



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

The social situation concerning homophobia and discrimination on grounds of sexual orientation in Austria

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. Austria has a history of criminalising homosexuals and has been one of the few countries that also criminalised female homosexuality. The total ban on homosexuality was repealed in 1971 and the age of consent for male-to-male relations was equalised in 2002. Furthermore the *Opferfürsorgegesetz* [Federal Nazi Victims Compensation Act] was recently amended in 2005 to include Nazi victims persecuted on the grounds of their sexual orientation. Helped by the efforts of an active LGBT movement, there has been a change in attitudes over the last 30 years. A *Eurobarometer* opinion poll from 2006 revealed that 49 per cent of Austrians are favourable to same-sex marriage being permitted throughout Europe. With regard to adoption by same-sex couples, the agreement was 44 per cent. Despite such general acceptance, Austria does not recognise same-sex partnerships.
- [2]. Following the transposition of the Employment Directive 2000/78/EC there are now bodies in place to address discrimination on grounds of sexual orientation on the labour market.
- [3]. There is little quantitative or qualitative data on the extent and nature of homophobia in Austria. However, discrimination on the labour market and underreporting of hate crime have been identified as key issues.

B. The Collection of Data

- [4]. The material for this report has been collected from four sources:
 - A legal country report carried out for this study by Manfred Nowak, co-director of the Ludwig Boltzmann Institute of Human Rights.¹
 - A sociological country report reviewing available data on the situation concerning homophobia and discrimination on grounds of sexual orientation, written by Gudrun Hauer and Kurt Krickler.²
 - Data collected through an interview held in Austria with the LGB NGO *HOSI-Wien* [Homosexual Initiative Vienna].

¹ M. Nowak (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, FRALEX.

² G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

- Data collected through an online questionnaire sent out to the stakeholders mentioned above.

[5]. According to Hauer and Krickler, there is little official data on LGBT issues in Austria. Despite obstacles at university level, an increasing number of projects and theses on LGBT issues and queer theory have been published. Reviewed in terms of content, they reveal a significant visibility for gay and lesbian topics—with a clear focus on male homosexuality.

[6]. There appears to be little to no data on transgender issues.

C. Key Findings

C.1. Attitudes Toward LGBT persons

[7]. Surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.

[8]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Austria was 7.4, compared with the EU average of 7.9 (Sweden was highest with 9.5 and Romania the lowest with 4.8).³

[9]. In the 2006 *Eurobarometer*, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 49 per cent in Austria (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Austria. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; the figure was 44 per cent in Austria (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁴

[10]. Austria was one of the few countries that criminalised female homosexuality, but repealed the ban on homosexuality in 1971. The age of consent for male-to-male relations remained higher compared to heterosexual and lesbian relations until 2002. Today, Austria still does not recognise same-sex partnerships. However, there has been a tremendous change in attitudes over the last 30 years, much of which

³ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁴ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

is owed to the work of the women's movement and the lesbian/gay movement.⁵

C.2. Criminal Law - Hate Crime

- [11]. Hate speech and hate crime are not commonly used terms in Austrian criminal law. Special criminal law provisions on homophobic crime do not exist, and statistics on homophobic crimes are not available.⁶
- [12]. Nevertheless, a number of related terms can be found in the *Strafgesetzbuch* [Criminal Code].⁷ Section 283 of the Criminal Code prohibits incitement of hate directed against churches or persons on the grounds of religion, race, ethnicity or state of origin. LGBT persons are not protected.
- [13]. Section 33 para. 1 of the Criminal Code states that 'racist, xenophobic or other specifically condemnable reasons' are an aggravating factor in the determination of penalties. Homophobic reasons could therefore be considered aggravating factors. However, such interpretation cannot be based on legal literature or court decisions.⁸
- [14]. Most homophobic hate speech originates from representatives of the Roman-Catholic Church or right-wing parties, but it is rarely echoed in the media.⁹
- [15]. There are no statistics in the area, but homophobic and transphobic hate speech and violence do not seem to be particularly major problems. Underreporting of homophobic violence or ordinary crimes is a problem, however, as victims who are not openly gay or lesbian may prefer not to report the crime in order to avoid disclosure of their sexual orientation.¹⁰

C.3. Freedom of Assembly

- [16]. There appear not to have been any violations of the right to freedom of assembly in the last two decades. Austria's only LGBT Pride march has taken place in Vienna every year since 1996.¹¹

⁵ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

⁶ M. Nowak (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, FRALEX.

