

## ARTIST VISA: A NEW PERSPECTIVE

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Moderation: Vasilena Gankovska (IG Bildende Kunst)

Protocol: Milena Dimitrova

Discussion on WIENWOCHE Youtube: <https://youtu.be/iOHFByHFyZ>

### More information on the subject matter:

<https://igbildendekunst.at/infomaterial/aufenthalt-beschaeftigung/>

<https://igbildendekunst.at/en/factsheets/residence/>

<https://www.artist-mobility.at/>

<https://www.austria4beginners.at/>

### Participants

**Mag. Severina Ditzov (SD)** is a business consultant, legal professional and co-founder and CFO of *The Collaboratory Coworking Space*, as well as one of the lawyers behind the Vienna-based non-profit *Austria for Beginners*. She graduated law studies with the University of Vienna and the University of Sofia. Severina has been working in commercial, company, immigration, labor and social security law for 6 years in Vienna, Austria.

**Miglena Hofer (MH)** is a legal professional and business consultant, based in Vienna, Austria. She holds legal degrees from Sofia University and Vienna University, and is the co-founder of *Austria for Beginners* and *The Collaboratory*.

**Klara Košťal (KK)** studied comparative literature, cultural management as well as political and communication sciences in Vienna and London. She has held various positions in the arts and culture sector (*PHACE Ensemble for New Music*, *Kulturforum New York*, *art:phalanx*, *Werk X*). Currently working as a consultant for the UNESCO Convention on Diversity of Cultural Expressions at the *Austrian Commission for UNESCO*.

**Shahrazad Nazarpour (SN)** grew up and studied theater and art in Iran. Since 2020 she has been studying Transmedia Art at the *University of Applied Arts, Vienna*. Her solo performance *Hijab Offline*, was part of the first edition of *Skin* – performance festival for young adults at *Dschungel Wien*.

**Vasilena Gankovska (VG)** is a visual artist based in Vienna since 2001. Currently she is a board member of *IG Bildende Kunst*.

**VG:** *It is great to be able to discuss here with people who are proficient in the professional terms and legal language in English on the topic of visa, traveling and residency permit in Austria.*

*The program of this year's WIENWOCHE was focusing on what is going on with cultural workers in the precariat, who are very often self-employed, with no working contracts and no regular working hours. For Non-EU nationals, this situation in the cultural field makes a legal stay even more of a bureaucratic nightmare. We want to think about the structural problems which artists face when they migrate or travel to Austria. We are going to discuss the challenges and solutions for a residency or visa, by sharing information and thinking about strategies, how to deal with structural problems.*

*Many professional organizations such as IG Bildende Kunst provide basic information about the legal requirements as well as counseling on social security and tax issues, but the situation is often very complex and requires legal support.*

*So this is the reason for the invitation of legal professionals with expertise in the field of residence permit and visa. "Austria for Beginners" provides legal support in Austria, by now for over 4000 people from over 50 countries. Immigration law is their expertise, now with focus on third-country nationals.*

*Another aspect we will discuss is the question of artistic mobility, which is, let's say, an essential part of professional characteristics. What does UNESCO do in regard to this and what are the main challenges, bringing artists to Austria. What if the artists decide to stay and settle, how is this possible?*

*A personal perspective on the legal situation by Shahrzad, but also people from the audience later on in the Q&A round.*

*We are going to start with statements by the discussion participants:*

**SN:** She has been in Vienna for two years now. She sees herself as an artist working internationally and also has opportunities for projects in different countries. But because of her passport and when she lived in Iran, it required time and money to apply for visas, often with no results.

Because of these restrictions she moved to Vienna to study at the University for Applied Arts, but the problem with the residence permit in a different shape continued and she had to wait 11 months for her student visa. After 2 years as an artist with a migration background she feels that here only her artwork with migration topic gets any attention, which feels like victimization. There are opportunities to show yourself as an immigrant, to work on immigration topics, but it is difficult with other topics for artistic work. This topic is or becomes one of your body.

**MH:** Thanks for the invitation to a first event in the artistic community for "Austria for Beginners". "Austria for Beginners" was founded 7 years ago by Severina Ditzov and her, because they got contacted by various people with a similar problem in the visa process, which mainly concerned administration. Their clients were often people who spoke good German, but it was the German of administration which they were lacking. This type of legal and administrative support was very needed, it started as a side job, but there was a lot of work.

In the EU there is the right of free movement of EU citizens. If you are a third-country national, then you need special ties to a destination country or a special purpose which you pursue – family members here, or being a **key professional or for example the goal to do research**.

