

Vienna, November 2019

Marriage for all?!

Current sociopolitical developments and the legal situation of binational couples in Austria

For years, the number of binational marriages has been rising in Austria – and it continues to grow. This shows that binational couples and families are part of a globalised world, in which a normalisation process is taking place slowly but steadily, making binational life partnerships no more “exotic” than others. Whereas in 1970 only 6% of all marriages were concluded between two non-Austrian partners or a non-Austrian and an Austrian partner, this percentage has increased to nearly one third (29,7%) in 2018. Nowadays, mixed and non-Austrian couples make up nearly half (49,8%) of all registered partnerships. With regard to the recognition of same-sex partnerships, there is good news to report: since August 1st, 2019, homosexual couples can marry in Austria, even if one or both partners are nationals of a country that does not allow same-sex marriages. “Marriage for all” has become a reality, also for binational homosexual couples. This is an important step towards equal rights on a rocky legal and bureaucratic path.

Since 2006, the founding year of Marriage without Borders, the legal situation for binational families has gradually deteriorated. The status of third-country family members has become more and more precarious – laws are being changed repeatedly and do not include any improvements. The required minimum income increases every year, which puts a heavy financial strain on binational couples. Additionally, no social benefits can be claimed, because this would mean a threat to public order and security, as the foreign national becomes a burden on the public finances of the state. The proof of German knowledge at level A1, which is required for the family reunion since 2011, is another obstacle which is sometimes hard to overcome. In many parts of the world no recognised language institutes exist and visas for the purpose of attending German courses in Austria are usually denied.

Moreover, the restrictive interpretation of legal terms such as “family member” excludes life partners and other relatives. As a result, couples are urged to marry in order to make their life partners “family members” by law. Nevertheless, each marriage concluded between persons with Austrian and non-EU/EEA citizenship is automatically reported to the immigration authorities. General suspicions against foreigners result in investigations to verify the genuinity of the marriage, which constitute a massive interference with the private life of the couple. Especially, asylum seekers are often confronted with harassment and hostility when their marriage is denied by registry offices without reasons. Sometimes they are told that getting married is simply not possible during their asylum procedure. These and similar examples of arbitrariness of public authorities cause psychological strain and anxiety.

More and more binational couples suffer from permanent stress - every few months various proofs evidencing a rightful stay must be submitted to the authorities. Long processing times make the emotionally difficult situation even harder to bear. Long-lasting inactivity of authorities, delays in the processing of documents, offensive statements, and degrading behaviour of officials are no exceptions but systematically rooted, as the documentation of the Austrian Ombudsman Board shows. It often takes one year or even longer until residence permits are issued, because authorities exceed the six-months processing period. For couples, this is a time of uncertainty, forced inactivity, and waiting without any future security while living separately.

The message sent by the state’s tightening of national immigration legislation is clear: immigration is to be reduced to a minimum. This is consistent with the lack of information and counselling provided by the state for affected couples. Given the fact that immigration legislation is a highly complex assemblage of legal texts from various sources, all of which are amended regularly, this leads to the following results: a lack of knowledge of the necessary bureaucratic steps and of the rights and duties of oneself as well as the state’s obligations. All of this contributes to the anxiety of binational couples.

Sad examples from last years have been (i) the restriction in connection with the asylum legislation in 2016 and (ii) the immigration legislation passed in 2018, which was also

directed against asylum seekers and recognised refugees. The former led to the fact that close relatives lost their right to family reunions after missing the application deadline and longer waiting period before being allowed to be with their families. This makes it impossible for family members of refugees or persons granted subsidiary protection to apply for a family reunion under asylum regulations. The host country's denial of the right to a family life adds to the trauma, hardship and misery experienced while fleeing their homeland.

The amendment of immigration laws in 2018 created a series of further legal restrictions against asylum seekers and recognised refugees: extended possibilities of the state to withdraw the status of international protection, discrimination when applying for citizenship, shortened deadlines to file appeals, liability to cover part of the costs arising from basic social services granted by the state, and creation of a regulation to seize cash carried by asylum seekers.

Another development is of great concern: the plans of the former Austrian government (ÖVP/FPÖ) to put an end to independent counselling services and replace them with a federal agency for the maintenance and support of asylum seekers (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*). In the future, the same ministry deciding asylum cases at first instance will be responsible for appeals against these decisions. A tense relationship exists between this legislative proposal, which includes infringements of the rights of asylum seekers, and the Charter of Fundamental Rights of the European Union. The right to a fair asylum procedure as well as the principle of child welfare are in danger. The members of Marriage without Borders know how deeply the legal situation can affect the emotional state of mind of people whose choice of life partner does not suit the taste of the republic. Thus, Marriage without Borders demands more political support to end discrimination against binational couples, both from the new federal government as well as from European policy makers. The road to making Marriage for All a reality is still a very long one, leading through an increasingly dense legal jungle.