⁷ Austria/BGBI1974/60, last amended by BGBI I 2007/112 (28.12.2007)

⁸ M. Nowak (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, FRALEX.

⁹ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

¹⁰ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

¹¹ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

C.4. Family and Other Social Issues

- [17]. There is no same-sex marriage or registered partnership legislation in Austria. In the absence of such legal recognition, same-sex couples have no access to a number of rights reserved for spouses, for example inheritance, immigration, income tax benefits and adoption. Same-sex couples have the same legal rights as unmarried opposite-sex couples (common-law couples).¹²
- [18]. On October 24, 2007, the Austrian Minister of Justice presented a draft *Gesetz über die Eingetragene Lebenspartnerschaft* [Law on Registered Partnerships].¹³ At the time of writing it is not foreseeable when this draft will be discussed in Parliament. At present there are ongoing discussions on various details (including where and how the partnership can be contracted,¹⁴ what the exact rights and duties that emerge from such a partnership are, what possibilities there are for adoption¹⁵ and what the distinctions are from regular forms of marriage¹⁶).
- [19]. In some parts of Austria, children are placed with same-sex couples as foster parents.¹⁷

C.5. The Labour Market

- [20]. As a result of the Austrian federal structure, the Employment Directive 2000/78/EC had to be implemented at federal as well as provincial level. All acts implementing the Directive entered into force on December 2, 2003.¹⁸
- [21]. Federal legislation provides protection from discrimination on grounds of sexual orientation only in the area of employment, and seven of the nine provinces (Burgenland, Carinthia, Salzburg, Styria, Upper Austria, the Tyrol and Vienna) expanded the scope of protection to the field of goods and services.¹⁹

¹² G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

¹³ Justizressort, Bundesministerium für Inneres [Justice Department, Ministry of the Interior], *Berger präsentiert Gesetzesentwurf zu eingetragenen Partnerschaften* (24.10.2007), available at: <http://www.bmj.gv.at/service/content.php?nav=66&id=386> (14.02.2008).

¹⁴ *derstandard.at*, (21.11.2007) 'ÖVP gegen Zeremonie und für längere Trennungsfrist', available at: <http://derstandard.at/?url=/?id=3118469> (14.02.2008).

¹⁵ *Wiener Zeitung*, (17.10.2007) 'Quasi-Ehe für Homosexuelle kommt', available at: <http://www.wienerzeitung.at/DesktopDefault.aspx?TabID=4103&Alias=wzo&cob=307827> (14.02.2008).

¹⁶ *ots.at*, (28.11.2007) 'Donnerbauer: Für eingetragene gleichgeschlechtliche Partnerschaft aber gegen Adoptionsrecht', available at: http://www.ots.at/presseaussendung.php?schlüssel=OTS_20071128_OTS0262 (14.02.2008).

¹⁷ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

¹⁸ <http://www.klagsverband.at/recht.php> (08.02.2008).

¹⁹ M. Nowak (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, FRALEX.

- [22]. The public institutions in place to promote equal treatment and anti-discrimination at federal level are the *Gleichbehandlungskommission (GBK)* [Equal Treatment Commission (ETC)]²⁰ and the *Gleichbehandlungsanwaltschaft (GAW)* [Ombud for Equal Treatment (OET)].²¹ Victims of discrimination on grounds of sexual orientation can decide freely if they want to file a court claim or an application with the ETC, or make use of the counselling services of the OET.
- [23]. About 40 cases a year have been brought forward, but only a few have been taken further than the initial report.²²
- [24]. Three cases have become publicly known and covered by the media:
- [25]. An openly gay truck driver sued colleagues for continuous homophobic bullying. In July 2006, the industrial court found the colleagues guilty of violating the anti-discrimination provisions in the Equal Treatment Act and ordered them to pay compensation.²³
- [26]. A policeman working in a special anti-terror unit filed a complaint to the Equal Treatment Commission. The man, who was rated as a highly professional policeman by his superiors ('best of the year'), was subjected to discriminatory treatment and transferred to lower-level jobs within the police force after he revealed his homosexuality. The Commission concluded that he had been subject to discrimination based on sexual orientation and recommended that he be transferred to the unit in which he originally worked.²⁴ At the time of writing, he was seeking financial compensation in a court case still pending.
- [27]. A tram driver in Vienna was bullied by colleagues for years and finally given notice of termination by Vienna's public transport company. The employee sued and won his case in the first instance at a Vienna industrial court. As the defendant has appealed this decision, the case is still pending in the appeal court.²⁵

