



## Universal Periodic Review Austria

### Joint report by the Platform Sexual and Reproductive Health and Rights for the 23th Session of the UPR Working Group in November 2015

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## Introduction

This report was prepared by the Platform on Sexual and Reproductive Health and Rights (SRHR)<sup>1</sup>. The Platform consists of 5 NGOs,<sup>2</sup> active in the field of sexual and reproductive health and rights, performing workshops and counselling, and an umbrella association comprising 33 women's organisations.

## Summary

Austria fails to fulfill the sexual and reproductive rights of its inhabitants. Same sex couples do not enjoy the same rights as hetero couples, there is still an unmet need of a reformation of sexuality education, there is no barrier-free access to family planning and contraceptives and many women are facing barriers when they want to have an abortion in Austria.

The Platform on SRHR therefore calls et al for the equality of hetero and homo sexual human beings at all levels, also an adequate, comprehensive, and evidence-based sexuality education, a barrier-free access to family planning and contraceptives, especially for adolescents and women with no or a small income, and free access to abortion.

### 1. LGB<sup>3</sup>-Life in Austria<sup>4</sup>

#### *Criminal Law (rehabilitation of victims)*

Austria was the first country in the world, which repealed the death penalty for homosexual contacts (1787, replaced by forced labor up to one month). Different then in the French Revolution and the countries under its influence Austria did not decriminalize homosexuality back then and it even considerably raised the penalties for same-sex relations again (1803 up to one year incarceration; 1852 up to one to 5 years).

In 1971 the total ban on homosexuality in Austria was repealed but was replaced with four new homophobic offences: higher age of consent, prostitution, advertising homosexuality and ban on LGB-associations. The last one of these four offences, the higher age of consent, was repealed in 2002 by a judgment of the Constitutional Court.

Over 1.000 gay men and women have been convicted under these offences in the years 1971-2002. They never have been granted reparation, nor have the victims of the pre-1971 total ban. Over 200 of these victims still have the homophobic convictions listed in their

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<sup>1</sup> The work of the institutions involved focuses on Sexuality education, sexual counselling, partner counselling, family counselling as well as women's and girls' rights.

<sup>2</sup> *Austrian Family Planning Association*, Austrian Society for Sex Research, *COURAGE*, Rechtskomitee LAMBDA and *Selbstlaut*.

<sup>3</sup> *LGB = Lesbian, Bisexual and Gay*

<sup>4</sup> Contribution of Austrian Society for Sex Research (ÖGS - [www.oegs.or.at](http://www.oegs.or.at)), Courage ([www.courage-beratung.at](http://www.courage-beratung.at)) , Rechtskomitee LAMBDA (RKL - [www.RKLambda.at](http://www.RKLambda.at)) to LGB Rights in Austria for UPR.

criminal record. In addition all convictions under the old total ban and under the four homophobic offences are still in force, none has been quashed.

The European Court of Human Rights ruled against Austria in 2013 for this ongoing registration of convictions under the homophobic offences in the criminal records (E.B. et al v Austria 2013) but the convictions are still on the criminal records. The Austrian Courts refuse to quash the convictions, and government and parliament are lacking initiatives for statutory solutions.

### **Recommendation:**

We call on member states to recommend that Austria should

- implement the ECtHR-judgment in E.B. et al v Austria (2013), immediately delete from the criminal records all convictions under the former homophobic criminal offenses,
- regret and beg pardon for its history of criminal persecution of gay and bisexual men and women,
- quash the convictions under the former homophobic criminal offences and
- effectively financially compensate the victims of these offences in line with the case-law of the ECtHR.

### *Protection from discrimination*

Statutory protection against discrimination on the basis of sexual orientation has been introduced in Austria by Directive 2000/78/EC (entry into force in December 2003).

While eight out of nine Austrian states went beyond the minimal requirements of the Directive and adopted anti-discrimination legislation banning sexual orientation discrimination in all areas of life, one state (Lower Austria) and the federation refused to do so and just implemented the Directive. Lower Austrian and federal equal treatment legislation are restricting protection against sexual orientation to employment while they prohibit discrimination on the basis of disability, race, ethnic origin and gender both inside and outside the work place (for example, in the supply with goods and services, social protection, social insurance and education).

