



Austria



2015 saw the implementation of several key judgments in the area of family law. These cases ranged from the extension of medically assisted reproduction to lesbian couples to the striking down of a ban on joint adoption options for same-sex couples, the first ruling of its kind in Europe. LGBTI activists gathered together in a show of public support for a lesbian couple evicted from a café; however the Eurobarometer figures revealed people in Austria felt less comfortable with LGBT work colleagues than the EU average. The push for marriage equality also continued throughout the year.

Access to goods and services

- In January, a lesbian couple who had kissed at Café Prückel in Vienna were asked to leave the establishment after the manager reportedly said “diversity such as this belongs in a brothel, not in a traditional coffee house”. The couple brought this to the attention of the media and the manager later apologised for her reaction. On 16 January, an estimated 2,000 people gathered in Vienna to protest against the couples’ treatment and to draw attention to discrimination against same-sex couples.

Age of consent

- A 2013 ECtHR judgment, concerning the non-deletion of convictions under the higher age of consent provision for male homosexual acts, was implemented following the introduction of the Special Criminal Record Deletion Act. The 2013 *E.B. and others v Austria* judgment required authorities to remove historical convictions handed down under article 209 of the criminal code from an individual’s record. The Act goes further than the ECtHR decision and extends this deletion to those convicted under additional legislation, such as the law criminalising male and female homosexuality, in force until 1971. The Act will come in force on 1 January 2016.

Bias-motivated speech

- On 7 July, the parliament’s National Council amended section 283 of the Criminal Code. The amendments were then passed by the Federal Council on 23 July. Sexual orientation was included in the list of aggravating factors that should be taken into account during sentencing. The new hate speech law will come into force on 1 January 2016.

Bias-motivated violence

- On 7 July, the parliament’s National Council amended section 33 of the Criminal Code through the Criminal Law Amendment Act 2015. The amendments were then passed by the Federal Council on 23 July. Sexual orientation was included in the list of aggravating factors that should be taken into account during sentencing. The new hate crime law will come into force on 1 January 2016.

- The latest ECRI report on Austria was published on 13 October. The lack of any comprehensive approach to LGBT issues at federal level was criticised and ECRI recommended that the Austrian authorities set up an IT system for recording homophobic and transphobic hate crime.

- Section 33 of the Penal Code was amended to expressly include sexual orientation; this provision covers the conditions that will be considered by judges as ‘special aggravating circumstances’ during sentencing. The grounds protected under incitement to hatred (found in section 283 of the code), including sexual orientation, will now be considered as special aggravating circumstances when a crime is committed for specific motives.

Family

- On 14 January, the Austrian Constitutional Court became the first court in Europe to strike down a ban on joint adoption for same-sex couples. The court held that excluding same-sex couples from joint adoption was discriminatory and contrary to the best interests of the child. The deadline for parliament to legislate was 31 December 2015, but in October the Federal Ministry of Justice declared that further legislative amendments were not considered necessary to implement the court decision – the wording in the court’s judgment would sufficiently achieve this goal. Joint adoption by same-sex couples will be possible as of 1 January 2016 without further amendments to the law.

- Access to artificial insemination was officially extended to lesbian couples, following a 2013 court decision to end the ban on sperm donations for lesbian couples. The Constitutional Court deadline for imposing this legal change had been set at 31 December 2014 but the vote to enact the law took place in 2015. The Reproductive Medicine Law Amendment Act came into force on 23 February.

- An Austria national and their Thai partner initiated proceedings against Austria before the ECtHR. Their application to enter a registered partnership at a civil registry office was initially rejected in 2010. The couple argued that this constituted discrimination on the

grounds of sexual orientation, as registered partnerships and civil marriages are conducted at different offices. The ECtHR officially opened proceedings in May but there were no further developments in the *Dietz and Suttasom vs Austria* case before the end of 2015.

- In November, a citizen's initiative calling on the government to consider marriage equality attracted 45,000 signatures from members of the public. The *Ehe Gleich!* Initiative will be examined by the Minister for Justice and the Minister for Family Affairs in 2016; although part of the community and some LGBTI NGOs feel that it would be preferable for the institution of marriage to be reformed and modernised first.

Freedom from torture, cruel, inhuman or degrading treatment

- On 6 November, the CoE's Committee on the Prevention of Torture published a report following a 2014 prison visit where they met with trans inmates. The Committee recommended that the authorities should take steps to ensure that trans people in prison have access to treatment and the legal gender recognition process; it also stated that anti-discrimination policies should be drafted and implemented to protect trans prisoners.

Public opinion

- According to Eurobarometer 2015, 57% of people surveyed in Austria believe that discrimination on the basis of sexual orientation is widespread (EU28 average was 58%). When asked about gender identity, 58% felt discrimination on this ground was widespread (EU 28 average was 56%). 70% totally agreed with the statement that LGB people should have the same rights as heterosexual people (EU 28 average was 71%). When asked to grade how comfortable they would be with certain scenarios on a scale of 1 (not comfortable at all) - 10 (totally comfortable), 55% said they would be comfortable or moderately comfortable with an LGB work colleague (EU28 average was 72%). When asked about a potential trans work colleague, 49% said they would be comfortable or moderately comfortable (EU28 average was 67%).