

**Austrian Dual Immigration Policy: Tension Between Human Rights
Violations and Legal Legitimacy**

By

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Table of Contents

Abstract	2
Acknowledgment	3
Introduction	4
Chapter 1: Austria's Dual Immigration Policy After the Outbreak of the Ukrainian war.....	10
1.1 Defining immigrants groups.....	10
1.2 The contribution of Austrian political parties to the adoption of a dual immigration policy	13
1.3 The duality of Austrian official decisions on immigration	15
1.4 The dualistic approach to immigration in political speech	22
1-5 The dualistic coverage of immigration issues in the Austrian media	24
Chapter 2: Evaluating Austria's Dual Immigration Policy in Light of International Human Rights Frameworks	29
2.1 Non-discrimination as a fundamental principle of international human rights.....	30
2.2 Austria's compliance with non-discrimination for immigrants	33
2.2.1 The duality of Austria's human rights implementation.	34
2.2.2 The legitimacy of Austria's dual immigration policy	37
2.2.2.1 The legality of unequal treatment under international non-discrimination norms	38
2.2.2.2 The legality of the security exceptions invoked by the Austrian authorities	39
2.2.2.3 the legality of unequal treatment under free speech norms	41
2.3 The lacuna in the international human rights framework	45
Conclusion	52
Bibliography	54

Abstract

This study investigates the dual immigration policy adopted by the Austrian regime in response to the arrival of Ukrainian and non-Ukrainian migrants who seek humanitarian protection in Austria. In the aftermath of the large influx of refugees from different countries seeking protection in 2015, Austria has intensified its efforts to crack down on illegal migration from non-European countries. Conversely, since the onset of the Ukrainian conflict, the Austrian government has demonstrated a welcoming approach towards Ukrainian refugees, framing it as an act of European solidarity. The thesis analyzes how administrative legislation, political discourse, and media coverage contribute to the Austrian dual policy towards Ukrainian and non-Ukrainian immigrants seeking humanitarian protection. The findings of this paper indicate that the Austrian double policy towards immigration constitutes a discriminatory practice against non-Ukrainian refugees and asylum seekers from different countries that faced wars. Under the international human rights framework, such a dual policy is legitimized and characterized by a tension between the principle of state security and the equal treatment of Ukrainian and non-Ukrainian immigrants who seek the protection of their human rights in Austria. This study highlights the urgent need to revise the international human rights framework to prevent discrimination between immigrants from Ukraine and any other countries who seek protection. It emphasizes the importance of establishing a new system that prohibits such a dual policy in dealing with immigration for humanitarian protection. This new system should prevent the state from prioritizing its national laws above the principles of equal treatment between immigrants from Ukraine and other areas worldwide.

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Introduction

This research project explores Austrian dual immigration policies during the period spanning 2015 to 2022, a time frame that witnessed the arrival of asylum seekers fleeing conflict in Syria, Afghanistan, and Iraq, followed by Ukrainian refugees seeking protection from the Russian invasion of their country in 2022. The Austrian regime's two-pronged strategy for handling these two distinct migration surges, as seen in its legal framework, border security measures, political discourse, and media coverage, raises pressing issues concerning the reasons behind this unequal treatment, including areas such as asylum procedures, borders control, and indulging in social perception.

In 2022, the country opened its borders to Ukrainian migrants. However, while the country opened its border to Ukrainian migrants, there have been apprehensions about the potential burden on its social and economic infrastructure stemming from non-Ukrainian migrants or refugees from other countries. Additionally, this measure harbors reservations about its ability to accommodate further asylum seekers from non-European nations.

The primary concern is the dual policy of immigration in Austria and the differential treatment of non-Ukrainian refugees. Specific provisions within the international human rights framework justify this policy and do not perceive it as discriminatory towards non-Ukrainian migrants. However, due to Austria's membership in the Geneva Convention since 1954, the country is obligated to ensure equal protection for all refugees.¹ The main issue revolves around the discriminatory measures implemented against the influx of asylum-seeking immigrants that exclusively target a specific group and appear specifically aimed at non-Ukrainian refugees.

¹ United Nation Treaty Collection, 'Refugees and Stateless Persons, Convention Relating to the Status of Refugees Geneva, 28 July 1951', accessed 25 April 2023, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en.

This trend is frequently observed in the Austrian media, where efforts are made to differentiate Ukrainian refugees from other illegitimate asylum seekers and refugees from other countries.

Additionally, as a state party to the European Convention on Human Rights (ECHR) since 1958, the Convention has constitutional status in Austria. Thus, the country is obligated to guarantee the rights enshrined in the Convention, regardless of nationality, and without discrimination.² Despite this, Austria's dual immigration policy discriminates against non-Ukrainian refugees and asylum seekers seeking protection in administrative laws, political speeches, and media coverage, reinforcing that not all refugees are entitled to the same protection as Ukrainians. However, these actions are not considered violations of the international human rights framework for protecting migrants and refugees in the nation because they are justified by state security and sovereignty.

The phenomenon of double policy has been the subject of a study by various scholars who offer diverse interpretations of the case. In their scholarly article, Christopher David LaRoche and Simon Frankel Pratt contend that the rationale behind such double standards lies in the significance of the notions of proximity and distance in defining geopolitical borders for empathy and solidarity.³ They emphasize several factors that have facilitated the impact of the Ukrainian conflict on Western nations, including cultural and moral considerations and shared political ideologies. Thus, their study seeks to rationalize the occurrence of double standards based on the principle of solidarity, which has facilitated a more expeditious response and improved management of refugees affected by the Ukrainian conflict. Julia Dahlvik, in her research on the asylum system in Austria, contends that the issues plaguing the system are

² Außenministerium der Republik Österreich, 'Human Rights and the Council of Europe', accessed 25 April 2023, <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/human-rights-and-the-council-of-europe/>.

³ Christopher David LaRoche Pratt Simon Frankel, 'Ukraine's Refugees Are Close Enough for European Solidarity', *Revista de Prensa* (blog), 30 March 2022, <https://www.almendron.com/tribuna/ukraines-refugees-are-close-enough-for-european-solidarity/>.

attributable to the inconsistent interpretation of laws by undertrained administrators lacking experience.⁴ Thus, her research seeks to rationalize the discriminatory nature of legislation concerning refugees by highlighting the lack of expertise and knowledge required for accepting or rejecting refugees in Austria and the tendency to interpret the law differently depending on the individual refugee case presented. In addition, James T Gathii posits that the presence of discriminatory refugee laws can be traced back to a confluence of factors, namely the colonial project and the concretization of anthropological notions of primitiveness which was racialized and served to legitimize the subjugation and dominance of non-European peoples.⁵ Gathii contends that the legal system, in particular, conferred upon White Europeans a sense of superiority over others, as Whiteness was deemed pure, neutral, and rational; in contrast, other races were regarded as impure, abnormal, and degenerate.⁶

The previous research in this area primarily concentrates on exploring the causes of implementing dual policies; however, my research diverges from this focal point by suggesting that the prevailing human rights framework demonstrates an imbalance in addressing the concerns of refugees and migrants, thereby failing to effectively safeguard the rights of migrants that may not be classified as direct violations of human rights principles. Consequently, this discrepancy results in differential treatment accorded by European Union nations to Ukrainian and non-Ukrainian migrants. This is further compounded by prioritizing state security over international human rights laws, leading to the political rather than legal implementation of refugee and humanitarian laws.⁷ As a result, there is a legitimization of

⁴ Kenneth Horvath, 'Julia Dahlvik (2018): Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria: 208 Seiten. Cham: Springer, Open Access: <https://www.springer.com/de/book/9783319633053>', *Österreichische Zeitschrift Für Soziologie* 44, no. 4 (December 2019): 451–54, <https://doi.org/10.1007/s11614-019-00388-7>.

⁵ James T Gathii, 'Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other', n.d., 1640.

⁶ *Ibid.*, 1641.

⁷ Marissa Jackson Sow, *Ukrainian Refugees, Race, and International Law's Choice Between Order and Justice*, vol. 116 (Cambridge University Press, 2022), 698–709, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/ukrainian-refugees-race-and-international-laws-choice-between-order-and-justice/A37EA3CE18E877242C486067972EE361>.

discriminatory practices against non-Ukrainian migrants who seek protection from the host state, as evidenced by the case study of Austria's dual immigration policy.

This research employs a mixed-methods approach integrating legal doctrinal analysis with empirical research. The methodology is intended to scrutinize both the formal legal materials (especially at the administrative level) and the informal materials that pertain to the law's construction and implementation. To examine the legal framework of the policy, the research will comprehensively examine formal legal materials such as statutes and administrative decisions in light of the human rights protection of both Ukrainian and non-Ukrainian migrants. These materials will be examined using a legal doctrinal approach to identify patterns, themes, and contradictions in the legal text. In addition to analyzing formal legal materials, this research will gather and analyze empirical data through document analysis. This will aid in comprehending how the international human rights framework law is implemented in practice in Austria and its impact on people's behavior towards Ukrainian and non-Ukrainian refugees through media coverage. The empirical research will focus on informal sources such as political speeches, media coverage, and public communication to identify how the social context shapes the implementation and interpretation of the law and has helped reinforce the dual immigration policy in the country.

Data collection will be carried out through a combination of primary and secondary sources. Primary sources will include Austrian legislation and official documents related to Ukrainian and non-Ukrainian refugees. Secondary sources will include public speeches and media coverage related to the state's dual policy. The data obtained through legal doctrinal analysis and empirical research will be analyzed using a combination of content analysis and thematic analysis. Overall, this mixed-method approach offers a comprehensive understanding of the policy by examining the legal framework and the social context in which it operates. By adopting a multi-dimensional approach that blends legal doctrinal analysis with empirical

research, this study will contribute to a more nuanced understanding of how the dual immigration policy arises and is implemented in practice in Austria.

The primary aim of this research paper is to explore the Austrian dual immigration policy, which enables the legitimization and propagation of anti-immigration movements against non-Ukrainian immigrants' refugees. Through an analysis of the essential components of this double policy within the Austrian regime, including state security measures, extremist far-right party ideologies, discriminatory legislation, political rhetoric, and media coverage, the paper endeavors to ascertain the interplay between the regime's national security concerns and the international human rights framework for refugees.

This thesis analyses the structural underpinnings of the dual immigration policy in Austria. Specifically, it investigates the ascendancy of anti-immigration policies that have gained traction due to the support of far-right political parties in the government, resulting in their influence on state legislation and policy. Specifically, this paper delves into the duality of Austria's response toward non-Ukrainian refugees who arrived after 2015; and those from Ukraine who came after 2022, emphasizing the disparate legislation governing these groups. The primary point contends that the paradigm through which anti-immigrant political speech and legislation are justified is the securitization of immigration from other nations. Additionally, this thesis investigates the role of the media in reinforcing Austria's dual policy, particularly the coverage that has perpetuated hate speech against non-Ukrainian refugees. Subsequently, this study assesses Austria's compliance with the international human rights framework, which proscribes differential treatment of immigrants based on their nationality. The analysis focuses on studying Austria's compliance with the human rights framework and the legal basis for its dual policy in dealing with immigration files. This thesis culminates in a comprehensive legal examination of the issue, revealing the incongruities and deficiencies within the international human rights framework that necessitate rectification to prevent

Austria from asserting the legality of its dual policy. This policy unequivocally contravenes specific provisions of the human rights framework. Additionally, any form of nationality-based discrimination among immigrants within the system must be legally eradicated.

The structure of this thesis includes two chapters; chapter one explores the creation of a distinctive Austrian dual immigration policy since 2015, particularly in the aftermath of the war in Ukraine. It focuses on how Austrian political parties contributed to this duality. It concentrates on the duality in Austrian laws, administrative decisions, political speech, and media coverage. Whereas chapter two considers the degree to which Austria's dual policy complies with international obligations relating to human rights, as well as how these obligations have been interpreted. The thesis concludes by placing significant emphasis on rectifying the existing gaps within the human international human rights system.

