**Joint Questionnaire OHCHR**

**Covid-19 and Human Rights - Special Rapporteurs Joint Call for Inputs**

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# Questions

* **Please explain the impact of the pandemic on the enjoyment of human rights and what actions have been taken by the State to respect, protect and fulfil human rights?**
* **Are there any measures put in place in your country following the pandemic which have had a limiting effect on human rights? If so, please list them, provide an explanation for their adoption and indicate the time-frame by which they will be lifted?**
	+ **Were these measures determined by law? If yes, please indicate the relevant legislation.**
	+ **Why were these measures necessary to respond to the COVID-19 situation?**
	+ **Were these measures proportional in view of their expected results to counter the pandemic?**
* **Did these measures have any discriminatory effects on various groups of the population? If so, please indicate which ones and why. Please describe whether responses to the pandemic by States, businesses, faith-based organizations or others actors have resulted in a rollback of human rights, including in relation to affirmative action, gender-equality, inclusion of persons with disabilities and LGBT persons, land rights of indigenous peoples’ or access to sexual and reproductive health services?**
* **What long-term impacts of the pandemic and its response measures are expected on the enjoyment of human rights?**
* **Please explain if economic recovery and financial assistance mechanisms to reduce the social economic impact of the measures adopted have been subjected to prior human rights impact assessments?**

# The Austrian Ombudsman Board

The Austrian Ombudsman Board (AOB) has been monitoring the public administration since 1977 based on the Federal Constitution. It monitors all authorities, administrative bodies and departments of the state, the provinces (*Laender*) and the local government authorities in the entire federal territory. Two provinces established their own Ombudsman (Tyrol and Vorarlberg) who are solely competent for complaints concerning the provincial and local authorities of these two *Laender*. Sine 1 July 2012 the AOB has also been responsible for protecting and promoting human rights in the Republic of Austria.

The AOB along with six regional commissions monitor [institutions in which there is or can be a deprivation or restriction of personal liberty](https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring#anchor-index-2315), such as in prisons or nursing homes. The inspection also extends to[institutions and programmes for people with disabilities](https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring#anchor-index-2929), and the administration is monitored as an executive authority if [direct orders are issued and coercive measures are exercised](https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring#anchor-index-2930), as in the case of deportations, demonstrations and police operations. The essential purpose of the above is to recognise and remedy risk factors for human rights infringements at an early stage. Furthermore, the AOB is the National Human Rights Institution (NHRI) of Austria.

The impact laws actually have on people’s lives is often only evident when regulations are applied by authorities. This proves especially true in times of Covid-19 virus. Shortcomings of laws often become evident when they are monitored. The AOB incorporates these experiences into the ongoing legislative process by drawing up statements on draft laws for the evaluation procedure and submitting these statements to the Austrian Parliament or a state parliament. The AOB also makes the legislative authority aware of existing legal provisions that are problematic and draws up suggestions for improvements in the form of legislative propositions. The AOB is further authorised to have the legitimacy of a regulation of a federal or provincial authority assessed in the event that concerns are raised. In such a case, the Board is able to submit an application to the Constitutional Court. The AOB is also involved in petitions and citizens’ initiatives that are addressed towards the Austrian Parliament. It elaborates statements relating to the above and submits these statements to the Parliament or the relevant state parliament.

The Austrian Ombudsman Board has a quite unique instrument to ensure visibility of its work. A weekly TV programme called “Advocate for the People” - "Bürgeranwalt" achieves very high media coverage. In this programme, which is aired every Saturday evening, the concerns of the citizens who complained to the AOB are vividly discussed and explained. Representatives of the authority involved are always invited to the show as well. If no immediate solution can be found, a follow-up show on the same topic will be broadcast a few months later signalling to the complainants that their rights are being taken seriously. This TV show was particularly used to improve the visibility of legal questions and human rights issues around the Covid-19 countermeasures. It also is a good representation of the key concerns that were raised in the complaints lodged to the AOB during the pandemic.

#  Covid-Measures in Austria

The Austrian government took several measures in order to contain COVID-19 and to protect the lives of people living in Austria and their right to health.

