



Mr Claudio Grossmann
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Position statement on the UN report
Committee against Torture
44th session

Dear Mr. Grossmann,

With reference to the reports of the UN Committee against Torture dated 26 April 2010 – 44th session and in light of the upcoming UN Committee meeting, the City of Vienna, upon recommendation of the Austrian Ministry for Foreign Affairs, hereby takes this opportunity to make the following detailed position statement regarding the remarks contained in the report under point 22.

In its report the UN Committee against Torture expressed concern over violations of privacy and humiliating circumstances during medical examinations carried out at the Vienna Communal Health Office, urging Austria to ensure that the greatest care would be taken to preserve the privacy and the dignity of the persons undergoing the examinations. This was apparently the result of a written posting on the Internet platform sexworkers.at which had levelled accusations against the Health Office regarding the diagnosis and treatment of sexually transmitted diseases (STD clinic – outpatient clinic for sexually transmitted diseases) and despite the Austrian delegation's repudiation of the accusations in question at the presentation of the report on 5-6 May 2010.

Before a more detailed discussion of the contents is undertaken, it must be stressed that Municipal Department 15 rejects the claims asserted on the Internet platform sexworkers.at.

The medical facility in question has been in existence for nearly two decades and is operated by Municipal Department 15 of the City of Vienna as an outpatient clinic for diagnosing and treating sexually transmitted diseases (STD clinic). The continued operation of the facility is subject to the provisions stipulated by the Vienna Hospitals Act. The Prostitution Ordinance forms legal basis for the examinations carried out at the STD clinic. The STD clinic in Vienna is a highly specialized medical facility which offers low threshold access to medical diagnostics and treatment, as well as counselling by social workers and street work free of charge.

Legal Situation in Austria

In Austria prostitution is only permitted within the framework of compliance with specific statutory provisions. The prostitution ordinance on the monitoring of the health situation of persons who engage in prostitution stipulates that persons who tolerate commercial sexual acts performed on their own bodies or perform such acts on others are to undergo an examination before taking up these activities as well as at regular weekly intervals. Said examinations are to be carried out by a public health officer to ascertain the absence of sexually transmitted diseases. In addition, persons who engage in prostitution must undergo an additional examination pursuant to the AIDS Act on a periodic basis at intervals of at least three months. Second examinations are to be carried out by public health officials to ascertain the absence of HIV infection. Provided that no infection is ascertained, the competent public health service (in Vienna the STD clinic) issues a photo-identification (so-called "control card"), on which the date of the last examination is entered. The results of the examination are not entered on the card. Should a sexually transmitted disease or HIV infection be ascertained, this control card is revoked by the public health service.

Persons interested in engaging in prostitution in Vienna are also obligated to be officially registered with the Federal Police Directorate pursuant to the Vienna Prostitution Act.

An examination carried out by a public health official is mandatory in any case for the control card to be issued. This means that not just any office based physician, but rather a public health official employed by the public authorities must ascertain the absence of

sexually transmitted diseases. A visit to a gynaecologist for general examinations is possible at any time, albeit not for obtaining a stamp on the control card.

Preserving the Privacy and Confidentiality of the Examinations

During the planning of the medical facility, which was newly built in 2007, standardized building guidelines were followed as to the arrangement of examination rooms, dressing rooms and waiting areas in order to ensure the confidentiality of such examinations. Patients may only gain access to the examination rooms by entering through the changing rooms, which can be locked to restrict further access from the waiting area. Each examination room has two changing rooms, which can be locked to ensure that they are not accessible from the waiting area and can only be opened from the examination-room side of the door. This ensures that no unauthorized or unwarranted individuals can enter the examination room during an examination. The examination area of the STD clinic has a separate waiting room for women.

Principally persons accompanying the patients are not present during the examination. However, in accordance with the wishes of the clients, such persons may join them for the subsequent consultation.

This clinic for the diagnosing and treating of sexually transmitted diseases is a public medical facility and accordingly open to anyone. Employees of the clinic are not permitted to refuse anyone access or the right to loiter in public areas (the street area in front of the clinic). Likewise, the medical staff is not legally authorized to ascertain any connections between the individuals waiting or remove anyone from the premises. Furthermore persons accompanying the patients are permitted in principle to enter the medical facility. Nor is it understandable why a visit to a medical facility would immediately constitute a "pillory-like situation". The entrance to the clinic even offers particular protection, as the entrance is not located directly on a public street, but rather is accessible via an inner courtyard.

Essentially each examination takes place in accordance with the principle of the preservation of confidentiality, and the staff complies with the relevant statutory provisions, as it is obligated to uphold official confidentiality and the secrecy of data. Furthermore, the rules governing doctor-patient confidentiality also apply to the medical personnel.

Should a sexually transmitted disease be diagnosed, the only repercussion the patient faces is the loss of the control card. As a result, the patient in question is prohibited from

engaging in prostitution and is provided with information from the STD clinic that he or she may be reissued a control card once the disease has been successfully treated.