Chapter 1: Austria's Dual Immigration Policy After the Outbreak of the Ukrainian war

In the past, Austria was considered a country that welcomes immigrants,⁸ but since 2015, with the influx of migrants from non-European nations, this perception has changed, which has led to the emergence of what is known as the "refugee crisis" in the state. Therefore, the immigration debate has taken center stage in politics and contributed to the emergence of new agendas from right-wing parties that helped create a duality in how the immigration issue is handled by securitizing some migrants while supporting others. Accordingly, the present chapter aims to discern the Austrian government's dual approach towards immigration, specifically from 2015 to the present in the aftermath of the Ukraine conflict. This inquiry involves scrutinizing the state's policy formulation process, focusing on the criteria employed to differentiate between those immigrants who are eligible for legal protection and those who are not. The paper will commence by elucidating the various categories of immigrant groups that are the subject of its inquiry, followed by the historical background of how the Austrian political parties have reinforced the dual policy of the regime for political reasons, then examine how this duality manifests in laws and administrative decisions, followed by a discussion of how some right-wing politicians participate in this duality and control public rhetoric. Finally, the last section examines the media's role in fostering stereotypes and supporting the regime policy.

1.1 Defining immigrants groups

The categorization and classification of individuals seeking or undergoing the migration process can have significant social implications, resulting in the formation of stereotypical

⁸ Ewa Godlewska, 'Anti-Immigrant Rhetoric as an Element of Public Life in Austria – Selected Aspects', *Annales Universitatis Mariae Curie-Skłodowska Sectio M Balcaniensis et Carpathiensis* 4 (28 December 2019): 23, <https://doi.org/10.17951/bc.2019.4.1.23-37>.

social representations and differential treatment of these individuals by host countries.⁹ The terminology used to categorize diverse types of immigration can impact individuals' fundamental rights and treatment. This paper focuses on different migrants who share the same reason, which is seeking protection from the host state. The legal categories, which are typically created by national or international law, can significantly influence the lives of individuals in the host country and the policies that the state follows to treat them.¹⁰ The United Nations Migration Agency (IOM) defines a migrant as "any person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of the person's legal status; whether the movement is voluntary or involuntary; what the causes for the movement are; or what the length of the stay is."¹¹ Thus, individuals who flee their home countries due to war are also considered migrants.

According to the 1951 Geneva Convention, a refugee is defined as an "individual who is unable or unwilling to return to their country of origin due to a well-founded fear of persecution based on their race, religion, nationality, membership in a particular social group, or political opinion."¹² This definition applies to recent migration trends, such as the influx of migrants from countries such as Syria and Iraq in 2015; and Ukraine refugees who fled the conflict in 2022. Before being recognized as refugees, individuals must request asylum due to persecution and seek protection, and this process defines them as asylum seekers.¹³

The UNHCR (UN High Commissioner for Refugees) has emphasized that seeking asylum is a fundamental right afforded to all individuals.¹⁴ However, a significant challenge

⁹ Kate Torkington and Filipa Perdigão Ribeiro, 'What Are These People: Migrants, Immigrants, Refugees?' United Nations: Migration-Related Terminology and Representations in Portuguese Digital Press Headlines | Elsevier Enhanced Reader', 22, accessed 20 April 2023, <https://doi.org/10.1016/j.dcm.2018.03.002>.

¹⁰ Ibid 22.

¹¹ United Nations, 'Migration', United Nations (United Nations), accessed 20 April 2023, <https://www.un.org/en/global-issues/migration>.

¹² UNHCR The UN refugee Agency, 'Convention and Protocol Relating to the Status of Refugees', UNHCR global website, 3, accessed 20 April 2023, <https://www.unhcr.org/media/28185>.

¹³ UNHCR, 'Asylum-Seekers', UNHCR, accessed 20 April 2023, <https://www.unhcr.org/asylum-seekers>.

¹⁴ Ibid.

arises when many people fleeing conflicts in their countries try to enter host countries illegally to claim asylum. Those who breach the conditions of entry or whose legal basis for entry and residence have expired and lack legal status in the transit or host country are known as illegal irregular or undocumented migrants.¹⁵ As a result, they cannot be legally protected by the state but must rely on the international human rights framework for protection.

In addition to the refugees and asylum seekers, a different group of migrants who seek protection is referred to as "displaced persons" who are forced or compelled to leave their homes or habitual residences due to the impact of armed conflict, generalized violence, human rights abuses, or natural or human-made disasters. Such individuals do not cross an internationally recognized border and thus remain refugees within their home country's boundaries.¹⁶

In 2022, Ukrainian migrants were classified as displaced persons despite crossing an internal border. This exception was justified by the EU's view that they should not be treated as regular refugees. Therefore, these notable refugees were granted temporary protection due to the Council of the European Union's decision.¹⁷

The thesis discerns the Austrian government's binary policy framework concerning diverse migrant categories, focusing on two distinct groups: Ukrainian refugees and non-Ukrainian refugees. Ukrainian refugees pertain to individuals who have been forcibly displaced internationally due to the initiation of the war in Ukraine in 2022, subsequently seeking refuge in Austria. On the other hand, non-Ukrainian refugees encompass individuals of all

¹⁵ European Commission European Union, 'Irregular Migrant', accessed 20 April 2023, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/irregular-migrant_en.

¹⁶ UN Commission on Human Rights, internally displaced persons: report of the Representative of the Secretary-General, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, 11 February 1998, E/CN.4/1998/53, available at: <https://www.refworld.org/docid/3b00f4234>.

¹⁷ The Council of The European Union, 'Council Implementing Decision (EU) 2022/382 of 4 March 2022 Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Article 5 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection', 071 OJ L § (2022), http://data.europa.eu/eli/dec_impl/2022/382/oj/eng.

nationalities, excluding Ukraine, who have been pursuing asylum in Austria since 2015, with a specific emphasis on non-European migrants. It is worth noting that the latter group does not encompass European Union (EU) nationals by definition, as the provision of freedom of movement exclusively applies to EU citizens.

1.2 The contribution of Austrian political parties to the adoption of a dual immigration policy

The "migration crisis" of 2015 had a considerable influence on Austria, affecting parties' elections and bringing attention to anti-immigrant policies towards refugees who flee the conflict in countries such as Syria, Iraq, or Afghanistan. While immigration from European countries continued to be more significant for Austria, especially after the Ukrainian war.¹⁸ The three main parties in the state government that have the most influence are those whose programs to a large extent, depend on how they handle illegal immigration. The first is the Austrian Freedom Party (FPÖ), which contested the political dominance of the Social Democratic Party (SPÖ) and the Christian conservative Austrian People's Party (ÖVP) after WWII. Later, the FPÖ was transformed into one of Europe's most extreme far-right parties when Jörg Haider took over the FPÖ in 1986.¹⁹ Therefore, this party has long been known for its anti-immigration policies, which have gotten worse in 2015 as a result of the increase in immigration from non-European countries.

The Austrian Freedom Party focuses on the idea of "national cultural identity" in its policies, highlighting the importance of Austrian and European citizens and advocating the

¹⁸ Leila Hadj Abdou and Didier Ruedin, 'The Austrian People's Party: An Anti-Immigrant Right Party?', *Journal of Ethnic and Migration Studies* 48, no. 2 (25 January 2022): 385–404, <https://doi.org/10.1080/1369183X.2020.1853904>.

¹⁹ Farid Hafez Miklin Reinhard Heinisch, and Eric, 'The New Right: Austria's Freedom Party and Changing Perceptions of Islam', *Brookings* (blog), 24 July 2019, <https://www.brookings.edu/research/the-new-right-austrias-freedom-party-and-changing-perceptions-of-islam/>.

repatriation of immigrants from non-European nations.²⁰ The Austrian People's Party (ÖVP) politicians have also increased their attention on immigration policy in recent years to be comparable to the FPÖ stance.²¹ Thus, it is clear how the country's political climate has been affected by the increase in immigration. Perhaps the only main party since 1998 that does not have a solid anti-immigration position and instead bases its platform on the rights to full integration and equal rights for minorities is the Social Democratic Party of Austria (SPÖ).²² It is clear that immigration has affected the state's politics and facilitated the rise of the anti-immigration parties to power.

The primary concern of this anti-immigration movement is not policies against Ukrainian migrants who seek sanctuary in the country due to the Russian invasion in 2022; instead, direct actions against non-Ukrainian refugees who flee from other countries. Therefore, political parties like the FPÖ have appropriated the notion of European identity by identifying a new scapegoat who might undermine this European unity, namely the refugees from outside the boundaries of Europe.²³ Consequently, this right-wing party has reemerged as the state's protector by identifying a potential threat and referencing it in its electoral program to get some support and later legitimize its measures. Securitizing immigration and refugee issues depends on establishing credible claims that non-Ukrainian immigrants and refugees pose a serious threat to the survival of political entities.²⁴

Right-wing populist movements frequently adopt a dubious perspective on Europe, invoking European identity by excluding groups of non-Europeans from developing nations,

²⁰ Godlewska, "Anti-Immigrant Rhetoric as an Element of Public Life in Austria – Selected Aspects." 24-26.

²¹ *Ibid.*, 27.

²² *Ibid.*, 28.

²³ Ruth Wodak, *The Politics of Fear. What Right-Wing Populist Discourses Mean* (Los Angeles, London, New Delhi, Singapore, Washington DC: Sage, 2015), 40–41, <https://doi.org/10.4135/9781446270073>.

²⁴ Jef Huysmans, 'The Politics of Insecurity: Fear, Migration and Asylum in the EU - 1st', accessed 2 May 2023, <https://www.routledge.com/The-Politics-of-Insecurity-Fear-Migration-and-Asylum-in-the-EU/Huysmans/p/book/9780415361255> (London, Great Britain: Routledge, 2008), 47.

as was the case with the former leader of FPÖ, Haider, who adopted an exclusionary policy toward Turkish immigrants, Muslims, or other non-Europeans.²⁵ Since 2015, the same approach, but applied to non-European refugees, has returned to the scene. Hence, the leading Austrian parties have emphasized this duality in dealing with immigration, particularly in the wake of the war in Ukraine. They have prioritized protecting the European national identity while simultaneously modifying immigration regulations to halt the flow of non-Ukrainian refugees who do not require the same level of protection as European Ukrainian refugees. Political parties have created a threat embodied by illegal immigrants and relied on the politics of fear to legitimize their reactions. This threat serves as a catalyst or condition for the mobilization of government security forces, the political discourse of unease, and public perceptions of risk.²⁶ Consequently, the administration's actions and laws have only been directed against non-Ukrainian immigrants and refugees who have applied for protection, making the government's dual approach to immigration management evident. The subsequent section of the research will primarily focus on these actions and legislation that serve as the central focus of examination.

1.3 The duality of Austrian official decisions on immigration

The Russian invasion of Ukraine in 2022 has brought attention to Austria's immigration policy, which presents contrasting approaches to accommodating migrants who sought protection in 2015 and those who arrived in 2022. The European Union Council decision documented in Decision EU (European Union) 2022/382, which enforces temporary protection for individuals fleeing Ukraine under Article 5 of Directive 2001/55/EC, serves as a significant factor in this regard.²⁷ As a signatory to this decision, Austria is obligated to offer such

²⁵ Wodak. *The Politics of Fear: What Right-Wing Populist Discourses Mean*. 54.

²⁶ Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU*. 21.

²⁷ the Council of The European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of

protection, as it did in the same year, opening its borders to 94,984 Ukrainian refugees.²⁸ On the other hand, since 2015, the Austrian government has granted asylum to approximately 146,000 refugees from non-European countries, while more than 18,000 asylum-seekers are still awaiting international protection from the government.²⁹ The state's administrative decisions clearly differentiate between these groups, based on the idea that non-Ukrainian immigrants are "crises" that endanger state security; aiding and integrating Ukrainian immigrants has been linked to defeating the Russian authoritarian regime.³⁰

There are double standards in the parties' political platforms, especially the FPÖ party. To curb the influx of undocumented migrants, many Austrian political platforms feature policies that differentiate between individuals seeking international protection from non-European regions and those arriving from European countries such as Ukraine in 2022. For instance, the FPÖ party's program in 2017 stressed stopping immigration and consistently deporting "phony"³¹ In 2019, the Freedom party placed a strong emphasis on its efforts to combat illegal immigration by mentioning the "PUMA" border protection unit that was established for border protection, as well as referring to transferring the treatment of the asylum seeker to only the state organizations, emphasizing that illegal immigrants no longer favor Austria as a destination, which indicates ³²This suggests that the government has an anti-

Directive 2001/55/EC, and having the effect of introducing temporary protection; 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof', 212 OJ L § (2001), <http://data.europa.eu/eli/dir/2001/55/oj/eng>.

