



AUSTRIA

Austria

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Country Summary

Although Austria has consistently been ranked highly in media freedom indexes, concerns are being raised over attempts by politicians to influence the media as well as attacks against journalists, especially against the backdrop of the Covid-19 pandemic. A significant rise in online hate speech was recorded during the pandemic: in one federal state, while 1822 posts were reported in 2019, the number rose to 3215 in 2020 and 2817 in 2021. As a result, a set of legislative acts aimed at combatting all forms of online hate was introduced in 2021 and 2022,

including the Communication Platforms Act (KoPI-G). The KoPI-G brought forward concerns over its broad applicability, putting obligations on smaller platforms, the requirement for platforms to delete certain content deemed illegal within 24 hours, as well as the compatibility of the Kopl-G with European Union Law. The Federal Act on Measures to Combat Online Hate (Hass-im-Netz-Bekämpfungsgesetz or HiNBG) was part of a bigger legislative process known as the “Hass-im-Netz-Gesetzespaket,” a set of legislative acts against all forms of online hate. It was implemented in Austria with the aim of addressing the growing problem of hate speech and other forms of online abuse. One notable non-legislative development was the implementation, in 2019, of a project addressing authors of inflammatory posts, offered by a probation-service association, and aiming to raise awareness on discrimination and to encourage reflection on inflammatory behavior. In a 2019 case referred by the Austrian Supreme Court, the Court of Justice of the European Union held that it does not violate EU law if national courts order online platforms such as Facebook to remove unlawful content worldwide, and Member States may also impose an obligation on hosting providers to remove or block access to illegal content.

Introduction

Austria has a strong democratic system that includes guarantees of political rights such as freedom of expression. This is reflected in the Freedom House country report, where Austria reached 93/100 points on the Global Freedom Score. However, the report shows concern about corruption in the country which also touched on media and freedom of media companies. In addition, nationalist and xenophobic statements by politicians have raised concern.⁵⁰ A broader focus on the state of freedom of expression and especially freedom of the press is shown by the indexing provided by Reporters Without Borders, where Austria held place 31 out of 180 in 2022, with a score of 76.74 out of 100.⁵¹ The main points of criticism were the occurrence of attempts by politicians to influence media as well as attacks of politicians against journalists. As in other countries around the world, the Covid-19-pandemic has led to the spread of disinformation on online platforms. Threats to and assault of journalists reporting about Covid-19-related demonstrations has led to concerns about restrictions on freedom of the press.⁵² Another debate relates to the public broadcasting service (ORF), where reforms have been frequently demanded. A proposal for major legislative changes in Austria’s broadcasting system was put forth in April / May 2023 and as such no further details are included in this report.

Within the reporting period (2015-2022), Austria has seen major legislative changes in regard to hate speech online. Online Hate Speech was widely discussed by Austrian society, especially after an incident around the Austrian politician Sigrid Maurer and a craft beer shop owner

⁵⁰ <https://freedomhouse.org/country/austria/freedom-world/2022>

⁵¹ <https://rsf.org/en/country/austria>

⁵² Ibid.

known as the “Bierwirt” became public in 2018. Sigrid Maurer received sexist messages via private message but could not take legal action against them due to an obligation under Austrian law not to publicize the shop owner's message. She made the incident public and asked people not to visit the craft beer shop. The shop owner, however, took legal action. As a result, Sigrid Maurer had to defend herself in court against an accusation of defamation. The process lasted for over two years and ended when the shop owner withdrew his complaint and the case against Sigrid Maurer was discontinued. When the incident occurred, a large crowdfunding campaign was started in order to provide financial support for Sigrid Maurer as well as for a civil society organization working with victims of hate speech and discrimination online. The public debate around it led to a strong urge to implement legal changes to tackle online hate.

Information on the amount of online hate speech, removal rates, and government requests are not centrally available. However, some information is provided by civil society organizations, regional anti-discrimination offices, and online platforms themselves: The Anti-Discrimination office of Styria (a federal state of Austria) runs an app where online hate can be reported easily. Their report shows a significant rise in online hate during the pandemic. While in 2019, 1822 posts were reported via the app, the number rose to 3215 in 2020 and 2817 in 2021. ZARA, an Austrian NGO tasked with providing support for victims of online hate, reported 7839 incidents in the first four years since the establishment of their counseling service (#GegenHassimNetz) in 2017.

