

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Austria

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# Executive summary

## Implementation of Employment Directive 2000/78/EC

As a result of the Austrian federal structure, the Directive had to be implemented at federal as well as at provincial level. All the acts implementing the Directive entered into force after 2 December 2003. The acts can be downloaded from the website of the Litigation Association of NGOs against discrimination (LitA, *Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern (KlaV)*)<sup>1</sup> or the website of the legislation and jurisprudence database at [ris.bka.gv.at](http://ris.bka.gv.at).

The federal legislation provides protection from discrimination on grounds of sexual orientation only in the area of employment, whilst eight of the nine provinces (Burgenland, Carinthia, Salzburg, Styria, Upper Austria, the Tyrol, Vienna, and Vorarlberg) expanded the scope of protection to the field of goods and services. Vorarlberg only included sexual orientation in the protection from discrimination outside work in 2008. In Lower Austria, protection from sexual orientation discrimination is restricted to employment. In Vienna, the complete scope of the Race Equality Directive covers all discrimination grounds except disability.

While the legislation adheres to the standards of the Directive, there are hardly any cases taken to the equality bodies and/or courts. This is best illustrated by the fact that there are hardly any rulings by the higher courts. Some decisions have been delivered by equal treatment commissions but they are not enforceable. Up to 2013 only nine decisions were delivered by the Equal Treatment Commission, Senate 2 regarding discrimination because of sexual orientation in the field of employment.<sup>2</sup> There are still hardly any court cases regarding sexual orientation and the Employment Directive, but there are quite a number of cases regarding sexual orientation and registered partnerships, which will be dealt with below.

The low number of complaints and proceedings can probably be traced back to the fact, that still many people do not know about the equality bodies.

## Freedom of movement

By law, freedom of movement is guaranteed to EEA and Swiss citizens and to third-country national partners of EEA and Swiss citizens. Due to the lack of official data it is impossible to judge the number of same-sex partners of EEA/Swiss citizens residing in Austria.

No significant trends have been identified.

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<sup>1</sup> Austria, Litigation association of NGOs against discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*), Website of the Litigation association of NGOs against discrimination, available at: [www.klagsverband.at/gesetze](http://www.klagsverband.at/gesetze). If not stated otherwise, all websites were last visited on 10 April 2014.

<sup>2</sup> Austria, Equal Treatment Commission, Senate II, Decisions (*Prüfungsergebnisse*), available at: [www.bka.gv.at/site/6612/default.aspx](http://www.bka.gv.at/site/6612/default.aspx)

## **Asylum and subsidiary protection**

A number of persons have been granted asylum due to their homosexuality or transsexuality, as can be deduced from decisions of the then Independent Federal Asylum Review Board (*Unabhängiger Bundesasylsenat (UBAS)*) published on the *Rechtsinformationssystem des Bundes (RIS)* [Federal Database for Legal Information] at [www.ris.bka.gv.at](http://www.ris.bka.gv.at). The UBAS was replaced by the Asylum Court as of 1 July 2008. The Asylum Court was replaced by the Federal Administrative Court as of 1 January 2014. Official statistics do not exist.

The number of cases on sexual orientation in front of the asylum authorities and the (then) asylum court rose during the last years. Also the number of cases in which asylum was granted went up. No further significant trends have been identified.

## **Family reunification**

Family reunification regulations are not applicable to same-sex partners of third-country nationals – unless they are married or registered partners.

The Registered Partnership Act (*Eingetragene Partnerschaft Gesetz, EPG*), which entered into force on 1 January 2010, introduced the right to register partnerships for homosexual couples. By way of the Registered Partnership Act, the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*) has been amended. According to the amended provisions, both registered or married (in case the law of the country of origin allows for marriage of same-sex partners) partners may be granted the normal residence permits according to the detailed provisions of § 47 NAG and §51 et seqq. NAG. Registered or married partners may thus be granted residence permits provided that the registration of their partnership meets the normal requirements provided in the laws on the personal status (*personenstandsrechtliche Voraussetzungen*). The Federal Ministry of the Interior (*BMI*) issued an order in August 2011 that homosexual couples who married abroad or registered their partnership in another country before the entry into force of the EPG have the right to subsequent immigration of family members.<sup>3</sup> This right was so far not explicitly foreseen for registered partnerships.

No further significant trends have been identified.

## **Freedom of assembly**

The banning of pro and contra LGBT demonstrations is only possible if they infringe criminal law, public safety or the public well-being.

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<sup>3</sup> Austria, Federal Ministry of the Interior (*Bundesministerium für Inneres*) (2011), Information on registered partnerships, which have been concluded abroad prior to the EPG (*Information betreffend (gleichgeschlechtliche) Partnerschaften, die vor Inkrafttreten des EPG geschlossen wurden, im Ausland geschlossene Ehen zwischen gleichgeschlechtlichen Partnern und Namenseintragungen von Österreichern in ausländischen Geburtsurkunden*), 19 August 2011, GZ.: BMIVA1300/0213-III/2/2011.

There are regular assemblies promoting tolerance in favour of LGBT people. According to the Ministry of the Interior there are no statistical data on public demonstrations in favour of and/or against LGBT people in Austria.

As there are no statistics and no case law available, there are no clear trends to be identified.

## **Hate speech and criminal law**

Hate speech is not a separate category of law in Austria. It would be subsumed under § 33 para 1 (aggravating factors) or § 283 (incitement to hatred) of the Criminal Code (*Strafgesetzbuch*). Sexual orientation was included in § 283 (incitement) as of 1 January 2012.

Still, homophobic hate speech may qualify as libel.

§ 209 of the Criminal Code – setting the minimum age for sexual relations between men at 18, compared to 14 for sexual relations between heterosexuals and between women – was annulled by the Constitutional Court (*Verfassungsgerichtshof*) in 2002. As a consequence, the newly amended regulations prohibit acts of a sexual nature with persons under the age of 16 years in general. So far, however, they have only been applied to men in homosexual relations.

In 2008, a Viennese court declared that a gay activist must accept being called a ‘professional poof’. This judgment was changed, as the Regional Higher Court ordered a new trial, the court then decided, that “poof” is a swearword and compensation of € 4000 was awarded.<sup>4</sup> The judgment is now final.

Institutional homophobia surfacing in Lithuania does no longer occur in Austria similar legal provisions have been abolished in the mid 1990ies.

There are no statistics available for the identification of trends.

## **Transgender issues**

In Austria, there is currently no specific legislation on changing sex/gender and 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.

In 2009 and 2010 the Constitutional Court and the Administrative Court have ruled that authorities

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<sup>4</sup> die Presse (2009), ‘Prozess um Beleidigung: Schimpfwort “Berufsschwuchtel”’, 24 June 2009, available at: [http://diepresse.com/home/leben/mensch/489963/Prozess-um-Beleidigung\\_Schimpfwort-Berufsschwuchtel](http://diepresse.com/home/leben/mensch/489963/Prozess-um-Beleidigung_Schimpfwort-Berufsschwuchtel).

must not require a gender reassignment surgery for changing of names.<sup>5</sup>

The government coalition agreement 2008 – 2013 (*Regierungsabkommen*) stated on page 120 that ‘the legal situation of transgender persons should be improved’.<sup>6</sup> The new government coalition agreement 2013-2018 does not mention any similar provision.<sup>7</sup>

As there are no statistics and no case law available, there are no clear trends to be identified.

## Intersexuality

The Austrian law does not define under which prerequisites a person is to be seen as a man or a woman, nor does it define intersexuality. Although intersexuality is not explicitly mentioned in the equality laws, discriminations on ground of ‘intersex’ are covered by the area of ‘gender’ in the Equal Treatment Act (*Gleichbehandlungsgesetz*). Yet, the topic is not sufficiently covered under non-discrimination policies so far. Medical interventions usually follow the ‘Consensus Statement’ of the representatives of the ‘Lawson Wilkins Pediatric Endocrine Society (USA) and the European Society for Paediatric Endocrinology’ 2006. Generally the consent of the intersex person has to be sought for such interventions. However, the consent is often sought from the legal representatives, because the surgeries or medical interventions are carried out when the child is still very young.

## Miscellaneous

Through the judgment *X vs Austria* stepchild adoption was made possible for homosexual couples. The General Civil Code and the Registered Partnership Act were amended accordingly.<sup>8</sup>

## Good practices

The Legal Committee Lambda (*Rechtskomitee Lambda*) is very active in filing claims regarding unequal treatment of LGBT couples regarding registered partnership.

The establishment of the first intersex-agent (*Intersex-Beauftragte*) at the homosexual Initiative Salzburg (*HOSI-Homosexuelle Initiative Salzburg*), the establishment of the association of intersex people Austria (*Verein Intersexueller Menschen Österreich*) and the establishment of the platform intersex Austria (*Plattform Intersex Österreich*), indicate that first steps are made to institutionalise the support for the benefit of intersexual persons in Austria. This may be regarded as a good practice that could be taken up other member states. However, due to their recent establishment, no long-term

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<sup>5</sup> See, e.g. Austria, Highest Administrative Court (*Verwaltungsgerichtshof*) (2009), 2008/17/0054, 27 February 2009 and further decisions by the Highest Administrative Court and the Constitutional Court.

<sup>6</sup> Austria (2008), Government Coalition Agreement 2008-2013 (*Regierungsprogramm 2008-2013*), available at: [www.bka.gv.at/DocView.axd?CobId=32965](http://www.bka.gv.at/DocView.axd?CobId=32965), p. 20.

<sup>7</sup> Austria (2013), Government Coalition Agreement 2013-2018 (*Regierungsprogramm 2013-2018*), available at: [www.bka.gv.at/DocView.axd?CobId=53264](http://www.bka.gv.at/DocView.axd?CobId=53264).

<sup>8</sup> Austria, Federal Law Gazette (*Bundesgesetzblatt*) (2013), BGBl. I Nr. 179/2013.

impact can be measured yet.

Furthermore, the establishment of the Vienna Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für gleichgeschlechtliche und transgender Lebensweisen, WAST*) can be mentioned as a good practice.

## A. Implementation of Employment Directive 2000/78/EC

Due to Austria's federal structure, Directive 2000/78/EC (Employment Equality Directive) had to be implemented at both federal and provincial levels.

While the implementation of the Employment Equality Directive regarding sexual orientation does not go beyond the minimum requirements regarding private labour contracts and the federal civil service regulated by federal law, provincial legislation in eight of the nine provinces covers employment and occupation, but also access to and supply of goods and services.

So far, there have been several attempts at the federal level to reach "levelling up" in the "other areas", also extending protection from discrimination because of sexual orientation in other areas, but this was not successful so far. For example, a draft amendment of the Equal Treatment Act was presented at the end of August 2012 implementing levelling-up outside the field of employment. The main change would be the extension of grounds covered outside of the field of employment, so that discrimination because of age, sexual orientation and religion would also be covered regarding access to goods and services.<sup>9</sup> On 21 November 2012 the Federal Minister for Women announced that the amendment did not make it into the Parliamentary Equal Treatment Committee (*Gleichbehandlungsausschuss*) and will be postponed due to missing approval of the Austrian People's Party (*Österreichische Volkspartei*).<sup>10</sup>

At federal level, the principle of equal treatment in the labour world irrespective of ethnic origin, religion or belief, age and sexual orientation is laid down in Part 2 of the Equal Treatment Act (*Gleichbehandlungsgesetz*) under the heading Equal treatment in the labour world irrespective of ethnic origin, religion or belief, age or sexual orientation ('Anti-discrimination') (*Gleichbehandlung in der Arbeitswelt ohne Unterschied der ethnischen Zugehörigkeit, der Religion oder Weltanschauung, des Alters oder der sexuellen Orientierung (Antidiskriminierung)*).<sup>11</sup>

The ETA contains no statutory definition of sexual orientation. The explanatory notes state that sexual

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<sup>9</sup> Austria (2012), Draft law to amend the Equal Treatment Act, the Act on the Equal Treatment Commission and the Ombud for Equal Treatment, the Disability Employment Act and the Federal Disability Equality Act (*Entwurf – Bundesgesetz mit dem das Gleichbehandlungsgesetz, das Gesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, das Behinderteneinstellungsgesetz und das Bundes-Behindertengleichstellungsgesetz geändert werden*), available at: [www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME\\_00407/](http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00407/).

<sup>10</sup> Austria, the Standard (*der Standard*) (2012), 'Equal treatment amendment postponed' (*Gleichbehandlungsnovelle vertagt*), 21 November 2012, available at: <http://diestandard.at/1353206838284/Gleichbehandlungsnovelle-vertagt>. Note: this is the only available source, no official sources available on this issue.

<sup>11</sup> Austria, Equal Treatment Act (*Gleichbehandlungsgesetz*), BGBl I 66/2004, last amended by BGBl I 107/2013 (14 January 2014).



orientation is to be understood broadly. Protection against discrimination should apply to bisexual and homosexual employees, as well as to heterosexuals and bisexuals in a homosexually dominated working environment. Homosexual partnerships must not be discriminated against as compared to heterosexual partnerships.<sup>12</sup> Since the entering into force of the registered partnership act registered partners are equal to married persons. This applies for salary as well as continued remuneration because of family reasons and fringe benefits.

It is not legally solved so far, whether a difference can be made regarding fringe benefits regarding married/registered or non-married/non-registered partners. So in the view of member of the Ombud for Equal Treatment it might be discriminatory in a specific case, when a fringe benefit is not awarded to a person living in a partnership, but only to persons living in registered partnerships or marriages. So unequal treatment in this regard would be conducted not because of sexual orientation, but because of the “legal” status of living in- or outside of wedlock or registered partnerships.<sup>13</sup>

Currently, § 17 para 1 of ETA prohibits direct and indirect discrimination in the employment sphere on grounds of sexual orientation. § 21 para 1 provides that harassment shall be deemed to be discriminatory if a person is harassed (1) by the employer, (2) due to the employer culpably neglecting the duties imposed on him/her by statutes, collective agreements or individual contract to protect the person from discrimination, (3) by a third person in connection with his/her employment and (4) by third persons outside a specific employment relationship (this would cover, in particular, harassment by customers). § 19 para 3 provides that instruction to discriminate against a person shall also be deemed to be discriminatory. § 19 para 4 provides that also discrimination because of association is covered.

There is only one court ruling on discrimination on the ground of sexual orientation falling within the scope of the Equal Treatment Act to be found in the registry of the courts ([ris.bka.gv.at](http://ris.bka.gv.at))<sup>14</sup> (see Annex 1). In this case, the Litigation Association of NGOs against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*) supported the plaintiff via intervention by a third party (see below). Up to January 2014 only nine decisions were delivered by the Equal Treatment Commission, Senate II regarding discrimination because of sexual orientation in the field of employment.<sup>15</sup>

The public institutions to promote equal treatment and anti-discrimination at federal level are the Equal Treatment Commission (ETC) (*Gleichbehandlungskommission (GBK)*) – consisting of three Senates<sup>16</sup>

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<sup>12</sup> Windisch-Graetz, M. (2004), ‘Das Diskriminierungsverbot aufgrund der sexuellen Orientierung’, in: *Zeitschrift für Arbeits- und Sozialrecht (ZAS)*, 2004, p. 11.

<sup>13</sup> Information received by a member of the Ombud for Equal Treatment on 26 February 2014.

<sup>14</sup> As of 30 January 2014.

<sup>15</sup> Austria, Equal Treatment Commission Senate II (*Gleichbehandlungskommission Senat II*), decisions (*Prüfungsergebnisse*), available at: [www.bka.gv.at/site/6612/default.aspx](http://www.bka.gv.at/site/6612/default.aspx). As the decisions of the ETC do not have binding character they are not presented as judgments in the Annex.

<sup>16</sup> 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

– and the Ombud for Equal Treatment (OET) (*Gleichbehandlungsanwaltschaft (GAW)*) –with equivalent competences.<sup>17</sup> 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 to make use of the counselling services of the OET.

Sexual orientation discrimination in private employment falling under the scope of the ETA is dealt with by Senate II of the ETC and the Ombud for Equal Treatment in employment irrespective of ethnic belonging, religion or belief, age or sexual orientation (OET II) (*Anwältin für Gleichbehandlung in der Arbeitswelt (GAW II)*). The OET reports 22 requests in 2008 and 31 in 2009.<sup>18</sup> The Regional Office of the OET in Styria reports two complaints on the ground of gender identity in 2008 and one in 2009.<sup>19</sup>

For 2010 the OET II reports 51 inquiries or consultations regarding discrimination because of sexual orientation and 25 for 2011.<sup>20</sup> For 2012 the OET II reports 14 inquiries or consultations regarding discrimination because of sexual orientation and 30 for 2013.<sup>21</sup>

The ETC is an independent public body and consists of members of ministries and social partners.<sup>22</sup> The procedure before the Commission is free of charge and applicants do not necessarily have to be represented by a legal counsel registered with the bar. Applicants can be represented by the OET, NGO representatives or any other person. Generally, the interrogation of applicants and the opponent is conducted together.<sup>23</sup> However, in case of alleged sexual harassment the parties are interviewed separately. Further informed persons (*Auskunftspersonen*) are interviewed separately. At the end of the proceedings the ETC delivers a legally non-binding decision (*Einzelfallprüfungsergebnis*) stating if discrimination has occurred or not. If discrimination is established by a Senate of the ETC the decisions merely constitute non-enforceable recommendations rather than effective sanctions.<sup>24</sup>

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employment, Senate III is responsible for equal treatment irrespective of ethnic belonging in other areas (the non-employment scope).

<sup>17</sup> 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) and for equal treatment of women and men in the context of goods and services.

<sup>18</sup> Information provided by email (11 February 2010).

<sup>19</sup> Information provided by email (15 February 2010).

<sup>20</sup> Austria, Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*) (2012), Part II of the Equal Treatment Report for private employment 2010 and 2011 (*Teil II des Gleichbehandlungsberichts für die Privatwirtschaft 2011 und 2011*), available at: [www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=49985](http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=49985).

<sup>21</sup> Information provided by the Ombud for Equal Treatment (OETII) on 14 and 17 February 2014 in response to an information request.

<sup>22</sup> For instance, representatives of the Austrian Chamber of Labour (*Arbeiterkammer*) and the Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich (WKÖ)*) are members of the ETC.

<sup>23</sup> Austria, Federal Chancellery (*Bundeskanzleramt*), Website on the proceeding in front of the Equal Treatment Commission (*Das Verfahren vor der Kommission*), available at: [www.bka.gv.at/site/5541/default.aspx](http://www.bka.gv.at/site/5541/default.aspx).

<sup>24</sup> Austria, Act on the Equal Treatment Commission and the Ombud for Equal Treatment (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*) BGBl I 108/1979 as amended by BGBl I 66/2004 last amended by BGBl I 107/2013 (11 November 2013).

In cases of multiple discrimination falling under the scope of the ETA, that include both gender discrimination and discrimination on the grounds of sexual orientation, Senate I of the ETC is competent. Correspondingly, the Ombud for Equal Treatment between men and women in employment (OET I) (*Anwältin für die Gleichbehandlung von Frauen und Männern in der Arbeitswelt (GAW I)*) is competent in cases of multiple discrimination.<sup>25</sup>

If someone feels discriminated against on grounds of both his/her sexual orientation and of his/her disability, the person must first obligatorily seek to reach a settlement (*Schlichtung*) with the Federal Office for Social and Disability Issues (*Bundesamt für Soziales und Behindertenwesen (BSB)*). Only if the Federal Office declares that no settlement could be achieved can the person file a claim before a court.<sup>26</sup>

The members of the Senates of the ETC and the OET can apply for a general opinion (*Gutachten*) of the Equal Treatment Commission in matters of general interest regarding discrimination. So far, no such general opinion has been adopted on sexual orientation.

The Ombud for Equal Treatment is a public authority competent for all of Austria. It is located in Vienna. For gender issues in the workplace (covering transgender) there are branch offices in Graz, Innsbruck, Klagenfurt and Linz. In cases of discrimination on the ground of sexual orientation, only the central office in Vienna is competent.

The OET offers its services free of charge and confidentially. The body gives legal advice, supports victims of discrimination by addressing potential discriminating parties and represents individuals in proceedings before the Equal Treatment Commission.<sup>27</sup>

As of the end of 2013, the ETC has delivered nine decisions with regard to sexual orientation discrimination. The ETC had to decide two cases presented in 2008. In both of them discrimination on ground of sexual orientation was established. In one case a man was discriminated against by two fellow workers and sued them. A Labour Court awarded damages of 400 Euro from each for long-term harassment on the ground of sexual orientation and sexual harassment. In the other case, the Equal

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<sup>25</sup> For procedural matters concerning multiple discrimination see Windisch-Graetz, M. (2005), 'Probleme der Mehrfachdiskriminierung', in: *Das Recht der Arbeit*, p. 238; Kletecka, A. (2005) *Durchsetzung der Diskriminierungsverbote*, in: Tomandl, T./Schrammel, W. (eds.), *Arbeitsrechtliche Diskriminierungsverbote*, Vienna, Braumueller, p. 93.

