



# Austria



Austria remained reluctant to improve the rights enjoyed by same-sex couples. The Austrian Constitutional Court delivered negative decisions related to gay and lesbian registered couples' access to: (i) equal registration ceremony venues; (ii) joint surnames; and (iii) medically assisted reproduction. In terms of legal protection, a positive development this year was the inclusion of an explicit reference to the ground of sexual orientation in the *Criminal Code* provisions related to incitement to hatred; however, Austria failed to extend the same protection to the ground of gender identity.

## Bias motivated violence

- As of January, Article 283 of the Austrian *Criminal Code* protects LGB people in its provisions prohibiting incitement to hatred through the inclusion of sexual orientation in the list of protected grounds. Previously, the law only referred to the grounds of race and ethnic origin and religion.

## Employment

- In 1976, a police constable was fired following his conviction for a homosexual offence, under the now repealed Article 209 of the *Criminal Code*. He was never reinstated to the police force and his pension remained cut by 25%. The Ministers of Interior and of Finance denied his claim for compensation. The man relied on the *European Convention on Human Rights* and on the *Employment Framework Directive* (Directive 2000/78/EC) and in 2009 made a claim for compensation for (i) loss of earnings; (ii) loss of pension and (iii) non-pecuniary damages. The Minister of Interior and Minister of Finance rejected his claim as they argued that it had no basis in law. The former policeman took his case to the Supreme Administrative Court and won. The Court quashed both decisions for violation of both material and procedural law. The Minister of Interior now has to decide on compensation for loss of earnings and the Minister of Finance for compensation for loss of pension. Both will have to take a decision on non-pecuniary damages.

## Equality and non-discrimination

- *Homophobia*, a short film set in the Austrian army, was released online ahead of the *International Day against Homophobia and Transphobia* (IDAHO) with the aim of portraying fear of the unknown as the motives behind homophobia. The 22-minute film was partly financed through crowd funding and the decisions about the script and cast were presented for discussion on social media platforms.
- A gay man in a registered partnership was allowed by an Austrian cardinal to serve on a local Parish Council, in a decision that overruled an earlier ban on the services of out gay people. The parish priest had originally taken a

negative decision about his appointment and the decision was backed by the Archdiocese. However, an Austrian cardinal overruled this ban and called his decision a “decision for human beings”.

## Family

- In November, the Constitutional Court decided that the reference to “persons of the opposite sex” in Article 2 Section 1 of the *Reproductive Medicine Act* whereby “medically assisted reproduction is only allowed in a marriage or cohabitation of persons of the opposite sex” is constitutional. The decision itself was based on the formalistic grounds that simply deleting “persons of the opposite sex”, as requested in the complaint, would not eliminate this supposedly anti-constitutional provision in the *Reproductive Medicine Act*. For the Constitutional Court also stated that the conditions laid down in the law could only be met by partners in opposite-sex unions (access to donor sperm is only possible if the sperm of the male partner is not reproductive). Based on this, it has to be assumed that even a broader formulated request for review of the *Reproductive Medicine Act* will lead to the same result, as the law obviously is also very restrictive for heterosexuals: women without a (infertile) male partner cannot meet the conditions set out by law. What would be needed is a wider political decision that brings about legislative change so that the existing statutory exclusion from access to medically assisted procreation of single women and women living in same-sex relationships is removed.

- In March, the Austrian Constitutional Court delivered a decision concerning the possibility of a joint family surname for one of the partners in a registered partnership. One of the spouses in a different-sex marriage could acquire a double-barrelled surname at any time, including after the marriage ceremony, while same-sex registered partners, following explicit statutory regulation, could only do so at the time of registration. With its recent judgment VfGH 03.03.2012, G 131/11, the Constitutional Court rejected this as discriminatory. In the ruling, the Constitutional Court stressed that same-sex couples also enjoy the constitutional protection of family.

- A man entered into a registered partnership in Austria and later noticed a coded entry in his passport. This code relates to the payment of fees connected to identity verification which takes place during the process of partnership registration. There were concerns that such a code might out the person as living in a same-sex partnership, which could violate one's privacy and informational self-determination as well as present a potential danger when travelling to countries where same-sex relationships are considered criminal. These entries are made in non-Austrian passports. Shortly after a notice from the NGO Lambda, the city of Vienna changed the code into a neutral one. Other Austrian provinces are unaffected by this decision and continue to follow the previous practice.

- In October, the Austrian Constitutional Court has affirmed that the different treatment of marriage and registered partnership in terms of which authority is competent to conduct the ceremony would fall under the legislator's margin of appreciation and therefore is not unconstitutional, VfGH 9 October 2012, B 121/11, B 137/11. This confirms the existing legislation which provides for same-sex partnerships being registered at the regional administrative offices which normally deal with the issuance of driving licenses, industrial licenses, residence permits and similar affairs. Different-sex couples have their marriage ceremony at the civil registry office.

- In October, the Grand Chamber of the ECtHR held a hearing in the case of *X. and Others v. Austria* (Application no. 19010/07). The case concerns the complaint by two women, who live in a stable same-sex relationship, about the Austrian courts' refusal to grant one of the partners the right to adopt the son of the other partner (second-parent adoption).

## Public opinion

- According to Eurobarometer 2012, 37% of Austrians believe sexual orientation discrimination is widespread. This is slightly below the EU27 average (46%). 37% believe gender identity discrimination is widespread. This is slightly below the EU27 average (45%). Austrians scored 5.7 on a scale from 1 ('totally uncomfortable') to 10 ('totally comfortable') when asked how comfortable they

would feel with an LGB individual in the highest elected political position in their country. This is slightly below the EU27 average (6.6). Austrians scored 4.8 on a similar scale when asked about a transgender/transsexual person in the highest elected political position in their country. This is slightly below the EU27 average (5.7).

## Member organisations of ILGA-Europe

Austrian Gay Professionals  
[www.agpro.at](http://www.agpro.at)

Austrian Queer Families  
[www.regenbogenfamilien.at](http://www.regenbogenfamilien.at)

Green Party LGBT Group  
[www.gruene-andersrum.at](http://www.gruene-andersrum.at)

Homosexual Initiative (HOSI) Salzburg  
[www.hosi.or.at](http://www.hosi.or.at)

Homosexual Initiative (HOSI) Vienna  
[www.hosiwien.at](http://www.hosiwien.at)

Homosexuelle Initiative Linz (HOSI Linz)  
[www.hosilinz.at](http://www.hosilinz.at)

Homosexuelle und Glaube Wien  
[www.hug-wien.at](http://www.hug-wien.at)

QWIEN – Center for Gay & Lesbian Culture and History  
[www.qwien.at](http://www.qwien.at)

Rechtskomitee LAMBDA  
[www.rklambda.at](http://www.rklambda.at)

Rosa Lila Tipp  
[www.villa.at](http://www.villa.at)

SoHo – Sozialdemokratischen  
Homosexuellenorganisation  
[www.soho.or.at](http://www.soho.or.at)

VEPO Austria