



Right to vote - National Report Austria

Veronika Apostolovski, Markus Möstl

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About ETHOS

ETHOS - Towards a European Theory Of Justice and fairness, is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening the knowledge on the European foundations of justice - both historically based and contemporary envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines); and
- d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reserve inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal, that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed "lived" experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice, and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition,
- b) legal framework,
- c) daily (bureaucratic) practice,
- d) current public debates, and
- e) the accounts of the vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinate the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019.

LIST OF ABBREVIATIONS

B-VG	Bundes-Verfassungsgesetz
CCPR	Covenant on Civil and Political Rights
CFR	Charter of Fundamental Rights of the European Union
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EuWO	Europawahlordnung
L-VG	Landes-Verfassungsgesetz
NRWO	Nationalrats-Wahlordnung
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
VfGG	Verfassungsgerichtshofgesetz
VfGH	Verfassungsgerichtshof/Constitutional Court
ZMR	Zentrales Melderegister

1. NATIONAL LEGAL FRAMEWORK

In Austria, norms in constitutional rank are spread across numerous laws. However, the main constitutional treaty containing the most relevant constitutional provisions for Austria is the so called *Bundes-Verfassungsgesetz* (B-VG).¹ This law lays down key characteristics of the Austrian legal system. According to Art. 2 B-VG Austria is a democratic republic and a federalist state. The Federal territory also comprises the territories of the federal states according to Art. 3 B-VG. Art. 6 B-VG regulates the basic rules about citizenship, stating that there is a uniform citizenship (1) and that nationals are also citizens of their province of principal residence (2). Art. 7 B-VG foresees an equality clause for all citizens:

All nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded. No one shall be discriminated against because of his disability. The Republic (Federation, provinces and municipalities) commits itself to ensuring the equal treatment of disabled and non-disabled persons in all spheres of everyday life.

Art. 8 B-VG defines German as the official language, also foreseeing special provisions regarding the safeguarding, respect and support of the language of the autochthonous ethnic groups (2) as well as the recognition of Austrian sign language (3).

Art. 9 B-VG elaborates on generally recognized rules of international law as integral parts of federal law. Art. 10 B-VG and the following provisions deal with the division of competences between the Federal State and the provinces in different thematic areas. Art 15 (1) B-VG states that *"In so far as a matter is not expressly assigned by the Federal Constitution to the Federation for legislation or also execution, it remains within the provinces autonomous sphere of competence"*.

1.1. Constitutional protection?

Does *national constitutional law protect the right to vote*, and if so, in which terms (as elaborated through judicial interpretation, where relevant)? Please report on any corresponding *state obligations* to enable the exercise of the right to vote. If not protected under national constitutional law, which national legal framework (eg legislation, case law) grants protection to the right to vote and lay down any corresponding state positive obligations to enable the right to vote.

¹ Constitution (*Bundes-Verfassungsgesetz*) (AUT).

Austrian constitutional law is rather unique in Europe. Austria ratified the ECHR in 1958 and introduced the ECHR and the First Protocol in Constitutional Rank in 1964. Therefore, Art. 3 of the First Protocol is a constitutional norm foreseeing the right to free elections in Austria.² The provision puts the state under the obligation “to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of legislature” (Art 3 Protocol No. 1 to the ECHR). This norm only concerns the choice of legislature, but is not confined to the national parliament. Rather, the constitutional structure of the respective State has to be taken into account.³ In *Timke v. Germany* the ECtHR found, that legislature does also apply to the German *Länder*. As Austrian provinces also hold legislative power in some regards, it can be assumed in line with jurisprudence by the ECtHR that Art. 3 also applies to the provincial level in Austria (see also *Motka v. Poland*). The elections have to be free and by secret ballot and have to take place regularly. However, according to the ECtHR, the scope of Article 3 of Protocol No. 1 does not cover local elections.⁴

According to Art. 10 (1) B-VG the Federation has powers of legislation and execution in the matter of elections to the National Council, popular initiatives, referenda and consultations of the people as provided by the Federal Constitution as well as elections to the European Parliament and European Citizens’ Initiatives. The Constitution lays down the general rules regarding the right to vote for national council (Art. 26 B-VG), president (Art. 60 B-VG), European Parliament (Art. 23 B-VG), provincial councils (Art. 95 B-VG) and also the municipal level (Art. 117 (2) B-VG). The right to vote is linked to Austrian citizenship, the constitution states, that “the federal people” (*Bundesvolk*) votes the national council, the president, etc. Due to better comprehension and to hinder duplication, this is discussed in detail under 1.2., as those fundamental constitutional norms are always supplemented by further national or provincial legal norms.

1.2 General national rules

Please summarise the *national legal framework* determining *who has the right to vote* (franchise) in which local/state, national/federal (legislative, as well presidential if relevant), and European elections, as well as, where relevant, in referenda, according to national constitutional or

² https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf

³ *Timke v. Germany*, Application No. 27311/95

⁴ *Timke v. Germany*, Application No. 27311/95

legislative/executive/administrative provisions, and relevant judicial interpretation? Please also include any exclusion rules (e.g disenfranchisement, voting bans, etc).

In Austria, different laws regulate European, federal, regional and local elections. The B-VG lays down a number of basic provisions on the right to vote and the set-up of elections on the different levels. Furthermore, the elections of the members of the European Parliament, as well as the members of the National Council of the Austrian Parliament are regulated by federal law. The rules on provincial and municipal elections are specified in the respective provincial acts on elections, which will be presented in detail below. Before going into detail on the current rules on election a short overview of the historical development of the right to vote shall be provided to understand the underlying principles of the norms in place at the moment.

After some different, restricted rights to vote (such as the census voting right introduced in 1873), the general and secret right to vote for men was introduced in 1907. In 1918 universal suffrage was introduced in Austria. This right to vote was already formulated as “general, equal, direct and secret vote of all citizens without difference of sex”.⁵ Between 1933 and 1945, the right to vote was then again restricted. In 1945, the right to vote was again fully guaranteed, the National Election Order tied up to the provisions of the 1st Republic prior to WW2. The constitution of 1920 was reintroduced. Nazis were 1945 disenfranchised, which amounted to around 500.000 persons. The right to vote was guaranteed for persons who were 21 years of age. Persons who were incapacitated partly or fully were not entitled to vote.⁶ In 1968 the age to vote was reduced to 19 years. This was further reduced in some provinces to 16 years already in 2002 (Burgenland, Carinthia), 2004 (Styria, Salzburg) and all over Austria in 2007.⁷

To allow for a more detailed view into historical development of the right to vote, this will exemplarily be presented looking into the National Council Election Order (NRWO). The National Council Election Order 1971⁸ foresaw disenfranchisement because of criminal convictions as well as

⁵ Thomas Hoffmann, ‘Die Nationalratswahlen der Ersten Republik. Eine statistische Studie’ (Wien 2013).

