



DANISH INSTITUTE FOR  
HUMAN RIGHTS

**COWI**

# The social situation concerning homophobia and discrimination on grounds of sexual orientation in Germany

March 2009

Please note that summary reports of each Member State are published in the interests of transparency and for information purposes only. Any views or opinions expressed therein in no way represent those of the Fundamental Rights Agency (FRA). Summary reports constitute summaries of the background information used by the FRA when compiling its own studies. While the FRA provides guidelines to national contractors on data to gather, their reports include information gathered on their own initiative. Only the information, data, opinions and recommendations presented by the FRA in its own publications constitute the official views of the Agency.

# Contents

<b>A.</b>	<b>A Summary of the Overall Situation of LGBT Persons .....</b>	<b>3</b>
<b>B.</b>	<b>The Collection of Data.....</b>	<b>3</b>
<b>C.</b>	<b>Key Findings .....</b>	<b>4</b>
	C.1. Attitudes Toward LGBT persons .....	4
	C.2. Criminal Law - Hate Crime .....	5
	C.3. Freedom of Assembly.....	6
	C.4. Family and Other Social Issues .....	7
	C.5. The Labour Market.....	7
	C.6. Education.....	9
	C.7. Health Service .....	9
	C.8. Religion	9
	C.9. Sports	10
	C.10. Media	11
	C.11. Asylum and Subsidiary Protection .....	11
	C.12. Family Reunification .....	12
	C.13. Transgender Issues .....	12
	C.14. Multiple Discrimination .....	14
<b>D.</b>	<b>Good Practice.....</b>	<b>15</b>

## A. A Summary of the Overall Situation of LGBT Persons

- [1]. Since the beginning of the 1990s, attitudes toward LGBT persons have changed in a positive direction, and homophobia in public discourse is no longer approved. The Life Partnership Law [*Lebenspartnerschaftsgesetz*] was passed in 2001 and is regarded as a milestone for LGBT rights. However, it does not give equal rights in adoption, tax benefits or inheritance.
- [2]. Conditions differ for LGBT persons in the various federal states in Germany.
- [3]. The Law on the Transposition of European Directives for the Realisation of the Principle of Equal Treatment was passed as federal law in 2006. *The Federal Anti-Discrimination Office*, which provides counselling in cases of unequal treatment and discrimination, has received about 4,400 inquiries, 5.1 per cent of which regarded sexual orientation.
- [4]. Studies show that homophobia among youth is particularly prevalent, and a higher suicidal tendency among LGB youth has been identified. Furthermore, a survey of 2,230 gay and lesbians showed that 44.4 per cent of respondents said they had experienced mockery and ridicule in the workplace because of their sexual orientation.

## B. The Collection of Data

- [5]. The material for this report has been collected from four sources:
  - A legal country report carried out for this study by Heiner Bielefeldt, director of the *German Institute for Human Rights*.<sup>1</sup>
  - A sociological country report carried out for this study reviewing available data on the situation concerning homophobia and discrimination on grounds of sexual orientation in Germany, written by Dominic Frohn and Patrick Stärke.<sup>2</sup>

---

<sup>1</sup> H. Bielefeldt (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*. FRALEX..

<sup>2</sup> D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

- Data collected through interviews held in Germany with *Lesben- und Schwulenverband in Deutschland* (LSVD) [Lesbian and Gay Association of Germany] and *The Federal Anti-Discrimination Office*.
  - Data collected through an online questionnaire that was sent out to the stakeholders mentioned above.
- [6]. The sociological researchers stated the following: ‘In general, it is important to stress that there are gaps regarding information, data, etc., on the situation of lesbian, bisexual, and trans-issues.’<sup>3</sup>

## C. Key Findings

### C.1. Attitudes Toward LGBT persons

- [7]. Surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.
- [8]. The 2008 *Eurobarometer* asked, ‘How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?’ (1 meaning ‘very uncomfortable’ and 10 meaning ‘very comfortable’). The figure in Germany was 8.3, with an EU average of 7.9. Romania was the lowest with 4.8.<sup>4</sup>
- [9]. In the 2006 *Eurobarometer*, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 52 per cent in Germany (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Germany. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; in Germany the figure was 42 per cent (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).<sup>5</sup>
- [10]. Findings from national research: Homophobia is a relatively stable variable in Germany.<sup>6</sup> In 2006, one-third of the German population said that two homosexuals kissing was disgusting (in 2006, 32.2 per cent; in 2004, 38 per cent; in 2002, 33.3 per cent).

---

<sup>3</sup> D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

<sup>4</sup> European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

<sup>5</sup> Eurobarometer 66 (2006), available at: [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf), pp. 43-46.