C.6. Education

- [28]. LGBT issues are not addressed in a systematic or standard way in schools, although sex education is part of the curriculum.²⁶ In most

²⁰ Senate I is responsible for equal treatment between men and women in the employment area, Senate II is responsible for equal treatment irrespective of ethnic belonging, religion, belief, age and sexual orientation in employment, Senate III is responsible for equal treatment irrespective of ethnic belonging in other areas (the non-employment scope).

²¹ OET I is responsible for equal treatment between men and women in the employment area, OET II is responsible for equal treatment irrespective of ethnic belonging, religion, belief, age and sexual orientation in employment, OET III is responsible for equal treatment irrespective of ethnic belonging in other areas (the non-employment scope).

²² Field trip meeting with *HOSI-Wien* May 1., 2008

²³ *LAMBDA-Nachrichten*, # 6/2006, p. 6 f, and # 1/2007, p 18.

²⁴ *LAMBDA-Nachrichten*, # 2/2007, p. 10.

²⁵ For more details see: <http://wien.orf.at/stories/270683/>.

²⁶ This and the following paragraphs on education: G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

cases, the topic is ignored by teachers or at best treated in a superficial way. The training of teachers ignores the issue of how to address homosexuality in schools.

- [29]. Since the 1980s, various LGBT organisations have offered specific information and training for schools, including lectures, educational material, visits to schools and inviting LGBT pupils to the youth groups of these organisations. All these initiatives are carried out by volunteers, and invitations to schools depend on the goodwill of school authorities or individual teachers.
- [30]. There is no university in the country that offers 'lesbian and gay studies' or 'queer studies', not even as part of gender studies. Courses with LGBT topics are offered in various studies in a random and sporadic fashion. Despite obstacles at university level, an increasing number of projects and theses on LGBT issues and queer theory have been published. Outside universities, lesbian and gay research and queer theory are characterised by a lack of funding and resources.
- [31]. There is very little data regarding conditions for LGBT students at all levels of education.

C.7. Health Service

- [32]. Homosexuality was officially deleted as a diagnosis in Austria's version of the international classification of diseases in 1991. In general, there is a deficit of knowledge on LGBT issues, especially in the officially recognised psychotherapeutic schools. Lesbians suffer from additional ignorance in mainstream medical care as their specific needs and health risks are barely recognised or addressed. Gynaecology is characterised by its focus on heterosexual women and the reproductive functions of their bodies.²⁷
- [33]. Gay men are not allowed to donate blood.²⁸
- [34]. Homosexuals are at higher risk of suicide than heterosexuals. The coming-out process is a very sensitive phase in this context.²⁹
- [35]. There is a lack of data regarding the experiences of LGBT patients in the health services.

²⁷ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

²⁸ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report..

²⁹ M. Plöderl (2005) *Sexuelle Orientierung, Suizidalität und psychische Gesundheit*, Weinheim, Basel: BeltzPVU.

