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DVR 0656097 | ZVR 776697963

Unser Zeichen:
80-01-(2021-0867)

bearbeitet von:
Muik, LL.M. / Andraschko

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Reply to the Special Rapporteurs on
extreme poverty and adequate housing

Vienna, July 23, 2021

Reply to the Special Rapporteurs on extreme poverty and adequate housing

Dear Mr. Special Rapporteur,
Dear Madame, Sir,

We would like to thank you for your letter concerning the ruling *Lăcătuș v. Switzerland* of the ECHR. The Austrian Association of Cities and Towns (AACT) will gladly answer your questions regarding the situation in Austria to the best of our knowledge.

- 1) Does your city, province/canton, federal state or national state have any laws or regulations in place that prohibit begging, eating, sleeping or performing personal hygienic activities in all or certain public places? Could you kindly share as well the text of relevant legal norms?**

- a) Prohibition of begging (State level / City level)

Bans on begging have been the subject of controversial discussions in Austria repeatedly in the past. Especially in the course of the EU's eastern expansion 2004 and 2007, numerous local bans on begging were imposed in Austria.

Under the law of competences, the responsibility for imposing such bans falls within the competence of the states (Bundesländer). Cities and municipalities can also impose begging bans in their respective municipalities within the scope of their competence of

local policing (örtliche Sicherheitspolizei).¹ The numerous begging bans were followed by numerous decisions of the Constitutional Court, which at least partially lifted begging bans in many places.²

Attached you will find an overview of the legal situation in each Austrian state.

In the attached document, you can also find data regarding the number of violations of begging bans in each state. However, these are only partly public and partly not up to date. Should such statistics be necessary for your further activities, we would suggest that you contact the Federal Ministry of the Interior (BMI) in this regard.

b) Prohibition of sleeping in certain public places – so called “camping restrictions” (State Level)

Sleeping in the open air is not uniformly regulated in Austria. Regulations, e.g. on camping outside campsites or on parking mobile homes and caravans are mainly found in individual state laws (but not in all states). In some cases, these also empower municipal councils to enact local camping restrictions. Many of these ordinances determine in which places of the respective municipality camping outside campsites is permitted or prohibited.

The relevant legal norms of the individual federal provinces can be found under the following links:

- [Burgenland](#)
- [Kärnten](#)
- [Niederösterreich](#)
- [Oberösterreich](#)
- [Salzburg](#)
- [Steiermark](#)
- [Tirol](#)
- [Vorarlberg](#)
- [Wien](#)

c) Prohibition of eating or performing personal hygiene in public spaces.

The Austrian Association of Cities is not aware of any legal restrictions on eating or performing personal hygiene in public spaces.

¹ Art 10-15 B-VG; Art 118 B-VG (federal constitutional law).

² For more information on the Constitutional Court's case law, see question 2.

2) Could you kindly provide your views as to whether or not regulations relating to begging applicable in your jurisdiction are compatible with the above mentioned UN human rights standards and the judgment of the ECHR in the case of *Lăcătuș v. Switzerland*?

The prohibition of begging in Austria has to a large extent been reviewed by the Constitutional Court and the jurisprudence of the Constitutional Court is the standard for the legal regulations in this regard.

Due to the Austrian peculiarity that the ECHR also has constitutional status domestically, it constituted the standard of review for the decisions at issue. In particular, this concerns Art. 8 ECHR and (even more) Art. 10 ECHR.

In order to assess whether the case law of the Constitutional Court differs in detail from that of the ECHR's case law, a more in-depth analysis would be necessary, which would go far beyond the scope of this questionnaire.

As illustrated below, the Constitutional Court's examinations were less concerned with penal provisions (as it was the case in *Lăcătuș v. Switzerland*), but rather with the constitutional conformity of the prohibition per se.

The Constitutional Court sets the following requirements for bans on begging:

Bans on begging may be permitted under certain conditions. However, so-called "absolute bans" have been deemed as unconstitutional. On the other hand, the prohibition of aggressive begging, begging with children or commercial begging was considered permissible. The Constitutional Court bases its decisions in particular on Art. 6 StGG (freedom of employment), Art. 8 ECHR (right to private life), Art. 10 ECHR (freedom of expression) and Art. 7 B-VG (equality before the law).