And the criteria for your visa are dependent on the reason for immigration. These criteria are not well done for artists who want to come to Austria. Artists from third countries are allowed to perform art

as a job in Austria, they have to be employed or self-employed, there is only a residence permit with the right to settle, but the requirements are hard to meet. Also there is no opportunity for a short stay here in Austria, which was possible before.

**KK:** There is an UNESCO document that gives legal grounds to the goal to make traveling and mobility for artists, also from third countries, possible:

Artist mobility is a part of the [UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions](#). This paper was signed by the Austrian government, but in Austria there are difficulties implementing it.

The paper demands a preference of treatment for artists from third countries. With signing it Austria committed to give <https://en.unesco.org/creativity/publications/preferential-treatment> in order to counter existing inequality and asymmetry. This is a responsibility of the Global North that is connected with power, privilege and the history of the Global North. The paper also calls for the implementation of a temporary cross border movement, for simplification of traveling and mobility.

No measure has been implemented so far. High security measures, high costs of traveling, funding and the lack of it, they hinder international exchange that would be so important. This shows also in the numbers of inward and outward mobility. Cultural diplomacy or sending of cultural workers to Third countries is **83 % (outward mobility), invited artists make up 57 % (inward mobility) of the exchanges.**

**A South – South** exchange is also nearly impossible, because of high expenses of traveling.

Therefore for the UNESCO Commission it is important to have discussions with various stakeholders and work towards and demand the implementation of the paper, like in the cooperation with the IG Bildende Kunst for example.

***VG:** We can jump into the discussion with a very short and clear question. Artist status in Austria is already a privilege – this is a statement – is this so? VG herself doesn't remember artist visas being a privilege. If it is a privilege, there is the question, where are the jobs for artists and how are they paid?*

**MH:** Artists are not privileged in the immigration process. Artists are often self-employed as artists. But as a self-employed the criteria are unrealistic – you need proof that you can support yourself from your work as an artist.

**SD:** The visa is tied to the purpose of coming to Austria. When you look at the general criteria, and specific criteria as an artist, there are following differences: The general criteria just require sufficient means to support yourself or to have an employer. If you require the visa as an artist, the means has to come from this specific type of work. **Law sees art as economic, and the law is not clear because of these contradictions between the general criteria and the criteria for artists.** When a law is not clear, there are usually court decisions, which decide how the law is to be implemented. Regarding the law on artist visas, there have been only **3 decisions** in the past years.

The general regulation for self-employment is: **you don't have to make money out of it in order to get a visa, you have to have sufficient means to cover your costs and to have the intention to make money.** So the rules for artists are stricter. The question here is: why is there no possibility for a short term stay, or **to do art and to also have another type of income? So the law strictly sees artists as taxpayers, if you earn enough and pay taxes you can come.**

**VG:** *Even not many Austrian citizens can cover that, to live from their artistic work. There is a study from 2018 on the economic situation of artists and cultural workers in Austria (Link in German: <https://www.bmkoes.gv.at/dam/jcr:5d940ab1-2260-4e4e-9b86-a28869858711/KF-Soziale-Lage-Kunstschaffender-Kunst-Kulturvermittler-bf.pdf>).*

*The average income from self-employed work of artists is appr. 8.000 Euro, for visual artists it is around 3.500 Euro. Are there third-country nationals in the survey? We don't know whether the questionnaire reached them (the survey was conducted in German). In our understanding, this survey shows the situation of Austrian and EU citizens. So third-country nationals have not been specific subjects to such a survey. But also we don't have numbers about their situation. If we don't have numbers we cannot prove that this situation with the permit is illogical. Also the job description of visual artists has shifted so much, it is much more diverse.*

**MH:** There is currently only the following possibility for a short stay as an artist:

There are differences between settlement permits and short stay permits. The short term permit mirrors the requirements for the stay for students. They have to intend to study, we don't know if they are going to study, and they need to have the funds to support themselves and proof that the funds don't come from illegal activity. So in the case that you are enrolled in a university, you don't have to earn from your art.

Transparency of the visa process and the rules of it is also very important. One needs to raise awareness of legal deadlines – **there is a 6 month mark to get an answer to a visa application**. If such a decision is being withheld for longer than the 6 months, you are taken away from the opportunity to complain.

There is a need for a bigger lobby – this is one of the aims and things that need to be done.

**KK:** **There is the Schengen visa codex – there are possibilities that not all documents have to be required or shown. (Obstacles to the short term stays also are): paying money for a visa, and then not being allowed to enter** – there are such cases in the “Diversity of cultural expressions” report, of artists. Also they have to submit the same document multiple times, although they have been working in Europe often.

