



## NATIONAL EVICTION PROFILES

### Pilot project - Promoting protection of the right to housing – Homelessness prevention in the context of evictions

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## **1 Executive summary**

1. Name of country: Austria
2. Regions: Austria is a federal state and consists of nine regions
3. NUTS II Regions: Burgenland, Niederösterreich, Wien, Kärnten, Steiermark, Oberösterreich, Salzburg, Tirol, Vorarlberg
4. The legal framework in relation to housing and evictions is based at the national level. Especially there are to mention: the tenancy law, the condominium act and the execution law. These laws define the state of tenants or owners of housing property and regulate in detail the aspects of protection, obligations, limits etc. as well as the procedures of eviction. The cancellation of tenancy contracts underlies the competence of legal court at district level and has to be done at these institutions (MRG § 33 legal cancellation, point (1)).
5. The tenancy law regulates the process of cancelling a tenancy contract according to rent arrears and/or other reasons like irregular behaviour etc. This procedure is strictly regulated but there is no regulation for the prevention of eviction. In special cases the households threat by eviction can apply for an extension of the time span when the eviction can be executed. This extension can be up to nine months (MRG § 34, extension of time span).  
In the case of housing property the law of execution of debts regulates step by step the proceedings of debt regulation (EO §§ 87 - 89). At last there is the possibility of a disposal of housing property and / or an auctionary sell. (reference: interviews with Wallerstorfer and Jedlizka, 2014)
6. In the year 2012 half of the accommodations (50%) in Austria were occupier owned houses (39.4%) or dwellings (10,3%), the other 50% were rented accommodations (Lugger 2014, p. 9), provided by social housing agencies (16,1%) or municipalities (7,4%). Further 9% of the accommodations in Austria belonged to other categories like job related accommodations provided by business, gastronomy or firms. (Lugger 2014, p. 26)  
Especially in the city of Vienna there is a high rate of rented accommodations (about 75%), mainly administrated by the municipality; in the other regions there is a housing market for rent only in the larger cities like the regional capitals. In the rural parts of these regions there are mainly one family houses in private property. So the housing market for rent is mainly situated in the urban area of the regional capitals.

## **2 Legal and policy background**

### **2.1 Introduction**

The legal framework for housing security and / or the right to housing is a matter of Austrian wide legal regulations, but there is no explicit right to housing in the Austrian constitution. Housing security is stated by the law of tenancy (MRG). Conditions of the protection of tenants or home owners in risk of homelessness are outlined and regulated in the law of execution of debts, rent or mortgage arrears etc. (EO). The relation between tenancy based housing and housing property is 50:50% (Lugger 2014, p. 24).

**Housing for rent:** The tenancy law in Austria is a very important fundament for housing conditions of a large part of Austrians and is in force for both – social rented housing and the private housing market.

The tenancy law regulates the conditions of tenancy contracts as well as the proceedings of cancelation. These fundamental rules are valid for the whole housing market for rent and are focused on the protection of tenants.

It is important to take care of the fact that the tenancy law defines two ways to build a tenancy contract: limited for the period of three years or unlimited (MRG § 29).

Therefore there are two fundamentally different ways how a tenancy contract ends.

- The limited contract ends at the arranged term (temporary limitation of tenancy contracts is only possible for the period of three years, but follow up contracts with a period of 3 years again are allowed). When the rent-period ends the tenants have to leave the accommodation. Otherwise eviction can take place if the landlord applies at the court that the tenant did not leave the dwelling in time.
- An unlimited contract can be cancelled by the landlord if some well-defined reasons (MRG § 30) like rent arrears are fact. For example if the monthly rents are not paid the tenancy contract can be cancelled according to certain rules defined by the tenancy law (MRG). The tenants are in this way protected against arbitrary discrimination by the landlord. But the tenancy law does not regulate a right to housing and/or a definitive prevention of homelessness.

The tenancy law states that a tenancy contract cannot be canceled arbitrarily. The cancelation of a tenancy contract must be based on certain reasons and facts. Main reasons for the canceling of a tenancy contract are rent arrears, inadequate use of the accommodation, problematic behavior or stress in the neighborhood etc. (MRG § 30)

**Owner occupied housing:** In Austria 50% of the households are living in their own housing property. 60% of these households are without credits or mortgage-obligations or housing related debts (Putschögl 2012). Up to now there is only little knowledge about the consequences of the loss of housing property according to debts and mortgage arrears.

In Austria there is only little awareness that a home-owner can lose his home and becomes homeless because there is only little evidence altogether (reference: Jedlizka). But there are practical experiences of the debt advice services (asb 2013). In the year 2012 there were altogether 10.770 households registered in a proceeding of a voluntary bankruptcy, almost 60% of them accompanied by a debt advice service.

The execution law provides restrictions according to necessary goods for the survival which are excluded from the execution of property. Especially this protected property includes necessary means of the daily life, clothing, groceries and heating material. Furthermore means for the job and/or for learning are included into the list of no forfeitable properties. But there is no general exclusion of an accommodation and/or a condominium as necessary means for the daily living. Housing property is on disposal in the case of excessive indebtedness. (EO § 87-89)

The main reasons for the indebtedness of private households as mentioned by the debt regulation services are unemployment (43%), practice with money (19%) and collapsed self-employment (17%). The costs of housing property are only at the fourth place in this ranking (11.5%) (asb 2013).

The practical experiences of the debt regulation services (reference: Jedlizka) show that housing property is important in the context of debt regulation, especially if there is a relevant amount of property to bring into the regulation proceeding. Usually it takes a long time until the housing property will be put under disposal to cover debts with other creditors. If it is the bank institute which has financed the housing property the first to be done in the context of debt regulation is the nomination of the bank institute as the creditor of the housing property (EO § 98).

In the first range consulting of indebted households starts with a budgetary check, for example to proof the balance of income and regularly living costs. An important part of this financial check is to check if there is property, for example housing property, and if the monthly housing costs are in a realistic balance with the income of this household. As Jedlizka points out in the interview the consultation of the indebted households will try to secure the housing security as a priority and to prohibit a disposal of the housing property. In the proceeding of debt regulation it depends mainly if the housing property is burdened with mortgage, esp. up to which level. If the mortgage is very high the housing property has no explicit relevance for individual bankruptcy and so the chances are quite high that the indebted household can stay in the former housing property – now as a tenant.

In many cases the credit institute has no hurry to put the housing property to disposal. The institute will claim the open debts and bring to account the interests. Meanwhile the housing conditions stay valid and the indebted household can stay in an accommodation (EO § 105). Furthermore it is possible that the housing conditions will be changed into a tenancy contract after the housing property has slipped to the bank institute – at least if the former owner of housing property can afford the rent. If a compulsory auction of the housing property takes place than it will come easily to an eviction. The household has than no legal mean to prevent an eviction. So homelessness can be the effect, but there is only statistical evidence, how often a compulsory auction of housing property takes place. But the numbers provided of the ministry for law don't include information on the effects of forced sale of housing property, e.g. how many households have to change homes in effect of an eviction from housing property and – last but not least – how many persons become homeless as an effect of eviction from housing property. When I asked my interview-partners from prevention services, debt advice and services for homeless about owner occupiers becoming homeless their answers were uniform: No, this is exceptionally rare.

