

COUNTRY REPORT

AUSTRIA



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Table of Contents

| | |
|---|----------|
| Background | 1 |
| <i>The Austrian Constitution</i> | 2 |
| Formal Constitution-Making..... | 3 |
| Incremental Constitution-Making..... | 5 |
| Deliberative Events and Incidents..... | 5 |
| Conclusions..... | 7 |
| References..... | 8 |

Background¹

Austria is a representative democracy and a federal state consisting of nine provinces. Compared to other federal states, Austrian federalism is institutionalized in a weak form – according to Hueglin and Fenna (2006, 34), Austria is one of those countries which “describe themselves as federations while being so centrally dominated in design and practice as to be little short of unitary states.” The weakness of the federal system is mirrored in the Austrian two-chamber-system in which the National Council (Nationalrat) holds “exclusive federal competence in both legislation and administration” (Art. 10 of the Austrian Constitution, quoted after Karlhofer 2015, XIX) while the Federal Council (Bundesrat) only holds residual competences. The Federal Council only has a suspensive veto right in federal legislation; its absolute veto right with regard to bills concerning the competences of the provinces (Bundesländer) was used only once in its history, in the year 2019 with regard to a law on ecological electricity². However, due to the EU’s ‘subsidiarity control procedure’, the Federal Council now considers itself as the ‘European Chamber’. By number of reasoned opinions the Austrian Federal Council ranks second among the 40 European chambers.

The informal institution of the conference of Landeshauptleute (heads of government of the provinces) exercises a power in the constitutional and political reality, that is close to a veto power next to the Bundesregierung (federal government; Öhlinger, Verfassungsrecht. 2009. S 149).

Political parties are the most important political actors in the Austrian system. Until the 1980s, the two large parties – the Social Democrats (SPÖ) and the Conservatives (ÖVP) – structured the Austrian political landscape together with the much smaller FPÖ, at this time a party combining liberal with right-wing positions. The two main political parties integrated the different political levels in Austria in the form of a party federal state (Parteienbundesstaat, cf. Decker 2011). Since the 1990s, the party landscape has become more differentiated, mainly due to the success of the Greens and the FPÖ; the latter developed to a populist radical right party and considerably increased its electorate (Karlhofer 2015, XVI-XVII). This development has weakened but not abolished the integrative force of political parties as, up to now, either SPÖ or ÖVP (or both) are part of every province government.

A further important informal factor in the Austrian political system is the so-called social partnership (Sozialpartnerschaft), a system of cooperation between representatives of the employers and employees and the government. Although

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² <https://www.parlament.gv.at/PAKT/AKT/SCHLTHEM/SCHLAG/J2019/026Oekostromgesetz.shtml>, (retrieved 2020-10-09)

declining in influence this Austrian form of corporatism still contributes to the stability of the economic and political system (cf. e.g. Lehner 2017).

The Austrian Constitution

The core part of the Austrian Constitution stems from 1920 and was written as a compromise between strongly opposed political forces, on the one hand, and the nation state and the provinces, on the other one. It is a purely procedural Constitution describing institutions and their functions without prescribing contents. This is, on the one hand, due to the conflictive situation in which it was conceived of, on the other one, due to the conviction of its main author, the legal expert Hans Kelsen, that constitutions should just define the rules of the game for democratic conflict, not prescribe its outcome (Leitner 2015). Important amendments were made in 1925 (changing and clarifying the distribution of competences between the federal level and the level of the provinces) and in 1929 (increasing the competences of the President at the costs of the competences of the Parliament). The version of 1929 is still in force today (although it was suspended during Austro-Fascism and National-socialism) but has been amended more than 130 times by now (Gamper 2020). Furthermore, this core part of the Constitution is only one of about 500 laws of constitutional rank. While praised as a model of democratic constitutionalism by some the Austrian Constitution has been dubbed “a ruin” by others due to its fragmented and confusing structure (Klecatska 1980, 83).

The Austrian Constitution only allows for very limited possibilities for direct and participatory democracy (cf. Ehs/Vospernik 2020): referenda (Volksabstimmungen) and popular petitions (Volksbegehren) – both part of the constitution since the 1920s, although never used before the 1960s – and, introduced only in 1986, popular consultations (Volksbefragungen).