As of 15 March 2020, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection established a regulation on the restrictions on movement in public spaces. Entering public spaces was prohibited except in cases of direct risk for life, body and health, professional work that cannot be postponed, helping vulnerable people, meeting basic daily needs such as buying food and walking in outdoor public spaces. Persons who do not live in the same household must keep a distance of at least one metre between themselves.[[1]](#footnote-1) Moreover, a regulation was introduced to prohibit the entering of the customer area of business premises of trade and service companies, restaurants as well as leisure and sports facilities.[[2]](#footnote-2)

Furthermore, quarantine measures in Tyrol and Vorarlberg were introduced. In the view of Ombudsman Amon, the authorities have reacted in a reasonably quick and correct manner by imposing the quarantine, even though this entailed considerable constraints for the population and represented a massive encroachment on fundamental rights.[[3]](#footnote-3)

Together with travel restrictions, these Regulations were not only massively limiting the freedom of movement but also restricting economic, social and cultural rights as well as the right to respect for private and family life in Austria.

In this TV-show “Advocate for the People”, Ombudsman Walter Rosenkranz pointed out that there were different forms of relationships besides marriage and the right to respect for private and family life was massively limited due to the movement restrictions. Another issue that was discussed with Ombudsman Rosenkranz were the actions of the police regarding violations of the COVID-19 measures. Ombudsman Rosenkranz ensured to scrutinise the provisions addressing police action issued by the Federal Ministry of the Interior.[[4]](#footnote-4)

The Federal Ministry of Education, Science and Research issued a decree which introduced online teaching and furthermore suspended classes at educational institutions, therefore urging students to stay at home.[[5]](#footnote-5) As a consequence, the right to education was not guaranteed, especially not for children in vulnerable situations.

Several financial funds were initiated and new labour law provisions were introduced to mitigate financial hardship. Additional laws were established to secure housing and prevent people from being evicted during the crisis.[[6]](#footnote-6) As many people and companies in Austria were worried about their financial security during the crisis, Ombudsman Bernhard Achitz discussed the newly introduced measures Vienna in another episode of the TV-show “Advocate for the People”, together with Martin Spitzer, Professor of Civil Law and Civil Procedure Law at the Vienna University of Economics and Business. Ombudsman Achitz highlighted the advantages of the new model for short-term work, which was introduced in order to counteract a large wave of redundancies and the resulting large-scale unemployment.[[7]](#footnote-7)

In order to protect the Austrian public health facilities and to avoid overburdening the available infrastructure and thus preventing the collapse of the public health system, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection issued several recommendations for the health sector, particularly hospitals, old people’s homes and nursing homes. Elective hospitalisation was largely suspended and visits at hospitals and nursing homes including old people’s homes were mostly prohibited as infections can be highly dangerous for patients and residents and the chains of infections are more likely to continue in such facilities.[[8]](#footnote-8)

In this regard Ombudsman Werner Amon stated in the TV-Program “Advocate for the People: "The Austrian Ombudsman Board will look into these cases in detail. It goes without saying that in such a situation, the retirement and nursing homes must take measures to prevent the spread of the virus in these facilities. Therefore, there have been imposed quite strict restrictions on visits based on the internal regulations. However, restricting the freedom of persons to such an extent that essential activities can no longer be carried out lacks a proper legal foundation.” [[9]](#footnote-9)

Not questioning the reasonability of these measures in light of COVID-19, the AOB criticized the ongoing isolation of residents which led to a massive restriction of the right to respect for private and family life. In the TV-show “Advocate for the People” Ombudsman Achitz spoke about the issue of vigilant coma patients and the fact that the isolation can result in a setback in their recovery, given the fact that relatives are a part of the nursing procedures. Ombudsman Achitz was therefore calling for creative solutions on how to end the isolation. In addition, he underlined that persons with multiple disabilities also have a right to visits. Based on the Convention on the Rights of Persons with Disabilities (UN CRPD), organisations of persons with disabilities or working with persons with disabilities should be included in the discussions on how to end the visiting ban and information on COVID-19 should be accessible for people with disabilities. Moreover, Ombudsman Achitz criticized that there were no clear directives for the managers of the facilities concerned, putting too much responsibility on the managers of nursing homes and older people’s homes.[[10]](#footnote-10)