1: The **average length of time** of the eviction procedure depends on the kind of tenancy contract. There is no formal evidence about the average length of time until an eviction can take place but information from prevention services shows that after a limited contract is ended it will take only a couple of weeks until an eviction of a tenant who does not leave the dwelling in time can take place. In the case of the cancelation of a valid limited or unlimited tenancy contract it will take a couple of

months (on average about five months) until the eviction is possible (reference: Wallerstorfer)

2: There are only limited **means and measures** the households being threat by cancelation of the tenancy contract and eviction can undertake to handle the threat or to prevent the eviction. It's just up to pay the rent arrear and / or to find an arrangement with the landlord / probably with support by a prevention service. Otherwise the household will have to find another accommodation during the narrow time left. The tenants can apply at the court for additional time until the eviction is executed in cause of certain reasons like homelessness in wintertime. This additional period is possible for maximal nine months.

3: **preventive measures:** There is no legal measure to stop the cancelation of tenancy contracts besides paying the rent arrear before the first session at the court. In this case the cancelation of the contract by the landlord is invalid. After the legal cancelation it just depends if the landlord accepts the intervention by the local authority or the prevention services to pay the rent arrears.

## 2.2 Housing is a fundamental right in Austria, but not an individual right

The legal foundation for the protection of tenants and provisions of housing security is the tenancy law. Housing security is an important aim of the tenancy law but in the effect weak. A cancelation of a tenancy contract can result in homelessness. There is no definitive statement in the tenancy law how to prevent homelessness or how to handle housing stress or homelessness after the eviction took place. Therefore it is to state that the tenancy law provides protection of tenants and security of housing up to a certain extent but the tenancy law is no substitute for a right to housing (Wallerstorfer).

### 1. constitutional, statutory and case law sources

Housing rights are not established in the constitution of Austria. Housing rights are only mentioned as general targets of legal and administrative measures like social housing (for example: S-WFG, § 1). But there is no real protection in relation to eviction or as a mean to end homelessness. There is no individual right stated which can guarantee that a single person or family will become housed when this is needed.

### 2. Civil/administrative protections to promote the right to housing

In fact Austria has ratified the European Social Charta but not the articles 30 and 31. The government of Austria obviously does not accept an individual housing right. When BAWO (Austrian umbrella organization of homeless services) wrote an open letter<sup>1</sup> to ask for the ratification of these articles in the Social Charta the answer was very simple: "The Austrian system of social housing is internationally accepted as a model of good practice. Therefore there is no need to implement an individual housing right. Otherwise it would be necessary to change the logical structure of the Austrian housing policy."<sup>2</sup>

<sup>1</sup> [http://www.bawo.at/fileadmin/user\\_upload/public/Dokumente/Interessensvertretung/BAWO\\_Offener\\_Brief\\_Ratifizierung\\_Europ\\_SozCharta\\_in\\_OEsterreich\\_Februar\\_2012.pdf](http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Interessensvertretung/BAWO_Offener_Brief_Ratifizierung_Europ_SozCharta_in_OEsterreich_Februar_2012.pdf)

<sup>2</sup> Reinhard Mitterlehner, federal minister for economy and housing policy: Letter, 3/2013; [http://www.bawo.at/fileadmin/user\\_upload/public/Dokumente/Interessensvertretung/EU\\_normiert\\_Menschenrecht\\_auf\\_Wohnen.pdf](http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Interessensvertretung/EU_normiert_Menschenrecht_auf_Wohnen.pdf)

3. In Austria there are no special rights like protection of home, courts discretion to protect children, social function of ownership, etc.
4. In Austria there are no significant cases where EU law or the European Convention on Human Rights has been relevant in relation to evictions until now (reference: Wallerstorfer and Jedlizka)

The eviction profile in Austria shows very clearly that the right on housing is not valid up to a high level. It is not even guaranteed that there are sufficient data about the effects of eviction and / or the compulsory auction of housing property. The framework to prevent eviction and homelessness as an effect of losing one's home by eviction or execution sales is a weak protection. This can be stated for example in respects of the prevention services. Services to prevent eviction can be provided by regional governments but this is no obligation. If a region like Burgenland does not provide services to prevent eviction there is no consequence in any way.

5. There is no legal or constitutional duty to provide shelter/housing for people who are homeless

Another important problem prevention services are confronted with is the lack of available and affordable accommodations. In the case that it is impossible or according to the housing costs not meaningful to prevent the cancelation of tenancy contracts it is important to provide this household with an alternative dwelling.

6. In Austria there are no references to Article 31 of the European Social Charter in relation with the cancelation of tenancy contracts and/or eviction

When BAWO, the umbrella organisation for homeless services in Austria, started a campaign to move the Austrian government to ratify the Article 31 of the European Charter there was only one positive response by the ecologist party ([www.bawo.at](http://www.bawo.at)).

### 2.3 Owner-occupied principal primary residences

- Owner-occupier with mortgage: 50% of the Austrians are living in housing property, mainly in one family houses (39.4%) and condominiums (10.3%)<sup>3</sup>. Living in housing property is not regulated by tenancy law. Households living in housing property are protected by the status of property in the constitutional law of Austria which has a high value in the Austrian housing policy and the social funding of owner occupied dwellings. About 60% of the Owner occupier have already paid off their credits and are free of mortgage obligations (Putschögl 2012). Altogether in Austria there is only a very low amount of mortgages in relation to other countries of the EU. In the year 2011 the amount of mortgages was 27.8% of the Austrian budget (Bruttoinlandsprodukt). On the average of EU 27 this relative share was 51.7%; countries like Netherlands came up over 100% of the national budget (Lugger 2014, p. 45). About 40% of the housing property is charged with mortgages. Home-owners can lose their property and risk homelessness if they are indebted or not able to pay the mortgage. The proceedings of execution of owner occupied accommodations are regulated in the execution law (EO §§ 87 – 89).

In the case of indebtedness EO § 99 states that in the preparation of a compulsory auction the housing property or the estate is legally managed (Zwangsverwaltung).

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<sup>3</sup> Statistik Austria 2013; Lugger 2014, p. 26

The legal manager of the property is obliged to protect the owner from having to sell the property under value.

EO § 105 regulates that the owner of the housing property has to be housed in an adequate accommodation during the legal management of the property. An eviction cannot be executed until the compulsory auction is finished. Afterwards there are no more obligations to provide adequate housing or to protect the owner from Homelessness.

- hybrid tenure - such as shared ownership/cooperative: There is no information provided - in the data compendium provided by Statistik Austria about housing in Austria the term of shared ownership is not mentioned.
- very long leases (7 to 100+ years) which are similar to owner-occupation (rather than periodic tenancies): There is no information available – in the data compendium on housing provided by Statistik Austria this special form of owner occupation is not even mentioned.

