

Austria

1. Discriminatory Family Code

The Austrian Marriage Act stipulates that the **minimum age of marriage** is 18 years old. However, a court may approve the marriage of an adolescent aged 16 to 18 years if his or her spouse is at least 18 years old and the adolescent appears ready to marry.¹ Only civil marriages, accompanied by a marriage contract, are recognized under Austrian law.² There are reports of undocumented **early marriages**, primarily in the Muslim and Romani communities.³

Since January 2010 two persons of the same sex have the right to a registered partnership but have no access to legal marriage. The main difference regarding legal equality between marriage and registered partnership is that within the partnership there is no right for adoption. In terms of labour and social law affairs there are no inequalities.⁴

Under the Civil Code, married men and women enjoy equal rights and duties, and are jointly entrusted with **parental authority**.⁵

An unmarried mother alone is entrusted with parental responsibilities; however, if she subsequently marries the child's father, he may then be entrusted with equal parental responsibilities as the mother.⁶ Unmarried parents may obtain joint custody by a court decision.⁷ In the case of **divorce**, under the Austrian Civil Code, parents must provide proportionately for children's maintenance.⁸ The parents may agree to joint custody, as long as a primary residence of the child is specified, and the court agrees the decision is in the child's best interest.⁹ If the parents fail to reach an agreement, the court will entrust one parent with sole parental responsibilities based on the best interests of the child.¹⁰

No evidence was found of discriminatory practices of **inheritance** to wives and daughters compared to husbands and sons.

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¹ Austrian Marriage Act (1938), Article 1 (paragraphs 1-2)

² Austrian Marriage Act (1938), Article 15; Austrian Civil Code, Article 44

³ U.S. State Department, "Human Rights Report" (2013), p. 13

⁴ Federal Chancellery for Women's Affairs (2014)

⁵ Austrian Civil Code, Section 144

⁶ Austrian Civil Code, Section 161, 166

⁷ Council of Europe (2009); Austrian Civil Code, Sec. 167

⁸ Austrian Civil Code, Sec. 140

⁹ Austrian Civil Code, Section 161, 166

¹⁰ Council of Europe (2009); Austrian Civil Code, Sec. 167

Men and women have equal right to **initiate divorce** in Austria in the case that there is no agreement on a joint divorce application.¹¹

According to the 2013 NGO Shadow report to the Convention on the Elimination of all forms of Violence against Women (CEDAW), there are strong social expectations that women should take primary responsibility for **domestic and care work**. According to the report, men contributed little more than a quarter of childcare duties and just below a quarter of the housework in Austria, based on survey data from 1998 to 2008.¹²

Forced marriages may also exist in certain communities in Austria. The Austrian Women's Counselling Centre launched a poster campaign with the message, "Forced marriage costs you your freedom: Life-long" to sensitize the public about this topic.¹³ The administration of the City of Vienna established a working group on forced marriages.¹⁴ Moreover, since August 2013, safe accommodation and counselling for women and girls affected by forced marriage are provided by the NGO Orient Express. This initiative is financed by the Federal ministry of Education and Women as well as by the Federal Ministry of interior.¹⁵

2. Restricted Physical Integrity

Austria has introduced a number of measures to prosecute perpetrators of **domestic violence**. In 2006, an amendment to the Code of Criminal Procedure eliminated the requirement for consent of victims in order to initiate criminal prosecution in cases of domestic violence and other dangerous threats in family contexts. Under the law, victims are offered the right to psychosocial and legal court assistance. In 2006, a new anti-stalking act came into effect, which has implications for domestic violence victims who are stalked by their abusers.¹⁶ In 2009, a new criminal offence was introduced for repeat offenders who continued to use violence against women.¹⁷

Aside from measures under criminal law, official protection is available for victims of domestic violence. The Federal Act on Protection against Domestic Violence (1997) allows the police to impose a temporary eviction order on perpetrators of such violence. A civil court may impose an interim injunction, barring the perpetrator from returning to his or her residence for a longer time period. This injunction may also prohibit the perpetrator from contacting the victim. Thus, victims may be allowed to remain in their homes without having to flee to shelters.¹⁸ The barring order has a term of two weeks. If the woman wants to prolong the protective measures beyond this term, she must apply for a temporary injunction under civil law against the perpetrator within these two weeks. A temporary injunction can be issued