²⁸ Statista, 'Ukrainian Refugees by Country 2023', Statista, accessed 5 April 2023, <https://www.statista.com/statistics/1312584/ukrainian-refugees-by-country/>.

²⁹ UNHCR, 'Austria', accessed 30 April 2023, <https://www.unhcr.org/countries/austria>.

³⁰ Victoria Schmidt and Bernadette Jaworsky, 'The Ukrainian Refugee "Crisis" and the (Re)Production of Whiteness in Austrian and Czech Public Politics', *Journal of Nationalism Memory & Language Politics* 16 (10 November 2022): 104–30, <https://doi.org/10.2478/jnmlp-2022-0011>.

³¹ FPÖ, 'Freiheitliches Wahlprogramm Zur Nationalratswahl', 2017, 3, https://www.fpoe.at/fileadmin/user_upload/Wahlprogramm_8_9_low.pdf.

³² party FPÖ, Mit Sicherheit Für Österreich: Fair. Sozial. Heimatreu., 2019, 3, https://www.fbi-politikschule.at/fileadmin/user_upload/www.fbi-politikschule.at/blaus_oesterreich/Wahlprogramme/Wahlprogramm_NRW_2019_Mit_Sicherheit_fuer_OEsterreich_nur_online.pdf.

immigration policy to stop asylum seekers from non-European areas, from entering the country and obtaining refugee protection.

One example of this duality is the borders' security, as the Austrian government relies on the Border Control Act (GrekoG) (No. 435/1996) to regulate the influx of immigrants.³³ Furthermore, following Regulation (EU) 2016/399 of the European Parliament and of the Council, the Austrian government has reinstated internal border control as an exceptional measure to manage the inflow of unauthorized migrants who attempt to cross its borders and seek international protection since 2015.³⁴ Consequently, the government decided to regulate its borders by modifying the Border Control Act in 2016,³⁵ enabling the implementation of identity checks when unauthorized migrants cross its boundary. Such legislation has been associated with safeguarding state security and managing the inflow of undocumented immigrants.

In the aftermath of the Ukrainian War, which clearly caused the different treatment that I have discussed, specific legislation has been introduced that pertains explicitly to Ukrainian migrants seeking asylum in Austria. The Austrian government grants these individuals temporary protection from November 1, 2022, which has been automatically extended beyond

³³ Innere Angelegenheiten, 'Bundesgesetz Über Die Durchführung von Personenkontrollen Aus Anlaß Des Grenzübertritts (Grenzkontrollgesetz – GrekoG) "1996_435_"', Accessed 30 April 2023, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1996_435_0/1996_435_0.Pdf, accessed 30 April 2023, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1996_435_0/1996_435_0.pdf.

³⁴ The European Parliament and The Council of The European Union, 'Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the Rules Governing the Movement of Persons across Borders (Schengen Borders Code)' (Official Journal of the European Union, 2016), <https://eur-lex.europa.eu/eli/reg/2013/604/oj>.

³⁵ Amendment 24/2016. 24. Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA-Verfahrensgesetz geändert werden Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA-Verfahrensgesetz, 'Amend. 24/2016.NR: GP XXV RV 996 AB 1097 S.', accessed 1 May 2023, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_24/BGBLA_2016_I_24.html; 'Imfname_508334.Pdf', accessed 30 April 2023, https://www.parlament.gv.at/dokument/XXV/A/1531/imfname_508334.pdf 1531/A. 24.02.2016 (XXV.GP) Antrag gemäß § 26 GOG-NR.

the first year.³⁶ In contrast to the policies addressing the influx of immigrants from other countries, the Austrian government has facilitated the entry of Ukrainian refugees by providing free transportation via Austrian trains from Ukraine to Austria.³⁷ Importantly, there is no legislative provision for verifying their identity or denying them international protection at the Austrian borders, as was with non-Ukrainian immigrants.

Another means to curb illegal immigration is cooperation with other countries in border areas. The dual immigration policy of Austria is exemplified by its collaboration with other nations to prevent illegal immigration. In 2017, a new police cooperation agreement was established with Hungary, enabling state-of-the-art measures,³⁸ such as mixed patrols without spatial limitations or cross-border rail traffic measures are primarily employed to combat the scourge of illegal migration. Austrian police officers are authorized to board trains at their last scheduled stop in Hungary to apprehend unlawful attempts to cross the border. Additionally, they have the authority to conduct official business on Hungarian territory.

In the following, my aim is to highlight differential treatment regarding movement restrictions. The Western Balkan Conference, held in Vienna in 2016, was organized by the Austrian government to close the borders along the Balkan route, highlighting the importance of the Western Balkans as a central transit hub for migrants and asylum seekers traveling to the European Union. This conference underlines that the right to asylum does not include the freedom of those seeking asylum to continue their travels and select a preferred country. During this meeting, The Austrian government emphasized cooperative efforts to control the country's

³⁶ Austria's digital government agency, 'Information for Ukrainian citizens', [oesterreich.gv.at - Österreichs digitales Amt](https://www.oesterreich.gv.at/en/themen/gesundheits_und_notfaelle/Informationen-für-ukrainische-Staatsangehörige.html), accessed 30 April 2023, https://www.oesterreich.gv.at/en/themen/gesundheits_und_notfaelle/Informationen-für-ukrainische-Staatsangehörige.html.

³⁷ ÖBB, 'Ukraine Hilfe', ÖBB, accessed 1 May 2023, <https://www.oebb.at/de/neuigkeiten/ukraine-hilfe>.

³⁸ Polizeikooperation, "Grenzüberschreitende Einsätze", n.d. Die Polizeikooperation mit Ungarn und Italien wird verbessert, n.d.

eastern borders under the guise of state security.³⁹ Austria had thus been given the green light following the conference to continue its anti-asylum seeker measures along its borders, where it had imposed a limit on the annual number of applications and threatened to restrict all refugees from entering the country once the cap of 37,500 applicants was reached.⁴⁰ The government justified these measures as protecting the country from illegal immigration and allowing it not to accept further non-Ukrainian refugees.

Looking at the issue from a distinct perspective, the Austrian government's approach towards reintegrating Ukrainian refugees, who were displaced due to the Russian invasion in 2022, starkly contrasts the approach taken towards asylum seekers from other areas. The latter group is not free to choose where they seek refuge; in contrast, the Austrian government facilitates the movement of Ukrainian refugees to and from other countries. It lets them choose a location where no movement restrictions exist to apply for protection.⁴¹ Due to the 2022 decision by the European Commission to grant migrants from Ukraine Temporary Protection Directive (TPD) status, Austria rapidly reacted to this action and welcomed the Ukrainians who had fled their home nations.⁴²

The Dublin Regulation, a legal framework that stipulates the criteria for determining which country among the 'Dublin countries' is responsible for processing asylum applications, has resulted in a lacuna in the refugee system within the EU. Governments such as Austria invoke the regulation to return asylum seekers to their first country of entry into the EU.

³⁹ Federal Ministry of the Interior in Austria, 'Westbalkankonferenz_Draft_Declaration_Letztfassung.Pdf', 2016, https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussendungen/2016/Westbalkankonferenz_Draft_Declaration_Letztfassung.pdf.

⁴⁰ Paul Scheibelhofer, "'It Won't Work without Ugly Pictures': Images of Othered Masculinities and the Legitimation of Restrictive Refugee-Politics in Austria", NORMA 12, no. 2 (3 April 2017): 96–111, <https://doi.org/10.1080/18902138.2017.1341222>.

⁴¹ ÖBB, ÖBB, 'Ukraine Hilfe'.

⁴² the Council of The European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection PDF.Pdf, accessed 7 January 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382>.

However, classifying Ukrainians as "real refugees" has created a gap in applying this regulation. Consequently, Ukrainians are permitted to travel without a visa or restrictions and are free to choose their preferred country of asylum.⁴³ Although temporary protection is not always the best option for asylum seekers, it was helpful during the Ukrainian emergency. This raises the question as temporary protection was not also utilized for Afghan citizens who were stuck at the border.

Another issue related to the Dublin Regulation is the duality in immigration detention centers, as non-Ukrainian immigrants attempting to enter Austria to seek international refugee protection pertains to the Dublin Regulation. This regulation may result in the denial of an asylum application in Austria, necessitating the return of the asylum seeker to another country. Subsequently, the Austrian government may detain these migrants in a detention center, as per the central grounds for detention pending return outlined in Section 76 of the FPG (No. 100/2005).⁴⁴ Furthermore, Amendment 145/2017 has extended the duration of detention from six to eighteen months, particularly in circumstances where establishing the identity of the individual is challenging.⁴⁵ Notably, accommodation facilities provided by the federal government for non-Ukrainian asylum seekers, though not explicitly designated as detention centers, impose de facto confinement by restricting their mobility to the vicinity of these facilities, typically situated in remote areas with limited public infrastructure.⁴⁶

⁴³ European Council on Refugees and Exiles ECRE, 'Comments on Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast).' (European Council on Refugees and Exile, 2015), <https://www.refworld.org/docid/552254094.html>.

⁴⁴ Amendment 100/2005. Bundesgesetzblatt Für Die Republik Österreich 'RIS-Dokument', accessed 1 May 2023, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2005_I_100/BGBLA_2005_I_100.html.

⁴⁵ Amendment 145/2017 Bundesgesetzblatt für die Republik Österreich, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005, das BFA-Verfahrensgesetz, das Grundversorgungsgesetz, 'Amend.145/2017.NR: GP XXV IA 2285/A S. 197. BR: S. 872', accessed 1 May 2023, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_145/BGBLA_2017_I_145.html.

⁴⁶ Ivan Josipovic and Ursula Reeger, 'Border Management and Migration Controls in AUSTRIA' (Austrian Academy of Sciences: The Horizon 2020 project 'RESPOND – Multilevel Governance of Mass Migration in Europe and Beyond, 21 June 2019), 32, <https://respondmigration.com/wp-blog/2019/2/15/comparative-dataset-on-migration-border-management-and-migration-controls-austria>.

Conversely, the detention center and protracted refugee procedures do not apply to Ukrainian refugees, and the legislation does not encompass Ukrainian migrants who have received temporary protection. As a result, these individuals are not required to await the conclusion of immigration procedures and can freely traverse other countries without any restrictions.⁴⁷

The government of Austria has augmented its efforts to enhance the protection of refugees originating from Ukraine by providing them with a residency permit and a work permit and expediting their access to the labor market by exempting beneficiaries of temporary protection from the labor market test.⁴⁸ By contrast, according to The Compilation Report: Universal Periodic Review: About Austria on the Refugee Statute, asylum seekers have access to the labor market three months after their admission to the Austrian asylum procedure, which may also take some time to be accepted.⁴⁹

Consequently, as it has demonstrated, the immigration policy of the Austrian government has been characterized by duality owing to the disparate treatment of Ukrainian and non-Ukrainian immigrants seeking international protection. In line with the government's responsibility to determine which individuals are eligible for protection and which are not, the government, for instance, in its program "Zusammen für Unsere Österreich," which means "together for our Austria," reveals the dual policy by making it clear that the government chooses who is allowed to live as an immigrant in the "Heimat," or national land.⁵⁰ Therefore, the government intended this dual policy and legitimized it with its own decisions, which were also connected to political dialogue.

⁴⁷ Austria's digital government agency, 'Information for Ukrainian citizens.

⁴⁸ 'European Council on Refugees and Exiles ECRE, -Information Sheet – Measures in Response to the Arrival of Displaced People Fleeing the War in Ukraine.', accessed 1 May 2023, <https://ecre.org/wp-content/uploads/2022/12/ECRE-Update-November-2022-Implementation-of-the-TPD.pdf>.

⁴⁹ UN High Commissioner for Refugees (UNHCR), Austria: UNHCR Submission for the Universal Periodic Review - Austria - UPR 37th Session (2021) , July 2020, available at: <https://www.refworld.org/docid/60775fa94.html>

⁵⁰ Neue Volkspartei und die Freiheitliche Partei Österreichs, 'Regierungsprogramm_2017-2022.Pdf, Zusammen. Für Unser Österreich, 2017, 9, https://www.oeh.ac.at/sites/default/files/files/pages/regierungsprogramm_2017-2022.pdf.