#### 1. Extent of evictions from owner-occupied housing

In the context of the debt regulation services there is no evidence about eviction of indebted households, so there is no information available about the extent of this problem (Jedlizka). Also in the context of eviction prevention services there is no evidence about evictions from owner-occupied housing (interview Wallerstorfer). The statistic, provided by the ministry of justice, gives a whole number of compulsory auction, including housing property as well as estates. But there is no information available about the extent of the problems in the context of losing one's housing property and getting evicted.

*TABLE: AUCTIONARY SELL AND EXECUTION OF EVICTIONS, 2010 – 2013 (BMJ 2014)*

Regions	forced sale of housing property	eviction proceedings in the case of rented accommodations
Burgenland	294	130
Carinthia	580	741
Lower Austria	1.081	1204
Upper Austria	501	1308
Salzburg	302	665
Styria	944	1413
Tyrol	457	493
Vorarlberg	188	387
Vienna	876	6906
total 2013	5.223	13.247
total 2012	5.738	13.625
total 2011	6.588	14.071
total 2010	7.312	13.788

(BMJ BIS Justiz; auctionary sell and eviction proceedings 2013)

Therefore there is information about the numbers of forced sales and evictions but there is no information about the effects of these proceedings, the housing status of evicted households and / or the length of the processes from the beginning of the invoice of missing mortgages till the effective eviction. When I asked the ministry of justice by letter I got only the answer to get in contact with the offices of debt advice which I have interviewed already personally (Jedlizka) and by mail (Grohs).

2. Key issues in the mortgage system, which lead to evictions → No information available

The ministry of justice did just answer, that my letter is on the way to the competent office, but I didn't get any further information. In the context of the debt advice services there is evidence about the causes of indebtedness but no information about forced sales of housing property. There are five main causes for the indebted situation of private households<sup>4</sup>

- unemployment 44%
- failed entertainment 18%
- handling the family finances 15%
- costs of housing and housing property 12%
- divorce 12%

3. Deficiencies: Deficiencies in the context of the eviction of owner occupied housing are mainly in the fact that there is no obligation to inform any agency about the proceeding headed on eviction. Also in the case of the debt advice services there is no guaranty that the indebted households will come into contact or get information about these services. (Jedlizka) Debt regulation is based on voluntariness, motivation and self-responsibility of the indebted persons.<sup>5</sup> But there is no provision to prevent eviction realized.
4. Good practices: The expert from the service for debt advice in Salzburg, Thomas Jedlizka, mentioned that housing property will be handled very specially in the course of debt regulation. In the practice of debt advice services the fact of housing will be protected as far as possible. So in the start of a private bankruptcy they will try to get housing property out of the range of disposed property. The experiences show that credit institutes are often willing to keep the owner occupier in their home. Sometimes it is possible to change the form of housing contract from ownership to a tenancy contract. But there is no legal regulation like that, this is just a practical possibility and not a legally based measure the indebted household can rely on to prevent homelessness. (reference: Jedlizka)
5. Legal procedures and processes leading to evictions from owner-occupied housing: See the table in Annex I

In the case when a compulsory auction of housing property is finished the former owner is not allowed to stay in the former home and it will be very easy for the new owner to call for an eviction. It is just necessary to send an eviction letter to the court and will only last a few weeks until the bailiff will execute the eviction. There is no

<sup>4</sup> asb – Schuldenreport 2014, p. 12

<sup>5</sup> asb – Schuldenreport 2014, p. 4



other protection from eviction beside the fact that the new owner has to oblige the formal proceeding. (reference: Jedlizka)

6. Mortgage law grounds for eviction

Eviction in the follow up of debt and mortgage arrears is based in the execution law (EO §§ 87 - 89). This means that the proceedings are formally regulated but there are no more measures provided to prevent homelessness etc. (interview Jedlizka)

7. minimum income protected from confiscation by the lender

The limit of exemption from execution (Pfändungsfreigrenze) in Austria is € 837 which has to remain a single person after debt execution. In the case of a household with more than one person a specific calculation is provided to protect the whole household. For example: Two adult persons with two children with a monthly income of € 1.600 have a protected income of € 1.565 (asbPfändungs-Rechner).

8. legal aid/mediation/conciliation/defence/appeals/alternative funding arrangements/preventative measures for borrowers facing eviction

Indebted households can get advice and individual support by special services which will support them in the process of debt regulation and will help them to prevent homelessness, if they come and contact these services. (interview Jedlizka)

9. Obligations on authorities/lenders/courts/bailiffs to inform housing or other agencies (e.g. social offices) of the threat of eviction and obligations of the latter to react

There are no obligation to inform any housing or social office / therefore no obligation of the latter to react and or to provide housing for the evicted household (interview Jedlizka)

**2.4 Private rented housing**

**2.5 Social and public rented housing**

In terms of eviction procedures and processes in Austria there is no difference between social, public and private rented housing. The tenancy law regulates procedures of cancelation of tenancy contracts and the following steps.

The context of the housing market for rent consists of accommodations provided by municipalities, social housing agencies and private landlords. There are different conditions how to access these accommodations and how much is to pay regularly. But in relation to the possible contracts, the legal ways of cancelation and the proceeding of eviction there are no differences. All of these aspects are regulated in the tenancy law and are handled with little differences in relation to regional and administrative causes and not because of the different legal status of the tenancy contracts.

1. legal/illegal evictions from rented housing → no evidence provided about illegal eviction

*TABLE: STATE AND EXTENT OF PROCEEDINGS IN THE COURSE OF 2010 – 2013*

state of proceedings	2010	2011	2012	2013
proceeding of cancelation	36.597	36.985	36.731	36.032
proceeding of eviction	13.788	14.071	13.625	13.320
eviction is executed	5.466	5.253	4.936	4.955

This table gives an overview about the different states of the legal proceedings, beginning with the legal cancelation of the tenancy contract. The second stage of the proceeding is the legal proceeding if the eviction can take place. The last stage is the eviction itself executed by an official member of the court.

In the period of 2010 up to 2013 the numbers through all categories stay quite high. There is a slow decrease in the proceedings of cancelation and eviction. But there were some more evictions executed than the year before. Comparing the proceedings in the years 2010 to 2013 we can note that the number of executed evictions are decreasing significantly (-10%).

In the year 2013 altogether 36.032 proceedings of legal cancelation of tenancy contracts were noted. These proceedings resulted in 13.320 cases with a legal cancelation of the contract. In 4.955 cases these legal decisions were followed by an eviction. That means that at least almost 5.000 households had to leave their former accommodation.

*TABLE: PROCEEDINGS OF CANCELATION, EVICTION AND EXECUTED EVICTIONS, IN THE YEAR 2013 (BAWO 2014)*

	proceedings of cancelation of tenancy contracts	proceedings of eviction	execution of evictions
Vienna	21.060	6.885	2.562
Vorarlberg	731	387	149
Lower Austria	3.295	1.261	453
Burgenland	393	130	38
Upper Austria	2.723	1.337	550
Salzburg	1.629	665	211
Styria	3.219	1.421	526
Carinthia	1.591	741	258
Tyrol	1.391	493	208
<b>total</b>	<b>36.032</b>	<b>13.320</b>	<b>4.955</b>

The comparison between the regions of Austria shows quite wide differences between the counties, especially in Vienna eviction is a very important issue. More than 58% of all legal proceedings of tenancy cancelation take place in Vienna. But in Vienna there are only 18% of the inhabitants of Austria living. Therefore we can state that eviction is an urban phenomenon.

