronted with financial penalties up to deportation. Language requirements to remain in Austria and receive access to the labour market are high. This is especially relevant for women who may be disproportionately responsible for childcare. There is need for a net income of €793.4 to secure one’s status. Measures for highly qualified workers that do not fall under the EU-regulation of free movement of workers (please see chapter 5.1 for more information), i.e. third-country nationals, the “Red-White-Red” Card attracts people that specialize in sectors in which Austria faces a substantial lack of employees.

The *Unemployment Agency (AMS)* assists migrant women in finding jobs. The Chamber of Labour requests an increase of personnel, which can cater to a rapid integration of migrant women into the labour market (Arbeiterkammer Oberösterreich 2018).

According to the *Association Relative à la Télévision Européenne (ARTE)*, a german-french tv-network (2019b), women working in the care-taking and nursing sector of elderly people come to Austria from Eastern European countries to seek employment with Austrian families,

facilitated through agencies. There are about of these 800 agencies. Since 2007, it is legal to take care of people for 24hrs in Austria. About 25,000 women work for these agencies without any collective agreement, i.e. payment scheme, in Austria. ARTE estimates that about 600 million Euros are generated annually. These agencies can be opened by anyone and cooperate with agencies in countries like Romania. The report exemplifies the financial dependency and liability to agencies of many women by looking at the legal situation in Romania where many women come from. While it is illegal for these agencies to take money for their services in Romania, future caretakers and nurses are obliged to pay a fee of about €500 to leave for Austria and to be transferred to a local agency (ibid.) Once arrived in Austria, many of these women register as self-employed and are therefore not eligible for minimum wage. In the ARTE report, a woman who decided to speak out about her experience tells the story that while these women's monthly income revolves around €1,000€, they are often threatened by agencies if they consider not working them anymore. According to a unionist for single self-employed workers, a family has to calculate monthly costs of about €6,000, if they decide to employ someone to take care of them as an employee. This is oftentimes unaffordable for families. Therefore, a self-employed caretaker sent by an agency is much more reasonable to hire. On paper, women are registered as self-employed. In practice, however, agencies seem to control the prices and salaries the women receive. The *Austrian Economic Chamber (WKO)*, for example, does not see need to act. According to a spokesperson, the care-taking sector should remain independent of state control (ibid.).

### **Asylum-seeking women and refugees**

Asylum seekers do not have access to the labour market. They may take up jobs in the non-profit, i.e. charitable sector, in which asylum seekers may earn between €3 and €5/hour. What counts as charitable work in the respective federal state, was defined by the BIM in 2016 (Asylkoordination 2018)

Women asylum seekers, (with women with non-EEA-citizenship marking 51.8 %), have limited access to employment, which sets them at higher risk to work in low paying, illegal and socially insecure work environments. "The presence of women from third countries and the EU's Eastern neighbouring states in highly precarious employment in domestic and personal services is pointed out" (ibid). These include house or sex work that puts them in a specific and often close emotional and physical relationship with their employers. It leaves many of them in a dilemma of entering a payed job to sustain a living, to fulfill standards under the integration agreement or to increase the chances of receiving a permanent status while being unable to make use of respective labour rights (ibid.).

Issued in 2004, a federal decree states that asylum seekers are permitted to only seek employment in the harvesting and seasonal-work sector. To comply with international human rights, this decree would have to be revoked by the Austrian government (Ammer 2012). Nevertheless, government has rather tightened provisions rather than loosened them.

Refugees and people with subsidiary protection have unlimited access to the labour market. Most frequently, they seek help at the AMS to find employment. In 2017, the *Integration Year Act* was implemented. This act “has the sole objective of ensuring the integration of persons granted asylum and beneficiaries of subsidiary protection as well as asylum seekers who will most likely receive protection status. The measures set forth in the act include language training, the evaluation of competencies, and career counselling, in order to support labour market integration as well as integration into society as whole” (EMN 2018: 6)

The *Chamber of Labour* (AK) calls for the rapid implementation of the EU- reception directive, under which asylum seekers can receive access to the labour market and which declares that women who have witnessed violence should be categorized as in need of protection (Arbeiterkammer Oberösterreich 2018).

## 6.7 Health

Just as much as for employment, for health-related data, differentiation between migrant and refugee women is barely given. According to the CEDAW Shadow Report of 2012, equal chances of recovery and staying healthy presupposes equal access to the health sector. Legally speaking and on paper, migrant women and asylum seekers residing in Austria ‘legally’ have access to health insurance and have equal rights to receive health care. When employed in Austria, the employee is insured by the employer, covering pension schemes and health insurance. Family members of a person who possesses a work permit in Austria and is employed can be co-insurance if needed (EMN 2017).