<sup>26</sup> This procedure is laid down in § 29 para 4 Equal Treatment Act (*Gleichbehandlungsgesetz*), BGBl I 66/2004, last amended by BGBl I 107/2013 and §§ 7k, 7n and 7o of the Act on the employment of persons with a disability (*Behinderteneinstellungsgesetz*), BGBl 22/1970 as last amended by BGBl I 138/2013. For further details see Hofer, H., Iser, W., Miller-Fahringer, K., Rubisch, M. (2006), *Behindertengleichstellungsrecht*, Vienna/Graz, nww.

<sup>27</sup> Austria, Act on the Equal Treatment Commission and the Ombud for Equal Treatment (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft - GBK/GAW-Gesetz*), BGBl I 108/1979 as amended by BGBl I 66/2004 last amended by BGBl I 107/2013 (11 November 2013).

Treatment Commission denied that the dismissal of a lesbian couple – who were both employed by the same enterprise – was discriminatory.

Altogether, the ETC delivered ten decisions on sexual orientation discrimination until 2013. Six cases found discrimination and/or harassment; three cases did not find discrimination or harassment because of sexual orientation.

For 2010 and 2011 Senate I of the ETC reports two applications because of gender identity, Senate II reports seven claims for these two years regarding discrimination because of sexual orientation (while noting that multiple answers were possible), four of them regarding harassment.<sup>28</sup>

In 2010, there have been no applications to Senate II of the ETC on sexual orientation discrimination; in 2011, there have been four such applications (one case did not find discrimination or harassment because of sexual orientation); in 2012 and 2013, there was one such application each (a discrimination or harassment because of sexual orientation was not found for these applications).<sup>29</sup>

The cases dealt with by the Equal Treatment Commission, Senate II, show mainly cases of harassment, using harsh language regarding the sexual orientation of the claimants in the work place (e.g. “*Scheiss Schwule*”, “*Schwuchtel*”, et. al.).

There are cases on insult/harassment because of sexual orientation, where this was also found as discriminatory practice (e.g. case GBK II/48/08<sup>30</sup>, GBK II/N-136/11<sup>31</sup>, GBK II/134/11<sup>32</sup>, GBK II/49/08<sup>33</sup>). In these cases the Commission clearly holds that the subjective feelings of the claimant have to be taken into account. The acts in question have to be suited for violating the dignity of a person. “Act” is to be understood broadly, also including verbal and non-verbal acts.

For example, in case GBK II/N-153/12<sup>34</sup> a woman felt forced to reveal her sexual orientation because of gossip pressure in her workplace. The claimant could not make her claims credible and concrete enough, so no discrimination was found. In another case<sup>35</sup> a man was accused of sexual harassment of

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<sup>28</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (2012), Equal Treatment Report 2010 and 2011, Part I (*Gleichbehandlungsbericht 2010 und 2011, Teil I*), available at: [www.bka.gv.at/DocView.axd?CobId=49191](http://www.bka.gv.at/DocView.axd?CobId=49191).

<sup>29</sup> Information provided by the Equal Treatment Commission (*Gleichbehandlungskommission, GBK*) on 27 January 2014.

<sup>30</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (year unknown), GBK II/48/08, available at: <http://www.bka.gv.at/DocView.axd?CobId=34882> (last accessed on 9 May 2014).

<sup>31</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (year unknown), GBK II/N-136/11, available at: <http://www.bka.gv.at/DocView.axd?CobId=48255> (last accessed on 9 May 2014).

<sup>32</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (year unknown), GBK II/134/11, available at: <http://www.bka.gv.at/DocView.axd?CobId=46681> (last accessed on 9 May 2014).

<sup>33</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (year unknown), GBK II/49/08, available at: <http://www.bka.gv.at/DocView.axd?CobId=35502> (last accessed on 9 May 2014).

<sup>34</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (year unknown), GBK II/N-153/12, available at: <http://www.bka.gv.at/DocView.axd?CobId=54199> (last accessed on 9 May 2014).

<sup>35</sup> Austria, Equal Treatment Commission (*Gleichbehandlungskommission*) (year unknown), GBK II/47/07, available at: <http://www.bka.gv.at/DocView.axd?CobId=34880> (last accessed on 9 May 2014).

a colleague. He then revealed his homosexuality to his boss and asked him not to “out” him. Yet, colleagues got to know about his sexual orientation and he was mobbed. Due to credibility issues no discrimination because of sexual orientation was found.

Looking at those cases, which were decided by the ETC (and thus a body which may only propose solutions, but does not issue legally binding decision) no clear impact of these cases can be identified. If the claimant has been able to make his/her case in a coherent and credible way, then discrimination was found. No further impact of those non-binding decisions could be identified.

The relative low number of complaints and especially court proceedings can probably be traced back to the fact, that still many people do not know about the equality bodies. Furthermore other factors, like risk of costs, being afraid to be again victimised, etc. lead to such low number of complaints and especially court cases. The European Training and Research Centre for Human Rights and Democracy conducted a project on Intersectional Discrimination, which was funded by the Austrian Science Fund. In the course of this project “Locating Intersectional Discrimination” interviews with victims were conducted and the above mentioned reasons for not bringing cases to court were identified.<sup>36</sup>

The ETA provides in § 62 that the Litigation Association of NGOs against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*) can support plaintiffs upon their request via intervention by a third party (*Nebenintervention*). The Litigation Association of NGOs against Discrimination comprises 35 member associations. The Litigation Association of NGOs against Discrimination reported that in practice the number of persons discriminated against on the ground of sexual orientation going to the Courts is very low. Accordingly, only about three to five percent of the proceedings involving the Litigation Association of NGOs against Discrimination concern cases dealing with discrimination on the ground of sexual orientation.<sup>37</sup> According to the Klagsverband, there were no cases dealing with discrimination on the ground of sexual orientation in 2012 or 2013.<sup>38</sup> According to the § 19 para 2 Civil Procedure Code (*Zivilprozessordnung*) the intervener can offer evidence and act as long as his/her motions are not contrary to the motions of the main party.

The prohibition of discrimination on the ground of sexual orientation in employment with federal public bodies is laid down in Part I, 2. Section (*Teil I, 2. Hauptstück*) of the Federal Equal Treatment Act (*Bundes- Gleichbehandlungsgesetz*).<sup>39</sup> Individuals who feel discriminated against on the ground of sexual orientation can file an application with the Federal Equal Treatment Commission (*Bundes-*

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<sup>36</sup> The findings of the project are published in: Philipp, S., Meier, I., Apostolovski, V., Starl K. and Schmidlechner K. (2014), *Intersektionelle Benachteiligung und Diskriminierung*, Baden-Baden, Nomos.

<sup>37</sup> Information provided by the Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern on 8 April 2014 in response to an information request.

<sup>38</sup> Information provided by the Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern on 13 May 2014 in response to an information request.

<sup>39</sup> Austria, Federal Equal Treatment Act (*Bundesgleichbehandlungsgesetz*), BGBl I 100/1993 as last amended by BGBl I 102/2012 (11 November 2013).

*Gleichbehandlungskommission (B- GBK)*<sup>40</sup> or file a court suit.

There has only been one case of discrimination on the ground of sexual orientation within the police where the Federal Equal Treatment Commission found the procedures taken by the supervisors of the policeman involved to be discriminatory. From 2007 until 2012, there have been no decisions on the ground of sexual orientation.<sup>41</sup> There has not been a court decision between 2010 and January 2014 published in the Federal Legal Information Service (*Rechtsinformationssystem des Bundes (RIS)*) regarding the Federal Equal Treatment Act and discrimination because of sexual orientation.

As there is no relevant case law to be reported for the reporting period, no trends in the jurisprudence can be identified. However, it may well be regarded as a continuing trend that the fear of stigmatization prevents persons to use counselling services<sup>42</sup> or to even file a complaint.

Each of the nine federal provinces is responsible for the transposition of the Directive into provincial law, with regard to the equal treatment of civil servants in provincial and communal administrations, and regarding the access to and supply of goods and services offered by the provinces and communities including social protection, social advantages, education and self employment. Eight provinces (Burgenland, Carinthia, Salzburg, Styria, the Tyrol, Upper Austria, Vienna and Vorarlberg) have provisions prohibiting discrimination on grounds of sexual orientation with regard to the access to and supply of goods and services offered by the provinces and communities, including social protection, social advantages, education and self employment. Vorarlberg only introduced this expansion in 2008. One province (Lower Austria) did not expand the scope of protection to the field of goods and services. There are no court decisions or binding administrative rulings within the scope of the Directive at provincial level.

Generally, the specialised institutions of the provinces are very similar. On the one hand there are Equal Treatment Commissions that publish opinions (*Gutachten*) on individual discrimination cases. On the other hand, Equal Treatment/Anti-discrimination Contact Points or Equal Treatment/Anti-discrimination Commissioners operate in order to support individuals. It should be noted that Commissions, unlike Contact Points or Commissioners, are in general only competent in relation to civil service issues, i.e. discrimination in the provincial and communal administrations.

According to information provided by the equality bodies at provincial level, no lawsuits regarding sexual orientation they know of have yet been filed under any provincial laws.

In the following chapters, the provincial legislation and equality bodies shall be briefly outlined to give

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<sup>40</sup> Austria, Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz*), §§ 22-24, BGBl I 100/1993 as last amended by BGBl I 102/2012 (11 November 2013).

<sup>41</sup> Austria, Equal Treatment Commission, Website of the Equal Treatment Commission, available at: [www.bka.gv.at/site/5513/default.aspx](http://www.bka.gv.at/site/5513/default.aspx).

<sup>42</sup> Information provided by the Litigation Association of NGOs against discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*) on 8 April 2014 in response to an information request.

an idea of the fragmentation and complexity of Austrian anti-discrimination legislation.

### A.1.1. Burgenland

The prohibition of discrimination on the ground of sexual orientation is laid down in the Anti-discrimination Act of Burgenland (*Burgenländisches Antidiskriminierungsgesetz*).<sup>43</sup> The scope of protection encompasses the employment area (civil service) as well as the access to and supply of goods and services including social protection, social advantages, education and self employment. The complete scope of Art 3 Racial Equality Directive is covered for all grounds of discrimination since the year 2005. The term Social matters (*Soziales*)<sup>44</sup> is understood to cover Social protection and social advantages. Discrimination through association was included in the Anti-discrimination act in 2013.<sup>45</sup>

According to the Commissioner for Anti-discrimination in Burgenland (*Antidiskriminierungsbeauftragter im Burgenland*) there has been no complaint on the ground of sexual orientation and no court decision.<sup>46</sup> The Commissioner for Anti-discrimination in Burgenland was not available for information on the years 2008 and 2009,<sup>47</sup> nor for the years 2010 to 2013.<sup>48</sup> The Commissioner for Equal Treatment of Burgenland (*Gleichbehandlungsbeauftragte*) was not available for information on the years 2010 to 2013.<sup>49</sup>

### A.1.2. Carinthia

The prohibition of discrimination on the ground of sexual orientation is laid down in the Anti-discrimination Act of Carinthia (*Kärntner Antidiskriminierungsgesetz*).<sup>50</sup> The act covers the area of employment as well as the access to and supply of goods and services offered by the provinces and communities, including social protection, social advantages, education and self employment. The complete scope of Art 3 Racial Equality Directive has been covered for all grounds of discrimination

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<sup>43</sup> Austria, Anti-discrimination Act of Burgenland (*Burgenländisches Antidiskriminierungsgesetz*), LGBI 84/2005, as amended by LBG I 22/2013.

<sup>44</sup> Austria, Anti-discrimination Act of Burgenland (*Burgenländisches Antidiskriminierungsgesetz*), LGBI. Nr. 84/2005, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=20000359](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgl&Gesetzesnummer=20000359), § 1 para. 2.

<sup>45</sup> Austria, Amendment of the Anti-discrimination Act of Burgenland (*Gesetz vom 7. März 2013, mit dem das Burgenländische Antidiskriminierungsgesetz geändert wird*), LGBI 22/2013, part 13.

<sup>46</sup> Information provided upon request by telephone, Anti-discrimination Contact Point, (23 January 2008).

<sup>47</sup> Various requests via telephone (8 February 2010, 9 February 2010, 10 February 2010).

<sup>48</sup> Various requests for information and reminder have been sent to the Commissioner for Anti-discrimination in Burgenland.

<sup>49</sup> Various requests for information and reminder have been sent to the Commissioner for Equal Treatment of Burgenland.

<sup>50</sup> Austria, Anti-discrimination Act of Carinthia (*Kärntner Antidiskriminierungsgesetz*), LGBI 63/2004 as amended by LBG I 18/2013.

since the year 2004. Discrimination through association was included in 2013.<sup>51</sup>

According to the Anti-discrimination Contact Point in Carinthia (*Kärntner Antidiskriminierungsstelle*), there have been two complaints so far.<sup>52</sup> In both cases a solution could be found through mediation. One of these cases concerned the civil service. In the other case, a bi-national lesbian couple argued that the income of the Austrian partner should be added to her partner's income for the purpose of determining eligibility to residence in Austria. No data are available for the years 2008 and 2009.<sup>53</sup> The Anti-discrimination Contact Point in Carinthia was not available for information for the years 2010 to 2013.<sup>54</sup>

Neither the Equal Treatment Commissioner (*Vorsitzende der Gleichbehandlungskommission*) for Carinthia, nor the equal-treatment officer (*Frauen- und Gleichbehandlungsbeauftragte des Landes Kärnten*) received any related enquires between the years 2010 and 2013.<sup>55</sup>

### A.1.3. Lower Austria

According to the Equal Treatment Act of Lower Austria (*Niederösterreichisches Gleichbehandlungsgesetz*) discrimination on grounds of sexual orientation is prohibited in civil service.<sup>56</sup> The Anti-discrimination Act of Lower Austria (*Niederösterreichisches Antidiskriminierungsgesetz*) prohibits discrimination on the ground of sexual orientation with respect to access to self employment, professional advice, professional education and professional associations (§ 11).<sup>57</sup> Protection against discrimination concerning goods and services is restricted to grounds of ethnic origin. In 2009, the Anti-Discrimination Act was amended. Only gender was included within the scope of protection against discrimination regarding the access to and the supply with goods and

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<sup>51</sup> Austria, Amendment of the Anti-discrimination Act of Carinthia (*Gesetz vom 31. Jänner 2013, mit dem das Kärntner Antidiskriminierungsgesetz und das Kärntner Landes-Gleichbehandlungsgesetz geändert werden*), LGBl 18/2013 part 8.

<sup>52</sup> Information provided upon request by email, Anti-discrimination Contact Point, (23 January 2008 and 24 January 2008).

<sup>53</sup> Request by email (8 February 2010).

<sup>54</sup> Various requests for information and reminder have been sent to the Anti-discrimination Contact Point in Carinthia.

<sup>55</sup> Information provided by the Equal Treatment Commissioner (*Vorsitzende der Gleichbehandlungskommission*) for Carinthia on 19 February 2014 via telephone, and the equal-treatment officer (*Frauen- und Gleichbehandlungsbeauftragte des Landes Kärnten*) by email on 31 January 2014 in response to information requests.

<sup>56</sup> Austria, Lower Austrian Equal Treatment Act (*Niederösterreichisches Gleichbehandlungsgesetz*), LGBl 69/1997, last amended by LGBl 109/2011.

<sup>57</sup> Austria, Lower Austrian Non Discrimination Act (*Niederösterreichisches Antidiskriminierungsgesetz*), LGBl 45/2005 as amended by LGBl 113/2011.



services.<sup>58</sup> Discrimination through association was included in the act in 2011.<sup>59</sup>

According to the Commissioner for Equal Treatment of Lower Austria (*Gleichbehandlungsbeauftragte*) there have been 12 complaints on the ground of sexual orientation between 2010 and 2013 (2010: five; 2011: two; 2012: one; 2013: four). Some of these complaints were referred to the competent federal equality body (one each in 2010, 2011, 2012 and 2013).<sup>60</sup>

## A.1.4. Salzburg

The Equal Treatment Act of Salzburg (*Salzburger Gleichbehandlungsgesetz*) provides protection against discrimination on the ground of sexual orientation with regard to civil service (§§ 4-11) and the access to and supply of goods and services offered by the provinces and communities, including social protection, social advantages, education and self-employment (§§ 28-29).<sup>61</sup>

The complete scope of Art 3 Racial Equality Directive is covered for all grounds of discrimination since the year 2006. The term Social matters (*Soziales*)<sup>62</sup> is understood to cover Social protection and social advantages.

The Board Support for Women's Affairs and Equality (*Stabstelle Frauenfragen und Chancengleichheit*) provides information and gives support in individual cases<sup>63</sup>.

Public servants or individuals seeking employment within the Salzburg public administration, who feel discriminated against, *inter alia*, on the ground of sexual orientation can submit an application to one of the Equal Treatment Commissions. The Commissions subsequently publish an opinion stating whether discrimination has occurred or not.

Five Equal Treatment Commissions operate within the public administration of the province of Salzburg:

- for the province of Salzburg,
- for provincial teachers,
- for the municipalities of the province of Salzburg (except the municipality of Salzburg),

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<sup>58</sup> Austria, Amendment to the Lower Austrian Non Discrimination Act, LGBl 148/09, (30 November 2009).

<sup>59</sup> Austria, Amendment to the Lower Austrian Non Discrimination Act (*Änderungen des NÖ Antidiskriminierungsgesetzes*), LGBl 113/11, 15 September 2011, available at: [www.ris.bka.gv.at/Dokumente/LrNo/LRNI\\_2011113/LRNI\\_2011113.pdf](http://www.ris.bka.gv.at/Dokumente/LrNo/LRNI_2011113/LRNI_2011113.pdf).

<sup>60</sup> Information provided on 21 January 2014 by the Commissioner for Equal Treatment of Lower Austria (*Gleichbehandlungsbeauftragte*) in response to an information request.

<sup>61</sup> Austria, Salzburg Equal Treatment Act (*Salzburger Gleichbehandlungsgesetz*), LGBl 31/2006 as amended by LGBl 41/2013.

<sup>62</sup> Austria, Salzburg Equal Treatment Act (*Salzburger Gleichbehandlungsgesetz*), LGBl 31/2006, § 28 para 2, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000441](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000441).

<sup>63</sup> Austria, Land Salzburg (2006), Discrimination – what can I do (*Diskriminiert was kann ich tun?*), available at: [www.salzburg.gv.at/pdf-gb-beratung2009.pdf](http://www.salzburg.gv.at/pdf-gb-beratung2009.pdf), (11 February 2010).

- for provincial hospitals and
- for the municipality of Salzburg.

Moreover, the Anti-discrimination contact point of the city of Salzburg (*Antidiskriminierungsstelle der Stadt Salzburg*) and the Homosexual Initiative Salzburg (*HOSI-Homosexuelle Initiative Salzburg*) receive complaints. The HOSI Salzburg is an association of civil law for the equalisation of the rights of LGBTI people and the elimination of social discrimination and inequality. HOSI Salzburg is an initiative fighting for social acceptance and legal equality for LGBTI people in the city and province of Salzburg, the neighboring Bavaria and Upper Austria. HOSI Salzburg receives financial support from the city of Salzburg and the province of Salzburg.<sup>64</sup>

These bodies received a total of 20 complaints from 2010 to 2013 (2010: four; 2011: two; 2012: six; 2013: eight).<sup>65</sup>

### A.1.5. Styria

In Styria, the prohibition of discrimination in the civil service and regarding access to and supply of goods and services offered by the provinces and communities, including social protection, social advantages, education and self employment is laid down in the Equal Treatment Act of Styria (*Steirisches Gleichbehandlungsgesetz*).<sup>66</sup> Sexual orientation is covered in both employment in the provincial and communal administrations and the access to and supply of goods and services offered by the provinces and communities including social protection, social advantages, education and self employment. The complete scope of Art 3 Racial Equality Directive is covered for all grounds of discrimination since the year 2004. The term Social matters (*Soziales*)<sup>67</sup> is understood to cover social protection and social advantages.

Two institutions are operating, the Equal Treatment Commission (*Gleichbehandlungskommission*) and the Equal Treatment Commissioner (*Gleichbehandlungsbeauftragte*). The Commissioner gives advice to individuals. The Commission publishes opinions (*Gutachten*) on individual and group requests and applications.

Four complaints have been forwarded to the Commissioner, one in 2005 and three in 2007.<sup>68</sup> The

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<sup>64</sup> Austria, HOSI Salzburg, Website of HOSI Salzburg, available at: [www.hosi.or.at](http://www.hosi.or.at).