¹¹ Austrian Marriage Act, Sec. 55a, Austrian Civil Code, Sec. 177(1)

¹² Frauen: Rechte jetzt! NGO Forum for the implementation of CEDAW in Austria (ed.) (2013)

¹³ WAVE network and European Information Centre Against Violence (2005)

¹⁴ CEDAW (2011) p. 45

¹⁵ Orient Express. <http://www.orientexpress-wien.com>

¹⁶ Federal Minister for Women and Civil Service (2007) p. 14

¹⁷ Second Act on Protection Against Violence (2009); CEDAW (2011) p. 19

¹⁸ Federal Minister for Women and Civil Service (2007) p. 12

even if the police have not intervened.¹⁹ According to the Justice Ministry, more than 7,700 injunctions preventing abusive family members from returning home were issued in 2011.²⁰

However, an eviction order may not offer sufficient protection to those victims who are totally dependent on their husbands financially, which is often the case of migrant women in Austria.²¹ In these cases, the Austrian Government continues to provide shelters where these women may seek assistance. The Government also established The Settlement and Residence Act (2005) that enables victims of domestic violence whose residence status is tied to a violent husband to receive an independent right of residence.²²

As of June 2009, victims have the right to considerate questioning also in civil proceedings that are related to criminal proceedings on account of violence. Furthermore they have the right to keep their residential address secret from the perpetrator.²³

In addition to these legal measures to combat domestic violence, the Austrian Government provides various services to victims through funding privately operated intervention centres and hotlines.²⁴ Since 1999, there has been an intervention centre in every province,²⁵ and since 2004 their budget has more than doubled.²⁶ The services of the intervention centres have expanded in recent years²⁷ to include various forms of assistance to victims, including helping them develop plans to stop the abuse, as well as legal counselling and social services.²⁸ There are about 30 women's shelters accommodating 750 women and their children.²⁹

The Government has also sponsored training seminars on the subject of violence against women, including for the judiciary and police, as well as anti-violence training for abusive men.³⁰ Under a 2001 amendment to the Federal Act on the Medical Profession, doctors are required to report cases of serious bodily harm or death of adult victims, which increases detection of domestic violence.³¹

A 2013 NGO Shadow Report to the Convention on the Elimination of all forms of Violence against Women (CEDAW) by a coalition of Austrian NGO's, led by the NGO Forum for the Implementation of CEDAW in Austria, alleges that there is still insufficient protection for victims of domestic violence, because offenders are hardly ever detained, and infringement of a restraining order is not a criminal

19 Victims' Rights to Support and Protection from Violence, June 2009, legislation for the protection from violence in Austria, http://www.interventionsstelle-wien.at/images/doku/gewaltschutzfolder_eng.pdf, p.4

²⁰ U.S. State Department, (2013) p. 11

²¹ Federal Minister for Women and Civil Service (2007) p. 43; Logar (2005) p. 12

²² Frauen: Rechte jetzt! (2013), p. 8; Federal Act concerning settlement and residence in Austria (the Settlement and Residence Act – SRA) Federal Law Gazette No. 100/2005 in the version Federal Law Gazette No. 31/2006

²³ Victims' Rights to Support and Protection from Violence, June 2009, legislation for the protection from violence in Austria, http://www.interventionsstelle-wien.at/images/doku/gewaltschutzfolder_eng.pdf, p. 10 (accessed 14/04/2014).

