

# **AUSTRIA's Comments**

**on**

# **GREVIO's Report**

Vienna, August 2017

Federal Ministry of Health and Women's Affairs

Division IV, Department IV/4

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[www.bmgf.gv.at](http://www.bmgf.gv.at)

Vienna, 2017

## Table of Contents

Introduction .....	3
Executive Summary .....	5
<b>I. Purposes, definitions, equality and non-discrimination, general obligations.....</b>	<b>5</b>
A. General Principles of the Convention .....	5
B. Scope of application of the Convention and key definitions (Articles 2 and 3) .....	5
<b>II. Integrated policies and data collection.....</b>	<b>6</b>
A. Comprehensive and co-ordinated policies (Article 7).....	6
B. Financial resources (Article 8) .....	7
C. Non-governmental organisations and civil society (Article 9).....	7
D. Co-ordinating body (Article 10).....	8
E. Data collection and research (Article 11).....	8
<b>III. Prevention .....</b>	<b>12</b>
A. Awareness raising (Article 13) .....	12
B. Education (Article 14) .....	13
C. Training of professionals (Article 15) .....	13
D. Preventive intervention and treatment programmes (Article 16).....	15
E. Participation of the private sector and the media (Article 17).....	16
<b>IV. Protection and support .....</b>	<b>16</b>
A. Information (Article 19) .....	16
B. General support services (Article 20) .....	17
C. Specialist support services (Article 22), including shelters (Article 23) and support services for victims of sexual violence (Article 25) .....	17
D. Protection and support for child witnesses (Article 26) .....	20

<b>V. Substantive law</b> .....	<b>21</b>
A. Civil law .....	21
B. Criminal law .....	23
<b>VI. Investigation, prosecution, procedural law and protective measures</b> .....	<b>25</b>
A. Immediate response, prevention and protection (Article 50).....	25
B. Risk assessment and risk management (Article 51) .....	28
C. Emergency barring and protection orders (Articles 52 and 53).....	28
D. Victim support in legal proceedings (Article 55 paragraph 2).....	29
E. Measures of protection during investigations and judicial proceedings (Article 56).....	29
<b>VII. Migration and asylum</b> .....	<b>30</b>
A. Migration (Article 59).....	30
B. Gender-based asylum claims (Article 60) .....	31

## Introduction

Monaco and Austria were the first two countries to undergo the basic evaluation by GREVIO (*Group of experts on action against violence against women and domestic violence*) – the monitoring committee of the Istanbul Convention.

Austria's Country Report, based on the questionnaire set up by GREVIO, covering the Convention in its entirety, was coordinated and prepared by the National Coordination Centre for Violence against Women and submitted to GREVIO on 1 September 2016.

Based on Austria's Country Report, GREVIO held a dialogue with an expert delegation from Austria in Strasbourg on 8 November 2017 on issues emanating from the Report.

In addition, GREVIO made an evaluation visit to Austria from 28 November to 2 December 2016 and met with governmental and non-governmental representatives working in the field of violence against women.

Based on the gathered information, GREVIO set up a draft report based on which Austria could submit comments. Taking these into consideration, GREVIO drafted its final Report and submitted it to Austria on 8 July 2017.

The following comments refer to the conclusions and proposals from the final GREVIO Report.

GREVIO's Report and Austria's comments will be submitted to the Austrian Parliament according to Article 70, paragraph 2 of the Convention.



## **Executive Summary**

As to GREVIO's conclusions on the legal situation concerning protection orders and child witnesses, Austria would like to refer to proposal 41.

### **I. Purposes, definitions, equality and non-discrimination, general obligations**

#### **A. General Principles of the Convention**

**GREVIO urges the Austrian authorities to take measures to ensure that the provisions of the Istanbul Convention are fully implemented with regard to all women, including women with disabilities, asylum-seeking women and women with insecure residence status.** (proposal 1, paragraph 5).

Please refer to proposals 27a-f.

#### **B. Scope of application of the Convention and key definitions (Articles 2 and 3)**

**Noting the absence of a full legal definition of domestic violence, GREVIO invites the Austrian authorities to adopt a universally applicable legal definition of domestic violence in line with Article 3 b of the Istanbul Convention, which would include economic violence** (proposal 2, paragraph 8).

The adoption of a universally applicable legal definition of domestic violence, including economic violence, is not considered feasible within Austria's legal system. The introduction of such a definition might turn Austria's complex and multi-layered legislation on domestic violence into a rather inflexible and rigid system. However, economic violence can already amount to a form of domestic violence under Austrian law if it reaches a critical level; for example, denying financial support can constitute a breach of obligations under marriage laws and can hence be considered accordingly during divorce proceedings.

**GREVIO strongly encourages the Austrian authorities to ensure that a set of comprehensive policies in the fields of prevention, protection and prosecution exists in relation to all forms of violence against women, in particular in relation to female genital mutilation and forced marriage** (proposal 3, paragraph 10).

Please refer to proposal 4.

As stated in the Report, criminalisation of gender-based violence in Austria covers all forms of violence and is in line with the Convention.

Taking into consideration GREVIO's observation that efforts of prevention, protection and prosecution have focused primarily on domestic violence in the past, Austria acknowledges the importance of increased efforts to implement comprehensive policies concerning other forms of gender-based violence.

## **II. Integrated policies and data collection**

### **A. Comprehensive and coordinated policies (Article 7)**

**GREVIO strongly encourages the Austrian authorities to develop a long-term plan/strategy giving due importance to all forms of violence covered by the Istanbul Convention and based on consistent and on-going funding to allow for sustainable and comprehensive actions** (proposal 4, paragraph 18).

Please refer to proposals 3 and 8.

The National Action Plan (NAP) on the Protection of Women against Violence (2014-16) contains a range of individual measures of rather short duration, but also a range of long-term policies that will be continued in the future, such as: 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.

The institutionalised interdisciplinary and nationwide Working Group on the Protection of Women against Violence (IMAG) acts as a facilitator to develop policies and monitor implementation. In order for the Working Group to function efficiently, interim goals have



been set which will change over time in accordance with the progress made in their implementation.

## **B. Financial resources (Article 8)**

**GREVIO strongly encourages the Austrian authorities to expand significantly the budget allocated to the Federal Ministry of Health and Women's Affairs for its work in the area of preventing and combating violence against women** (proposal 5, paragraph 22).

