



The EU Mutual Learning Programme in Gender Equality

Preventing sexual harassment


Copenhagen, 22-23 September 2022

Comments paper – Austria



Ein Unternehmen der ÖSB Gruppe.

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This publication is supported by the European Union Citizens, Equality, Rights and Values Programme (2021-2027).

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Preventing sexual harassment in Austria

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Abstract

The legal basis for sexual harassment in Austria is § 218 of the Criminal Code “Sexual harassment and public sexual acts”. Not covered by Section 218 of the Criminal Code, and therefore not punishable by the courts are verbal and non-verbal harassment with sexual reference without physical contact. For the workplace and the education sector the provisions of Equal Treatment Act regulate discrimination on the grounds of gender and include verbal and non-verbal harassment with sexual reference without physical contact. Employers are legally responsible for taking appropriate remedial action in the event of (sexual) harassment in the company. In January 2021, the package of laws against online hate came into force, also intending to protect women and girls from degradation, insults and threats on the Internet. A key component of this package is the criminal offense against so-called upskirting. The good practices examples in the paper show a risen awareness for sexual harassment which has started in Austrian Cultural Industries in recent years and which led to the constitution of a contact point against discrimination and unequal treatment, abuse of power, sexual assault and violation of labour law. Recently a "Counselling Centre for Victims of Violence, Harassment and Abuse of Power in the Arts, Culture and Sports" started its work, providing psychological and legal support and counselling to those affected in these areas of work. Besides that, other singular initiatives have been implemented e.g. against sexual harassment in the club scene or in public baths. The comments paper argues that it is important to broaden the prevention measures targeted at sexual harassment and sexual violence in all parts of society and to implement a National Action Plan with a clear political commitment, clear targets and sufficient resources for the implementation of measures.

1. Country context and policy debate on preventing sexual harassment

1.1 Policy context

To get an idea of the status of gender equality in Austria, the EIGE Gender Inequality Index 2021 gives insight, accordingly Austria achieved a score of 68.0 out of 100, which is in line with the average EU-score. Gender inequality is most pronounced in the domain of power in which Austria scores 48.2 points and ranks 16th. Despite

improvements since 2018 (+ 3.6 points), Austria is furthest away from gender equality in economic decision-making, ranking 19th with a score of 28.0 points.¹

In the domain violence against women no score is available for Austria due to a lack of comparable EU-wide data. Recent data on the protection against violence published by the Federal Ministry of Interior show the following²: Between 1997 and 2022, the security police issued a total of approximately 161,650 prohibitions of entry and approach under the provisions of the Security Police Act. From 2020 to date, approx. 28,750 such measures have been counted, of which approx. 3.700 persons in 2022 alone. More than 90% of those turned away were and are male. Since the mid-2000s, there has been an increase in the statistics. This might be attributed to the fact that the "ban on entering" measure had gained acceptance and it can be assumed that the increasing acceptance had steadily reduced the dark field of unreported incidents since November 2021.

According to police crime statistics on female homicides 29 women were murdered in the past year 2021 - often by their (ex-)partners or family members. Prior to that, there was actually a high of 41 murders of women in 2018. By comparison, 19 women were murdered in 2014. This means there was more than a doubling of murdered women during this period. About 3 women are now murdered each month. In the vast majority of the murders of women, there was a relationship or family relationship (e.g., partner or ex-partner or family member) between the perpetrator and the victim. In the current year 2022, 25 women have already been murdered (as of 8/31/2022).

This paper focuses on the issue of sexual harassment and the strategies to combat it. Apart from this, there are strategies and measures implemented in Austria to combat violence against women that are not discussed here, such as the protection against violence package ("Gewaltschutzpaket")³.

1.2 Legal background for sexual harassment

1.2.1 § 218 of the Criminal Code "Sexual harassment and public sexual acts"

In criminal law, section 218 of the Criminal Code regulates the offence of "sexual harassment and public sexual acts". According to this, it is punishable, among other things⁴:

- Harassment through a sexual act. This includes sex-related touching of the parts of the victim's or perpetrator's body belonging to the immediate sexual sphere with the body of the other person (for example, intensive touching of the female breast or grasping between the legs - also over clothing), which is not merely fleeting, or

¹ <https://eige.europa.eu/gender-equality-index/2021/country/AT>

² <https://www.bmi.gv.at/news.aspx?id=2F625658414350654B4E413D>

³ https://bmi.gv.at/magazin/2022_01_02/Gewaltschutz.aspx

⁴ <https://www.wien.gv.at/menschen/frauen/stichwort/gesundheit/dein-koerper-dein-recht/rechtsinformationen-sexuelle-belaestigung.html>

- a violation of the dignity of a person through intensive touching of a part of the body belonging to the sexual sphere. This case therefore also includes parts of the body not belonging to the immediate sexual sphere (buttocks, thighs, lips), if the dignity of the victim is violated by blatant touching (for example, stroking the thigh, grabbing the buttocks, kissing).