Given the division of competency between the federation and the nine states this double standard in anti-discrimination legislation leads to an abstruse state of the law. Thus skiing instructors (state competency) for instance are prohibited to discriminate on the basis of sexual orientation in eight states, but they are allowed to discriminate in Lower Austria. The same is true for ambulance officers and kindergartens (state competency).

Industrial law is a federal competency, which means that sexual orientation discrimination is banned in employment only. Thus a waiter remains free to refuse to serve guests and throw them out just on the basis that they are lesbians, gays or bisexuals, while the guests on their part are prohibited from rejecting a waiter on the basis of his/her sexual orientation. The same is true for secondary schools (federal competency): federal equal treatment legislation does not prohibit teachers to discriminate against their pupils on the basis of sexual orientation but it prohibits the pupils to discriminate against their teachers on this basis. And

for tenancy law (federal competency): landlords are free to discriminate while they themselves are protected from discrimination on the basis of sexual orientation.

When it comes to race, ethnic origin, disability and gender the law prohibits discrimination to both sides: to the waiter and to the guest, to the teacher and to the pupil and to the landlord and the tenant alike. The same applies to sexual orientation discrimination in vocational schools and in universities as they provide vocational training which belongs to employment: thus in such schools also sexual orientation discrimination is prohibited to both sides: to the waiter and to the guest, to the teacher and to the pupil and to the landlord and the tenant alike.

Thus Austrian anti-discrimination legislation not only suffers from considerable lack of protection against sexual orientation discrimination, it is also confusing and abstruse.

### **Recommendation:**

We call on member states to recommend that Austria should

- provide the same level of effective legislative protection against sexual orientation discrimination as it provides for discrimination on the basis of disability, race and ethnic origin (beyond employment: as in the supply with goods and services, social protection, social insurance and education)

### *Same-Sex Partnerships & Families*

Austria passed legislation providing for registered partnership for same-sex couples after having been summoned to a hearing before the European Court of Human Rights in late 2009 in a case dealing with the lack of legal recognition of same-sex couples<sup>5</sup>.

Registered partnership was intended as an equivalent for civil marriage, but it was not intended to be equal to marriage.

The government bill contained around 100 inequalities to marriage. The number of inequalities has been reduced in parliament so that the Partnership Act passed contained 67 inequalities.

The Partnership Act came into force 1st January 2010. Within the following five years the number of inequalities went down to 39, due to successful litigation in European and Austrian high courts<sup>6</sup>. Major recent examples are second-parent adoption<sup>7</sup>, medically assisted procreation by donor insemination for women in lesbian partnerships (Austrian Constitutional Court: VfGH 10.12.2013 G 16/13 G 44/13), joint adoption by same-sex couples (Austrian Constitutional Court: VfGH 11.12.2014 G 119-120/14) and automatic co-parenthood (registered couples) and parenthood by recognition (unregistered couples) of children conceived by medically assisted procreation in lesbian couples (Medically Assisted Procreation Law Amendment Act 2015).

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<sup>5</sup> Schalk & Kopf vs Austria

<sup>6</sup> (updated list of current and past inequalities at <http://www.rklambda.at/Publikationen>)

<sup>7</sup> (ECtHR: X et al vs Austria GC 2013)

However, 39 inequalities still remain. There are different waiting periods for divorce, different alimony obligations after divorce, a minimum age limit of 18 versus 16 for civil marriage and many more. The most striking differences are those in the law on names and on the place of registration.

Before 2010, Austrian law recognized only first names and family names. The Registered Partnership Act created a completely new category of names: the second name. Who enters registered partnership, the Registered Partnership Act established, loses his family name and receives a second name instead. "Second names" ("Nachname") have been introduced solely for persons in a registered, thus same-gender, partnership. A second name therefore labels a person as homosexual, opening them up to stigma, discrimination, and violation of the right to a private life. Second names thus work as the Pink Triangle of Austria's law of names. The last time before when a particular social group had been labeled with a special category of names was by the "Second Decree on the Implementation of the Act on the Change of Family Names and First Names" of the year 1939. This decree had ordered the labeling of Jews by the obligatory first names Israel and Sara ...