In order to cover higher costs of the Violence Protection Centres in 2017, the Ministry of Finance has allocated an additional 250,000 Euros to the budget of the Federal Ministry of Health and Women's Affairs. It is expected to allocate another 250,000 Euros for women-specific projects in the course of the year.

**GREVIO strongly encourages the Austrian authorities to provide the legal basis necessary to ensure adequate and consistent funding to the various specialist support service providers** (proposal 6, paragraph 26).

With the exception of the Violence Protection Centres, women-specific support services are primarily funded by federal states (*Länder*) and municipalities. This must be considered when attempting to devise potential legal funding regulations. Although not all of the states have implemented legally binding funding regulations, providing adequate support services within the limits of budgetary constraints is generally a main priority.

## **C. Non-governmental organisations and civil society (Article 9)**

**GREVIO invites the Austrian authorities to ensure effective co-operation and referrals between government agencies and the specialist service sector in relation to all forms of violence and that the contracting out of services is on terms, particularly as regards guaranteed and stable funding levels, which allow NGOs to meet fully the needs of all victims** (proposal 7, paragraph 33).

Please also refer to proposal 6.

The ongoing cooperation between counselling services and government agencies is generally well perceived among relevant stakeholders and understood to ensure that victims receive high quality counselling. Nonetheless, there are continuous efforts to maintain and improve the quality of counselling, such as the development of curricula for training of staff,

frequent offers of free training courses or the preparation of counselling guidelines. On the other hand, government agencies regularly rely on the expertise of NGOs and keep track of recent developments in this sector.

#### **D. Coordinating body (Article 10)**

**GREVIO strongly encourages the Austrian authorities to assign the role of coordinating body to one or more fully institutionalised government entities, to equip these with clear mandates, powers and competences that are widely communicated and to allocate the necessary human and financial resources to these entities** (proposal 8, paragraph 37).

The Austrian coordinating body comprises of two entities, the Inter-Ministerial Working Group on the Protection of Women against Violence (IMAG) and the National Coordination Office on Violence against Women.

The IMAG is composed of representatives of line ministries, the federal states and NGOs, and allows for a direct exchange of information and discussion among major stakeholders. This includes setting policy priorities as well as supporting implementation, monitoring and evaluation of existing policies. If required, temporary sub-working groups on specific issues are set up, for example on victim-oriented work with perpetrators.

The National Coordination Office on Violence against Women is strictly a coordinating body at present. Its main tasks are gathering, analysing and publishing relevant information on violence-specific issues, with a specific focus on data collection.

#### **E. Data collection and research (Article 11)**

**GREVIO strongly encourages the Austrian authorities to take measures to monitor the prevalence of the forms of violence against women not previously assessed, in particular forced marriage and female genital mutilation** (proposal 9, paragraph 40).

Austria acknowledges the usefulness of a more detailed picture regarding the prevalence of different forms of violence.

**GREVIO strongly encourages the Austrian authorities to develop data categories for use by the law enforcement agencies on the type of relationship of the perpetrator to the victim that would allow the nature of their relationship to be more specifically documented** (proposal 10a, paragraph 45).

Austria recognises the need for further improving data collection and analysis. Thus, Austria has established an inter-ministerial working group in order to explore all possibilities.

**GREVIO strongly encourages the Austrian authorities to ensure that these and any other data categories in use are harmonised across the various sectors** (proposal 10b, paragraph 45).

Please refer to proposal 10a.

**GREVIO strongly encourages the Austrian authorities to make domestic violence against women and the gendered nature of other forms of violence more visible in the annual law enforcement agencies crime statistics and in the way this data is presented to the public. This would include the visible presentation of information on the number of homicides of women at the hands of men for reasons of their gender (gender-related killing of women)** (proposal 10c, paragraph 45).

Please refer to proposal 10a.

**GREVIO strongly encourages the Austrian authorities to ensure that information on all interventions and measures taken by law enforcement agencies such as emergency barring orders are documented electronically and in a comparable manner such that they can be used for the purpose of evidence-based policy-making rather than mainly for internal recording requirements** (proposal 10d, paragraph 45).

Please refer to proposals 10a and 11a.

**GREVIO strongly encourages the Austrian authorities to develop data categories for use by the criminal justice sector on the type of relationship of the perpetrator to the victim that would allow the nature of their relationship to be documented in more detail** (proposal 11a, paragraph 49).

Please refer to proposal 10a.

It needs to be noted that the main aim of court statistics is the effective management of court procedures in order to maintain a reliable, fast and high-quality judicial system.

Data collection and analysis with the aim of providing necessary information for policy development is considered important, while recognising special challenges such as limited personnel and financial resources. In addition an increasing demand for statistical data heightens the risk of data not being recorded or recorded wrongly. Therefore it is essential to balance the need for information against available resources.

Notwithstanding the manifold challenges, the improvement and harmonisation of data collection is a continued effort of the Austrian government.

**GREVIO strongly encourages the Austrian authorities to ensure that these and any other data categories in use are harmonised across the various sectors** (proposal 11b, paragraph 49).

Please refer to proposal 11a.

**GREVIO strongly encourages the Austrian authorities to pursue the existing plans of introducing a “unique person number” to trace offenders and the offences they are charged with across the various sectors** (proposal 11c, paragraph 49).

Please refer to proposal 10a and 11a.

**Reiterating the observations made by the Council of Europe Commissioner for Human Rights in his 2012 report on Austria, GREVIO thus encourages the Austrian authorities to ensure the collection of data from the civil justice sector on the number of civil law protection orders, the type of violence they cover as well as the sex, age and relationship of all parties involved** (proposal 12, paragraph 51).

Please refer to proposal 11a.

**GREVIO welcomes the intention expressed by the Federal Ministry of Health and Women's Affairs to bring the data categories in use by the Equal Treatment Commissions in line with the requirements of the Istanbul Convention and encourages the Austrian authorities to ensure their breakdown by type of offence, sex, age, relationship of the perpetrator to the victim and outcome of the case (proposal 13, paragraph 53).**

The Equal Treatment Commission will collect verified data on the type of infringement, sex and age of the victim, sex of the perpetrator, relationship of the perpetrator to the victim as well as the Commission's findings in accordance with the requirements of the Istanbul Convention.