²⁴ U.S. Department of State, "Human Rights Report" (2013) p. 11

²⁵ CEDAW (2004) p. 38

²⁶ CEDAW (2011) p. 21

²⁷ Frauen: Rechte jetzt! (2013), p. 5

²⁸ U.S. State Department, "Human Rights Report" (2013) p. 11

²⁹ Frauen: Rechte jetzt! (2013), p. 5

³⁰ CEDAW (2004), p. 39; Logar (2005), p. 11; CEDAW (2011), p. 21; U.S. State Department (2013), p. 11

³¹ CEDAW (2004), p. 38

offence. The report also stated that the wording of court verdicts often reveal a lack of knowledge and sensitivity concerning violence against women.³²

According to the Ministry of Women's Affairs and Civil Service, between 10 to 20 % of adult women in Austria suffered from domestic violence during their lifetimes. Fewer than 10% of them filed complaints.³³ Female migrants, asylum-seekers, and refugees reportedly continue to face particular difficulties escaping from violent relationships. The percentage of migrant women seeking protection in women's shelters is disproportionately high.³⁴

In Austria, **rape**, including spousal rape, is punishable by up to 15 years' imprisonment.³⁵ The Criminal Law Amendment Act (2004) abolished the privileged treatment previously applied to rape and sexual coercion within the context of marriage or cohabitation.³⁶

The minimum age for consensual sex in Austria is 14 years-old. Statutory rape of an underage minor is punishable by ten years' imprisonment. The sentence may be extended to 15 years if the victim becomes pregnant.³⁷ Another Criminal Law Amendment Act (2001) made rape and severe sexual abuse of minors punishable by life imprisonment if it had lethal consequences, or otherwise by ten to 20 years' imprisonment.³⁸ The Second Act on Protection against Violence (2009) criminalized serial perpetration of violence against women. The basic penalty is up to three years' imprisonment. In specific cases, the penalty may be extended, and for several sexual offences, more severe punitive sanctions may be applied.³⁹

In 2011, there were 1,303 reported cases and 278 convictions for rape and sexual coercion, and 695 cases and 291 convictions for sexual abuse of minors.⁴⁰ According to an Austrian NGO Shadow Report to CEDAW, there is a lack of gender-sensitive data collection on violence against women, and a need for more sensitisation programmes for those working within the judiciary.⁴¹ Since 2000, public funding has been provided to minor or female victims of sexual violence for psychosocial counselling and legal aid.⁴² The Government conducted police training programs on gender-based violence.⁴³ Throughout Austria, child protection centres provide counselling to minor victims of violence, including sexual violence.⁴⁴

The Criminal Law Amendment Act (2004) created an explicit provision against **sexual harassment** to protect against undesired acts of a sexual nature, without the stipulation that the perpetrator used violence or that the offence was committed in public.⁴⁵ Labour courts may order employers to compensate victims of sexual harassment on the basis of the findings of the Federal Equality

³² Frauen: Rechte jetzt! (2013) p. 4

³³ U.S. Department of State, (2013) p. 11

³⁴ Frauen: Rechte jetzt! (2013) p. 7

³⁵ U.S. Department of State, (2013) p. 10

³⁶ CEDAW (2004) p. 29

³⁷ U.S. Department of State, (2013) p. 13

³⁸ CEDAW (2004) p. 28; Federal Law Gazette I No. 130/2001

³⁹ CEDAW (2011) p. 19

⁴⁰ U.S. Department of State, (2013) p. 11, 13

⁴¹ Frauen: Rechte jetzt! (2013)

⁴² CEDAW (2004) p. 28

⁴³ U.S. Department of State, (2013) p. 11

⁴⁴ Council of Europe (2009)

⁴⁵ CEDAW (2004) p. 30; Penal Code, Section 218, as amended by the Criminal Law Amendment Act (2004)

Commission.⁴⁶ The Equal Treatment Act prohibits sexual harassment and sex-related harassment also in the context of access to and the supply of goods and services. The minimum compensation for non-material damage in all cases of sexual harassment is EUR 1 000.⁴⁷

Some NGOs reported that immigrant families in Austria practice **female genital mutilation (FGM)** or cutting. This practice is criminalised under the Criminal Code's general bodily injury provision by up to ten years' imprisonment.⁴⁸ The Criminal Law Amendment Act (2001) included a provision that consent cannot be given to a mutilation or other such wounding of the genitals that is intended to bring about a permanent impairment of sexual sensation. FGM is therefore always unlawful.⁴⁹ In 2008, the National Action Plan for the Prevention and Elimination of Female Genital Mutilation in Austria was presented in Parliament.⁵⁰

