

UNIVERSAL PERIODIC REVIEW

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Austria

Freedom of religion or belief for asylum seekers

Stakeholder Report

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Jointly submitted by:



European Baptist Federation (EBF)

The EBF was founded in 1949 to unite European Baptists as Europe emerged from WWII. Today the EBF is comprised of approximately 825,000 members in 61 member bodies representing nearly every country in Europe and Euro-Asia as well as five Baptist Unions in the Middle East. The EBF is one of the five regions that make up the Baptist World Alliance, and serves as European representative for the BWA. The EBF is diverse in language, culture, and tradition but remains united in Baptist identity, evangelistic zeal, and a concern for human rights and religious freedom.



Baptist World Alliance (BWA)

The Baptist World Alliance is a global movement of Baptists founded in 1905 in London, England. Today, the BWA is headquartered outside Washington D.C., USA and is a fellowship of 240 Baptist conventions and unions in 125 countries and territories comprising 47 million members in 169,000 churches.

Summary Report

1. This report focuses specifically on the rights of those seeking asylum in Austria on the basis of religious persecution in their country of origin. Based on Article 14 of the UNDHR, the 1951 Convention Relating to the Status of Refugees provides that that the term “refugee” apply to any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail him or herself of the protection of that country.” (Article 1A(2)). Further, Article 3 states that the contracting states should apply the provisions of the Convention to refugees without discrimination as to race, religion, or country of origin. In regards to return or “refoulement,” no contracting state should expel or return a refugee in any manner whatsoever to the frontiers of their territories where her/his life or freedom would be threatened on the account of his race, religion, nationality, membership of a particular social group or political opinion.¹ Austria is signatory to the 1951 Convention as well as party to the Common European Asylum System. Further Article 45a of the Austrian Aliens Force Police Act states that forcible return to the home country is not permissible in terms of non-refoulement principle in case of substantial grounds for the belief that in the state of origin, the life or freedom of the asylum-seeker would be in danger for reasons of race, religion, nationality, membership in a social group, or political opinion.² Since 2015 Austria has received 186,380 asylum applications, of which 96,559 persons were granted either asylum, subsidiary protections or humanitarian residence permits.³
2. The Conventions Relating to the Status of Refugees protect the right to asylum for those whose life or freedom is threatened in their country of origin or residence due to their religious belief or affiliation. Article 18 of the UNDHR guarantees the right to freedom of religion or belief, “including the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others in public and private, to manifest his/her religion or belief in teaching, practice, worship, and observance.”⁴ When these rights are violated in a person’s country of origin such that a person cannot practice their religion or choose or

¹ *Convention relating to the Status of Refugees* (adopted 28 July 1951, entered into force April 1954). 189 UNTS 137 (Refugee Convention)

² “The Organization of Asylum and Migration Policies in Austria,” International Organization for Migration, Country Office for Austria, December 2015.

³ „Jährliche Asylantragszahlen in Österreich seit 2000“ and „Entscheidungen im Asylverfahren 2014-2020“ Migration info und grafik – Grundlegende Richtung des Mediums: Informationen zu Asyl, Flucht, Grundversorgung und Integration. https://www.migration-infografik.at/asyl/at_asylstatistiken_2020/#antraege Note that calculation was reached by comparing asylum applications beginning in the year 2015 and asylum decisions reached beginning in the year 2016, to account for processing times

⁴ Article 18. *International Covenant on Civil and Political Rights*. (adopted 16 December 1966, entered into force 23 March 1976).

express their religious convictions in peace and safety, this constitutes legal grounds to seek asylum in another country.