**GREVIO encourages the Austrian authorities to take measures to improve the systematic and comparable collection of data by all hospitals, whether they have set up Victim Protection Units or not, on the number of victims of the different forms of violence against women, their sex, age and relationship with the alleged perpetrator (proposal 14, paragraph 56).**

The City of Vienna has established a network of all Victim (and Child) Protection Units in 2013 which presently involves nine hospitals, five of which are general public hospitals. Data collection is one of several important tasks of the network.

All Victim (and Child) Protection Units in Vienna's public hospitals are already collecting relevant data – especially regarding the sex and age of victims, the type of violence and the relation of the victim to the perpetrator – albeit not yet in a standardised way.

Since 2017, all public hospitals in Vienna are required to use a standardised documentation sheet in cases of violence, and the total number of victims supported by the hospitals' Victim (and Child) Protection Units is recorded by the Vienna Hospital Association<sup>1</sup>. Both measures are important steps towards the standardisation of data collection on the regional level.

Austria will examine further possibilities of standardised data collection by Victim (and Child) Protection Units, including central regulations.

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<sup>1</sup> Wiener Krankenanstaltenverbund (KAV)

**GREVIO encourages the Federal Office for Immigration and Asylum to introduce a data collection system that would allow asylum claims on the basis of gender-related persecution and their outcomes to be recorded** (proposal 15, paragraph 58).

The Federal Office for Asylum and Immigration will carefully evaluate the technical requirements in order to adapt the data collection system as suggested with due consideration of limited financial and organisational resources as the number of asylum applications has risen sharply since 2015.

**GREVIO encourages the Austrian authorities to invest more into the evaluation of existing policies and legislative measures to assess their level of implementation and victim satisfaction and to address, through research, forms of violence against women such as female genital mutilation and forced marriage or other traditional practices harmful to women not previously covered** (proposal 16, paragraph 61).

Austria acknowledges the importance of evaluation and research and will continue its efforts with due consideration of limited financial and human resources.

### **III. Prevention**

#### **A. Awareness raising (Article 13)**

**GREVIO encourages the Austrian authorities to acknowledge gender inequality as a root cause of violence against women and to take measures to increase gender equality, not only through legislation but also through awareness raising, public education and cultural change** (proposal 17, paragraph 67).

Austrian authorities are well aware of the fact that gender inequality is a root cause of violence against women. Apart from legal regulations against discrimination, diverse efforts have been and will be made to achieve *de facto* gender equality.

An instrument of special importance to achieve gender equality is gender mainstreaming/gender budgeting. Gender mainstreaming has been applied in Austria for more than 15 years on all levels, assessing the different effects political decisions may have on men and women. Moreover, an inter-ministerial Working Group on Gender Mainstreaming/Budgeting was established, connecting and fostering exchange between the different departments and governing bodies of Austria's administrative system. The working group initiates the exchange of good practices, develops

criteria for the implementation of the gender mainstreaming/budgeting strategy and evaluates ongoing projects, measures and laws.<sup>2</sup>

Further important tools to support the integration of gender equality in all areas of responsibility on the level of the Federal Government are the principle of effect-oriented budgetary management<sup>3</sup> and the requirement of impact assessments for major public measures (comprising all laws and measures of extraordinary budgetary effect)<sup>4</sup>. Both tools require taking into account the objective of achieving real equality between women and men.

**GREVIO strongly encourages the Austrian authorities to ensure a stronger role of the various federal ministries in conceptualising, implementing and evaluating public awareness-raising activities to ensure regular campaigns and programmes of national reach, including with the help of public broadcasting announcements. GREVIO further specifies that this would have to be accompanied by appropriate budgetary measures (proposal 18, paragraph 69).**

Austria acknowledges the need for public awareness-raising activities, taking into account the overall budgetary means available for measures against violence against women.

## **B. Education (Article 14)**

No proposals by GREVIO.

## **C. Training of professionals (Article 15)**

**GREVIO strongly encourages the Austrian authorities to introduce compulsory and harmonised training modules on violence against women and domestic violence for all health professions (proposal 19, paragraph 75).**

Early detection and documentation of violence against women (VAW) as well as professional emphatic interaction with VAW-affected patients by healthcare professionals is considered a high priority, and ongoing efforts will be continued. The harmonisation of training modules across all health professions as suggested is not considered the best way of approach. Rather, curricula will need to be adapted to the specificities of the respective health profession.

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<sup>2</sup> <http://www.imag-gmb.at/?lang=en>

<sup>3</sup> Art 51(8), 51(9) and 13 (3) of the Federal Constitution (Bundes-Verfassungsgesetz)

<sup>4</sup> §§17,18, 58 and 68 of the 2013 Federal Budget Law (Bundeshaushaltsgesetz)

**GREVIO strongly encourages the Austrian authorities to ensure sustainable and stable funding for training sessions on all issues listed in Article 15 of the Istanbul Convention carried out by the specialist women’s support services for law enforcement agencies** (proposal 20, paragraph 77).

Adequate training of police officers in cooperation with specialised women’s support services according to Article 15 of the Istanbul Convention will remain an important concern for law enforcement agencies in Austria.

**GREVIO strongly encourages the Austrian authorities to provide for compulsory vocational training for legal professionals on all issues listed in Article 15 of the Istanbul Convention** (proposal 21, paragraph 79).

Basic training for judges and public prosecutors includes an obligatory three-day training course on human rights issues not yet mentioned in Austria’s Report to GREVIO.

Adequate training of judges, prosecutors and lawyers is considered very important, and ongoing efforts will be continued.

Accordingly, seminars for judges, prosecutors and lawyers on equal treatment, violence and the protection of victims are offered annually, and the Austrian Lawyers Academy offers seminars on psychosocial court assistance for lawyers, as well. Trainee lawyers are required to attend forty-two half-days of further training<sup>5</sup>. Seminars on equal treatment, violence, the protection of victims and psychosocial court assistance can be selected with a duration of up to four half-days.

However, it has to be taken into account that contrary to initial training obligations, mandatory on-the-job training for judges and prosecutors might be in conflict with judicial independence.

Furthermore, a general obligation for all judges and prosecutors to attend seminars on equal treatment, violence and the protection of victims independent of their specific field of action (e.g. law of tenancy, commercial law, etc.) would take training efforts too far.

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<sup>5</sup> Guidelines for the Training of Trainee Lawyers (Richtlinien für die Ausbildung von Rechtsanwaltsanwärtern)



**GREVIO strongly encourages the Austrian authorities to develop a training manual on how to identify victims of gender-based violence in the asylum process and how to grant asylum or subsidiary protection and to provide for compulsory training for immigration and asylum officials** (proposal 22, paragraph 81).