<sup>65</sup> Information provided by these bodies on 3 January 2014, 31 January 2014, 3 February 2014 and 6 February 2014 in responses to information requests.

<sup>66</sup> Austria, Styrian Equal Treatment Act (*Steirisches Landesgleichbehandlungsgesetz*), LGBl 66/2004, as amended by 165/2013.

<sup>67</sup> Austria, Styrian Equal Treatment Act (*Steirisches Landesgleichbehandlungsgesetz*), LGBl 66/2004, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000467](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000467), § 32.

<sup>68</sup> Information provided upon request via email, Equal Treatment Commissioner (7 February 2008).

Commissioner did not provide information on these cases.<sup>69</sup> There were no complaints in 2008 and two in 2009.<sup>70</sup> In 2010 there were three inquiries, in 2011 ten inquiries, in 2012 five inquiries and four inquiries in 2013. These inquiries dealt with labour world or access to goods and service (hereby especially regarding the place to close registered partnerships). No applications were filed to the Styrian Equal Treatment Commission in this regard in 2010, 2011, 2012 and 2013.<sup>71</sup>

## A.1.6. The Tyrol

In the Tyrol, discrimination on the ground of sexual orientation in the civil service is prohibited by the Equal Treatment Act (*Tiroler Landes-Gleichbehandlungsgesetz*)<sup>72</sup> and the Municipal Equal Treatment Act (*Gemeinde-Gleichbehandlungsgesetz*).<sup>73</sup> The Anti-discrimination Act of the Tyrol (*Tiroler Antidiskriminierungsgesetz*)<sup>74</sup> regulates discrimination with regard to the access to and supply of goods and services offered by the provinces and communities, including social protection, social advantages, education and self employment.

The Tyrolean Anti-discrimination Commissioner (*Antidiskriminierungsbeauftragte*) received one request in 2006 with regard to sexual orientation. It was settled without the use of legal remedies.<sup>75</sup> In 2008/2009 there were no requests.<sup>76</sup>

The Service Centre Equal Treatment and Non-discrimination (*Servicestelle Gleichbehandlung und Antidiskriminierung*) is a public institution of Tyrol to provide support for the enforcement of the right to equal treatment and protection against discrimination as provided in the Anti-discrimination Act of the Tyrol (*Tiroler Antidiskriminierungsgesetz*). The Service Centre provides legal counselling, support and information. The counselling provided by the Service Centre is confidential and free of charge.<sup>77</sup> The Service Centre Equal Treatment and Non-discrimination received one inquiry on anti-

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<sup>69</sup> Email request (23 January 2008).

<sup>70</sup> Email request (9 February 2010).

<sup>71</sup> Information provided by the Equal Treatment Commissioner of Styria on 15 January 2014 in response to an information request.

<sup>72</sup> Austria, Tyrol Equal Treatment Act (*Tiroler Landes-Gleichbehandlungsgesetz*), LGBl 1/2005, last amended by LGBl. 40/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000244](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000244).

<sup>73</sup> Austria, Tyrol Municipal Equal Treatment Act (*Gemeinde-Gleichbehandlungsgesetz*), LGBl 2/2005, last amended by LGBl. 130/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000001](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000001).

<sup>74</sup> Austria, Tyrol Anti-discrimination Act (*Tiroler Antidiskriminierungsgesetz*), LGBl 25/2005, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrT&Dokumentnummer=LTI30000319](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrT&Dokumentnummer=LTI30000319).

<sup>75</sup> Information provided upon request by email, Anti-discrimination Commissioner (24 January 2008).

<sup>76</sup> Information provided upon request by email, Anti-discrimination Commissioner (8 February 2010).

<sup>77</sup> Austria, Service Centre Equal Treatment and Non-discrimination, Website of the Service Centre Equal Treatment and Non-discrimination (*Servicestelle Gleichbehandlung und Antidiskriminierung*), available at: [www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung](http://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung).

discrimination/contact with administrative offices in 2010 (the Service Centre has been in contact with this person seven times), in 2011 one inquiry (four contacts with this person) regarding work/equal treatment and two inquiries (15 contacts in total) regarding anti-discrimination/contact with administrative offices, in 2012 one inquiry (one contact with this person) regarding work/equal treatment and one inquiry (one contact with this person) regarding anti-discrimination/contact with administrative offices. In 2013 there was one inquiry (28 contacts with this person) regarding work/equal treatment. The Service Centre knows about one case which was claimed by the courts regarding discrimination because of sexual orientation in 2013, but could not provide further information.<sup>78</sup> Moreover, the Anti-discrimination Commissioner and Equal Treatment Commissioner Tyrol (*Antidiskriminierungsbeauftragte des Landes Tirol und Gleichbehandlungsbeauftragte für den Landesdienst Bereich TILAK*) received one complaint in 2010, which was also brought before the courts.<sup>79</sup>

## A.1.7. Upper Austria

In Upper Austria, the prohibition of discrimination on the ground of sexual orientation in the civil service and with regard to goods and services offered by the provinces and communities, including social protection, social advantages, education and self employment, is laid down in the Anti-discrimination Act of Upper Austria (*Oberösterreichisches Antidiskriminierungsgesetz*).<sup>80</sup> The complete scope of Art 3 Racial Equality Directive is covered for all grounds of discrimination since the year 2005. The term Social matters (*Soziales*)<sup>81</sup> is understood to cover Social protection and social advantages.

§ 14 of the Anti-discrimination Act establishes an Anti-discrimination Contact Point. There have been four complaints with regard to discrimination on the ground of sexual orientation, three in 2006 and one in 2007.<sup>82</sup> There was one complaint in the years 2008 and 2009 – it is not clear in which year.<sup>83</sup> Between 2010 and 2013, the Anti-discrimination Contact Point received six complaints (2010: none; 2011: one; 2012: three; 2013: two).<sup>84</sup> The Equal Treatment Commissioner for the City of Linz

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<sup>78</sup> Information received on 2 January 2014 from the Service Centre in response to an information request.

<sup>79</sup> Information received on 29 January 2014 from the Anti-discrimination Commissioner and Equal Treatment Commissioner Tyrol in response to an information request.

<sup>80</sup> Austria, Anti-discrimination Act of Upper Austria (*Oberösterreichisches Antidiskriminierungsgesetz*), LGBI 50/2005 as amended by LGBL 90/2013.

<sup>81</sup> Austria, Anti-discrimination Act of Upper Austria (*Oberösterreichisches Antidiskriminierungsgesetz*), LGBI 50/2005 as amended by LGBL 90/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=20000360](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=20000360), § 2 para. 1.

<sup>82</sup> Information provided upon request by email, Anti-discrimination Contact Point (24 January 2008).

<sup>83</sup> Information provided upon request by email, Anti-discrimination Contact Point (11 February 2010).

<sup>84</sup> Information received on 29 November 2013 from the Anti-discrimination Contact Point in response to an information request.

(*Gleichbehandlungsbeauftragte für den Magistrat Linz*) received no complaints from 2010 to 2013.<sup>85</sup>

## A.1.8. Vienna

In Vienna, discrimination on grounds of sexual orientation in the civil service is prohibited according to §§ 18a-18c and 67b-j of the Civil Servants Act of Vienna (*Wiener Dienstordnung*)<sup>86</sup> and in §§ 4a-4d and 54a-54i of the Act on Contract Employees of Vienna (*Wiener Vertragsbedienstetenordnung*).<sup>87</sup> The prohibition of discrimination with regard to access to and supply of goods and services offered by the provinces and communities, including social protection, social advantages, education and self employment, is laid down in the Anti-discrimination Act of Vienna (*Wiener Antidiskriminierungsgesetz*).<sup>88</sup> In Vienna, the complete scope of Art 3 Racial Equality Directive is covered for all grounds of discrimination except disability. The term Social matters (*Soziales*)<sup>89</sup> is understood to cover Social protection and social advantages. Discrimination through association was included in 2010.<sup>90</sup>

The Viennese Anti-discrimination Contact Point (*Antidiskriminierungsstelle*) is, *inter alia*, competent to advise and support all individuals that feel discriminated against on the ground of sexual orientation. So far, two complaints have been forwarded to the Contact Point – one in 2006, the other in 2007.<sup>91</sup> The Anti-discrimination Contact Point received two complaints in 2008 and 2009.<sup>92</sup> The Viennese Anti-discrimination Contact Point, referring to confidentiality, refused to provide information for the time between 2010 and 2013, but admitted that only a few cases of discrimination on the ground of sexual orientation have been subject to complaints to the Viennese Anti-discrimination Contact Point. The main reason for this lies in the fact that Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für*

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<sup>85</sup> Information received on 4 February 2014 from the Equal Treatment Commissioner for the City of Linz in response to an information request.

<sup>86</sup> Austria, Civil Servants Act of Vienna (*Wiener Dienstordnung*), LGBI 56/1994, last amended by LGBI 33/2013.

<sup>87</sup> Austria, Act on Contract Employees of Vienna (*Wiener Vertragsbedienstetenordnung*), LGBI 50/1995, last amended by LGBI 33/2013.

<sup>88</sup> Austria, Anti-discrimination Act of Vienna (*Wiener Antidiskriminierungsgesetz*), LGBI 35/2004 as amended by LGBI 88/2012.

<sup>89</sup> Austria, Anti-discrimination Act of Vienna (*Wiener Antidiskriminierungsgesetz*), LGBI 35/2004 as amended by LGBI 88/2012, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrW&Dokumentnummer=LRWI\\_1500\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrW&Dokumentnummer=LRWI_1500_000), § 1 para. 1.

<sup>90</sup> Austria (2010), Amendment to the Viennese Antidiscrimination Act (*Gesetz, mit dem das Gesetz zur Bekämpfung von Diskriminierung (Wiener Antidiskriminierungsgesetz) geändert wird*), LGBI. 44/2010, available at: [www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/jahrgang/2010/pdf/lg2010044.pdf](http://www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/jahrgang/2010/pdf/lg2010044.pdf).

<sup>91</sup> Information provided upon request by email by the Viennese Anti-discrimination Contact Point on 7 February 2008.

<sup>92</sup> Information provided upon request by email by the Viennese Anti-discrimination Contact Point on 9 February 2010.

*gleichgeschlechtliche Lebensweisen*), is very well known in the community.<sup>93</sup>

Another anti-discrimination contact point established in Vienna is the Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für gleichgeschlechtliche Lebensweisen*), located within the Vienna municipal administration, which offers advice in a broad, primarily non-legal sense. Until 2009 there have been approximately 150 requests each year.<sup>94</sup> Apart from responding to any such requests, the Contact Point is responsible for projects to promote tolerance for LGBT people. Between 2010 and 2013 many inquiries to the Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles concerned cases not covered by the Vienna Anti-discrimination law. Therefore, only the complaints regarding employment have been reported by the Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles for this period of time: 2010: 14; 2011: 13; 2012: 26, 2013: 28.<sup>95</sup>

Between 2010 and 2013, the Vienna Commissioner for Equal Treatment of Vienna (*Gleichbehandlungsbeauftragte*) received one inquiry (in 2012).<sup>96</sup>

## A.1.9. Vorarlberg

In Vorarlberg, discrimination on the ground of sexual orientation is prohibited in employment by the Act Prohibiting Discrimination (*Gesetz über das Verbot der Diskriminierung*).<sup>97</sup> On 08.02.2008, a draft proposal to implement Council Directive 2004/113/EC was put forward<sup>98</sup>, but no improvements for LGB persons were foreseen then, whereas the scope of protection for transgender persons was proposed to be expanded to the access to and the supply of goods and services. The Act Prohibiting Discrimination was changed in 2008<sup>99</sup>. LGBT-persons now are protected from discrimination

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<sup>93</sup> Information provided by the Vienna Anti-discrimination contact Point (*Antidiskriminierungsstelle*) on 6 December 2013 in response to an information request.

<sup>94</sup> Information provided upon request by telephone by the Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles, Vienna municipal administration on 7 February 2008.

<sup>95</sup> Information provided by the Vienna Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für gleichgeschlechtliche Lebensweisen*) on 3 February 2014 in response to an information request.

<sup>96</sup> Information provided by Vienna Commissioner for Equal Treatment of Vienna (*Gleichbehandlungsbeauftragte*) on 19 February 2014 in response to an information request.

<sup>97</sup> Austria, Vorarlberg Act Prohibiting Discrimination (*Vorarlberger Gesetz über das Verbot der Diskriminierung*), LGBI 17/2005 as amended by LGBI 91/2012.

<sup>98</sup> Austria, Draft proposal, Act on an amendment of the Anti-discrimination Act (*Begutachtungsentwurf, Gesetz über eine Änderung des Antidiskriminierungsgesetzes*), available at: [www.vorarlberg.gv.at/vorarlberg/land\\_politik/land/gesetzgebung/weitereinformationen/newsletter/begutachtungsentwurf.htm](http://www.vorarlberg.gv.at/vorarlberg/land_politik/land/gesetzgebung/weitereinformationen/newsletter/begutachtungsentwurf.htm), (14 February 2008).

<sup>99</sup> Austria, Vorarlberg Act amending the Anti-discrimination Act (*Gesetz über eine Änderung des Antidiskriminierungsgesetzes*), LGBI. 49/2008, available at: [www.ris.bka.gv.at/Dokumente/Lgbl/LGBL\\_VO\\_20080812\\_49/LGBL\\_VO\\_20080812\\_49.html](http://www.ris.bka.gv.at/Dokumente/Lgbl/LGBL_VO_20080812_49/LGBL_VO_20080812_49.html).

concerning the access to and the supply of goods and services. Discrimination because of association was included in 2012.<sup>100</sup>

According to § 11 of the Act Prohibiting Discrimination, the Ombud of the Province of Vorarlberg – Anti-discrimination Contact Point (*Landesvolksanwalt – Antidiskriminierungsstelle*) is responsible for equal treatment issues.<sup>101</sup>

A compilation of the acts and equality bodies at federal as well as at provincial level can be downloaded from the website of the Litigation Association of NGOs against discrimination (LitA) (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*).<sup>102</sup>

The Anti-discrimination contact point at the Ombudsman office of Vorarlberg (*Antidiskriminierungsstelle der Landesvolksanwältin von Vorarlberg*) received no complaints on the ground of sexual orientation between 2010 and 2013.<sup>103</sup>

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<sup>100</sup> Austria, Vorarlberg, Anti-discrimination Act (*Antidiskriminierungsgesetz*), LGBI. 91/2012, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrVbg&Dokumentnummer=LRVB\\_0910\\_000\\_20121221\\_99999999&ResultFunctionToken=3c8b1c49-393e-4b7e-a740-8684413f34ff&Position=1&Titel=&Lgblnummer=&Typ=&Index=&FassungVom=15.01.2014&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=diskriminierung](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrVbg&Dokumentnummer=LRVB_0910_000_20121221_99999999&ResultFunctionToken=3c8b1c49-393e-4b7e-a740-8684413f34ff&Position=1&Titel=&Lgblnummer=&Typ=&Index=&FassungVom=15.01.2014&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=diskriminierung).

<sup>101</sup> The Ombud did not provide information. Telephone and email requests on 24 January 2008 and 8 February 2010).

<sup>102</sup> Austria, Litigation association of NGOs against discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*), Website of the Litigation association of NGOs against discrimination, available at: [www.klagsverband.at/gesetze](http://www.klagsverband.at/gesetze), (15 May January 2014).

<sup>103</sup> Information received on 4 February 2014 from the Anti-discrimination contact point at the Ombudsman office of Vorarlberg (*Antidiskriminierungsstelle der Landesvolksanwältin von Vorarlberg*) in response to an information request.

## B. Freedom of movement<sup>104</sup>

On 1 January 2006, the so-called Aliens' Rights Package 2005 (*Fremdenrechtspaket 2005*)<sup>105</sup> entered into force.<sup>106</sup> It consists of the Aliens' Police Act (*Fremdenpolizeigesetz*), the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*) and the Asylum Act (*Asylgesetz*). Only the regulations relevant to same-sex couples are presented in this report.

The Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*)<sup>107</sup> provides family members of EEA and Swiss citizens with a number of legal possibilities to reside in Austria.

§ 2 para 1/9 Settlement and Residence Act defines family members (*Familienangehörige*) as spouses, unmarried minor children and registered partners. According to § 8 (8) NAG they are entitled for a residence title "family member". Unmarried, or un-registered partners generally do not qualify as family members.

By way of the Registered Partnership Act 2009 – RPA (*Eingetragene Partnerschafts-Gesetz 2009, EPG*), the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*) has been amended. Article 59 of the EPG included the amendments relevant to the NAG. According to the amended provisions, both registered or married (in case the law of the country of origin allows for marriage of same-sex partners) partners may be granted the normal residence permits according to the detailed provisions of § 47 NAG and §51 et seqq. NAG. Registered or married partners may thus be granted residence permits provided that the registration of their partnership meets the normal requirements provided in the laws on the personal status (*personenstandsrechtliche Voraussetzungen*).

The Federal Ministry of the Interior (BMI) issued an order in August 2011 that homosexual couples who married abroad or registered their partnership in another country before the entry into force of the Registered Partnership Act 2009 also have the right to subsequent immigration of family members (*Familiennachzug*), i.e. family reunification.<sup>108</sup> Marriages of homosexual couples from other countries are only qualified as registered partnerships according to this order, as marriages among homosexual couples are not allowed in Austria. Until then, this right was not explicitly foreseen for such registered

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<sup>104</sup> Schuhmacher, S./Peyerl, J. (2006) *Fremdenrecht*, Vienna, OeGB Verlag, pp. 100-104.

<sup>105</sup> Austria, Aliens' Rights Package 2005 (*Fremdenrechtspaket 2005*), BGBl 100/2005.

<sup>106</sup> The most comprehensive textbook on the Aliens' Rights Package is Bruckner, R./Doszokil, H./Marth, T./Taucher, W./Vogl, M. (2008), *Fremdenrechtspaket*, Vienna, nwv.

<sup>107</sup> Austria, Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*), BGBl I 157/2005, last amended by BGBl I 144/2013.

<sup>108</sup> Austria, Federal Ministry of the Interior (*Bundesministerium für Inneres*) (2011), Information on registered partnerships, which have been concluded abroad prior to the EPG (*Information betreffend (gleichgeschlechtliche) Partnerschaften, die vor Inkrafttreten des EPG geschlossen wurden, im Ausland geschlossene Ehen zwischen gleichgeschlechtlichen Partnern und Namenseintragungen von Österreichern in ausländischen Geburtsurkunden*), 19 August 2011, GZ.: BMIVA1300/ 0213-III/2/2011.



partnerships. Due to this order, the legal situation was clarified and no amendments of the law are therefore required. As stated above, non-registered and unmarried partners do not qualify as family members.

If living-partners (*Lebenspartner*) – the term is not explicitly defined but seems to cover stable relations that are not legally registered – originate from a country where there is a registered partnership for same-sex couples, they can prove this via this registration. Otherwise, the existence of such a partnership can be proved in other ways, e.g. by providing witnesses, documents, photos or a registration card. There is no legal minimum period of time for which the ‘stable partnership’ must have lasted in the country of origin. It is essential that the partners intend to have and maintain a partnership.

There are no official figures on how many LGBT partners of EEA citizens reside in Austria.<sup>109</sup>

Partners of EEA/Swiss citizens who are EEA/Swiss citizens themselves are entitled to settlement in Austria. In many cases they will have an original right to settlement themselves.<sup>110</sup> The right to residence is attributed primarily by EU law and there is no need to apply to the Austrian authorities. They can receive a registration certificate (*Anmeldebescheinigung*) if they possess a passport, health insurance and sufficient money. Unlike third country nationals, no minimum amount of money must be demanded by the authorities.

According to § 56 of the Settlement and Residence Act, third country national partners of EEA/Swiss citizens can obtain a quota-free Settlement Permit – Family Member (*Niederlassungsbewilligung – Angehöriger*). The EEA/Swiss partner has to prove the necessary subsistence (*Unterhalt*) and to make a Declaration of Liability (*Haftungserklärung*), in which she or he commits her or himself to cover all relevant costs.

The Settlement Permit – Family Member is issued for a period of twelve months. The holder of this permit can apply for a Settlement Permit – Restricted (*Niederlassungsbewilligung – beschränkt*), which guarantees an original right of settlement. Therefore the general requirements must be fulfilled and the person must possess a Certificate of intent to grant a work permit (*Sicherungsbescheinigung*) in accordance with § 11 of the Aliens Employment Act (*Ausländerbeschäftigungsgesetz*).<sup>111</sup> The Federal Ministry of the Interior (*BMI*) issued an order in August 2011 that homosexual couples who married abroad or registered their partnership in another country have the right to subsequent

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<sup>109</sup> Information provided upon request via email by a representative of the Ministry of the Interior, department III/4 on 6 February 2008.

