

## Austrian Ombudsman Board Submission 2024 Rule of Law Report - targeted stakeholder consultation

\* I am giving my contribution as

Other

If "Other", please specify

NHRI and Ombudsman Institution

\* Organisation name

250 character(s) maximum

Austrian Ombudsman Board

24 out of 250 characters used.

Main Areas of Work

- ☐ Justice System  
☐ Anti-corruption  
☐ Media Pluralism  
☒ Other

If "Other", please specify

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:  
500 character(s) maximum

<https://volksanwaltschaft.gv.at/en>

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Transparency register number

\* Country of origin

Austria

First name

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Previous

Next

## IV. Other institutional issues related to checks and balances

### B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

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#### *Independence*

According to Art. 148a (6) of the Austrian Federal Constitution (B-VG), the Austrian Ombudsman Board (AOB) is an independent organ. The three Ombudsmen are elected by the National Council (Parliament) to represent the AOB independently and impartially. Each Ombudsman has a fixed tenure of six years that cannot be revoked by the parliament (Art. 148g (1) B-VG). The Constitutional Court can only decide on the loss of office in the event of a violation of the law (Art. 141 (e) B-VG).

Moreover, the AOB's financial autonomy underlines its independence. In line with Art. 148d (2) of the B-VG, the AOB discusses its own budget in the relevant committee and then in the plenary session of the National Council. Subsequently, the AOB's independence is ensured through direct discussions with the members of the parliament (MPs).

#### *Resources*

The budget has been increased steadily in recent years. In 2024, the budget is 15,400,000 Euros.<sup>1</sup> The AOB thus has sufficient resources to carry out its mandate. Currently, 93 permanent staff and approximately seven part-time staff and trainees are employed at the AOB.

#### *Powers and Capacity*

Since its establishment, the mandate of the AOB expanded and therefore its capacity to contribute to the rule of law increased. Originally, the AOB was entrusted with the task of investigating alleged maladministration of the national, regional, and local administration. It needs to investigate any complaint of alleged maladministration lodged by an individual (Art. 148a (1) B-VG). Additionally, it can start investigations on its own initiative if there are suspicions of maladministration (Art. 148a (2) B-VG).

Once the AOB identified maladministration, it can issue recommendations to the highest administrative authorities. Within a deadline of eight weeks, the authority concerned must either conform to the recommendations and inform the AOB accordingly or state in writing why the recommendations have not been complied with (Art. 148c B-VG). Recommendations as a way to enforce the rule of law have proven to be a successful method. The AOB enjoys the trust of the Austrian public authorities contributing to a high implementation level of the AOB recommendations.

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<sup>1</sup> [Volksanwaltschaft: Budget soll 2024 um 5,5 % steigen \(PK1180/13.11.2023\) | Parlament Österreich](#)

Moreover, the AOB reports on its recommendations in the annual report<sup>2</sup> and its activities annually to the National Council and the Federal Council (Art. 148d (1) B-VG). Next to the plenary discussions at the National and Federal Council, the reports and activities are also deliberated in a separate committee that has been specifically designed for the AOB only. This committee was designed by MPs who designate their resources to focus solely on the AOB. The efforts of the MPs to create a committee and subsequently discuss the reports and activities once more in the plenary illustrates their interests, cooperation, and trust in the AOB. This increases the capacity of the AOB to enforce the rule of law.

In addition to the annual reporting, the AOB can deliver special reports<sup>3</sup> any time to the National Council and the Federal Council on its observations on specific topics (Art. 148d (1) B-VG). The AOB has also the right to speak in front of the National Council when assisting in the disposal of petitions and citizens' initiatives presented to the National Council (Art. 148a (5) B-VG).

The AOB can also apply for a ruling on the lawfulness of an federal, regional, or local ordinance at the Constitutional Court (Art. 139(1)(6) in conjunction with Art. 148i (1) B-VG).

