

# 1. Promotion and Protection of Human Rights

## 1.1 General Remarks

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In response to these conditions, a committee headed by Mrs. Eleanor Roosevelt, the wife of US President Franklin D. Roosevelt, wrote the Universal Declaration of Human Rights (October 24, 1945):

### Article 2.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

On 14 December 1955 the United Nations admitted Austria as its 70th member. <sup>03</sup> Nonetheless, Austria still continued to persecute LGBTIQ+ people.

## 1.2 Implementation of International Human Rights Obligations <sup>05</sup>

### 1.2a Ratified

CCPR - International Covenant on Civil and Political Rights

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

CRC - Convention on the Rights of the Child

CRPD - Convention on the Rights of Persons with Disabilities

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### 1.2b Signed but so far not ratified

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### 1.2c Acceptance of individual complaints procedures for Austria

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### 1.2d Acceptance of the inquiry procedure for Austria

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1.3a Austria is a member of the Human Rights Council for the 2019-2021 term. Austria continues to focus primarily on his previous focus on human rights, including children's rights, human rights education, the fight against racism and discrimination. Austria also undertakes particularly intensive activities in the following key areas of the protection of minorities. <sup>06</sup>

## **2.0 Challenges and Recommendations**

### **2.1 Foreign policy**

Since the last UPR, the Kurz II government, promised to implement the 2013 EU agreement to promote and protect human rights for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.<sup>20 21 22</sup>

We recommend that Austria:

- 2.1a Fully integrate the Yogyakarta Principles plus 10 (2017) into all foreign policy discussions and decisions.
- 2.1b Stand up for equal rights for LGBTIQ+ (sexual orientation, gender identity, sex characteristics) in within the European Union and all there countries, and the future also for the United States of Europe.
- 2.1c Ensure that all foreign policy discussions support worldwide LGBTIQ+, non-binary, and gender nonconforming people.
- 2.1d Take part in international LGBTIQ+ events. This means also flying rainbow and sex/gender diversity / transgender / intersex / non-binary flags at the 'Bundesministerium für Europa, Integration und Äußeres' and at embassies and consulates at IDAHOBIT, during pride / LGBTIQ+ events and pride month.
- 2.1e Ensure that at the Austrian/Russian civil society forum 'Sotschi-Dialog', LGBTIQ+ community members are also full involved.
- 2.1f Provide material support and asylum, if necessary, to persecuted LGBTIQ+ people from countries that have anti-LGBTIQ+ laws or informal persecution campaigns.
- 2.1g Provide material resources to media researchers and support efforts by publicly financed media to counter disinformation campaigns on the part of foreign governments (especially Russia) against LGBTIQ+ people and other minorities.

## 2.2 Equal protection

Since the last UPR process, there were 3 amendments to the Austrian anti-discrimination law. However, the 15 recommendations (UPR 2<sup>nd</sup> Cycle 11.2015) were not included in these amendments. Instead, Austria "noted" these recommendations - (A/HRC/31/12/Add.1 Point.4), stating, "Austria supports a common approach within the EU."<sup>07 08 09</sup>

However, the Charter of Fundamental Rights of the European Union (2000/C364/01) also contains numerous features that have not yet been implemented by Austria, such as a blanket ban on discrimination by employers for reasons of age, or the closure of loopholes related to "legitimate objectives". Additionally, the Austrian antidiscrimination law does not specifically protect persons against discrimination because of actual or perceived gender expression or identity, or trans or intersex status.<sup>10 42</sup>

We recommend that Austria:

- 2.2a Fully revise the federal Equality Law (Antidiskriminierungsgesetz – ADG) to protect LGBTIQ+, non-binary, and gender nonconforming people from discrimination in housing, health care system, employment, education and businesses (including coffee-shops (Kaffeehäuser), restaurants, hotels, taxis, public transportation) and online media.
- 2.2b Ensure that all laws are in accordance with the Yogyakarta Principles, section 10 (sexual orientation, gender identity, gender expression or sex characteristics).<sup>11 12</sup>
- 2.2c Ensure that this federal law guarantee equal protection also for minors, parents, refugees, detainees, migrants, persons of all racial and ethnic backgrounds, all national minorities (*autochthone Volksgruppen*), and persons with disabilities.<sup>13 14</sup>
- 2.2d Investigate and prosecute all types of hate crime against LGBTIQ+ people, including setting up a special police commission to coordinate efforts with state, local, and law enforcement.<sup>15</sup>
- 2.2e Ensure for statistically detailed recording of hate crimes (sexual orientation, gender identity ...).
- 2.2f Develop a pilot project for educating, retraining, and reintegrating LGBTIQ+ people who have experienced long-term unemployment, to reduce unemployment rates and increase the level of economic stability in this community.
- 2.2g Support athletes of all ages, sexes, and genders (including Intersex, trans, and non-binary persons) in sports.
- 2.2h Ensure full access and recognition also for minors, students, and persons with disabilities.
- 2.2i In future censuses and surveys, allow for 4 choices of sex/gender: female, male, diverse (X) and undeclared (empty space), and allow for these choices to be nonexclusive (i.e. allow for multiple choices).
- 2.2j For such purposes, allow for freely-chosen gender markers, e.g. non-binary, intersex, inter....
- 2.2k Conduct research into all known cases of persecution of LGBTIQ+ (especially trans and intersex) people during the Holocaust and post-war period.
- 2.2l Improve the protection of Holocaust memorials against vandalism and attacks.
- 2.2m Rehabilitate the homosexual (also transgender and/or intersex) victims of laws against homosexual and related acts (Strafgesetz (StG) §§ 129 I b (Tat) and 130 (Strafmaß)) and overturn all relevant criminal judgments. Also rehabilitate victims from other countries who were imprisoned and died in the Holocaust on the national territory of Austria.<sup>23</sup>
- 2.2n Ensure for the creation and execution of a comprehensive federal LGBTIQ+ action plan.
- 2.2o Create a federal anti-discrimination-agency that is also responsible for LGBTIQ+ issues (same-sex sexual orientation, gender identity, gender expression, and/or sex characteristics).
- 2.2p Ensure that the federal anti-discrimination-agency also has a department responsible for women's rights and to combat anti-Semitism (Antisemitismus-Beauftragte/n) ...
- 2.2q Adopt a comprehensive package against all forms of hate crimes.
- 2.2r Establish an independent Austrian National Human Rights Institution (NHRI).