However, Echsel et al., representing the NGO *Peregrina*, clarify that migrant and refugee women are at higher risk of becoming and staying ill without recovering (Frauen: Rechte jetzt! 2013). Equal access is not given for these women to the Austrian health system, as it is not sufficiently adapted to women with migration background due to the lack of e.g. language proficiency by personnel and/or translators or interpreters (ibid.). To counter these circumstances, some initiatives commenced their work to make needs for refugee women more visible. Since 2017, a roundtable on “Flight and Women’s Health” gathers on a regular basis in Vienna to discuss current issues in the field of asylum and women’s health as well as to connect

actors working in the field of asylum, refugees and women (Stadt Wien 2018). Another initiative – the *Viennese Platform for Women, Flight and Health* – was founded in 2017. Their focus lies on women refugees and their health requirements. Out of 21,000, 34 % of the refugees in 2017 were women who received basic care of by the Social Funds Vienna. Just as the round table, the Platform seeks to connect about 100 actors in the field of health, women, refugees and asylum as well as hospitals and administrative bodies (ibid.).

According to Echsel et al., women migrants and refugees have less access to social security. Therefore, they are at higher risk of suffering from work-related health problems (Frauen:Rechte jetzt! 2013a). Data is limited on this issue. Some studies show that migrant and refugee women assess their quality of life and psychological health as unsatisfactory (ibid.). Their risk of suffering from chronic diseases such as diabetes is three times higher than with other groups in Austria. The risk of experiencing high blood pressure, depression or anxiety is 2.6 times higher and 1.5 times higher when it comes to migraines, joint and spinal problems (ibid.). A lot of the primary psychological and physical health care is still left at the hands of local NGOs. Oftentimes the lack of language proficiency of health care personnel makes medical support impossible (ibid.).

### **Spotlight: traumatized asylum seekers and victims of torture**

Since 1987, Austria has been a contracting party of the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*. However, victims of torture and trauma face high levels of legal and psychological insecurity once they arrived in Austria (Ammer et al. 2012).

*“Austria used to accept responsibility for traumatized asylum seekers and victims of torture, processing asylum-applications according to Art. 24b of the Asylum Law (2003). This provision was cancelled in the new Asylum Law 2005. During the first months of 2006, several traumatised asylum-seekers have been placed in detention pending deportation, which becomes legal once the asylum authorities assume that Austria will not be responsible for processing the application (Dublin-II). Traumatized asylum seekers and victims of torture are excluded from negative decisions on the merits of their case during the admissibility procedure only. A higher standard of proof for traumatised refugees and victims of torture is established in the new law (§30 AsylG). The asylum seeker has to prove that they suffer from a psychological disorder that is aggravated by stress (“belastungsabhängige krankheitswertige psychische Störung”), hindering them from representing their interests in the asylum-procedure, or that they risk permanent injury to their (mental) health (Dauerschaden)” (European Council on Refugees and Exile 2005: 44).*

The *Dublin–III regulation* makes it easier for the Austrian state to deport people despite their need for psychological and/or psychiatric assistance. This is due to Austria’s geographical location, which makes it unlikely for a refugee to apply asylum for the first time. As people are required to deliver proof for their condition, this procedure can cause stress or trigger discomfort and retraumatize people in vulnerable psychological conditions. Refugees have difficulties with proving their ‘credibility’ of their condition, which in the worst case may lead to disapproval of their application for asylum (Ammer et al. 2012).

To our knowledge, *HEMAYAT* is the only NGO offering support to victims of war-induced torture and trauma in Vienna. According to the institution’s 2019 summer report, currently about 600 refugees await psychotherapy for which funding is not available. “Even though less and less refugees come to Austria, there has never been such a large demand for psychotherapy for torture- and conflict- induced traumatized refugees” (HEMAYAT 2019:1, author’s translation). Reasons for that are “a slight delay in reflecting world politics” (ibid.), recently recognized refugees moving to Vienna and quite often the delay of symptoms of torture and trauma (ibid.) In 2018, 1, 353 survivors of torture and trauma received therapy or help. The institution documented an increase in hours of delivered counselling by 10% compared to 2017 (ibid.).