The Federal Office for Asylum and Immigration recognises the need for further adaptation of its training manual(s) relating to the identification of victims of gender-based violence.

#### **D. Preventive intervention and treatment programmes (Article 16)**

**Recalling the obligation contained in Article 16, paragraphs 1 and 3, in particular as regards the emphasis on the safety of victims of domestic violence, GREVIO encourages the Austrian authorities to reinforce the efforts underway to ensure the systematic victim-orientation of all perpetrator programmes** (proposal 23a, paragraph 86).

Austria acknowledges the need for victim-orientation of perpetrator programmes and recognises the implementation of nationwide victim-oriented perpetrator programmes as an important tool for the prevention of (further) domestic violence.

Based on legal provisions (Code of Criminal Procedure), obligatory victim-oriented perpetrator programmes can be ordered by the court / prosecutor and are financed by the Ministry of Justice. They are offered exclusively by the probation service “Neustart”.

Since perpetrator programmes are, at least to some extent, also a form of treatment – be it psychiatric treatment, psychological counselling or a form of psychotherapy – they still require consent by the perpetrator as a prerequisite. Compulsory treatment is possible only within narrow constitutional limits.

Nevertheless, Austria recognises the importance of court orders for the participation in perpetrator programmes and the respective awareness among judges and social workers of the Child and Youth Support Agencies.

Voluntary perpetrator programmes are offered by a variety of agencies. Continued efforts are made to provide the necessary budgetary means to offer nationwide victim-oriented perpetrator programmes as well as shared standards.

Recalling the obligation contained in Article 16, paragraphs 1 and 3, in particular as regards the emphasis on the safety of victims of domestic violence, GREVIO **encourages** the Austrian authorities to use all available means to ensure wider attendance of programmes for domestic violence perpetrators (proposal 23b, paragraph 86).

Please refer to proposal 23a.

### **E. Participation of the private sector and the media (Article 17)**

GREVIO welcomes initiatives taken by certain private sector entities and public media corporations and **invites** the Austrian authorities to continue to encourage the private sector to take an active part in preventing and combating violence against women in all its forms. GREVIO refers in this regard to a publication on Article 17 of the Istanbul Convention on implementing Article 17 (proposal 24, paragraph 90).

Austria recognises the importance of the private sector to take an active part and will continue its efforts to encourage further involvement.

## **IV. Protection and support**

### **A. Information (Article 19)**

GREVIO **invites** the Austrian authorities to continue the provision of information to victims of violence against women and to ensure that minority language speakers have all information available to them (proposal 25, paragraph 94).

Austria recognises the importance of the provision of relevant information to victims of violence in a language that can be understood by the victim and will maintain the broad range of (multilingual) information material available and the extensive information rights under procedural law as already outlined in Austria's Report to GREVIO.

## **B. General support services (Article 20)**

**GREVIO strongly encourages the Austrian authorities to ensure nation-wide implementation of the legal obligation resulting from Article 8e of the Federal Hospitals Act to set up Child and Victim Protection Units and to monitor and evaluate its implementation** (proposal 26, paragraph 97).

The Ministry of Health will evaluate the nationwide implementation of Victim (and Child) Protection Units.

As to the implementation of Victim (and Child) Protection Units, please also refer to proposal 14. Concerning efforts to ensure relevant training for health professionals please refer to proposal 19.

## **C. Specialist support services (Article 22), including shelters (Article 23) and support services for victims of sexual violence (Article 25)**

**GREVIO urges the Austrian authorities to ensure generally that the specialist support services meet the demands of victims, irrespective of the form of violence they experienced or the particular realities and compounding difficulties they face and in particular to aim at a comprehensive strategy for service provision by conducting a needs assessment on the number, types and geographical location of services required by victims of all the different forms of violence** (proposal 27a, paragraph 107).

Please refer to proposals 27b-g.

Austria acknowledges the need for a comprehensive system of adequate support services for victims of all types of gender-based violence and will continue its efforts in that respect, notwithstanding limited budgetary and human resources.

The diverse and wide-ranging network of women-specific counselling facilities is open to all women in need. Restricted access to women's shelters for specific groups of victims is at least partially compensated by other options available.

Despite austerity programmes introduced since the financial crisis in 2007/2008, the broad range of support services for female victims of violence has not only been maintained, but it has been broadened. Moreover, financial resources for Violence Protection Centres have been increased substantially.

As to GREVIO's observation in paragraph 101 that there are no dedicated specialist support services for cases of sexual harassment, Austria would like to point out that most women-specific support services provide support in cases of sexual harassment, especially those specialised on sexual violence. Hence, specific support services for sexual harassment are

not considered to be necessary. Furthermore, in cases of sexual violence in the workplace, support is also provided by the Ombud for Equal Treatment<sup>6</sup>.

**GREVIO urges the Austrian authorities to ensure that sexual violence (including rape) counselling services are available in each of the nine provinces** (proposal 27b, paragraph 107).

Austria recognises the need for specific counselling services for victims of sexual violence and will continue its efforts to improve availability.

**GREVIO urges the Austrian authorities to set up more specialist support services for victims of forced marriage and female genital mutilation** (proposal 27c, paragraph 107).

Austria will continue its efforts to improve support of victims of forced marriage and female genital mutilation, a problem which has increased and might further increase with further migration.

Apart from the specialised support agency for victims of forced marriage named “Orient Express”, which was already explicitly mentioned in Austria’s Report to GREVIO, Austria would like to draw attention to some further relevant measures that have been set in the past and that GREVIO might not have been aware of yet.

In October 2016, an intersectoral nationwide Working Group on Abduction and Forced Marriage<sup>7</sup> was established under the leadership of “Orient Express”<sup>8</sup>. The Group focuses on policy development.

The work of “Orient Express” was further strengthened as public funding has been provided for a Coordination Group on Abduction and Forced Marriage<sup>9</sup> since January 2017.

On the regional level, Vienna has already introduced a broad range of measures. In 2007, the 24-hours women’s emergency hotline has implemented a regional Task Force on Forced Marriage that works to improve prevention, protection and support in Vienna and focuses on cooperation and support in individual cases. In the same year, the City of Vienna has also established an intersectoral female genital mutilation (FGM) advisory board including NGOs. Furthermore, specific counselling is provided by the Women’s Health Centre “FEM Sued” of the City of Vienna and the NGO “African Women's Organization”, which also focusses on awareness-raising among African and Arabian communities.