<sup>110</sup> Austria, Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*), BGBl I 157/2005, last amended by BGBl I 144/2013, §§ 52, 53, 57.

<sup>111</sup> Austria, Aliens’ Employment Act (*Ausländerbeschäftigungsgesetz*), BGBl 218/1975, last amended by BGBl I 72/2013.

immigration of family members.<sup>112</sup> Until then, this right was not explicitly foreseen for registered partnerships.

A search on the RIS shows two decisions by the Highest Administrative Court (*Verwaltungsgerichtshof, VwGH*) which deal with (registered) partnerships and residence permits.<sup>113</sup> In Case 2011/22/0162<sup>114</sup> the Highest Administrative Court dealt with a case similar to C-256/11, with the only (for the court not relevant) difference, that it was a registered partnership and not a marriage. The decision of the lower instance, which rejected the claim to receive a residence title “family member”, was lifted and the case was remitted to the lower instance. The follow-up decision of the lower instance could not be found.

In Case 2008/22/0308 a Kosovarian national applied for a residence title “dependent” (*Angehöriger*) according to § 47 (3) Residence and Settlement Act, which was rejected. The authority stated that the claimant has lived in a homosexual relationship since 2005 with an Austrian national and receives factual support from him. They met in Austria, therefore § 47 (3) NAG is not applicable (as it foresees, that a joined household had to exist in the country of origin). The claimant appealed against this decision. The country of origin in the sense of § 47 (3) NAG can only be another country than Austria. Therefore the claim was rejected, as it was undisputed in this case, that the partnership was founded in Austria. The Kosovar claimant did not receive the residence title.

No significant trends on how the law has been implemented can be identified from these cases.

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<sup>112</sup> Austria, Federal Ministry of the Interior (*Bundesministerium für Inneres*) (2011), Information on registered partnerships, which have been concluded abroad prior to the EPG (*Information betreffend (gleichgeschlechtliche) Partnerschaften, die vor Inkrafttreten des EPG geschlossen wurden, im Ausland geschlossene Ehen zwischen gleichgeschlechtlichen Partnern und Namenseintragungen von Österreichern in ausländischen Geburtsurkunden*), 19 August 2011, GZ.: BMIVA1300/ 0213-III/2/2011.

<sup>113</sup> Austria, Highest Administrative Court (*Verwaltungsgerichtshof*), 2011/22/0162 of 18 October 2012 and 2008/22/0308 of 7 April 2011.

<sup>114</sup> Austria, Highest Administrative Court (*Verwaltungsgerichtshof*) (2012), 2011/22/0162, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT\\_2011220162\\_20121018X00](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2011220162_20121018X00) (last accessed 9 May 2014).

## C. Asylum and subsidiary protection

No official data are available either on the number of persons who were granted asylum or subsidiary protection because of persecution on the ground of sexual orientation, or on family members of such persons.<sup>115</sup> The Federal Ministry of the Interior provides extensive Asylum Statistics, updated every month, but these statistics do not include any information on asylum or subsidiary protection because of sexual orientation.<sup>116</sup>

In Austria, asylum law is laid down in the Asylum Act 2005 (*Asylgesetz 2005*).<sup>117</sup> LGBT people are considered to be a particular social group by the dominant doctrine<sup>118</sup> and practice<sup>119</sup> and are therefore protected by the Geneva Refugee Convention. LGBT-persons have frequently been considered a “social group” according to Article 10 of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. As of 1 January 2014 the whole legal system regarding asylum and alien law matters was reformed. A new institution – the Federal office on alien matters and asylum (*Bundesamt für Fremdenwesen und Asyl*) was installed. Furthermore, through the administrative litigation reform (*Verwaltungsgerichtsreform*), the asylum court ceased to exist, and its matters are now dealt with by the Federal Administrative Court (*Bundesverwaltungsgericht*).

A search on the Federal Legal Information Service (*Rechtsinformationssystem des Bundes (RIS)*) shows a number of decisions by the Federal Asylum Office (*Bundesasylamt (BAA)*) and the Asylum Court in favour of LGBT asylum seekers.<sup>120</sup> There is also a number of negative decisions by the Asylum Court. For detailed information on case numbers please see the Annex. There are two<sup>121</sup>

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<sup>115</sup> Information provided upon request by email, Ministry of the Interior, department III/5 on 24 January 2008.

<sup>116</sup> For example: Austria, Federal Ministry of the Interior (*Bundesministerium für Inneres*) (2013), Asylum statistics December 2013 (*Asylstatistik 2013*), available at: [www.bmi.gv.at/cms/BMI\\_Asylwesen/statistik/files/2013/Asylstatistik\\_Dezember\\_2013.pdf](http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik/files/2013/Asylstatistik_Dezember_2013.pdf).

<sup>117</sup> Austria, Asylum Act 2005 (*Asylgesetz 2005*), BGBl I 100/2005, last amended by BGBl 144/2013.

<sup>118</sup> Schuhmacher, S./Peyrl, J. (2006), *Fremdenrecht*, second edition, Vienna: ÖGB Verlag, pp. 176-177.

<sup>119</sup> See decisions in Annex 1.

<sup>120</sup> It is impossible to give meaningful numbers here as the decisions listed in the RIS are not complete as they for instance do not include decisions by the first instance.

<sup>121</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*) (2013), U1268/13 of 16 September 2013, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT\\_20130916\\_13U01268\\_00&ResultFunctionToken=37e05635-d04a-400e-a750-](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20130916_13U01268_00&ResultFunctionToken=37e05635-d04a-400e-a750-7678472a36fb&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechts)

[7678472a36fb&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechts](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20130916_13U01268_00&ResultFunctionToken=37e05635-d04a-400e-a750-7678472a36fb&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechts) satz=True&SucheNachText=True&GZ=&VonDatum=&BisDatum=12.05.2014&Norm=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=sexuelle+orientierung (accessed on 12 May 2014); and Austria, Constitutional Court (*Verfassungsgerichtshof*) (2012), U1776/11 of 5 March 2012, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT\\_09879695\\_11U01776\\_2\\_00&ResultFunctionToken=37e05635-d04a-400e-a750-](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09879695_11U01776_2_00&ResultFunctionToken=37e05635-d04a-400e-a750-7678472a36fb&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechts)

[7678472a36fb&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechts](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09879695_11U01776_2_00&ResultFunctionToken=37e05635-d04a-400e-a750-7678472a36fb&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechts)

relevant decisions of the Constitutional Court on asylum, falling into the reference period.<sup>122</sup> Both cases concerned the same case of a homosexual Nigerian. The Constitutional Court found the actions of the first and second instance as being arbitrary and in the first round (U1776/11) sent the case back to the prior instances and in the second round (U1268/13) lifted the decision. This was a purely formal decision, with no further substantive interpretations of the law. Thus no trends resulting from these decisions could be identified.

Decisions mostly concern Iranian, Afghan, Nigerian and Ukrainian LGBT persons (see Annex 1). There are no relevant highest court decisions on the questions of LGBT as a particular social group, the qualification of an actual application of imprisonment as an act of persecution or the impossibility to expect from LGBT to conceal their sexual orientation and/or gender identity.<sup>123</sup>

Already in 1991 the explanations to the Asylum Act 1991 clearly stated, that persecutions because of sexual orientation are to be seen as persecution because of belonging to a particular social group, and has since then been reiterated at various occasions.<sup>124</sup>

The cases of the (then) Asylum Court analysed in the course of this research mainly evolved around the questions of credibility of claimants, internal flight alternatives.

Regarding the impossibility to expect from LGBT to conceal their sexual orientation and/or gender identity the Asylum Court in one decision quotes the UNHCR Guidance note on refugee claims relating to sexual orientation and gender identity, where several cases were analysed, stating that the possibility of the persecuted to evade persecution because of evading measures (e.g. keeping one's sexual orientation secret) does not preclude the persecutorial character. The court clearly states, that a future suppression of her sexual needs and interests cannot be expected from LGBT persons.<sup>125</sup>

Family reunification of refugees is only possible under the regime of the Settlement and Residence Act (*Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich, Niederlassungs- und Aufenthaltsgesetz - NAG*, last modified by BGBl. I Nr. 144/2013). Only spouses and minor children

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satz=True&SucheNachText=True&GZ=&VonDatum=&BisDatum=12.05.2014&Norm=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=sexuelle+orientierung (accessed on 12 May 2014).

<sup>122</sup> Identified using the search words "sexual orientation" within the public registry ris.bka.gv.at of the Highest Administrative Court and the Constitutional Court.

<sup>123</sup> The search was conducted using the search words "sexual orientation" within the public registry ris.bka.gv.at of the Highest Administrative Court and the Constitutional Court.

<sup>124</sup> See e.g. Austria, Asylum Court (*Asylgerichtshof*) (2013), D3 434775-1/2013/6E of 16 July 2013, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT\\_20130716\\_D3\\_434\\_775\\_1\\_2013\\_00](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20130716_D3_434_775_1_2013_00) (last accessed 12 May 2014). For further quotes see Austria, Asylum Court (*Asylgerichtshof*), (2010), C10 257854-0/2008/6E at point 3.5. of 10 March 2010, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT\\_20100310\\_C10\\_257\\_854\\_0\\_2008\\_00](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20100310_C10_257_854_0_2008_00) (last accessed 12 May 2014).

<sup>125</sup> Austria, Asylum Court (*Asylgerichtshof*) (2011), A5 410.832-1/2010/20Eof 9 May 2011, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT\\_20110509\\_A5\\_410\\_832\\_1\\_2010\\_00](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=AsylGH&Dokumentnummer=ASYLGHT_20110509_A5_410_832_1_2010_00) (last accessed 12 May 2014).

are entitled to apply for a Settlement Permit – Unrestricted (*Niederlassungsbewilligung – unbeschränkt*). Therefore, family reunification of same-sex partners – unless they are married or registered – is not possible.

A search on the Federal Legal Information Service (*Rechtsinformationssystem des Bundes (RIS)*) showed two decisions on family reunification under the Settlement and Residence Act (see Annex 1 for further details).

Since 1 July 2008 until 31 December 2013 the Asylum Court (*Asylgerichtshof*) had been active.<sup>126</sup> It acted as the last instance regarding individual complaints against decisions by the Asylum Offices (as of 1 January 2014 Federal Offices for Asylum and Alien Matters). There were no ordinary remedies against these decisions. Still, decisions of the Asylum Court could be taken to the Constitutional Court as extraordinary remedies (*außerordentliches Rechtsmittel*).

As of 1 January 2014 the Asylum Court was replaced by the Federal Administrative Court. The Federal Office for Asylum and Alien Matters acts as the first instance in asylum procedures, the Federal Administrative Court as the second instance. Decisions of the Federal Administrative court can be brought to the Highest Administrative Court, if the decision on solving the case depends on a fundamental legal question (*grundlegende Rechtsfrage*).

The deportation of a lesbian Ukraine citizen was declared unlawful because she has proved to be well integrated in Austria.<sup>127</sup> In one case the Asylum Court decided that the Federal Asylum Office (*Bundesasylamt*) has failed to collect the relevant evidence and needs to do so.<sup>128</sup> A Liberian citizen was denied asylum because the court did not believe his descriptions – and therefore did not consider it necessary to verify the argument that he was a victim of discrimination on ground of his sexual orientation.<sup>129</sup> There is a similar case of a Serbian citizen of Roma origin who argued that he suffered persecution due to being a Roma and being homosexual. The Asylum Court also dismissed his application because the evidence given was not considered credible – and because he was convicted several times due to drug related delinquency.<sup>130</sup>

A Pakistani transsexual was granted asylum, as she would have been forced into prostitution in her country of origin due to her sexual orientation (identity), to guarantee basic means of subsistence.<sup>131</sup> An Afghan national was granted asylum, as he would fear persecution because of his homosexuality in his country of origin.<sup>132</sup>

The number of cases on sexual orientation in front of the asylum authorities and the (then) asylum court rose, as can be seen looking at the statistics below. Also the number of cases in which asylum

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<sup>126</sup> Austria, Asylum Court Implementation Act (*Asylgerichtshof Einrichtungsgesetz*), BGBl. I 4/2008.

<sup>127</sup> Austria, Asylum Court (*Asylgerichtshof*), D8 268476-0/2008, (13 November 2009).

<sup>128</sup> Austria, Asylum Court (*Asylgerichtshof*), D1 319244-1/2008, (13 August 2009).

<sup>129</sup> Austria, Asylum Court (*Asylgerichtshof*), A2 407466-1/2009, (30 November 2009).

<sup>130</sup> Austria, Asylum Court (*Asylgerichtshof*), B1 310343-1/2008, (16 November 2009).

<sup>131</sup> Austria, Asylum Court, E1 432.053-1/2013/5E of 29 January 2013.

<sup>132</sup> Austria, Asylum Court, C4 417.734-1/2011/9E of 10 December 2012.

was granted went up.

There is a very high number of cases (exceeding 400)<sup>133</sup> to be found for the period of 1 January 2010 until 31 December 2013 using the key words “sexual orientation” and “family member” at the national registry of the courts (ris.bka.gv.at). It is not manageable within this study to analyse all those cases regarding how the concept of family member is understood.

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<sup>133</sup> Please note that this high number does not mean that all those cases concerned the topic of family members of asylum seekers invoking “sexual orientation” but does also comprise any case where country of origin information on these topics was included to form a holistic picture. There is no further fine tuning of searches possible within the registry webpage.

## D. Family reunification

According to § 46 of the Settlement and Residence Act<sup>134</sup> family reunification is restricted to family members (*Familienangehörige*). According to the definition of § 2 para 1 no 9 Settlement and Residence Act family members are spouses, unmarried minor children, and registered partners. There are no provisions on family reunification included in the Registered Partnership Act and there is no case law yet.

A search on the Federal Legal Information Service (*Rechtsinformationssystem des Bundes* (RIS)) does not show any decisions on family reunification of LGBT partners and unmarried minor children under the Settlement and Residence Act.

The Federal Ministry of the Interior (*BMI*) issued an order in August 2011 that homosexual couples who married abroad or registered their partnership in another country before the entry into force of the EPG have the right to subsequent immigration of family members.<sup>135</sup> Until then, this right was not explicitly foreseen for these registered partnerships. Due to this order, the legal situation was clarified and no amendments of the law are therefore required.

No statistics are available<sup>136</sup>.

A search on the RIS has not shown any new decisions in the respective field (15 January 2014).

As there are no statistics and no new case law available, there are no clear trends to be identified on this basis.

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<sup>134</sup> Austria, Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*), BGBl I 157/2005, last amended by BGBl I 144/2013.

<sup>135</sup> Austria, Federal Ministry of the Interior (*Bundesministerium für Inneres*) (2011), Information on registered partnerships, which have been concluded abroad prior to the EPG (*Information betreffend (gleichgeschlechtliche) Partnerschaften, die vor Inkrafttreten des EPG geschlossen wurden, im Ausland geschlossene Ehen zwischen gleichgeschlechtlichen Partnern und Namenseintragungen von Österreichern in ausländischen Geburtsurkunden*), 19 August 2011, GZ.: BMIVA1300/ 0213-III/2/2011.

<sup>136</sup> Information provided upon request via email by a representative of the Ministry of the Interior, department III/4 on 6 February 2008 and 21 January 2014.

## E. Freedom of assembly

The principle of freedom of assembly is laid down in two constitutional statutes, namely Article 12 of the Constitutional Law on General Rights of Citizens (*Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger*)<sup>137</sup> for citizens only, and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten*)<sup>138</sup> irrespective of nationality. The Assembly Act 1953 (*Versammlungsgesetz 1953*)<sup>139</sup> sets out in more detail the requirements regarding notification (§ 1) and the prohibition of assemblies that violate criminal law or public order (§ 6). Moreover, foreigners are not allowed to act as organisers of an assembly to negotiate public issues (“zur Verhandlung öffentlicher Angelegenheiten”), and it is forbidden to hide the face or to use instruments that prevent persons from being identified (§ 9). However, no special regulations exist for assemblies of LGBT persons.

According to § 2 of the Assembly Act 1953, assemblies open to the public have to be notified to the police or the District Administration Authority (*Bezirksverwaltungsbehörde* (BH)) at least 24 hours in advance.

§ 6 of the Assembly Act 1953 provides that the public authorities have to ban demonstrations infringing criminal law, public security and the public well-being. General demonstrations in favour of LGBT persons are therefore legal. Demonstrations against LGBT persons are legal under the same conditions.

A search on the Federal Legal Information Service (*Rechtsinformationssystem des Bundes* (RIS)) shows no case law as of 16 January 2014.

In Austria, several public events are organised in favour of tolerance of LGBT people. The best known example is the annual Rainbow Parade (*Regenbogenparade*) in Vienna. Local associations and individuals hold numerous comparable events. However, no official statistics exist on events either in favour of, or against, LGBT people in Austria.<sup>140</sup>

As there are no statistics and no case law available, there are no clear trends to be identified on this basis.

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<sup>137</sup> Austria, Constitutional Law on General Rights of Citizens (*Staatsgrundgesetz*), RGBL 1867/142.

<sup>138</sup> Austria, European Convention for the Protection of Human Rights and Fundamental Freedoms (*Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten*), BGBl 210/1958, last amended by BGBl III 47/2010.

<sup>139</sup> Austria, Assembly Act 1953 (*Versammlungsgesetz 1953*), BGBl 98/1953, last amended by BGBl I 161/2013.

<sup>140</sup> No information has been provided by the Ministry of the Interior or the Vienna Federal Police Bureau (*Bundespolizeidirektion Wien* (BPD Wien)) upon request via telephone and email on 22 January 2008.



## F. Criminal law

Hate speech and hate crimes are still not commonly used terms in Austrian (criminal) law. Special provisions in criminal law on homophobic crimes do not exist, and statistics on homophobic crimes are not available.

§ 33 para 1 (5) 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 as aggravating factors. This was for example stated by the Federal Minister of Justice in a reply to a parliamentary inquiry in August 2013, stating that “Generally speaking homophobic violence can be subsumed under § 33 para 1 (5) Criminal Code (StGB) as well as any other form of violence”.<sup>141</sup>

Gery Keszler, organiser of the annual pro-LGBT ‘Life Ball’ was called a ‘professional poof’ (‘*Berufsschwuchtel*’) in an article published in the right-wing weekly magazine *Zur Zeit*.<sup>142</sup> The element libel (*Beleidigung*) is regulated in § 115 of the Criminal Code<sup>143</sup> and is – according to § 117 of the Criminal Code – a so-called crime subject to private prosecution (*Privatanklagedelikt*)<sup>144</sup>. On 15 January 2008, the Vienna Regional Criminal Court (*Straflandesgericht Wien*) found the author not guilty. According to a newspaper article,<sup>145</sup> the judge argued that the remark could constitute libel, but a public figure such as Mr Keszler should be expected to be subject to such a level of public criticism. On 24 June 2009, the journalist was convicted to a fine of 750 Euro and a compensation of 4,000 Euro.<sup>146</sup> The case is now final.

Therefore, homophobic hate speech may qualify as libel (§ 115 of the Criminal Code).

§283 (1) of the Criminal Code penalises public incitement to acts of violence against (a member of) a religious community or church or against (a member of) a group determined by their race, colour, language, religion or belief, nationality or ethnic origin, sex, disability, age or sexual orientation provided that the incitement is done because the individual or group of individuals belongs to that group and provided that this is done in a manner suitable to disturb the public order or this is done in

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<sup>141</sup> Austria, Federal Minister of Justice (2013), Reply to a parliamentary inquiry, BMJ-Pr7000/0176-Pr1/2013, 26 August 2013, available at: [www.parlament.gv.at/PAKT/VHG/BR/AB-BR/AB-BR\\_02734/fname\\_320943.pdf](http://www.parlament.gv.at/PAKT/VHG/BR/AB-BR/AB-BR_02734/fname_320943.pdf).

<sup>142</sup> *Zur Zeit* (July 2007), Online version of the magazine, available at: <http://www.zurzeit.at>.

<sup>143</sup> Bertel, C./Schwaighofer, K. (2008), *Oesterreichisches Strafrecht: Besonderer Teil §§ 75 bis 168b StGB*, Vienna/New York, Springer, pp. 139-143.

<sup>144</sup> Bertel, C./Schwaighofer, K. (2008), *Oesterreichisches Strafrecht: Besonderer Teil §§ 75 bis 168b StGB*, Vienna/New York, Springer, pp. 144-147.

<sup>145</sup> *dieStandard.at* (2008), ‘Gery Keszler als “Berufsschwuchtel” bezeichnet: Klage abgewiesen’, 20 March 2008, available at: <http://diestandard.at/?id=1200408517742>.

<sup>146</sup> *derStandard.at* (2009), ‘“Berufsschwuchtel” ist Beleidigung’, 24 June 2009, available at: <http://derstandard.at/1245819929972/Keszler-gewinnt-Klage-Berufsschwuchtel-ist-Beleidigung>.

a manner noticeable for the wider public. The penalty foreseen is two years of imprisonment.