## 6.8 Education

As for many of the discussed points in this report, access to education stands in reciprocal relationship with a number of other aspects mentioned in the document at hand. Education is compulsory for nine years and is free of charge in Austria. Irrespective of their nationality, children have to attend school. Vocational training can be chosen as further education in different schools specified on certain fields, such as tourism. Like higher education at universities (apart from private schools and institutions), these forms of education are free of charge. Over the last eight years, the initiative *Zusammen Österreich (together Austria)* has sent out several *integration ambassadors*, which visit schools and clubs all over the country to ensure a higher level of inclusion and promote anti-discrimination pedagogical approaches. Their aim is to convey benefits and advantages of living in a multicultural society as well as how to confront forms of xenophobia and hate crime. They also provide material and trainings for teachers, parents and sports coaches to broaden their understanding of diversity and to prevent exclusion of children with migration biographies (Zusammen Österreich 2019).

### 6.8.1 Migrant women

According to Leitner and Wroblewski for the *Institute of Advanced Studies (IHS)*, women with migration biographies show a risk for early educational dropout, which is almost three times higher than average (Klagsverband 2018). Only 29 % of 15-24-year-old girls and women completed compulsory schooling. Steiner et al. (2016) constitute that there is lack of analyses for underlying reasons why girls with migration background drop out of school so early. As empirical data is absent, no decisive consequences can be derived to counter this issue. According to Altzinger et al. (2013), social and family background have significant influence on the educational path that girls follow. Leitner and Wroblewski highlight aspects, which may play a role in the high numbers of drop-outs, such as gender roles, pregnancies and support for family members (the elderly and young).

### 6.8.2 Refugees and asylum seekers: language classes and apprenticeships

A Study on Contributions by Civil Society to cope with the Migration Crisis (Simsa et al. 2016) illustrates how refugees are dependent on civil society to provide them with services to fulfill and achieve criteria to remain in Austria. Taking classes in German and learning to communicate is a crucial precondition for a refugee to have access to the job market, fulfill criteria on the integration agreement and to stay in Austria permanently. For most refugees, taking classes is only possible after having received a positive decision on asylum. Many people are dependent on public transport and respective monthly travel passes to reach the venues where these classes take place. To illustrate the financial constraints this could impose, the amount of about €27 was subtracted from their €40 pocket money from several refugees and asylum seekers to afford the travel costs (ibid.). Having limited access to public transport and language classes prevents refugees from partaking and, as a result, being included as equal actors in society. Moreover, this does not contribute to their psychological health, which is often at risk already. The matter of mobility is especially relevant for refugees living outside urban areas.

In 2013, a decree was passed which made apprenticeships to asylum seekers under 25 accessible under certain conditions. This concerned employment sectors which tend to be understaffed (Migration Integration Policy Index 2015). This decree was revoked in 2018. Those asylum seekers who have started their apprenticeship already, may continue to study. Unless they receive a negative notice on their asylum application (Asylkoordination 2018). In 2018, 70,000 people signed a petition to stop deportations of future skilled workers. The *Asylkoordination* (asylum coordination) initiated a campaign and offers small-scale projects to support

unemployed asylum seekers between the ages of 18 and 30. Participation requires German language skills of B1 level and work experience in their profession.

Little work has been conducted on the matter of unemployment of women migrants and refugees and age. As the Austrian integration system is strongly directed by employability of immigrants, these older women may face additional forms of barriers to overcome.

## **6.9 Access to services for refugee and migrant women in the event of GBV**

Schwarz-Schlöglmann (2017) illustrates a number of reasons why women migrants and refugees frequently find it hard to access services or make use of their rights in the event of GBV. Apart from physical or verbal forms of GBV, these women face structural barriers such as the reduction of or exclusion from social security benefits. Those forms reinforce isolation and a lack of a social network, lack of German language skills, or fear of the police. Sauer (2011) underpins this assessment with factors of socio-economic inequality, exclusion from citizenship and the lack of educational and employment opportunities. The extent to which access is available needs to be analyzed in the light of the intersections of class, race and gender.

In general, Austria is well equipped with institutions that support women, children, and adolescents in the event of e.g. domestic violence, IPV and rape. Austria has 30 shelters offering room for 766 women and children. Vienna provides about 175 spots for women (ORF 2013). Each federal state has its own *Violence Protection Center/Intervention Center*. Six regional counselling centres for sexual violence are presently installed in Austria to provide counselling and support for e.g. rape victims. However, there is a significant difference between urban and rural regions regarding access to services. On paper, any woman should have access to protection, prevention and support facilities. Nevertheless, some differences can be identified especially for refugee women.