⁶ Constitutional Law of 19 October 1945 on Election to National Council, Provincial Councils and Municipal Council of the City of Vienna in the Free Republic of Austria (Verfassungsgesetz vom 19. Oktober 1945 über die erste Wahl des Nationalrates, der Landtage und des Gemeinderates der Stadt Wien in der befreiten Republik Österreich) (AUT).

⁷ Demokratiezentrum Wien, ‘Wahlrechtsentwicklung in Österreich 1948 bis heute’ <<http://www.demokratiezentrum.org/wissen/timelines/wahlrechtsentwicklung-in-oesterreich-1848-bis-heute.html>>.

⁸ National Council Election Order 1971 (Nationalrats-Wahlordnung 1971) (AUT).

disenfranchisement because of lack of legal capacity (*mangelnde Handlungsfähigkeit*, § 24 NRWO 1971). This was amended in 1983, stating that persons who have a legal trustee (*Sachwalter*) are excluded from the right to vote. In 1988, the Constitutional Court declared § 24 NRWO 1971 as being unconstitutional, as a general, undifferentiated reference to having a trustee is contrary to the principle of equality (*gleichheitswidrig*). The provision was therefore nullified. The National Council Election Order (NRWO) still in place today was introduced in 1992, foreseeing a right to vote for all citizens who have finalized their 18th year of life and are not disenfranchised due to criminal convictions.

The NRWO has been amended 22 times since 2002. In 2011, amendments were adopted following the initiative of some members of parliament. The initiative aimed at harmonizing certain rules in all laws dealing with elections at the federal level (national council, presidential elections, EU elections, referenda).⁹ These amendments were, for example, related to the FRODL judgment by the ECtHR and led to implementing the more specified rules on disenfranchisement as further described below. They furthermore concerned the topic of voting cards (change of rules to hinder abusive application of voting cards), which is of relevance for persons with disabilities who are unable to go to the polling booths themselves.

In 2015, another initiative by members of parliament led to the Election Amendment Act 2015, which does not include any relevant changes to be reported here.¹⁰ In another amendment in 2017, proposed by some members of parliament, new electronic possibilities were introduced regarding support of referenda. Furthermore, the constitutional provisions on competences were amended to be more detailed regarding the competences regarding voting. This led to, for instance, the more detailed provisions regarding competences of municipalities regarding keeping registries of those persons being entitled to vote in European elections (Art. 26 (2) B-VG). This was laid down in the newly

⁹ As this amendment was based on this initiative no explanatory remarks are available regarding the amendment, but only the considerations by the submitting members of parliament. Parlament, *Antrag der Abgeordneten Dr. Wittmann, Mag. Molterer, Mag Stadler Kolleginnen und Kollegen betreffen ein Bundesverfassungsgesetz, mit dem das Bundes-Verfassungsgesetz und ein Bundesgesetz, mit dem die Nationalrats-Wahlordnung 1992, das Bundespräsidentenwahlgesetz 1971, die Europawahlordnung, das Wählerevidenzgesetz 1973, das EuropaWählerevidenzgesetz, das Volksabstimmungsgesetz 1972, das Volksbefragungsgesetz 1989, das Volksbegehrengesetz 1973, die Strafprozessordnung 1975 und das Tilgungsgesetz 1972 geändert werden (Wahlrechtsänderungsgesetz 2011)*, 1527/a XXIV. GP.

¹⁰ Parlament, *Antrag der Abgeordneten Mag. Wolfgang Gerstl, Dr. Peter Wittmann Kolleginnen und Kollegen betreffend ein Bundesgesetz, mit dem die Nationalrats-Wahlordnung 1992, das Bundespräsidentenwahlgesetz 1971, das Wählerevidenzgesetz 1973 und das EuropaWählerevidenzgesetz, geändert werden (Wahlrechtsänderungsgesetz 2015)*, 1438/A XXV. GP.

introduced law on voters evidence (*Wählerevidenzgesetz 2018*)¹¹, which entered into force on 1 January 2018.¹² This law also contributed to simplified information towards other EU Member States regarding Union citizens entitled to vote in line with Directive 93/109/EC.

In the following, the main provisions regulating the various types of elections in Austria will be presented.

The constitutional rules regarding **election of the National Council** are laid down in Art. 26. Art. 26 B-VG states that all Austrian citizens hold the equal, direct, personal, free and secret suffrage by men and women. The National Council is elected by the federal people in accordance with the principles of proportional representation on the basis of equal, direct, personal, free and secret suffrage by men and women who have completed their sixteenth year of life on the day of election. This means that the right to vote the National Council is foreseen for all Austrian citizens who have completed their 16th year of life, regardless of disabilities, religion, education, class, etc. Further rules on election of the National Council are laid down in the National Council Election Order (*Nationalratswahlordnung, NRW*).¹³ It repeats the constitutional provision in § 21 (1) stating that all men and women who hold Austrian citizenship and finalized their 16th year of life on the date of election are entitled to vote. Persons who were convicted because of certain crimes are excluded from the right to vote according to § 22 NRW. Prisoners, who conducted certain crimes, such as treason, attack on highest representatives of the state, attacks against the military, high traitorous attacks against another state and genocide and crimes against humanity are excluded from the right to vote during their time in prison¹⁴. Also crimes linked to terrorism, the prohibition act (*Verbotsgesetz*) and linked to elections lead to disenfranchisement. The judge has to decide in the individual case, whether

¹¹ Law on Persons entitled to vote (*Wählerevidenzgesetz*) (AUT).