Referenda are obligatory in case of overall amendments of the constitution. Only a majority of members of the National Council can request facultative referenda on smaller changes of the Constitution or draft legislation. Results of referenda are binding³. Referenda are also possible in the majority of provinces and municipalities of Austria; in two Austrian provinces, municipal referenda can be launched by the population⁴.

Popular votes on national level can also only be requested by a majority of the members of the National Council. Up to now, one popular vote on national level took place. Popular votes are also possible on the level of the provinces and municipalities and are much more frequently used here, especially in Vienna⁵.

Popular petitions are the only instrument of direct democracy which can be initiated by citizens. A popular petition on federal level needs 100.000 signatures in

³ <https://www.bmi.gv.at/410/> (retrieved 2020-10-11)

⁴ https://gemeindegund.at/website2020/wp-content/uploads/2020/07/RFG_4-2015-Direkte-Demokratie-und-Partizipation-in-den-oesterreichischen-Gemeinden.pdf; (retrieved 2020-10-11)

⁵ http://www.demokratiezentrum.org/themen/direkte-demokratie/direkte-demokratie-in-wien.html?tx_jppageteaser_pi1%5BbackId%5D=2185 (retrieved 2020-10-11)

order to oblige the National Council to discuss it . About 50 national popular petitions were launched up to now. Popular petitions are also possible on provincial and municipal level except for the case of one province (cf. Ehs/Willroider 2013).

In 2014/2015, a study commission of the parliament developed proposals for “Strengthening Democracy” in Austria. Above all, the question was discussed if popular petitions with a high number of signatures (10% of the population) should automatically lead to a referendum. This proposal was rejected by the governing parties (cf. Ehs 2016). However, on the base of the proposals of the commission, evaluation procedures for legislative proposals were opened to the public in 2017. Thus, a real legislative power of the population was denied while, at the same time, early participation in the legislative procedure (without any binding character) was implemented.

The coalition agreement of the previous conservative/right government announced to implement the facilitation of referenda according to the proposals of the commission: If a popular petition were signed by a minimum of 900.000 citizens and the parliament had not launched a referendum within one year the referendum would automatically take place. However, this reform was announced for the end of the legislative term in 2022 while the coalition ended abruptly after the so-called Ibiza scandal in May 2019 (cf. Ehs/Vospornik 2020). In the current coalition agreement of the conservative/green government direct democracy and citizens’ participation are not mentioned at all.

Forms of direct democracy on municipal level include municipal meetings (usually a form of information or public relation by the administration) and review procedures⁶. Forms of deliberative democracy have also been developed in some provinces and municipalities and will be described later.

Formal Constitution-Making

As mentioned above, for an overall amendment of the Constitution, a referendum is obligatory. In the Second Republic of Austria, one obligatory referendum took place asking for the accession of Austria to the EU in 1994. Less fundamental amendments to the Constitution need a higher quorum than normal decisions: presence of half the members as opposed to one third for ordinary business, and a two-thirds majority vote as opposed to an absolute majority of votes⁷. For such amendments, a majority of members of the National Council can request a facultative referendum. One facultative referendum took place in Austria up to now.⁸

While one could expect a higher deliberative quality of parliamentary debates due to the requirement of a two-third-majority, even in such cases loyalty to one’s party seems to be of higher impact than the question at stake. Thus, mostly, voting

⁶ <https://www.kommunal.at/direkte-demokratie-den-gemeinden>

⁷ https://austria-forum.org/af/AEIOU/Verfassungs%C3%A4nderung/Verfassungs%C3%A4nderung_english (retrieved 2021-01-12)

⁸ <https://www.bmi.gv.at/410/> (retrieved 2020-10-11)

behaviour in the parliament is pre-defined by closed door party negotiations. Generally, the deliberative quality of the Austrian National Council as well as its influence on political decision making are seen as rather weak. The parliament is only included in political decision making after draft legislation has already been formulated and, frequently, this legislation leaves the parliament unchanged⁹ (cf. Pollak/ Slominski 2009). However, according to empirical research, debates in parliamentary committees are frequently constructive, factual, and of high deliberative quality (Pollak/ Slominski 2009).