According to Schwarz-Schlöglmann (2017), 25-30% of women at shelters or protection centers show some kind of migration background. Shelters and refugee's reception centers are most frequently confronted with violence against refugee women in the following three contexts (Schwarz-Schlöglmann 2017:166):

- “Violence in the family
- Violence against women: mostly single or those who traveled on their own
- Violence in the immediate social environment”.

According to the 2018 *CEDAW* Shadow report, refugee women with e.g. subsidiary protection face relatively higher obstacles when trying to leave a relationship (Klagsverband 2018). For refugee women coming to Austria to reunite with their families, their legal (asylum) status is, in most cases, dependent upon the status of their spouse, since they oftentimes apply for asylum as a family (EMN 2016; see more on this in chapter 5). Until recently, this made escaping violent relationships extremely hard. Under the *Asylum Act*, refugees may leave their spouse and receive an independent status. However, requirements for receiving permission to remain in Austria (language, employment, income) are oftentimes hard to meet.

In 2017, the *Diakonie*, a protestant charity organization, opened Austria's first ever center tailored to the needs of women refugees in Vienna. Services include language-training, education on sexual and reproductive health, social activities but also help in the event of *GBV* (ORF 2017). Although this center is a step towards the right direction, extensive and nationwide infrastructure is yet to be installed (ibid.).

There are some NGOs, like *FEM Süd* in Vienna, that offer support for women in the case of *FGM/C* and forced marriage. If minors are likely to be taken away for a specific amount of time to get married or for the removal of parts of their genitals, child protective services may step in. There is a special clinic in Vienna, which cooperates with gynecologists offering plastic and reconstructive surgery. Organizations like *Orient Express* offer support (legal and psychological) to women and their relatives confronted with forced marriage. Women who have been forced to undergo *FGM/C* and press charges against the offender have the right to receive psychosocial and judicial support free of charge.

As mentioned before, *ZARA*, *Romano Centro* and the *Forum against Antisemitism* offer support for any person who experienced forms of hate crimes. Some migrant women may be especially affected when e.g. wearing a head scarf, if they are insulted or assaulted due to their skin colour or confronted with stereotypes and prejudice around "culture-specific" gender roles and norms. Legal and psychological support as well as mediation and workshops on related topics are offered to women, men and children.

*LGBTIQ*+-specific support facilities and services for migrants and refugees are rare. Vienna, Linz and the Salzburg region feature some institutions, such as *Queer Base*.

What is especially concerning is the pressure under which some women's shelters provide protection for refugee women. In some federal states in Austria, women refugees have unequal access to these institutions due to various reasons. "In several of the nine provinces of Austria, some groups of migrant or refugee women, especially undocumented and asylum-seeking women and women with limited social rights and benefits, face barriers to accessing women's



shelters” (GREVIO Shadow Report 2016: 5). Public donors, like local governments, restrict accommodating asylum seekers and undocumented women, which forces shelters to come up for those women privately (ibid.). It might also lead to women not being admitted to shelters at all. This poses severe financial and existential insecurity for women and NGOs. “There is a lack of services provided in mother tongues other than German. Since the funding of migrant organisations is not secured, they suffer from austerity measures and are even forced to close, such as the migrant counselling centre Horizont in Lower Austria” (ibid: 51). We list other relevant organizations in the upcoming chapter 7.

## 6.10 Shortcomings

Women migrants and refugees are dependent upon a number of services and support which are either of general nature, i.e. relevant to any person, but also to their status-specific needs as a refugee and/or migrant. Voices, from different fields within the Austrian non-governmental sector such as *LEFÖ*, *HEMAYAT*, *Queer Base* or *UNDOK* have criticized the lack of the following requirements to ensure women’s support:

- Psychosocial support,
- Therapists and comprehensive appropriate infrastructure for women exposed to *GBV*,
- Services and education on reproductive and sexual health,
- *LGBTIQ+* specific support structures,
- Access to services regardless of women’s status,
- Women-only quarters and areas to seek refuge and/or participate in society, e.g. art, language, religion etc.
- Fair and equal integration into the job market and access to employment and social security,
- Services in mother tongue for women,
- More funding needed to expand services and access to shelters,
- Access to shelters for any woman,
- Improved distribution of and access to information about rights of women migrants and refugees,
- Infrastructure for traumatized and tortured refugees,
- Sensitization for structural reasons for and forms of *GBV*,
- Prevention of racial profiling by authorities,
- Anti-racism and anti-sexism measures,

- Training for medical and judicial personnel, social workers, police, judges, psychotherapists in every of the above points,
- Increase federal budgets for ministries working on intersecting issues regarding women refugees
- Increase funding to combat all forms of hate crime.