As a result, on 28 April 2020 the Federal Ministry of Social Affairs, Health, Care and Consumer Protection issued a recommendation for old people’s homes and nursing homes, emphasising the necessity for a balance between the right to health and the right to social contacts and respect for private and family life. Moreover, the recommendation made it clear that the general restrictions on movements also apply to residents, meaning that residents could enter public spaces under the above-mentioned rules. However, the AOB received a large number of complaints stating that residents of old people’s homes were not allowed to leave the facilities under any circumstances, constituting an illegal deprivation of liberty.[[11]](#footnote-11)

Another measure that affected persons needing care were the regulations on travel restrictions as many 24-hour home carers are coming from other European countries. An issue that concerned a lot of people in Austria and that was also discussed with Ombudsman Achitz in the TV-show “Advocate for the People”.[[12]](#footnote-12)

The COVID-19 pandemic has demonstrated the systemic relevance of nursing institutions in a dramatic way. Whilst media and political attention was primarily focused on the hospital sector and its resilience during the first weeks of the epidemic outbreak, the staffs of old people’s homes and nursing homes were and are facing unprecedented challenges. In the period from 4 May until 15 May 2020, the AOB’s six regional commissions conducted 166 telephone interviews with care services based on a previously developed structured questionnaire. These care services made a significant contribution to preventing a much higher rate of illness and death. It was important to the AOB to continuously analyse what has worked and what needs to be improved, because as of 5 June 2020, 34,4% of the people who have died from COVID-19 in Austria were vulnerable residents of nursing homes - and the crisis is far from over. The interviews revealed that at the beginning of the pandemic a lack of staff and safety equipment as well as insufficient testing made it extremely difficult to focus on the residents’ needs and to ensure adequate care in quarantine. Even in the current, more relaxed phase with low SARS-CoV-2 infections in Austria, unexpected, sometimes catastrophic individual developments will and can occur in facilities time and again (so-called *clusters*). The AOB will publicly address the recommendations resulting from the telephone interviews with regard to a possible resurgence of infections in autumn and will include a demand for more consistent and efficient support for nursing facilities during the pandemic.[[13]](#footnote-13)

Since 1 May 2020, the restrictions on movement have been gradually lifted, generally upholding the safety distance rules for persons who do not live in the same household and rules for wearing nose-mouth-masks. Furthermore, customers were allowed to enter the premises of trade and services and restaurants could reopen for the public under certain conditions like earlier closing times. Since 18 May 2020 museums, archives and libraries have reopened and the allowed maximum size of public events will be monthly extended until autumn.[[14]](#footnote-14) Travel restrictions have been gradually lifted for most European countries as well.[[15]](#footnote-15)

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection issued several recommendations on the gradual readmission of elective hospitalisation, also introducing a relaxation of the restrictions regarding visits of patients and residents of nursing homes and older people’s homes.[[16]](#footnote-16)

Since 3 June 2020, students of all school levels are back in school where certain hygiene rules have to be followed. The Federal Ministry of Education, Science and Research issued a recommendation on dividing school classes to be able to uphold the safety distance. Hence, for half of the week students are attending classes on school premises and in the other half of the week online teaching is being continued. Moreover, a regulation has been passed to change procedures for exams and a summer school has been established to support individual students before the start of the next school year.[[17]](#footnote-17)

# Ombudsman Institutions in times of the pandemic

The International Ombudsman Institute (IOI) as only global organisation for the cooperation of 205 independent Ombudsman institutions from more than 100 countries worldwide published a resolution on Covid-19. It calls on all Ombudsman Offices to redouble their efforts to protect vulnerable people during the COVID-19 crisis and to ensure that lessons are learned for the future.