¹² Parlament, *Antrag gemäß § 26 GOG-NR der Abgeordneten Mag. Gerstl, Dr. Wittmann Kolleginnen und Kollegen betreffend ein Bundesgesetz, mit dem das Bundes-Verfassungsgesetz, die Nationalratswahlordnung 1992, das Bundespräsidentenwahlgesetz 1971, die Europawahlordnung, das Europa-Wählerevidenzgesetz, das Volksabstimmungsgesetz 1972 und das Volksbefragungsgesetz 1989 geändert, das Volksbegehrengesetz 2018 und das Wählerevidenzgesetz 2018 erlassen sowie das Volksbegehrengesetz 1973 und das Wählerevidenzgesetz 1973 aufgehoben werden (Wahlrechtsänderungsgesetz 2017)*, 1809/A XXV.GP.

¹³ National Council Election Order (*Bundesgesetz über die Wahl des Nationalrates (NRWO)*) (AUT).

¹⁴ The development of this provision will be further discussed in some detail under sub-sections 1.5 and 2.2.

disenfranchisement will be imposed on the person (§ 446a Criminal Procedures Act)¹⁵. Apart from this disenfranchisement in specific cases no further disenfranchisements are foreseen in the NRWO. The CRPD positively mentions in its concluding observations, that Austria “ensures persons with psychosocial and intellectual disabilities the right to vote and to be elected”¹⁶.

The **election of the members of the European Parliament** is laid down in Art. 23 a B-VG, stating that “The members of the European Parliament shall in Austria be elected in accordance with the principles of proportional representation on the basis of equal, direct, personal, free and secret suffrage by men and women who have completed their sixteenth year of life on the day of election and on the day appointed for election are either endowed with Austrian nationality and not excluded from suffrage under the provisos of European Union law or endowed with the nationality of another member state of the European Union and qualified to vote under the provisos of European Union Law.” The law implementing further provisions on EP elections are laid down in the European Election Order (*Europawahlordnung, EuWO*).¹⁷ All men and women who are older than 16 on the day relevant for registration in the European voters evidence (*Europa Wähler evidenz*)¹⁸ are entitled to vote. All persons entitled to vote have to be registered in the electoral register. Municipalities are obliged to maintain those electoral registers (§ 11 (3) EuWO).

The **election of the President** is regulated in Art. 60 B-VG. This provision refers to the regulation on election to the National Council, stating that the president is elected by the citizens following the same right to vote. The further provisions on the election of the president are laid down in the **President Election Act** (*Bundespräsidentenwahlgesetz*).¹⁹ § 4 of this act states that all men and women who hold the right to vote for National Council on the right of the election are entitled to cast a vote in the presidential election. Through this reference, the same disenfranchisement is in place for certain prisoners, as was described above.

Art. 95 B-VG foresees basic rules for **provincial elections**. The nine provincial constitutions also foresee the basic rules on the voting of provincial councils (*Landtage*). For example, the Styrian Provincial

¹⁵ Criminal Procedures Act (*Strafprozessordnung*) (AUT).

¹⁶ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Austria, adopted by the Committee at its tenth session, CRPD/C/AUT/CO/1*, 1.

¹⁷ European Election Order (*Bundesgesetz über die Wahl der Mitglieder des Europäischen Parlaments*) (AUT).

¹⁸ § 2 Europe Voters Evidence Act (*Europa Wähler evidenzgesetz (EuWEG)*) (AUT).

¹⁹ Federal President Election Order (*Bundespräsidentenwahlgesetz 1971*) (AUT).

Constitution (*Steiermärkisches Landes-Verfassungsgesetz, L-VG*)²⁰ lays down in Art. 10 (1) that all provincial citizens above the age of 16 are entitled to vote. Voting takes place in the respective electoral district and the day of election has to be a Sunday. The Tyrolean Constitution, for example, additionally foresees in Art. 17 that Austrian citizens who moved abroad and stayed in Tyrol before are still entitled for voting within the first ten years after their leave.²¹ The Viennese Constitution does not comprise specific provisions on elections, but simply states in § 10 that members of the provincial council are elected by those entitled to vote as laid down in the provincial election order.²²

The more detailed provisions on the election procedure are made by the election regulations for the provincial councils (*Landtage*). According to the Art 95 B-VG, the conditions of eligibility for these elections must not be narrower than those foreseen for the election to the National Council. Each of the provinces has a separate provincial election order.²³ There are certain disenfranchisements foreseen in the election orders. For example, in Vorarlberg (§ 19 (2) b)²⁴ and Tirol (§ 2 (1) b)²⁵ citizens living abroad are only entitled to vote until 10 years after moving abroad. In Vienna (§ 16 (1) 3)²⁶, Upper Austria (§ 20 (1) 2)²⁷, Carinthia (§ 17 (1))²⁸, Salzburg (§ 20 (1))²⁹, Burgenland (§ 20 (1))³⁰, Styria (§ 20³¹

²⁰ Styrian Provincial Constitution (*Steiermärkisches Landes-Verfassungsgesetz, L-VG*) (AUT).

²¹ Tyrolean Constitution (*Tiroler Landesordnung*) (AUT).

²² Viennese Constitution (*Wiener Stadtverfassung*) (AUT).

²³ Lower Austria Provincial Council Election Order (*NO Landtagswahlordnung*) (AUT), Styrian Provincial Council Election Order (*Steiermärkische Landtagswahlordnung*) (AUT), Tyrolean Provincial Council Election Order (*Tiroler Landtagswahlordnung*) (AUT), Burgenland Provincial Council Election Order (*Burgenländische Landtagswahlordnung*) (AUT), Carinthian Provincial Council Election Order (*Kärntner Landtagswahlordnung*) (AUT), Salzburg Provincial Council Election Order (*Salzburger Landtagswahlordnung*) (AUT), Upper Austrian Provincial Council Election Order (*Oberösterreichische Landtagswahlordnung*) (AUT), Act on municipal election in Vienna (*Wiener Gemeindewahlordnung 1996*) (AUT), Vorarlberg Provincial Council Election Order (*Vorarlberger Landtagswahlgesetz*) (AUT).

²⁴ Vorarlberg Provincial Council Election Order (*Vorarlberger Landtagswahlgesetz*) (AUT).

²⁵ Tyrolean Provincial Council Election Order (*Tiroler Landtagswahlordnung*) (AUT).

²⁶ Act on municipal election in Vienna (*Wiener Gemeindewahlordnung 1996*) (AUT).

²⁷ Upper Austrian Provincial Council Election Order (*Oberösterreichische Landtagswahlordnung*) (AUT).

²⁸ Carinthian Provincial Council Election Order (*Kärntner Landtagswahlordnung*) (AUT).