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<sup>6</sup> <http://www.gleichbehandlungsanwaltschaft.at/site/6427/Default.aspx>

<sup>7</sup> Arbeitskreis “Verschleppung und Zwangsheirat”

<sup>8</sup> [http://www.orientexpress-wien.com/en/we\\_for\\_women/counselling/](http://www.orientexpress-wien.com/en/we_for_women/counselling/)

<sup>9</sup> Koordinationsstelle “Verschleppung und Zwangsheirat”

As to medical treatment, two hospitals, both located in Vienna, have specialised units that provide reconstructive surgery for victims of FGM, and special trainings are offered to relevant healthcare professionals (e.g. in Vienna, special training is given to all childbirth departments of all hospitals and to other medical groups).

Moreover, specific information material on how to support girls and women affected by FGM has been developed for different professional groups, and specific information material on FGM for schools was further enhanced<sup>10</sup>.

**GREVIO urges the Austrian authorities to set up adequate support services, including shelter accommodation, for women victims of domestic violence with mental health issues, intellectual or physical disabilities that require medical care or support** (proposal 27d, paragraph 107).

The diverse and wide-ranging network of women-specific facilities is open to all women in need.

Apart from an obligation for all facilities to offer barrier-free access, there are further specific measures and several specific facilities for handicapped victims and elderly victims in need of care, as partially outlined in Austria's Report to GREVIO.

Furthermore, regulations under the Equal Treatment Acts provide protection against discrimination in accessing goods and services (such as counselling) on the grounds of disability.

Support structures also exist for victims of violence with a history of substance abuse or mental health issues, including accommodation in a shelter under certain conditions. In cases of therapeutic need for women who are exposed to domestic violence, accelerated admission can take place in an appropriate therapy facility, e.g. for drug addicts in Vienna.

Nevertheless, there are limits to the services that can be provided depending on the individual circumstances. Austria acknowledges the need for increased sensitivity and further measures concerning these particularly vulnerable groups, as well as for close cooperation between the relevant institutions involved.

**GREVIO urges the Austrian authorities to ensure that domestic violence victims with a history of substance abuse receive access to adequate support services, including accommodation** (proposal 27e, paragraph 107).

Please refer to proposal 27d.

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<sup>10</sup> <http://www.politik-lernen.at/content/site/gratisshop/shop.item/105713.htm>

**GREVIO urges the Austrian authorities to remove funding requirements and other bureaucratic obstacles that prevent access to services and shelters for asylum-seeking women and undocumented women and to ensure the same for recognised refugees and those with subsidiary protection** (proposal 27f, paragraph 107).

Counselling services are open to all female victims of violence, regardless of their residence status, hence also to asylum-seeking and undocumented women.

Access to women shelters is regulated on the regional level, and restrictions for asylum-seeking and undocumented women in some regions are at least partially compensated by special accommodation facilities for female refugees.

**GREVIO urges the Austrian authorities to ensure financial and human resources are available to enable the above** (proposal 27g, paragraph 107).

Please refer to proposal 27a.

**GREVIO encourages the Austrian authorities to enable the longer-term needs of all women victims and their children to be met by providing adequate levels and stability of funding** (proposal 28, paragraph 111).

Please refer to proposal 27a.

#### **D. Protection and support for child witnesses (Article 26)**

**Recalling the obligation contained in Article 26 of the Istanbul Convention, GREVIO encourages the Austrian authorities to enable violence protection centres to offer timely help and support to child witnesses to avoid preventable emotional distress to such children** (proposal 29, paragraph 120).

Austria will continue its efforts to offer high-quality support to child witnesses of domestic violence in a way that keeps emotional distress as low as possible. However, the notion of declaring which agencies need to be appointed to fulfil the obligations under Article 26 of the Istanbul Convention is rejected. The Convention leaves it to the discretion of the Party how to best protect and support child witnesses.

## V. Substantive law

### A. Civil law

**GREVIO invites the Austrian authorities to consider the use of disciplinary measures under the Civil Service Act in relation to the misconduct or failure of state officials to take appropriate action in relation to cases of violence against women and domestic violence** (proposal 30, paragraph 127).

Adequate regulations are already in place.

The Official Liability Act (“Amtshaftungsgesetz”)<sup>11</sup> provides for state liability in cases of unlawful, culpable action of state organs exercising public authority – these are state organs at the federal, provincial and municipal authority levels, other bodies of public law and social insurance institutions.

An unlawful, culpable action can also be an omission if the organ was obliged to act, and acting in accordance with that obligation would have prevented the damage from occurring.

In case of an unlawful, culpable action, disciplinary measures against the state organ will be taken.

**GREVIO invites the Austrian authorities to make more use of the awarding of compensation during criminal proceedings and to ensure that access to claims for compensation is available to all victims of the forms of violence covered by the Istanbul Convention** (proposal 31, paragraph 132).

GREVIO’s criticism that referring non-Austrian victims of crime to the compensation schemes available in their home countries in practice presents an insurmountable burden fails to consider that victims are eligible for support, including in compensation matters. Migrant victims of human trafficking are entitled to support even if they unlawfully reside in Austria.

Furthermore, there seems to be a misunderstanding regarding the actual regulation in place. Compensation under the Austrian Victims of Crime Act (Verbrechensopfergesetz – VOG) is also possible if a victim waives his or her right to claim compensation from the perpetrator during criminal proceedings – this is not equivalent to waiving compensation as such (as referred to in Article 8, paragraph 3 of the Law on Victims of Crime). Only the latter case and compensation actually provided by the perpetrator lead to a loss of the equivalent claim according to the VOG.

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<sup>11</sup> [https://www.ris.bka.gv.at/Dokumente/Erw/ERV\\_1949\\_20/ERV\\_1949\\_20.html](https://www.ris.bka.gv.at/Dokumente/Erw/ERV_1949_20/ERV_1949_20.html)

Hence, Austria rejects the criticism in paragraph 130 concerning a lack of information on the impact the victim's choice will have on state compensation (as there is no consequence) and once more draws attention to the extensive victims' rights to be informed outlined in section 5.6. of Austria's Report to GREVIO, including information on the possibilities to receive compensation<sup>12</sup> and free psychosocial and legal court assistance<sup>13</sup>.