In addition, same-sex couples are excluded from the civil registry offices (town halls) where civil marriages are performed and are relegated to the regional administrative offices traditionally competent for the issuance of driving licenses, industrial licenses, residence permits, sex work licenses and similar unromantic affairs. The banning of same-sex couples from the civil registry office (town hall) and their relegation to other offices traditionally not entrusted with civil status affairs is an Austrian and German anomaly. Apart from Austria, only some German states had engaged in such discrimination. All of them have already repealed this blatant form of segregation.

*Austria remains the only country worldwide granting same-sex couples absolutely the same parenting rights as opposite-sex couples (second-parent adoption, joint adoption, automatic co-parenthood and parenthood by recognition of children conceived by medically assisted procreation in lesbian couples) but still prohibiting same-gender marriage.*

#### **Recommendation:**

We call on member states to recommend that Austria should

- make civil marriage and all other forms of partnership gender-neutral

## **2. Sexuality Education**

### *Curriculum*

Our work as sexual and reproductive rights professionals has shown that national sexuality education curricula are not in line with children's and adolescents' needs and that they are still refused their right to information and the entitlement to necessary knowledge regarding their health. On the one hand, this is due to the fact that the focus in curricula is laid on biological aspects, which really falls short because sexuality also has psychological, physical, social, emotional, political and cultural dimensions in addition to the biological aspect. On the other hand, sex education in curricula is not performed in line with the varying needs of children and adolescents with regard to their sexuality, which depend on their stage of development. Today's sex education fails to help children and adolescents with their life

decisions regarding sexuality and sexual health. The result of this is that they are left alone with their questions and partly with contradictory and incorrect information obtained from the media and from friends. Helping children and adolescents with their decisions regarding sexuality can be decisive for a safe, healthy and violence-free life.<sup>8,9</sup> We believe that this is in contravention of Article 24 of the UN Convention on the Rights of the Child, which was also signed by Austria, which states that children have the right to the enjoyment of the highest attainable standard of health and/or to access to suitable training that gives them the opportunity to live a healthy and safe life. According to that, it has to be ensured that children acquire the necessary knowledge and can understand it.

Sexuality is present across the entire life span and cannot be reduced to a certain phase of life because it is influenced by different life experiences gathered in the course of time. For that reason, effective sex education has to consider sexuality in different phases of development and has to be age-appropriate, and it has to be taught in all grades. Sex education has to become a fundamental part of school curricula because schools are the only institution in Austria where all children and adolescents of different origins and social backgrounds come in contact with each other. In addition, it is the task of schools to even out differences in knowledge between children when they start going to school.

#### **Recommendation:**

We call on member states to recommend that Austria should

- Implement evidence based sex education based on the fundamental values such as respect, tolerance and responsibility defined in the human rights is integrated in all curricula. It should comprise not only the physical changes in children and adolescents, but focuses on equal rights and human rights, fights all forms of discrimination, considers cultural differences and deals with different identities. It should be age-appropriate and adapted to the respective phases of development of children and adolescents, and should be based on the sex education matrix of the WHO Regional Office for Europe and the Federal Centre for Health Education are considered when the curricula are developed.
- All curricula should also also comprise political, cultural, social, emotional, physical and psychological dimensions of sexuality in addition to the biological aspect.

#### *Teacher training*

Teachers are among the persons children and adolescents make contact with the most. As a result, they are among the most important confidants who can answer their questions regarding sexuality and other spheres of life and teach them a positive approach to sexuality and their bodies. As sex education is no fixed part of teacher training in Austria, many teachers are not able to cope with the questions and needs of children and adolescents with regard to sexuality. Based on our experience with teachers, we can say that not even the

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<sup>8</sup> UNESCO 2013. Young people today. Time to act now. Why adolescents and young people need comprehensive sexuality education and sexual and reproductive health services in eastern and southern Africa.