While a smaller legislative act introduced a provision against Cyber-Mobbing already in 2016, an extensive legislative framework against hate online (known as the “Hass-im-Netz-Gesetzespaket”) entered into force in 2021, consisting of a legislative act (KoPI-G) imposing obligations on platforms, and another legislative act (HiNBG) that changed already established provisions in order to make them a better fit for hate speech in digital spheres. The new legislative acts have led to mixed reactions. While it was seen as a positive step that new legislation regarding hate speech online has been introduced, concerns were raised about the legislation going too far and resulting in restrictions on freedom of expression.⁵³

I. Legislation

KoPI-G (Kommunikationsplattformen-Gesetz) – Communication Platforms Act⁵⁴

The Communication Platforms Act (Kommunikationsplattformen-Gesetz, KoPI-G) was part of a bigger legislative process known as the “Hass-im-Netz-Gesetzespaket” (Laws on Hate Online), a set of legislative acts against all forms of online hate. It entered into force on 1st January 2021. This Federal Act aims at providing safe and transparent online communication

⁵³ <https://www.article19.org/resources/austria-draft-communication-platforms-act-fails-freedom-of-expression/>;
<https://en.epicenter.works/content/first-analysis-of-the-austrian-anti-hate-speech-law-netdgkoplg>.

⁵⁴ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011415>

on platforms through promoting responsible and transparent handling of user reports on allegedly illegal content on communication platforms and the expeditious handling of such reports as well as posing transparency obligations on platforms. This kind of speech regulation can also be seen in the German NetzDG (Netzwerkdurchsetzungsgesetz; Network Enforcement Act) and the European Union's Digital Services Act (DSA). The NetzDG entered into force prior to the Austrian KoPI-G and served as a source of inspiration for the Austrian regulation. The DSA will require amendments of the KoPI-G. It applies to domestic and foreign service providers which provide communication platforms on a profit-oriented basis. Subject to the provisions of the KoPI-G are platforms with more than 100.000 registrations in the previous year or a sales revenue achieved through the operation of the communication platform in Austria above EUR 500.000 during the previous year. The supervisory authority (KommAustria) keeps a publicly available list of the service providers covered by the Act, which currently includes 11 platforms.⁵⁵

The KoPI-G introduces a reporting system for communication platforms. Service providers have to set up an effective and transparent procedure for handling and processing reports on allegedly illegal content available on the communication platform. Such a procedure shall be easy to find, permanently available, and easy to use. Users have to be able to report content, including the information required for an assessment, to the service provider and receive an explanation of how their report will be dealt with and what the result of the procedure in question was, including information on the main reasons for the decision made and the possibility to file an application for a review procedure. The KoPI-G also introduces a complaint procedure, allowing major concerns about reporting systems to be brought to the supervisory authority (KommAustria). Service providers are obliged to prepare a transparency report on the handling of reports of allegedly illegal content on an annual basis, or on a half-yearly basis for communication platforms with over one million registered users. The report shall be submitted to the supervisory authority no later than one month after the end of the period covered in the report and shall simultaneously be made permanently and easily accessible on the service provider's own website. If the supervisory authority finds that the obligations set out in KoPI-G are being violated, it shall initiate a supervisory procedure which can result in fines up to EUR 10 million.

The enactment of the law has led to mixed reactions: While several provisions such as the transparency requirements were received positively, civil society organizations such as Article 19 or the local NGO, epicenter.works, raised concerns about the Act.⁵⁶ The main reasons of concern were the broad applicability of the law, putting obligations on smaller platforms as

⁵⁵ https://www.rtr.at/medien/service/verzeichnisse/plattformen/Verzeichnis_Kommunikationsplattform.de.html

⁵⁶ <https://www.article19.org/resources/austria-draft-communication-platforms-act-fails-freedom-of-expression/>;
<https://en.epicenter.works/content/first-analysis-of-the-austrian-anti-hate-speech-law-netdgkopl>

well and the short timeframes put into place, which requires platforms to delete certain content deemed illegal within 24 hours.

Another cause for concern was the compatibility of the Kopl-G with European Union Law. Three internet platforms applied to KommAustria for a ruling legally declaring that they did not fall within the scope of the KoPI-G. The providers essentially argued that the provisions of the KoPI-G were not compatible with EU law, in particular with the Country-of-Origin Principle of the E-Commerce Directive and the Audiovisual Media Services Directive (AVMSD). The supervisory authority considered the KoPI-G applicable to the three platforms, which was later confirmed by the BVwG (Bundesverwaltungsgericht; Federal Administrative Court). Following an appeal by the platforms, the VwGH (Verwaltungsgerichtshof; High Administrative Court) has now dealt with the case and decided to bring the case to the Court of Justice of the European Union (CJEU) for a preliminary ruling. There is no final decision on the case yet.