Furthermore, § 283 (2) StGB prohibits the public agitation against a group specified in § 283 (1) and further prohibits insults violating the human dignity of such a group provided that the insult aims to disparage the group and is made to the wider public. The penalty foreseen is up to two years of imprisonment.

These provisions also apply regarding transgender or gender reassignment issues.

Moreover, homophobic hate speech is covered by the ETA as harassment (*Belästigung*) in employment.

Insult (*Ehrenbeleidigung*) is laid down in § 1330 Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). It covers all kinds of violations of human dignity by verbal abuse, hurt or mockery<sup>147</sup>. Homophobic hate speech can be qualified as insult. Still, a search on the Federal Legal Information Service (*Rechtsinformationssystem des Bundes (RIS)*) does not show any decisions.

Until 2002, the most severe form of discrimination against gay people in Austria could be found in § 209 of the Criminal Code. While there was a general minimum age of 14 years for sexual relations among heterosexuals or between two women, § 209 prohibited male persons who had attained the age of 19 years from ‘fornicating’ with a person of the same sex who had attained the age of 14 years but not the age of 18 years. In 2002, upon a request for review made by the Innsbruck Regional Criminal Court (*Straflandesgericht Innsbruck*), the Constitutional Court found that § 209 of the Criminal Code was unconstitutional. This decision was the consequence of a number of judgements delivered by the European Court of Human Rights that established different age limits for men and women for sexual relations to be in breach of Articles 8 and 14 of the European Convention on Human Rights.<sup>148</sup> Subsequently, more neutral clauses were introduced into the Criminal Code, setting the age at 16 years for all sexual relations.<sup>149</sup> Even now that the law is apparently neutral, experience shows that these sections are mainly targeted at gay men. Court cases relying upon the new regulations that were initiated in 2002 only concerned male homosexual relations.<sup>150</sup> In the first half of 2003, half of the

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<sup>147</sup> Koziol, H./Welser, R. (2008), *Grundriss des bürgerlichen Rechts. Band II*, Vienna, Manz, p. 349.

<sup>148</sup> European Court of Human Rights, *S.L. vs. Austria*, 09.01.2003; *L. and V. vs Austria*, 09.01.2003; *R.H. vs. Austria*, 19 January 2006; *Wolfmeyer vs. Austria*, 12 May 2005.

<sup>149</sup> Austria, Criminal Code (*Strafgesetzbuch*), BGBl. Nr. 60/1974 last amended by BGBl. I Nr. 134/2013, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296), §§ 207a and 208..

<sup>150</sup> Austria, Federal Ministry of Justice (*Bundesministerium für Justiz*) (2003), Reply to a parliamentary inquiry from Federal Minister Dr. Dieter Böhmendorfer regarding a written inquiry (91/J) of Dr. Caspar Einem and colleagues to the Federal Ministry of Justice regarding prosecution of homo- and bisexual men (§ 209 StGB) (*Anfragebeantwortung durch den Bundesminister für Justiz Dr. Dieter Böhmendorfer zu der schriftlichen Anfrage (91/J) der Abgeordneten Dr. Caspar Einem, Kolleginnen und Kollegen an den Bundesminister für Justiz betreffend*

criminal court proceedings initiated still concerned male-male relations.<sup>151</sup> This discriminatory application of § 207a of the Criminal Code even triggered the European Parliament to call upon Austria to apply the new regulations in a non-discriminatory manner.<sup>152</sup> However, persons who had been convicted under §209 of the Criminal Code have not been compensated.

Moreover, the nationwide retention of records of convictions under § 209 in the Registry of Convictions (*Strafregister*) is still being upheld, as this practice was confirmed by the Constitutional Court in 2006.<sup>153</sup> This was ruled as a violation of Art 8 and Art 14 and Art 13 of the European Convention on Human Rights by the European Court of Human Rights on 7 November 2013.<sup>154</sup>

There are no statistics available for the identification of trends. It is difficult to identify relevant case law, as the hate motive is usually not considered in the judgments as a motive for the crime (neither as an aggravating circumstance, nor in the determination of the penalty). This issue has been addressed by a Parliamentary inquiry questioning the way the Austrian judiciary deals with such crimes.<sup>155</sup>

## F.1. Provisions similar to the institutional homophobia proposed in Lithuania

In Austria, the *Pornography Act (Pornographiegeseztz)*<sup>156</sup> is the equivalent to the Lithuanian law on the protection of minors against the detrimental effects of public information. The Pornography Act includes provisions against the publication and dissemination of media promoting sexually deviant acts (§ 1) and against the publication and dissemination of any media endangering the moral and health development of juveniles (§ 2). None of these provisions makes any distinction between heterosexual

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*strafrechtliche Verfolgung homo- und bisexueller Männer* (§ 209 StGB)), 04 April 2003), available at: [www.parlament.gv.at/PG/DE/XXII/AB/AB\\_00091/fname\\_002664.pdf](http://www.parlament.gv.at/PG/DE/XXII/AB/AB_00091/fname_002664.pdf).

<sup>151</sup> Austria, Federal Ministry of Justice (*Bundesministerium für Justiz*) (2003), Reply to a parliamentary inquiry (656/J) of Mag. Melitta Trunk and colleagues to the Federal Ministry of Justice regarding use of § 207 b StGB against homosexual men (*Anfragebeantwortung durch den Bundesminister für Justiz Dr. Dieter Böhmdorfer zu der schriftlichen Anfrage (656/J) der Abgeordneten Mag. Melitta Trunk, Kolleginnen und Kollegen an den Bundesminister für Justiz betreffend ausschließliche Anwendung des §207b StGB gegen homosexuelle Männer*), 05 September 2003), available at: [www.parlament.gv.at/PG/DE/XXII/AB/AB\\_00660/fname\\_007871.pdf](http://www.parlament.gv.at/PG/DE/XXII/AB/AB_00660/fname_007871.pdf).

<sup>152</sup> For details see: Graupner, H. (2004) 'Austria', in: Report of the European Group of Experts on Combating Sexual Orientation Discrimination (2004), Combating Sexual Orientation Discrimination in Employment, legislation in 15 EU member states, p. 54, available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/aneval/sexorfull\\_a.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/sexorfull_a.pdf), (20 February 2008).

<sup>153</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*), B0742/06, 4 October 2006.

<sup>154</sup> European Court of Human Rights, *Case of E.B. and Others v. Austria*, Applications nos. 31913/07, 38357/07, 48098/07, 48777/07 and 48779/07, 7 November 2013.

<sup>155</sup> Austria, Parliament (*Parlament*) (2013), Parliamentary inquiry of 26 June 2013 (*Parlamentarische Anfrage vom 26.6.2013*), available at: [http://www.parlament.gv.at/PAKT/VHG/BR/J-BR/J-BR\\_02952/fnameorig\\_312108.html](http://www.parlament.gv.at/PAKT/VHG/BR/J-BR/J-BR_02952/fnameorig_312108.html).

<sup>156</sup> Austria, Pornography Act (*Pornographiegeseztz*), BGBl 97/1950 last amended by BGBl I 50/2012.

and homosexual or bisexual acts. A search on the RIS shows that no hint can be found that LGBT issues are targeted more often than heterosexual issues.

§ 220 of the Criminal Code outlawing the promotion of homosexual activities or sodomy was abolished in 1996 by BGBl 1996/762. Such promotion was considered an offense constituted by the content of a media (*Medieninhaltsdelikt*) according to § 1 para 1 subsec 12 Media Act (*Mediengesetz*)<sup>157</sup>. According to § 34 Media Act the prosecutor can apply for a publication of the judgement.

There has never been any suspicion that “phallometry” or “phallometric testing” has been applied in Austria.

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<sup>157</sup> Austria, Media Act (*Mediengesetz*), BGBl 314/1981 last amended by BGBl I 50/2012.

## G. Transgender Issues

The ETA does not make explicit reference to transgender issues. However, transgender-specific issues, including gender identity and transsexuality, are considered by legal doctrine to be covered by the discrimination ground of gender<sup>158</sup>, a position which corresponds to that of the government (see below). Consequently, transgender issues should fall within the scope of Part 1 of the Equal Treatment Act, headed ‘Equal treatment of men and women in the employment area’.<sup>159</sup>

Council Directive 2004/113/EC prohibiting discrimination between men and women in access to and supply of goods and services was transposed into national law. The respective provisions were incorporated into the Equal Treatment Act<sup>160</sup>. Transgender people are protected from discrimination in the field of goods and services, as discrimination of transgender persons is considered as discrimination on grounds of gender.<sup>161</sup> However, the new provisions do not apply to lesbians, gay men and bisexuals. Still, the provisions of most provinces (except Lower Austria) cover sexual orientation, too (see A 1.1- A1.9).

In Austria, no specific legislation on transgender issues is so far in place. If transgender persons feel discriminated against, their complaint is filed under the discrimination ground of gender in accordance with the Equal Treatment Acts and Anti-discrimination Acts applicable.

The legal basis for a change of name can be found in the Personal Status Act (*Personenstandsgesetz*) (last amended in January 2013)<sup>162</sup> and the Change of Name Act (*Namensänderungsgesetz*).<sup>163</sup>

No statistics exist on how many persons have changed their sex/gender, or how many name changes have been effected due to changes of gender.

The Personal Status Act stipulates that the authorities keep Personal Status Registers (*Personenstandbücher*) that hold the names, birth dates, dates of marriages and dates of death of individuals. § 41 (1) reads as follows: ‘The Personal Status Authority has to change a registration if it has become incorrect.’

§ 2 para 2 no 3 of the Change of Name Act provides that forenames can be changed if ‘the forename is not in accordance with the holder’s sex’.

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<sup>158</sup> Bei, N. (1997) ‘Diskriminierung transsexueller Personen’, in: *Das Recht der Arbeit 1997*, p. 245

<sup>159</sup> Windisch-Graetz, M. (2005), ‘§ 17’, in: R. Rebhahn (ed.), *GIBG – Gleichbehandlungsgesetz Kommentar*, Wien New York, Springer, p. 446.

<sup>160</sup> Austria, Amendment to the Equal Treatment Act and the Act on the Equal Treatment Commission and the Ombud for Equal Treatment (*Änderung des Gleichbehandlungsgesetzes sowie des Bundesgesetzes über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*), BGBl I 98/2008.

<sup>161</sup> Austria, Explanatory Notes (*Erläuterungen*), RV 415dB XXIII. GP, available at: [www.parlament.gv.at/PG/DE/XXIII/I/I\\_00415/fname\\_096505.pdf](http://www.parlament.gv.at/PG/DE/XXIII/I/I_00415/fname_096505.pdf).

<sup>162</sup> Austria, Personal Status Act 2013 (*Personenstandsgesetz 2013*), BGBl I 16/2013.

<sup>163</sup> Austria, Change of Name Act (*Namensänderungsgesetz*), BGBl 195/1988 last amended by BGBl 161/2013.

In 1996, the Ministry of the Interior (MoI) issued an internal order (*Erlass*), the so-called Transsexual Order (*Transsexuellen-Erlass*),<sup>164</sup> stating that after a change of gender a name can only be changed (to another name typical for the other sex) if the person (a) provides a medical opinion on several physical and medical prerequisites (2.2) and (b) has changed the notification of his/her sex in the Register of Births (*Geburtenregister*) (3). The change of notification in the Register of Births could only be effected if the person was not married (2.4).

The Constitutional Court annulled this order due to formal publication deficiencies (it had not been published as a formal decree but as an internal order only). Moreover, the Court ruled that there is no legally valid reason to restrict the correction of incorrect data in public registers to unmarried persons.<sup>165</sup>

The government coalition agreement of 2008 states on page 120 that ‘the legal situation of transgender persons should be improved’.<sup>166</sup> The new government coalition agreement 2013-2018 does not mention any similar provision.<sup>167</sup>

According to the Constitutional Court decision of 2006, after a change of sex, persons can rectify their names in the Register of Births and subsequently change their name. Nevertheless, there is still no explicit legal basis, and specific legislation on the change of name was expected no earlier than in late 2009.<sup>168</sup> However, there is still no explicit legislation in place.

A search on the Federal Legal Information Service (*Rechtsinformationssystem des Bundes* (RIS)) does not show any related decisions.

On 27 February 2009, the Administrative Court decided that according to Austrian law operations of the genitals are no prerequisite for registering a new name in the Register of Births.<sup>169</sup> In another case of a transgender woman the Administrative Court decided twice<sup>170</sup> that operations of the genitals are not necessary for registering a name in the Register of Births.

On 3 December 2009, the Constitutional Court decided<sup>171</sup> that operations of the genitals must not be a prerequisite for registering a new name in the Register of Births. Still transgender persons and their

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<sup>164</sup> Austria, Federal Ministry of the Interior (*Bundesministerium für Inneres*) (1996), Transsexual Order (*Transsexuellen Erlass*), BMI Zahl: 36.250/66-IV/4/9, 27 November 1996.

<sup>165</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*) (2006), B947/05, 21 June 2006.

<sup>166</sup> Austria (2008), Government Coalition Agreement 2008-2013 (*Regierungsprogramm 2008-2013*), available at: [www.bka.gv.at/DocView.axd?CobId=32965](http://www.bka.gv.at/DocView.axd?CobId=32965), p. 20.

<sup>167</sup> Austria (2013), Government Coalition Agreement 2013-2018 (*Regierungsprogramm 2013-2018*), available at: [www.bka.gv.at/DocView.axd?CobId=53264](http://www.bka.gv.at/DocView.axd?CobId=53264).

<sup>168</sup> Information provided upon telephone request by the Ministry of the Interior, department III/2 (22.01.2008).

<sup>169</sup> Austria, Highest Administrative Court (*Verwaltungsgerichtshof*) (2008), 008/17/0054, 27 February 2009.

<sup>170</sup> Austria, Highest Administrative Court (*Verwaltungsgerichtshof*) (2008), 2008/06/0032, 15 September 2009, Austria, Highest Administrative Court (*Verwaltungsgerichtshof*) (2010), 2009/17/0263, 17 February 2010)

<sup>171</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*) (2009), B1973/08, 03 December 2009,

lawyers and organisations feared in 2010<sup>172</sup> that the Ministry of the Interior will continue to request an operation of the genitals before changing the name. For the first time, a low ranking representative of the Ministry of the Interior has indicated changes in 2010.<sup>173</sup> According to information provided by NGOs, a complaint has been made against this openly unlawful practice by the authorities to the Public Prosecutor against corruption (*Korruptionsstaatsanwaltschaft*),<sup>174</sup> which was terminated in 2010.<sup>175</sup>

However, since the Court decisions mentioned above clearly clarified that the operation of the genitals is not required for the changing of names, the legal situation in Austria has been clarified already and does not provide the respective authorities with any room for maneuver (this means that the authorities may not decide otherwise).

As there are no statistics and no case law available, there are no clear trends to be identified on this basis.

According to the Austrian Health Council (*Oberste Sanitätsrat, OSR*), the age of 19 should be required for the reassignment of gender. The Austrian Health Council is a Advisory body to the Ministry of Health and is comprised of experts from all areas of medicine. Although the advice given by the Austrian Health Council is not binding, its opinion is considered to represent the current status of medical science. Gender reassignments for underage persons are thus not *lege artis* in Austria. The Supreme Court (*Oberster Gerichtshof*) also made explicit reference to the opinion given by the Austrian Health Council on the issue of transsexuality and the minimum age of 19 for the reassignment of gender in its judgment 10ObS2303/96s dated 12 September 1996.<sup>176</sup>

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<sup>172</sup> Austria, the Standard (*der Standard*) (2010), ‘Ministry insists on obligation to do surgery’ (*Ministerium besteht auf Operationszwang*), available at: <http://diestandard.at/1263705944806/Transgender-Ministerium-besteht-auf-Operationszwang>, 25 January 2010.

<sup>173</sup> Austria, the Standard (*der Standard*) (2010), ‘Transsexuality no obligation to surgery’ (*Transsexualität kein Operationszwang*), available at: <http://diestandard.at/1263706511148/Transsexualitaet-Kein-Operationszwang>, 2 February 2010,

<sup>174</sup> Austria, Legal Committee Lambda (*Rechtskomitee Lambda*) (2010), ‘Obligation to surgery for transsexuals: abuse of authority in Federal Ministry for the Interior’ (*Operationszwang für Transsexuelle: Amtsmissbrauch im Innenministerium*), available at: [http://www.rklambda.at/dokumente/news\\_2010/News-de\\_PA-100126\\_Operationszwang%20fuer%20Transsexuelle.pdf](http://www.rklambda.at/dokumente/news_2010/News-de_PA-100126_Operationszwang%20fuer%20Transsexuelle.pdf).

<sup>175</sup> dieStandard (2010), ‘Keine Ermittlungen gegen Innenministerium’, 18 February 2010, available at: <http://diestandard.at/1266279164781/Operationszwang-fuer-Transsexuelle-Keine-Ermittlungen-gegen-Innenministerium>.

<sup>176</sup> Austria, Supreme Court (*Oberster Gerichtshof*), 10ObS2303/96s, 12 September 1996, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_19960912\\_OGH0002\\_010OBS02303\\_96S0000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_19960912_OGH0002_010OBS02303_96S0000_000).

## H. Intersexuality

- 1) Are intersex people specified (or is the ground of ‘intersex’ included) under national non-discrimination legislation and/or in legal cases/jurisprudence and/or in non-discrimination policies?

Although the gender of a natural person is of high relevance (especially in family law), the Austrian law does not define under which prerequisites a person is to be seen as a man or a woman.<sup>177</sup> Intersexuality is not mentioned in the law. Each person born is assigned a gender, e.g. according to the Personal Status Act.<sup>178</sup> The basic information on personal status, i.e. name, day and place of birth, gender, etc. have to be registered within one week after birth according to § 2 (1) of the Act. So either male or female gender has to be registered within this short period. A registration is to be corrected according to § 42 Personal Status Act if it was already incorrect at the time of registration. No third gender is implemented in Austria.

While the rights of transgender persons are so far recognised and also protected in Austria, the rights of intersexuals are still new ground. Persons who are born with unclear biological sexual characteristics do not have thorough legal protection in Austria. Though physically healthy, most of them are subject to irreversible medication or surgery.<sup>179</sup>

A) Is discrimination on ground of ‘intersex’ covered by the law?

b) yes, implicitly: Intersexuality is not explicitly mentioned in the equality laws. However, as confirmed by the Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*), discriminations on ground of ‘intersex’ are covered by the area of ‘gender’ in the Equal Treatment Act (*Gleichbehandlungsgesetz*).<sup>180</sup>

Moreover, the Austrian Advertising Council states in its document on gender discrimination, that advertisements are discriminatory because of gender, if they are likely to depreciate persons not living up to common understandings about belonging to one of the sexes (like intersexual persons or transgender persons) (*“Geschlechterdiskriminierende Werbung (sexistische Werbung) liegt insbesondere vor, wenn (f) Personen abgewertet werden, die nicht den vorherrschenden Vorstellungen über Zugehörigkeit zu einem Geschlecht entsprechen (z.B. intersexuelle, transgender Menschen”*<sup>181</sup>).

In the only case on intersexual persons that can be found in the jurisprudence database (ris.bka.gv.at) as of January 2014, intersexuality was covered by discrimination because of disability. In 2009, a

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<sup>177</sup> Austria, Supreme Court (2009), 10ObS29/09 as of 21 April 2009.

<sup>178</sup> Austria (2013), Law of Civil Status 2013 (*Personenstandsgesetz 2013*), BGBl. I Nr. 16/2013, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_16/BGBLA\\_2013\\_I\\_16.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_16/BGBLA_2013_I_16.pdf).

<sup>179</sup> Talk given by Dr. Helmut Graupner in the course of the Fundamental Rights Day 2013 of the Judiciary, 20 September 2013.

<sup>180</sup> Information folder on equal treatment for transgender and intersexual persons provided by the Ombud for Equal Treatment, available at: [www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=42164](http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=42164).

<sup>181</sup> Austria, Advertising Council (*Werberat*), Special rules of conduct (*Spezielle Verhaltensregeln*), available at: [http://werberat.at/show\\_4274.aspx](http://werberat.at/show_4274.aspx).



woman (who was born as an intersexual and registered as a man, but then changed her status and also took female hormones) stated, that she was mistaken for a man and this was discrimination because of a disability according to the Federal Disability Equal Treatment Act (*Bundes-Behindertengleichstellungsgesetz*). As a hermaphrodite she is qualified as a disabled person, which was also affirmed by a decision of the Federal Social Office (*Bundessozialamt*). That the claimant as a hermaphrodite falls under the Federal Disability Equal Treatment Act, was not questioned by the defendant, and therefore, the Supreme Court did not say more about it. The case then dealt mainly with other questions on why the claim was not justified.<sup>182</sup>

B) Is intersex discrimination covered under national non-discrimination policies? If so, how?

