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# 3.5.5. The possibility to have a same-sex official in the appeal procedure

**3.5.5. The possibility to have a same-sex official in the appeal procedure**

Two relevant judgments were pronounced in Austria and Belgium on the possibility to have a same-sex interpreter, interviewer or judge to ensure a fair trial in appeal procedures.

In a case in which a female applicant alleged the risk of being subjected to a forced marriage in Syria, the Federal Constitutional Court of Austria ruled that a judgment pronounced on appeal by a male judge could violate the applicant's right to a fair trial, if the applicant claimed a violation of sexual self-determination before the Federal Office for Immigration and Asylum (BFA). This was irrespective of whether the statements of the applicant were credible.

The Council of State in Belgium ruled that the possibility for an applicant to have a personal interview with the decision authority led by a person of the same sex and assisted by a same-sex interpreter, as provided by Article 15 of the recast APD, does not apply to appeal procedures, but these guarantees must be complied with on appeal if the applicant was not given this opportunity before the determining authority.

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