

UPR on Federal Republic of Germany, February 2009

*Report submitted by the
Lesbian and Gay Federation in Germany
(Lesben- und Schwulenverband in Deutschland LSVD),
Non-governmental organization in consultative status with the Economic
and Social Council of the United Nations*

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A) Partnership law

The German Life Partnership Law (Lebenspartnerschaftsgesetz) was passed in 2001. As a registered partnership law it was an important step towards legal equality for lesbians and gays. But still today it does not give equal rights and same-sex registered partnerships are still discriminated by German law. Equal rights in areas like taxation and pension laws, adoption and child custody are still not granted.

i) Taxation

Today lesbian and gay registered couples take full responsibility for each other, but they are treated like strangers in the current taxation law. Example: In case of death the surviving partner has to pay high taxes, so that she or he will often not be able to stay in the shared house or apartment, whereas married couples are largely exempted concerning this inheritance tax. Fortunately a committee consisting of politicians of the two ruling parties agreed on a reform of the German inheritance taxation law. A compromise was found and the massive discrimination of registered same-sex couples is supposed to be abolished, but until now the reform has not passed the German Parliament, so this discrimination continues.

Registered same-sex partnerships have all the obligations married heterosexual couples do have. But on the other hand they have fewer rights. They are responsible for each other; have to support the partner in case of unemployment or disability. But this burden cannot be deducted from the income tax. In the area of income tax registered same-sex partners are treated like strangers, the assessment is thus different for married heterosexual partners, which means that the registered same-sex partners have to pay more income tax.

ii) Civil service law

Federal civil servants living in a registered same-sex partnership are not granted equal rights. They do not get the same extra pay and bonuses as married heterosexual civil servants. Furthermore the pension rights of the deceased partners are not passed on. This discrimination has to be

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Offizieller Beraterstatus
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Mitglied im Deutschen
Paritätischen
Wohlfahrtsverband
(DPWV)

Mitglied der
International Lesbian
and Gay Association
(ILGA)

considered as unconstitutional and is against European law, as shown by rulings of the European Court in Luxembourg.

iii) Rainbow families

Full acknowledgement and legal acceptance of rainbow families, of same-sex registered couples living with children are still legally put in a major disadvantage, in comparison to married parents because of the discrimination of registered partnerships in Germany. General common adoption is not granted so that a lot of so called rainbow families live together like classical families and raise children like married couples, but are legally discriminated. They pay more income taxes than married couples and are not granted all rights of a classical family. This means that children in rainbow families do not have equal opportunities.

Registered same-sex couples in Germany do not have a common adoption right as it does exist for heterosexual married couples. In many European countries such as Spain, Belgium, UK, the Netherlands or Sweden registered or married same-sex partnerships are granted this right. In Germany lesbians and gays may adopt as a single person. This way of founding families is practiced as well, but these rainbow families are not recognized as a family, and children within those do not have the possibility of a double legal protection (of two legal guardians), which means that children living in the rainbow families are not granted equal rights and opportunities.

This legislation is against all basic fundamental rights such as the principles of the European Convention on Human Rights as developed by the European Court of Human Rights in its judgments. Furthermore the Yogyakarta Principles, a list of recommendations for states and their legislation developed in 2006 by international human rights experts, strongly recommends in principle 24: "Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members."

Thousands of children in Germany live with lesbian or gay parents, grow up in so called rainbow families and are raised as well, as children living together with heterosexual parents, as demonstrated by a lot of social science research. Rainbow families and their children become more and more visible and proud; they find their place in the diverse family spectrum. The only problem is that they are still legally discriminated. Furthermore for registered same-sex partnerships the right to found a family is limited and restricted. It does not make any sense to treat gay and lesbian couples in a different way than heterosexual couples concerning the right to found a family. Moreover it is not at all acceptable to discriminate children living in rainbow families; it is against all principles of equality not to grant them equal opportunities.

iv) Second parent adoption

Germany introduced second parent adoption in 2005 (common adoption of one's partner's biological child or children). This was an important step forward and a measure in favour of equal legal treatment for these children. Nevertheless same-sex registered partnerships are still discriminated because the authorities treat them in a different way: they pay more taxes, they are not granted common adoption rights, and they do not have equal access to family founding services such as sperm banks and fertility treatments.

v) Artificial insemination and assisted reproduction

In other European countries such as Belgium, Denmark, Finland, Sweden or Spain the situation is modern and up-to-date: rainbow families are treated by the authorities in the same way as classical families, artificial insemination is granted for all interested women including those living in a same-sex partnership. But in Germany only married women have legal access to sperm banks. The Federal Medical Association prohibits (to its members) in its guidelines for assisted reproduction any help and support in case a lesbian couple living in a same sex registered partnership that is interested in artificial insemination. The reason for this guideline is not an ethical objection. The Federal Medical Association simply wants to protect its members from possible maintenance grants and costs. Nevertheless lesbian couples practice artificial insemination and a lot of children are born but this reality is ignored by legislation and politicians, and the real circumstances have long ago by-passed the state of the law.

B) Unconstitutional transsexuality law

In July 2008, the German Constitutional Court declared as unconstitutional the provision in the 30 year old German Transsexuality Law (Transsexuellengesetz TSG) which demands forced divorce of transsexuals. The TSG demands that transsexuals who legally want to change their gender marker on their birth certificates have to be unmarried (though a registered partnership was no hindrance). This part of the law has just been declared unconstitutional and may not be used until the German government proposes a new solution. The German government has time until August 1, 2009 to come up with a new legal provision. Earlier the Constitutional Court declared that a revocation of a legal change of names in the case of a marriage after the name change was also unconstitutional.

LSVD has been urging for years a reform of this law, but the Ministry of Internal Affairs has never become active and has never seen any reason to modernize the transsexual law.

C) Antidiscrimination law

As a result of EU directives Germany implemented an Antidiscrimination law called Allgemeine Gleichstellungsgesetz AGG (General Law on equal treatment) in 2006. It was another important step towards equal rights and equal treatment. It brought some progress in terms of protection against discrimination. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people are for example protected against discrimination by insurance or major housing and house building companies. But this law has some undemocratic and unacceptable exceptions, such as the right of the churches to dismiss lesbian and gay personnel.

Meanwhile the European Commission has published its plans for further antidiscrimination measures concerning access to goods and services. The German government expressed to be against such plans, although the German AGG already provides such a protection. But the EU directive is important for new EU countries that do not grant a comprehensive discrimination protection.

D) Human rights

The German government has been leading the way in the field of promoting human rights for LGBTI people on international level. Thanks to the funding of the German Foreign Office LGBTI activists from Africa, Asia and Latin America had the possibility to take part in important sessions of the UN Human Rights Council in Geneva. Another example: The German government funded the translation and publication of the German version of the Yogyakarta Principles. We ask the government to fully support the spirit and aims of these principles and to bring them forward on national and international levels.