## 2.3 Documentation and travel

Since the last UPR process, a third gender option was introduced, following a decision by the Constitutional Court (Verfassungsgerichtshof (VfGH)). So far, this possibility has not been granted to all non-binary people and a medical assessment is required, even though gender presentation and gender markers in documentation are not a medical issue.

For binary (i.e. male or female) transgender changes to civil status (or corrections thereto), an Assessment (Gutachten) or specialist opinion (fachärztliche Stellungnahme) is required, even though civil status and gender markers, and documentation pertaining thereto, are not a medical issue.

The free choice of the first name is also restricted if there is a change in civil status.

It is not allowed for citizens from other countries living in Austria to receive adapted Austrian ID documents with corrected name and gender. <sup>17 18 19 42</sup>

We recommend that Austria:

- 2.3a Institute a third and fourth gender designation for all non-binary, and gender nonconforming people. Also allow for freely-chosen gender markers, e.g. non-binary, intersex, inter....
- 2.3b Pass antidiscrimination legislation requiring to modify birth certificates and identity documents according to self attested gender rather than inserting medical authorities into the process.
- 2.3c Allow for a free choice of names (*Intersex, Transgender, and non-binary people*) for all gender [W/M/D/I/...] adjustments .
- 2.3d Make sure that this is also possible for newborns and children, without legal or bureaucratic hurdles, at the registry offices.
- 2.3e Make sure that all gender options and possibilities for name change are allowed for:
  - a. Austrian citizens and
  - b. Austrian residents
- 2.3f Institute a third and fourth gender designation on all Austrian *ID Cards*, travel passports and identification documents, namely an X and empty option, in line with the requirements of the ICAO (the international air traffic organization). The choice of sex or gender designation shall in all cases be made through self-attestation without the need for further documentation.
- 2.3g Pass legislation to remove gender or sex from all documents where gender or sex is not strictly necessary.
- 2.3h Implement changes to security procedures at airports, border crossings, etc., to ensure privacy for all people no matter what their sex or gender. This includes ensuring that metal detectors, scanners, etc. can operate equally effectively on bodies of all shapes and sizes.
- 2.3i Invest in continuing education on reducing bias and improving mechanisms to accommodate gender diversity, for state and private security services, and also for third parties such as businesses and private citizens.

## 2.4 Medicine and health care

Since the last UPR, numerous necessary changes in the law and new regulations have not been taken into account. Also, Austria still does not ban harmful 'conversion therapies' that are used against LGBTIQ+ people.<sup>39</sup>

We recommend that Austria:

- 2.4a Ensure that all health insurance policies cover reproductive health, mental health, sexual health, HIV, and gender-related health, including but not limited to access to counseling, hormone therapy, and surgeries according to the self-determined wishes of the patient.
- 2.4b Ensure that all health care providers are educated about applicable nondiscrimination law, including laws that prohibit the refusal of health care to persons because of actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.
- 2.4c Use the terms of ICD 11 codes for "variants of sexual development", as well as Gender incongruence (HA60, HA61, HA6Z), and phase out outmoded and discriminatory language.
- 2.4d Support the depathologization of sex and gender diversity (no longer using the term "Disorders of Sex Development", DSD) with changes being made to the ICD 11.
- 2.4e Ban nonconsensual sex reassignment surgeries or the sterilization of infants and minors ("Intersex Genital Mutilation" (IGM)), without infringing on the rights of others (such as transgender people) to freely choose when and where to receive medical treatment.
- 2.4f Educate health care providers, families, and educational institutions on gender diversity, including but not limited to, the lived realities of intersex, transgender, and non-binary people. This education includes education about applicable nondiscrimination laws.
- 2.4g Ban all advertising and provision of "conversion therapies" intended to influence a person's sexual orientation, gender identity or gender expression, of children, youths and adults, under relevant statutes related to mail and wire fraud.
- 2.4h End the discriminatory ban on blood donation.

## 2.5 Criminal justice

Since the last UPR, Austria has begun the process to re-introduce "protective"-custody (Schutzhaft), which would allow authorities to arrest someone without charging them with a crime. During Nazi times, this authority was particularly abused against foreigners and sexual minorities, as well as against political opponents.<sup>40 41</sup>

We recommend that Austria:

- 2.5a Ensure that all persons in federal, state, or local custody receive all necessary medical care, including treatment for HIV, gender dysphoria, or hormone replacement therapy.
- 2.5b House incarcerated prisoners by the gender with which the prisoner identifies.
- 2.5c Institute strict policies to eliminate prison rape and all forms of abuse, both by other prisoners and by persons in authority.
- 2.5d Invest in further de-escalation training and policies for police officers, judicial officers ...