In 2012, the mandate of the AOB broadened with Austria's ratification of the Optional Protocol to the Convention Against Torture (OPCAT) and the Convention on the Rights of Persons with Disabilities (CRPD). Consequently, Art. 148a (3) B-VG was amended to include a preventive monitoring mandate. The mandate permits the AOB and its special Commissions to visit and inspect locations of deprivation of liberty (Art. 4 OPCAT), watch and check organs authorized to exert direct administrative power and compulsion such as the police, and visit institutions for persons with disabilities (Art. 16(3) CRPD). The AOB makes use of this right as often as possible. Therefore, it conducted 481 preventive monitoring visits in 2022.<sup>4</sup>

In 2017, the constitutional provision "Pensions for Victims of Children's Home Act" added to the AOB's mandate. With the provision, an independent Pension Commission was set up by law within the AOB to accommodate the pension of persons who suffered from violence in a home operated by the Federal Government, the Laender, and the church (Art. 15 Pensions for Victims of Children's Homes Act). A legislative amendment to the "Pensions for Victims of Children's Home Act" in 2023, illustrates the impact of the AOB. On the initiative of the AOB, the mandate of the Pension Commission was extended to additional victim groups. The appreciation and interests of the MPs for the AOB contributed to the AOB's capacity to advocate for the legislative amendment.<sup>5</sup>

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.

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According to Art. 148c of the B-VG, in conjunction with Art. 6 of the Austrian Ombudsman Act, the responsible federal, regional, or local authorities are obligated to comply with recommendations on

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<sup>2</sup> [Annual Report 2022 \(volksanwaltschaft.gv.at\)](https://www.volksanwaltschaft.gv.at/jahresberichte/2022); [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2022 - Monitoring Public Administration \(volksanwaltschaft.gv.at\)](https://www.volksanwaltschaft.gv.at/jahresberichte/2022)

<sup>3</sup> [Sonderbericht der Volksanwaltschaft Terroranschlag 2. November 2020](#); [Bericht der Volksanwaltschaft an den Wiener Landtag 2021](#); [Bericht der Volksanwaltschaft an den Wiener Landtag 2021](#)

<sup>4</sup> [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2022 - Monitoring Public Administration \(volksanwaltschaft.gv.at\)](https://www.volksanwaltschaft.gv.at/jahresberichte/2022) p. 481

<sup>5</sup> [Künftig Rente auch für Heimopfer, deren Partnerin bzw. Partner Einkommen bezieht - Artikel - Volksanwaltschaft](#)

measures to be taken in or by reason of a particular case addressed to them by the AOB. They shall do so within a term of eight weeks and inform the AOB accordingly or give the reasons in writing why the recommendation has not been complied with.

While recommendations and suggestions are always communicated to the relevant authorities, all general recommendations including the reactions of the concerned governmental department are also found in the annual reports of the AOB.<sup>6</sup> Specific recommendations that derive from individual cases and subsequent actions of the AOB and the concerned authority are frequently uploaded on the AOB website.<sup>7</sup> Therefore, the public can easily access all recommendations including government reactions. The availability of recommendations and consecutive activities creates transparency in the tracking process of recommendations.

Ordinarily, the recommendations and suggestions are followed-up and implemented by the authorities. The appreciation and trust in the AOB of the MPs (see above) as well as the federal and local authorities contribute to a high implementation rate of recommendations. Moreover, the weekly TV show “Bürgeranwalt” (People’s Advocate) assists in the implementation of recommendations as the public display of grievances may increase the willingness to rectify them (see below).

## E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives etc.)

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The AOB has various on-going initiatives to foster a rule of law culture.

### *Public Information Campaigns*

Among them is the campaign “One Woman in Five” referencing statistics that uncover that one woman in five living in Austria has been exposed to sexual or physical violence. The campaign was initiated in 2016 by the AOB. It serves as a public information campaign as well as an education initiative. As part of the campaign, every year a series of lectures is organized together with the Medical University of Vienna Department of Forensic Medicine.<sup>8</sup> The lectures connect the AOB with academics, representatives of women’s refuges, and students. The aim is to sensitize young

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<sup>6</sup> [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2022 - Monitoring Public Administration \(volksanwaltschaft.gv.at\)](#); [Annual Report 2022 \(volksanwaltschaft.gv.at\)](#); [Empfehlungsliste der Volksanwaltschaft und ihrer Kommissionen 2012 – 2022](#)

<sup>7</sup> [Missstandsfeststellungen der Volksanwaltschaft - Landes- und Gemeindeverwaltung - 2023](#)

<sup>8</sup> [Eine von Fünf - Volksanwaltschaft](#)

professionals on the topic and prepare them for their professional careers.<sup>9</sup> The lectures are summarized in a written anthology and published.<sup>10</sup>