1.4 The dualistic approach to immigration in political speech

The ability of Austrian officials to communicate with the public and influence them in favor of state policy has been crucial in defending anti-immigration laws or strengthening those that encourage European immigrants. The language can integrate events into more networks of meanings and mobilize specific expectations and reactions to an event, making political speech powerful, especially in contexts frequently evident in the public sphere, such as parliamentary debates and official speeches.⁵¹

Gerhard Karner, the interior minister for Austria, stated in an interview that the Schengen borders with Romania and Bulgaria would have an impact on the immigration system, which Austria cannot accept because it is unable to handle the volume of illegal immigration from third world countries that will use the Balkan route. He suggested strengthening border control to prevent illegal immigration. However, the duality in his speech states that there is a difference between illegal; and legal immigrants from Ukraine because the latter are women who are afflicted, not men, adding in a later interview that the system is prepared to assist the Ukrainian refugees.⁵²

This example demonstrates how politicians use language to persuade audiences and justify a dual immigration policy. Securitizing various immigrant groups is an assignment of the blame since political parties attempt to protect national security from potential threats. As a result, politicians attempt to categorize migrants by anticipating risk profiles based on historical trends and extrapolating them to the prospective behavior of everyone in the risk category based on general stereotypical perception.⁵³ Their discourse rests upon the notion that certain non-Ukrainian refugees may pose a potential menace, albeit without clarifying the

⁵¹ Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU*. 8.

⁵² Profile Online, 'Gerhard Karner Im Club 3: „Kroatien Ja. Bulgarien Und Rumänien Nein.“ - YouTube', 2022, <https://www.youtube.com/watch?v=gusnppako58>; Ihr Programm, '27.02.2022 - Gerhard Karner - Ukrainische Flüchtlinge', 2022, <https://www.youtube.com/watch?v=-HsvuqOCdBo>.

⁵³ Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease," *Alternatives: Global, Local, Political* 27, no. 1_suppl (2002): pp. 63-92, <https://doi.org/10.1177/03043754020270s105>, 81.

underlying rationale for undertaking such a risk or the evidentiary basis for arriving at such a conclusion.

Some speeches could be classified as hate speeches that portray non-Ukrainian refugees as terrorists out to harm citizens. Because members of parliaments and regional councils are immune from civil or criminal responsibility for any votes cast while performing their duties under the Austrian constitution, these speeches are very unlikely to end.⁵⁴ Those who possess immunity may demonstrate a dualistic discourse that entails embracing refugees and migrants from Ukraine while simultaneously engaging in verbal attacks against non-Ukrainian refugees, thereby portraying them as either a menace or undeserving of protection, examining the legality of such rhetoric and its potential, mobilize Austrians to support anti-immigration policies that target non -Ukrainian immigrants.

In his address at "Europäische Visionen: Visionen for Europe" on February 12, 2016, in Düsseldorf, Heinz-Christian Strache, a former Austrian vice chancellor and head of the FPÖ party, supported the German right-wing party AfD and criticized the former German chancellor Angela Merkel's immigration policies. He argues that refugees from Syria may remain safe in their neighboring countries and that immigrants have no right to settle wherever they like, claiming that Markel's politics are "gemeingefährlich," which means it is a dangerous kind of government since it puts people in danger of being killed by terrorists in Germany and Austria.⁵⁵ In 2022, when the influx of Ukrainian refugees commenced and an immigration policy was implemented to welcome them, the aforementioned anti-immigration discourse was notably absent. Additionally, this policy is not described as dangerous as Merkel's policy has been, but rather as an expression of European solidarity.

⁵⁴ Federal Constitutional Law [Austria], 20 December 1930, art 27-96. available at: <https://www.refworld.org/docid/585902b34.html> [accessed 22 January 2023] United Nations High Commissioner for Refugees, 'Austria: Federal Constitutional Law', accessed 2 May 2023, <https://www.refworld.org/docid/585902b34.html>.

⁵⁵ TV FPÖ, 'Zu Gast Bei Der AfD: Rede von FPÖ-Obmann HC Strache in Düsseldorf - YouTube', 2016, <https://www.youtube.com/watch?v=CtEsEEVy6TM>.

The previous chancellor of Austria, Sebastian Kurz, also discussed the idea that Afghan asylum seekers do not have the right to choose which country they wish to reside in and that the state cannot support such a large influx of people from other cultures due to state national security concerns. In contrast, he argues in a different interview that people from Ukraine are "rechteflüchtlinge," or legitimate refugees, as opposed to other illegal immigrants who are not from Europe.⁵⁶ This dual approach to dealing with immigration has not changed under new chancellor Karl Nehammer, who went as far in his speech, as calling for the construction of a fence with Bulgaria to halt the flow of non-European refugees while asserting that the war in Ukraine is more related to the unity of the European Union.⁵⁷ Politicians in the government have played a crucial role in highlighting immigration politics and bringing the situation to the level of national security. As a result, their discourses have divided the immigrants and strengthened the stereotypical images of non-Ukrainian refugees, which the Austrian media's dual coverage has reinforced, as the next section demonstrates.

1-5 The dualistic coverage of immigration issues in the Austrian media

The media has played a significant role in shaping the Austrian public's perception of non-Ukrainians, particularly in the country's approach to immigration issues, resulting in a dichotomous standard of coverage. In this regard, the media has employed negative stereotypes against non-Ukrainian refugees, which could be classified as a form of discrimination. Austrian news, articles, and journalism have fostered stereotypical images of non-European immigrants, which have given rise to hate speech that misleads the public.

⁵⁶ BILD, 'Sebastian Kurz: Millionen Afghanen Wollen vor Den Taliban Fliehen | Die Richtigen Fragen', 2021, <https://www.youtube.com/watch?v=Np2af5JyGvQ>; FPÖ TV, 'Sebastian Kurz Zur Flüchtlingspolitik: „Keine Politik Der Offenen Grenzen“ | Die Richtigen Fragen - YouTube', 2016, <https://www.youtube.com/watch?v=TczwIZVvxlI&t=51s>.

⁵⁷ OE24.TV, 'Europarat: Nehammer Zum Thema Migration Und Asyl', 2022, <https://www.youtube.com/watch?v=LdRPE6fEMAM>.

Political orientation can influence how populist rhetoric, migrants, and their construction are perceived in the public's consciousness. The media typically highlights only the negative aspects of non-European refugees to support the states' anti-immigration politics. Since the massive influx of non-European immigrants into the nation, the anti-immigration parties' slogans have always been against them to manipulate public opinion against them and create an image of a savior who can protect the state from invaders who will destroy the Austrian principles. For example, the FPÖ party's 2019 election slogan is "FPÖ Voten Gegen EU Asylchaoten," which translates to "vote for the FPÖ to end the EU refugee chaos."⁵⁸ The FPÖ party has consistently run a campaign that calls for restrictive immigration laws, making it possible for statements like "halt the influx of new refugees" to be made throughout most elections or "Islam is not welcome in our land,"⁵⁹ referring to non-Ukrainian refugees, most of whom come from different religious and cultural backgrounds.

The language used in the media has produced double coverage of individuals within the same category as people seeking protection, and this tactic has significantly reduced the acceptance of non-Ukrainian refugees. The Kronen TV program discusses violence against women due to illegal immigration to connect the threat to gender equality with the flux of refugees entering the country.⁶⁰ To justify the dualistic nature of the state's politics, the media has furthered discriminatory policies against non-Ukrainian refugees by characterizing

⁵⁸ Die Partei als Marke: Das visuelle Framing der Wahlplakate – Politikmagazin.at', accessed 15 January 2023, <https://www.google.com/imgres>.

⁵⁹ Theo Anders, Katharina Mittelstaedt, and Fabian Schmid, 'Eigenbau statt Spindoktor: Wer im Wien-Wahlkampf die Fäden zieht', DER STANDARD, accessed 15 January 2023, <https://www.derstandard.at/story/2000120503027/eigenbau-statt-spindoktor-wer-im-wahlkampf-die-faeden-zieht>. Der Standard, 'Corona-Impfung: Wieso Dauert Das so Lange?', accessed 2 May 2023, https://html5-player.libsyn.com/embed/episode/id/17517140/height/90/theme/custom/thumbnail/yes/direction/backward/no-cache/true/render-playlist/yes/custom-color/60bfd3/destination_id/1462691; 'Keine Rechte Propaganda Auf Wiens Straßen! - Online Petition', openPetition, accessed 15 January 2023, <https://www.openpetition.eu/at/petition/online/keine-rechte-propaganda-auf-wiens-strassen>.

⁶⁰ krone.at, 'Gewalt an Frauen ist Problem der Migration', Kronen Zeitung, 30 November 2022, <https://www.krone.at/2870252>.

Ukrainian refugees as "vertriebene" or "displaced people."⁶¹ The media's manipulation of language has created a gap that has been used to influence public attitudes regarding European and non-European refugees.

Austria's print media face difficulties due to the lack of context-specific regulations. Instead, the National Press Council (Presserat) has created a Code of Ethics that outlaws discrimination based on age, religion, sex, and other factors in writing.⁶² The number of complaints to the Press Council for violations of the Code of Ethics has been increasing remarkably since 2015,⁶³ with most of the issues relating to third world asylum seekers. The owner of the journal "Der Österreichische Journalist," Johann Oberauer GmbH, was found to have violated the Code of Ethics in 2015 after publishing an article titled "The Journalist as a Nazi in Making." Additionally, he set up a fake Facebook account and posted numerous messages encouraging people to oppose Syrian refugees, such as "dispense gas syringes to Syrians for self-ignition," "Heil Hitler," and "refugees who order at Zalando." Der Österreichische Journalist claimed that these techniques were used to gather information and gauge Facebook's response to the content.⁶⁴ The Press Council decided that the approaches were unjustified since the harm these postings could inflict outweighed the readers' learning from the article. However, the council did not thoroughly investigate the journalist's justification, especially considering that he wrote about it for seven days. In addition, it was determined that the journalist had only broken Article 8 of the code of ethics, which deals with the use of unfair methods or tools, rather than discriminating against a specific group.⁶⁵ As a

⁶¹ Zeitung oe24, 'Vertriebenen-Ausweis für ukrainische Flüchtlinge', 25 March 2022, <https://www.oe24.at/video/ukraine-krieg/vertriebenen-ausweis-fuer-ukrainische-fluechtlinge/514671189>.

⁶² 'Presserat.at - Grundsätze Für Die Publizistische Arbeit - (Ehrenkodex Für Die Österreichische Presse), accessed 17 January 2023, https://presserat.at/show_content.php?hid=2.

⁶³ Presseart Österreichischer, 'Fallstatistik_presserat_2011-2016.Pdf', accessed 17 January 2023, https://www.presserat.at/rte/upload/pdfs/fallstatistik_presserat_2011-2016.pdf.

⁶⁴ Free Word Centre country report, 'Article 19, Austria Responding to Hate Speech' (London, United Kingdom: Equality and Citizenship (REC) Programme of the European Union, 2018), 40, <https://www.article19.org/wp-content/uploads/2018/09/Austria-Responding-to-Hate-Speech-.pdf>.

⁶⁵ Österreichischer Presseart, 'Entscheidung_2015_192_10.12.2015.Pdf', 2015, https://www.presserat.at/rte/upload/entscheidungen_2016/entscheidung_2015_192_10.12.2015.pdf.

result, unless a decision is made to discourage hate speech, such language will continue to appear in Austrian media. The primary concern is that the discriminatory campaign against the influx of immigrants seeking asylum does not extend to Ukrainian refugees, as the discriminatory practices have been targeted solely at non-Ukrainian refugees. This trend is frequently observed in the Austrian media, where efforts are made to differentiate Ukrainian refugees from other illegitimate asylum seekers and refugees from other countries.

In 2022, the media covered immigration from two opposing perspectives, which is evident in the headlines that refer to non-Ukrainian refugees as "storming our border" and to European Ukrainian refugees as "we can support the Ukrainian refugees" and "Austria needs to help."⁶⁶ Due to this dual standard of coverage, there are now two opposing public perceptions of immigrants: one that reflects sympathy with Ukrainian refugees' immigration stories as European citizens, and the other that reflects fear and hostility toward other refugees who are not from the same culture and may destroy the nation.