In 2010 the Austrian Ministry for Health received an inquiry on intersexuality from the German Bundestag. Then a clarification of the medical and legal questions (systematic registration, medical treatment, gender identification in birth certificates, legal bases for medical treatment) took place together with the Ministry of Justice and the Ministry of the Interior.<sup>183</sup>

However, it seems that this topic is not sufficiently covered under non-discrimination policies so far, no specific measures regarding intersex people could be identified during research. But the Ombud for Equal Treatment in the Labour World e.g. mentions in its report for 2010 and 2011, that networking with NGOs in the area of transgender and intersexuality has been started.<sup>184</sup>

The Homosexual Initiative Salzburg (*HOSI-Homosexuelle Initiative Salzburg*) is a non-profit association for LGBTI persons in Salzburg. It has appointed the first intersex-agent (*Intersex-Beauftragte*) in Austria. According to the intersex-agent (*Intersex-Beauftragte*) of HOSI Salzburg, intersex discrimination is currently not sufficiently covered under national non-discrimination policies. However, intersex discrimination is now becoming more broadly known and also taken up to a small degree by politicians. In May 2013 the then Minister for Women and Public Administration invited a representative from an intersex-association to talks on discrimination. Some political parties and independent organisations take up this topic by way of events, position papers, or expressions of solidarity. The intersex-agent regards these initiatives as necessary steps, but according to her it still remains to be seen how this potential will be implemented.<sup>185</sup> On 8 November 2013 the first Intersex Solidarity Day was organised at the University of Salzburg.<sup>186</sup>

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<sup>182</sup> Austria, Supreme Court (2009), OGH 10b189/09i of 15 December 2009.

<sup>183</sup> Information received from the Federal Ministry for Health on 5 December in response to an information request.

<sup>184</sup> Austria, Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft*) (2012), Equal Treatment Report for the Private Sector 2010 and 2011 part II (*Gleichbehandlungsbericht für die Privatwirtschaft 2010 und 2011, Teil II*), p. 109.

<sup>185</sup> Information provided by the intersex-agent of HOSI Salzburg on 7 January 2014 in response to an information request.

<sup>186</sup> Austria, HOSI Salzburg (2013), Website of HOSI Salzburg, available at: [www.hosi.or.at/2013/11/04/8-november-intersex-solidarity-day](http://www.hosi.or.at/2013/11/04/8-november-intersex-solidarity-day).

The intersex-agent (*Intersex-Beauftragte*) of HOSI Salzburg calls for number of measures/reforms, such as education and trainings for pedagogues, medical professionals and midwives, information for parents at hospitals, awareness training at schools, abrogation of the term ‘Disorder of Sexual Development’, setting up unisex-toilets at public places, as well as setting up sickrooms and detention cells particularly for intersex persons.<sup>187</sup>

A brochure on sexual education of children aged six to 12 also contains information on intersexuality as well as an introduction on how to conduct an exercise with children on intersexuality.<sup>188</sup>

In February 2014 an association of intersex people Austria (*Verein Intersexueller Menschen Österreich*) was established and also a platform intersex Austria (*Plattform Intersex Österreich*) is in existence.<sup>189</sup> The association is the first self-representation association of intersexual persons in Austria. It offers advice for persons affected as well as for relatives, help and trainings for persons in the counseling sector as well as self-help groups.<sup>190</sup>

The platform intersex Austria is an independent network of NGOs, scientists and activists. It was set up to improve the situation of intersex persons in Austria. The goals are to

- Strengthen the awareness for life-realities of intersexual persons
- Foster public discussion regarding the topic
- Support organisations in their claims
- Offer advice and information regarding psychosocial aid and medical support.<sup>191</sup>

C) Is it allowed in the respective EUMS that children remain without gender marker/identification on their birth certificates, and if so, until which age and under which conditions? Please provide detailed information and references.

According to the Personal Status Act the basic information on personal status, i.e. name, day and place of birth, gender, etc according to § 2 (1) of the Act have to be registered within one week after birth. So either male or female gender has to be registered within this short period. No third gender is implemented in Austria.

The intersex-agent (*Intersex-beauftragte*) of HOSI Salzburg calls for the possibility of a postponement of the entry into the birth register, as well as for the possibility to include the intersex-identity in identity documents.<sup>192</sup>

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<sup>187</sup> Information provided by the intersex-agent of HOSI Salzburg on 7 January 2014 in response to an information request.

<sup>188</sup> Austria, Federal Ministry for Education, the Arts and Culture (*Bundesministerium für Unterricht, Kunst und Kultur*) (2012), really intimate (*ganz schön intim*), available at: [http://www.selbstlaut.org/TCgi/Images/selbstlaut/20121027204152\\_Selbstlaut\\_GSI\\_WEB\\_korr.pdf](http://www.selbstlaut.org/TCgi/Images/selbstlaut/20121027204152_Selbstlaut_GSI_WEB_korr.pdf), p. 69.

<sup>189</sup> Information received during a meeting on „gender specific girl work: intersexuality” in Salzburg on 21 February 2014.

<sup>190</sup> Information received by a member of the association on 27 February 2014.

<sup>191</sup> Information received by a member of the platform on 27 February 2014.

<sup>192</sup> Information provided by the intersex-agent of HOSI Salzburg on 7 January 2014 in response to an information request.

2) Are surgical and medical interventions performed on intersex people in your country?

A) If so, please specify:

(a) the legal basis (or: legal grounds) for such interventions

There are no separate legal provisions for such interventions. Thus, the entire range of relevant norms of civil law, criminal law, physicians' professional regulations, etc. applies. Thus, medical treatments are generally regarded as (grievous) bodily harm (§§ 83 et seq. Criminal Code) that are only justified by the consent given (see § 90 Criminal Code) by the person concerned, or depending on the age, the representative of the person concerned.

(b) the medical protocols or procedures applicable in such situations. On what medical ground(s)<sup>193</sup> could such interventions take place?

Experts explain that the procedures basically follow the 'Consensus Statement' of the representatives of the 'Lawson Wilkins Pediatric Endocrine Society (USA) and the European Society for Paediatric Endocrinology' 2006 (available at <http://pediatrics.aappublications.org/cgi/reprint/118/2/e488>).<sup>194</sup> Moreover the Statement by the German Ethics Council (*Deutscher Ethikrat*) and statements from other countries (e.g. G. Warne, Australia) are taken into consideration by experts.<sup>195</sup> The medical procedures applied (hormonally or surgically) depend on the diagnosis and, if possible, are carried out when the capacity to consent by the minor him\*herself and clarity of diagnosis are given.<sup>196</sup> The Ministry of Health stated that there is a tendency today to postpone irreversible treatments as far as possible, in order to take account of the child's point of view in the decision process.<sup>197</sup> This was confirmed by an expert working in the field.<sup>198</sup>

An expert explains that surgical interventions are required only in emergency cases (e.g., in case of

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<sup>193</sup> Other than those necessary to sustain the physical health of the person for example in a life threatening situation at birth.

<sup>194</sup> Information received from the Federal Ministry for Health on 5 December in response to an information request. Information confirmed on 2 and 10 February 2014 by a medical experts working in the field in response to information requests.

<sup>195</sup> Information received on 10 February 2014 by a medical expert working in the field in response to an information request.

<sup>196</sup> Information received on 10 February 2014 by a medical expert working in the field in response to an information request.

<sup>197</sup> Information received from the Federal Ministry for Health on 5 December in response to an information request. Information confirmed on 2 and 10 February 2014 by a medical experts working in the field in response to information requests.

<sup>198</sup> Information received on 2 February 2014 by a medical expert working in the field in response to an information request.

infections). Another reason would be diagnostic interventions.<sup>199</sup> Another expert explains that the medical reasons for medical interventions are urological blockages, tumor risk and psychological reasons.<sup>200</sup>

B) If the aforementioned surgeries or medical interventions are carried out in the respective EUMS, is the **fully informed consent of the parties** concerned required by law or by protocol – and who are those interested parties considered to be (parents/guardians etcetera)?

(a) if this fully informed consent is required, is any explicit reference made to a certain age of consent? (under national law and/or medical protocol)?

§ 173 (1) Civil Code (*Allgemein Gürgerliches Gesetzbuch, ABGB*) stipulates that if a child possesses the cognitive faculty (*Einsichtsfähigkeit*) and the power of judgement (*Urteilsfähigkeit*) it is only the child him\*herself who may give the consent to any medical treatment. In doubt, the cognitive faculty and the power of judgement are presumed for mature minors (children of 14 years of age until their 18th birthday). If there is a lack of the required cognitive faculty and the power of judgement, the consent may be given by the person who is responsible for the legal representation in care and education.

(b) is the fully informed consent sought from the intersex person him/herself or are parents/guardians/legal representatives of the intersex person granted the right to consent on the persons' behalf?

§ 173 (1) Civil Code stipulates that if a child possessing cognitive faculty and the power of judgement consents to a treatment with serious implications on the physical integrity or personality, the consent has to be sought also from the person who is responsible for the legal representation in care and education.

Thus, the consent of the intersex person has to be sought in general. However, the consent is often sought from the legal representatives, because the surgeries or medical interventions are carried out when the child is still very young (babies, or infants).<sup>201</sup> As stated in some literature medical and surgical interventions are performed on intersex people in Austria way too early.<sup>202</sup> The intersex-agent (*Intersex-Beauftragte*) of HOSI Salzburg calls for a prohibition of sex-assigning and cosmetic medical

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<sup>199</sup> Information received on 2 February 2014 by a medical expert working in the field in response to an information request.

<sup>200</sup> Information received on 10 February 2014 by a medical expert working in the field in response to an information request.

<sup>201</sup> Information provided by the intersex-agent of HOSI Salzburg on 7 January 2014 in response to an information request.

<sup>202</sup> Austria, Sexual Therapy Carinthia (*Sexualtherapie Kärnten*), Intersexuality (*Intersexualität*), available at: [www.sexualtherapie-kaernten.at/ist\\_kaernten/intersexualitaet.php](http://www.sexualtherapie-kaernten.at/ist_kaernten/intersexualitaet.php).

interventions (both, surgical and by way of hormones) for minors.<sup>203</sup>

Certainly, comprehensive information has to be provided before such interventions. If possible, this information is provided to the child that has the capacity to consent, i.e. is at least 14 years of age.

In Vienna it is a common practice that for sex-assignment operations and the removal of gonads the clinic management and the legal department are involved.<sup>204</sup>

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<sup>203</sup> Information provided by the intersex-agent of HOSI Salzburg on 7 January 2014 in response to an information request.

<sup>204</sup> Information received on 10 February 2014 by a medical expert working in the field in response to an information request.

# I. Miscellaneous

## I.1. Registered Partnership

On 24 October 2007, the Austrian Minister of Justice presented a draft Law on Registered Partnerships (*Gesetz über die Eingetragene Lebenspartnerschaft*).<sup>205</sup> Discussions on various details (where and how the partnership can be contracted,<sup>206</sup> what the exact rights and duties that emerge from such a partnership are, what possibilities there are for adoption,<sup>207</sup> what the distinctions are from regular forms of marriage,<sup>208</sup> etc.) had continued for quite a while.

In 2009, a new draft was presented called Registered Partnership Act 2009 – RPA (*Eingetragene Partnerschafts-Gesetz 2009 (EPG)*). Most provisions entered into force on 1 January 2010<sup>209</sup>. Compared to the draft presented in 2007, the new act contains more differences to marriage restricted to heterosexual couples<sup>210</sup>. At the moment it is not possible to evaluate the impact of the law yet. Most LGBT-organisations have commented on it ambiguously.<sup>211</sup>

The Legal Committee Lambda has supported individuals in filing claims against the differences laid down in the registered partnership act and quite a number of differences has been abolished by the Courts. A regularly updated list of changes on differences can be downloaded from the web-page of the Legal Committee<sup>212</sup>. For example norms regarding the ceremony on registering the partnership

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<sup>205</sup> Austria, Federal Ministry of the Interior, Justice Department (*Bundesministerium für Inneres, Justizressort*) (2007), ‚Berger presents draft law on registered partnerships‘ (*Berger präsentiert Gesetzesentwurf zu eingetragenen Partnerschaften*), available at: [www.bmj.gv.at/service/content.php?nav=66&id=386](http://www.bmj.gv.at/service/content.php?nav=66&id=386).

<sup>206</sup> der Standard (2007), ‘ÖVP gegen Zeremonie und für längere Trennungsfrist’, 21 November 2007, available at: <http://derstandard.at/?url=/?id=3118469>.

<sup>207</sup> Wiener Zeitung (2007), ‘Quasi-Ehe für Homosexuelle kommt’, 17 October 2007, available at: [www.wienerzeitung.at/DesktopDefault.aspx?TabID=4103&Alias=wzo&cob=307827](http://www.wienerzeitung.at/DesktopDefault.aspx?TabID=4103&Alias=wzo&cob=307827).

<sup>208</sup> ots.at (2007), ‘Donnerbauer: Für eingetragene gleichgeschlechtliche Partnerschaft aber gegen Adoptionsrecht’, 28 November 2013, available at: [www.ots.at/presseaussendung.php?schluessel=OTS\\_20071128\\_OTSO262](http://www.ots.at/presseaussendung.php?schluessel=OTS_20071128_OTSO262).

<sup>209</sup> Austria, Registered Partnerships Act 2009 (*Eingetragene Partnerschaft Gesetz 2009*) (2009), BGBl I 135/2009 last amended by 179/2013.

<sup>210</sup> See Benke, N. (2010), Zum Bundesgesetz über die eingetragene Partnerschaft 2009: Weder Ehe noch Familie, in: *Zeitschrift für Ehe- und Familienrecht*, 2010, p. 19.

<sup>211</sup> Rechtskomitee Lambda (2009), ‘News’, available at: [www.rklambda.at/dokumente/news\\_2009/News-de\\_PA-091218-](http://www.rklambda.at/dokumente/news_2009/News-de_PA-091218-Partnerschaftsgesetz.pdf)

[Partnerschaftsgesetz.pdf](http://www.rklambda.at/dokumente/news_2009/News-de_PA-091218-Partnerschaftsgesetz.pdf); HOSI Wien (2009) ‘Historische Abstimmung im Nationalrat: HOSI Wien überreicht allen 183 Abgeordneten rosa Punschkräpfen’, available at: [www.hosiwien.at/historische-abstimmung-im-nationalrat-hosi-wien-uberreicht-allen-183-abgeordneten-rosa-punschkrapfen/](http://www.hosiwien.at/historische-abstimmung-im-nationalrat-hosi-wien-uberreicht-allen-183-abgeordneten-rosa-punschkrapfen/).

<sup>212</sup> Austria, Legal Committee Lambda (*Rechtskomitee Lambda*) (2013), inequalities compared to marriage (*Ungleichbehandlungen zur Ehe*), August 2013, available at:

have been changed (now witnesses are also registered in the protocol, similar to the witnesses of marriage; the laws on adoption have been amended, etc).

There is a number of parliamentary inquiries on inequalities between registered partnerships and marriages, also referencing to the Schalk v. Kopf judgement of the ECtHR.<sup>213</sup>

The basic principles of the *RPA*:

- Two persons of the same sex can conclude a registered partnership (§ 1 *RPA*, § 2 *RPA*).
- The registered partners are obliged to support each other and to reside together (§ 8 *para 2 RPA*).
- The registered partnership can be divorced at the courts (§ 13 *RPA*).

The main differences and shortcomings of the *RPA* in short:

- The registered partnership is only available for two persons of the same sex (§ 2 *RPA*).
- The registered partnership cannot be concluded at the register office (*Standesamt*) but only at the District Authority (*Bezirksverwaltungsbehörde*), there is no ceremony and witnesses are not necessary like for marriages of heterosexual couples (§ 6 *para 1 and 2 RPA*;) This was changed through a decision of the Constitutional Court, which lifted the prohibition to conclude it in the register offices.<sup>214</sup> A provision with the same wording again entered into force on 1 November 2013 – § 25 of the new Law of Civil Status 2013 (*Personenstandsgesetz 2013*), as this law was decided on in December 2012 and the Federal Government did not decide to amend this provision to follow the ruling of the Constitutional Court.<sup>215</sup> Regarding witnesses the Constitutional Court changed administrative practice through its ruling B125/11, B138/11 of 12 December 2012<sup>216</sup>, now § 25 *PSStG 2013* foresees the recording of witnesses.
- The registered partners must keep their names (§ 7 *RPA*) but can take the name of the partner, separated by a hyphen, this was decided by the Constitutional Court 131/11-15 of 3 March

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[www.rklambda.at/dokumente/publikationen/2013RKL\\_EPG\\_AbweichungenvomEherecht\\_V7\\_August2013.pdf](http://www.rklambda.at/dokumente/publikationen/2013RKL_EPG_AbweichungenvomEherecht_V7_August2013.pdf)  
f.

<sup>213</sup> Austria, Parliament (*Parlament*) (2011), Parliamentary inquiry of 8 April 2011 (*Parlamentarische Anfrage vom 8.4.2011*), available at: [www.parlament.gv.at/PAKT/VHG/BR/J-BR/J-BR\\_02814/fnameorig\\_213284.html](http://www.parlament.gv.at/PAKT/VHG/BR/J-BR/J-BR_02814/fnameorig_213284.html); Austria, Legal Committee Lambda (*Rechtskomitee Lambda*) (2013), inequalities compared to marriage (*Ungleichbehandlungen zur Ehe*), August 2013, available at: [www.rklambda.at/dokumente/publikationen/2013RKL\\_EPG\\_AbweichungenvomEherecht\\_V7\\_August2013.pdf](http://www.rklambda.at/dokumente/publikationen/2013RKL_EPG_AbweichungenvomEherecht_V7_August2013.pdf)  
f.

<sup>213</sup> Austria, Parliament (*Parlament*) (2011), Parliamentary inquiry of 12 April 2011 (*Parlamentarische Anfrage vom 12.4.2011*), available at: [www.parlament.gv.at/PAKT/VHG/BR/J-BR/J-BR\\_02817/fnameorig\\_213582.html](http://www.parlament.gv.at/PAKT/VHG/BR/J-BR/J-BR_02817/fnameorig_213582.html) (last accessed at 13 May 2014).

<sup>214</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*), G 18, 19/2013-8, available at: [www.vfgh.gv.at/cms/vfgh-site/attachments/5/4/1/CH0006/CMS137879228981/ep\\_ort\\_g\\_18-19-2013.pdf](http://www.vfgh.gv.at/cms/vfgh-site/attachments/5/4/1/CH0006/CMS137879228981/ep_ort_g_18-19-2013.pdf).

<sup>215</sup> Austria (2013), Law of Civil Status 2013 (*Personenstandsgesetz 2013*), BGBl. I Nr. 16/2013, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_16/BGBLA\\_2013\\_I\\_16.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_16/BGBLA_2013_I_16.pdf), § 25; Austria, Legal Committee Lambda (*Rechtskomitee Lambda*) (2013), Constitutional Court abolishes limitation to administrative offices, government reintroduces it (*VfGH hebt Amtsrümezwang auf – Regierung führt ihn wieder ein*), available at: [www.rklambda.at/dokumente/news\\_2013/News\\_de\\_PA\\_130708\\_EP.pdf](http://www.rklambda.at/dokumente/news_2013/News_de_PA_130708_EP.pdf).

<sup>216</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*) (2012), B 125/11, B 138/11 of 12 December 2012.

- 2012<sup>217</sup>;
- The joint adoption (i.e. the adoption of a child that is not the child of one of the partners) is not allowed (§ 8 para 4 RPA). Stepchild adoption was not possible due to the wording of the provision within the General Civil Code, a lesbian couple filed a claim against this. Finally the Grand Chamber of the ECHR<sup>218</sup> found a violation of Art 14 together with Art. 8 of the ECHR as of 19 February 2012 compared to non-married heterosexual couples. The law was amended in the follow-up; now adoption of step children is possible for homosexual couples.<sup>219</sup> Although step-child adoption is now possible, obviously obstacles still exist, which can be seen regarding a case recently presented by the Legal Committee Lambda. A mother who adopted the child of her partner wanted to have the birth certificate changed. This was rejected by the civil registry office (*Standesamt*). It would only issue a birth certificate where only the birth mother is listed or one in which the adoptive mother would be listed as the “father”. The office stated that it does not have a suitable form (*Formular*), as the forms are regulated in the Personal Status Directive of the Federal Ministry of the Interior, and they were not adapted after introducing step-child adoption for homosexual couples. The Legal Committee Lambda states that the Offices would have anyhow issued a birth certificate, as the Highest Administrative Court decided in 2010, that the authority would have to adapt the forms, if the directive did not foresee the suitable form.<sup>220</sup> The rainbow family filed an appeal against this decision. The case is now pending before the newly established Administrative Court Vienna.<sup>221</sup>
  - Registered partners are explicitly excluded from medically assisted procreation (*medizinisch unterstützter Fortpflanzung*) according to § 2 para 1 Reproduction Act (*Fortpflanzungsmedizingesetz*)<sup>222</sup>. In December 2013 the Austrian Constitutional Court decided in a landmark decision, that the prohibition of sperm donation for lesbian couples is unconstitutional (case No. G44/2013). The relevant laws have to be changed until end of December 2014.<sup>223</sup>

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<sup>217</sup> Austria, Constitutional Court (*Verfassungsgerichtshof*) (2012), B 131/11-15 of 3 March 2012.