Next to the lectures on women and violence, the AOB together with the Austrian League of Human Rights launched a campaign that concerns a tool to monitor the Universal Periodic Review process of the UN Human Rights Council in Austria in November 2023. With the online tool, any user can check on the implementation status of the recommendations submitted by the UN Human Rights Council in the past five years.<sup>11</sup>

### *Debates in National and Regional Parliaments*

In line with Art. 148d of the B-VG, the annual and special reports are discussed at the National Council as well as in the Parliaments of the Laender. Therefore, in April 2023 the AOB presented its 2022 special reports “Juveniles in Detention” and “Terrorist Attack in November 2, 2020” at the National Council. Subsequently, MPs asked questions.<sup>12</sup> Its annual report was discussed in June 2023, where MPs had the opportunity to ask questions. One of the prominent topics for questions was the situation in care homes.<sup>13</sup>

### *Contributions from Civil Society*

Another initiative is the strong involvement of CSOs. Once a year, the AOB organizes an NGO Forum where CSO representatives and persons affected exchange experiences on specific topics. This year the AOB, public authorities, CSOs, academics, and affected persons discussed poverty prevention and poverty reduction (Armutsvermeidung/ Armutsbekämpfung). In working groups, the participants deliberated on good practices, opportunities for improvement, and cooperation between authorities.<sup>14</sup>

Compared to the NGO Forum, the NGO Sounding Board is a less formal way to connect the AOB with NGOs. The Sounding Board is meeting quarterly to identify possible work intersections. The goal is to build or strengthen alliances among institutions to, for instance, cooperate in presswork. In 2023, the Sounding Board led to close collaboration between the AOB, Austrian Disability Ombudsman, Austrian Disability Council, and the NGO Austrian Initiative for Independent Living. All organizations cooperated in the country review process of the UN Committee on the Rights of Persons with Disabilities (UNCRPD). Together they coordinated their submissions to the UNCRPD and their presswork.<sup>15</sup>

### *Education Initiatives*

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<sup>9</sup> [Zum Nachschauen: „Doppelt benachteiligt? – Ein gewaltfreies Leben für ALLE Frauen!“ - Artikel - Volksanwaltschaft](#)

<sup>10</sup> [AÖF - eine von fünf - Gewaltschutz für Frauen in allen Lebenslagen \(aoef.at\)](#)

<sup>11</sup> [New monitoring tool shows where Austria falls short in terms of human rights - Artikel - Volksanwaltschaft](#)

<sup>12</sup> [952. Sitzung des Bundesrats vom 14. April 2023 \(952/BRSITZ/2023\) | Parlament Österreich](#)

<sup>13</sup> [Nationalrat diskutiert Tätigkeitsbericht der Volksanwaltschaft für 2022 | Pressedienst der Parlamentsdirektion – Parlamentskorrespondenz, 14.06.2023 \(ots.at\)](#)

<sup>14</sup> [NGO-Forum 2023: Volksanwaltschaft vernetzt Armutsbetroffene mit Behörden - Artikel - Volksanwaltschaft](#)

<sup>15</sup> [Press conference on the official country review of Austria by the UN CRPD Committee - Artikel - Volksanwaltschaft](#)

Since 2017, the AOB has been giving lectures to prospective police officers and prison guards about the application of human rights in their work and the preventive monitoring tasks of the AOB. These obligatory trainings constitute an integral part of the basic training of the police and prison guards.<sup>16</sup> In 2022, the AOB lectured 67 classes to police trainees<sup>17</sup> and 11 classes to prison guards.

Moreover, the AOB offers visits to students and professionals on the premises to learn more about the institution. During the visits, they can ask questions to staff and receive a lecture.<sup>18</sup>

Other - please specify

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The weekly ORF television program “Bürgeranwalt” (People’s Advocate) continues to be one of the AOB’s most important communication platforms. Since January 2002, the AOB has been informing the public about ongoing investigative proceedings regularly. One or two current cases are discussed, and the “Follow-up” section of the program revisits older cases to illustrate developments in the case. This approach often successfully solves the problem in question.

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<sup>16</sup> [Bundesrat Ernest Schwindsackl \(ÖVP, Steiermark\), 907. Sitzung des Bundesrates, 18:50 \(parlament.gv.at\)](#)

<sup>17</sup> [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022, Band 2: Präventive Menschenrechtskontrolle](#) p.14

<sup>18</sup> [Service - Volksanwaltschaft](#)