In relation to the number of inhabitants there is a high difference between the Austrian wide rate of eviction and the special situation in Vienna. In Austria there live 8.3 mio persons, almost 5.000 got evicted in the year 2013. This is a rate of 0.06%. Vienna has 1.5 mio inhabitants and 2.562 were evicted in the year 2013. This is a rate of 0.17%, almost three times as high than the Austrian average. This difference is mainly a result of the fact that Vienna is an urban area with a high rate of households living in rented accommodations. In comparison with the capitals in the Austrian counties the disproportion gets significantly smaller. → **Many Austrians are living in housing stress and in risk of homelessness**

- In the year 2013 there were about 74.520 persons threatened by the cancelation of their tenancy contract
- That is about 0.9% of the population of Austria.
- About 14% of these eviction proceedings were actually executed, therefore about 11.500 persons had to apply for a new accommodation and / or were homeless.

## 2. Key issues in the rented housing system, which lead to evictions

The formal information about cancelation of tenancy contracts and eviction provided by the ministry for justice does not contain information about causes and effects of eviction proceedings. The monitoring provided by the eviction prevention services shows that in about 80% their clients are threat by eviction because of rent arrears which are the most important reason. In 20% of the prevention cases there are different causes like anti-social behaviour, noise, littering etc. (FSW 2013, p. 183)

## 3. Deficiencies in the context of eviction and the prevention of eviction

20 years ago the first prevention services started in Salzburg and Vienna. The regions of Lower Austria, Upper Austria, Styria and Vorarlberg implemented prevention services in the following years. But still there are three Austrian regions without professional prevention services. This is the fact in Burgenland, Carinthia and Tyrol. Just recently the government of Tyrol announced that there will be an innovative process in the next time to start a prevention project. In the region Carinthia there are no prevention services in the rural parts. Professional prevention of eviction is only provided in the capital of Klagenfurt.

Another deficiency is mentioned by the experts (interview Wallerstorfer) in relation to the narrow window of opportunity to intervene in the cancelation and eviction process. The first information about the start of a cancelation proceeding is only given to the tenants and not to local / regional authorities. In many cases the households will come very lately in contact with the prevention services and a successful intervention is often stressed by lacking time to finance the rent arrears and/or to build up a consistent arrangement with the landlord. Furthermore there is a special deficiency in relation to the status of prevention services. In Vienna the prevention service will immediately get the written information about cancelation of the tenancy contract and can start the intervention proactive and without temporary delay. In other regions of Austria prevention services are not part of the communication between court and public authorities and their role in the proceedings depends on arrangements and / or the good will of the municipal authorities.

## 4. Good practice to identify

Prevention services in Austria are provided mainly by NGO's. The only exception is Vienna where households with children will be supported by the office for youth welfare. In the last decade it was possible to implement prevention services also in the rural parts of the regions of Salzburg, Lower and Upper Austria, Styria and Vorarlberg. Another very important good practice can be identified in the fact that some of these prevention services (esp. in Vorarlberg) are integrated in a network of social services and housing agencies. Cooperation with social housing agencies is an important factor to prevent eviction. Some social housing agencies have started to provide social work so they can start prevention by themselves. Also the cooperation with extern prevention services will be much easier than without (Wallerstorfer).

5. Legal procedures and processes leading to evictions from rented housing (public, social and private housing).

In addition to the table in Annex I the following chapter gives an overview on proceedings and processes leading to eviction – step by step

***Cancelation of an unlimited tenancy contract and eviction – step by step***

The law of tenancy states that rent arrears are a relevant cause to cancel a tenancy contract (MRG § 30). Other causes to cancel a tenancy contract can be the fact of misusing the dwelling as an office, to start a business in it or to sub-contract the dwelling to other persons. Another important reason why a tenancy contract can be cancelled is a conflict in the community of the house (noise, litter etc.). The prevention services report that in 80% of the cancelation proceedings the prime cause are rent arrears, other causes like conflicts, littering, noise etc. are of minor importance (FSW 2013, p. 183).

***FIRST STEP: LETTER OF CANCELATION***

In the case that the contracted rent is not paid the landlord can start a cancelation proceeding with a letter to remind the tenant about the rent arrear. The tenancy law states that the cancelation of a tenancy contract can start if the tenants did not pay the rent for eight days although the landlord did reclaim the rent. The prevention services observe that on the average there is a rent arrear of more than two months as monetary background for an eviction procedure. (Interview Wallerstorfer) Some housing companies have installed own offices to intervene in cases of rent arrears and / or other conflicts according to the tenancy contract. Some other housing companies engage social workers to provide a preventive service by themselves. These activities are strictly separate from the legal framework.

***SECOND STEP: WRITTEN INVITATION TO THE FIRST SESSION OF THE COURT (1. TAGSATZUNG)***

After the second written complaint the landlord can inform the legal court and the legal proceeding of cancelation will start. The first act is a formal letter to the household of the tenant. This formal information allows the tenants to intervene against the pronounced cancelation of the tenancy contract, to inform the court about real circumstances, for example that there is no rent arrear, that noise or litter were not caused by them etc. Within a limited period of four weeks the tenants can correct the statements in the cancelation letter of the landlord and/or access a prevention service. If there are no important reasons why the cancelation wouldn't be correct, e.g. because there is no rent arrear etc., in this first session the court will simply state that the tenancy contract is cancelled. If the tenant can proof that the rent arrear is already paid the cancelation of the tenancy contract is invalid but the tenant has to pay the costs of the proceeding.

***THIRD STEP: WINDOW OF OPPORTUNITY TO PREVENT HOMELESSNESS***

If the tenancy contract is cancelled the court has to inform the municipal authorities that the household of this tenant is thread by eviction and homelessness (MRG § 33a). After a limited period of 4 weeks after the court has cancelled the tenancy contract the landlord can continue to start with the eviction proceeding.

The administrative board of the town or village receives the formal cancellation letter by the court and is now challenged to act in order to prevent homelessness or to inform a specific prevention service.

#### *FOURTH STEP: EVICTION PROCEEDING*

Four weeks after the legal cancellation of the tenancy contract the landlord can continue in the proceeding of eviction. He has to apply to the court and the eviction will be executed by a legal bailiff. When the eviction will be executed depends on the agenda / the time table of the bailiff (EO § 30). But the tenant can ask the court to provide more time (maximum: nine months) to leave the dwelling because of certain reasons, e.g. homelessness in winter time etc. (MRG § 34). But the MRG doesn't reflect on a right to housing or a prevention of eviction.

#### ***Cancellation of a limited tenancy-contract in time of validity***

If there are certain reasons it is possible to cancel a limited tenancy-contract before it ends. In this case the proceeding of cancellation and the following eviction is the same than it is with an unlimited contract (see above).