Possibilities to claim compensation during criminal proceedings are further supported by the fact that in case of necessity, the judge can appoint an expert to assess damages and pain periods without any costs arising for the victim. Hence, also the concern expressed in paragraph 131 that more use should be made of the possibility to award compensation under criminal proceedings is rejected.

**Recalling the importance of Article 31 of the Istanbul Convention, GREVIO strongly encourages the Austrian authorities to step up measures to ensure that the safety and needs of child witnesses of domestic violence are guaranteed in child custody decisions** (proposal 32, paragraph 138).

Apart from a dense network of support agencies for child victims of violence, extensive efforts have been made to improve vocational training of employees of family court assistance facilities: In addition to a comprehensive and job-related annual training programme, further ad-hoc programmes, many of which relate to child custody and domestic violence, are offered. The number of job-related external training courses has risen from around 50 in 2016 to 140 in 2017. Furthermore, specific countrywide in-house training programmes are offered in order to guarantee uniform application of training content. These specific programmes, some of which relate to child custody and domestic violence, are developed by the management of family court assistance facilities in close coordination with the relevant departments of the Federal Ministry of Justice.

Specific training offers also exist for family judges focussing on child welfare and domestic violence in general.

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<sup>12</sup> § 10 (2) of the Criminal Procedure Code (StPO)

<sup>13</sup> § 70 of the Criminal Procedure Code (StPO)



## **B. Criminal law**

**GREVIO invites the Austrian authorities to introduce criminal legislation that would cover the intentional conduct set out in Article 36, paragraph 1 c of the Istanbul Convention.** (proposal 33, paragraph 143).

The GREVIO Report claims gaps in implementing Article 36 of the Istanbul Convention concerning causing another person to engage in non-consensual acts of sexual nature with a third person and the difference between sexual acts against the will of a victim versus non-consensual sexual acts.

This notion is rejected since Austria's legislation fully covers the aforementioned „gaps“. Please refer to the following explanation:

**Causing another person to engage in non-consensual acts of sexual nature with a third person** is – depending on the circumstances – covered by §§ 201 (rape), 202 (sexual coercion), 205a (violation of the right to sexual self-determination) or 218 (sexual harassment) in combination with the general provision of § 12 (instigation or aiding and abetting) of the Austrian Criminal Code (StGB).

### **Sexual acts against the will of a victim versus a non-consensual sexual act**

Despite the fact that the Austrian Criminal Code refers to sexual acts against the will of a victim instead of a non-consensual act, no cases have been reported that would have been covered by the latter but not by § 205a StGB. Even if the law would require a non-consensual act, there would not be a difference in practice as the intent of the perpetrator has to comprise that fact as well. Therefore, if a victim remains passive, the perpetrator must be aware of the fact that this behaviour is not an implicit consent, and this must be covered by his intent. If the perpetrator is aware of the fact that the victim does not consent to the sexual act, the perpetrator is also aware of the fact that the sexual act is against the victim's will.

**GREVIO invites the Austrian authorities to introduce a specific criminal offence of psychological violence to capture more adequately the criminal conduct covered by Article 33 of the Istanbul Convention** (proposal 34, paragraph 145).

GREVIO implies that Austria does not comply with Article 33 of the Istanbul Convention for lack of a specific criminal offence of psychological violence. This notion is rejected for the following reasons:

The Convention does not necessarily require having a specific offence of psychological violence but that the parties shall take the necessary legislative or other measures to ensure

that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

As pointed out in the Explanatory Report to the Convention "... *The extent of the offence is limited to intentional conduct which seriously impairs and damages a person's psychological integrity which can be done by various means and methods. The Convention does not define what is meant by serious impairment. Use must be made of coercion or threats for behaviour to come under this provision.*"

The Austrian criminal law fulfils this requirement. There are three provisions that cover both means of Article 33 of the Convention: (serious) coercion<sup>14</sup> and menacing threat<sup>15</sup>. These provisions do not require serious damage or impairment of a person's psychological integrity, they only refer to the means of compelling another person by means of violence or menacing threat<sup>16</sup> or wilfully seeking to frighten and disconcert the victim<sup>17</sup>, regardless of whether or not – in this specific situation – the victim's psychological integrity is impaired.

The main provisions covering all cases of psychological violence that result in a serious impairment of a person's psychological integrity – without the requirement of special means like coercion or threat – represent (serious) bodily harm<sup>18</sup>.

Bodily harm also includes provoking the onset or causing the aggravation of a physical or mental illness. These circumstances must be clinically significant from a medical perspective, which complies with the requirement of a serious impairment of a person's psychological integrity outlined in the Convention (since the Convention explicitly does not include a definition of the word "serious", it is left to the member states to define this term in domestic law).

Bodily harm also covers cases where the perpetrator intends to provoke the onset (or cause the aggravation) of a physical or mental illness even if that behaviour has not yet resulted in a physical or mental illness. In such cases, the requirements of liability of attempt<sup>19</sup> are fulfilled, and the person will be punished for attempted bodily harm. Furthermore, it should be pointed out that concerning the requirement of intent it is not necessary that the perpetrator acts with intent to harm the victim. A person already acts intentionally as required under § 83 StGB if that person is aware of a substantial risk of damage to the health of the victim caused by the perpetrators behaviour and, with regard to the circumstances, takes that risk<sup>20</sup>.

<sup>14</sup> §§ 105 and 106 of the Criminal Code (StGB)

<sup>15</sup> § 107 of the Criminal Code (StGB)

<sup>16</sup> §§ 105 and 106 of the Criminal Code (StGB)

<sup>17</sup> § 107 of the Criminal Code (StGB)

<sup>18</sup> § 83 StGB covers bodily harm, § 84 StGB covers serious bodily harm.

<sup>19</sup> § 15 of the Criminal Code (StGB),

<sup>20</sup> Definition of intent under § 5 (1) of the Criminal Code (StGB)

## **VI. Investigation, prosecution, procedural law and protective measures**

### **A. Immediate response, prevention and protection (Article 50)**

**GREVIO strongly encourages the Austrian authorities to take further measures to improve the collection of evidence in cases of domestic violence, stalking, forced marriage, female genital mutilation, rape and sexual violence, so that reliance on the victim's testimony is lessened** (proposal 35a, paragraph 155).