The outbreak of the coronavirus disease (COVID-19) and the subsequent rapid development of the pandemic have had a huge impact on all of us and confront us with unprecedented challenges. The Resolution thus states:

*“The pandemic has had a disproportionate impact on older people and people with underlying health problems. However, many other groups have suffered disproportionately. These include disabled people in institutional care, the unsheltered, children and adolescents, people from black and minority ethnic communities, Aboriginal, indigenous and first peoples, Roma and travellers, victims of family violence, migrants, asylum seekers and refugees, people deprived of their liberty and people in poorer communities. Communication is also vital now, and we must make sure people without internet access, who do not speak the first language of the country in which they live, or who face other challenges are given the appropriate assistance so that they are fully aware of all of the restrictions and the available supports. Ombudsman Offices are working across the globe to ensure that the rights of all people are respected. The Ombudsman is needed more than ever during a global pandemic. The role is crucial in making sure people have access to public services they need to keep them safe and that these services are delivered fairly.”[[18]](#footnote-18)*

The AOB will continue to monitor all Austrian authorities and scrutinise the applicable laws and regulations with regard to COVID-19 to protect the most vulnerable persons within the society. By working closely with the Austrian government as well as with the people living in Austria, the AOB remains a key actor in protecting human rights by limiting the impacts of the pandemic and its responsive measures.

1. Read the legal basis of these first measures here: Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz gemäß § 2 Z 1 des COVID-19-Maßnahmengesetzes, StF: BGBl. II Nr. 98/2020, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011078&FassungVom=2020-03-20> [↑](#footnote-ref-1)
2. Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz betreffend vorläufige Maßnahmen zur Verhinderung der Verbreitung von COVID-19, StF: BGBl. II, Nr. 96/2020, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011076&FassungVom=2020-04-14> [↑](#footnote-ref-2)
3. Austrian Ombudsman Board, “Volksanwalt Werner Amon äußert sich zu den Coronavirus-Maßnahmen“, 25 April 2020, <https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Werner-Amon-aeussert-sich-zu-den-Coronavirus-Massnahmen?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-3)
4. Austrian Ombudsman Board,“Volksanwalt Walter Rosenkranz beantwortete Fragen zur Corona-Krise”, 11 April 2020, <https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Walter-Rosenkranz-beantwortete-Fragen-zur-Corona-Krise?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-4)
5. Federal Ministry of Education, Science and Research, “Informationsschreiben an Bildungsdirektionen, Schulen, Betriebe und nachgeordnete Dienststellen”, <https://www.bmbwf.gv.at/Themen/schule/beratung/corona/corona_info.html>, accessed on 9 June 2020 [↑](#footnote-ref-5)
6. 24. Bundesgesetz: 4. COVID-19-Gesetz, (NR: GP XXVII IA 403/A AB 116 S. 22. BR: AB 10292 S. 905.), <https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_24/BGBLA_2020_I_24.html> [↑](#footnote-ref-6)
7. Austrian Ombudsman Board, “Rechtliche Auswirkungen des Coronavirus”, 23 March 2020, <https://volksanwaltschaft.gv.at/artikel/Rechtliche-Auswirkungen-des-Coronavirus?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-7)
8. Federal Ministry of Social Affairs, Health, Care and Consumer Protection , “Coronavirus – Fachinformationen”, 9 June 2020, <https://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus---Fachinformationen.html>, accessed on June 2020 [↑](#footnote-ref-8)
9. Austrian Ombudsman Board, “Volksanwalt Werner Amon äußert sich zu den Coronavirus-Maßnahmen“, 25 April 2020, <https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Werner-Amon-aeussert-sich-zu-den-Coronavirus-Massnahmen?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-9)
10. Austrian Ombudsman Board, “Bürgeranwalt: Angehörige dürfen Wachkomapatientin nicht besuchen”, 30 May 20020, <https://volksanwaltschaft.gv.at/artikel/Buergeranwalt-Angehoerige-duerfen-Wachkomapatientin-nicht-besuchen?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020

