

Germany



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Although Germany has an increasingly vibrant lesbian subculture, lesbians remain targets of physical violence as well as more subtle forms of unfair treatment, including ignorance of lesbians' specific needs by state agencies and other service providers. Discrimination against lesbians is often ignored or tolerated in ways that human rights violations against other groups in society are not. For example, Steffen Heitmann, who campaigned for the post of the Federal President of Germany in 1994, once wrote: "Despite all of the openness regarding homosexuals one must not forget that the genetic code of people is heterosexual and that homosexuals will always remain a minority and hence must accept the resulting disadvantages."¹ While Mr. Heitmann's remarks about foreigners and the German Nazi past were widely criticized in public, this remark was never condemned or even noticed outside the lesbian and gay community.

In recent years the German media seem to have "discovered" lesbians. Talk-shows, newspapers and magazines often touch on lesbianism. However, in most cases the subject is treated in a sensational way. Reports are often biased and show lesbians as polygamous, exotic, sexualized objects. Lesbians are also rarely represented on their own, but rather together with gay men. While there are many similarities and areas of cooperation between lesbians and gay men, this approach fails to consider that in addition to homophobia, lesbians encounter further difficulties because they are women living in a male-dominated society.

Such visibility has not greatly reduced the societal pressures on individual lesbians to remain "in the closet," and the socialization of girls leaves little room for considering alternatives to heterosexuality. Girls who come out to their parents are often subjected to emotional and financial pressures to conform to heterosexual norms of marriage and childbearing.

L A W

In Germany, consensual sexual relations between women have never been prohibited by law.² This may be because women's sexuality in and of itself was not taken seriously, and thus lesbianism was never perceived as being as "threatening" as male homosexuality. There are no federal laws in Germany prohibiting discrimination on the basis of sexual orientation, but the Brandenburg Constitution, applicable only in Brandenburg, does provide such protection within the state.

Many lesbian and gay organizations lobbied for the inclusion of prohibitions against sexual orientation discrimination in the federal constitution when it was amended in 1994. However, while these efforts received support from many Social Democrats and members of the Green Party, the conservative Christlich-Demokratische Union/Christlich-Soziale Union (CDU/CSU) argued that such a paragraph would

"dilute the constitution" and that "sexual orientation" is not defined and could include forms of sexuality such as "pedophilia and excessive sadomasochistic acts."³

PARTNERSHIP

There is no legal recognition in German law for lesbian partnerships. In August 1992, 200 lesbians and gay men who tried to "marry" were rejected by local marriage license bureaus, which cited a 1966 Constitutional Court decision defining marriage as a "relationship between a man and a woman."⁴ The case law of lower courts varies from support of same-sex marriage to complete rejection of it. Test cases were brought to the Constitutional Court. While interpreting the right to marry as an exclusive right for heterosexual couples, the court suggested that Parliament adopt legisla-

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tion recognizing non-married couples.

Same-sex partners do not have many of the rights and privileges that married heterosexuals have, such as social security benefits and reduced income and inheritance tax. Nor do they have rights that have been recognized for non-married heterosexuals, such as the right of the surviving partner to retain possession of an apartment in the event of that one member of the couple dies. In the course of amending the federal constitution, a proposal was introduced to expand the protection of marriage to long term

partnerships. It failed due to the opposition of the CDU/CSU, which stated that it "respects non-marriage cohabitations but rejects their legal equalization with marriage."⁵

CHILDREN

Under current adoption regulations, married couples and single people are permitted to adopt children. Lesbians are not able to adopt children as a couple, and it is virtually impossible for lesbians to adopt children even as single women if their sexual orientation is known.⁶ Donor insemination is available only to married women, and lesbians who want to have children are forced to find doctors abroad. Lesbian mothers are often denied custody rights by the courts on the grounds that their lifestyle is "immoral." In a 1988 case that removed a 10-year-old boy from the custody of his mother and her female partner, the psychological report ordered by the court recommended that the father receive sole custody so that the boy would be in a better position to develop his sexuality and his male identity. Another court decision in 1988 stated that it would be "irresponsible to let a child of school age be brought up by a homosexual couple."⁷ If lesbian mothers manage to retain custody, their female partners have no rights whatsoever with regard to the children.

CHURCH

Religious institutions are an important employer for people working in the field of social services. Catholic institutions are free to discriminate against their lesbian employees in that they may discharge them if they do not observe the morals and norms of the church. As a result, to work in such institutions lesbians must remain silent about their identity.

The Evangelical Church has initiated a dialogue in the last several years on the subject of homosexuality and has stated publicly that lesbians and gay men should be more

fully integrated into communities and that prejudices should be broken down. Openly lesbian pastors are, for the most part, tolerated. However, even though the relationship between the church and openly lesbian women is slowly improving, lesbians are still not treated equally. For example, the partners of lesbian pastors may still not live in church-sponsored housing, while the spouses of heterosexual pastors can.