²⁹ Salzburg Provincial Council Election Order (*Salzburger Landtagswahlordnung*) (AUT).

³⁰ Burgenland Provincial Council Election Order (*Burgenländische Landtagswahlordnung*) (AUT).

³¹ Styrian Provincial Council Election Order (*Steiermärkische Landtagswahlordnung*) (AUT).

together with Art. 3 of the Styrian Constitution³²) only citizens with main place of residence within the province are entitled to vote. Lower Austria generally entitles all citizens with main place of residence in the province with the right to vote, and additionally foresees in § 21 (1)³³ that citizens can register as expat Lower Austrians in the registers according to § 2a (1) Lower Austrian Provincial Citizens Evidence Act.³⁴ The provincial election orders also include identical provision regarding the disenfranchisement of prisoners as § 22 NRW (see e.g. § 22 Lower Austrian Provincial Council Election Order, § 18 Carinthian Provincial Council Election Order, § 21 Burgenland Provincial Council Election Order, § 4 (1) Tyrolean Provincial Council Election order, etc).

The **election of municipal councils** is foreseen in Art. 117 (2) B-VG and states that the rules for municipal elections may not be tighter than the conditions established for the provincial councils. However, rules for municipal elections may include the rule that persons who have not yet been in municipality for one year are not eligible to vote, if their residence in the municipality is apparently temporary. Municipal elections are codified in the provincial legislation of the respective province. For example, the election order for Vienna foresees, that all men and women, who finalized their 16th year of life on the day of election and hold Austrian citizenship, are not disenfranchised from their right to vote and have their main place of residence in Vienna are entitled to vote. It furthermore states that EU citizens are also entitled to vote in the separate districts (but not the municipal council) (§ 16 (2) Wiener Gemeindewahlordnung³⁵). The Styrian Municipal Election Order (*Gemeindewahlordnung*³⁶) lays down that all men and women who finalized their 16th year of life on the day of election and held Austrian or another EU citizenship on the day of deadline (*Stichtag*) are entitled to vote, in case they have their main place of residence in the municipality. Both laws foresee a disenfranchisement rule for prisoners with direct reference to § 22 NRW.

Rules on referenda are foreseen in Art. 43 et seq. B-VG. A referendum has to be held, if the National Council decides on it or if a majority of members of the National Council asks for it (Art. 43 B-VG). Mandatory referenda are only foreseen for entire changes of the constitution, as laid down in Art. 44

³² Styrian Provincial Constitution (*Steiermark Landes-Verfassungsgesetz 2010*) (AUT).

³³ Lower Austria Provincial Council Election Order (*NO Landtagswahlordnung*) (AUT).

³⁴ Lower Austria Provincial Citizens Evidence Act (*NO Landesbürgerevidenzgesetz*) (AUT).

³⁵ Act on municipal election in Vienna (*Wiener Gemeindewahlordnung 1996*) (AUT).

³⁶ Act on Municipal Elections in the province Styria (*Steiermärkische Gemeindewahlordnung 2009*) (AUT).

(3) B-VG.³⁷ A referendum on the dismissal of the President can be called by a two-thirds majority in the National Council.³⁸ The President can be put down through this referendum according to Art. 60 (6) B-VG. Referenda are furthermore regulated in different federal and provincial laws. The Federal Referendum Act (*Volksabstimmungsgesetz*³⁹) lays down that all men and women who were entitled to vote for the National Parliament (*Nationalrat*) on the day of referendum are entitled to vote. Similar provisions are foreseen in the provincial laws on referenda.

The Constitutional Court is competent to decide on appeals regarding procedures of referenda (Art. 141 (1) lit 3 B-VG, §§ 57-61 a VfGG, Art. 141 (3) B-VG, § 14 Volksabstimmungsgesetz). Those appeals may only concern procedural aspects of the referendum.⁴⁰ Appeals may only be filed by a specific number of electors, varying between 100 to 500 depending on the province and law in question.⁴¹

1.3. Specific rules targeting selected groups

Provide details on any *specific rules targeting our selected groups*, namely refugees/asylum-seekers, foreign residents, citizens living abroad, persons living with disabilities (including mental disabilities), and criminals/prisoners. Does national law impose particular obligations on the state in order to guarantee the exercise of the right to vote to those who are entitled to vote? Pay particular attention to measures aiming at guaranteeing the exercise of the right to vote of disabled persons, citizens living abroad, prisoners, older persons, etc.

Persons with disabilities:

³⁷ Venice Commission, *Compilation of Venice Commission Opinions and Reports Concerning Referendums*, CDL-PI(2017)001.

³⁸ Venice Commission, *Referendums in Europe –an analysis of the legal rules in European States*, CDL-AD(2005)034, 8.

³⁹ Referendum Act (*Volksabstimmungsgesetz 1972*) (AUT).

⁴⁰ Venice Commission, *Referendums in Europe –an analysis of the legal rules in European States*, CDL-AD(2005)034. 25.

⁴¹ Venice Commission, *Referendums in Europe –an analysis of the legal rules in European States*, CDL-AD(2005)034. 25.

As already stated in the section above, there are no restrictions regarding the right to vote regarding persons with any kind of disabilities. The disenfranchisement was abandoned already in 1987.⁴² A number of safeguards are foreseen by law to enable persons with disabilities to cast their vote.

§ 66 NRW on the right to personally vote, states that blind or visually impaired persons are to be given stencils (*Schablonen*) to facilitate personal voting. According to information we found, stencils were chosen over Braille, as many people are not able to read and understand Braille.⁴³

Physically or sensually impaired persons may bring a person of their choice to be assisted when voting. Similar to identical provisions are foreseen in the election orders of the provinces (e.g., § 63 Lower Austria Provincial Council Election Order, § 62 Carinthian Provincial Council Election Order, etc.).

Looking into the historical development of § 66 NRW is interesting. In 1992, § 66 NRW initially foresaw rules on personally casting the vote and stated that blind, severely visually impaired or frail persons might bring a person to aid them to the polling booth. This was amended in 1998 to “modernize” the language, then stating that persons with physical or sensory disabilities may be assisted by a person while voting (*“körper- und sinnesbehinderte Wähler dürfen sich einer Person, die sie selbst auswählen können und gegenüber dem Wahlleiter bestätigen müssen, führen und sich bei der Wahlhandlung helfen lassen”*).⁴⁴ Just one year later, in 1999, the provision was again amended, now foreseeing the provision of stencils for blind or visually impaired persons and accompanying persons for voters with physical or sensory impairments.⁴⁵ In 2017, a number of members of parliament proposed a change to the NRW to make voting more accessible.⁴⁶ It proposed the provision of election information also in sign language and easy to read versions, to adapt the

⁴² Ursula Naue and Angelika Wegscheider, A., ‘Politische Partizipation von Menschen mit Behinderungen in Österreich’ (2015) *juridikum* 1/2015, 85-95.