Not covered by Section 218 of the Criminal Code, and therefore not punishable by the courts are verbal and non-verbal harassment with sexual reference without physical contact, for example: suggestive remarks and looks, as well as sexist jokes.

Sexual assaults such as rape or other sexual acts are regulated in further sections of the Criminal Code (§§ 201 ff StGB "Strafbare Handlungen gegen die sexuelle Integrität und Selbstbestimmung").

1.2.2 Sexual harassment in the workplace and in the education sector – Equal Treatment Act⁵

Verbal and non-verbal harassment with sexual reference without physical contact, if committed in the workplace and in the education sector, constitutes discrimination on the grounds of gender and are regulated under the provisions of the Equal Treatment Act. There, sexual harassment is defined as *"conduct belonging to the sexual sphere which affects the dignity of a person or is intended to do so and is unwanted, inappropriate or offensive to the person concerned"*. Sexual harassment in the workplace takes many forms. It can be visual, verbal, physical or it can take the form of sexual blackmail.

Employers are legally responsible for taking appropriate remedial action in the event of (sexual) harassment in the company. They must take action to prevent further harassment. Employees must also be protected from harassment committed by third parties, such as customers or contractors. If employers culpably fail to respond or do not respond appropriately, they may be sued for damages.

1.2.3 Laws against online hate

In January 2021, the package of laws against online hate came into force, also intending to protect women and girls from degradation, insults and threats on the Internet. A key component of this package is the criminal offense against so-called upskirting (secretly photographing or filming under a person's skirt or in their neckline). In this law, the definition of upskirting also refers to unauthorised recordings within one's own home, for example while sleeping or through the window when changing clothes. The making or unauthorised dissemination of such recordings is punishable by up to one year's imprisonment.

⁵ <https://www.gleichbehandlungsanwaltschaft.gv.at/Themen/Belaestigung.html>

1.3 Available data and policy debate

Data on sexual harassment is only available for the area of sexual harassment in the workplace. The working climate index (2018) reveals the following⁶: Significantly more than half of all women have experienced first-hand sexual harassment by male colleagues, bosses or customers. 38% have been confronted with derogatory remarks - four percentage points higher than two years before. 31% have been stared at or scrutinised - up 6% points since 2016. 12% have suffered sexual harassment in the form of physical assault - up by a third from two years ago.

The Ombud for Equal Treatment recorded 96% female, 3% male and 1% transgender victims for the years 2016 and 2017. As such assaults are related to power relations and dependencies, young workers and trainees are particularly affected. Those who experience assault often feel helpless and are afraid to go public. Social expectations and the tabooing of sexual harassment also encourage a culture of silence and thus isolates victims.

Two cases of sexual harassment have recently dominated the debate on this issue in Austria:

1.3.1 #MeToo Debate in the Austrian Cultural Industries⁷

On the initiative of Austrian film director, Katharina Mückstein, countless victims of sexism, racism and assault in the Austrian and German cultural industries have spoken out in 2022. Cases of sexual harassment in the film industry were posted on Mückstein's Instagram account. Incidents reported by her and others have revealed: It's not about individual perpetrators, but about systemic weaknesses in institutions mainly publicly funded and which like to position themselves as progressive and feminist to the public. The high number of posts also show: harassment seems to be an open secret. The incidents take place in training schools, stages or film sets. There are often no consequences for the perpetrators. The government has responded to the reports and initiated a "trust office" against harassment and violence in the arts, culture and sports (see next section: vera*).

1.3.2 Sexual harassment at Formula 1

During the last Austrian Grand Prix (2022) numerous reports of sexism, sexual harassment and homophobic and racist remarks occurred which has led to international attention. Immediately after the reports, Formula 1 made an official statement. Numerous women had reported in social media about gauntlets in the stands mainly occupied by men and incidents of homophobia and racism also

⁶https://ooe.arbeiterkammer.at/beratung/arbeitundgesundheit/arbeitsklima/arbeitsklima_index/Arbeitsklima_Index_2018_November.html

⁷ <https://www.derstandard.at/story/2000136756872/metoo-die-fortsetzung>

occurred. Harassment also took place in the campsites around the track and had already been part of everyday life at Formula 1 in previous years.

These examples show the high prevalence of sexual harassment and the need for a broader strategy against these forms of discrimination.