Introduction of a New Provision against Cyberbullying (§ 107c StGB)⁵⁷

An amendment of the Austrian Criminal Code (Strafgesetzbuch, StGB) came into force on January 1st, 2016. It introduced a new provision against “Continued harassment by means of a telecommunications or computer system” (Fortdauernde Belästigung im Wege einer Telekommunikation oder eines Computersystems), targeting several forms of Cyberbullying. The provision applies to cases in which information or pictures relating to the most personal living sphere is made public without the prior consent of the person. For the provision to be applicable, it is required that a person’s honor is violated, and a larger group of people can perceive the act of cyberbullying. A violation of the provision can lead to imprisonment of up to one year or a monetary fine, or up to three years if the cyberbullying lasts longer than a year or leads to the suicide of the victim.

After the enactment of the provision, it showed that the number of incidents this provision could be applied to was limited due to the provision of “continued harassment,” which was interpreted as a large number of individual acts. This was the subject of an amendment that entered into force in 2021. It now suffices that only one single action has been taken but can be available online for a longer period of time. This amendment was part of a larger legislative framework (see below: Federal Act on Measures to Combat Online Hate (Hass-im-Netz-Bekämpfungsgesetz, HiNBG))

Implementation of the DSM Directive: Amendment of the UrhG (Umsetzung der DSM-Richtlinie: Änderung des UrhG)⁵⁸

The implementation of the DSM Directive in Austria has led to an amendment of the Copyright Act (Urheberrechtsgesetz 1936) in order to adapt the regulations to meet European

⁵⁷ <https://www.ris.bka.gv.at/eli/bgbl/1974/60/P107c/NOR40229319>

⁵⁸ https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2021_I_244/BGBLA_2021_I_244.html

requirements. The DSM Directive is intended to update copyright provisions in the digital age, thus creating a uniform framework for the use of protected material on the Internet. The comprehensive amendment to copyright law clarifies, among other things, the responsibility of large platforms for the uploading of protected works by their users, according to which a license from the author is to be obtained in the future. In any case, measures taken by the platforms should not lead to permitted uses being prevented. Therefore, content is to be made accessible there for which the users have already declared that it is permitted when uploading it ("pre-flagging"). Small parts of works, for example, 15-second excerpts of films or music - should not be automatically blocked. If platforms systematically implement excessive protective measures that lead to permitted uses on the platform being prevented, KommAustria, as the supervisory authority, would have to initiate supervisory proceedings.

The Federal Act on Measures to Combat Online Hate – (Bundesgesetz, mit dem Maßnahmen zur Bekämpfung von Hass im Netz getroffen werden (Hass-im-Netz-Bekämpfungsgesetz – HiNBG)⁵⁹

The Federal Act on Measures to Combat Online Hate (Hass-im-Netz-Bekämpfungsgesetz or HiNBG) was part of a bigger legislative process known as the "Hass-im-Netz-Gesetzspaket", a set of legislative acts against all forms of online hate. It was implemented in Austria with the aim of addressing the growing problem of hate speech and other forms of online abuse.

The Act pursues the goal of remedying this unsatisfactory situation through several measures in the field of private law, criminal law, and media law. While some measures included small adaptations of already existing law in order to make them easier applicable in digital spheres, other measures were new to the Austrian legal system. While it is not possible to include all measures in this report, some of the most important ones are listed here:

Introduction of a new simplified injunction procedure: The aim was to provide a fast and cost-efficient remedy to victims of online hate, with the goal of establishing a legally enforceable obligation for content to be taken down (§ 549 ZPO). While this measure was highly welcomed in the first place, it has not yet proven to work sufficiently, with only a very limited number of cases where the procedure was used effectively.

Introduction of a possibility for employers to act against online hate directed against one of their employees (§ 20 ABGB).

Amendment of the criminal provision against cyberbullying to make it more easily applicable (see above, Introduction of a new provision against Cyberbullying (§ 107c StGB))

Introduction of a new criminal law provision against unauthorized image recording ("unbefugte Bildaufnahmen," § 120a StGB), which forbids taking pictures of genitals, the pubic

⁵⁹ https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_148/BGBLA_2020_I_148.html

area, buttocks, or female breasts. The act is criminally punishable without the images being made public. However, if done so, there is a higher penalty.

Amendments in media law include the restructuring of the provisions aiming *at compensation for media law violations*. In addition, the legal status of witnesses and family members was improved, allowing them to take legal action if their legal interests are violated through media.

It is now possible for *victims of online hate to request psychological and legal support* throughout the court proceedings in order to reduce the emotional burden that might come with such proceedings.

COVID-19 Legislation (COVID-19-Maßnahmengesetz⁶⁰)

The COVID-19 pandemic brought about unprecedented changes to daily life in many countries, including Austria. In an effort to contain the spread of the virus, the Austrian government implemented measures such as lockdowns, curfews, and restrictions on public gatherings. The first lockdown was introduced with the Ordinance of the Federal Minister for Social Affairs, Health, Care and pursuant to § 2 no. 1 of the COVID 19 Measures Act (Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz gemäß § 2 Z 1 des COVID-19-Maßnahmengesetzes). While the measures of the government varied throughout the pandemic, the main aim was to restrict people from meeting up in person. There were no measures relating explicitly to freedom of expression such as any legal action against disinformation about Covid vaccines.