⁴³ Bizeps, ‘Wie funktionieren Stimmzettel-Schablonen für sehbehinderte oder blinde Menschen?’ <<https://www.bizeps.or.at/wie-funktionieren-stimmzettel-schablonen-fuer-sehbehinderte-oder-blinde-menschen/>>.

⁴⁴ 161th Federal Law to amend the National Council Election Order 1992 (*161. Bundesgesetz, mit dem die Nationalrats-Wahlordnung 1992 geändert wird*) (AUT).

⁴⁵ 90th Federal Law to amend the National Council Election Order 1992 (*90. Bundesgesetz, mit dem die Nationalrats-Wahlordnung 1992 geändert wird*) (AUT).

⁴⁶ Parlament, *Entschliessungsantrag der Abgeordneten Helene Jarmer, Freundinnen und Freunde betreffend Barrierefreiheit bei der Ausübung des Wahlrechts, 2024/A vom 01.03.2017 (XXV.GP)*.

provisions regarding accessibility of polling stations to the CRPD and to specify the rules in §66 NRW on accompanying persons.⁴⁷

The voting conditions for people living in long term institutions are regulated in the respective law that applies either for the election of the European Parliament (EuWO §58/§59), the Austrian National Council (§72/§73), the provinces or the municipalities. To facilitate access to elections for people living in long term institutions it is possible to install a special electoral commission close to or in the respective institution. Furthermore, a mobile electoral commission may also visit bedridden persons in their personal accommodation (according to § 73 NRW and § 59 EuWO).

On 13 June 2013, the National Assembly decided on an amendment of the Election to the National Council Act (§79 (2)) as well as the Election to the European Parliament Act (63 (2)). This amendment serves the facilitation for visually strongly impaired or blind persons to give a preferential vote (*Vorzugsstimme*) through the possibility to enter the preferential vote with the number of the candidate on candidates list.

Every citizen eligible to vote has the possibility to apply for a voter card (Wahlkarte, EuWO §26/NRW §38) which enables the person to vote at a favored polling station or to send the voter card by post.

Similar regulations are codified in the provincial legislation on the respective provincial and municipal elections. Despite different formulation of the correspondent paragraphs, all provinces provide a mobile electoral commission for people living in long term institutions, as well as the possibility to vote via voter card.

The Elections to the Parliament Act (§52(5)) the European Parliament Act (§39(6)) and various provincial Municipal Election Acts foresee that every municipality should provide at least one polling station which is accessible for persons with disabilities.⁴⁸ However, because of using the phrase

⁴⁷ We did not find further information about the success of this proposal to amend the provisions, but as the provisions are still in place in the current way it was obviously not successful.

⁴⁸ Act on municipal elections in the province of Carinthia (*Kärntner Gemeinderats- und Bürgermeisterwahlordnung*) (AUT), §50(5); Act on municipal election in the province of Upper Austria (*Oberösterreichische Kommunalwahlordnung*) (AUT), §41(3)]; Act on Municipal Elections in the province Styria (*Steiermärkische Gemeindewahlordnung 2009*) (AUT)§50(4); Austria, Act on municipal election in the province of Tyrol (*Tiroler Gemeindewahlordnung*) (AUT), §47(3); Act on municipal election in Vienna (*Wiener Gemeindewahlordnung 1996*) (AUT), §51(1); Act on municipal election in the province of Vorarlberg (*Vorarlberger Gemeindewahlordnung*) (AUT), §26(3).

“wherever technically possible” this regulation is deemed to be not entirely effective.⁴⁹ § 52 (5) NRW further states (as well as the provincial and municipal documents) that where technically possible guidance system for visually impaired persons should be installed.⁵⁰ § 39 (6) EuWO also foresees this system, as this provision is identical in its wording. No such provisions exist in Lower Austria, Burgenland, as well as Salzburg.

Foreigners:

Art. 23 a B-VG foresees the right to vote regarding the European Parliament and municipal elections for EU nationals. In this regard persons with the nationality of another EU member state are entitled to vote. The detailed rules were already presented above in Section 1.2.

In Austria, there is no requirement under law to register to vote. An electoral roll is provided by the authorities of the municipalities and evaluated continuously. The electoral roll is based on the population register (*Zentrales Melderegister, ZMR*). There is a different electoral roll for the European Parliament elections in place. However, non-Austrian EU-citizens who reside in Austria need to register to the electoral roll for the European Parliament elections.

Furthermore, EU citizens are entitled to vote on the municipal level. For example § 17 of the Graz Election Order⁵¹, foresees that all men and women who finalized their 16th year of life, hold Austrian citizenship and have their main place of stay in Graz are entitled to vote. Furthermore, EU citizens, who are not excluded from the right to vote and have their main residence in Graz are also entitled to vote. It is important to note that citizens of other EU countries are not entitled to vote at the local level in Vienna, as Vienna is also a province at the same time (see § 16 of the Viennese Election Order)⁵².

Apart from that there are no other entitlements to vote for any other foreigners. This is an ongoing discussion in Austria and led to different initiatives, such as for example the Migrants Advisory Board

⁴⁹ Angela Wegscheider, ‘Politische Partizipation von Menschen mit Behinderungen’ [2013] SWS-Rundschau Vol. 53, No 2, pp. 216-234 (221).

⁵⁰ E.g., also §49 Grazer Wahlordnung, § 51 (1) Wiener Gemeindevahlordnung, § 48 (3) Innsbrucker Wahlordnung. Note: it is not possible to access all municipal laws in Austria in a coherent, centralised manner via the registry of the Federal Chancellery. Therefore, mainly examples from provincial capitals can be provided.

⁵¹ Act on Municipal Election in Graz (*Gemeindevahlordnung Graz 2012*) (AUT).

⁵² Act on municipal election in Vienna (*Wiener Gemeindevahlordnung 1996*) (AUT).