C.8. Religion

- [36]. The Roman Catholic Church has traditionally had a strong impact on Austrian society. This influence has been detrimental to the acceptance and rights of gays and lesbians. Other religious denominations do not play an important role in this respect in Austria.³⁰
- [37]. A small group under the Roman Catholic Church called 'Living Waters' attempts the 'healing of homosexuality', and cooperates with psychiatrists and psychotherapists.³¹

C.9. Sports

- [38]. Homosexuality is largely invisible in mainstream sports. Homophobic statements have been made by prominent sport representatives, such as the former trainer of the national Austrian soccer team, Otto Barić,³² who was fined by the UEFA for homophobic statements.
- [39]. Sports have become an important part of LGBT leisure activities in Austria. Gays and lesbians have founded a number of sports groups and initiatives to facilitate common training and participation in national and international competitions. This part of the LGBT movement is one of the most active and flourishing branches.³³

C.10. Media

- [40]. The last 30 years have seen tremendous change in the attitudes of society and the media regarding homosexuality. Today all aspects and facets of homosexuality are covered and in the mainstream media. Gays and lesbians are represented in a positive, supportive or at least neutral and objective way. There are considerable differences, however, in the depiction of homosexual men and lesbians in the media, mostly reflected in the use of language. 'Homosexual' issues are often referred to as 'Schwul'[gay men] issues. Gay men dominate public depictions of homosexuals, and lesbians are largely invisible.³⁴
- [41]. Anti-gay statements and articles by right-wing parties are sometimes circulated by the media.³⁵

³⁰ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

³¹ Comprehensive coverage in articles in *LAMBDA-Nachrichten*, # 4/2003, pp. 34–48, # 1/2004, pp. 26–34, and # 2/2004, pp. 9–11.

³² See: www.hosiwien.at/?p=381.

³³ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

³⁴ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

³⁵ Field trip meeting with *HOSI-Wien*, (Austria, 2 May 2008).

C.11. Asylum and Subsidiary Protection

- [42]. No official data are available on the number of persons granted asylum or subsidiary protection due to persecution on the ground of sexual orientation, nor on the family members of such persons.³⁶
- [43]. In Austria, asylum law is laid down in the *Asylgesetz 2005* [Asylum Act 2005].³⁷ LGBT persons are considered to be a ‘particular social group’ by the dominant doctrine³⁸ and practice³⁹ and are therefore protected by the Geneva Refugee Convention.
- [44]. At least six gay men (five Iranians and one Romanian) have been granted refugee status. In all decisions the reasons given did not mention persecution because of homosexuality, but this was the only additional reason put forward in the appeals after the initial applications for asylum on other grounds of persecution had been rejected.⁴⁰

C.12. Family Reunification

- [45]. According to Sections 46, 50 and 69 of the Settlement and Residence Act⁴¹ family reunification is restricted to spouses and unmarried minors. Reunification of third-country partners with third-country nationals residing in Austria is only possible if they are married.
- [46]. In the absence of any registered-partnership legislation, it is, in effect, almost impossible to procure a stay or work permit for a same-sex partner from a country outside the EU/EEA.⁴²
- [47]. A search on the *Rechtsinformationssystem des Bundes* (RIS) [Federal Legal Information Service] does not show any decisions on family reunification of LGBT partners and unmarried minors under the Settlement and Residence Act.
- [48]. There is no available legal literature or interpretation by authorities with regard to same-sex couples married in a country of origin where same sex marriage is permitted.⁴³

³⁶ Information provided upon request by email, Ministry of the Interior, department III/5 (24.01.2008).

³⁷ Austria/BGBl I 2005/100, last amended by BGBl 2008/4 (14.01.2008).

³⁸ S. Schuhmacher, J. Peyrl (2006): *Fremdenrecht*, second edition, Vienna: ÖGB Verlag, pp. 176-177.

³⁹ See decision described in Annex 1 and Austria/Unabhängiger Bundesasylsenat/240.479/0-VIII/22/03, (10.05.2004); Austria/Unabhängiger Bundesasylsenat/261.132/4-VIII/40/05, (14.07.2005); Austria/Unabhängiger Bundesasylsenat/234.179/0-IV/44/03, (03.12.2004).

⁴⁰ G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

⁴¹ Settlement and Residence Act, Austria/BGBl I 157/2005, last amended by BGBl I 4/2008 (04.01.2008).