<sup>9</sup> UNESCO 2009. International Technical Guidance on Sexuality Education.

current curricula are taught properly, which is partly connected with the fact that teachers cannot reconcile the topic of sexuality with their own values, do not feel up to teaching about sexuality or are not convinced of the necessity, the purpose and the consequences of effective sex education. Readiness and motivation are important basic requirements for sex education because they would have a positive effect on the attitude towards sexuality. The attitude of teachers plays a central role in sex education because children and adolescents often regard their teachers as role models and adopt their attitude.

Sex education should be integrated in teacher training curricula, and independently of whether it will be taught by the respective person or not. For the reason alone that sexuality is an important aspect of human development and human beings, sex education has to be a compulsory subject in educator training courses.

### **Recommendation:**

We call on member states to recommend that Austria should

- Ensure that sex education in schools is taught as a separate subject for which teachers are trained.
- Ensure that the subject of sex education is introduced as a compulsory subject in teacher training colleges and all educator training courses.

### *Sexual Violence*

Positive sex education based on a comprehensive understanding of sexuality is a fundamental part of the prevention of sexual violence because often perpetrators gain access to children/adolescents by exploiting their curiosity all around the topic of sexuality.<sup>10</sup>

In order to do justice to Article 5 of the Universal Declaration of Human Rights<sup>11</sup>, Article 19 of the UN Convention on the Rights of the Child<sup>12</sup> and Paragraph 48 of the 1993 Vienna Declaration and Programme of Action<sup>13</sup> regarding sexual integrity in terms of the protection

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<sup>10</sup> Federal Centre for Health Education (BZgA) 2011. Standards for sex education in Europe. Framework concept for political decision-makers, education institutes, health authorities and experts.

<sup>11</sup> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 5 of the Universal Declaration of Human Rights

<sup>12</sup> 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described in Section 1, and, as appropriate, for judicial involvement."

<https://www.unicef.at/fileadmin/media/Kinderrechte/crcger.pdf>

<sup>13</sup> "The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root

of children and adolescents from sexual abuse as well, we regard it as absolutely necessary to counteract the very special dynamics of sexual violence against children and adolescents with a comprehensive understanding of sex education and the appropriate attitude.

From experience gathered in daily practice as sexual health and rights professionals, we know that many educators are afraid of that they will face accusations that making sexuality a topic of discussion will result in „provoking“ sexual violence. That is not true. Abuse and infringement are no form of sexuality, but violence. Positive sex education can help children/adolescents to find their voice and the confidence to talk about themselves. That is positive. Positive sex education based on a comprehensive understanding of sexuality should have as little of a taboo effect as possible and also address all other dimensions such as political, cultural, social, emotional, physical and psychological dimensions in addition to the biological aspects of sexuality.

Our understanding of comprehensive sex education and meaningful prevention is based on the fact that children and adolescents who feel free, safe, and strong are less often affected by sexual assault and/or able to get help after an assault more quickly.<sup>14</sup>

For that reason, sex education has to create awareness of the different types of border violations, to encourage children and adolescents to trust their feelings and to get help, to point their rights to physical and sexual self-determination out to them, to boost their critical faculty, to question sexual stereotypes, discriminating structures and clichés and to provide positive sex education.

For those reasons, different types of discrimination, bodily violations and connections, such as of racist and sexualised assault, always have to be explained as well, and action has to be taken to counteract them. That requires language(s), images, words, history (and stories), background knowledge, role models, points of reference, that do not only draw on the hegemonic images and do not only reflect dominant discourses.

### **Recommendation:**

We call on member states to recommend that Austria should

- Ensure adequate funds to those organisations working in this area to enable the provision of sex education to prevent violence .
- Actively implement the "Standards for Sex Education in Europe“ of the WHO Regional Office for Europe and the Federal Centre for Health Education in the educational settings and educational curricula.
- Integrate trauma education into the training for the subject of sex education in order to enable the drawing of concrete conclusions for a comprehensive and positive understanding of sex education from the knowledge of traumatisation and the coming to terms with experience with violence.

