

Austria

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- **Context information from ECRI**

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In 2010, Austria created a special regime of registered partnership for same sex couples. Since then, the courts have annulled several discriminatory provisions and lowered the preconditions for legal gender recognition of transsexual persons. The Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles is tasked with eliminating discrimination and establishing a social climate where all persons can live as equals. The living conditions of LGB persons are improving.

Certain media publish clearly racist content and do not respect the Press Council's decisions and members of vulnerable groups are given too little space to express their views. Hate speech on online forums is not systematically monitored; such content was also posted on the web pages of the Federal President and several ministers. There are no official statistics on homophobic and transphobic incidents; numerous racist, homo- and transphobic acts go unreported.

There is little official data and research on LGBT persons who experience comparatively high levels of discrimination. Young LGBT persons are subject to mobbing and lack assistance during their coming-out. On the federal level, there is no comprehensive approach to LGBT issues. The authorities have not enacted specific legislation on transgender issues and they have not abolished all unjustified differences in the regulation of married and registered same-sex couples.

29. ECRI notes that there are no official statistics on homo and transphobic offences. Moreover, the authorities have informed ECRI that they cannot provide an estimate of the number of unreported cases; they are in the process of reviewing their statistics as recommended in ECRI's 4th report.

As on hate speech, there is no official data on homophobic and transphobic violence. 23% of the respondents at the FRA's LGBT survey responded that they had been physically or sexually attacked or threatened with violence during the last five years. 54% of those who had been subject to such an attack in the past 12 months thought that this had happened partly or entirely because they were perceived to be LGBT. Only 19% of the victims had reported an incident to the police.

With regard to the attack on the Roma encampment in 2013, it again underlines that the authorities should intensify their action to prevent the dissemination of racist, homo- and transphobic content on the Internet and refers back to the recommendations previously made in this report.

78. In Austria, little official data and research are available on LGBT persons. Their number can be estimated at several hundreds of thousands.¹¹⁶ The FRA LGBT survey provides precious insights into their living conditions and the Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles (VAASTL) recently commissioned a survey of the living conditions of LGBT persons in the capital. A prize for research on homosexuality is awarded every two years.¹¹⁷ ECRI considers that

sound quantitative and qualitative research is needed to understand the living conditions of and design and evaluate the legal framework and policies for LGBT persons. 79. ECRI recommends that the authorities undertake research and collect data on the living conditions of LGBT persons as well as on intolerance and discrimination against them.

86. The FRA LGBT-survey of 2012 showed comparatively high levels of discrimination experienced by LGBT persons in Austria.¹³⁸ 78% answered that casual jokes about LGBT are fairly or very widespread in everyday life. 65% are of the opinion that positive measures to promote respect for the human rights of lesbian, gay and bisexual (LGB) persons are fairly or very rare. 60% strongly agree and 27% agree that training of public servants (e.g. police, teachers) on the rights of LGBT would improve their situation. Among transgender persons this figure was 77%. LGB representatives reported on a positive note that their situation is improving and that the victory of Conchita Wurst at the 2014 Eurovision song contest has contributed to a better public awareness about LGB issues. The situation of transgender persons remains much worse; the general population and civil servants have little knowledge about their situation. There is also very little knowledge about intersex persons.

- **Legislative issues**

83. In Austria there are administrative procedures for changing a transgender person's first name, for gender recognition and for changing the gender marker in official documents. However, there exists no specific legislation on these issues, as the Constitutional Court, in 2006, annulled secondary legislation on the ground that it lacked an adequate legal basis. According to civil society representatives the authorities still use a decree from 1983. On 27 February 2009, the Higher Administrative Court (HAC) decided that to have access to legal gender recognition, it is sufficient to have undergone gender-corrective measures which have led to a significant similarity in the external appearance of the opposite sex; the Court also recalled that gender recognition was not restricted to unmarried persons. It can be deduced from this decision that no sterilisation is needed. In 2014, the Federal Ministry for Health issued recommendations according to which a medical opinion is needed prior to any change in the personal status. The HAC has also held that the change of gender of a married person needs to be taken into account when issuing a new marriage certificate. As there is persistent legal uncertainty on crucial aspects of transgender persons' private life, ECRI considers that the authorities should enact legislation on the matters discussed in this paragraph.