#### ***Eviction after the limited tenancy contract is run out of validity***

After the end of the limited contract it is a quite contract free period and there is no protection of the tenants. The following eviction proceeding is very simple. The landlords are not allowed to execute it by themselves but they just have to apply the eviction because also in this case. In these cases there are no regular time limits and the eviction will take place whenever the executer can arrange it.

6. Mandatory and discretionary grounds for eviction: see above: processes and proceedings
7. impacts on the principles of rental housing - stability, affordability and flexibility: The MRG implements a system how tenancy contracts provide stability, affordability and flexibility.

ad stability: There are two ways how to set up an tenancy contract – a limited or an unlimited contract. The limited version has to cover a period of three years. After these three years the tenancy contract can be followed by a new tenancy contract. Again there are two ways of contracts possible – a limited or an unlimited contract. But the landlord is not allowed to state a shorter time period. In this case the tenancy contract would become unlimited.

ad affordability: The MRG defines how much a rented accommodation can cost. This is a very complex mechanism, valid only for those accommodations which are regulated by the MRG (MRG § 1), and differentiated according to certain aspects like situation in the city, the quality of the vicinity etc. (MRG §§ 15, 15a, 16).

ad flexibility: The MRG states the conditions how to change or to cancel a tenancy contract. To protect the tenants the MRG states that a valid tenancy contract can only become cancelled by legal court proceedings. A tenant who wants to cancel a tenancy contract has to follow certain obligations like time limits etc.

8. Minimum income which the evicted debtor is entitled to retain: See above
9. Preventative measures for private renters facing eviction: The prevention services don't make a difference between tenants at the different housing

markets (public, social and private). The services to prevent eviction are open for households which are threat by eviction. But in the prevention practice only few cases where accommodations occupied by owners are threat by eviction (interview Wallerstorfer).

The prevention services in Austria are mainly confronted with the fact that the eviction cases can only become prevented when there is enough money to cover the rent arrears. There are regional differences how needed funds are provided. So in Vienna the prevention service FAWOS can cover rent arrears with money (social benefit) from the city of Vienna (reference: Schuster-Gundacker). In regions like Styria the prevention service, provided by Caritas, has to cover rent arrears with extra funds from charity activities (reference: Wallerstorfer).

10. Obligations on landlords/courts/bailiffs to inform housing or other agencies (e.g. social offices) of the threat of eviction and obligations of the latter to react: There is only a specific obligation that the court has to inform the public authorities about the cancelation of tenancy contracts.
11. Special protected tenures in the private rented sector – like protected tenants: In Austria there are no special protected tenures in the private rented sector and therefore there are no special provisions related to eviction.

- **Institutional accommodation- permanent institutional accommodation with a contract/tenancy**

Institutional accommodation is regulated by the law of tenancy but in terms of contract cancelation and eviction there are quite important differences.

MRG § 1, point 1.1a of the tenancy law states an exception from the protection of tenants, if the tenancy contract is strictly combined with individual support. In this case cooperation and compliance of the tenant with this individual support are binding conditions sine qua non. In this case the tenant has to cooperate with individual support and regulations of the institution, for example a shared apartment for homeless persons. If the tenant is not willing to fulfil conditions, for example concerning the consume of drugs or alcohol, the validity of the tenancy contract ends and for the social service provider it is no not necessary to apply to the court to cancel the contract. The tenant can now be forced to move out of the accommodation voluntarily. Otherwise the service provider has to intervene at the court via eviction letter and ask for eviction. This is the same procedure than with limited contracts after the contracted period is finished and there is no more protection of the tenants in force.

The service provider is not allowed to organize an eviction by himself. This would be illegal. But the service provider easily can apply to the court, send an eviction letter and get the bailiff doing his job.

## **2.6 unauthorised occupancy**

Unauthorised occupancy like squatting, self-build without permission and unauthorized encampments are not regulated by the tenancy law and there is no protection of eviction. An eviction of squatters etc. is traditionally done by police force – if the landlord is challenging that.



## 2.7 Temporary or permanent dispossession/ exclusion from home

1. extent of evictions in the context of home dispossession due an injunction/barring order/separation/divorce: In the case of domestic violence the police can intervene and evict the aggressor from the common accommodation (Wegweisung). This ban is valid for two weeks, afterwards it is necessary to get a confirmation of this ban by the regional court (§§ 382b und 382e EO).

Often women would not rely on a barring order. Instead of an intervention like that many women who are confronted with domestic violence will leave their home and seek protection in a shelter for women. In cases like that it would not come to an eviction, but it is not sure that women (with children), staying in their former home without their partner can afford the costs of housing. But there are no data available about this soft loss of housing.

### Statistical evidence on domestic violence:

Intervention by police – domestic violence / 2012	7.647
Court decisions – barring order (Wegweisung) (§38a SPG) / 2010 <sup>6</sup>	1.931
Women and children seek protection in a shelter (2013 <sup>7</sup> )	3.232

2. Key issues/situations in this sector which lead to losing home's possession: In the cases of domestic violence as well as divorces it will come to housing stress. Probably the accommodation is not affordable after a split of the family budget, probably the accommodation does not fit anymore in order to other reasons. In Austria there is no sufficient and reliable statistical information about temporary dispossession of homes and the effects of temporary dispossession of ones home in a long run.
3. Deficiencies to be identified: The umbrella organisation of women's shelters criticize that they have problems to help their clients into adequate and affordable accommodations. Therefore it may happen quite often that women in stress with violence cannot access a shelter because there are waiting lists and no available rooms. The problem is especially high for women with many children and for migrants.
4. Good practices to be identified: In Austria there are intervention offices in the case of domestic violence (Gewaltschutzzentren) – in all regions – as well as shelter for women and children in domestic violence stress. Counselling and advice in the intervention offices is a low threshold service and free of charge.
5. Legal procedures and process to leading to dispossessions in this sector: In the case of domestic violence the police has to evict the aggressor and ban this person for two weeks from the accommodation and the vicinity. If the victim of domestic violence needs protection after this temporary ban will diminish after these two weeks this person has to intervene at the regional court and asks for a confirmation of this barring order for a longer period. In the meanwhile the police has to control and monitor the effects of the barring order. The police has to report their observations to the court; eg. a violation of the barring order is a

<sup>6</sup> Bandion-Ortner 2011; this numbers are total numbers. There are no gender-specific differentiated data available

<sup>7</sup> a oef 2014

criminal act and will be punished by law. The aggressor can be taken under arrest in order of a repeated violation.

6. Legal aid/mediation/conciliation/defence/appeals/alternative funding arrangements/ preventative measures for people in this sector facing eviction: In the case of domestic violence there are services provided for victims of domestic violence like intervention offices (counselling) and shelters (protection). The aggressor can access a therapy to improve the control of aggression and violent behaviour. In the context of the regional court it is possible to access a mediation service if there is a will to keep in partnership.

## **2.8 The extent of “soft law” measures in relation to evictions**

Non-legally binding policies and protocols which can be used by courts, landlords, lenders and others to mitigate and prevent evictions.