Summary of cases of begging bans that have been under legal examination:

- [VfGH \(12/18\)](#) – The begging restriction in the city of Feldkirch is not illegal; Possibility of quiet begging also in the city center in spacious and heavily frequented areas. Temporary ban on begging for - adequately defined - near and entrance areas of outdoor dining areas, shops or parking ticket machines as well as unlimited begging ban for certain locations after proof of deficiency has been provided in accordance with the law.
- [VfGH \(07/17\)](#) - "Absolute ban on begging, which is constitutionally frowned upon" in Salzburg's old town: The ordinance of the Salzburg City Council of May 20, 2015 regarding a begging ban has proven to be a "constitutionally frowned upon absolute begging ban" with regard to the old town because of its temporal and local scope and was illegal. The court rejected a complaint regarding the ban on begging at the Grünmarkt. As early as 2012, the Constitutional Court found that an absolute ban on using public space as a "silent beggar" violated the principle of equality because it would exclude people from using it. Such a ban is also contrary to the freedom of expression guaranteed by the European Convention on Human Rights.

- [VfGH](#) (10/17) - The Constitutional Court lifts the ban on begging in the city of Bludenz: The decision states: "It may be true that due to the local conditions in some places and at some times in the city of Bludenz, the use of public space within the meaning of Section 7 (3) Vbg. State security law is also made more difficult by 'silent' beggars. However, the Bludenz begging ban regulation forbids 'silent' begging not only in certain places or at certain times, but in terms of area without any differentiation and unlimited in time. As the Regional Administrative Court of Vorarlberg rightly explains, the arguments put forward by the city council of Bludenz are unable to justify such a comprehensive ban on begging."
- [VfGH](#) 06.12.2012, G 64/11: Ban on begging in Styria is unconstitutional: §3a Styria L-SG forbids all forms of begging in public places without exception. It thus also includes silent forms of begging. Such a comprehensive regulation, which simply prohibits begging without any differentiation, cannot be objectively justified and also violates Article 10 of the ECHR. The legal considerations set out in Ev 30.06.12, G155/10, can be transferred to §3a Paragraph 1 Stmk L-SG.
- [VfGH](#) 12.10.2012, G 134/10: Ban on begging in Vienna: application rejected as inadmissible
- [VfGH](#) 30.09.2012, G 155/10: Fundamental decisions on begging bans (Salzburg): Bans against begging must differentiate between certain forms of begging, which also covers those forms of begging in which an individual beggar is unobtrusive and not aggressive or at all "quiet", only through written ("signs") or symbolic ("hat") make others notice them in a public spaces, asking another person for financial help. It is acknowledged that meeting other people is inherent in public places.
- [VfGH](#) 30.06.2012, G 118/11: Fundamental decisions on begging bans (Carinthia): The ban on begging is not unconstitutional, since it is based only on commercial activity, while silent forms of begging are permitted.
- [VfGH](#) 30.06.2012, G 132/11: Fundamental decisions on begging bans (Upper Austria): With §1a Oö PolStG, certain manifestations of begging are covered by the state law prohibition (eg begging in an intrusive or aggressive manner, such as by touching or unsolicited accompaniment or insulting, begging with children); the penalized behaviors are - unlike the silent begging - regarded as particularly suitable for disturbing local coexistence. The new regulations of the Upper Austrian Policies Act-Nov 2011 are intended not only to protect those detained for begging, but also to protect those members of the local community who are harassed by the beggars because of their special behavior.

3) Has your local, regional or national Government adopted any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places? Is your Government planning to undertake such measures in light of the judgement of the ECHR? If so, could you kindly explain what is envisaged, and which obstacles you may be facing?

Bans on begging have been amended several times in the recent past based on the jurisprudence described above. However, the Austrian Association of Cities and Towns has no information that any immediate changes are currently planned on the basis of the ECHR decision (especially with regard to the design of penal provisions).

4) Which measures are in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecation or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

a) Federal Level

- Tenancy and Housing law (Mietrecht)

The Tenancy Law (MRG) regulates the conditions for renting and subletting living space. Relevant for homeless policy are the provisions on the termination of apartments (e.g. protection against dismissal, tenant protection), but also on the acquisition of living space (deposits, broker fees) and on the limitation of rental contracts. These provisions, which have been changed several times in the last 10 years, mean in practice that people in particular problematic situations can hardly get permanent (rental) living space, but are forced to have to rent temporary living space every few years. Equally relevant are the provisions on (judicial) evictions, for example in the event of permanent rent arrears. With the amendment to the Tenancy Law from 2000, a significant improvement in the prevention of eviction was created: Before an imminent eviction, the tenant must be informed of the possibilities of eviction advice. Precarium rents (sublease agreements that can be terminated on a daily basis) are also regulated in the MRG.