<sup>218</sup> European Court of Human Rights (2012), X *et al vs Austria*, 19 February 2012, Appl. No. 19010/07.

<sup>219</sup> Austria (2013), Adoption Law Amendment Act 2013 (*Adoptionsrechts-Änderungsgesetz 2013*), BGBl I 179/2013.

<sup>220</sup> Austria, Highest Administrative Court (*Verwaltungsgerichtshof*) (2010), 2010/17/0042, 29 November 2010.

<sup>221</sup> Austria, Legal Committee Lambda (*Rechtskomitee Lambda*) (2014), Newsletter of 19 March 2014.

<sup>222</sup> Austria, Reproduction Act (*Fortpflanzungsmedizingesetz*), BGBl 275/1992 as amended by BGBl I 189/2013.

<sup>223</sup> Austria, Legal Committee Lambda (*Rechtskomitee Lambda*), VfGH: Samenspendeverbot für lesbische Paare ist verfassungswidrig, Newsletter of 18 January 2014; Austria, Constitutional Court (*Verfassungsgerichtshof*) (2013), G16/2013 et al of 10 December 2013, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT\\_20131210\\_13G00016\\_00&ResultFunctionToken=e5906c6c-1135-4b06-97a5-cbfc7d57473d&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechtsatz=True&SucheNachText=True&GZ=&VonDatum=&BisDatum=13.05.2014&Norm=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=fmedg](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_13G00016_00&ResultFunctionToken=e5906c6c-1135-4b06-97a5-cbfc7d57473d&Position=1&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&SucheNachRechtsatz=True&SucheNachText=True&GZ=&VonDatum=&BisDatum=13.05.2014&Norm=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=fmedg) (last accessed 13 May 2014).



A new version of the § 2 (1) Reproduction Act will enter into force on 1 January 2015.<sup>224</sup> The Constitutional Court in its ruling took reference to the *Schalk and Kopf v. Austria* judgment, stating that according to the jurisprudence of the ECtHR are not “private life” but also under the heading of “family life”, if the persons live in a homosexual de-facto relationship within a joined household.

## I.2. Fosterchildhood

Homosexual partners are not allowed to adopt children (see H.1, apart from the exception to adopt step children of their partners following the judgment of the ECHR) but they can act as foster parents. In 2008, Muslim parents brought a claim against the assignment of a gay couple as foster parents for their daughter. The biological parents claimed that the daughter would be exposed to Christian paedophiles. The District Court of Vienna and the Court of Appeal rejected the claim.<sup>225</sup>

They stated that the foster parents were educated adequately and supervised by the youth welfare services. Their performance was considered to be very good. The court did not consider it necessary to argue why homosexuals are appropriate foster parents. In almost all provinces homosexual couples are working as foster parents, only Lower Austria does not accept homosexual couples as foster parents. A lesbian couple addressed the Constitutional Court on this issue, but the Constitutional Court rejected the claim in 2013.<sup>226</sup> The case was decided by the Highest Administrative Court early May 2014. The Highest Administrative Court confirmed the ban on child fostering for same-sex couples in the province of Lower Austria. The attorney of the couple already announced that they will take the case to the European Court of Human Rights.<sup>227</sup>

The establishment of the first intersex-agent (*Intersex-Beauftragte*) at the homosexual Initiative Salzburg (*HOSI-Homosexuelle Initiative Salzburg*), the establishment of the association of intersex people Austria (*Verein Intersexueller Menschen Österreich*) and the establishment of the platform intersex Austria (*Plattform Intersex Österreich*), all presented above in chapter H, indicate that first steps are made to institutionalise the support for the benefit of intersexual persons in Austria. This may be regarded as a good practice that could be taken up other member states. However, due to their recent establishment, no long-term impact can be measured yet.

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<sup>224</sup> Austria (2014), Abolition of a wording in § 2 (1) and of § 2 (2) and § 3 (1 and 2) of the Reproduction Act by the Constitutional Court (*Aufhebung einer Wortfolge in § 2 (1) sowie des § 2 (2) und des § 3 (1 und 2) des Fortpflanzungsmedizingesetzes durch den Verfassungsgerichtshof*), BGBl I Nr. 4/2014, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2014\\_I\\_4/BGBLA\\_2014\\_I\\_4.html](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2014_I_4/BGBLA_2014_I_4.html) (last accessed 13 May 2014).

<sup>225</sup> Austria, Vienna Regional Court (*Landesgericht Wien*), 48 R 305/08w, 13 November 2008, published in: *Zeitschrift für Ehe- und Familienrecht* 2010, 26. The decision is not published in the RIS.

<sup>226</sup> Austria, Rechtskomitee Lambda (2013), ‘Verfassungsgerichtshof: weiter kein Pflegekind für lesbisches Paar aus Niederösterreich’, 25 January 2013. Case not available in full text.

<sup>227</sup> Austria, Rechtskomitee Lambda (2014), ‘Lesbian Couple excluded from child fostering’, May 2014. Case not available in full text.

Furthermore, the establishment of the Vienna Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für gleichgeschlechtliche und transgender Lebensweisen, WAST*) can be mentioned as a good practice. It was already set up in 1998, offering advice and help regarding discrimination, funding of queer small projects, education and awareness raising, conferences and queer “*Stadtgespräche*”.<sup>228</sup>

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<sup>228</sup> Austria, Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für gleichgeschlechtliche und transgender Lebensweisen*), Tasks (*Aufgaben*), available at: [www.wien.gv.at/kontakte/wast/aufgaben.html](http://www.wien.gv.at/kontakte/wast/aufgaben.html) (last accessed 12 May 2014).

## Annex 1 – Case law

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	Lorry driver
Decision date	14.07.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Landesgericht Salzburg</i> [Regional Court of Salzburg], 18Cga120/05t
Key facts of the case (max. 500 chars)	The plaintiff is a lorry driver. He has been harassed and sexually harassed since before the entry into force of the Equal Treatment Act prohibiting discrimination on ground of sexual orientation in employment and occupation. The defendants were two of more persons making discriminatory, obscene and humiliating remarks connected to his sexual orientation. The remarks continued although his employer instructed them to refrain from such behaviour. Supported by the Litigation Association of NGOs against Discrimination <sup>229</sup> and represented by a barrister the plaintiff sued two persons for 400 Euro each.
Main reasoning/argumentation (max. 500 chars)	The plaintiff only intended to obtain a symbolic amount of compensation, knowing that the minimum sum for sexual harassment is 720 Euro (400 Euro for harassment). The court had no doubt that harassment and sexual harassment in the sphere of employment under the Directive and the Equal Treatment Act had taken place. The decision argues in detail that harassment can be committed in a variety of ways – spoken word, exclusion and physical violation.

<sup>229</sup> Austria, Litigation association of NGOs against discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*), Website of the Litigation association of NGOs against discrimination, available at: [www.klagsverband.at](http://www.klagsverband.at).

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Concept of harassment and sexual harassment, involvement of NGOs ( <i>Nebenintervention</i> ) to support victims of discrimination in court actions under the Equal Treatment Act, shifting of the burden of proof.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendants were sentenced to pay the plaintiff 400 Euro each for harassment and sexual harassment. Due to the fact that the plaintiff only sued for the minimum amount for harassment (and even less than the minimum for sexual harassment) this decision cannot have any consequences with respect to clarifying how to assess immaterial damages.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	Discriminatory transfer to another police unit
Decision date	No date
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Senat II der Gleichbehandlungskommission des Bundes</i> [Senate II of the Federal Equal Treatment Commission], 7. Gutachten 2006 <a href="http://www.frauen.bka.gv.at/DocView.axd?CobId=20675">www.frauen.bka.gv.at/DocView.axd?CobId=20675</a>
Key facts of the case (max. 500 chars)	The applicant is a policeman. After announcing his (homo)sexual orientation he was subjected to discrimination by his supervisors. He was transferred from a special unit to another post. The other colleagues involved in this discriminatory incident stayed in the special unit without facing consequences.
Main reasoning/argumentation (max. 500 chars)	The Commission decided that the applicant had been discriminated against on the ground of his sexual orientation, as the defendant could not bring forward any facts indicating that the applicant had been treated equally to his colleagues. Moreover, the Commission refused the supervisors' justification that he was transferred to another unit to protect him against possible harassment. Such 'protection' must not be introduced against the will of the person.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision clarified that the burden of proof is clearly shifted to the defendant.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Senate recommended that the applicant should be transferred back to the special unit again.
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Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

Case title	No discriminatory dismissal of two employees
Decision date	No date
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Senat II der Gleichbehandlungskommission</i> [Senate II of the Equal Treatment Commission] <a href="http://www.frauen.bka.gv.at/DocView.axd?CobId=24553">www.frauen.bka.gv.at/DocView.axd?CobId=24553</a>
Key facts of the case (max. 500 chars)	The two applicants were employed by the same employer. Both of them were dismissed. They considered themselves discriminated against on ground of their sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The applicants argued that they were dismissed after it became known to other colleagues that they lived together as a homosexual couple. The employer produced evidence that their homosexuality had been known of for a longer period, and that their negligence in fulfilling their duties led to their dismissal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In this case, the shifting of the burden of proof was at stake. It was incumbent upon the employer to prove that discrimination did not take place.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	No discrimination was established by Senate II of the Equal Treatment Commission.

Chapter B, Freedom of Movement

Case title	2011/22/0162
Decision date	18 October 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Highest Administrative Court ( <i>Verwaltungsgerichtshof</i> ), 2011/22/0162, available at: <a href="http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&amp;Dokumentnummer=JWT_2011220162_20121018X00">www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&amp;Dokumentnummer=JWT_2011220162_20121018X00</a>
Key facts of the case (max. 500 chars)	The administrative authority rejected a claim of a Tunesian national to receive a residence title “family member” according to § 11 (1) 5 of the Residence and Settlement Act (NAG), stating that the claimant entered Austria with a valid visa (which was valid until 1 October 2010) and stayed since then. He lives in a registered partnership with an Austrian national. The claim for the residence title was brought forward on 2 September 2010, so still within the period of legal stay in Austria. He would have had to leave Austrian territory once the visa expired, but he stayed, this forms a hinderance to issuing the residence title according to § 11 (5) NAG and so the claim was rejected. A claim was brought to the Highest Administrative Court against this decision.
Main reasoning/argumentation (max. 500 chars)	The Highest Administrative Court considered this case to be similar to the ECJ judgment C-256/11, only with the non-relevant difference of it not being a marriage but a registered partnership. The administrative authority did not check whether this case is an exceptional case according to the EU standards.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Cases where persons are exceptionally allowed to stay within Austrian territory according to ECJ C-256/11.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The decision of the lower instance was lifted and the case was remitted to the lower instance.

Case title	
Decision date	7 April 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Highest Administrative Court ( <i>Verwaltungsgerichtshof</i> ), 2008/22/0308, available at: <a href="http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&amp;Dokumentnummer=JWT_2008220308_20110407X00">www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&amp;Dokumentnummer=JWT_2008220308_20110407X00</a>
Key facts of the case (max. 500 chars)	A claim of a Kosovar national for a residence title "dependent" ( <i>Angehöriger</i> ) according to § 47 (3) Residence and Settlement Act was rejected. The authority stated that the claimant has lived in a homosexual relationship since 2005 with an Austrian national and receives factual support from him. They met in Austria, therefore § 47 (3) NAG is not applicable. The claimant appealed against this decision.
Main reasoning/argumentation (max. 500 chars)	It is undisputed, that the partnership was only founded in Austria, country of origin according to § 47 (3) NAG can only be another country than Austria.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The claim was rejected by the Highest Administrative Court.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim was rejected and the Kosovar claimant did not receive the residence title.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	Asylum for transsexual Iranian
Decision date	28 March 2006

Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Unabhängiger Bundesasylsenat</i> [Federal Independent Asylum Tribunal], 244.745/0-VIII/22/03
Key facts of the case (max. 500 chars)	Ms H. applied for asylum because she claimed to be prosecuted by the Iranian authorities due to her transsexuality and religion. A change of sex/gender is forbidden in Iran.
Main reasoning/argumentation (max. 500 chars)	Prosecution because of transsexuality is sufficient reason for the recognition of the status of refugee.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Transgender persons are a particular social group protected by the Geneva Convention 1951.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant was granted refugee status.

Case title	Asylum for transsexual Pakistani
Decision date	29 January 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Asylum Court ( <i>Asylgerichtshof</i> ), E1 432.053-1/2013/5E



Key facts of the case (max. 500 chars)	The claimant, a Pakistani national filed for international protection in 2007. She claimed being transsexual and that she was abandoned by her family because of that and does not have contacts with them. She lived in various places in Pakistan and had to work as a dancer and prostitute, as she did not have any other possibility to earn money as a transsexual. This applies for all provinces in Pakistan. In fear of her live she decided to leave Pakistan.
Main reasoning/argumentation (max. 500 chars)	Prosecution because of transsexuality is sufficient reason for the recognition of the status of refugee.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Transgender persons are a particular social group protected by the Geneva Convention 1951.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant was granted refugee status, as because of intensive and systematic discrimination because of her sexual orientation she would be forced into prostitution in her country of origin.

Case title	Asylum for homosexual Afghan
Decision date	10 December 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Asylum Court (Asylgerichtshof), C4 417.734-1/2011/9E

Key facts of the case (max. 500 chars)	The claimant is an Afghan national, member of the Hazara ethnic group and Shiite. He was abused as a child by a friend of his father. Starting at the age of 14 the claimant discovered his homosexuality, his friends knew about this and he had a homosexual relationship.
Main reasoning/argumentation (max. 500 chars)	Prosecution because of homosexuality is sufficient reason for the recognition of the status of refugee.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Homosexual persons are a particular social group protected by the Geneva Convention 1951.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant was granted refugee status.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 1

Case title	Annulment of <i>Transsexuellen-Erlass</i> [Transsexual Order]
Decision date	8 June 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Verfassungsgerichtshof</i> [Constitutional Court], V 4-06/7
Key facts of the case (max. 500 chars)	A married man had undergone a gender changing operation and wanted to have his name changed. The Transsexual Order provided that this notification required that he be divorced from his wife, since a change of name is only authorised for non-married persons.

Main reasoning/argumentation (max. 500 chars)	The Court argued that the Transsexual Order should have been published as a government decree, not as an internal order, and subsequently annulled the order. Moreover, the Court stated that such a regulation was unlawful as it lacked a legal basis. The Court did not discuss whether such a regulation (no possibility of changing the name of married persons after changing their sex/gender) constituted a breach of art 8 ECHR, alone or in combination with art 14 ECHR.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Marriage as an institution for heterosexuals only, administrative hurdles for changing names.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The changing of names after a change of sex/gender can no longer be refused according to this ruling. The changing of names of married persons cannot be refused.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 2

Case title	No operations of genitals for change of name necessary
Decision date	15 September 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Verwaltungsgerichtshof</i> [Administrative Court], 2008/06/0032
Key facts of the case (max. 500 chars)	A person wanted to have his name changed. The authorities demanded a gender changing operation for this notification – without any legal basis.
Main reasoning/argumentation (max. 500 chars)	The Court argued that the practice of the authorities lacked a legal basis, violated the principle of equal treatment of the Austrian Federal Constitution and constituted a breach of art 8 ECHR.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Administrative hurdles for changing names without a legal basis.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The changing of names after a change of sex/gender can no longer be refused according to this ruling.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 3

Case title	No operations of genitals for change of name necessary
Decision date	3 December 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Verfassungsgerichtshof</i> [Constitutional Court], B 1973/08-13
Key facts of the case (max. 500 chars)	A man wanted to have his name changed. The authorities demanded a gender changing operation for this notification – without any legal basis.
Main reasoning/argumentation (max. 500 chars)	The Court argued that the practice of the authorities lacked a legal basis, violated the principle of equal treatment of the Austrian Federal Constitution and constituted a breach of art 8 ECHR.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Administrative hurdles for changing names without a legal basis.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The changing of names after a change of sex/gender can no longer be refused according to this ruling.
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Chapter G, Name change and/or sex change of transgender people, relevant case law, case 4

Case title	No operations of genitals for change of name necessary
Decision date	17 February 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	<i>Verwaltungsgerichtshof</i> [Administrative Court], 2009/17/0263
Key facts of the case (max. 500 chars)	After the Administrative Court had ruled that an operation of the genitals is no prerequisite for changing the name of a person in the <i>Register of Births</i> , a person wanted to have her name changed to a female name. The authorities demanded a gender changing operation for this notification again – without any legal basis.
Main reasoning/argumentation (max. 500 chars)	The Court argued that the practice of the authorities lacked a legal basis and violated already existing court decisions (see Chapter G, Case 3).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Administrative hurdles for changing names without a legal basis.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The changing of names after a change of sex/gender can no longer be refused according to this ruling.

Chapter H: Intersexuality

Case title	Hermaphrodite
Decision date	15 December 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	Supreme Court ( <i>Oberster Gerichtshof</i> ), 1Ob189/09i, available at: <a href="http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&amp;Dokumentnummer=JJT_20091215_OGH0002_0010OB00189_09I0000_000">www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&amp;Dokumentnummer=JJT_20091215_OGH0002_0010OB00189_09I0000_000</a>
Key facts of the case (max. 500 chars)	The claimant was considered male and registered as male after birth. 40 years later she changed her status to female and started carrying a female name as well as conducting surgical measures to become female. Still she is seen as a man from time to time because of her height and weight and deep voice. On 10 March 2008 the claimant tried to hinder a chattel-execution, she reacted aggressively. The executor accidentally addressed her as "Mr." twice, apart from that he addressed her as "Mrs." ( <i>Frau</i> ). The claimant asked for 3000€ compensation. She based her claim on being protected because of disability. Especially her gender is of high sensitivity because of her disability (i.e. hermaphroditism). Through wrongly addressing her she was damaged in her private sphere and suffered insult and also physical problems. The defendant stated, that he had just accidentally addressed the claimant with "Mr." because of her aggressive behavior. The first instance rejected the claim. The second instance rejected the appeal.
Main reasoning/argumentation (max. 500 chars)	For the applicability of § 5 (3) Disability Equal Treatment Act it is necessary, that the forbidden behaviour leads to a interference of the dignity of a certain intensity. This intensity was not reached in this case, as the defendant only accidentally addressed the claimant wrongfully.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Intensity of interference of dignity regarding discrimination because of disability.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim was rejected.
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Chapter I: Miscellaneous

<b>Case title</b>	B125/11, B138/11
<b>Decision date</b>	12 December 2012
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	Verfassungsgerichtshof, Constitutional Court B125/11, B138/11; full text not publicly available, abstract available at: <a href="http://www.vfgh.gv.at/cms/vfgh-site/attachments/3/2/0/CH0004/CMS1363690520017/presseinformation_eingetragene_partnerschaft_zeremonien_pruefungsbeschluss.pdf">www.vfgh.gv.at/cms/vfgh-site/attachments/3/2/0/CH0004/CMS1363690520017/presseinformation_eingetragene_partnerschaft_zeremonien_pruefungsbeschluss.pdf</a> .
<b>Key facts of the case (max. 500 chars)</b>	The claimants wanted to enter their registered partnership outside of the premises of the regional administrative offices ( <i>Bezirksverwaltungsbehörden</i> ) and wanted to be asked the questions whether they want to close their registered partnerships in front of two witnesses. This was rejected by the provincial governors of Styria and Vienna, as § 47 (1) of the Law of Civil Status ( <i>Personenstandgesetz</i> ) does not allow this. In this claim because of violation of constitutionally guaranteed rights of equal treatment and non-discrimination (also based on Art. 21 of the Charter of Fundamental Rights) the Constitutional Court was addressed. Also the unconstitutional law foreseeing this was criticised.
<b>Main reasoning/argumentation</b>	The Court decided, that it should be possible also when entering registered partnerships to have two persons at the ceremony, who shall play a special role. Furthermore the official persons should ask questions to the partners

<b>(max. 500 chars)</b>	whether they want to officially want to register their partnership (similarly to the process conducted at marriages)- Furthermore at the end of the ceremony, the officials should state that the persons are now officially registered partners.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	Clarification on ceremony in front of regional administrative offices regarding registered partnerships. The question whether or not also registering partnerships is allowed outside of the premises of the regional administrative offices was subject to a separate proceedings for review of the law, which was initiated by the Constitutional Court, because it raised concerns about the wording being unconstitutional.
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	Regional administrative offices shall now conduct the ceremonies following the decision of the constitutional court.