II. Non-legislative Developments

Universal Periodic Review⁶¹

The Third Austrian State Report focuses on the implementation of recommendations adopted in the second Universal Periodic Review. It was adopted by the Ministerial Council on 7th October 2020 and submitted to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in mid-October 2020. Before submission, draft reports had been widely distributed to civil society organizations with a request for comments. The review of Austria before the Human Rights Council in Geneva took place on the 22nd January 2021.

The national report points out that internet discussion forums make an important contribution to open discussion in a pluralistic, democratic public sphere but notes that the right to freedom of expression ends where its exercise endangers public peace and harms others. In order to deal with the issue, the Austrian Government Program developed a package of measures. (these were the above-mentioned laws regarding hate online). Specific trainings for public

⁶⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011073>

⁶¹ <https://www.ohchr.org/en/hr-bodies/upr/at-index>

prosecutors and judges were planned and police officers would participate and provide presentations. In 2019, a project addressing authors of inflammatory posts was transformed from trial to regular operation. This project offered by a probation-service association aims to raise awareness of discrimination and to encourage reflection on inflammatory behaviour.

III. Enforcement

E.S., an Austrian politician, gave a speech in 2009 in which she criticized Islam and made statements that were considered as promoting hatred against Muslims. She was convicted under Austrian criminal law for violating the prohibition of hate speech. The case reached the national Supreme Court which, in 2014 decided that the measures taken against her were proportionate. E.S took her case to Strasbourg, arguing before the European Court of Human Rights (ECtHR) that her right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) had been violated. She claimed that she did not intend to incite hatred against Muslims, but rather to express her opinion on a matter of public interest, namely the integration of Muslim immigrants into Austrian society. In 2018, the ECtHR acknowledged that the case involved a delicate balancing exercise between the protection of freedom of expression and the need to prevent hate speech. The ECtHR considered various aspects, mainly the protection of political speech on the one hand and the protection of religious groups on the other hand. The speech of E.S. was considered as going beyond the permissible limits of an objective debate, ultimately leading to the Court finding no violation of Art 10 ECHR. The conviction of E.S. in Austria was therefore not declared unlawful.

The judgment of the European Court of Justice (CJEU) of 3 October 2019 in *Glawischnig-Piesczek v Facebook Ireland Limited*⁶² has far-reaching consequences for the liability of online platforms in relation to illegal content. The case revolved around a Facebook post that contained insulting and defamatory statements about the former Austrian politician Eva Glawischnig-Piesczek. After Ms Glawischnig-Piesczek had tried in vain to have the post deleted, she filed a lawsuit against Facebook Ireland Limited at the Vienna Commercial Court. She demanded that Facebook remove the post as well as identical posts or posts with equivalent meaning worldwide. The Vienna Commercial Court granted Ms Glawischnig-Piesczek's request, but Facebook appealed to the Austrian Supreme Court, which eventually referred the case to the CJEU for a preliminary ruling.

The CJEU's decision clarified that it does not violate EU law if national courts order online platforms such as Facebook to remove unlawful content worldwide, including materially identical content. The CJEU emphasized that while the EU Directive on Electronic Commerce (EC Directive) states that hosting providers are not responsible for content uploaded by users on their platforms, they are obliged to remove illegal content as soon as they become aware

⁶²<https://curia.europa.eu/juris/document/document.jsf?jsessionid=F609219264F7D9C1D4CCA24C49E0AB05?text=&docid=218621&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4928846>

of it. In addition, Member States may also impose an obligation on hosting providers to remove or block access to illegal content. However, in this case, the Austrian Supreme Court did not touch on the question of worldwide applicability again as it was not brought up in the subsequent proceedings.

Conclusion

Austria's democratic system encompasses robust safeguards for political rights, including freedom of expression. A significant legal advancement in the realm of freedom of expression occurred in 2015 with the introduction of the Communication Platforms Act (Kommunikationsplattformen-Gesetz, KoPI-G). This act was part of the comprehensive legislative process known as the "Hass-im-Netz-Gesetzespaket" (Laws on Hate Online), which aimed to address various forms of online hate. Effective from January 1, 2021, the Communication Platforms Act sought to foster secure and transparent online communication on platforms by promoting responsible and transparent handling of user reports concerning potentially illegal content. Notably, recent rulings by the CJEU and ECtHR with regard to Austria have upheld the legality and legitimacy of Austria's approach to combatting hate speech and slander on online platforms.