Most of this comes down to the lack of funding from governmental bodies on local and federal level. As stated in the *GREVIO* Shadow Report, “to enable migrant women and their children to live free of violence requires not only the right to be protected from violence, but also social and economic rights, such as the right to employment, to financial assistance and to housing” (*GREVIO* Shadow Report 2016:51). As budget is, on a governmental level, always connected to political will, the tendency of reducing funding for NGOs is in line with political developments over the past three to five years. As of 2016, the Ministry for Women and Health received a budget of €10 Million to finance projects and campaigns on *GBV* and measures generally directed towards gender equality (*ibid.*). These assets were deemed as insufficient for comprehensive improvements in this regard (*ibid.*).

Overall, access to services for (women) migrants and refugees varies across rural and urban areas, depends on the specificity of the service and sometimes depends on the status and title of a migrant or refugee woman.

## 7 Agents and actors in the field of *GBV*, women migrants and refugees

### 7.1 NGOs and Civil Society

In Austria, there is a wide range of NGO and civil society actors that are active in the field of refugee and migrant support. Some actors specialize on specific groups or needs of refugees; others compile a collection of services catering to general requirements and interests of refugees and migrants. Vienna by far offers most services and infrastructure and hosts a variety of NGOs but also state- and city-subsidized centres and institutions. Same goes for services designed more specifically to support women refugees in the event and prevention of *GBV*. On a federal level, some networks of actors working in the field of *GBV* but also on migration and refugees have formed to coordinate and unite their efforts and demands. One of these networks was initiated with the ratification of the *Istanbul Convention*. *GewaltFREI leben*, a network and alliance of several actors in the field of victim protection and protection against violence, including prominent voices such as Rosa Logar, focus on the progress of the *Istanbul Convention*'s implementation in Austria. A number of similar networks like the Autonomous Women's Shelters in Austria exist, which increase the level of solidarity among these institutions and people. As outlined in the chapter on health (6.3), some networks have formed on local levels, working on specific topics such as FGM/C but also on the intersections of fields, which are relevant to refugee women, such as access to health, language, leisure and employment. Further relevant NGOs and initiatives in the field of *GBV*, refugees and migration following and offering different approaches and services are

- *Arbeitersamariterbund Österreich*
- *Asylkoordination Österreich*,
- *Autonome Frauenhäuser*
- *Diakonie Österreich*
- *Österreichisches Rotes Kreuz*
- *Caritas Österreich*
- *Johanniter*
- *MIGAY*,
- *HEMAYAT*,
- *Asyl in NOT*,
- *Asylkoordination Österreich*
- *Volkshilfe Flüchtlings- und MigrantInnenberatung*,

- *Verein Flüchtlingsprojekt Ute Bock,*
- *Orient Express,*
- *LEFOE,*
- *Peregrina in Vienna,*
- *QueerBase,*
- *Oriental Queer Organization Austria,*
- *maiz,*
- *Initiative Frauen\* auf der Flucht,*
- *FEM and MEN,*
- *ZARA*
- *SOS Mitmensch*
- *Weisser Ring Opferhilfe*
- and others.

As for international organizations present and active in the field in Austria, the involvement of the *UNHCR* in Austria is of special character. It is “embodied in the *Asylum Act* that the *UNHCR* must be informed immediately when asylum proceedings are initiated. It has the right to demand information on every asylum procedure, to examine the files, to contribute to the assessment of fact-finding, to be represented at interviews, as well as to get in contact at any time with the asylum seekers or refugees” (Merhaut and Stern 2019:32).

Actors within the field of civil society and NGOs experienced remarkable backlashes concerning financial assets and political pressure over the last years. An especially peculiar incident marks the public announcement of human-rights lawyer Roland Frühwirth who withdrew from his profession and the closure of his chancery. He stated that too many of his clients had been deported despite of proof of danger of life, previous devastating experience of violations of human rights and hardship (Frühwirth 2019). He concluded for himself he could not continue to represent a system in which persecuted people seeking refuge cannot find help for reasons of political disapproval. His alleged multiple failures to protect his clients in a judicial system he felt has oftentimes substituted constitutionality with arbitrariness (ibid.)<sup>7</sup>. In addition, a comparable situation was created by the lawsuit filed by a consultant of the *Federal Agency for Foreigner's Affairs and Asylum* (BFA) against *Asyl in NOT*, an NGO providing legal support to refugees facing inter alia political persecution, in 2019. The NGO claims for

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<sup>7</sup> For Ronald Frühwirth's extensive statement, please see <http://www.ronald-fruehwirth.at/shutdown.html>.

this accusation to be unjustified and to contribute to the intimidation of critical voices in the field (Asyl in Not 2019).