The responsibility for this contradictory immigration policy and the treatment of non-Ukrainian refugees, therefore, falls on various factors. Right-wing political ideologies and procedures have been instrumental in widening the divide between European and non-European immigrants. They focus on illegal immigration as a threat to national security and Ukrainian refugees as an increase in European unity. Austrian law has allowed the government to declare unjustified exceptional measures for the preservation of public order and the protection of internal security when illegal immigrants and asylum seekers arrive at Austria's borders⁶⁷

⁶⁶ krone.at, 'So können Sie aus der Ukraine Geflüchteten helfen', Kronen Zeitung, 17 March 2022, <https://www.krone.at/2657513>; '20.000 stürmen unsere Grenze', 21 October 2015, <https://www.oe24.at/oesterreich/chronik/20-000-stuermen-unsere-grenze/209012556>; edith. meinhard, 'Ukraine-Flüchtlinge: Österreich will helfen', 7 March 2022, <https://profil.at/oesterreich/ukraine-fluechtlinge-oesterreich-will-helfen/401929564>; krone.at, 'Gewalt an Frauen ist Problem der Migration'.

⁶⁷ Human Rights Watch, 'Austria: Drastic, Unjustified Measures against Asylum Seekers', 27 April 2016, available at: <https://www.refworld.org/docid/5721cccd118.html> [accessed 21 January 2023] United Nations

On the other hand, the law implemented a dual-legislation approach and opened the borders for Ukrainian refugees after the Ukrainian War.⁶⁸ In addition, some political leaders have utilized the securitization of illegal immigration in their speeches as a transversal political technology to confirm their roles as protectors of national security and to conceal some of their failures.⁶⁹ Therefore, the political speeches were crucial in mobilizing the public against a particular group of refugees, and they also influenced the Austrian media, which depicted two distinct immigration images. Thus, "state propaganda, when supported by the educated classes and when no deviation is permitted from it, can have a big effect,"⁷⁰ that is how the media influenced Austrian perceptions of non-Ukrainian immigrants, which were very different from the portrayal of Ukrainian refugees. As a result, the Austrian regime may be primarily to blame for this dual immigration policy, which resulted in a discernible discriminatory treatment of non-Ukrainian refugees.

High Commissioner for, 'Refworld | Austria: Drastic, Unjustified Measures against Asylum Seekers', accessed 21 January 2023, <https://www.refworld.org/docid/5721cccd118.html>.

⁶⁸ ÖBB 'Ukraine Hilfe', accessed 30 April 2023, <https://www.oebb.at/de/neuigkeiten/ukraine-hilfe>.

⁶⁹ Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease," 65.

⁷⁰ Noam Chomsky, *Media Control: The Spectacular Achievements of Propaganda*, 1st ed, The Open Media Pamphlet Series 2 (New York: Seven Stories Press, 1997), 10.

Chapter 2: Evaluating Austria's Dual Immigration Policy in Light of International Human Rights Frameworks

Europe's Ukraine crisis has drawn attention to the disparate ways humanitarian protection obligations under international law are carried out, particularly concerning treating Ukrainian immigrants as a priority over those from other nations. This chapter aims to examine whether Austria's dual immigration policy is compliant with its legal obligations to protect human rights. Austria has obligations in its dealings with immigrants and refugees within its authority as a member of the 1951 Refugee Convention and its Protocol, the European Convention on Human Rights, and the EU. The thesis posits that the anti-immigrant policies of the nation in question with regard to non-Ukrainian immigrants can be characterized as discriminatory and contravene international human rights norms.

The introductory section of this chapter commences by identifying and scrutinizing international human rights conventions and treaties that encompass specific provisions explicitly prohibiting discriminatory practices targeted against refugees and immigrants seeking international protection within the domestic legislation of state members. It then delves into the complicated situation of the Austrian regime's implementation of these international regulations in dealing with the refugee crisis in 2015 and the Ukrainian refugees after the Ukraine War in 2022. The chapter focuses on the contradictory policies of the Austrian government, which are exemplified by its discriminatory laws and its officials and media's racist rhetoric toward refugees from outside of Europe. The analytical underpinnings behind the dual policy implemented by the Austrian government are illustrated through a focus on the inherent contradiction between the assertion of freedom of expression as a justification in discussions about the dual immigration policy and the alternative analysis that perceives this duality as an intentional dissemination of hate speech aimed explicitly at non-Ukrainian immigrants. Furthermore, this chapter delves into another tension arising from the Austrian

regime's other justification of duality, the freedom to establish immigration laws within the framework of state sovereignty, juxtaposed with the argument about the equal enjoyment of human rights. The concluding section of this chapter addresses the primary rationale underlying the Austrian regime's adoption of a dual immigration policy, highlighting that the discriminatory application of international law by the state stems from legal loopholes; nevertheless, these shortcomings in international human rights law do not absolve the dual policy from being considered a violation of human rights standards.

2.1 Non-discrimination as a fundamental principle of international human rights

Most contemporary human rights are derived from the 1948 Universal Declaration of Human Rights (UDHR), founded on the principle that all human beings are equal in dignity and rights.⁷¹ The declaration also underscores the individuals' rights to seek asylum, emphasizing the significance of refraining from discrimination against refugees.⁷² This principle has been subsequently restated in numerous international and regional treaties and conventions that emphasize equality as a fundamental principle in legislation that safeguards human beings. These instruments prohibit discrimination against immigrants, including refugees.

All EU Member States are parties to most of the United Nations human rights treaties, including a prohibition on discrimination.⁷³ For instance, the International Covenant on Civil and Political Rights (ICCPR) articulates in Article 2 that all individuals are equal without discrimination.⁷⁴ In addition, prohibiting discrimination has also been referred to in Article 3

⁷¹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art 1. available at: <https://www.refworld.org/docid/3ae6b3712c.html>

⁷² Ibid, arts 14/ 2

⁷³ European Union Agency for Fundamental Rights., European Court of Human Rights., and Council of Europe (Strasbourg)., Handbook on European Non-Discrimination Law :2018 Edition. (LU: Publications Office, 2018), <https://data.europa.eu/doi/10.2811/58933>.

⁷⁴ International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art 2. available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

of the 1951 Refugee Convention underscores the obligation of contracting states to treat refugees in a manner devoid of discriminatory practices. Hence the non-discrimination principle is a tenet in most international treaties, conventions, and declarations, which mandate all state parties to incorporate it in their domestic law. However, the elaboration of this principle has varied significantly, resulting in different interpretations and applications.

The principles of equality and non-discrimination are frequently cited as essential barriers to Austrian state discrimination against non-citizens. Nonetheless, there has been considerable discussion regarding the effectiveness of these principles, especially in protecting non-Ukrainian immigrants and refugees. In addition, non-discrimination provisions in treaties have been revised, such as in Article 21 of the EU Charter, which seeks to prevent discrimination based on nationality.⁷⁵

The UNHCR has also recognized racial discrimination as a significant factor contributing to forced displacement, posing a threat to the protection of asylum-seekers and refugees throughout different stages of the displacement cycle.⁷⁶ In this regard, the principles of non-discrimination have been elucidated through two instrumental frameworks, namely the European Convention of Human Rights (ECHR) and the Committee for the Elimination of Racial Discrimination (CERD Committee) addressing and combatting racial discrimination.⁷⁷

⁷⁵ European Union, 'Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, Available at: <https://www.refworld.org/docid/3ae6b3b70.html>', n.d., art. 21.

⁷⁶ UNHCR United Nations High Commissioner for Refugees (UNHCR), UNHCR Note on Combating Racism through Strategic Approach (Geneva, 2009), 3, <https://www.refworld.org/pdfid/4b30931d2.pdf>.

⁷⁷ United Nations High Commissioner for Refugees (UNHCR) Division of International Protection Geneva, UNHCR Note on combating racism through strategic approach, 2009 United Nations High Commissioner for Refugees (UNHCR), UNHCR Note on Combating Racism through Strategic Approach; The UN Refugee Agency, 'UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951' (UNHCR), accessed 27 March 2023, <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.htm> UN General Assembly, 'International Convention on the Elimination of All Forms of Racial Discrimination' (UN General Assembly, 1965), <https://www.refworld.org/docid/3ae6b3940.html>; Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Available at: <https://www.refworld.org/docid/3ae6b3b04.html>', n.d.

These legal instruments impose binding obligations upon member states to enforce measures that prohibit discriminatory practices and recognize nationality as a significant basis for potential acts of discrimination.

Hence, States that have ratified Protocol No. 12 of the ECHR enable individuals to avail themselves of the opportunity to bring cases of discriminatory treatment by the state to the European Court of Human Rights, even if the issue is limited to social or cultural rights and specific aspects of asylum and immigration policies.⁷⁸ In such instances, the court is obligated to assess the case under Protocol 12. not only depending on Article 14, the convention, which emphasizes that all rights in the convention must be protected without discrimination.⁷⁹ One illustrative instance of a violation of Article 14 in the European Court of Human Rights (ECtHR) pertains to the case of *M.A. v. Denmark*, as the court determined that the Danish authorities breached the rights of a Syrian Asylum seeker who possessed contemporary protection, specifically the right to reunification with his family as stipulated under Artikel 8 of the Convention.⁸⁰ The violation occurred due to the imposition of a statutory three-year waiting period before granting a family reunion to this individual.⁸¹ Consequently, this case highlights the significant leeway provided to states in the Application of waiting periods and the issue of discrimination under Artikel 14 concerning a particular group of refugees who must be protected from the state. Several other European countries emulated Denmark's adoption of waiting periods, thereby infringing upon the rights of many refugees who arrived after 2015.

⁷⁸ Barne-og J.H. Janneke Gerards, 'Janneke Gerards: Protocol No. 12 to the European Convention on Human Rights', NOU, Regjeringen.no (regjeringen.no, 19 June 2009), <https://www.regjeringen.no/no/dokumenter/nou-2009-14/id566624/>.

⁷⁹ Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Available at: <https://www.refworld.org/docid/3ae6b3b04.html>', art. 14.

⁸⁰ *M.A. v. Denmark*, Council of Europe: European Court of Human Rights, 9 July 2021. para 1-2, available at: <https://www.refworld.org/cases,ECHR,60ec0ae24.No.6697/18> (ECtHR [GC] 9 July 2021).

⁸¹ *Ibid*, Para 2-3.

In addition, CERD Committee also prevents discrimination under Article 5, emphasizing the prohibition of discrimination based on race, color, or national or ethnic origin.⁸² The case *NHV v Minister for Justice* in the Irish Supreme Court illustrates racial discrimination, explicitly addressing discriminatory legislation implemented by the Irish government.⁸³ This legislation prohibits Asylum seekers from accessing the labor market, which is considered an act of racial discrimination and a violation of their fundamental right to seek employment.⁸⁴ Although the court's ruling, in this case, permits the individual in question to obtain employment, it exemplifies a broader issue concerning discrimination against immigrants seeking international protection. Therefore, it becomes evident that the principle of non-discrimination has been incorporated into most international human rights frameworks. However, the effective enforcement of this principle relies heavily on the actions of state members. This aspect forms the focal point of the subsequent section of the thesis, which examines the implementation of this principle in the context of Austria.

2.2 Austria's compliance with non-discrimination for immigrants

International human rights instruments provide protection provisions for immigrants, and states such as Austria are obligated to uphold provisions that prevent discrimination. However, Austria's approach to immigration, characterized by a dual policy, has exhibited discernible discriminatory practices against non-Ukrainian refugees. As demonstrated in the previous chapter, this discrimination is evident in the country's legislation, official speeches, and media coverage. This part examines Austria's implementation of the non-discrimination provision in human rights laws and highlights justifications of the Austrian regime for a

⁸² UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660 UN General Assembly, 'International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, Vol. 660, p. 195', (General Assembly, 1969), art. 5, <https://www.ohchr.org/sites/default/files/cerd.pdf>.

⁸³ *N.v.H -v- Minister for Justice & Equality and ors* [2017] IESC 35 (IESC (2017) 30 May 2017): Supreme Court, 30 June 2017, Para2-3. available at: https://www.refworld.org/cases,IRL_SC,5937af004.html

⁸⁴ *Ibid*, Para1.

separate policy that supports one group while disregarding another; it also examines the other views that refuse such justification and policy and emphasizes that the Austrian Dual immigration policy considers a violation of Fundamental human rights.