(*MigrantInnenbeirat*) in Graz, which is elected by all migrants in Graz and advises the city. This Migrant Advisory Board is legally anchored in § 13o of the Statute of the City of Graz.⁵³ In Vienna, a right to vote for foreigners was installed in the early 2000s. This was challenged in front of the Constitutional Court. This case is discussed in more detail in section 1.5.

1.4 Specific rules concerning citizens of former colonies

Are there any specific regimes for citizens of former colonies or current overseas territories?

Not applicable.

1.5 Constitutional challenges

Have national/local rules set out in legislation, regulations or other binding legal measures been challenged for incompatibility with national constitutional norms? If so, which ones, and with what effect? [If information is easily accessible, can you also indicate who were the parties challenging those rules? Have certain national rules contested by societal actors but not challenged before courts?]

The relevant provisions of the Constitution were brought before the Constitutional Court in a number of cases. Due to limited space available only the most relevant for this paper will be presented. Most of the cases dealt with challenging election results by political parties. Within the last 15 years two cases regarding disenfranchisement are relevant for the present project:

In its decision of 27 November 2003 (B669/02 Slgnr. 17058), the Constitutional Court looked into the constitutionality of the conditions of the disenfranchisement under § 22 NRWO regarding a person convicted of aggravated fraud and serving a six-year prison term:

“The enactment of legislation providing for disenfranchisement under section 22(1) of the [National Assembly Election Act] on the basis of a final sentence (imposed by a domestic court for one or more offences committed with intent) carrying a term of imprisonment of more than one year lies, in the Constitutional Court's view, within the margin of appreciation afforded to the legislature in matters of election of the legislature. The fact that as a consequence of this rule citizens who are sentenced to just over a year's imprisonment for an offence committed with intent are stripped of their right to vote, whereas citizens who are sentenced to just under one year's imprisonment (for an intentionally committed offence) are not, does not make the legal

⁵³ Provincial Law on Institutionalising Migrant Advisory Boards in Styria (*Landesgesetz betreffend die Einrichtung von MigrantInnenbeiräten in der Steiermark*) (AUT).

provision in question unconstitutional (cf. VfSlg. 13.822/1994 mwH). Nor do the factual submissions advanced by the complainant in this connection (for instance with reference to the Youth Courts Act) alter this conclusion in any way.”⁵⁴

In another decision of 27 September 2007 (B1842/06) the Constitutional Court examined the constitutionality of section 22 of the National Assembly Election Act once again. The complainant had been convicted of aggravated robbery and kidnapping and sentenced to nineteen and twelve years imprisonment respectively. In its decision, the Court – after referring at length to the judgment of the European Court of Human Rights in the case of *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX) – maintained the findings adopted in its decision of 27 November 2003. It stated in particular as follows:

“In respect of the present complaint, it is established that the legal position in the United Kingdom at issue in the judgment in the *Hirst* case differs decisively from the one in Austria that is relevant here: section 22 of the National Assembly Election Act does not provide for blanket forfeiture of the right to vote in respect of all convicted prisoners, irrespective of the type or seriousness of the offence they have committed or their individual circumstances. The precondition for imposing forfeiture of the right to vote is a final sentence for one or more intentionally committed offences carrying a prison sentence of more than one year; sentences to a fine, sentences to less than one year's imprisonment and conditional prison sentences do not result in forfeiture of the right to vote. Moreover, section 44(2) allows the judge to conditionally suspend the legal consequences of the conviction, including therefore disenfranchisement; in this respect the Austrian legal system also makes legal provision for consideration to be given to the individual circumstances of the person concerned.”⁵⁵

There are also other similar cases dealing with disenfranchisement of prisoners (e.g. WIV1/2017 or WIV4/2016)⁵⁶ prior to the ECtHR's FRODL decision.

In 2002, Vienna installed a right to vote for migrants in the districts for all non-Austrians who resided in Vienna for 5 years without interruption and who were above 16 years old. This norms were brought to the Constitutional Court by 37 members of the municipal council. The applicants stated, that those provisions would violate Art. 3 Basic Law on the General Rights of Citizens (*Staatsgrundgesetz, StGG* -

⁵⁴ *Frodl v Austria*, Merits and Just Satisfaction, App No 20201/04 (ECHR 2010).

⁵⁵ *Frodl v Austria*, Merits and Just Satisfaction, App No 20201/04 (ECHR 2010).

⁵⁶ VfGH, WIV1/2017, 24 November 2017.

Staatsbürgervorbehalt) as well as the electoral principle of homogeneity of the constitution, which states that Art. 26, 95 and 117 B-VG foresee identical principles for all elections, therefore laying down basic principles for elections within Austria. The Court found a violation and considered the norms as being unconstitutional.⁵⁷ The Court did not follow up on the principle of homogeneity or Art. 3 StGG, but stated that the relevant norms are following the basic democratic principle of the constitution laid down in Art. 1 B-VG, which states that “Austria is a democratic republic. Its law emanates from the people”. According to the Court, the term “people” is linked to Art. 26 B-VG and is tied to the Austrian citizenship. Therefore, the Viennese provision a right to vote for migrants in the districts for all non-Austrians who resided in Vienna for five years without interruption and who were above 16 years was regarded as unconstitutional.

1.6 Relevant institutional and procedural aspects

If certain institutional aspects (eg judicial review) or procedural rules (eg standing) are important in order to understand how the right to vote is protected under domestic law, please provide relevant details (200 words or a reference to accessible English language material presenting it in a relevant, synthetic and concise manner).

2. IMPACT OF INTERNATIONAL/EUROPEAN LAW

2.1 Challenges to national rules based on international instruments

Have rules on the right to vote set out in national constitutional documents, legislation, regulations or other binding legal measures been challenged *by reference to international instruments* (notably the ICCPR and CRPD). With what effect? Please refer to background paper (Deliverable 3.3), Section **Error! Reference source not found.** for relevant information.

Have international monitoring bodies adopted opinions/decision on the compatibility of those rules with international law? Did it result in changes in national law?

The National Council stated upon the ratification of the CRPD that it is implemented through introducing national laws to do so (so-called *Erfüllungsvorbehalt*), The CRPD as such can therefore not be a tool of measurement of constitutionality of national legal acts. It is not directly applicable and does not form subjective rights and can therefore not be considered as a tool to assess the legality of another (national) legal norm.⁵⁸ The same holds true für the ICCPR, the government also stated, that

⁵⁷ VfGH, G218/03, 30 June 2004.