3. Although the Federal Ministry for Foreigners and Asylum (*Bundesamt für Fremdenwesen und Asyl*, or the *BFA*) does not publish statistics on the grounds of asylum applications, a significant number of asylum applications since the 2015 were submitted on the grounds of religious persecution and/or religious conversion. Especially vulnerable to persecution are asylum applicants hailing from Afghanistan or the Islamic Republic of Iran who are either Christian converts, are accused of blasphemy, or those who have otherwise renounced the Islamic faith. Religious organizations throughout Austria have publicly raised concerns about the BFA standards for assessing asylum applications on the basis of religious conversion. The BFA has received criticism by both the Catholic and the Lutheran churches in Austria for intransparent standards of assessment for religious conversion, which have amounted in many cases to arbitrary “religious tests” of asylum applicants.⁵ In April 2020 the Federal Constitutional Court of Austria (*Bundesverfassungsgericht*) released its decision regarding the 2011 case of an Iranian asylum-seeker (Mr.N) contesting his negative asylum decision from the BFA (*2BvR 1838/15*). Mr. N was denied asylum by the BFA on the grounds that his religious conversion was not sincere enough to warrant asylum, in the BFA’s assessment the applicant had converted to Christianity for “social and integrative reasons” as opposed to a sincere religious conversion, and thus his case failed to substantiate a reasonable fear of persecution in Iran. In this ruling Constitutional Court articulated a clear set of standards by which asylum cases on the basis of religious conversion should be evaluated, “The courts must establish the central fact that the practice of faith which could make one vulnerable to persecution has a central meaning for the religious identity of the person in question. This specialized evaluation does not threaten the autonomy of the churches, religious organizations, nor does it threaten the freedom of religion or conscience of the individual.”⁶ Further, the decision of the court defends the right of the BFA to evaluate the sincerity and depth of religious belief insofar as it is relevant to the potential for persecution in the asylum-seekers’ country of origin. Neither the courts nor the BFA may

⁵ See: “Evangelische Kirche kritisiert ‚Glaubensprüfung‘ durch Asylbehörden.” *Die Presse*, Nov. 11, 2019. <https://www.diepresse.com/5720895/evangelische-kirche-kritisiert-glaubenspruefung-durch-asylbehorden> and “Asyl: Kirchen empört über Umgang mit afghanischen Konvertiten: Evangelische Kirchenspitzen und katholischer Bischof Krautwaschl äußern anlässlich des Schladminger Falles Hossein K. Kritik an Asyl-und Abschiebepaxis.” *Katholische Kirche Österreich*, Nov. 11, 2019 <https://www.katholisch.at/aktuelles/127875/asyl-kirchen-empuert-ueber-umgang-mit-afghanischen-konvertiten>

⁶ Keine formale oder inhaltliche ‚Glaubensprüfung‘ durch die Gericht be Asylbegheren von Konvertiten“ Pressemitteilung Nr. 39/2020. Bundesverfassungsgericht Österreich. <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2020/bvg20-039.html> „Die Gerichte müssen jedoch die innere Tatsache, dass die verfolgungsträchtige Glaubensbetätigung für die religiöse Identität des Betroffenen zentrale Bedeutung hat, zu ihrer vollen Überzeugung feststellen. Diese fachgerichtliche Prüfung verletzt weder das Selbstbestimmungsrecht der Kirchen oder Religionsgemeinschaften noch die Glaubens-Gewissens-und Religionsfreiheit des Einzelnen.“

implement test of religion or religious knowledge as the decisive factor in an asylum decision, nor may they simply deny the validity of baptismal certificates, church membership, and the testimony on behalf of the asylum-seeker by faith communities and religious leaders. In previous cases the BFA has questioned or even denied the validity of such documentation. The Constitutional court set a clear boundary here: the BFA and other authorities may no longer deny the validity of documentation provided by religious communities. Even so, such evidence constitutes second-order evidence of the applicants' religious convictions. The BFA and other authorities retain to evaluate the religious convictions of the applicant, however the evaluation standards have been clarified. Rather than arbitrary religious tests or assessments of sincerity, the task of the BFA is to evaluate whether the religious convictions and religious practices of the asylum applicant are central to their identity and self-understanding, and do not constitute merely a casual interest in a religion or belief system, such that they could not simply give up these beliefs or practices upon return to their country of origin. If the religion or belief are judged sufficiently central to the identity of the applicant, and such beliefs or practices would make them a target of persecution in their country of origin, this would constitute grounds for asylum in Austria according to the assessment of the Constitutional Court.