⁴² G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

[49]. No statistics regarding family unification are available.⁴⁴

C.13. Transgender Issues

- [50]. According to a 2006 Constitutional Court decision, persons can rectify their name in the Register of Births and change their name after a change of sex. Nevertheless, there is currently no specific legislation on changing sex/gender or changing names after a change of sex/gender. In 2006, the *Transsexuellen-Erlass* [Transsexual Order] that prohibited married persons from changing their name after a change of sex/gender was annulled by the Constitutional Court. New legislation is not expected before late 2009.⁴⁵
- [51]. In the course of 2008, Council Directive 2004/113/EC prohibiting gender discrimination in access to and supply of goods and services will be transposed into national law. The respective provisions will be incorporated into the Equal Treatment Act. According to the explanatory notes to the government bill, transgender persons will be protected from discrimination in the field of goods and services, as this is considered discrimination on grounds of gender.⁴⁶
- [52]. If transgender persons feel discriminated against, their complaint is filed as discrimination on the ground of gender.⁴⁷
- [53]. Transgender issues have received increasing media attention in recent years thanks to more transgender persons being prepared to speak out in public. There has also been increasing awareness among politicians about the specific issues and demands of transsexuals in Austria. Though cooperation and mutual support occur, the transgender movement has traditionally been separated from the gay and lesbian movement.⁴⁸
- [54]. Discrimination against transgender persons continues, especially in the labour market, but there is a lack of research on the matter.
- [55]. Transgender persons who are married and have undergone re-assignment surgery are no longer forced to divorce in order to be legally recognised in their new gender. Thus, cases of same-sex marriage have been produced by gender reassignment of one spouse in

⁴³ Information provided upon request by a representative of the Municipal Department 35 of the City of Vienna, via e-mail (26.03.2008).

⁴⁴ Information provided upon request via email by a representative of the Ministry of the Interior, department III/4 (06.02.2008).

⁴⁵ M. Nowak (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, FRALEX.

⁴⁶ Austria / *Erläuterungen* [Explanatory Notes]/ RV 415dB XXIII. GP, available at: http://www.parlament.gv.at/PG/DE/XXIII/I/I_00415/fname_096505.pdf (08.01.2008).

⁴⁷ M. Nowak (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, FRALEX.

⁴⁸ This and the following two paragraphs: G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

a marriage. Although legislation prohibits same-sex marriage, the authorities have not dissolved these marriages.

C.14. Multiple Discrimination

- [56]. There is a lack of research data on multiple discrimination and LGBT minorities. However, some insights have emerged:
- [57]. Lesbians facing gender discrimination:⁴⁹ Unlike gay men, lesbians encounter discrimination as women. However, this cannot be considered as just an addition to homophobia, as the two forms of discrimination have a mutual impact and lead to a specific form of discrimination. As a consequence of the generally lower pay of women, the average income of lesbians is much lower than that of gay men. Violence against lesbians is in most cases sexual or 'sexually connoted'.
- [58]. LGBT persons with ethnic minority backgrounds: LGBT persons from ethnic minority communities may face xenophobic or racist prejudice in the mainstream LGBT community in the same way that immigrants face such problems in Austrian society at large. LGBT persons of Muslim background may have specific difficulties coming out due to their religion, socialisation and gender role expectations in their social or family environment.
- [59]. LGBT elders: There are no housing projects or homes for the LGBT elderly or geared toward their specific needs.
- [60]. LGBT disabled persons: Sexuality is still a taboo when it comes to persons with disabilities, especially if they are residents in institutions. Prejudices against persons with disabilities also exist in the LGBT community.

C.15. Other Areas of Concern

- [61]. Regarding goods and services: In 2004, *HOSI-Wien*—on the occasion of its 25th anniversary—intended to purchase the name of two trains circulating in Austria. The Austrian State Railways (ÖBB) offers such patronage during a full year.⁵⁰ The name of the train would be announced in printed timetables, over loudspeakers in train stations and on overhead platform displays. It was the intention to name the two trains 'Homosexuelle Initiative'. Although the advertising company had already signed the contract with *HOSI-Wien*, the management of ÖBB eventually refused to approve the sale. Other political NGOs, alongside private companies, have had no problems in buying such patronage.

⁴⁹ This and the following paragraphs on multiple discrimination: G. Hauer and K. Krickler (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Austria*, Sociological Country Report.

⁵⁰ See: www.hosiwien.at/?p=435; *LAMBDA-Nachrichten*, # 1/2005, p. 14.

D. Good Practice

[62]. Good practices are described in Annex 1.