2.2.1 The duality of Austria's human rights implementation.

Following the Ukrainian crisis in 2022, the Austrian government has implemented regulations to guarantee equal treatment of Ukrainian refugees; these contrast with the quite different legal regulations in place for non-European refugees from other countries in 2015. The Austrian government has relied on its domestic legislation to determine the refugee status granting, notwithstanding the Refugee Convention's terms, which demand contracting states to apply its provisions to refugees without discrimination based on race, religion, or country of origin.⁸⁵ Significantly, Austria, which is obliged to prohibit discrimination through its legislation, engages in discriminatory practices concerning immigration through its law. An example of such a law that was already discussed is the Border Control Act, which regulates the entry of migrants from developing countries, and the 2016 amendment to its asylum law, which empowers the government to deny migrants access to the country under an emergency state.⁸⁶ However, this amendment to the act does not encompass the surge of Ukrainian immigrants into Austria in 2022 following the Ukrainian War.

To address discriminatory practices within the nation, the government of Austria has implemented a series of legal measures. Among these is the Equal Treatment Act 63, which

⁸⁵ 'UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951', art. 3.

⁸⁶ _Bundesgesetz über die Durchführung von Personenkontrollen aus Anlaß des Grenzübertritts (Grenzkontrollgesetz – GrekoG) '1996_435_', accessed 30 April 2023, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1996_435_0/1996_435_0.pdf. ' _Bundesgesetz Über Die Durchführung von Personenkontrollen Aus Anlaß des Grenzübertritts (Grenzkontrollgesetz – GrekoG) "1996_435_"', Accessed 30 April 2023, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1996_435_0/1996_435_0.Pdf., https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_24/BGBLA_2016_I_24.html; Horvath, 'Julia Dahlvik (2018)', 36.

applies to the private sector and prohibits discriminatory employment practices based on gender, ethnicity, religion, sexual orientation, and age.⁸⁷ The principle of equal treatment is further supported by the Federal Equal Treatment Act 65, which prohibits discrimination in federal agency employment based on gender, age, sexual orientation, or religion.⁸⁸ Additionally, the GBK/GAW Act, also known as the Federal Act on the Equal Treatment Commission and the Equal Treatment Ombudsperson, addresses individual cases related to violations of equal treatment.⁸⁹ It is worth noting, however, that the current legal framework in Austria does not explicitly address discrimination against immigrants in its statutes.

Austria is required to include numerous refugee-related laws in its national legislation because it is a signatory to the 1951 Convention and its Protocol and a member of the European Union.⁹⁰ The implementation of this legislation under national jurisdiction will determine how it is applied. Despite these commitments, Austria has been a key player in limiting asylum-related issues. Following the principle of equal treatment, refugees are expected to be afforded equal opportunities to those provided to European Union residents, thereby precluding any discriminatory practices based on nationality, including differentiation between Ukrainian and non-Ukrainian immigrants. Contradicting this principle, the Austrian Trade Union Federation ÖGB endorses measures restricting refugees' access to employment, limiting their eligibility

⁸⁷ RIS-Rechtsinformationssystem des Bundes, 'Gleichbehandlungsgesetz - Bundesrecht konsolidiert, Fassung Vom 28.03.2023', 2023,

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>.

⁸⁸ 'RIS - Equal Treatment Act - Consolidated Federal Law, Version of 03/28/2023', accessed 28 March 2023, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>.

⁸⁹ Federal Law on the Equal Treatment Commission and the Equal Treatment Ombudsman, 'GBK/GAW-Gesetz - Federal Law Consolidated, Version of 03/28/2023', accessed 28 March 2023, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466>.

⁹⁰ 'United Nations Treaty Collection', accessed 29 March 2023, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en; European Union Website, 'Austria – EU Member Country Profile| European Union', accessed 29 March 2023, https://european-union.europa.eu/principles-countries-history/country-profiles/austria_en.

solely to instances where no European Union citizen can be found.⁹¹ This discrimination is directed explicitly towards non-Ukrainian immigrants and refugees, wherein Ukrainian refugees are granted expedited access to labor opportunities, exempt from the waiting period imposed on other refugees from other regions.

Austrian lawmakers also approved a law in 2016 permitting the federal government to halt the processing of asylum requests outside of interim border checkpoints and the provincial LPDs' registration points.⁹² This measure facilitated the assessment of eligibility for refugee admission into Austria while upholding the non-refoulment principle established within international human rights law. The non-refoulment principle mandates that no individual should be forcibly returned to a country where they would be subjected to torture, cruel, inhuman, degrading treatment, punishment, or any other irreparable harm.⁹³ It is important to note that this principle applies universally to all immigrants, regardless of their migration status or nationality, ensuring individuals' protection in all circumstances. According to Section 36 of the 2016 Amendment Act, No. 24/2016, and the operation of state systems, the refusal of the entrance was justified by "the number of foreigners appealing for international protection."⁹⁴ It is important to note that these rules were not in place in 2022 when Ukrainian immigrants entered Austria after the Ukrainian War.

The discourse advanced by politicians and the media concerning measures taken against illegal immigration and in support of refugees has contributed to the legitimization of these policies in a manner that avoids their characterization as violations of human rights law, which

⁹¹ Julia Hofmann et al., 'Symbolic Struggles over Solidarity in Times of Crisis: Trade Unions, Civil Society Actors and the Political Far Right in Austria', 2019, 662,

<https://www.tandfonline.com/doi/epdf/10.1080/14616696.2019.1616790?needAccess=true&role=button>.

⁹² Josipovic and Reeger, 'Border Management and Migration Controls in AUSTRIA', 24.

⁹³ European Union, 'Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, Available at: <https://www.refworld.org/docid/3ae6b3b70.html>', art. 78(1); 'International Covenant on Civil and Political Rights (ICCPR) | Equality and Human Rights Commission', art. 2,3; Janice Marshall, 'The 1951 Convention Relating to the Status of Refugees', 1951, art. 33(1).

⁹⁴ 'Amendment 2016, RIS Dokument'; Josipovic and Reeger, 'Border Management and Migration Controls in AUSTRIA', 24.

prohibits discrimination against immigrants and refugees. The discourse in question has emphasized the significance of safeguarding the security and protection of citizens of the European Union.⁹⁵ However, such practices have been criticized by some, such as Volmer, who contends that the exclusionary practices have been reinforced through a range of policy frames and discursive strategies over the years, reflecting a process of "moralization of bordering," where this entails the moral validation of excluding specific groups of people based on a narrative of deservingness that posits some individuals as not deserving of the same treatment or rights as those within the host society.⁹⁶

As an illustration, the Austrian Chancellor Karl Nehammer, who is known for his strong opposition to immigration and has consistently defended Austria's authority to expel Afghan asylum seekers, expressed his stance on accepting Ukrainian refugees by stating that "the situation in Ukraine is distinct from that of countries such as Afghanistan. We are referring to providing assistance to neighboring countries."⁹⁷ Such an action raises concerns regarding discriminatory practices in the provision of refuge, which racial considerations should not influence. Hence, the Austrian government employs two distinct approaches in implementing the human rights framework to address and mitigate discrimination. Nevertheless, this dual approach is supported by legal justifications provided by the Austrian government, which will be discussed in the coming part to examine Austrian compliance with the international human rights framework.

2.2.2 The legitimacy of Austria's dual immigration policy

⁹⁵ Markus Rheindorf and Ruth Wodak, 'Borders, Fences, and Limits—Protecting Austria From Refugees: Metadiscursive Negotiation of Meaning in the Current Refugee Crisis', 18, accessed 29 March 2023, <https://www.tandfonline.com/doi/epdf/10.1080/15562948.2017.1302032?needAccess=true&role=button>.

⁹⁶ Bastian Vollmer, 'Vollmer, B. (2016), "A Hermeneutical Approach to European Bordering", *Journal of Contemporary European Studies*, 25(1): 1-15.', 7, accessed 29 March 2023, https://www.academia.edu/26086861/Vollmer_B_2016_A_Hermeneutical_Approach_to_European_Bordering_Journal_of_Contemporary_European_Studies_25_1_1_15.

⁹⁷ Moustafa Bayoumi, 'They Are "Civilised" and "Look like Us": The Racist Coverage of Ukraine', *The Guardian*, 2 March 2022, sec. Opinion, <https://www.theguardian.com/commentisfree/2022/mar/02/civilised-european-look-like-us-racist-coverage-ukraine>.

The Austrian government has made concerted efforts to bolster its discriminatory immigration procedures through public speeches and media campaigns. These endeavors aim to legitimize these measures under various legal justifications, thus giving rise to a contentious debate between proponents and opponents of such dual policies. As a result, the Austrian regime has introduced justifications for the dual nature of its immigration framework. Conversely, some reject this policy and contest the justifications put forth by the government, highlighting that the dual immigration policy constitutes a transgression of immigrants' fundamental human rights. In addition to the clash between the freedom to determine immigration policy for the sake of state security and the obligation to ensure equal enjoyment of human rights within the country. Consequently, divergent and controversial explanations have emerged, encompassing the dichotomy between the principles of free speech and hate speech.

2.2.2.1 The legality of unequal treatment under international non-discrimination norms

The Refugee Convention provided the first justification for the dual immigration policy from the Austrian regime, neither mandates the creation of a system for determining refugee status nor offers precise instructions on how to conduct those procedures.⁹⁸ Instead, the Convention places an obligation on states to implement its obligations adequately. Consequently, it is the responsibility of the Austrian state to determine the framework procedures for determining refugee status and for decision-makers to interpret the Convention in their policies.⁹⁹ Therefore, it hinges on the idea that Austria has the right to implement the Convention in a manner that does not contradict its national law. For instance, Austrian law prohibited a 13-year-old Syrian unaccompanied minor who was granted subsidiary protection

⁹⁸ Johannes Kepler, 'De-Constructing the UN and OAU Refugee Definitions and the Application in Austria and South Africa', Universität Linz, 2016, 9.

⁹⁹ *ibid*, 9.

from initiating a family reunification process for three years; the Constitutional Court ruled that this restriction was not discriminatory.¹⁰⁰ The Constitutional Court found that there was no risk of unequal treatment when distinguishing between those who were eligible for subsidiary protection and those who were eligible for asylum.¹⁰¹ As a result, since states can decide who can enter their territories and how they will be protected, the refugee law and anti-discrimination principles do not always protect asylum seekers against such treatment of non-Ukrainian immigrants. Even though it may seem that officials' responsibilities entail enforcing the law, deciding asylum claims frequently entails interpreting and manipulating the law and adding to, changing, or breaking it when necessary to handle certain individual situations.¹⁰²

2.2.2.2 The legality of the security exceptions invoked by the Austrian authorities

The Austrian government has employed another reason, namely preserving state security, to justify its dual immigration policy. This justification is utilized to support the government's position on implementing differentiating approaches to various types of immigration. The designation of illegal immigration as a security issue is crucial for politicians, national and municipal law enforcement agencies, military police, border patrols, secret services, courts, some social service providers, many media, and a sizeable number of the general public.¹⁰³ As a result, the mobilization of state security in Austria has created a sense of threat in society, which has legitimized the policymakers' actions and rhetoric against refugees under the umbrella of state security.¹⁰⁴ As defined by Balzac, the notion of

¹⁰⁰ European Council on Refugees and Exiles, ecre, Asylum Information Database , aida, Country Report: Austria, 2020 -Aida-At_2020update.Pdf, 150, accessed 29 March 2023, https://archiv2022.asyl.at/files/33/00-aida-at_2020update.pdf.

¹⁰¹ Verfassungsgerichtshof, 'VfGH_Entscheidung_E_4248-2017_ua_subs_Schutzberechtigte_anon, 2018, https://www.vfgh.gv.at/downloads/VfGH_Entscheidung_E_4248-2017_ua_subs_Schutzberechtigte_anon.pdf.

¹⁰² Horvath, 'Julia Dahlvik (2018), 119.

¹⁰³ Didier Bigo, 'Security and Immigration: Toward a Critique of the Governmentality of Unease', *Alternatives: Global, Local, Political* 27, no. 1_suppl (February 2002): 63, <https://doi.org/10.1177/03043754020270S105>.

¹⁰⁴ Ibid, 63.

securitization refers to “an identifiable social and technical (dispositif) embodying a specific threat image through which public action is configured to address a security issue.”¹⁰⁵

Consequently, the dual immigration policy of the Austrian government has gained legitimacy, especially because Article 9 of the 1951 Refugee Convention recognizes that contracting states may, in exceptional circumstances, take provisional measures that they deem essential to national security in the case of a specific individual, pending a determination by the contracting state that the person is indeed a refugee and that the continuation of such measures is necessary for national security.¹⁰⁶ Thus, the Austrian government has substantiated its discernment between immigrants within its policy framework by employing the exception to safeguard the nation's security against unauthorized immigrants from regions beyond the bounds of Europe.