Available federal budget has been distributed among state and non-state actors offering support and services according to a scattergun approach, which still leaves many of them in precarious situations (Deutschlandfunk 2019). This finds expression in the financial responsibility for projects some NGOs had planned to realize with an initially awarded government-budget, which was withdrawn later in the year of 2018/9 (ibid.). Furthermore, NGOs feel like they received indirect instructions to stay quiet and complain as little as possible about their situation (ibid.). However, as illustrated by one representative from the anti-discrimination agency in Graz, this trend is not solely implied by governmental bodies but represents attitudes towards migration of parts of the public, stating, “there is no point anymore. The political and societal situation has developed in a way that we are not wanted anymore, that we should stay quiet, should not attract attention so that nothing more severe happens” (ibid.).

To understand civil society’s active role in the field of migration and refugees, it is worthwhile to save room for its overall contribution, especially in recent years. Although not decisively assessing *GBV* and refugees as a topic, the afore mentioned study by Simsa et al. (2016) documents Austrian civil society’s contribution to coping with the so called refugee crisis in 2015/6 and highlights the nexus between distribution of tasks between the state and NPOs/NGOs and their contribution to negotiating societal contradictions in the field of migration. Apart from larger organizations such as the Austrian Red Cross, private individuals have had a significant role in assisting refugees (Simsa et al. 2016). For example, about 7,000 volunteers were temporarily active for one single, supposedly larger organization to stem the work effort (ibid.). Civil society’s effort should therefore not go unnoticed.

According to the *Civil Society Index*’ update of 2019, especially civil society actors in the area of migration, art, politics in the field of women, the job market and development witness financial constraints which pose existential threats. Developments „correspond with known processes illustrated in academic literature on the development of authoritarian governments. Although Austria can be classified a liberal democracy with well-established basic rights, there are clearly visible tendencies, which restrict the potential of civil society, and their participation in political decision-making processes” (Civil Society Index 2018, translated by author).

## 7.2 State agents

We can extrapolate from previous chapters that agents on a state and federal level play an important role in the field of refugees and *GBV* in Austria. While carrying a relevant amount of responsibility for financial distribution among actors providing services in the field of *GBV* and refugees, the redistribution of competences in the field of migration and asylum and respective power shifts have added control mechanisms on a judicative, legislative and executive level to the state since 2015. Four different coalition governments will have governed Austria by the end of 2019 over the last six years – a development that started in 2013. Therefore, ministries and administrative bodies have undergone some significant changes. The following pages give a brief overview of these developments on state level to make political and legislative amendments in the field of *GBV* more comprehensible.

As depicted in chapter 2, the previous two governments have put relatively high focus on issues around what has been labeled as “cultural violence”, including forced marriage and FGM/C. The *Ministry for Women, Family and Youth* and its predecessor (Ministry for Women and Health) published several policy briefs in close coordination with the Integration Fund on these matters (ÖIF 2018). Documents include fact sheets, statistics, descriptions and explanations of forms of *GBV*, identifying their roots in traditional and culturally specific environments.

Relevant actors in the field of **refugees, migration and women** are:

- Austrian Federal Ministry of the Interior
- Austrian Federal Ministry for Europe, Integration and Foreign Affairs
- Austrian Federal Office for Immigration and Asylum
- Austrian Federal Ministry for Women, Family and Youth
- *Austrian Integration Fund (ÖIF)*

When looking at the ministries’ competences, it is significant to highlight that political matters concerning integration and foreign affairs have been combined in a single ministry. Like in many other European countries, the question of “internal, national and border security” has become an important political instrument to justify increasingly restrictive measures regarding migration and asylum. Furthermore, although a decisively independent agency, the *ÖIF* is closely tied to the Ministry for Europe, Integration and Foreign Affairs, which enables an efficient exchange of information, assignment of research and studies and respective political and policy measures. Centralization concerning the executive and judiciary competences in the field of asylum and immigration has been taking place since 2014. The Bundesamt für Fremdenwesen und Asylum (BFA) was established in 2014, replacing the Bundesasylamt