1. “soft law” measures: In Austria there are few “soft law” measures in relation to evictions like provisions for social work in the context of social housing agencies – models of good practice! But there is no literature available, no information about facts like how many social housing agencies have realised innovative measures in this way etc. There is no information about effects etc. available.
2. Use of innovative soft approaches and effects: Social work in the context of social housing agencies will get information about rent arrears of households very early in the process and in an informal way of intervention. So they can start contacting the household, asking if there are any problems, if the agency can help.

There is an immediate effect: The intervention to prevent eviction stays at an informal level and does not cause any additional costs. Because of this informal way of exchange and common way to look for a solution of problems the chances are quite high that it wouldn't come to a formal eviction (Wallerstorfer).

The experience of prevention services show that it is much easier to prevent an eviction if the information starts early in the formal process, especially if the intervention can start before a formal proceeding has started. Furthermore the cooperation with a social worker as partner in the social agency is an important help in the provision of prevention measures like an arrangement of payments by instalments (Wallerstorfer).

## **3 Data - extent and profiles of evictions**

### **3.1 Data about eviction processes started and actual evictions executed**

1. For owner-occupied principal primary residences:
  - a) the number of households receiving a notice of termination/foreclosure of the mortgage → this information is not available
  - b) the number of households receiving an repossession/eviction order → this information is not available;
- c) The number of households actually evicted → the number of owner-occupied residences confronted with eviction is included in the total number of executed evictions. The monitoring system of the

ministry of justice doesn't differentiate between different kinds of residences and/or the specific status of households confronted with eviction.

2. For private rented principal primary residences:
  - a) Number of households threatened with an eviction after they have received a notice to quit/termination of tenancy → this number is included in the total number of cancellation proceedings; the monitoring system of the ministry of justice doesn't differentiate between different kinds of tenancy contracts and/or housing market.
  - b) Number of households receiving an eviction order → this number is included in the total number of cancellation proceedings; the monitoring system of the ministry of justice doesn't differentiate between different kinds of tenancy contracts and/or housing market.
  - c) Number of households actually evicted → this number is included in the total number of cancellation proceedings; the monitoring system of the ministry of justice doesn't differentiate between different kinds of tenancy contracts and/or housing market.
3. For social rented/public principal primary residences → the following numbers are total numbers and include also the segments of private housing and – in the stage of eviction – the owner-occupied residences.
  - a) the number of households threatened with an eviction after they have received a notice to quit/termination of tenancy;

regions	2013	2012	2011	2010
Vienna	21060	22134	22294	21819
Vorarlberg	731	884	739	785
Lower Austria	3295	3043	3042	3077
Burgenland	393	398	394	397
Upper Austria	2723	2598	2665	2756
Salzburg	1629	1623	1646	1567
Styria	3219	3286	3331	3275
Carinthia	1591	1469	1632	1572
Tyrol	1391	1296	1242	1349
<b>total</b>	<b>36032</b>	<b>36731</b>	<b>36985</b>	<b>36597</b>

- b) the number of households receiving an eviction order

regions	2013	2012	2011	2010
Vienna	6885	7270	7531	7434
Vorarlberg	387	444	348	327
Lower Austria	1261	1259	1228	1294
Burgenland	130	136	119	126
Upper Austria	1337	1242	1326	1263
Salzburg	665	578	662	604
Styria	1421	1504	1533	1477
Carinthia	741	717	794	729
Tyrol	493	475	530	534
<b>total</b>	<b>13320</b>	<b>13625</b>	<b>14071</b>	<b>13788</b>



c) Number of households actually evicted.

regions	2013	2012	2011	2010
Vienna	2562	2565	2789	3068
Vorarlberg	149	159	131	157
Lower Austria	453	450	459	437
Burgenland	38	47	38	41
Upper Austria	550	493	541	535
Salzburg	211	202	216	200
Styria	526	555	558	542
Carinthia	258	265	277	258
Tyrol	208	200	244	228
<b>total</b>	<b>4955</b>	<b>4936</b>	<b>5253</b>	<b>5466</b>

4. evictions from freely used properties such as those squatted or occupied without authorization: → no information available

**3.2 Data about the geographical distribution of eviction processes started and actual evictions prosecuted → see above**

**3.3 Characteristics of the households involved in the process of eviction**

- The monitoring system provided by the ministry of law doesn't differentiate between characteristics of the households involved in the process of eviction.
- The data of prevention services on households etc. threat by eviction are very limited to the prevention cases but provide no information about the whole situation of eviction in Austria; for example: In the year 2012 FAWOS (prevention service in Vienna) was informed about 18.280 eviction cases at the district courts in Vienna. 49% of these households were contacted by FAWOS; 20% of the contacted households accepted this invitation and got advice and support (FAWOS 2013, p. 13).
- Prevention services are provided only in six regions of Austria. In the regions Burgenland, Carinthia and Tyrol there are no region wide prevention services provided and so there are no comparable data covering all regions.
- Prevention services in Austria have started a network project to improve data collection and establish common standards of monitoring. The next step in this development will be in September 2014.

- ⇒ Households composition: no data available
- ⇒ Number of persons per household concerned (in %): no data
- ⇒ Sex of the persons concerned (in %): no data available
- ⇒ Age of the persons concerned (in %): no data available
- ⇒ Country of birth of the persons concerned (in %): no data available
- ⇒ Citizenship (in %): no data available
- ⇒ Usual activity status/labour status (in %): no data available
- ⇒ Value of the dispossessed property / household income of households being involved in the eviction process: no data available

- ⇒ Specific groups who are especially vulnerable to evictions: no data available
- ⇒ Change of groups affected during recent years: no data available

## **4 Risk factors for evictions and evictions leading into homelessness**

### **4.1 Risk factors and eviction leading to homelessness**

#### **1. Risk factors for evictions relevant for Austria**

Risk factor number one is rent arrears in the consequence of decreasing household income (unemployment, illness, divorce etc.). The reports of the prevention services show that this is in almost 90% of the households which are in contact with the services because of threatened by eviction (reference: Wallerstorfer)

Risk factor number two is anti-social behaviour like noise, littering etc. or psychosocial illness. The reports of the prevention services figure that about 10% of the cases they work on are related to these causes (reference: Wallerstorfer).

#### **2. evidence on the relative importance of various risk factors**

- ➔ There is no valid information in total available; the data provided by the ministry of law don't differentiate any of these aspects.
- ➔ evidence comes only from the reports of the prevention services in the regions where prevention takes place (six regions of nine; for the regions Burgenland, Tyrol and Carinthia there are no data available)

#### **3. Predominant risk factors**

- ➔ see above

### **4.2 Evictions and homelessness**

- ➔ Evidence on homelessness after an eviction: There is no evidence on homelessness occurring immediately after an eviction provided by the ministry of law.
- ➔ There is evidence provided by homeless services that homelessness is in the long run an effect of cancelation of tenancy contracts and the follow up of an eviction.
  - Hidden homelessness: The services for homeless report that many of their homeless clients don't access the services immediately after becoming homeless. In the first attempt to handle the housing crises they will start to camp at friends or relatives, sleeping on the couch or use the given money to rent a room in a cheap boarding house (44.7% of the homeless clients of homeless services are hidden homeless before they will access a homeless service; only 2.4% have been living in an accommodation (FSW 2014, p. 199).
  - Usually it is the second strategy to access homeless services when they realise that it is not easy to get an affordable accommodation in time and that it is impossible to live with friends that long.
- ➔ Furthermore there are some qualitative studies on local strategies to fight homelessness (Riesenfelder 2012) and the individual histories fighting homelessness (Schoibl 2011).
  - The evaluation of homeless services in Vienna (Riesenfelder 2012) shows that eviction is the background for the first contact to homeless services in 33% of the analysed cases of homelessness. More than