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causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.”  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

<sup>14</sup> Federal Centre for Health Education (BZgA) 2011. Standards for Sex Education in Europe. Framework concept for political decision-makers, education institutes, health authorities and experts.



- Integrate anti-discriminatory approaches such as "social justice", "anti-bias", "adultism criticism" and "critical diversity" into the training for the subject of sex education in order to enable the drawing of concrete solutions from the knowledge of social discrimination axes and intersectionality regarding the social, political and cultural dimensions which positive sex education has to counter in order to support children and adolescents in their development and to empower them in the best possible way.

### **3. Access to sexual and reproductive health**

#### *Availability of contraceptives*

In Austria, neither state institutions nor health funds absorb the costs for contraceptives. That affects young people and adolescents and people with low or no income in particular because of the cost of contraception.

Based on our daily experience in our counseling centers, we know that a lack of education and the elevated costs of contraceptives are among the main reasons for unwanted pregnancies. The majority of our clients simply cannot afford safe and suitable contraceptives.

Contraception is about protection against sexually transmitted infections and the prevention of unwanted pregnancies. Both can put the sexual and reproductive health and also the life of those affected at risk. On the occasion of the World Conference on Women in Beijing, it was stated that "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health".<sup>15</sup> In order to safeguard the human right to self-determination, the human right to the highest attainable standard of health and the human right to physical integrity, barrier-free access to contraceptives is necessary.

Long-term contraception is the safest protection<sup>16</sup> against unwanted pregnancies, but it also involves the highest costs. As the selection of a safe contraceptive should not depend on the amount of pocket money, the parents' approval or the salary of a person, it is absolutely necessary to establish a uniform regulation for all girls and young women under 18 years of age, which enables barrier-free access for all. This principle of barrier-free access to services in the field of sexual and reproductive health especially for adolescents has been repeatedly agreed in UN documents<sup>17</sup> and needs to be implemented in Austria.

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<sup>15</sup> Beijing Platform for Action (1994) para 96

<sup>16</sup> According to the Pearl index

<sup>17</sup> International Conference on Population and Development (ICPD), Program of Action( POA) para 7.3; ICPD +5 para 73(a); ICPD +5 para 73(e)

### **Recommendation:**

We call on member states to recommend that Austria should

- Integrate access to free contraceptives in the national action plan.
- In cooperation with the Austrian health insurance carriers, request that the Ministry of Health prepare a plan in order to ensure cost absorption for contraceptives for adolescents up to 18 years of age and women from the age of 18 years onwards who are not able to pay the costs themselves for financial reasons (demand-oriented minimum security benefits).
- Ensure that condoms are available for free at central contact points for adolescents and marginalized groups. Financing should be taken over by the Ministry of Health.

### *Emergency contraception: The "morning-after pill"*

"The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health,<sup>18</sup>" also include emergency contraception. According to the resolution of the EU Commission<sup>19</sup>, it is possible in Austria since January 2015 to obtain emergency contraception with two different active agents<sup>20</sup> over the counter in pharmacies.

However, direct access to the "morning-after pill" is not always guaranteed. From practice, we know that pharmacies with religious owners, increasingly so in rural areas, intentionally fail to keep "morning-after pills" in stock in order to avoid having to dispense them. As far as ellaOne<sup>21</sup> is concerned, many secular pharmacies do not have them in stock either. The medication can be supplied within a few hours, but early intake provides for better protection against unwanted pregnancy.<sup>22</sup>

In addition, it has to be emphasized that pharmacies often do not offer girls and women a sufficiently anonymous, safe place for the purchasing of "morning-after pills"<sup>23</sup>. The risk of an unwanted pregnancy increases by a great deal as a result of that. The human right to liberty from arbitrary interference with privacy can be violated.