Austrian Ombudsman Board, “Volksanwalt Achitz: Besuchsverbote auch in Einrichtungen für Menschen mit Behinderungen beenden!”, 29 April 2020, <https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Achitz-Besuchsverbote-auch-in-Einrichtungen-fuer-Menschen-mit-Behinderungen-beenden?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-10)
11. Austrian Ombudsman Board, “Pflegeheime: Mit kreativen Lösungen Isolation beenden”, 27 April 2020, <https://volksanwaltschaft.gv.at/artikel/Pflegeheime-Mit-kreativen-Loesungen-Isolation-beenden?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020

Austrian Ombudsman Board, “Volksanwalt Werner Amon äußert sich zu den Coronavirus-Maßnahmen“, 25 April 2020, <https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Werner-Amon-aeussert-sich-zu-den-Coronavirus-Massnahmen?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020

Austrian Ombudsman Board, “Volksanwalt Achitz: Besuchsverbote auch in Einrichtungen für Menschen mit Behinderungen beenden!”, 29 April 2020, <https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Achitz-Besuchsverbote-auch-in-Einrichtungen-fuer-Menschen-mit-Behinderungen-beenden?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-11)
12. Austrian Ombudsman Board, “Rechtliche Auswirkungen des Coronavirus”, 23 March 2020m, <https://volksanwaltschaft.gv.at/artikel/Rechtliche-Auswirkungen-des-Coronavirus?topic_type=aktuelles&archiv=0>, accessed on 9 June 2020 [↑](#footnote-ref-12)
13. Rappold, E. ; Bachner, F., Schmidt, A., “COVID-19 in Alten-und Pflegeheimen“, Gesundheit Österreich GmbH, 9 June 2020, <https://goeg.at/sites/goeg.at/files/inline-files/COVID-19%20in%20Alten%20und%20Pflegeheimen%20v1a.pdf> [↑](#footnote-ref-13)
14. Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz betreffend vorläufige Maßnahmen zur Verhinderung der Verbreitung von COVID-19, StF: BGBl. II Nr. 96/2020, <https://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus---Rechtliches.html>

Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz betreffend Lockerungen der Maßnahmen, die zur Bekämpfung der Verbreitung von COVID-19 ergriffen wurden (COVID-19-Lockerungsverordnung – COVID-19-LV), StF: BGBl. II Nr. 197/2020,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011162>

Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz, mit der die COVID-19-Lockerungsverordnung geändert wird (2. COVID-19-LV-Novelle), ttps://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\_2020\_II\_231/BGBLA\_2020\_II\_231.html [↑](#footnote-ref-14)
15. Federal Ministry for European and International Affairs, “Akuteller Hinweis: Weltweite Reisebeschränkungen“, https://www.bmeia.gv.at/, accessed on 15 June 2020 [↑](#footnote-ref-15)
16. Federal Ministry of Social Affairs, Health, Care and Consumer Protection , “Coronavirus – Fachinformationen”, 9 June 2020, <https://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus---Fachinformationen.html>, accessed on June 2020 [↑](#footnote-ref-16)
17. Federal Ministry of Education, Science and Research,” Etappenplan zur Aktivierung des Schulbetriebs”, <https://www.bmbwf.gv.at/Themen/schule/beratung/corona/corona_info/corona_etappenplan.html>, accessed on 9 June 2020

Federal Ministry of Education, Science and Research, “Coronavirus (COVID-19): Fragen und Antworten zu Corona”, <https://www.bmbwf.gv.at/Themen/schule/beratung/corona/corona_fua.html>, accessed on 9 June 2020

Verordnung des Bundesministers für Bildung, Wissenschaft und Forschung, mit der die Verordnung über Vorbereitung und Durchführung abschließender Prüfungen für das Schuljahr 2019/20 geändert wird, <https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_II_198/BGBLA_2020_II_198.pdfsig>

Federal Ministry of Education, Science and Research, “Sommerschule 2020”, <https://www.bmbwf.gv.at/Themen/schule/beratung/corona/sommerschule.html>, accessed on 9 June 2020 [↑](#footnote-ref-17)
18. Read the entire Resolution here: IOI Covid-19 Resolution: <https://www.theioi.org/ioi-news/current-news/board-of-directors-adopts-resolution-on-covid-19> [↑](#footnote-ref-18)