50% of these cases left their accommodations without legal procedures of eviction because the landlords pronounced a cancelation of the tenancy contract or because of the costs which were not affordable (p. 25)

- In an analysis of 100 documents of advice and support because of homelessness (in the range of prevention services, homeless services and target group specific services for vulnerable persons) Schoibl (2011) shows that about 21% of the documented homelessness resulted directly out of evictions (p. 86 ff.). Only few exceptions of these evictions were caused by unsocial behaviour and/or conflicts with the landlords. In the large majority the housing specific problems were caused by decreasing income in order of unemployment, illness or divorce.
1. Evidence on particular forms of homelessness following an eviction (e.g. on rough sleeping, staying in a shelter, or staying temporarily with family and friends) and on the dynamics between different stages of a homelessness period (for instance the family/individual may start out staying temporarily with family or friends but may eventually end up staying in a shelter after other options for accommodation may have run out)
    - ➔ The monitoring of eviction proceedings doesn't include information about the effects of evictions. Therefore the experiences of homelessness following an eviction are not documented.
    - ➔ Local surveys on homelessness exist for the city of Salzburg (FWLH 2014). But this annual survey shows the actual (non-)housing situation of homeless persons according to the ETHOS-definition. But there is no information documented about the immediate effects of eviction and/or the strategies of households concerned by eviction proceedings.
  2. particular risk of homelessness following an eviction → not available
  3. individuals with complex support needs such as the mentally ill or substance abusers → no evidence available

## 5 Conclusions

Homelessness in Austria is an important issue and in the last few years the extent of homelessness has started to increase again. Obviously the increase of homelessness of inhabitants of Austria is an effect of rising housing costs and an insufficient income situation on the one hand and new kinds of homelessness in the context of temporary migration from EU-States without a chance to settle in Austria (Schoibl 2013). Many of these new homeless are sleeping rough because the access to regular services for homeless is restricted.

### **Regional strategies to fight homelessness – no strategy on national level**

Instead of a national strategy to fight homelessness in the nine counties of Austria there are completely different systems in force (BAWO 2013). Some of these regional service schemes are quite elaborated and provide prevention as well as treatment, support and rehousing. But also professional services with high standards are confronted with a restrictive housing market and a lack of available and

affordable accommodations. So there are some counties like Vienna, Upper Austria and Vorarlberg, where services for the homeless cover the problems of homeless persons with a high level of professional standards. This starts with services to prevent homelessness. There are provisions like consultation, support in housing and measures to rehouse homeless persons in adequate and affordable accommodations. There are other Counties like Lower-Austria, Salzburg and Styria with quite elaborated services according to prevention and support in housing but with special problems to rehouse homeless persons in the regular housing market. Also these counties have preventive provisions established but rehousing or rehabilitation is extremely difficult in order to lacking available and affordable accommodations. De facto the services for Homeless in these counties provide support and treatment like a revolving door: Clients of these services stay temporarily in supported housing and leave these facilities into expansive accommodations with a temporarily limited tenancy contract. After a while these persons will become homeless again in order of limited contracts, high housing costs and / or rent arrears.

### **Knowledge about homelessness**

In the last 15 years there were only two initiatives by the federal government to provide nationwide data on homelessness and services on homelessness. These surveys were realized by BAWO, the national umbrella organization for homeless services.<sup>8</sup> These report state that it has been very difficult to get reliable data according to problems in counting homelessness, to problems with hidden homelessness, to problems with double counting and obligations of data protection. Both surveys were focused on the cooperation of homeless services and the collection of data was restricted to homeless persons in contact with homeless services. Persons in hidden homelessness, living with friends and relatives, staying in stationary treatment or prison without a place to go after their release etc. could not be counted. At the same time it was not possible to provide a mechanism how to take care of double counting, eg. persons who are in contact to more than one service at the same time. So the surveys on homelessness were handicapped by under- and overestimating the number of homeless persons at the same time. Data from these surveys can give just a hint about the quantitative amount of the problem of homelessness.

### **Knowledge about pathways to homelessness**

There are different pathways to homelessness but the state of monitoring in Austria gives no possibility to build up a ranking, which are the most risky situations for persons to become homeless. This lack of knowledge is one cause why it is almost impossible to build up knowledge based prevention schemes.

### **Knowledge about homelessness in the follow up of eviction**

In Austria there is a rising awareness about the risks of housing costs, rent arrears and legal proceedings which can be followed by eviction. Since more than 10 years the ministry of justice publishes the numbers of legal proceedings as well as the final

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<sup>8</sup> BAWO 1999 & 2009

consequences like the execution of eviction. But still these statistics is not sufficient because there is no evidence about the individual state of housing – in the course of the legal proceedings and / or in consequence of the executed eviction. So there are numbers but these numbers give only evidence of the state of proceedings. So up from the beginning of the 1990ies regional initiatives in Salzburg and Vienna started to establish specialized prevention services in the range of the eviction. At least it took some more years until the counties Styria, Nether Austria, Upper Austria and Vorarlberg followed. Just recently the government of Tyrol decided to start a prevention service as well. But still the counties Burgenland and Carinthia refuse to provide a professional prevention service.

### **Knowledge about homelessness by loss of housing property**

Up to now there is only little knowledge about the consequences of the loss of housing property according to debts and mortgage arrears. There is no evidence about housing stress or homelessness as a consequence of an auctionary sell of houses or accommodations. Therefore it is no surprise that in Austria there is no scheme provided to prevent homelessness in the consequence of a forced sale.

1. more research needs to be done

In Austria there is no national strategy to fight homelessness and there is no general monitoring system provided to allow knowledge on the extent of homelessness, on the pathways to homelessness and the effects of measures to fight homelessness at local and/or regional level.

2. Deficits in the system of monitoring

→ The national monitoring system on eviction proceedings and the effects of evictions is completely insufficient and doesn't provide knowledge according to the kinds of households, age and sex of the person threat by eviction or homelessness.

→ The national monitoring system of the whole proceedings which are leading to eviction doesn't contain any information what happens between the first announcement of the cancelation of the tenancy contract and the follow up. For example: If the household is just moving out of the accommodation there is no further documentation provided. The case is just closed, but there is no explanation why numbers at the following stages of the eviction process are much smaller.