- **Education & Awareness raising**

89. The coming-out process is a particularly sensitive phase for young LGBT persons. Many of them are victims of mobbing and homosexuals are at higher risk of suicide than heterosexuals. During the FRA survey, 73% responded that they had never talked openly about their being LGBT at school. About 90% agreed or strongly agreed that measures implemented at school to respect LGB persons would allow them to feel more comfortable as a LGB person (82% of transgender persons responded likewise). Research indicates that LGBT issues are not addressed in a systematic or standard way in schools even though sexual education is part of the curriculum. In Vienna for example, there are no requirements concerning the number of hours for sexual education, the issues to address and materials and methods to use. Teachers are not sufficiently prepared to address LGBT issues and do

not treat them adequately or do not treat them at all. The Federal Ministry for Education's decree on sexual education dates back to 1990 and does not refer to homosexuality, same-sex partnership, diverse family structures, sexual orientation or gender identity. Nevertheless, specific information and training for schools is provided by LGBT organisations.

7. ECRI welcomes the fact that the authorities are in the process of updating the decree on sexual education; at the same time ECRI considers that additional ECRI welcomes the fact that the authorities are in the process of updating the decree on sexual education; at the same time ECRI considers that additional.

91. ECRI recommends that the authorities of the Federation and the Länder provide LGBT adolescents with the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. It also recommends that they implement, in particular in schools, measures to promote mutual understanding and respect for all persons irrespective of sexual orientation or gender identity.

Concerning the situation of transgender persons it has to be stated that the recommendations issued by the Federal Ministry for Health in 2014 regarding the treatment process on gender dysphoria and transsexualism were developed by an interdisciplinary and multi-professional expert group, in which also legal specialists were represented. Regarding ECRI's recommendation to enact legislation on the matters discussed, the competent Federal Ministry of Health will take this suggestions into consideration when dealing with the next legal reform process.

- **List of recommendations for Austria from ECRI**

The authorities should set up an IT-based system for recording and monitoring racist, homo and transphobic incidents. They should apply the law in a more vigorous way to curtail the activities of organisations that promote racist ideology and counter and condemn hate speech systematically, in particular during election campaigns. The authorities should encourage the media to strengthen their self-regulation and give adequate space to members of vulnerable groups to express themselves.

The authorities should task, at federal level, an administrative service to develop and coordinate an action plan for LGBT persons. They should undertake research and collect data on their living conditions, enact legislation on transgender issues and reexamine whether each of the remaining differences in the regulation of married and same-sex couples is justified. Finally, they should provide LGBT adolescents with the necessary assistance and protection.

In particular, the police and prosecution services should adopt a broad definition of racist, homo- and transphobic incidents and establish a tool that automatically searches for keywords in their files, which can help to detect cases which might have been motivated by racism, homo- or transphobia.

18. (§ 84) ECRI recommends that the authorities re-examine whether there is an objective and reasonable justification for each of the remaining differences in the regulation of married and same-sex couples and that they abolish all unjustified differences. It also recommends that legislation is

enacted on the issues of access to gender reassignment treatment, changing a transgender person's first name, gender recognition and changing the gender marker in documents.

32. ECRI recommends that the authorities set up an IT-based system for recording and monitoring racist, homo- and transphobic incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist or homo/transphobic offences (§ 12 of General Policy Recommendation No. 11 on combating racism and racial discrimination in policing).

46. ECRI, in its 4th report, recommended that the authorities systematically condemn all forms of racism in political discourse. In this respect, human rights monitoring in the city of Graz - covering the use of hate speech during election campaigns - can be cited as a good example. Unfortunately, on the federal level, racist and homo- and transphobic speech, in particular hate speech from politicians, is not systematically countered.

79. ECRI recommends that the authorities undertake research and collect data on the living conditions of LGBT persons as well as on intolerance and discrimination against them.

84. ECRI recommends that the authorities re-examine whether there is an objective and reasonable justification for each of the remaining differences in the regulation of married and same-sex couples and that they abolish all unjustified differences. It also recommends that legislation is enacted on the issues of access to gender reassignment treatment, changing a transgender person's first name, gender recognition and changing the gender marker in documents.

ECRI considers that the authorities should have a more systematic approach to LGBT issues. They should adopt a strategy or action plan to ensure the LGBT persons' right to equality and to address the specific needs of each subgroup and also intersex persons. Also, an administrative unit should be tasked, on the federal level, with initiating and coordinating research on and policies for LGBT persons. At the level of the Länder, Vienna can serve as a good example. The VAASTL is tasked with eliminating discrimination against LGBT persons and establishing a social climate where all persons can live as equals.

19. (§ 88) ECRI recommends that the authorities task at federal level an administrative service to develop and coordinate an action plan or a comprehensive programme for LGBT persons aiming to ensure that LGBT persons can live on an equal footing with others in Austria.