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Sex and labour trafficking is prohibited under Austria's Criminal Code.⁵¹ According to the U.S. State Department, Austria is a destination and transit country for sex trafficking and forced labour."⁵² The Government prosecuted 45 offenders of human trafficking in 2011. The Austrian Government established a hotline for human trafficking and sponsors an Intervention Centre for trafficked women.⁵³ A new law in 2012 offers trafficked women easier access to the Austrian labour market.⁵⁴

Abortion has been legal in Austria since 1974, under the condition that it is performed in the first three months of pregnancy after a medical consultation. An abortion may be performed after 12 weeks if it is necessary to avoid serious danger to the women's physical or mental health, if the foetus is at risk of being born with a serious physical or mental defect, or if the woman is under 14 years of age.⁵⁵

3. Son Bias

The **male/female sex ratio** for the working age population (15-64) in 2014 is 1.01 while the sex ratio at birth is 1.05.⁵⁶ There is no evidence to suggest that Austria is a country of concern in relation to **missing women**.

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In 2012, the ratio of female to male in primary school enrolment was 99.8 and 96 for secondary education.⁵⁷

⁴⁶ U.S. Department of State, (2013) p. 11

⁴⁷ European Commission (2011), p. 36

⁴⁸ European Institute for Gender Equality, (2013), p. 13

⁴⁹ CEDAW (2004) p. 29

⁵⁰ European Institute for Gender Equality (2013) p. 109

⁵¹ Criminal Code, Article 104(a), 217

⁵² U.S. State Department, (2013a) p. 80

⁵³ CEDAW (2011) p. 24

⁵⁴ Austrian Task Force on Combatting Trafficking, (2012) p. 21

⁵⁵ Federal Law of 23 January 1974 (Bundesgesetzblatt, No. 60, 1974)

⁵⁶ CIA. (n.d)

⁵⁷ World Bank Development Indicators Database

The data reported by UNICEF on nutrition and birth registration is not gender disaggregated. However, birth registration from 2005-2012 was 100%.⁵⁸

4. Restricted resources and assets

Men and women have **equal ownership rights to land** in Austria.⁵⁹ No data on women's access to and ownership of land was found. Men and women have equal **ownership rights to non-land assets** in Austria.⁶⁰ Men and women enjoy **equal rights to financial services**. About 97% of women compared to 98% of men in Austria aged 15 years or older hold bank accounts at a formal financial institution.⁶¹

5. Restricted civil liberties

No evidence was found of discriminatory practices in **access to public space** for women compared to men. There are many active women's civil society organisations (CSO's) in Austria, campaigning on a range of issues. The 2013 NGO Shadow Report to the Committee on the Convention on the Elimination of all forms of Violence against Women (CEDAW) argues that the existence of many of these CSOs remains precarious, since they are largely dependent on public funding, which could be cut due to the economic situation.⁶²

There are no **quotas** for women in Parliament at the Federal or sub-national levels in Austria, though leading political parties undertake voluntary quotas. The women's quota is one-third of the People's Party, 40% of the Social Democratic Party, and one-half of the Green Party.⁶³

In 2014, 32.24% (59) of the 183-seat National Council, are female, and 18 women in the 61-member Federal Council (29.51%).⁶⁴ Six women served on the 14-member Council of Ministers.⁶⁵

All levels of the Austrian Government are obliged to aim for gender equality under the Austrian Federal Constitution (2009).⁶⁶ The Federal Budget Law (2013) includes the objective of gender equality in its regulations for Austrian administration.⁶⁷ An amendment to the Federal Equal Treatment Act in 2011 requires the Government to draw up and publish annual income reports, with the aim of eliminating gender-specific pay disparities in the federal civil service.⁶⁸ The Equal Treatment in Federal Service Act stipulates that female candidates have preference in all federal ministries, providing they are at least equally qualified as the best-qualified male competitor, until a 45% quota is reached.⁶⁹

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⁵⁸ UNICEF

⁵⁹ Civil Code, Secs. 18, 354, and 1237

⁶⁰ Civil Code, Secs. 18, 354, and 1237

⁶¹ World Bank (2011)