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<sup>18</sup> Beijing Platform for Action (1994) para 96

<sup>19</sup> [http://ec.europa.eu/health/documents/community-register/2015/20150107130448/dec\\_130448\\_de.pdf](http://ec.europa.eu/health/documents/community-register/2015/20150107130448/dec_130448_de.pdf)

<sup>20</sup> Vikela, Postinor, Levodonna (active agent: levonorgestrel) – to be taken within 3 days (72 hours); obtainable over the counter since December 2009

ellaOne (active agent: ulipristal acetate) – to be taken within 5 days (120 hours), obtainable over the counter since January 2015

<sup>21</sup> Which can be taken up to 120 hours afterwards.

<sup>22</sup> The "morning-after pill" is no abortion pill, but it postpones ovulation in order to prevent insemination. If ovulation has already taken place or if the ovum has already been inseminated at the time it is taken, the "morning-after pill" is useless.

<sup>23</sup> Especially in rural areas, the employees of the closest pharmacy are presumably known by the relatives of the person concerned, which enormously raises their inhibition level when having to ask about emergency contraception.

For girls/women, it has to be possible to take the "morning-after pill" as a preventative measure and, in case of a financial emergency, to get them for free in order to take them within the recommended first 12 hours after unprotected sex.

In addition to the dispensing of the "morning-after pill" by advice centers and gynecologists, it has to be ensured that all girls/women can also get them anonymously if they want to. A low-threshold option would be the training of school doctors in counseling regarding the "morning-after pill" and to enable possible dispensing in schools. In addition to that, the family counseling centers all over Austria could lend themselves as alternative point of contact for girls and women due to their regional distribution and regular opening hours. Studies have shown that people are not sufficiently aware of the "morning-after pill" and the fact that it is available over the counter or that they are not taken for other reasons.

**Recommendation:**

We call on member states to recommend that Austria should

- Develop legislation requiring pharmacies to be bound by law to keep a quota of emergency contraception products, adequate for the number of inhabitants in the region, in stock.
- Develop policies and practices that allows for the dispensing of the "morning-after pill" by school doctors and guarantees value-neutral, anonymous, extra-school counseling centers
- Develop a wide spread, independent awareness and information campaign on the "morning-after pill" for adolescents, adults and also for doctors and pharmacists, to be carried out by the Ministry of Health.

*Prevention of sexually transmitted infections*

The number of ST infections is again on the rise in Austria. In comparison to 1991 and/or 2005, gonorrhoea and chlamydia reached their peak in 2011. The number of syphilis cases is also four times higher in 2011 compared to 1991. Furthermore 1-2 people contract HIV every day in Austria, without being aware of their own risk. STIs are not limited to special risk groups, but concern all groups of society.

The human right to the highest attainable standard of health also comprises protection from sexually transmitted infections. That can only be achieved by means of sensitive and age-appropriate sex education and access to contraceptives.

Several UN declarations state that the protection of adolescents and women from HIV is part of their sexual and reproductive health and contributes to the improvement of equality<sup>24</sup> and the human right to equal opportunities for men and women.

The mere imparting of factual knowledge or symptoms in the scope of biology lessons is not nearly sufficient to create awareness regarding the risk of infection in adolescents. That is underestimated for the most part: Up to the age of 25 years, one in four persons gets infected with sexually transmitted viruses or bacteria at least once.

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<sup>24</sup> Political Declaration on HIV/AIDS (2011) para 53; Abuja+12 (2013), para 7(ix); UNGASS +5 on HIV/AIDS (2006) para 31; UNGASS (2011) para 81

In order to counteract the trend of increasing ST infections in Austria, early diagnosis and therapy are not sufficient, but continuous "health education" is necessary. "Health education" improves the knowledge of sexually transmitted diseases and their prevention and reduces the risk of infection.

**Recommendation:**

We call on member states to recommend that Austria should

- Put in place processes and protections to ensure that diagnosis and therapy of sexually transmitted infections should only be performed by doctors who have of sufficient knowledge in the field of dermatovenerology and appropriate experience in techniques for history-taking and counseling in this highly sensitive topic that is frequently considered a "taboo"
- Ensure that condoms are made available for free at central contact points for adolescents and marginalized groups. Financing of that should be taken over by the Ministry of Health.
- In the scope of sex education, give information about possible misapplication and tips on condoms should be discussed during classes.
- Expand programmes that offer the HPV vaccination in the scope of the school vaccination programme for adolescents up to 12 years of age for those adolescents up to the age of 18. Young people who missed vaccination at school because of their age should be given the opportunity to get vaccinated without incurring any costs.