⁵⁸ OGH, 5Ob183/17y, 21 December 2017.

the implementation of the Covenant has to be conducted through national laws (*Dieser Staatsvertrag ist im Sinne des Art. 50 Abs. 2 Bundes-Verfassungsgesetz durch Erlassung von Gesetzen zu erfüllen*).⁵⁹

International mechanisms:

According to the search in the Jurisprudence Database of the OHCHR no relevant cases were brought in front of the CPRD Committee regarding Austria so far. The CRPD positively mentions in its concluding observations, that Austria “ensures persons with psychosocial and intellectual disabilities the right to vote and to be elected”.⁶⁰ The Committee also notes that Austria is one of the first States with which it has dialogued to have established a monitoring body under article 33 of the Convention, and that it ensures persons with psychosocial and intellectual disabilities the right to vote and to be elected.⁶¹

Still, the committee further states, that: The Committee commends the State party for upholding article 29 of the Convention by allowing all persons, including persons with intellectual and psychosocial disabilities, to vote. However, it appears that many polling booths are not fully accessible to persons with disabilities. The Committee recommends that the State party step up its efforts to ensure that voting is fully accessible to all persons, irrespective of disability, and that voting information is provided in all accessible formats.⁶²

A case regarding the right to stand for election for Association’s work-council (*Betriebsrat*) was brought before the Human Rights Committee by a Turkish national in 2000 (CCPR/C/74/d/965/2000 Karakurt). The Committee found a violation of Art. 26 CCPR as non-nationals were not entitled to stand for election in this regard. This provision challenged (§ 53 ArbVG) does no longer contain a provision regarding citizenship, so all workers are now able to be elected in this regard.

⁵⁹ Statement put in the national version of the ICCPR at <
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000627>>.

⁶⁰ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Austria, adopted by the Committee at its tenth session*, CRPD/C/AUT/CO/1, 1.

⁶¹ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Austria, adopted by the Committee at its tenth session*, CRPD/C/AUT/CO/1, 1.

⁶² Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Austria, adopted by the Committee at its tenth session*, CRPD/C/AUT/CO/1, margin notes 48 and 49.

2.2 Challenges to national rules based on European (Council of Europe) instruments?

Have national rules set out in national constitutional documents, legislation, regulations or other binding legal measures been *challenged by reference to the Council of Europe's law*, in particular ECHR Article 3 Protocol 1, but also other ECHR provisions.

Have any cases concerning the right to vote in your country been taken to/decided upon by the ECtHR? With what effect? Was national law adjusted to comply with the ECtHR decision(s)? Please refer to background paper (Deliverable 3.3), section Please refer to background paper (Deliverable 3.3), section 5) Justice in the Rights to Vote, Housing and Education in Council of Europe Law) for relevant information.) for relevant information.

A case concerning the right to vote was brought before the ECtHR. In *Frodl vs. Austria* a prisoner complained that his name was not taken up into the local electoral register, although he fulfilled the general conditions regarding age, citizenship and residence in the community. The applicant challenged § 22 NRWO, which laid down that persons convicted because of crime to over a year of prison can be excluded from the right to vote. The ECtHR found a violation of Art. 3 of Protocol No. 1 in this case, as no discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned exists under the provision of § 22 NRWO in its form at the relevant point of time. § 22 NRWO was amended following this decision, now foreseeing explicit links between the crimes committed and the disenfranchisement of the convicted. It now states, that the court can decide to exclude the convicted from elections until prison time has ended (§ 446a Criminal Procedures Act).

2.3 Challenges to national rules based on EU law

Has *EU law* (in particular Article 24(3) TEU, Articles 20 and 22(b) TFEU, and Articles 39-40 EU CFR) been invoked before domestic courts to challenge national rules *de lege* or *de facto* disenfranchising certain categories of persons (disabled, criminals, prisoners, expats, foreign residents, etc).

Has the right to vote in your country been subject to European Commission investigation under Article 268-269 TFEU procedure or a decision of the CJEU? With what effect? Please refer to background paper (Deliverable 3.3), section **Error! Reference source not found.** for relevant information.

In its decision WIV4/2016, the Constitutional Court deals in detail with the jurisprudence of the ECtHR and the Court of Justice of the EU, mentioning *Frodl*, *Scopolla* and *Delvigne*, but assessed the restrictions on taking up convicted prisoners in election evidence registers as lying within the (wide) margin of appreciation of the legislator.

The cases brought before the court were based on Art. 3 of the First Protocol to the ECHR (WIV4/2016 et al) or on Art. 3 of the First Protocol to the ECHR together with Art. 14 ECHR (B1842/06), but not on any EU norms.

In December 2012, the city of Vienna decided on a city-wide referendum regarding the situation regarding parking spaces. In an application to the Constitutional Court several claimants challenged the legality of this referendum, regarding the exclusion of Union citizens who are entitled to vote at

the municipal level. One of them was a French citizen, who lived in Vienna for over five years and is also part of the district council. According to § 2 (3) Viennese Referenda Act only Austrian citizens are entitled to vote, above the age of 16 and having the main place of residence in Vienna. The claimants stated that the French woman was entitled to challenge the legality (although she was not considered to be able to take part according to § 2 (3) due to her citizenship), because Art. 22 TFEU read together with Art. 3 of Directive 94/80/EC directly entitles her to vote. The Court concluded that the claimant is not entitled to vote in this regard, as in Vienna the relevant level of voting for EU citizens is the district, not the city, as the city and province entail the same area. Also Art. 40 CFR would not constitute rights going beyond Art. 22 TFEU.