4. *Recommendations*: Examples of grounds for the rejection of a 2017 Iranian asylum case – include the applicants' inability to cite the 10 Commandments, the Creeds, or explain the religious meaning of the sacraments to the satisfaction of the BFA. To follow through on the decision of the Constitutional Court, that asylum applications on the basis of religious conversion should not be decided on the basis of a test of religious knowledge. Austria should implement religious literacy trainings amongst state employees, especially within the BFA, that evaluate asylum applications. Such trainings would sensitize those responsible for asylum decisions to the diversity of belief and practice not only within the Christian faith, but also across faith and belief systems. Such training would enable officials to make asylum decisions from an informed and unprejudiced basis, with the focus of such evaluations of levels of religious sincerity always oriented as secondary concerns, relevant only insofar as they influence the danger of religious persecution in the country of origin. GAVE, an NGO based in the Netherlands, has released a comprehensive set of guidelines for the evaluation of asylum cases based on religious persecution and religious conversion. They advocate intake interviews that take into account the *personal, social, cognitive, cultural, historical, and emotional* aspects of a religious conversion, and do not merely test for knowledge of religious history or religious rites.⁷ The expertise and recommendations of the GAVE Foundation have influenced public policy in the Netherlands, and are largely in line with the April 2020 decision of the Federal Constitutional Court of Austria. It is imperative that the asylum

⁷ Dr. Marnix Visscher. *Credibility of Conversion: Assessment by the Dutch Immigration Service*. 26 February 2019. GAVE Foundation Netherlands.

process in Austria does not itself undermine the fundamental right to asylum on the basis of religious persecution through fundamental misunderstandings of the nature of religious conviction or religious conversion on the part of state officials. We call upon the Austrian government to implement measures to ensure fair asylum processes for those seeking asylum on the basis of threats to their freedom of religion or belief. These measures would be a response to the directives of the decision of the Austrian Constitutional Court from 03 April, 2020.⁸

Sample of relevant recommendations from previous UPR Cycle (2015)

5. *Investigate all allegations of racial profiling, of the practice of unlawful detention and of searches of persons belonging to ethnic and religious minorities, and penalise strictly law enforcement officers who were engaged in such actions.* (Uzbekistan, Supported)
6. *Adapt the integration measures by taking into account the current migration situation in order to prevent cases of intolerance on the grounds of religion and of ethnic belonging.* (Belarus, Supported)
7. *Harmonize anti-discrimination laws by broadening their application scope so as to include the grounds of religion, belief, age and sexual orientation.* (Belgium, Noted)
8. *Ensure that law enforcement officials conduct their duties in line with Austria's international obligations, particularly in relation to migrants, asylum seekers and minorities.* (Rwanda, Supported)
9. *Abolish the quota system requirement in relation to family reunification.* (Egypt, Noted)
10. *Pay specific attention to its human rights obligations in the context of the significant influx of migrants from the Middle East and North Africa to the country.* (Russian Federation, Supported)
11. *Protect rights of migrants, asylum seekers, and refugees in accordance with international human rights standards with a view to combat discrimination against them.* (Pakistan, Supported)
12. *Adapt the integration measures by taking into account the current migration situation in order to prevent cases of intolerance on the grounds of religion and of ethnic belonging.* (Belarus, Supported)
13. *Continue to raise awareness to eradicate existing prejudices and stereotypes against people with a migration background and foreigners.* (Turkey, Supported).
14. *Consider the ratification of the International Convention on the Protection of the rights of all Migrant Workers and Members of their Families.* (Bolivia, Noted)

⁸“Keine formale oder inhaltliche ‚Glaubensprüfung, durch die Gericht bei Asylbewerbern von Konvertiten“
Pressemitteilung Nr. 39/2020. Bundesverfassungsgericht Österreich.
<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2020/bvg20-039.html>

UPR 37 (2020) suggested recommendations regarding freedom of religion or belief for asylum seekers

15. *Introduce religious literacy, FORB, and human rights trainings at federal agencies charged with the handling of asylum applications*
16. *Uphold non-refoulement principle in cases of asylum seekers who face persecution and/or threat to their lives in their country of origin as a result of their religion or belief.*
17. *Implement culturally and religiously sensitive evaluation methods of religious belief in asylum applications that take into account the various personal, social, cognitive, cultural, and historical aspects that contribute to a change in one's religious practice or convictions, evaluating such cases with the final issue not being the religious conviction itself, but the danger an asylum applicant would in their country of origin as a result of their religious convictions.*