(BAA). The Federal Administrative Court took over responsibilities previously carried by the Federal Asylum Court. “To sum up, decisions on asylum and thus on reception, deportation, and possibility to stay (by means of toleration, subsidiary protection, and a residence title based on humanitarian grounds) are taken at the conclusion of administrative procedures on a national level by the BFA” (Merhaut and Stern 2019:36). Already in 2005, the *Asylum Act* was implemented to “accelerate asylum procedures [...] and to terminat[e] residency at the earliest possible stage” (ibid: 35). The state therefore concentrated competences for asylum and its surveillance in its immediate radius of operation. “Since 2015, the right to intervene enables the federal government to intervene regarding the accommodation of asylum seekers whose applications have been admitted to the in-merit procedure, which usually comes under the legislative competence of the provinces. In order to decrease the number of asylum seekers in 2016, the Austrian government restricted the rights of recognized refugees, lowering the right of residence to [three] years and adding barriers to family reunification” (ibid: 32). Moreover, the recent government initiated the reorganization of legal advice for refugees in a state-controlled agency while excluding and prohibiting NGOs from providing this service (Der Standard 2019b). The director of *UNHCR Austria* expressed substantial concerns about negative consequences of lack of control and transparency within the system and predicted a high level of error-proneness (die Presse 2019a).

While the state took over more power in services for refugees, it simultaneously increased the privatization in the field of security for e.g. refugee-specific accommodation. “[...] The Aliens Law Amendment Act 2017 (FrÄG 2017) entails an amendment to the Federal Basic Care Act (Grundversorgungsgesetz – Bund 2015), specifying that personnel in accommodation facilities are entitled to exercise coercive power (Befehls- und Zwangsgewalt) in order to enforce house rules and security e.g. to expel a person who does not comply with the facility’s house rules. According to the Ministry of Interior [...], the personnel entitled to such coercive power would be, for instance, the staff of private security companies that are contracted to manage accommodation facilities, such as ORS Service GmbH” (ECRE 2015: 13).

While their federal party representatives strongly advocated for measures to restrict migration and facilitate deportations of refugees, it is curious that “most prominent resistance to governmental directives has occurred at a local level. Over recent years, several mayors from the SPÖ and ÖVP have acted against their own party positions by protecting asylum seekers living in their municipality who faced deportation, or by interfering in protests against accommodation centers” (Merhaut and Stern 2019: 32).

Furthermore, the government communicated deportations and closing borders in 2015/6 and 2016 and the *Balkan Route* respectively as a necessary measure of *managing* migration to reconstitute the respective national sovereignty of the Austrian state (Rosenberger et al. 2018). Migration and flight were progressively framed as a criminal offence rather than a human right. Governments between 2015 and 2019 followed a comparable rhetoric regarding an increase of the mandate of Frontex on the external borders of the EU and the ‘protection’ of Europe as a whole. Reintroduction of border checks within the Schengen Area, events of illegal pushbacks, policing and militarization of the borders presented and continue to present a highly contested issue (Josipovic and Reeger 2018).

The gradual exclusion and criminalization of NGOs and their work, paired with a decrease in funding has some serious implications for the centralization of power around state authorities. This process is in line with increasing restrictive measures to ‘regulate’ migration, providing refugees with less accommodating services and possibilities for integration. The above described shortages and lack of services will most likely increase isolation of refugees rather than overcoming resentments against them in society. Access to service in the event of *GBV* has become progressively difficult while need for services in some fields has increased and funding has been simultaneously reduced. Measures such as the new *Gewaltschutzpaket* as presented by the recently dissolved government will most likely not improve the situation significantly, as it does not aim at sufficiently strengthening the institutions that provide these services. Publications such as the paper by Mendel and Neuhold may serve as an important analytical contribution to understand the dynamics behind certain measures and developments introduced and pursued by Austrian governments.

Looking at the state as an actor in the field, we therefore conclude two strands of developments, which are intertwined with regards to *GBV*. On the one hand, power shifts and restructuring of state bodies and authorities occurred. On the other, increased emphasis is put on “culture-specific” forms of *GBV* and the victim’s protection, which need to be tackled. This push for legal reforms simultaneously serves as an argumentative base why restrictive migration politics are necessary. Part of this relates to the argument of “protecting our women” and victims of violence from “other cultures”.



