Austria

Asylum
In June, a man from Iran who sought asylum on the basis of his sexual orientation had his claim dismissed by the Vienna Federal Office for Aliens and Asylum, because he could not name what the colours in the Pride flag stood for. Queer Base assisted him throughout the process, raising awareness of his case in the media. The Federal Administrative Court subsequently overruled the asylum office’s decision and, on 13 August, he was granted political asylum.

The Austrian Asylum Office rejected the asylum claim of a teenager from Afghanistan in August, who had arrived in Austria as an unaccompanied minor in 2016. Homosexuality is criminalised in Afghanistan and can technically be punishable with the death penalty. The 18-year-old’s application for asylum based on his sexual orientation was not accepted, with the official report stating that the applicant did not “walk, act or dress” like a gay man. The report also made reference to the fact that the applicant did not have large groups of friends in the accommodation he was being housed in, commenting “Aren’t homosexuals rather social? [sic]”. With the legal support of Queer Base, the applicant appealed the judgment and the case is currently pending at the Austrian Federal Administrative Court.

Also in August, another man (originally from Iraq) whose asylum application had been turned down spoke to the UK newspaper The Independent about his intention to appeal the decision in court. He said that even though he had mentioned in his interview that he was not out to his family, immigration officials questioned his father and asked him if he knew his son was gay. When his father said that this was not the case, his claim was rejected on the basis that he was just ‘acting’ gay.

Family
Sebastian Kurz, Austria’s Chancellor and the leader of the ÖVP (Austrian People’s Party) stated on national television in January that the new Government will duly implement the 2017 Constitutional Court’s decision and same-sex couples will be able to marry starting January 2019. The five couples who successfully challenged the marriage ban at the Constitutional Court, were allowed to marry already from October 2018 onwards. The first couple got married on 12 October.

On 24 October, the Constitutional Court ruled that with regards to adoption, same-sex couples must be treated the same way as different-sex couples, including in cases of separation. The case featured a lesbian couple who had a child together in 2010 and later separated. The Court ruled that the non-biological mother must be recognised as a parent just like a heterosexual father would in such a case. It also emphasised that the best interest of the child needs to be guiding in adoption procedures, regardless of the parents’ gender.

Legal gender recognition
On 29 June, the Constitutional Court issued a judgment ordering that gender markers in civil registers and identity documents have to reflect an individual’s own self-determined gender identity. The decision found in favour of the intersex person who had asked for their birth registry details to be corrected from male – either to ‘inter’, ‘X’, ‘other’ or a similar option, or to delete the entry altogether. Although the judgment was of immediate effect, it has not yet been implemented. The Austrian Registry Offices are currently waiting for clear regulations from the Ministry of Interior, with regards to which terms to use (“inter”, “divers”, etc.) and eventual requirements. The Ministry of Interior is expected to issue guidelines early 2019.

“It is historic and groundbreaking for the rights of intersex persons in Austria, in Europe and worldwide”

Dr. Helmut Graupner (counsel in the specific case and president of LGBTI NGO RKL) in RKL’s press release, 29 June 2018

Bodily integrity
The 29 June judgment of the Constitutional Court (see more under Legal gender recognition) stated that surgeries on intersex infants and children can only be justified in exceptional cases where a medical need is indicated. This was however not part of the binding judgment and such surgeries continue to be performed. The Ministry of Health is expected to publish medical guidelines next year. Civil society fears that the guidelines will fail to include a ban on non-consensual and medically unnecessary surgeries on intersex children.

For more information visit Rainbow-Europe.org