

To Civil Society Section, OHCHR, Geneva
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Submission from Sex Worker Forum of Vienna
to the Office of the
United Nations High Commissioner for Human Rights
on the situation in Austria relating to the

**Promotion and Protection of Human Rights
in the Context of HIV and AIDS**



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Introductory Note: The author, Sex-Worker Forum, is an incorporated non-governmental not-for-profit organization, chartered at Vienna, Austria, and working to protect and promote the human rights of voluntary sex workers in Central Europe, with a particular focus on the German speaking countries and regions. The filled-in questionnaire below refers to the United Nations Human Rights Council Resolution 12/27, as concerns the situation in Austria.

1. General.

Are human rights, including but not limited to the rights to non-discrimination, privacy, health, education and information, explicitly incorporated in your existing national plan or national strategy on HIV and AIDS?

In Austria, the European Convention of Human Rights has constitutional status. Insofar, there is a general protection of human rights. However, there is no specific legal protection of persons with HIV/AIDS. On the contrary, the AIDS Act of 1993 and the Penal Code provide the legal basis to intrude into human rights of persons with HIV/AIDS (see below).

2. Challenges:

Main human rights challenges in the realization of universal access to HIV prevention, treatment, care and support. 2.1. Identify at least 3 key human rights challenges and the population groups particularly affected by these challenges. 2.2. For each of the three

key challenges identified, describe: (i) the main causes of these challenges, (ii) the actors that have a role to play in addressing these challenges and, (iii) the factors that may prevent them from taking effective action (capacity and institutional gaps).

Challenge 1: Austrian law penalizes the private sexual life of persons, who have acquired HIV/AIDS.

ad (i), causes: By sections 178, 179 of the Penal Code the private sexual activities of a person, who has acquired HIV/AIDS may be penalized. Even a person, who does not know about the own infection, may be penalized for negligence (Source: *Mayerhofer*, StGB, Vienna 2009, 6th edition). By Supreme Court of Austria rulings (11 Os 171/97 of 25 November 1997), there is no prosecution of safer sex. However, even unsafe sex with the consent of the informed partner may be penalized.

ad (ii), actors: The Federal Government could address this problem by submitting an amendment of the Penal Code to Parliament.

ad (iii), factors: There is a systematic institutional barrier to such legal reform, as persons with HIV are still stigmatized and therefore they have no political support.

Challenge 2: There are obligatory regular HIV-tests for risk groups.

ad (i), causes: By section 4 of the AIDS Act of 1993, sex workers are obliged to at least four HIV tests per year. In Vienna, there is the additional obligation to visit the public health office for this purpose. As the Committee against Torture observed recently, in Vienna the circumstances of these medical checks may amount to degrading treatment (CAT/C/AUT/CO/4-5 of 20 May 2010, para 22). Moreover, it is known “that regulatory efforts such as mandatory HIV testing and treatment for sexually-transmitted infections (STIs) and detention seem ineffective. Mandatory testing is against the principles of human rights, and furthermore, these approaches chase sex workers away, when what is needed is cooperation” (*Wolffers / van Beelen*, Lancet 361/2003, p 1981). The latter assertion is

confirmed by the consolidated *International Guidelines on HIV/AIDS and Human Rights* of 2006 by OHCHR and UNAIDS.

ad (ii), actors: The Federal Government could address this problem by submitting an amendment of the AIDS Act to Parliament. Moreover, the Provincial Governments could address this problem by stopping mandatory testing.

ad (iii), factors: There is a systematic institutional barrier to such legal reform, as sex workers are stigmatized and criminalized, whence they have no political support. For, according to a ruling by the Supreme Court of Austria (3 Ob 516/89 of 28 June 1989), the contract to exchange sex for money between a sex worker and her client is contrary to public moral. Moreover, that Court (1 Ob 728/85 of 15 January 1986) assessed sex work as asocial behavior. More recently, that Court (2 Ob 23/03a of 12 June 2003) developed the theory, that also voluntary sex work is a “degradation of the performer’s intimate sphere”, tantamount to a derogation of human rights. This jurisprudence has devastating effects for sex workers and restrains them in the enjoyment of basic civil and human rights.

Challenge 3: Due to challenge 2 and stigmatization, sex workers face pressures to unsafe sex, which exposes them to higher HIV risks.

ad (i), causes: Amongst clients emerges a dangerous belief that sex workers, being obliged to regular HIV tests, are certified as “safe for unsafe sex”, whence they face an increasing demand for sex without a condom. This trend may build up a momentum, where market forces may pressure sex workers to offer unsafe practices, and owners of bordellos might even force them to do so (Source: report of the Austrian Government: Task Force Menschenhandel, Prostitution in Österreich, Vienna 2008, p 35). Due to such side effects of compulsory examinations (driving women underground, increasing pressure for unsafe practices), already now rates of certain sexually transmitted infections are significantly higher in Austria, than in Germany, where there are no compulsory

examinations (for syphilis, see *Epidemiologic Bulletin* 49/2009 of Robert Koch Institute, Berlin, www.rki.de).

ad (ii), actors: The Federal Government could address this problem by submitting regulations similar to the German Prostitution Act of 2002 and to the German Infektionsschutzgesetz of 2000 to Parliament.

ad (iii), factors: There is a systematic institutional barrier to such legal reform, as sex workers are stigmatized and criminalized (see above), whence they have no political support. Obviously the Austrian administration attaches much more importance to the restriction of sex work, than to HIV prevention.

3. *Response.*

a. Please describe key legal, policy, programming, budgeting or other measures in place to address the challenges faced by those groups or populations more severely affected by HIV, as well as the measures being taken to overcome the capacity and institutional gaps described in question 2. b. Please indicate whether affected persons participated in the design, implementation and evaluation of these policies, programmes or measures. If so, please describe the participation process.

ad a, measures: In the perception of the author, Austria does ignore the above challenges. The Austrian Parliament delegated the investigation of degrading treatment, mentioned in challenge 2 (interpellation by *Schwentner et al*, 5874/J XXIV. GP of 24 June 2010) to the Federal Minister of Women’s Affairs, but in her answer the Federal Minister declared her lacking competency to change anything.

ad b, participation: Except for singular invitations, there are no representatives of sex workers who may participate in governance, including design, implementation or planning of policies programs or measures.

4. *Achievements.*

What are your most significant human rights achievements in the national HIV response? Please describe briefly how these achievements came about and the lessons learnt from the experience.

In the perception of the author, in Austria there are no significant achievements that excel the European average.

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