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Austria's Constitutional Court Recognizes Non-Binary People as a Matter of Human Rights

In a landmark ruling of 18 December 2025 ([E 1297/2025](#)) that strengthens gender identity rights in Austria, the Constitutional Court (Verfassungsgerichtshof) has made it unequivocally clear: non-binary people are entitled to full legal recognition, including an appropriate gender designation or the complete deletion of a gender entry in the civil status register.

Gender Identity as a Fundamental Right

The Constitutional Court reaffirmed a principle long established by the European Court of Human Rights (ECtHR): the right to individual gender identity is protected under Article 8 of the European Convention on Human Rights. The Court emphasized that the state must respect each person's decision for or against a particular gender, and that this protection applies equally to non-binary persons, who cannot be forced into male or female classifications ([para. 19f](#)). Importantly, the Court confirmed that all trans, intersex, and non-binary people have the right to request the complete deletion of their gender marker from official records ([paras 25, 32, 34](#)).

The State Is Not Obliged to Register Gender

As it had already stated in its 2018 ruling on intersex persons, the Constitutional Court reiterated that the state is not obliged to register gender at all (VfGH [15.06.2018, G 77/2018](#) para. 18, 42). However, if it chooses to do so, such registration must be accurate and truthful meaning it must reflect a person's gender identity, not merely their physical or biological characteristics.

Rejection of a Restrictive Legal View

The Court firmly rejected the opposing legal interpretation advanced by the Administrative Court in a decision from December 2024 ([Ro 2023/01/0008](#)). That interpretation sought to define legal gender exclusively on the basis of biological sex. According to the Constitutional Court, such an approach constitutes a human rights violation, as it imposes a state-determined gender identity on individuals against their will ([paras. 19, 25, 27, 31, 35, 37](#)).

The Case Behind the Decision

The ruling arose from a case involving a person who is biologically male but identifies as non-binary—neither male nor female. Relying on the Constitutional Court's 2018

jurisprudence, the person requested both a non-binary designation and the deletion of their gender entry (www.genderklage.at). The Administrative Court initially ruled in their favor. However, the Mayor of Vienna appealed the decision to the Administrative Court, which unexpectedly attempted to reverse decades of human rights progress by insisting on biological sex as the sole determinant of legal gender. The Constitutional Court has now decisively overturned that approach.

Clarifying the “Third Gender” Ruling

The Constitutional Court has clarified that non-binary identities must also be recognized, provided that the gender identity is serious and enduring. Civil registry offices may seek expert opinions to assess such applications, but they may no longer exclude non-binary persons as a matter of policy. The decision marks a significant step forward for gender self-determination in Austria and sets a clear constitutional standard: gender identity belongs to the individual, not to the state.