

UPR on Federal Republic of Germany, September 2012

*Report submitted by the
Lesbian and Gay Federation in Germany
(Lesben- und Schwulenverband in Deutschland - LSVD),
co-signed by ILGA Europe (European region of the International Lesbian,
Gay, Bisexual, Trans and Intersex Association),
both non-governmental organizations in consultative status with the
Economic and Social Council of the United Nations*

September 25, 2012

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 gay men. But still today it does not give equal rights and same-sex registered partnerships are still discriminated by German law. Equal rights in areas such as income taxation, adoption and child custody are still not granted.

i) Taxation

Today lesbian and gay registered couples take full financial responsibility for each other (i.e. have to support the partner in case of unemployment or disability like heterosexual married couples), but they are treated like strangers in the current income tax law (i.e. this burden cannot be deducted from the income tax unlike for heterosexual married couples).

ii) Rainbow families

Rainbow families, 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. 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.

In Germany for same sex couples the access to family reproduction services such as common adoption and artificial insemination or assisted reproduction is limited. 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 gay men may adopt as a single person. This way of founding families is practiced as well, but is less

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Offizieller Beraterstatus
beim Wirtschafts- und
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ECOSOC

Mitglied im Deutschen
Paritätischen
Wohlfahrtsverband
(DPWV)

Mitglied der
International Lesbian,
Gay, Bisexual, Trans and
Intersex Association
(ILGA)

probable to lead to success.

Depending on the kind of family foundation, the children have got less legal protection. If a rainbow family was built by adoption, the children do not have the possibility of a double legal protection.

This legislation is against 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."

a) 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 in the area of parentage law: In case of artificial insemination and/or assisted reproduction the law still makes differences: children born in classical families of married parents automatically have two parents whereas registered same sex couples have to make a detour choosing the second parent adoption way which mostly takes at least one year.

b) 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 been given legal access to sperm banks. The Federal Medical Association militates in its guidelines for assisted reproduction against any help and support for lesbian couples looking for artificial insemination, even if they are living in a same sex registered partnership. Although this advice given to the physicians isn't legally binding, it sustains a huge refusal against the medical support of lesbian couples opting for donor insemination in Germany. The reason for this recommended exclusion seems in all appearances not to be an ethical objection. The Federal Medical Association brings forward the argument that they want to protect its members from possible maintenance grants and costs. Nevertheless lesbian couples practice artificial insemination and a lot of children are

born in same sex families but the couples mostly have to look for support in other European Countries. This reality is ignored by legislation and politicians, and the social reality has long ago by-passed the state of the law.

B) 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 (or for that matter remarried divorced people) who work in publicly funded social services that are not part of the core religious ministry.

Meanwhile the European Commission has published its plans for further antidiscrimination measures concerning access to goods and services. In the past the German government vehemently opposed such plans, although the German AGG already provides such a protection. But the EU directive is important for EU countries that do not grant a comprehensive discrimination protection not only to LGBTI people but also to disabled people, seniors or religious minorities.

Finally section 3,3 (equality paragraph) of the German constitution that bans discrimination on all grounds (and has been thus interpreted by the Constitutional Court to encompass sexual orientation and gender identity), does not enumerate sexual orientation and gender identity. The German government and the ruling parties still oppose an amendment of the equality paragraph.

C) Combating Homophobia/Transphobia

Germany should follow up on its commitments in the first UPR to *“Continue its efforts and take further initiatives to combat hate crimes based on sexual orientation” (recommendation by the Netherlands)* and to *“Strengthen measures to counter discriminatory attitudes, for example by including sexual orientation and gender identity in public education and equality programmes and initiatives” (recommendation by New Zealand)* by launching a national action plan to combat homophobia and transphobia, similar to regional initiatives for example in Berlin and North-Rhine-Westphalia.

D) Rehabilitate all victims of the notorious §175

We urge the Federal Government and the Bundestag to take up the initiative of the State of Berlin and other states to rehabilitate the tens of thousands of men who were prosecuted for consensual homosexuality under §175 in contravention of European Human Rights Law as reflected in the jurisprudence of the Strasbourg Court.

E) Reform of the Transsexuality Law and Address Issues of Intersex People

Germany should follow up on its commitment in the first UPR to “Modify promptly the law on transsexuality to facilitate registration of a change of gender on official documents, without requiring transsexuals to divorce, in line with the decision of the Constitutional Court” (recommendation by New Zealand). We additionally urge the German Government and Bundestag to do a thorough revision of this thirty year old law in consultation with organisations of trans people, in line with the decision of the Constitutional Courts and the principles of human rights law such as enumerated in the Yogyakarta Principles.

In 2009, CEDAW urged the German Government to start a dialogue with intersexuals to better protect their human rights (CEDAW/C/DEU/CO/6, paras. 61, 62) After the study by the Ethics Forum we urge the German Government and the Bundestag to continue the dialogue with Intersex people and alleviate the human rights abuses still committed and to compensate previous victims (see also submission by Forum Human Rights).

F) Human rights

The German government has been leading the way in the field of promoting human rights for LGBTI people for example on the 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.

Furthermore we ask for the systematic inclusion of LGBTI issues in our foreign policy and in German international cooperation and development politics.