Mietrechtsgesetz - legal act available under:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002531>

- Right to registration - Federal Law on Reporting (Reporting Act 1991 - MeldeG)

Through the right to registration, the report creates a basis that decides on access to essential civil rights (right to vote, determination of the local jurisdiction of the authority issuing the decision, e.g. in social welfare law). No entry in the voter register is possible without this kind of registration. In addition, the entitlement to social welfare (Sozialhilfe) or to a (communal) social benefit may depend on this. The registration law therefore also provides a way for homeless people to meet this requirement (see § 19a MeldeG illustrated on the next page).

- *§ 19a. Main residence confirmation*
The registration authority has to confirm to a homeless person on application in accordance with the model in Appendix D in two copies that he has the center of his life relationships in this municipality (confirmation of main residence) if he
 - *1. makes it clear that he has had the focus of his life exclusively in the area of this community for at least one month, and*
 - *2. can designate a point in the area of this municipality that he visits regularly (contact point).*

Meldegesetz 1991 - legal act available under:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005799>

- Job Placement and financial support by the federal unemployment scheme and the federal job agency (Leistungen aus der Arbeitslosenversicherung)
 - Support in searching for a job, as well as training and qualification measures.
 - Financial support for the time of unemployment (the amount and duration of the financial support partly depends on the years the person has paid into the national unemployment insurance scheme while being employed).

Arbeitslosenversicherungsgesetz - legal act available under:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008407>

b) State Level

Social Assistance (Sozialhilfe)³

In contrast to unemployment benefits, social assistance does not follow an insurance-scheme and can in principle be drawn for an unlimited period (provided the legally stated conditions are met). The area of social security falls within the competence of the federal states. The laws therefore differ in detail. However, the “Sozialhilfe-Grundsatzgesetz” passed by the federal parliament creates an overarching framework within which the directly applicable state laws operate. The law, which can be seen as a prestige project of the previous conservative-right government, was and is controversial because it defines maximum limits and restricts the scope of traditionally more generous federal states (such as Vienna). The Constitutional Court has already overturned some provisions of that legal act.⁴

Sozialhilfe-Grundsatzgesetz – legal act available under:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010649>

Despite a certain degree of standardization, the social assistance laws of the federal states continue to vary widely. The following is an example based on the objectives stated in the legal acts of the states Vienna and Lower Austria (Niederösterreich):

Vienna:

Tasks and services:

- (1) Social assistance has to enable those people to lead a decent life who need the help of the community.*
- (2) Social assistance includes assistance to secure the necessities of life, assistance in special situations and social services.*

Niederösterreich:

By offering:

- 1. Help with in-patient care*
- 2. Help in special situations*
- 3. Help for people with special needs*
- 4. Funding*
- 5. Social services (through social institutions):*
 - (2) Assistance is provided, unless otherwise specified,*
 - through cash or in kind benefits and*
 - by out-patient services, partial in-patient and in-patient services.*

³ Som etimes also referred to as „Mindestsicherung“. The term was used by older legal acts.

⁴ VfGH 19.12.2019, G 164/2019-25, G 171/2019-24.

(3) Social assistance benefits also include social work advice and support, which is necessary to avoid and overcome social emergencies and to sustainably stabilize the person seeking help. The state provides these services within the framework of private law and there is no legal entitlement to them.

(4) Current cash or non-cash benefits according to Paragraph 2 can be appropriately limited in time according to the specific emergency situation.

The social assistance laws of all federal states can be found under the following links:

- [Burgenland](#)
- [Kärnten](#)
- [Niederösterreich](#)
- [Oberösterreich](#)
- [Salzburg](#)
- [Steiermark](#)
- [Tirol](#)
- [Vorarlberg](#)
- [Wien](#)

c) Additional services by states, cities and towns, NGOs, associations and funds

In addition to social services provided by law, there are numerous initiatives for counselling, emergency shelters and transitional housing, ⁵ eviction prevention and reintegration programs. These are offered by states, cities and towns, NGOs (partly publicly financed), private associations or funds.

A list of the numerous programs in each state can be found under the following link:

<https://www.oesterreich.gv.at/themen/soziales/armut/2/Seite.1694300.html#Nieder%C3%B6sterreich>

We hope that we have been able to help you with our explanations. If you have any questions, please do not hesitate to contact us.

Yours sincerely



OSR Mag. Dr. Thomas Weninger, MLS
Secretary General

⁵ special programs for children, young people and women.