⁶² Frauen: Rechte jetzt! (2013) p. 6

⁶³ Global Database of Quotas for Women (2009)

⁶⁴ Austrian Parliament – Frauenanteil im Parlament

⁶⁵ U.S. State Department, "Human Rights Report" (2013) p. 9

⁶⁶ Austrian Federal Constitution (2009), Article 13, paragraph 3

⁶⁷ European Institute for Gender Equality (2013) p. 109

⁶⁸ CEDAW (2011) p. 9

⁶⁹ CEDAW (2011) p. 9; CEDAW (2004) p. 34

The NGO Shadow Report to CEDAW (2013) states that there is a lack of feminist issues covered in mainstream **media** in Austria.⁷⁰ An amendment to the Federal Act governing Austrian Radio and Television required the Television and Broadcasting Corporation to give preference to women who have the same qualifications as male candidates until a share of 45% of women is reached for all functions.⁷¹

The Federal Act on the Equal Treatment Commission and the Ombudsmen Office for Equal Treatment (1979) establishes **equal rights for women in the workplace**.⁷² If gender discrimination in promotion is found, labour courts may award the equivalent of up to four months' salary. The courts may also order compensation for women denied a post despite having equal qualifications.⁷³ A 2011 amendment to the Equal Treatment Act (1979) requires companies over a certain size to provide biannual reports on salaries by gender, with the aim of creating pay transparency.⁷⁴

Pregnant women are entitled to 16 weeks of **maternity leave**, including eight before the birth of the child. Additional leave is allowed under certain circumstances, such as premature or multiple births. During maternity leave, the woman receives 100% of her average income for the three months prior to taking leave.⁷⁵ There is no legal right to paternity leave, though collective agreements may provide a few days off for fathers immediately after the birth of a child.⁷⁶ Both fathers and mothers are entitled to special arrangements that allow them to leave work or change their full-time contracts to part-time ones in order to care for their children over a specified number of years. Under this system, they may later return to their full-time positions, while enjoying special protection against dismissal.⁷⁷

In practice, the **gender pay gap** in Austria is amongst the highest in the EU-15, and more prime age women work part-time than in the EU-27.⁷⁸ Following the financial and economic crisis of 2009, there was a decline in full-time employment and an increase in part-time employment for women in Austria.⁷⁹ In 2011, women accounted for 4.4% of all Austrian management board members or general management.⁸⁰

The NGO Shadow report states that access of migrant and asylum-seeking women to the labour market remains difficult. The situation has improved in recent years, for example, because the Government issued many work permits to resident migrant women. Nonetheless, a significant number of these women continue to occupy informal jobs, often in sex, domestic, or care work, for which the Government cannot enforce labour laws that would provide social protection and minimum wages.⁸¹

⁷⁰ Frauen: Rechte jetzt! (2012) p. 15

⁷¹ Federal Act Governing Austrian Radio and Television, CEDAW (2011), p. 35

⁷² ETC/OOEC Act, Federal Law Gazette No. 108/1979 as amended in Federal Law Gazette I No. 66/2004

⁷³ U.S. State Department, (2013), p. 12

⁷⁴ CEDAW (2011), p. 8

⁷⁵ Council of Europe (2009)

⁷⁶ Council of Europe (2009)

⁷⁷ CEDAW (2011) p. 17; Council of Europe (2009)

⁷⁸ Statistik Austria (2013); Frauen: Rechte jetzt! (2013), p. 3

⁷⁹ CEDAW (2011), p. 13

⁸⁰ CEDAW (2011), p. 25

⁸¹ Frauen: Rechte jetzt! (2013), p. 6-7

The National Defence Act (2001), expanded women's access to public offices in the Austrian Federal Army. The Federal Armed Forces Act (2001) entitled women who complete basic training to enlist in active military service.⁸²

As of 2012, the lyrics of Austria's national anthem were officially changed to include a reference to women. The passage "Home you are to great sons," was changed to "Home of great daughters, sons." This decision followed decades of debate in Austria's parliament.⁸³

⁸² CEDAW (2004) p. 41; National Defence Act of 2001, Federal Law Gazette I No. 146/2001

⁸³ Homola (2011)

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