<b>Case title</b>	G 18, 19/2013-8
<b>Decision date</b>	19 June 2013
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	Verfassungsgerichtshof/Constitutional Court, G 18, 19/2013-8, available at: <a href="http://www.vfgh.gv.at/cms/vfgh-site/attachments/5/4/1/CH0006/CMS1378799228981/ep_ort_g_18-19-2013.pdf">www.vfgh.gv.at/cms/vfgh-site/attachments/5/4/1/CH0006/CMS1378799228981/ep_ort_g_18-19-2013.pdf</a> .
<b>Key facts of the case (max. 500 chars)</b>	The claimants in other cases B125/11 and B138/11 before the court wanted to close their registered partnership outside of the premises of the regional administrative offices ( <i>Bezirksverwaltungsbehörden</i> ) and wanted to be asked the questions whether they want to close their registered partnerships in front of two witnesses. This was rejected



	by the provincial governours of Styria and Vienna, as § 47 (1) of the Law of Civil Status ( <i>Personenstandgesetz</i> ) does not allow this. In this claim because of violation of constitutionally guaranteed rights of equal treatment and non-discrimination (also based on Art. 21 of the Charter of Fundamental Rights) the Constitutional Court was addressed. Also the unconstitutional law foreseeing this was criticised.
<b>Main reasoning/argumentation (max. 500 chars)</b>	In the course of these claims (B125/11 and B138/11) to the Constitutional Court, the court raised concerns whether the wording “ in the premises of the regional administrative offices” is constitutional and it initiated proceedings for review of the law.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	The court did not find any justification for the unequal treatment of marriages and registered partnerships regarding the place of creation of these acts. The question of creation of registered partnerships in- or outside of administrative offices does not seem to stand in any factual connection to the different institutes of marriage and registered partnership. This wording was rendered ineffective as being contradictory to Art. 14 and 8 ECHR.
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	The discriminatory wording was rendered ineffective.  Note: a provision with the same wording again entered into force on 1 November 2013 – then § 25 of the new Law of Civil Status 2013 ( <i>Personenstandsgesetz 2013</i> ), as this law was decided on in December 2013 and the Federal Government did not decide to amend this provision to follow the ruling of the constitutional court. <sup>230</sup>

<sup>230</sup> Austria (2013), Law of Civil Status 2013 (*Personenstandsgesetz 2013*), BGBl. I Nr. 16/2013, available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_16/BGBLA\\_2013\\_I\\_16.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_16/BGBLA_2013_I_16.pdf), § 25; Austria, Legal Committee Lambda (*Rechtskomitee Lambda*) (2013), Constitutional Court abolishes limitation to administrative offices, government reintroduces it (*VfGH hebt Amtsräumezwang auf – Regierung führt ihn wieder ein*), available at: [www.rklambda.at/dokumente/news\\_2013/News\\_de\\_PA\\_130708\\_EP.pdf](http://www.rklambda.at/dokumente/news_2013/News_de_PA_130708_EP.pdf).

<b>Case title</b>	G 131/11-15
<b>Decision date</b>	3 March 2012
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	Constitutional Court, G 131/11-15 Judgment not publicly available.
<b>Key facts of the case (max. 500 chars)</b>	The claimant was named "K.". After entering a registered partnership his name was changed to the last name of his partner "E." and was entitled to keep his name K. following the name E. unhyphenated. The claimant asked (after having registered the partnership) for having the names separated by a hyphen. This was not followed by the Magistrate. The claimant appealed to the Constitutional Court as this was a violation of his right to private and family life (Art. 8 ECHR) and discriminatory (Art. 14 ECHR). Registered partnerships as such do not lead to changes of names, but the "Name changing Act" ( <i>Namesänderungsgesetz</i> ) was adapted that way, that registered partners can apply for a change of names, if this application is done together with registering the partnership.
<b>Main reasoning/argumentation (max. 500 chars)</b>	The wording "together with registering the partnership" is discriminatory and violates the rule of equality. Different treatment between marriage and registered partnerships is allowed, but severe grounds are needed to do so, according to Art. 8 and 14 ECHR. Discrimination 'out of principle' is not compatible with such strict requirements.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	Equal treatment regarding marriage and registered partnerships.
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	The wording " <i>und dies gemeinsam mit der Begründung der eingetragenen Partnerschaft beantragt</i> " in §2 "Name Changing Act" ( <i>Namensänderungsgesetz</i> ) is discriminatory and therefore to be nullified.

<b>Case title</b>	G 44/2013-14, G16/2013-16
<b>Decision date</b>	10 December 2013
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	Constitutional Court ( <i>Verfassungsgerichtshof</i> ) G 44/2013-14, G16/2013-16, 10 December 2013. Available at: <a href="http://www.vfgh.gv.at/cms/vfgh-site/attachments/5/8/8/CH0003/CMS1389880378763/fortpflanzungsmedizin_g16-2013ua.pdf">http://www.vfgh.gv.at/cms/vfgh-site/attachments/5/8/8/CH0003/CMS1389880378763/fortpflanzungsmedizin_g16-2013ua.pdf</a>
<b>Key facts of the case (max. 500 chars)</b>	When introducing the Registered partnership act medically supported reproduction was explicitly prohibited for same sex couples. The claimants claimed at the district court in Wels to include in a court protocol the approval of one of the partners regarding the medical sperm donation (approval of the partner is one of the legal prerequisites for conducting such sperm donation). This was rejected by the district and then also regional court. The court argued that the ECHR was not violated and the women could also go to Germany to conduct this sperm donation. The Supreme Court asked the Constitutional Court twice to lift this provision (OGH 3Ob147/10d and 3Ob224/12f).
<b>Main reasoning/argumentation (max. 500 chars)</b>	The Constitutional Court emphasised, that also same sex couples are families. The exclusion of lesbian couples regarding sperm donations cannot be justified with the protection of traditional families, because same sex partnerships are in no substitution relation to marriages and different sex partnerships, but are added to them. Also same sex couples have the right to reproduction according to Art. 8 ECHR. The limitation of allowed methods of reproduction to heterosexual partnerships and marriages is not proportional and thus discriminatory.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	Right to reproduction, discrimination of same sex couples.
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	The Constitutional Court declared the norm laying down the exclusion of same sex partnerships regarding sperm donation as unconstitutional. The wording "of persons of different sexes" will be lifted as of 31 December 2014.



## Annex 2 – Statistics

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation<sup>231</sup>

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Total number of complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) <sup>232</sup>	0	0	0	0	0	40	53	45	27	38	79	60 (court: 1 <sup>233</sup>	59	78
Total number of findings of Discrimination confirmed (by equality body, tribunals, courts etc.) if possible disaggregated according to social areas of discrimination (employment, education	0	0	0	0	0	1	1	0	2 <sup>235</sup>	--	--	--	--	--

<sup>231</sup> The numbers are the total, taking both the federal and provincial levels into account. For the sources regarding the provincial level see Chapter A and the next table on complaints in the provinces. Information on the federal level was provided by the Equal Treatment Commission (*Gleichbehandlungskommission, GBK*) on 27 January 2014 and the Ombud for Equal Treatment (*Gleichbehandlungsanwaltschaft, GAW*) on 14 and 17 February 2014 in response to information requests. According to the Ombud for Equal Treatment, there have been no inquiries regarding intersexuality in the reporting period.

<sup>232</sup> The total number presented here is the sum of the numbers presented for the provinces and the federal level. For the sources see Chapter A and the related statistics below.

<sup>233</sup> Austria, OGH 9 ObA 113/11z. No further cases were found for the years 2010 to 2013 in the data base of the legal information system. The search was last conducted on 27 November 2013.

<sup>234</sup> Due to the variety of data provided by various stakeholders no reliable total sum can be given for the years 2010 to 2013.

<sup>235</sup> The anonymised decision of the ETC does not show the date of the decision. The number only shows that the cases have been presented in 2008.

National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) <sup>236</sup>	0	0	0	0	0	0	0	0	1	0	0	0	--	--	--	--
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.) <sup>237</sup>	0	0	0	0	0	0	0	0	1	0	0	0	--	--	--	--

Chapter A, Complaints in the provinces

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Burgenland <sup>238</sup>	0	0	0	0	0	0	0	0	--	--	--	--	--	--
Carinthia <sup>239</sup>	0	0	0	0	0	0	0	2 (one employment, one access to goods and services)	--	--	0	0	0	0

<sup>236</sup> Due to the variety of data provided by various stakeholders no reliable total sum can be given for the years 2010 to 2013.

<sup>237</sup> Due to the variety of data provided by various stakeholders no reliable total sum can be given for the years 2010 to 2013.

<sup>238</sup> The Commissioner for Anti-discrimination in Burgenland and the Commissioner for Equal Treatment of Burgenland were not available for information for the years 2010 to 2013 despite of several requests for information.

<sup>239</sup> Information provided by the Equal Treatment Commissioner (*Vorsitzende der Gleichbehandlungskommission*) for Carinthia on 19 February 2014 via telephone, and the equal-treatment officer (*Frauen- und Gleichbehandlungsbeauftragte des Landes Kärnten*) by email on 31 January 2014 in response to information requests. The Anti-discrimination Contact Point in Carinthia was not available for information for the years 2010 to 2013 despite of several requests for information.

Lower Austria <sup>240</sup>	0	0	0	0	0	0	0	0	0	0	0	5	2	1	4
Salzburg <sup>241</sup>	0	0	0	0	0	0	0	0	1	1	4 (1 employment)	2	6 (1 employment, 1 goods and services)	1 (2 goods and services)	8
Styria <sup>242</sup>	0	0	0	0	0	1	0	1 (no details provided)	0	2	3	10	5	4	
Tyrol <sup>243</sup>	0	0	0	0	0	0	1	0	0	0	2	3	2	1	
Upper Austria <sup>244</sup>	0	0	0	0	0	0	3	1	0	1	0	1	3	2	

<sup>240</sup> Information provided on 21 January 2014 by the Commissioner for Equal Treatment of Lower Austria (*Gleichbehandlungsbeauftragte*) in response to an information request. Some of these complaints were referred to the competent federal equality body (one each in 2010, 2011, 2012 and 2013).

<sup>241</sup> Information provided by the Equal Treatment Commissions, the Anti-discrimination contact point of the city of Salzburg (*Antidiskriminierungsstelle der Stadt Salzburg*) and the Homosexual Initiative Salzburg (*HOSI-Homosexuelle Initiative Salzburg*) on 3 January 2014, 31 January 2014, 3 February 2014 and 6 February 2014 in response to information requests.

<sup>242</sup> Information provided by the Equal Treatment Commissioner of Styria on 15 January 2014 in response to an information request.

<sup>243</sup> Information received on 2 January 2014 from the Service Centre and on 29 January 2014 from the Anti-discrimination Commissioner and Equal Treatment Commissioner Tyrol in response to information requests.

<sup>244</sup> Information received on 29 November 2013 from the Anti-discrimination Contact Point in response to an information request and an information received on 4 February 2014 from the Equal Treatment Commissioner for the City of Linz in response to an information request.

Vienna <sup>245</sup>	0	0	0	0	0	1	1	0	2	2	14	13	27	28
Vorarlberg <sup>246</sup>	--	--	--	--	--	--	--	--	--	--	0	0	0	0

Chapter B, Freedom of movement of LGBT partners

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners who claimed their right to residence but were denied this right.	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation<sup>247</sup>

	00	01	02	03	04	05	06	07	08	09	10	11	12	13

<sup>245</sup> Information provided by the Vienna Anti-discrimination contact Point (*Antidiskriminierungsstelle*) on 6 December 2013, the Vienna Anti-discrimination Contact Point for Lesbian, Gay and Transgender Lifestyles (*Wiener Antidiskriminierungsstelle für gleichgeschlechtliche Lebensweisen*) on 3 February 2014 and the Vienna Commissioner for Equal Treatment of Vienna (*Gleichbehandlungsbeauftragte*) on 19 February 2014 in response to information requests.

<sup>246</sup> Information received on 4 February 2014 from the Anti-discrimination contact point at the Ombudsman office of Vorarlberg (*Antidiskriminierungsstelle der Landesvolksanwältin von Vorarlberg*) in response to an information request.

<sup>247</sup> No official statistics or data from private sources available. The decisions presented in this table were found via the Federal Legal Information System (Rechtsinformationssystem des Bundes) by using the keywords Homosexualität (homosexuality), homosexuell (homosexual), sexuelle Orientierung (sexual orientation), Transsexualität (transsexuality) and transsexuell (transsexual).



Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	-	-	1 <sup>248</sup>	1 <sup>249</sup>	4 <sup>250</sup>	2 <sup>251</sup>	1 <sup>252</sup>	0	-	1	3 <sup>253</sup>	3	3	2
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation.	2 <sup>254</sup>	-	-	-	-	-	-	1 <sup>255</sup>	-	0 <sup>256</sup>	20	18	12	11

Chapter C, Asylum and subsidiary protection, protection of LGBT partners<sup>257</sup>

	2000	2001	2002	2003	2004	2005	2006	2007	2010	2011	2012	2013
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<sup>248</sup> Austria, Independent Asylum Senate (*Unabhängiger Bundesasylsenat*), 215.214/0-VIII/22/02, 24 October 2002.

<sup>249</sup> Austria, Independent Asylum Senate (*Unabhängiger Bundesasylsenat*), 228.027/0-VI/17/02, 19 March 2003.

<sup>250</sup> Austria, Independent Asylum Senate (*Unabhängiger Bundesasylsenat*), 240.479/0-VIII/22/03, 10 May 2004; 234.015/12-VIII/40/04, 02 June 2004; 239.930/0-XI/38/03, 09 August 2004; 234.179/0-IV/44/03, 3 December 2004.

<sup>251</sup> Austria, Independent Asylum Senate (*Unabhängiger Bundesasylsenat*), 238.353/5-VIII/22/03, 5 August 2005; 261.132/4-VIII/40/05, 14 July 2005.

<sup>252</sup> Austria, Independent Asylum Senate (*Unabhängiger Bundesasylsenat*), 244.745/0-VIII/22/03, 28 March 2006.

<sup>253</sup> Please note, that the statistics for 2010 until 2013 are not officially published. The decisions presented in this table were found via the Federal Legal Information System by using the keywords “sexuelle Orientierung” (*sexual orientation*), “Homosexualität” (*homosexuality*), Transsexualität (*transsexuality*) and lesbisch (*lesbian*). There is also a quite high number of decisions not presented here, where the case was sent back to the first instance by the Asylum Court. Furthermore the decisions of the first instance are not as such available for the public, only the decisions by the (then) asylum court.

<sup>254</sup> Austria, Highest Administrative Court (*Verwaltungsgerichtshof*), 2000/01/0141, (11.10.2000); 2000/20/0356, 30 November 2000.

<sup>255</sup> Austria, Independent Asylum Senate (*Unabhängiger Bundesasylsenat*), 306.704-C1/4E-IV/44/06, 05 February 2007.

<sup>256</sup> The denial of asylum or subsidiary protection of persons having invoked the fear of persecution on grounds of sexual orientation can be a result of failing to provide evidence that is not necessarily in connection with sexual orientation. These cases have not been included here.

<sup>257</sup> No official statistics or data from private sources available.

Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partners.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Chapter D, LGBT partners benefiting family reunification

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	-	-	-	-	-	-	-	-	-	-	-	-	-	..258

Chapter E, LGBT persons' enjoyment of freedom of assembly<sup>259</sup>

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	-	-	-	-	-	-	-	-	-	-	1	1	1	1 <sup>260</sup>
Number of demonstrations against tolerance of LGBT people.	-	-	-	-	-	-	-	-	-	-	-	-	-	-

<sup>258</sup> No official statistics available as reported by the Federal Ministry of the Interior on 21 January 2014.

<sup>259</sup> No official statistics or data from private sources available.

<sup>260</sup> At the annual Rainbow Parade (*Regenbogenparade*) approximately 100.000 people actively oppose discrimination against lesbian, gay and transgendered people and show their solidarity with the concerns of the movement. See website of the Rainbow Parade at: [www.hosiwien.at/en/rainbow-parade/](http://www.hosiwien.at/en/rainbow-parade/).

Chapter F, Homophobic hate speech<sup>261</sup>

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	-	-	-	-	-	-	-	-	-	1 <sup>262</sup>	-	-	-	263
Range of sanctions issued for homophobic hate speech	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic statements	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	-	-	-	-	-	-	-	-	-	-	-	-	-	264

Chapter F, Homophobic motivation of crimes as aggravating factor<sup>265</sup>

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	-	-	-	-	-	-	-	-	-	-	-	-	-	-

<sup>261</sup> No official statistics or data from private sources available.

<sup>262</sup> Conviction of 750 Euro, compensation of 4,000 Euro.

<sup>263</sup> No cases were found for the years 2010 to 2013 in the data base of the legal information system.

<sup>264</sup> No cases were found for the years 2010 to 2013 in the data base of the legal information system.

<sup>265</sup> No official statistics or data from private sources available.

Chapter G, Transgender issues<sup>266</sup>

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of name changes effected due to change of gender	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Number of persons who changed their gender/sex in your country under the applicable legislation	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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<sup>266</sup> No official statistics or data from private sources available. The introduction of a central register of births, deaths, and marriages (*Personenstandsregister*) was postponed to November 2014 by the Ministry of the Interior. See ORF News, Central register of births, deaths, and marriages: Introduction delayed (*Personenstandsregister: Einführung wird verschoben*), available at: <http://orf.at/stories/2200816/>.

**Table 1: Requirements for rectification of the recorded sex or name on official documents**

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions. Still no adapted legal norms in place. Since the Court decisions clearly clarified that the operation of the genitals is not required for the changing of names, the legal situation in Austria has been clarified already and does not provide the respective authorities with any room for maneuver.
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Pol)	Further changes expected following court case <i>Lydia Foy</i> (2007)

									and under Passports Act 2008)	
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

**Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies**

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>267</sup>	All areas of RED*		
AT		✓		✓	One of nine provinces (Lower Austria) has not extended protection to all areas covered by RED: . At the level of the federal state, discrimination on the ground of sexual orientation is still only implemented in the employment area. Levelling-up in the other areas has so far not taken place, even though proposal for amendments existed. These proposals were not agreed upon.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	

<sup>267</sup> Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>267</sup>	All areas of RED*		
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	



Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED <sup>267</sup>	All areas of RED*		
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
JK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
<b>TAL</b>	<b>9</b>	<b>7</b>	<b>11</b>	<b>0</b>	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

**Table 3: Discrimination on grounds of gender reassignment or identity in national legislation**

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation indicating that discrimination on the ground of gender reassignment is assimilated to discrimination on the ground of “sex”.
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered 'sex' discrimination. The new ground 'transgender identity or expression' now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the 'gender reassignment' protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under "medical supervision" and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
<b>TOTAL</b>	<b>10</b>	<b>3</b>	<b>15</b>	

Note: ✓ = applicable; positive development since 2008

**Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation**

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT	✓	✓	§ 283 Criminal Code on incitement to hatred was amended as of 1 January 2012, now also covering sexual orientation. According to a statement by the Federal Minister of Justice in August 2013, replying to a parliamentary inquiry, one can assume that homophobia is an especially reprehensible motive and falls under the norm of § 33 (1) 5 Criminal Code on aggravating circumstances. <sup>268</sup>
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	

<sup>268</sup> Federal Ministry of Justice (*Bundesministerium für Justiz*) (2013), Reply to a parliamentary inquiry (*Anfragebeantwortung*), 26 August 2013, available at: [http://www.parlament.gv.at/PAKT/VHG/BR/AB-BR/AB-BR\\_02734/fname\\_320943.pdf](http://www.parlament.gv.at/PAKT/VHG/BR/AB-BR/AB-BR_02734/fname_320943.pdf).

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
UK (Ireland)	✓	✓	
UK (& Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

**Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification**

Country Codes	Free movement <sup>269</sup>		Family Reunification		Asylum		Comments
AT						✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE							
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ							Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE							Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK					✓		
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES							Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.

<sup>269</sup> In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement <sup>269</sup>		Family Reunification		Asylum		Comments
FI							
FR			?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. No information available on refugees.
HU						?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE						✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU						✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV							Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL							
PL							
PT						✓	Allows same-sex couples to enter into a marriage since June 2010.
RO							The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE							Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.



Country Codes	Free movement <sup>269</sup>		Family Reunification		Asylum		Comments
UK							
<b>TOTAL</b>							

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.