Carrying out the Examination and Treatment

With regard to the procedure of the examination, it should be pointed out that the staff has completed all of the professional training required and is thereby subject to all of the provisions outlined in the appropriate professional statutes, all of which mandate the preservation of human dignity and working for the well-being of the patient. The examinations are carried out in accordance with scientific and medical, as well as hygienic standards and are validated as up-to-date in accordance with the prevailing standard operating procedures.

The STD clinic in Vienna is a highly qualified medical facility which provides low threshold access to medical diagnostics and treatments by specialists. All examinations are carried out in accordance with the latest medical and scientific findings. It can be assumed that the expert staff has gained a great deal of routine experience on a daily basis, thereby ensuring that the examinations are optimally carried out. However, many methods used in the examination, even when flawlessly carried out, can lead to short-term discomfort (e.g. a brief burning sensation when urinating for the first time after a urethral swab, bruising at the puncture site of a blood draw).

It should be principally stated that all examinations are only carried out after person to be examined has given his or her approval. Examinations carried out against a person's will, i.e. "forced examinations", are not permitted in Austria. Persons, who are incarcerated or in any other kind of judicial or police detention, must undergo a medical examination prior to imprisonment, and once their ability to be incarcerated has been established, they are entitled to a medical examination at any time pursuant to the Incarceration Ordinance. Should a person found to be suffering from symptoms of illness or shows any signs of having contracted a sexually transmitted disease – including based on the person's own statements – the person in question is accompanied by a correctional prison officer or a law enforcement officer to be examined at the STD clinic. The person in question is subject to the security provisions of the competent public authority during transport. The examination at the STD clinic then takes place based on the complaints of the person in question. Examinations on patients in handcuffs are not carried out in principle.

The Physicians' Act mandates that doctors explain and provide information on the treatments to be carried out. It is necessary to obtain the required compliance in

particular for medicines to be taken by the patient, as the consistent administration of medication is important in particular in treatment of diseases using antibiotics. For this reason, special information material is available at the STD clinic when a sexually transmitted disease has been diagnosed; this material is also available in the patients' various native languages and provides information about the necessary check-ups and measures to be taken to prevent the spread of the disease in question. When taking a medical history, the patient is asked about any possible allergies, and the results are documented in the file.

Services Offered by the STD Clinic

The STD clinic's staff is made up of eight physicians, nine medical office assistants, three biomedical analysts, two office workers and four trained social workers.

Some 50,000 patient interactions take place every year at the STD clinic, wherein the focus is on examinations carried out pursuant to the Act on Sexually Transmitted Diseases. Gynaecological examinations outside of the STD clinic can only be carried out by specialists for gynaecological medicine. The opening hours are from 8 a.m. to 12 p.m. However, examinations generally go on until 1 p.m. past the cut-off point for patient registration, and in some cases even longer. In response to the growing number of examinations carried out, funding for additional medical and clinic staff was approved in 2009; additional personnel has been and is still being requisitioned on an on-going basis.

Persons who visit the STD clinic on a weekly basis in accordance with the ordinance governing the monitoring of the health situation of persons in connection with the Act on Sexual Transmitted Diseases do so in order to receive the stamp on their official control card. For that reason, it is usually understood that this does not replace an annual or routine gynaecological examination. In any case, the staff at the STD clinic communicates to patients the necessity of additional gynaecological examinations with regards to an annual screening check-up, and should there be any suspicion of an gynaecological disease, the patient is then referred to a specialist to clarify the situation. If so desired, patients can receive assistance in their search for a physician (e.g. a doctor who speaks the native language of the patient).

The regular examinations to determine the absence of sexual transmitted diseases certainly do not automatically mean that prostitutes should not practice safer sex. The argument that customers feel safer thanks to the examinations is therefore irrelevant,

because essentially prostitutes should only engage in contact with their customers when practicing safer sex. For that reason, regular information on safer sex is passed on within the context of the examinations and consultations with social workers at the STD clinic. In addition, within the context of street work, the sex workers, as well as the bar owners and customers are informed of the importance of practicing safer sex.

Austrian laws are aimed at upholding the principle of equality for all persons and are not aimed at a particular gender. Essentially it must be stated that diseases are transmitted primarily by the failure to practice safer sex, and must be viewed as occurring independent of gender.

The STD clinic carries out examinations on male as well as female prostitutes.

It is not possible to compare data between Germany and Austria, as examinations on sex workers in Germany are only recommended, and registration requirements are handled differently. According to the German Infectious Disease Control Act, only the detection of syphilis bacteria in laboratory diagnostics must be reported; gonorrhoea does not come under that heading. The data used both in Germany as well as in Austria are based on sentinel systems (i.e. only certain, representative facilities report infectious disease statistics), which, however, are structured differently.

In conclusion we would like to draw your attention to the enclosed photographs of the STD clinic, which are perhaps able to convey a suitable impression of the medical facility and its equipment.

Yours sincerely,


Dr Karin Spacek
Head of Municipal Department 15

Encl.

cc to:

Administrative Group for Public Health and Social Affairs
City of Vienna Human Rights Coordinator
Foreign Ministry of the Republic of Austria
Ministry of Health of the Republic of Austria