In the years 2003-2005 a so-called “Austria Convention” (Österreich Konvent) should develop ideas for a fundamental revision of the Austrian Constitution. This convention can be understood as a deliberative body – but one from which citizens were nearly completely excluded. The convention consisted of representatives of the government, the high courts, the Ombudsman board, the Court of Auditors, the parliaments and governments of the provinces, the Federation of Austrian Towns and Cities and the Federation of Austrian Municipalities, and the social partnership as well as selected judges and university rectors. 41 civil society organizations were invited to present their ideas to the convention. The convention made 14 broad proposals to reform the Constitution aiming towards a better structured and easier understandable Constitution including a catalogue of fundamental rights, increased efficiency of the administration, more control over public financial management, and reforms of voting laws including lowering active voting rights from the age of 18 to the age of 16 (cf. Konrath 2005).

However, only a very few of these proposals were actually implemented – amendments were made with regard to voting laws (including the lowering of the voting age), the judiciary and organizational details in administration (Leitner 2015). In the coalition agreement of the current government, the development of a catalogue of fundamental rights has been announced¹⁰.

The exclusion of citizens from the convention led to two initiatives, the citizens’ convention (Bürger-Konvent) and the Youth Convention (Jugendkonvent). The citizens’ convention met four times, representatives of the Austria convention took part in all four meetings and the ideas of the citizens’s convention were taken into consideration by the Austria convention (Leitner 2015). The Federal Representation of the Youth (Bundesjugendvertretung) launched several protests against the fact that it was not invited to the Austria convention and organized a public youth convention. Also, in this case, members of the Austria convention were present (Blümel 2004).

⁹ <https://www.derstandard.at/story/2000009833207/das-ist-unser-job-die-demokratie-zu-sichern> (retrieved 2021-01-12)

¹⁰ <https://www.bundeskanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf> (retrieved 2020-10-11)

Incremental Constitution-Making

The Austrian Constitution has been amended more than 130 times by now (Gamper 2020) and the core part of the Constitution is only one of about 500 laws of constitutional rank. Thus, the Constitution is continuously incrementally changed without any public attention to this fact. Due to its fragmentation, it also lacks the symbolic value of Constitutions of other states.

The Austrian Constitutional Court has been introduced already in 1920 when it was unique in the whole world. Thus, it can be seen as a role model for other Constitutional Courts¹¹. However, its independence seems doubtful as the governing parties decide on the appointment of constitutional judges. Furthermore, its competences are more limited than in several other countries as it cannot revise decisions of the highest criminal and administrative court¹². The main task of the Constitution Court is to supervise the constitutionality of laws but it does not further develop the Austrian Constitution.

Deliberative Events and Incidents

While neither the Federal Constitution nor provincial constitutions have ever been amended on the base of citizens' deliberations, still, some institutionalized forms of citizens' deliberation exist in Austria and their number is (slowly) increasing.

On the Federal level, the Council of Ministers adopted recommendations for the participation of the public in 2008 (Bundeskanzleramt 2009) and, on this base, in 2011, a practical guide was issued (Lebensministerium et.al. 2011). These documents deal with informative, consultative, and cooperative forms of participation of the public.

Deliberative procedures on the provincial level started earlier: In 2005, the first Youth Council was constituted in the westernmost province of Austria, Vorarlberg; since then, local youth councils have taken place in various parts of Austria. Randomly selected young people discuss a defined theme for one to two days and deliver recommendations to the competent politicians (N.N. 2014). In 2020, the first nation wide Youth Council took place, organized by "Fridays for Future"¹³.

In 2012, the first Austrian municipality introduced participatory budgeting¹⁴. Nowadays, several municipalities and some Viennese districts make use of this participatory instrument¹⁵.