On the other hand, opponents of the Austrian policy on immigration argue that the policy allowing freedom of distinction violates the principle of equal treatment and enjoyment of rights, which has been established in the European Convention on Human Rights as a prohibition of discrimination. This principle should therefore be implemented for refugees even before they are given refugee status, and it is not acceptable to differentiate access to social benefits based on nationality.¹⁰⁷ The Austrian government was criticized in Amnesty International's 2022–2023 annual report for its disparate handling of refugees.¹⁰⁸ In one instance, the Styrian Regional Administrative Court ruled that an asylum seeker from Morocco had been unlawfully returned by the police to Slovenia, noting that such unlawful actions were

¹⁰⁵ Thierry Balzacq, *Securitization Theory: How Security Problems Emerge and Dissolve*, 1st ed. (Routledge, 2011), 16, <https://www.routledge.com/Securitization-Theory-How-Security-Problems-Emerge-and-Dissolve/Balzacq/p/book/9780415556286>.

¹⁰⁶ ‘UN High Commissioner for Refugees (UNHCR), *The Refugee Convention, 1951*’, art. 9.

¹⁰⁷ David Fennelly and Clíodhna Murphy, ‘Racial Discrimination and Nationality and Migration Exceptions: Reconciling CERD and the Race Equality Directive’, *Netherlands Quarterly of Human Rights* 39, no. 4 (1 December 2021): 311, <https://doi.org/10.1177/09240519211055648>.

¹⁰⁸ ‘Amnesty International Report 2022/23: The State of the World’s Human Rights’, Amnesty International, 27 March 2023, 79–80, <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>.

a recurrent practice, especially when Austria at the same time accepted more than 90,000 Ukrainian refugees who received temporary protection under the provisions of the EU Temporary Protection Directive.¹⁰⁹

2.2.2.3 the legality of unequal treatment under free speech norms

The dual policy in the Austrian government's official rhetoric and media coverage finds additional justification in a legal framework that establishes a distinction between the treatment of refugees from Ukraine, depicted favorably, and the discourse surrounding refugees from other countries who are not from Ukraine. This duality is purportedly justified within the framework of freedom of expression as outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).¹¹⁰ This right stipulates that the state is obliged to ensure freedom of expression without any interference and to facilitate the access, receipt, and dissemination of information through the media, regardless of the frontiers.¹¹¹ The Human Rights Committee (HRC) has stressed the breadth of Article 19 (2) of the ICCPR, which asserts that the concept of freedom of expression is so broad that it can protect discriminatory speech.¹¹² The Austrian government might contend that, as a result, discriminating speech qualifies as a type of free speech.

The Austrian Constitution protects the right to freedom of expression, which is evidenced by the provisions contained within it. This right is enshrined in the Federal Bill of

¹⁰⁹ *ibid*, <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>.

¹¹⁰ UN General Assembly, 'Universal Declaration of Human Rights, 10 December 1948, 217 A (III)', art. 19; 'International Covenant on Civil and Political Rights (ICCPR) | Equality and Human Rights Commission', act 19.

¹¹¹ UN General Assembly, 'Universal Declaration of Human Rights, 10 December 1948, 217 A (III)', art. 19.

¹¹² 'International Covenant on Civil and Political Rights (ICCPR) | Equality and Human Rights Commission', art. 19(2); Nations Unies UN Human Rights Committee (102nd sess: 2011 : 'General comment no. 34, Article 19, Freedoms of opinion and expression' (UN, 12 September 2011), para. 11, <https://digitallibrary.un.org/record/715606>.

Rights, though it is only guaranteed for Austrian citizens as stipulated by law.¹¹³ Additionally, the Austrian regime's constitution ensures legal immunity for members of the provincial parliaments and the National Council, thereby protecting them from any civil or criminal liability for expressing their opinions during their official duties.¹¹⁴

Determining who is entitled to exercise the right of freedom of speech and what kinds of discussions are allowed can be controversial. One example of this is represented in a case brought before the European Court of Human Rights (ECtHR) in 2016, known as the Case of Genner v. Austria, where the applicant, Mr. Michael Genner, an Austrian national affiliated with the organization, provides legal and social support to individuals seeking asylum and refugees.¹¹⁵ He contended before the court that his conviction for defamation, stemming from the publication of articles that referenced particular personal narratives of asylum seekers, contained text asserting that the former minister and the policies implemented by the government resembled “war criminals” and that the government's laws and regulations towards refugees are “compliant instruments of a racially tainted bureaucracy.”¹¹⁶ Mr. Genner argued that this conviction violated his rights to freedom of expression under Article 10 of the Convention.¹¹⁷ The ECtHR's decision, however, stated that there was no violation of Article 10 of the Convention and that the government intervention pursued a legitimate goal and was required for a democratic society.¹¹⁸ As a result, within the legal framework, expressions of

¹¹³ ‘RIS - Basic Law on the General Rights of Citizens - Consolidated Federal Law, Version of 03/30/2023’, art. 13, accessed 30 March 2023, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000006>.

¹¹⁴ Austria: Federal Constitutional Law [Austria], 20 December 1930, available at: <https://www.refworld.org/docid/585902b34.html> the Austrian Legal Information System., ‘Federal Constitutional Law’, art. 96, accessed 30 March 2023, https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html.

¹¹⁵ ‘GENNER v. AUSTRIA’, Council of Europe, European Court of Human Rights, para. 6, accessed 21 May 2023, [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22refugees%22\],%22sort%22:\[%22kupdate%20Descending%22\],%22respondent%22:\[%22AUT%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-159886%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22refugees%22],%22sort%22:[%22kupdate%20Descending%22],%22respondent%22:[%22AUT%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-159886%22]}).

¹¹⁶ Ibid, para. 9.

¹¹⁷ Ibid, para. 3.

¹¹⁸ Ibid, paras 3–4.

discrimination by Austrian politicians towards immigrants from non-Ukrainian backgrounds are considered permissible as an exercise of their freedom of speech. Similarly, the media enjoys freedom and autonomy under the Federal Constitutional Act, allowing them to adopt a racially biased stance against non-Ukrainian refugees.¹¹⁹ However, it is worth noting that such freedom does not extend to discussing the legal provisions or the individuals responsible for their creation

Conversely, critics who oppose the dual immigration policy implemented by the state are unable to accept its invocation of freedom of speech as a justification for expressing negative sentiments towards non-Ukrainian refugees. The argument is that such speeches and media coverage discussed in the previous chapter can transform into hate speech. Despite the lack of explicit mandates for states to outlaw hate speech within the context of the European Convention, it is pertinent to note the reference to the right to private life and its potential susceptibility to interference, which becomes particularly significant when considering the imperative of upholding national security and ensuring public safety, as outlined in Article 8. Furthermore, when examining the provisions of Article 10(2), which allow for restrictions on freedom of expression, it is evident that such limitations are justifiable considering national security, territorial integrity, or public safety concerns.¹²⁰

In addition, Article 20(2) of the ICCPR states that inciting hatred, hostility, or violence must be illegal. As a result, the Austrian government's contradictory stance on immigration cannot be justified, and the negative statements can be qualified as hate speech.¹²¹ However,

¹¹⁹ Federal Constitutional Act of 10 July 1974 on Guaranteeing the Independence of Broadcasting the National Council the Austrian Legal Information System., 'Federal Constitutional Act of 10 July 1974 on Guaranteeing the Independence of Broadcasting', art. 1, accessed 30 March 2023, https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1974_396/ERV_1974_396.html.

¹²⁰ Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Available at: <https://www.refworld.org/docid/3ae6b3b04.html>', art. 8(2), 10(2).

¹²¹ International Covenant on Civil and Political Rights (ICCPR) | Equality and Human Rights Commission', art. 20(3).

the main issue is that Austrian constitutional law lacks clear clauses addressing "advocacy of hatred" that encourages discrimination or clauses comparable to Article 20(2) of the ICCPR.¹²² Yet, the only reference to this is the ban on materials that directly support the objectives of the outlawed Nazi Party (NSDAP).¹²³ The Austrian criminal code also forbids harassing behavior that breaches human dignity and aims to humiliate others and incites or encourages violence against any group.¹²⁴ Nonetheless, there are no content restrictions on printed media in Austria, and the Radio and Telecommunication Regulatory Corporation (RTR GmbH) has published press subsidy rules that do not expressly prohibit hate speech against immigrants and refugees from third-world countries.¹²⁵ Since there is no particular focus on hate crimes against refugees under national legislation, the Austrian regime has thereby legitimized discriminatory speech against immigrants and has not classified it as a type of hate crime; however, this does not imply the absence of violations of the preceding international legislation discussed earlier, which is intended to prevent discrimination.

From a legal perspective, Austria's implementation of a dual immigration policy can be characterized as a violation of the state's duty to ensure equal enjoyment of rights for refugees within its borders. However, the Austrian government's endorsement of this dualistic approach to immigration policy appears to be justified under their legal framework. Nonetheless, this validation raises concerns regarding the evident discrimination against non-Ukrainian immigrants, which could potentially contravene the Refugee Convention, Article 14 of the European Convention on Human Rights (ECHR), and even Protocol 12, despite Austria not having ratified the latter but having signed it. Given the existence of the international human

¹²² country report, 'Article 19, Austria Responding to Hate Speech', 16.

¹²³ National Socialism Prohibition Act 1947 'ERV_1945_13, accessed 30 March 2023, https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1945_13/ERV_1945_13.pdf.

¹²⁴ Gesamte Rechtsvorschrift für Strafgesetzbuch, Fassung vom 11.10.2021 'Cms_nlp_aut_criminal_code_1974.Pdf', para. 1, accessed 30 March 2023, https://www.cms.int/huemul/sites/default/files/document/cms_nlp_aut_criminal_code_1974.pdf.

¹²⁵ Free Word Centre, Article 19, Austria Responding to Hate Speech, 19.

rights framework, it is essential to shift the focus toward addressing the deficiencies within this framework regarding protecting immigrants and refugees.

2.3 The lacuna in the international human rights framework

The legal justification employed by Austria in implementing its discriminatory policy towards non-Ukrainian refugees highlights the inadequacies of the international legal framework in protecting immigrants and refugees. Following the conflict in Ukraine, this phenomenon became particularly obvious in Austria as different legislative initiatives targeted the same impacted group. Implementing such discriminatory practices highlights the urgent need for a comprehensive review of the current legal system and the creation of more robust safeguards for the human rights of refugees from non-European countries.

The first gap can be found in the 1951 Refugee Convention, which on the one hand, has acknowledged that refugees should not be denied the rights and privileges accorded to foreign nationals, provided there is no reciprocity requirement.¹²⁶ On the other hand, Article 9 offers an exception, though, allowing the contracting states to adopt extraordinary measures for the sake of their national security.¹²⁷ This provision has been used as a legal justification for Austria's discriminatory practices during refugee crises, rendering the refugee statute ineffective at safeguarding refugees.¹²⁸ As a result, the current legal system needs to be critically examined to guarantee that all refugees are adequately protected in all circumstances.

¹²⁶ 'UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951', art. 7.

¹²⁷ Ibid, art. 9, accessed 27 March 2023, <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

¹²⁸ Amendment 2016 Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA-Verfahrensgesetz, 'Amend. 24/2016.NR: GP XXV RV 996 AB 1097 S. '; Amendment 2005 Bundesgesetz, mit dem das Bundes-Verfassungsgesetz geändert wird, ein Asylgesetz 2005, ein Fremdenpolizeigesetz 2005, 'Amend. 100/2005.NR: GP XXII RV 952 AB 1055 S. 116. '; Amendment 2017 Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005, das BFA-Verfahrensgesetz, das Grundversorgungsgesetz, 'Amend.145/2017.NR: GP XXV IA 2285/A S. 197. BR: S. 872'.

Another gap is clear even in the ICCPR that emphasizes equality without discrimination in Article 2. However, such discrimination is limited exclusively to race, religion, or country of origin.¹²⁹ It is important to note that determining whether other forms of discrimination are permissible rests with the individual state itself.

