

Change of legal gender status

The conditions for the correction of legal gender status are vary between Austria's federal states. They are not transparent.

In general one or two certificates from mental experts, who confirm the gender identity, are required. Some require the medical diagnoses "Transsexualism" (ICD10, F640). Since only a person by herself can seriously declare one's gender identity, this policy is a certain incapacitation of transgender persons.

A self-determination of one's gender should be allowed.

Change of first name

The name is an important part of one's personality. The European Court of Human right already noted: "The right to develop and fulfil one's personality necessarily comprises the right to identity and, there-fore, to a name."¹

The Austrian law for name change (NÄG, BGBl. 195/1988) offers a possibility to modify one's first and second name. However it prohibits choosing a first name which is not in line with one's registered gender (NÄG Par 3.1.7). This seems to be a general rule to facilitate the identification of one's gender by the first name to stabilise sexist order. In fact, mainly due to migration, there are a lot of first names, from which the gender cannot be identified by most people.

But in practice the NÄG-restriction is a specific discrimination of trans*-persons, since no one else asks for a first name of the other gender. Nevertheless, transsexuals need a proper first name when they start to live in there desired gender continuously. Without this it is impossible to be recognised in one's gender and to find respectively to stay in employment.

Treatment of transsexuals in jails

Already in 2014 the Committee for Prevention of Torture of the Council of Europe noted², that transgender-persons in jail are neither medically nor socially treated appropriate. The recommendation, that "policies to combat discrimination and exclusion faced by transgender persons in closed institutions should be drawn up and implemented" has been ignored by now by the Austrian Ministry of Justice till today.

¹) Burghartz, Opinion of the Eur. Comm'n. H.R. (Annex), 280 Eur. Ct. H.R. (ser. A)at 37

²) See

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680653ec7> Par. 116