As done already during GREVIO's on-site visit, Austria would like to once more draw attention to the fact that in many cases, evidence other than the statement of the victim is either not available or not sufficient to achieve a conviction. But notwithstanding the fact that the importance of the victim's statement is intrinsic to cases of domestic and sexual violence, efforts to improve collection of further evidence will be continued.

As to efforts concerning forensic evidence, please refer to section 3.8. of Austria's Report to GREVIO.

**GREVIO strongly encourages the Austrian authorities to step up measures to assess the real risk of re-offending in domestic violence cases in order to make more appropriate use of pre-trial detention where warranted** (proposal 35b, paragraph 155).

Austria recognises the need to further improve assessment of the real risk of re-offending in domestic violence cases and would like to draw attention to the following measures:

The Ministry of Interior Affairs is presently implementing a standardised risk assessment tool that will be applied by law enforcement officers throughout Austria. The respective assessment results will be made available to the public prosecutor in charge.

Moreover, the Ministry of Justice is presently analysing the recent case referred to in paragraph 154 and footnote 26 (which happened on 15 December 2016, not 16 December as stated) and assessing the use of pre-trial detention. In addition, a meeting with representatives of Violence Protection Centres, police authorities, the Public Prosecution Authority of Vienna and the Senior Prosecution Authority of Vienna in the Ministry of Justice on 20 April 2017 resulted in an agreement to improve information exchange and communication between Violence Protection Centres, police and public prosecution on the risk of re-offending in order to ensure an immediate follow-up to risk assessments undertaken by Violence Protection Centres and to try to develop a common understanding of

risk factors for re-offending based on indicators that will be provided by the Violence Protection Centres. A follow-up meeting is planned for autumn 2017.

**GREVIO urges the Austrian authorities to ensure more is done to demonstrate a sensitive approach towards victims who report rapes and other forms of sexual violence, for example by setting up rape crisis or sexual violence referral centres in all nine provinces staffed by specially trained professionals** (proposal 36, paragraph 157).

Austria acknowledges the high importance of sensitive treatment of victims of rape and other forms of sexual violence and the need for further improvement concerning the holistic support of victims of sexual violence.

As to paragraph 156 and in order to avoid misunderstandings, Austria would like to draw attention to the fact that particularly vulnerable victims may ask to be questioned by a person of the same gender during the investigation proceedings provided that an officer of the same gender is available.<sup>21</sup>

**GREVIO strongly encourages the Austrian authorities to ensure that prosecution services resort to all possible measures in order to ensure criminal justice for all forms of violence covered by the Istanbul Convention** (proposal 37, paragraph 160).

Austria acknowledges the high importance of resorting to all possible measures in order to ensure criminal justice for all forms of violence covered by the Istanbul Convention.

However, attention is drawn to the fact that it is a prerequisite for the indictment that a conviction is probable<sup>22</sup>, which means that there is a chance of more than 50% that the accused will be convicted. If all evidence available makes a conviction appear improbable, e.g. because the victim refuses to testify and also further investigation does not lead to sufficient evidence, the prosecutor cannot indict the suspect.

**GREVIO urges the Austrian authorities to introduce exceptions to the use of diversionary measures in domestic violence and stalking cases** (proposal 38, paragraph 162).

Austria rejects the proposal to introduce exceptions to the use of diversionary measures in domestic violence and stalking cases because this is neither considered to be in the best interest of victims of domestic violence and stalking nor constitutionally sound. Austria also

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<sup>21</sup> § 66a (2) no. 1 of the Code of Criminal Procedure (StPO)

<sup>22</sup> § 210 (1) of the Code of Criminal Procedure (StPO)

rejects the strong criticism of the use of diversionary measures in cases of domestic violence which are not based on any statistics that would support this strong criticism.

The wellbeing and safety of victims with regard to diversionary measures is ensured by the following complex system of criteria that need to be met:

- a criminal sanction is not necessary to prevent the suspect from committing criminal acts
- a criminal sanction is not necessary to counteract that other persons commit criminal acts
- the guilt of the suspect is not regarded as grave according to § 32 of the Austrian Criminal Code (StGB) – please refer also to proposal 47
- the crime did not result in the death of a person (except for negligent acts, e.g. causing a traffic accident, that resulted in the death of a close relative)
- no penalty of more than five years imprisonment is prescribed
- not applicable to crimes against sexual integrity with a penalty of more than three years imprisonment
- the interests of the victim must be examined and promoted.

Furthermore, Austria would like to draw attention to a study funded by the European Union on “Restorative justice in cases of domestic violence” from 2015<sup>23</sup> that compares victim-offender mediation in cases of intimate partner violence in a number of EU-Member States. Austria was found to have developed a distinct methodology for partner violence and was considered a best practice example.

**GREVIO invites the Austrian authorities to collect data on the number of cases of violence against women, including domestic violence, that are dealt with through diversionary measures, broken down by type of measure** (proposal 39, paragraph 164).

Please refer to proposals 10a and 11a.

**GREVIO strongly encourages the Austrian authorities to ensure that victim-offender mediation does not replace criminal justice in cases of violence against women** (proposal 40, paragraph 168).

Austria rejects the proposal due to the fact that victim-offender mediation actually constitutes a measure of criminal justice<sup>24</sup> safeguarding the interests of the victim to the greatest extent

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<sup>23</sup> 2015: Restorative justice in cases of domestic violence. Best practice examples between increasing mutual understanding and awareness of specific protection needs by Dr.in Birgitt Haller and Dr.in Veronika Hofinger (IRKS), <http://www.ikf.ac.at/projekte.htm>

<sup>24</sup> § 204 of the Code of Criminal Procedure (StPO)

possible and does not replace criminal justice, as stated by GREVIO. Hence, Austria considers its law fully in line with Article 48 of the Convention. Furthermore, it needs to be stated that a number of (international) documents highlight the importance of victim-offender mediation<sup>25</sup>.

As to the regulation in place, Austria would like to further explain the following: Victim-offender mediation is not obligatory for judicial authorities and is only permissible if certain criteria are met – please refer to proposal 38. Victim-offender mediation is also not mandatory for the victim<sup>26</sup>, and the rights and interests of the victim need to be safeguarded during all diversionary measures<sup>27</sup>.

## **B. Risk assessment and risk management (Article 51)**

No proposals by GREVIO.