In 2013, participatory democracy was incorporated in the constitution of Vorarlberg, and the provincial government issued a "Directive of the government of

¹¹ <https://www.flexlex.at/b/100-jahre-verfassungsgerichtshof> (retrieved 2021-01-12)

¹² <https://www.wienerzeitung.at/themen/recht/recht/2051178-Reform-von-Verfassungsgerichtshof-und-Justiz-die-Diskussion-ist-eroeffnet.html> (retrieved 2021-01-12)

¹³ <https://www.vienna.at/jugendrat-soll-wiener-klimaaktivisten-gehoer-verschaffen/6477137> (retrieved 2020-10-11)

¹⁴ <https://www.rmooe.at/projekte/b%c3%bcgerhaushalt-vorderstoder> (retrieved 2020-10-15)

¹⁵ See e.g. <https://www.wien.gv.at/bezirke/margareten/politik/partizipatives-budget.html> (retrieved 2020-10-15)

Vorarlberg on the convocation and implementation of citizens' councils" (Richtlinie der Vorarlberger Landesregierung zur Einberufung und Durchführung von Bürgerräten). The directive stipulates that citizens are selected by random selection for a citizens' council that every council discusses for two days and issues a common declaration which forms a recommendation and not a political decision (cf. Ehs/Vospornik 2020).

In Salzburg, a commission started to discuss the possibility of new forms of participation as a supplement to representative democracy in 2013. Citizens' councils should be introduced. The first such citizens' council took place in 2014. In 2016, the Constitutional and Administrative Committee unanimously approved the formation of citizens' councils based on the Vorarlberg model (Trettel and Valdesalici 2017, 10-11).

Since 1997, Local Agenda 21 procedures on the base of the Agenda 21 Action Plan of the UN from 1992 have taken place in Austria. These procedures aim at sustainable development on the base of small-scale local and regional initiatives launched by local and regional governments and carried through with broad participation of citizens. Projects supported by the Local Agenda 21 focus on questions of ecology, transport, community life, economy, culture and local planning¹⁶.

Furthermore, different provinces and municipalities have organized one-time deliberative procedures. In 2010 and 2011, two Gov2.0Camps¹⁷ took place in Vienna. In the form of barcamps, open data strategies for the city of Vienna were discussed. Since then, an Open Government Data (OGD) strategy of Vienna has been implemented in hitherto 40 phases; further phases are planned¹⁸. In 2012, the Charta of Vienna (Wiener Charta) was developed in a procedure combining offline and online participatory procedures dealing with the question how citizens want to live together in Vienna¹⁹. Since 2020, the province Upper Austria (Oberösterreich) has organized a democracy forum (Demokratieforum) to develop proposals for a strong democracy²⁰.

There are also deliberative initiatives by NGOs and associations, e.g. the convention on housing rights (Wohnrechtskonvent) organized in 2019/20 by the Association Forum Housing- Building-Politics (Verein Forum Wohn-Bau-Politik) (cf. Ehs 2020).

Citizens' participation in Austria has been documented since 2001 on the platform participation.at. For Vienna, possibilities to participate can be found since 2013 on the website <https://www.wiengestalten.at/>. The cities of Graz (since 2014)

¹⁶ <https://www.salzburg.gv.at/themen/umwelt/nachhaltigkeit/la21/was-ist-agenda-21-> (retrieved 2020-10-11)

¹⁷ https://www.barcamp.at/Gov2.0camp#Wie_funktioniert_das_Government_2.0_barcamp.3F;
https://www.barcamp.at/Gov2.0camp_Vienna_2011 (retrieved 2020-10-15)

¹⁸ <https://digitales.wien.gv.at/site/open-data/> (retrieved 2020-10-15)

¹⁹ <https://dialogplus.at/portfolio/wiener-charta/> (retrieved 2020-10-15)

²⁰ <https://www.demokratieforum.at/> (retrieved 2020-10-11)

and Vienna (since 2019) publish a list of projects for which citizens' participation is foreseen²¹

Conclusions

The Austrian political system is characterized by the predominance of institutions and organizations over direct citizens' participation. Main political actors are political parties as well as the social partners. Though formally a federal state, Austria has, in fact, many centralized features.

Citizens' participation is very limited by law and no constitutional procedures including citizens have taken place on federal or provincial level. Still, an increase of citizens' deliberations of a consultative nature can be observed over the last years on the local and regional level.

²¹ <https://www.graz.at/cms/beitrag/10298221/7769828>;
<https://www.wien.gv.at/stadtentwicklung/projekte/> (retrieved 2020-10-15)

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