2. Good practice examples

2.1 #we_do! and vera*

With the MeToo debate, the reflection process on improvement and awareness has started in Austrian Cultural Industries in recent years. With **#we_do!**, the umbrella organisation of Austrian filmmakers and the film producers created a venue for contact and advice against discrimination and unequal treatment, abuse of power, sexual assault and violation of labour law - for everyone working in the Austrian film and television industry⁸.

vera*, a "Counselling Center for Victims of Violence, Harassment and Abuse of Power in the Arts, Culture and Sports" was initiated in 2021 by a resolution of the National Council and started its work on September 5, 2022.⁹ vera* provides psychological and legal support and counselling to those affected in the arts, culture and sports. The newly created office is independent and, in addition to its advisory activities, also is contributing to the elimination of harassment through workshops, awareness-raising and structural measures. The office is supported by two independent associations, the "Vertrauensstelle", the association for the arts and culture sector and "100% Sport" for the sports sector.

2.2 Act4Respect

In cooperation with the Vienna Chamber of Labour, the association "Sprungbrett" offers support in cases of sexual harassment at the workplace since 2019. This support includes¹⁰:

- General information about the topic
- Telephone counselling
- Individual counselling for those affected and their families in the Vienna area
- Awareness-raising workshops for apprentices at Viennese vocational schools
- Information events for companies and vocational schools
- Act4Respect school lessons
- A guideline for companies on the topic of sexual harassment in the workplace (available for download)¹¹

⁸ <https://we-do.filmschaffende.at/>

⁹ [vera* Vertrauensstelle für Betroffene von Gewalt & Belästigung \(vera-vertrauensstelle.at\)](https://vera-vertrauensstelle.at/)

¹⁰ <https://sprungbrett.or.at/act4respect/>

¹¹ https://sprungbrett.or.at/wp-content/uploads/2021/07/Leitfaden_Act4Respect_2021_07_WEB.pdf

2.3 Awareness campaign: “I am your lifeline!”

After cooperations with the Vienna Donauinselfest 2018, the Viennese baths and the Wiener Linien (Vienna public transport), the campaign "Ich bin dein Rettungsanker" (I am your lifeline) started working with the gastronomy and club scene in 2019.¹² The campaign is primarily intended to raise awareness and at the same time provide tools for action to support women who have been harassed.

Restaurant and club scene businesses that collaborate with the initiative commit to the following principles:

- Training of security staff and the use of badges for identification.
- Information flyers in women's toilets.
- No advertisement with sexist content.
- Implementing safety measures, for example regarding the lighting.

2.4 "Luisa goes swimming": project against sexual harassment in public baths

"Is Luisa there?" By asking this simple question, persons who have been sexually harassed at one of Graz's six outdoor and indoor swimming pools can contact the bathing attendants. The project, officially launched on 4 July 2022, is intended to raise awareness and at the same time offer assistance and support for girls, women and all other genders in case of sexual harassment.¹³

3. Transferability aspects and lessons learnt

The Alliance Against Sexual Harassment mentioned in the Danish Discussion paper is an important and relevant initiative for Austria. The authors point out that this recently implemented initiative is the only one that addresses sexual harassment outside of the labour market and workplaces. Remarkable seem the diverse composition of the members of the Alliance and the focus on education, sports, leisure and culture. The focus on cultural change is the basis of the Alliance which also requires a broad treatment of the topic. As also mentioned in the Danish discussion paper, the role of surveys is important to identify the problem of sexual harassment. In Austria there is a lack of research on the topic.

From the Netherland's approach we can learn the importance of sexuality education in early ages addressing topics as consent, gender, diversity, responsibility and boundaries. Prioritisation of prevention is also an important aspect for Austria as well as the need for a National Action Plan. A point for the discussion might be the lacking of differentiation between sexual harassment and sexual violence.

¹² <https://www.wien.gv.at/menschen/frauen/stichwort/gewalt/kampagnen/anker.html>

¹³ <https://www.inside-graz.at/chronik/luisa-geht-schwimmen-projekt-gegen-sexuelle-belaestigung-in-grazer-baedern.html>

4. Conclusions and recommendations

A recent pilot study conducted in Tyrol revealed that sexism is part of everyday life of nearly all women and a high percentage of men. Around 86% of women reported that they have already experienced cat calling (whistling behind, staring at or making suggestive remarks) and 70% experienced touching and kissing without consent.¹⁴

Discrimination due to gender takes many forms and determines and affects the whole society on a daily basis. It not only harms the lives of women but also those of men and non-binary persons. Until now initiatives for the prevention of sexual harassment have mainly taken place within the Austrian Cultural Industries and other singular initiatives have been implemented. A special focus should be put upon more vulnerable groups of the population as stated in the discussion papers. It is important to broaden the prevention measures targeted at sexual harassment and sexual violence in all parts of society (including social media) and to implement a National Action Plan with a clear political commitment, clear targets and sufficient resources for the implementation of measures.

¹⁴ <https://www.lrsocialresearch.at/content.php?pg=aktivitaet&id=773>