**MH:** Commitment was made to reform the permit system in Austria, to organize it better. But there is no possibility for direct message to the person in charge of the application and also the people on the job there don't work with an up to date system regarding entering data for example.

**VG:** *The legislation, the Ministry of Interior, the system behind it doesn't have interest to deal with these topics. So a question to SN – if you decide to stay in Austria, what would be your plan?*

**SN:** There is no plan at hand. It would be to extend the study for as long as possible, because there are not many possibilities to stay in Austria. Also in the home country there is not much space to work as an artist. As for the government office in Austria – after 11 months they said they lost the documents, although I called them every day.

**VG:** *Being a visual artist, but also employed – this is unusual. From a legal perspective, how difficult is it, in terms of preparation, to hire a third-country national?*

**SD:** As a company it is important to consult someone before submitting the documents.

**MH:** We had a case, after months they were about to get fined, as employers of a third-country national, because there was a document missing. So when you hire someone from a third country and you have to pay a lawyer who takes care of all these details, the price is higher, but it is possible.

**KK:** Art institutions often don't dare to invite people from third countries. But it is worth staying with the process.

**SD:** Europe suffers from a lack of a working force, but companies are afraid to bring someone from outside of the EU/EWR.

**MH:** It also concerns the labor market in Austria. The labour office, AMS, has the job to check if there is already someone in the country with similar qualifications. But that is usually not an issue. Hiring is not hiring a CV, it is hiring a specific person, rather than a diploma, so this is ok.

**VG:** *In the art sphere, it should not be a problem to make the argument that one wants a specific, unique person. Could this be a good argument that the AMS can understand?*

**MH:** Yes, and it is possible to fight decisions. If there is no fight, there will be bad decisions or wrong decisions taken. But the benefit from the residency permit is also special and it is missing the point for allowing foreign artists to come – they bring diversity and value to the culture. The culture scene needs people from around the world.

**SN:** As for finding employment, it is difficult. Because of my accent I was not accepted for an easy job like controlling tickets. Opportunities for people from third countries are also very different because the education/portfolio from the Middle East for example, is not the same.

**MH:** Immigrants don't fit the Austrian framework, so they don't get employed.

**VG:** *This is also a question of diversity.*

**MH:** It is always possible and viable, we have to raise awareness to this, that it is doable for an employer. The employers have to be informed about the process. Usually, they are not familiar with how it works. The employee is not able to start next week, you need to inform the labour office, AMS. In the case of artist students, you have to inform AMS 8 weeks in advance. This is cutting opportunities.

Every residency permit has its purpose. It is issued for a specific purpose. The access to the labor market is complementary to the fact that you have to study and sustain yourself. It is social injustice. It is not welcoming.

**VG:** *We are thinking about strategies to meet the situation. We met to think together about how to improve the situation.*

**KK:** There are already various demands, which were formulated together with the IG Bildende Kunst and Helping Hands. In this discussion we can formulate new demands, come up with a single document, which can help to raise awareness where there are possibilities for action which can be presented to officials. Within the framework of "[ARGE Kulturelle Vielfalt](#)" there is a sub-working group on preferential treatment and mobility.

**Question from the audience:**

**The self-employed in Austria are outside of the labor law. You are outside AK. Where are the self-employed claims regulated?**

**MH:** Social perspective and tax perspective are different. There can be no regulations. Self-employed persons are entrepreneurs, so that is actually the freedom of contracting, meaning that if you agree to something – that is your choice to know what is good for you. It requires a higher level of knowing what you are doing. When it serves the state, the artists are treated as entrepreneurs, and when it does not serve the state – they are artists.

**SD:** Artists belong to the new self-employed. For artists, it is a matter of self-organization to create their presentation. The dulas (Ger. „hebamme“) are also self-employed but they have a chamber.

**MH:** If you have a business license (Gewerbe), you must become a member of WKO (The Chamber of Economics) and have representation.

**SD:** *Freiheit der Kunst* – freedom of art is guaranteed by the constitution. But not for the third-country nationals, because the law sees the art as economic activity.

**VG:** In the arts we have these advocacy groups and of course we don't have the power of WKO. I see you are aiming more at a structural institution – it has its advantages, but on the other hand it would not be so independent. Our advantage at IG Bildende Kunst is that we are self-organized, independent and act on behalf of our members. Making claims and lobbying is not so easy. There is no interest in dealing with third-country nationals because these people are no voters. EU nationals are not political subjects either, but at least have the privilege of movement, which is already a lot.