For the past fifteen years an ecumenical group of lesbians and gays called *Homosexuelle und Kirche* (HuK, Homosexuals and the Church) has sought to break down prejudices within the church. In addition, there is a group in Berlin called *Lesben und Kirche* (LuK, Lesbians and the Church) which is open to all lesbians, whether ordained or not, and *Maria und Martha* (MuM, Maria and Martha), a network of lesbians employed by the church. The Catholic Church has vocally opposed such groups. When HuK held a service to celebrate their fifteenth anniversary in May 1995, a spokesperson for the Archdiocese of Cologne responded that the organization violated basic principles of Catholicism and thus had no place in the church.⁸

ASYLUM

In 1988, the German Federal Court of Justice recognized persecution on the basis of sexual orientation as a valid ground, under certain circumstances, for granting refugee status. This pronouncement by the German Federal Court has the virtual effect of law, but is also subject to interpretation. Those who apply for asylum must substantiate that homosexuality is a driving component of their personality and identity. Should there be doubt as to the irreversibility of an applicant's sexual orientation, a psychological evaluation may be obtained.⁹

The Federal Administrative Court has determined that

asylum based on sexual orientation may be granted if the applicant is threatened in her country of origin by severe and unbearable penalties not acceptable from the viewpoint of German law. Discriminatory laws in the country of origin are not sufficient proof, nor is the threat of death. Before a decision on the application is made, the court seeks to obtain information on the country in question, and the applicant must establish that homosexuality is equated with possessing dissident political opinions. If the persecution is by non-state agents, the applicant must demonstrate that the government denies protection to the affected persons. The decisions regarding asylum for lesbians and gay men have been inconsistent. A deciding factor in such cases is how much tolerance a particular court has for matters relating to homosexuality.¹⁰

VIOLENCE AGAINST LESBIANS

Violence by right-wing extremists has increased in Germany in recent years, and lesbians have been a target for their aggression. Consequently, the more lesbians become visible, the more they are threatened. Still, such violence frequently goes unreported. Many victims fear that reporting such an incident would result in their having to publicly reveal their lesbianism.

LESBIAN INSTITUTIONS

Lesbian institutions in large and medium-sized cities have undergone considerable development in the last 10 years. In addition to an ever-growing bar and disco culture, whose main goals are mostly commercial, many cities have increasing numbers of meeting places with social, political,

or cultural purposes. These venues are run mostly in cooperation with heterosexual women or gay men. The last five years has brought greater specialization among lesbian groups and associations. Lesbian sport leagues have formed, as well as dance clubs, choirs, theater, rock groups, and much more. Counseling services sensitive to the needs of lesbians have also become increasingly available. Many groups have been founded in order to give voice to specific interests and needs within and outside the lesbian world, bringing together groups of deaf lesbians, Afro-German lesbians, lesbians with children, lesbians over 40, lesbian businesswomen, and many others. In 1987 the Lesbenring, a nationwide association of lesbian groups, was established. However, this subculture is limited to urban areas, and lesbians in villages and rural areas remain isolated from one another.

NOTES

- 1 Tageszeitung, October 1993.
- 2 From the late 19th century until 1969, male homosexual relations were criminalized. In 1969, the total ban was replaced by Article 175, which established a higher age of consent for sex between two men (18) than for sex between two women (14) or between a woman and a man (14). In 1994, Art. 175 was superseded by Art. 182, which set an equal age of consent (16) for hetero- and homosexual relations.
- 3 Letter to Alexandra Duda from Susanne Rahardt-Vahldieck, CDU/CSU Member of Parliament, 26 March 1993.
- 4 BverfGE 10,59/66.
- 5 Frankfurter Allgemeine Zeitung, 12 October 1994, p. 9.
- 6 Article 174 of the Civil Code, cited in Kees Waaldijk, *Tip of an Iceberg: Anti-Lesbian and Anti-Gay Discrimination in Europe, 1980-1990* (December, 1991 draft). Utrecht: Interfacultaire Werkgroep Homostudies, Rijksuniversiteit te Utrecht, 1991, p. 24.
- 7 Both cases cited in Waaldijk, *Tip of an Iceberg*, p. 41.
- 8 Kölner Stadtanzeiger, 30 May 1995.
- 9 For example, in the case of an Iranian lesbian who applied for asylum, a gynecologist provided expert testimony stating that

her lesbianism was irreversible.

10 Homosexualität als politischer Asylgrund? Berlin: Referat für gleichgeschlechtliche Lebensweisen. Pamphlet No. 11, Summer 1994.

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