In another case, 16 members of the provincial council of Vorarlberg challenged several norms of the Municipal Election Act due to its alleged unconstitutionality. The case dealt with the norms, which set up the construction of the ballots as well as with the assessment of validity of casted votes. The ballot was one uniform ballot for the election of the municipal council and the mayor at once. The claimants brought forward, that Art. 3 of the First Additional to the ECHR, as well as Art. 40 CFR and Art. 20 TFEU were violated. The Constitutional Court stated – as relevant for this research paper – that Art. 40 CFR and Art. 20 TFEU are no Austrian constitutional provisions against which the constitutionality of national acts can be assessed. Note: this decision was given prior to decision U466/11, where the Constitutional Court considered the CFR as being in the same rank as the ECHR in Austria, stating: *Auf Grund der innerstaatlichen Rechtslage hat der Äquivalenzgrundsatz zur Folge, dass auch die von der Grundrechte-Charta garantierten Rechte vor dem Verfassungsgerichtshof als verfassungsgesetzlich gewährleistete Rechte gemäß Art144 bzw Art144a B-VG geltend gemacht werden können und sie im Anwendungsbereich der Grundrechte-Charta einen Prüfungsmaßstab in Verfahren der generellen Normenkontrolle, insbesondere nach Art139 und Art140 B-VG bilden.*

2.4. Relevant institutional and procedural aspects

Please provide necessary information concerning the incorporation and position/authority of international law, Council of Europe's instruments, and EU law in your country, which is of relevant to understand the protection of the right to vote in your country? In particular, does your state follow a monist or dualist approach? Can national courts invalidate/set aside national laws against international, Council of Europe and EU instruments? To what extent are the relevant provisions of international law granted direct effect?

Art. 9 B-VG states that the generally recognised rules of international law are part of the federal law. While there is still ongoing discussion about what falls within this wording, it is uncontested that treaties do not fall within the meaning of Art. 9 (1) B-VG. The Federal President concludes state treaties according to Art. 65 B-VG. The position of state treaties within the national legal order is defined by their content. Austria follows a twofold way, on the one hand foreseeing general transformation for rule, but also on the other hand asking for special transformation, necessitating legislative steps within Austria. Through accession to the EU, which was considered as a complete change of the Austrian constitution, also the law of the EU is one of the relevant legal orders in Austria (constitutional dualism). EU law precedes national law and "simple" constitutional law, but not the basic principles of the Constitution. The explanatory comments on the Austrian Constitutional Law on Acceding to the EU

states, that it aims at “opening up the Austrian legal order towards the legal order of the EU in a way, as it follows from its specific claim of validity” (die österreichischer Rechtsordnung gegenüber der Rechtsordnung der EU in der Weise zu öffnen, wie sich dies aus deren besonderem Geltungsanspruch ergibt). Authors claim, that the close interconnections between EU and national law led to a monist compression (monistische Verdichtung).

With the accession to the EU a new section was included in the constitution (Art. 23a-23k B-VG).

Courts can invalidate or set aside national laws against EU instruments. The Constitutional Court clearly stated in judgement U466/11 that the EU Fundamental Rights Charta is as a measurement tool for its proceedings to review legal acts. The Constitutional Court holds the right to invalidate laws, if they are in violation of fundamental rights.

In C-112/13 the Court of Justice of the EU dealt with a preliminary ruling of the Supreme Court, clarifying how this judgment U466/11 is to be understood for the Supreme Court, whether it is obliged to address the Constitutional Court in such matters.

An infringement proceeding against Austria based on Art. 258 TFEU was lodged under number 20070215 regarding the right to vote on the municipal level (It was a non-communication case, indicating a failure to notify the EU about transposition. No other relevant infringement procedures by the EU Commission or judgements by the Court based on such procedures could be identified.

3. RIGHT TO VOTE, JUSTICE AS REPRESENTATION AND VULNERABILITY

3.1 Right to vote and justice as representation

When reviewing the national legal framework and, where relevant, the domestic engagement with international and European norms, could you identify arguments proposing different conceptions of justice as representation. Please specify whether these were part of court’s reasoning or parties’ arguments, and if the latter, provide any relevant information that could help evaluate who mobilized the law to achieve greater justice (eg NGOs, etc.).

Please refer to background paper (Deliverable 3.3), section 2) Subsection: **Error! Reference source not found.** for relevant information.

The legal situation in Austria regarding voting was presented in detail above. The right to vote is closely linked to Austrian citizenship. All Austrian citizens above the age of 16 are entitled to vote. This also applies for all persons with disabilities. The only exception possible is the disenfranchisement of nationals who were convicted of a crime. This provision in § 22 NRWO was quite generally worded in its beginning. Because of that, the provision was repeatedly brought before the Constitutional Court as being unconstitutional, as all persons convicted to a sentence of one year or above were disenfranchised. As presented above in detail, the court did not find the provision unconstitutional and assessed it to be within the margin of appreciation of the legislator. Only the FRODL judgement by the ECtHR brought changes to the law. § 22 NRWO is now worded in a much more specifying way, foreseeing disenfranchisement only for prisoners, who conducted certain crimes, such as treason,

attack on highest representatives of the state, attacks against the military, high traitorous attacks against another state and genocide and crimes against humanity. Also crimes linked to terrorism, the prohibition act and linked to elections may lead to disenfranchisement. Furthermore, the judge has to decide in the individual case whether disenfranchisement shall be conducted or not. Via the ECtHR, the long standing jurisprudence of the Constitutional Court was overruled and the right to vote for a number of prisoners was guaranteed. In this regard, the number of disenfranchised persons most likely decreased. However, there are no such statistics available.

Non-citizens from third countries do not hold a right to vote in Austria. While Vienna tried to introduce such a right to vote in 2002, this was overturned by the Constitutional Court arguing that the understanding of “people” in the Constitution refers to Austrian citizens only. As presented above, EU citizens are entitled to vote at the municipal level. In general not allowing foreigners to vote, their right to representation is hindered. The numbers of foreigners in Austria is constantly rising, with 730.261 in 2002 and not 1.395.880 in January 2018, with the total number of inhabitants also rising from 8.063.630 to 8.822.267. This means that a rising percentage of persons living in Austria is not entitled to cast their vote.

3.2 Vulnerability and the right to vote

Does the concept of vulnerability play a role in protecting the right to vote or defining who is entitled to vote and how in your country? Please explain how, and provide some representative illustrations.

Please refer to background paper (Deliverable 3.3), section **Error! Reference source not found.** for relevant information.

Overall the concept of vulnerability does not seem to play a (prominent) role regarding protection of the right to vote or defining who is entitled to vote. As already discussed above, the right to vote for Austrian citizens (Bundesvolk as laid down in e.g. Art. 26 B-VG) is framed very broadly, encompassing everybody above the age of 16, regardless of gender, disability, religion, and other factors.

Vulnerability plays a role regarding voting safeguards for persons with handicaps. The laws foresee certain provisions which allow persons with disabilities to participate in the election. Special aids are foreseen to be able to cast a vote personally, such as stencils or the possibility to bring a person as an assistance to the voting booth. Furthermore, electoral commissions etc. are installed to enable all persons to vote who are living in long – term institutions.

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