→ There is need for a completely new monitoring system at national level

3. Examples of good practice

- a) There are prevention services in six (out of nine) regions of Austria provided advice and support also in the regional parts of these regions
- b) the prevention service in Vienna is partly adjusted with public authority, that means that the information about eviction will be delivered directly to the service and the prevention service can start to intervene immediately
- c) the prevention service in Vienna is cooperating with the office of social benefit; in the case of rent arrears it is quite easy to arrange a repay
- d) the prevention services, especially in Vorarlberg, are integrated in the network of social services as well as housing agencies. This is an

- excellent base for cooperation and successful solving housing related problems
- e) Some housing agencies have started to provide social work and prevention of eviction as a part of their duties
4. arrangements/legal provisions to deal with vulnerability
    - ➔ In Austria the fact of vulnerability / disability is not relevant in the provisions to deal with eviction.
  5. provisions for removal and storage of possessions of the evicted household
    - ➔ The possessions of the evicted households are professionally removed and stored in a magazine by the local authorities. The evicted tenants will have to pay for transport and storage otherwise they wouldn't get their possession back.
  6. conclusions or recommendations
    - ➔ In Austria there is no solid strategy to prevent and to fight homelessness at a national level. According to this lack there are altogether nine different systems in force, mainly without a sufficient link to housing related aspects
    - ➔ In Austria the right to housing is only manifested as a general target of housing policy but it is no individual right. Therefore Austria did not ratify the §§ 30 and 31 of the Social Charta of Social Rights.

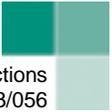
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### **Interviews with experts**

**Bernhard Wallerstorfer**, Fachstelle für Gefährdetenhilfe Salzburg / Soziale Arbeit GmbH, 26.2.2014; interview on the issues: tenancy law, eviction and prevention of eviction / **Thomas Jedlizka**, Schuldnerberatung Salzburg, 21.3.2014; interview on the issues: law on execution of debts, forced sale of property, debt regulation / **Hans Grohs**, asb (umbrella organisation of debt advice offices in Austria), by mail, 19.6.2014 / Johannes Schuster-Gundacker, FAWOS / Volkshilfe Wien, 24.1.2014; interview: monitoring of eviction proceedings, validity of the available data (provided by Bundesrechenzentrum), regional specifics and eg. urban phenomena / Sieglinde Trannacher, Delogierungsberatung / Volkshilfe Klagenfurt, 15.5.2014; interview on regional / urban aspects of eviction and prevention services



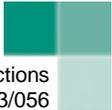
### Annex I: The process of becoming homeless by eviction in private, social and public rented accommodations

In Austria all of these types of rented accommodations underlie the regulations of the tenancy law; the proceedings of cancelling the contract and to evict the tenants are almost the same – there is only one relevant difference between limited and unlimited tenancy contracts. In the case of limited tenancy contracts an eviction proceeding after the period of tenancy is finished can start with phase 3 – court decision to evict and subsequents. The first steps of invoice, appliance to the court about the cancelation and the formal cancelation of the contract by the court is not needed because there is no valid contract anymore – therefore it is just the question of a legal eviction proceeding.

Calendar of events, legal basis	formal / informal proceedings / time limits	legal protection / defences / legal or human rights / legal aids	possible interventions by households being evicted prevention services
<b>PHASE 1 – PRE-COURT</b>			
MRG § 32: legal cancelation average: rent arrear for 2 – 3 months	informal letter after 8 days of delay the landlord can send the first letter	no legal protection available	the tenant just can pay the missing rents or inform the landlord about any reasons for the delay informal intervention by social workers in some social housing agencies
the landlord can give the case to an debt-collecting agency or a lawyer	2 letters to invoice the missing rents	no	if the tenant pays the arrear and the costs of agency or lawyer the written cancelation of the contract is invalid
landlord / debt-collecting agency / lawyer	cancelation letter to the court	no	no
<b>PHASE 2 – COURT PROCEEDINGS</b>			
4 weeks period	court case starts with a letter to the tenants and an invitation to the first session of court	no the letter by the court can contain information about prevention services etc.	The tenants can intervene – pay the missing rents – bring in some arguments that the cancelation letter is not correct, eg. on arrears and / or other reasons for the cancelation of the tenancy contract



after 4 weeks period	first session of the court proves the intervention of the tenant and states if the tenancy contract is cancelled or not	MRG 33a: information of the local authorities: the court has to send a cancellation letter to the municipal authority that an eviction can take place	the municipal authorities can inform a prevention service (Vienna) that an eviction can take place and a prevention service is needed otherwise the municipal authority informs the household about prevention services and invites them to get in contact with these services
<b>PHASE 3 – COURT DECISION TO EVICT FROM RENTED ACCOMMODATIONS AND SUBSEQUENT</b>			
4 weeks period  MRG §34: delay of eviction	the cancellation of the tenancy contract is in force	there are no legal claims against the cancellation but the prevention proceeding might start – there is no legal claim to get professional support to prevent eviction	the tenants have now a period of 4 weeks to come to a new arrangement with the landlord or to realize a new tenancy or to prevent eviction with the help of a prevention service Formal appliance to provide a delay of the eviction because of certain reasons like homelessness, children in the household etc. the maximal period of delay is nine months
letter of eviction	the landlord sends a formal letter to the court and asks for an eviction	no legal protection	informal intervention by tenant and/or prevention service
there is no fixed period, it just depends on the timetable of the bailiff	the bailiff arranges a date for the eviction according to his/her timetable	no legal protection	there is no legal intervention possible; the tenants can just ask the landlord to give them more time to arrange an alternative housing solution; they can argue with the needs of children, climate and/or other personal reasons why an eviction should be postponed but there is no legal protection provided
	eviction takes place	no legal protection but professional support by homeless agencies	



### Annex II: The process of becoming homeless by eviction from owner occupied accommodations

After a forced sale of housing property the inhabitants of this accommodation lives in a contract free status and the new owner of the property can ask for leaving his / her property. If the dwellers don't leave the dwelling the owner has to send a formal eviction letter to the court.

<b>Austria – Housing property: One family houses and owner occupied accommodations in condominiums</b>			
Calendar of events, reasons and legal basis for evictions	formal / informal proceedings / legal time limits	legal protection / defences / legal or human rights / legal aids or alternatives to prevent eviction or homelessness	possible interventions by households being evicted and also agencies concerned to prevent evictions and homelessness
<b>PHASE 1 – PRE-COURT</b>			
Mortgage arrear EO §§ 87-89	invoice, in many cases by an attorney or an incasso office	letter to the court	pay the arrear apply to the court to take the housing property in the hand of the credit institute
<b>PHASE 2 – COURT PROCEEDINGS</b>			
start of the execution proceeding session	implementation of a legal management of the property – EO § 99	forced sale of the housing property	build an arrangement with the legal management according to the housing situation – EO § 105 contact a debt advice service – preparation of an individual bankruptcy
<b>PHASE 3 – EVICTION FROM HOUSING PROPERTY AND SUBSEQUENT</b>			
letter of eviction by the landlord, the credit institute, the new owner of the housing property (EO §§ 87-89)	the landlord sends a formal letter to the court and asks for an eviction date	no legal protection	informal intervention by tenant and/or prevention service – contact with the landlord / the new owner of the accommodation to ask for delay of eviction, to seek a new arrangement, probably to get a new tenancy contract
	the bailiff arranges a date for the eviction	no legal protection	it would be best to arrange an alternative housing solution
	eviction takes place	no legal protection	