In addition, The EU Charter of Fundamental Rights ensures that the right to asylum is not merely a procedural entitlement to apply for asylum but rather a "subjective and enforceable right of persons."¹³⁰ However, the practical implementation of this right reveals that individuals are not guaranteed the actual granting of asylum. This disparity between legal provisions and their practical application highlights a significant gap that undermines the true nature of this right. This is due to the discretionary power afforded to states, whereby they are empowered to determine who can be protected and who's not.¹³¹ As a result, what ought to be a duty for nations to offer to individuals becomes a privilege.

Although the 21 Article in the Charter that has been discussed previously prevents discrimination based on nationality, the Charter excludes third-country nationals (TCNs).¹³² These individuals are citizens of states that are not members of the EU, and their exclusion has been reinforced by non-discrimination Directives, which underscore that the non-discrimination principle "does not cover the difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-

¹²⁹ United Nations High Commissioner for Refugees, 'UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951', UNHCR, art 3, accessed 27 March 2023, <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

¹³⁰ 'Charter of Fundamental Rights of the European Union', art. 18, accessed 26 March 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12016P/TXT&rid=3>; Horvath, 'Julia Dahlvik (2018)', 32.

¹³¹ Horvath, 'Julia Dahlvik (2018)', 32.

¹³² 'European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, art 21 Available at: <https://www.refworld.org/docid/3ae6b3b70.html>', n.d. European Union Agency for Fundamental Rights, Handbook on European Non-Discrimination Law: 27.

country nationals."¹³³ Hence, although the European Union (EU) Charter of Human Rights forbids discrimination based on nationality, it only applies to EU member states, suggesting that discrimination against non-Ukrainian refugees is not prohibited by the law.¹³⁴ It is crucial to thoroughly investigate the ambiguous and discriminatory aspects inherent within the international human rights framework. Therefore, despite attempts to prohibit prejudice, equal treatment cannot be promised to everyone in European states. This has fueled anti-immigration policies, particularly against non-Ukrainian refugees in Europe.

Also, it is essential to highlight that the Dublin Regulation, which governs the allocation of responsibility for processing asylum applications among European Union member states, has been operationalized for non-Ukrainian refugees upon their arrival in Austria. However, it has yet to be extended to Ukrainian refugees in the aftermath of the Ukrainian conflict, despite their lack of origin in Dublin Regulation countries and their displacement as internal refugees. The fairness of this system warrants scrutiny, as asylum seekers from non-European countries should have the right to apply for asylum in the land of their choice. However, some countries may reject applications based on the applicant's nationality and the diplomatic relationship between the applicant's country of origin and where they seek asylum.¹³⁵ For instance, the 2016 joint declaration between the European Union and Afghanistan facilitated cooperation between responsible authorities, and repatriations were primarily conducted through FRONTEX Joint Return Operations.¹³⁶

¹³³ 'Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin: Official Journal L 180, 19/07/2000 P. 0022 – 0026', *Pharmaceuticals, Policy and Law* 13, no. 3,4 (2011): 301–10, art 3 (2). <https://doi.org/10.3233/PPL-2011-0332>.

¹³⁴ 'Charter of Fundamental Rights of the European Union', art. 21.

¹³⁵ Total number of completed Dublin returns, listed by destination country¹ 'Total Number Dublin Returns from Austria, Listed by Destination Country', 3, accessed 15 May 2023, https://www.parlament.gv.at/dokument/XXVI/AB/2483/imfname_738095.pdf; Josipovic and Reeger, 'Border Management and Migration Controls in AUSTRIA', 38.

¹³⁶ Ivan Josipovic and Ursula Reeger, 'Border Management and Migration Controls in AUSTRIA', *RESPOND*, 21 June 2019, 38,

Protecting refugees from discriminatory practices entails many contentious matters that underscore deficiencies within the existing framework. One of these is how Article 1(2)(3) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) should be interpreted, which excludes nationality from the Treaty's prohibition on status-based discrimination.¹³⁷ These Articles Contradict Article 5 of the CERD, reinforcing that the state has the discretion to treat such groups by its national legislation, which, as was previously mentioned, can broaden the scope of discrimination.¹³⁸

In addition, the idea of immigration is not clearly defined in this context, as it only includes legal migrants in the state and does not encompass policies such as anti-immigration measures against asylum seekers, border control, and discrimination against who is allowed to enter the country.¹³⁹ Hence, the degree to which a state upholds its human rights obligations can vary depending on its policies. In cases where a state possesses discretion in implementing these obligations, the level of commitment may be significantly diminished or nonexistent. This apparent gap in the law can potentially legitimize discrimination in the provision of refuge and the treatment of refugees from non-European nations.

Another gap is apparent in the ECHR as the discriminatory treatment of non-Ukrainian refugees and immigrants in Austria does not fall within the ambit of protocol 12 of the convention, given that Austria has not ratified it and non-discrimination issues are restricted to Article 14 of the convention.¹⁴⁰ Notwithstanding this, the ECHR (European Convention on Human Rights) does not expressly forbid discrimination based only on a person's immigration status.

¹³⁷ 'International Convention on the Elimination of All Forms of Racial Discrimination', art. 1(2)(3).

¹³⁸ art. 1 (2)(3)-5; Fennelly and Murphy, 'Racial Discrimination and Nationality and Migration Exceptions', 313.

¹³⁹ 'European Convention on Human Rights.Pdf', art. 14, accessed 26 March 2023, https://www.echr.coe.int/documents/convention_eng.pdf protocol 12 (1).

¹⁴⁰ Ratification of International Human Rights Treaties - Austria 'University of Minnesota Human Rights Library', accessed 7 May 2023, <http://hrlibrary.umn.edu/research/ratification-austria.html>.

These lacunas in the international human rights framework emphasize the need for a comprehensive reassessment of the existing framework to ensure the appropriate preservation of the right to asylum as a fundamental and enforceable entitlement for individuals seeking refuge. These loopholes call for establishing a system that facilitates fair and non-discriminatory access to a host country, irrespective of an individual's country of origin is imperative.¹⁴¹ Furthermore, it is essential to extend protective measures, free from bias or prejudgment to all individuals falling within the jurisdiction of a state. This necessitates addressing the disparity between legal provisions and their actual implementation by states to prevent interpretations prioritizing state interests over asylum seekers' well-being.

Furthermore, it is necessary to assess the viability of establishing dual immigration policies for specific European nations, Austria being an illustrative example. The contradiction between the protective measures extended to European refugees and the painful experiences of non-Ukrainian refugees exposes the dichotomy that characterizes the EU's approach to refugees.¹⁴² This dichotomy underscores the distinctions between Europeans and individuals from diverse cultures. The manifestation of such double standards concerning immigrants has granted legitimacy to anti-immigration policies, which unfairly discriminate against non-Ukrainian refugees and deprive them of their right to safety.

The disparity in the refugee legislation and international framework for safeguarding refugees could be attributed to the notion that the law is heavily influenced by political considerations rather than purely legal principles, in addition to racism, which undermines the efficacy of the human rights framework as a mechanism for dispensing justice and thereby

¹⁴¹ Stephen B. Young, 'Between Sovereigns: A Reexamination of Refugee's Status Transnational Legal Problems of Refugees: Part 5: Entering the Country of Refuge: International Perspectives', *Michigan Yearbook of International Legal Studies* 3 (1982): 17.

¹⁴² Sunday Israel Oyebamiji et al., 'Echoes of Colour Discrimination in Refugee Protection Regime: The Experience of Africans Fleeing the Russia-Ukrainian War', *Migration Letters* 19, no. 5 (29 September 2022): 703, <https://doi.org/10.33182/ml.v19i5.2776>.

renders it ineffective in terms of its applicability to national laws of states.¹⁴³ Hence, it is paramount to revise international law by acknowledging the discriminatory treatment against non-European refugees and the existence of anti-immigration policies in some European countries, which should be prohibited according to the law. In addition, the refugee law needs to be revised by the Refugee Convention's responsibilities, which should stop discriminatory national interests from taking precedence over fundamental human rights.¹⁴⁴ A new system should be established to prevent political interests from undermining the principles of equality and non-discrimination.¹⁴⁵ As a result, the new EU policy should strive to guarantee that all asylum seekers can enter the EU legally, regardless of their nationality, to improve governability, reduce return-related issues, and ensure the sustainability of the Dublin system, it is necessary to rectify the irregularities in the European systems.¹⁴⁶

In summary, the war in Ukraine has highlighted weaknesses in the European system for handling difficulties with immigration and refugees. These gaps have enabled countries like Austria to justify policies that discriminate against non-Ukrainian refugees based on their nationality. Implementing Austria's dual policy in upholding its obligations concerning refugees and international human rights commitments may be perceived as legitimate. However, such legitimacy does not necessarily imply the absence of human rights violations at the international level. Instead, it underscores the presence of systemic loopholes that enable certain European nations to exclude non-European refugees from attaining equitable treatment and protection against discrimination. The conflict between normative rules and discretionary decision-making illustrates the need to update international standards for refugee human rights rather than just national laws to stop prejudice against non-European refugees and guarantee

¹⁴³ Sow, *Ukrainian Refugees, Race, and International Law's Choice Between Order and Justice*.

¹⁴⁴ Ibid, <https://doi.org/10.1017/ajil.2022.56>.

¹⁴⁵ Ibid: 698–709, <https://doi.org/10.1017/ajil.2022.56>.

¹⁴⁶ Kepler, 'De-Constructing the UN and OAU Refugee Definitions and the Application in Austria and South Africa', 41.

that all refugees are treated equally regardless of their nationality.¹⁴⁷ Efforts must be made to change the system to prevent discrimination against non-European refugees and improve the handling of refugees based on their needs rather than their nationality.

¹⁴⁷ Horvath, 'Julia Dahlvik (2018)', 119.

Conclusion

This thesis has examined the legitimation of Austria's dual immigration policy within the international human rights framework, focusing on its application during the influx of immigrants from developing countries in 2015 and the subsequent wave of immigrants from Ukraine following the Ukrainian conflict. The study encompasses both Ukrainian and non-Ukrainian immigrants who sought international protection within the Austrian context. An analysis of the existing dual policy within the Austrian immigration system has demonstrated that it is formally integrated into administrative legislation, official speeches, and media coverage of immigration and refugee matters. Nevertheless, this thesis has also unveiled significant inadequacies within the international framework, which legitimize the infringement upon the human rights of immigrants originating from areas outside Ukraine. Furthermore, these deficiencies contribute to the emergence of discriminatory practices in treating non-Ukrainian refugees and immigrants seeking international sanctuary within Austria.

The findings reveal notable gaps within the international framework that allow for the legal legitimization of dual immigration policies in Austria. The analysis elucidates how the ascent of anti-immigration policies, as exemplified in Austria, capitalizes on gaps within the international human rights framework. Through the provision of empirical evidence regarding implementing such policies within the Austrian regime, this research augments the existing comprehension of the dual nature of immigration policy. Furthermore, this thesis calls into question the characterization of this policy as non-violative of human rights or as nondiscriminatory towards non-Ukrainian refugees, which is instead portrayed as integral to state security. The findings of this thesis underscore the necessity of revising refugee and international human rights laws to safeguard refugees from the duality that infringes upon their fundamental rights. It also highlights the importance of recognizing the violation of human

rights when a state adopts a dual immigration policy that prevents certain groups of refugees and asylum seekers from receiving legal protection. Moreover, this thesis sheds light on the duality mentioned above and the anti-immigration stance specifically targeting non-Ukrainian immigrants to address and mitigate such practices.

The objectives of this study have been successfully achieved through a comprehensive examination of the relationship between the law within the international human rights framework and its varied implementation in specific cases. The practical implications of the research findings extend to various stakeholders involved in refugee immigration law and human rights, including decision and policymakers. These stakeholders must be conscious of the potential risks associated with Austria's dual immigration policy and its impact on refugees and immigrants and seek to prevent it.

Recognizing and addressing these gaps is of utmost importance for the international community to ensure equitable treatment of immigrants, regardless of their origin. By advocating for the development of inclusive and comprehensive frameworks, we can strive towards a future where all individuals seeking protection are afforded the same rights and opportunities, irrespective of their nationality.

In conclusion, this thesis emphasizes the necessity of increased attention to this issue and the establishment of support systems to combat discrimination against refugees and immigrants from non-Ukrainian countries. We should promote inclusivity for all refugees and immigrants, regardless of their nationalities, to advance our understanding and effectively advocate for change within the human rights framework.

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