#### **4. Abortion**

##### *Legal situation regarding abortions in Austria*

The performing of abortions is still forbidden for doctors and the women concerned in the Austrian Criminal Code – StGB, but since 1975, it is no longer punishable if performed by a doctor within the first three months after nidation after previous counseling: These provisions are referred to as "abortion on demand". The estimates on the number of abortions performed every year based on these provisions are upwards of 20,000 per year, there are no registration or recording obligations in Austria and currently no statistical material either. Women have to pay for abortions themselves, and they costs approx. upwards of 300 Euro. In Vienna, there are outpatient clinics and public hospitals performing abortions, but that is not the case in several other federal states. In order to safeguard the self-determination of women regarding pregnancy and birth, improved framework conditions are absolutely essential.

The so-called "abortion on demand" was judged to be in conformity with constitution, Decision Number 7400 of the Constitutional Court<sup>25</sup> as early as in 1974; the right to life granted in Article 2 of the European Human Rights Convention (EHRC) does not refer to

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<sup>25</sup> in the Collection of Decisions of the Constitutional Court.

unborn life – but this human right guarantees every person a right to life and physical integrity.

Article 8 EHRC protects privacy; the Constitutional Court regards the decision on the wish for child as part of that privacy protected by fundamental rights, – most recently, see Decision Number 19824 of the Constitutional Court, among others. Consequently abortions are also covered by the protection of Article 8 EHRC; according to the prevailing doctrine, the right to self-determination is also derived from that.

In 2004, the Austrian Women’s Association<sup>26</sup> requested the express establishment of this right to self-determination in the constitution – this request was not implemented.<sup>27</sup>

Right-wing organizations such as the Austrian Kartellverband keep requesting the establishment of a ban on abortions in constitutional law and tightening of the provisions permitting abortion on demand, for example by means of increased counseling requirements.

However, bans on abortion do not prevent abortions, but they force women back into illegality; illegal abortions put the life and health of women world-wide at risk; consequently free and safe access to legal abortions is a fundamental part of the sexual and reproductive health of women as well.

**Recommendation:**

We call on Member States to recommend that Austria should

- alter the legal framework conditions: Abortions do not necessarily have to be regularized by criminal law. Regulations in health legislation (hospital act, physicians' act) like in France or no special regulations for abortions like in Canada would be an alternative.

*Training of medical staff*

The legal requirements are not sufficient to guarantee the above-mentioned fundamental rights; in order to guarantee women their physical integrity and their right to self-determination efficiently, suitable framework conditions are required too, which are only partly given in Austria:

Abortion is one of the most frequent and – if performed properly – also one of the least complicated and safest interventions performed on women.<sup>28</sup> However, the proper performing of abortions is not part of the specialist registrar training in the field of

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<sup>26</sup> Österreichischer Frauenring

<sup>27</sup> [http://www.konvent.gv.at/K/DE/POSP-K/POSP-K\\_00185/fname\\_028800.pdf](http://www.konvent.gv.at/K/DE/POSP-K/POSP-K_00185/fname_028800.pdf)

<sup>28</sup> also the opinion of Dr. Christian Fiala, head of the outpatient department Gynmed in Vienna, making reference to FIAPAC, Fédération internationale des associés professionnels de l'avortement et de la contraception - <http://fiapac.org/en/p/home/>

gynecology; furthermore, in theory every physician can perform abortions due to the Austrian legal situation. That seems questionable with a view to the reproductive health and physical integrity of women.

**Recommendation:**

We call on Member States to recommend that Austria should

- integrate the teaching of abortions in the specialist registrar training for gynecologists, to ensure that they are performed according to the latest medical standards.