## 8 Dominant Narratives and Public Discourse

Closing remarks of the previous chapter serve as a transition to this concluding short aspect of dominant narratives and public discourse around *GBV* and women refugees. As our preliminary research on this country report reveals, the political saliency of the topic has increased and received a comparably large amount of attention over the past years. Recent developments show an increasingly negative connotation of the topic of migration and asylum (Bischof and Rupnow 2017) and it has become more of a balance on a knife's edge on who might take an interest in and/or instrumentalize research findings. We have therefore decided to conduct a separate frame analysis, which looks at the discursive elements around *GBV* in the context of women migrants and refugees. It will attempt to establish a link between political, governmental and public discussions and their reflection in policy in the recent 5 to 10 years more systematically. It will therefore allow us to assess the situation more conscientiously.

To give a brief insight, we illustrate a preliminarily identified simple line of argument as follows. Considering media reports and policy documents, the problem definition reads that foreign men are perceived as a threat and discussed as perpetrators while women are conceived of as victims, with a special focus on “our women” (Rheindorf and Wodak 2018). Hence, the frequently presented and suggested problem solution is to restrict immigration, close borders and to turn the attention towards “culture-specific” forms of *GBV* by government bodies. The derived premature key analytical question is henceforth what (gendered and racialized) ideas and constructions of victims and perpetrators are embedded within this narrative?

We assume that discourse around *GBV* and refugees is interlocked with pervasive anti-immigration sentiments. We presume these sentiments conducive to keep funding and research on *GBV* (against refugee women) at a minimum. A frame analysis is, therefore, germane to the understanding of political measures to counter *GBV*.

## 9 Conclusion

Different forms of *GBV* are induced by imbalances in power structures, upheld patriarchal hierarchies on a societal and systemic level. This is applicable for *GBV* against women as well as other marginalized groups in society. Austria is not excluded from these dynamics. Thinking violence as something all women, no matter their nationality, race, class etc. can be exposed to, is crucial, since its underlying constructions and the reason why *GBV* occurs can be retraced to structural forms of discrimination embedded in society. It is therefore important to understand *GBV* not as an individualized issue but as a challenge to society. However, this does not imply a universality to the experience of violence per se. Refugee and migrant women in Austria face challenges, which need specific attention but simultaneously do not explicitly differ from groups of women, which are not categorized as refugees or migrants. That is why this country report presents a first spotlight onto the intersections of women migrants and refugees, gender and race in the context of *GBV* in Austria.

Research for this country report has given some insight into what potential there is to expand on that allows women refugees and migrants to built resilience in their potentially vulnerable life situations. Measures may include expanding access to services and support infrastructure but also health and employment. Urban areas, with Vienna at the forefront, are well equipped with infrastructure compared to rural areas. Regarding women's shelters and ad-hoc protection against domestic violence, Austria seems to be living off its good reputation from the past. While achievements in the 1990s concerning protection against and prevention of domestic violence demonstrated a big leap forward and a success for feminist struggles, there is an increasing need for improvement in the field of protection against *GBV* in the context of refugee women.

At the same time, it becomes obvious that political will to support this infrastructure has deteriorated in recent years. A delicate network of shifts in political power, xenophobic and discriminating-against discourse against migrants and refugees has complicated the situation for refugees in Austria of which women face certain additive forms of hardship. There is a demand for improved infrastructure of short-term help, such as unlimited access to emergency shelters and long-term infrastructure concerning education, employment, health, leisure, mobility and social security. Some of the most important actors in the field, namely NGOs, face financial, legal and political insecurity while changes to migration and asylum law have constrained their work and conditions under which their clients approach them.

The issue of “cultural or tradition-specific” forms of violence has received more attention by government. It is yet to be analyzed how this agenda may be in line with discursive developments around *GBV*, migration and women and e.g. Eurocentric frames revolving around “the Other”. The task remains to acknowledge the role of the state in how he reproduces structural forms of *GBV*. Contributions by scholars like Sauer present a solid conceptual foundation, which we can and will build our further analyses on.

The chapters of human trafficking traumatized refugees and the *WPS 1325 ff.* show that the issue of *GBV* needs to be reflected upon in a global context, exceeding national borders of Austria. While the act of violence may occur on the journey or in a person’s country of origin, the consequences of experienced violence are likely to show after their arrival in Austria. This report reveals the need for analyses of in international migration regimes and actors therein in the context of *GBV*. Furthermore, research *GBV* around borders and the ramification the Austrian border regime (Hess et al. 2017) have had not only within but also outside of Austria and the EU open promising questions for further investigation.

Overall, *GBV* against refugee women has been and is a relevant topic in Austria. As some initiatives show (e.g. Platform Women, Flight, Health), an important task in upcoming years is to make the issue visible, underline its importance for every-day lives of these women and to catch attention of relevant actors who can have a significant impact on improving women’s life situations.

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