## **C. Emergency barring and protection orders (Articles 52 and 53)**

**GREVIO encourages the Austrian authorities to ensure that protection orders are effectively applied in relation to all forms of violence, including for the prevention of forced marriage and female genital mutilation, and that existing gaps in the system of emergency barring and protection orders are closed in, particularly in respect of children and stalking victims (proposal 41, paragraph 179).**

Austria will certainly continue to further improve the implementation of the existing system of protective instruments such as police emergency barring orders, civil protection orders and additional measures under criminal law such as contact bans – please refer to proposal 35b.

Furthermore, there is also a need for clarification as to paragraphs 175 and 176. Interim injunctions are not automatically extended to children of the person at risk (independent of their age), although a prohibition to enter the residence and its immediate vicinity will be effective also for children living in the same household as the person at risk. However, a prohibition to meet or contact the person at risk would refer only to that person and not to his or her children (independent of their age).

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<sup>25</sup> 2015: Restorative justice in cases of domestic violence. Best practice examples between increasing mutual understanding and awareness of specific protection needs by Dr.in Birgitt Haller and Dr.in Veronika Hofinger (IRKS), <http://www.ikf.ac.at/projekte.htm>

<sup>26</sup> See § 204 (2) of the Code of Criminal Procedure (StPO): “The injured person shall be included in the efforts for an out-of-court compensation for the act to the extent he/she is willing to do so.”

<sup>27</sup> See § 206 of the Code of Criminal Procedure (StPO): “When proceeding according to this chapter of the law, the interests of the injured parties have always to be taken into consideration and to be supported as much as possible...”

The Child and Youth Welfare Office may apply for an interim injunction for “protection against violence in residential dwellings”<sup>28</sup> and for “general protection against violence”<sup>29</sup> as well as for its enforcement if the other legal representative (the person at risk) has not made a necessary request without delay.<sup>30</sup> Furthermore, the court which issues or rejects an interim injunction for “protection against violence in residential dwellings” with a minor as one of the parties has to inform the Child and Youth Welfare Office.<sup>31</sup>

#### **D. Victim support in legal proceedings (Article 55, paragraph 2)**

**GREVIO invites the Austrian authorities to consider amending the eligibility criteria for psycho-social and legal court assistance to ensure that all child (direct or indirect) victims may benefit from such assistance** (proposal 42, paragraph 184).

The eligibility criteria for psychosocial and legal court assistance<sup>32</sup> contain no age limit. Furthermore, victims of crimes against sexual integrity who are not yet 14 years old are entitled to psychosocial court assistance in any case<sup>33</sup> (meaning without establishing any specific need for such assistance; legal assistance is not excluded but possible if the need is established).

Child witnesses, though not entitled to psychosocial and legal court assistance, have extensive rights to safeguard their support and wellbeing. These comprise, e.g., the right to be accompanied by a person of trust<sup>34</sup>, the right to refrain from testifying<sup>35</sup> or the right to request adversary questioning<sup>36</sup> (please refer to section 5.6. of Austria’s Report to GREVIO).

#### **E. Measures of protection during investigations and judicial proceedings (Article 56)**

**GREVIO invites the Austrian authorities to prioritise the safety of the victim through adequate measures to decrease the opportunities for the perpetrator to encounter and possibly intimidate the victim in the context of court proceedings** (proposal 43, paragraph 187).

Apart from the application of procedural law that allows for specific measures to avoid direct confrontation of the victim with the perpetrator (e.g. adversary questioning, please refer to

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<sup>28</sup> § 382b of the Enforcement of Judgments Act (EO)

<sup>29</sup> § 382e of the Enforcement of Judgments Act (EO)

<sup>30</sup> § 211 (2) General Civil Code (ABGB)

<sup>31</sup> § 382c (3) of the Enforcement of Judgments Act (EO)

<sup>32</sup> § 66 (2) Code of Criminal Procedure (StPO)

<sup>33</sup> § 66 (2), second sentence of the Code of Criminal Procedure (StPO)

<sup>34</sup> § 160 of the Code of Criminal Procedure (StPO)

<sup>35</sup> §§ 156 of the Code of Criminal Procedure (StPO)

<sup>36</sup> § 165 of the Code of Criminal Procedure (StPO)

Austria's Report section 5.6.), this issue is considered to be mainly of organisational nature (e.g. clear directions for perpetrators and victims to avoid encounters in their respective summons). Further efforts have been made through structural improvements in the context of renovations.

## VII. Migration and asylum

### A. Migration (Article 59)

**GREVIO invites the Austrian authorities to harmonise the conditions and criteria for sponsored spouses to obtain autonomous residence status under the Residence and Settlement Act and remove any differences linked to the nationality of the sponsoring and abusive spouse** (proposal 44, paragraph 194).

There seem to be some misunderstandings as to the regulations in place and the reasoning behind them which Austria would like to clarify: As noted by GREVIO, the various regulations regarding independent rights of residence for victims of violence are very similar in wording. The differences in wording are due to EU legislation and its implementation on the national level. Nevertheless, all victims of spousal abuse and forced marriage fall under special hardship clauses, independent of their residence status or nationality.

In the event of the family's dissolution, the criteria for an autonomous residence permit usually in place – such as proof of health insurance, sufficient income, etc. – are waived under the same conditions for EEA nationals and their third country national partners as for third country nationals, mentioned in § 27 of the Residence and Settlement Act.

As to the different regulations mentioned in paragraph 191 concerning time limits, the following clarification is given: The victim of spousal abuse has to inform the authority immediately (“unverzüglich”), which, according to jurisprudence, means that information has to be provided without undue delay – at the latest within one month according to the provisions of the Residence and Settlement Act. However, in both cases (EEA nationals and their spouses, and spouses of third country nationals and of Austrians) this “deadline” is not an absolute one. The authority must consider the specific circumstances of each case when deciding if the information was provided without undue delay.

Paragraph 57 of the Asylum Act applies to victims who are third-country nationals – independent of the nationality of the abusive spouse.



## **B. Gender-based asylum claims (Article 60)**

**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).**

The Federal Office for Asylum and Immigration will adequately take into account the invitation to ensure the possibility that all women are interviewed on their own concerning their asylum application and to step up adequate training for all professionals involved. Nevertheless, limited financial and organisational resources must be taken into account as the number of asylum application has risen sharply since 2015.

Furthermore, Austria would like to draw attention to special trainings and seminars for lawyers in asylum procedures, the rights of the asylum seekers and the relating needs of the persons seeking help offered by the Austrian Lawyers Academy as well as other training institutions. As a result, there are already a great number of lawyers who specialise in this sensitive field.