*Availability*

In Austria, abortions are not performed in all hospitals financed with public funds. Hospitals and/or sponsors of hospitals are not obliged to provide for suitable facilities, unlike in some German federal states<sup>29</sup>. Furthermore there are no cost provisions in the scope of social insurance (only options that are handled in a very restrictive manner in the scope of social security) that would alleviate the financial burden on women – also on female migrants. Abortions cost between 285 and 1000 Euro in Vienna. In the western federal states, there are no public outpatient clinics and hospitals performing abortions – the "travel expenses" incurred as a result make abortions even more expensive. As medication-induced abortion is only legal in Austria in a hospital or outpatient clinic, women in the western federal states are refused the allegedly "gentler" abortion. As recently as at the beginning of this year, a vote was held on that, resulting in that there will be no abortions in public hospitals in these federal states either in the future. In some circumstances, cheap offers might put the physical integrity and the lives of women at risk. Women still see themselves forced to set their hand to it themselves – severe injuries are the result.

**Recommendations:**

We call on Member States to recommend that Austria should

- Oblige hospitals financed with public funds to perform abortions in all federal states.
- Absorb the costs for abortions by health insurance and introduce regulations for women who have no health insurance, e.g. female migrants
- Support the costs for contraceptives by health insurance, in particular long-term methods (IUD, implants, sterilization), free dispensing in schools and counseling centers, providing of more information and sex education

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<sup>29</sup> e.g. Baden-Württemberg

### *Increasing Opposition*

The civil rights of women in Austria are also restricted through the agitation of militant anti-abortionists who are networked and financed on an international scale, especially from the USA, in front of clinics and medical practices.

Unfortunately one of these long-established groups, namely Human Life International - HLI, which is active all over the world and has a tight, hierarchical organization, was recently accredited in the field of the UNO ECOSOC. The orientation of HLI itself, but also of other like-minded groups can very well be described as militant-fundamentalist-religious. HLI is also supported by the Vatican and has a branch in Rome. HLI is responsible for the "training of activists" all over Europe and beyond, intended for active campaigning outside clinics and medical practices. HLI Austria has a leading role in the export of and supply with trained staff, especially in the former "real socialist" countries and down to Russia, and has the full support of fundamentalists in the clergy and of numerous lay groups of the Catholic Church and beyond (alliances with evangelicals).

The activists, that are partly also trained well by persons from the USA, subject women to psychological terror which demonstrably results in a higher risk of complications after an abortion.

Every fundamental right applies only insofar as it does not restrict other liberties that are protected by fundamental rights in an inadmissible way. Freedom of assembly and/or freedom of expression are invoked again and again as an argument against the establishment of safe zones around hospitals, outpatient clinics and medical practices. When weighing this up with the fundamental rights of women, however, one has to come to the conclusion that isolated restrictions of the freedom of assembly and expression are admissible in the interest of the life, health and self-determination of women.<sup>30</sup>

There are no safe zones around medical practices and outpatient clinics where abortions are performed even though this has been requested for many years and specific proposals presented. Only in Vienna, there is a right to banish persons in §, 3 Federal State Security Law of Vienna: According to that, persons who exercise psychological pressure in front of medical institutions on other persons coming toward these institutions, approach them or give them objects against their will can be sent away by the police – if they fail to follow this instruction from the police, an administrative penalty can be imposed on them.

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<sup>30</sup> <http://diepresse.com/home/meinung/gastkommentar/109299/Schutzzonen-nicht-verfassungswidrig>

**Recommendations:**<sup>31</sup>

We call on Member States to recommend that Austria should

- Review and clarify the legislation of self-determination deemed part of the right to privacy in the Article 8 EHRC through seeking an express establishment in the national fundamental rights catalogue, e.g. in the Federal Constitution Act.
- Implement directives on safe zones around outpatient clinics. This statutory enactment authorization should be either introduced on the federal level in the Security Police Act or on the state level in the State Police Act, though the municipalities can also exercise the right to enact local police directives guaranteed in Article 118, Section 6, Federal Constitution Act.

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<sup>31</sup> can also be looked up on the website of the women's networking platform 20000Frauen <http://zwanzigtausendfrauen.at/2013/04/forderungenschwangerschaftsabbruch/>