<sup>6</sup> Institut für interdisziplinäre Konflikt und Gewaltforschung [IKG] (2006) *Indikatoren des Syndroms Gruppenbezogene Menschenfeindlichkeit im Vergleich*. [On-line], Accessible at: <http://www.uni-bielefeld.de/ikg/index.htm> [15 June 2006]

- [11]. Homophobia in youth appears to be very prevalent.<sup>7</sup> In a 2002 survey, 71 per cent of boys and 51 per cent of girls agreed with the statement ‘I don’t like gays and lesbians (at all).’ [‘Schwule und Lesben finde ich (überhaupt) nicht gut.’]. This represented a significant increase: In 1998 only 28 per cent of girls and 41 per cent of boys agreed with this statement.
- [12]. Homophobia appears to be higher among certain ethnic communities.<sup>8</sup> For example, 47.7 per cent of German boys reported that two men kissing was abhorrent, compared to 75.8 per cent of boys with a Russian background and 78.9 per cent of boys with a Turkish background.
- [13]. Furthermore, research finds that women tend to be less homophobic than men.<sup>9</sup> Both men and women appear to be more homophobic toward homosexual persons of their own sex than toward homosexual persons of the opposite sex.

## C.2. Criminal Law - Hate Crime

- [14]. The offence of incitement is defined in §130 of the Criminal Code, whose sections 1 and 2 are relevant to incitement to homophobia. Under section 1, incitement to hatred or appeals to violent or wanton measures against parts of the population, as well as attacks on the human dignity of others through abusive language, malicious contempt or vilification, is punishable by three months to five years in prison. Additionally, the regulation provides that the act must be conducted in such a manner that it is capable of disturbing the public peace. Section 2 includes in the threat of punishment of all possible public expressions in word, publication or picture that fulfil the characteristic elements named in section 1. By contrast, hate speech is not regarded as an insult in the Criminal Code because it is not aimed at particular individuals.
- [15]. Although the laws lack explicit mention of homophobia, individual cases have resulted in convictions.
- [16]. There are no special police hate crime units or a registration system for hate crime by the police or courts. One extensive study analysed hate crime and violence against gay and bisexual men.<sup>10</sup> Unfortunately, there is no such study for lesbians or transgender

---

7 I. Barlovic (2002) *61 Prozent der deutschen Jugendlichen lehnen Homosexuelle ab*, München: iconKids & Youth.

8 B. Simon (2007) *Einstellungen zur Homosexualität: Ausprägungen und sozialpsychologische Korrelate bei Jugendlichen mit und ohne Migrationshintergrund*, Kiel: Christian-Albrechts-Universität.

9 J. Seise, R. Banse, F.J. Neyer (2002). Individuelle Unterschiede in impliziten und expliziten Einstellungen zur Homosexualität. Eine empirische Studie, in: *Zeitschrift für Sexualforschung*, 15 (1).

10 MANEO – *Das schwule Anti-Gewalt-Projekt in Berlin* [MANEO – the gay Anti-Violence-Project in Berlin] [online], accessible at: <http://www.maneo.de/highres/index.html>

persons. A specific survey analysing discrimination and violence against lesbians was conducted in North Rhine-Westphalia.<sup>11</sup>

- The findings of the MANEO study, with 23,949 respondents:

The three most reported hate crimes were harassment/defamation (39.4 per cent), threats (14.4 per cent) and interpersonal restraint (13.6 per cent).

Most hate crime takes place between 9 p.m. and midnight in a location familiar to the victim. Most incidents occur in the street or public places (45 per cent) or on local public transportation (15 per cent). The other 15 per cent of incidents took place in school or the workplace.

Most perpetrators (54 per cent) were 18 to 24 years old. Some victims said their attackers seemed to be right wing extremists (7 per cent) or appeared to be minority ethnic descent (16 per cent).

Physical violence occurred in 15.6 per cent of cases. Respondents under 18 were much more likely to experience physical violence (47.5 per cent).

Ninety-two per cent of the respondents who experienced hate crimes without physical injury did not inform the police. Some respondents said they were afraid of the police, or thought they would not be taken seriously. Most victims trivialised the incidents of hate crime they experienced.

- Findings of the MFJFG study, with 757 respondents:

Nearly 95 per cent of lesbians interviewed experienced homophobia in the form of verbal or psychological violence. Forty-four per cent reported gender-based violence, meaning they were targeted because of their gender. Ten per cent of respondents said they were victims of physical violence. Younger respondents reported more homophobia, discrimination and harassment.

Physical violence is a particular problem in public places. Gender-based violence also occurs mostly in public places, but also in the workplace or school. Verbal and psychological violence also take place in the family or in circles of friends or acquaintances.

In violence against lesbians, 65.4 per cent of the perpetrators were perceived as German and 29.9 per cent were perceived as ethnic.

### C.3. Freedom of Assembly

- [17]. Freedom of assembly is guaranteed as a fundamental right in art. 8 of the Basic Law, according to which all Germans have the right to assemble peacefully and without weapons, without the need for registration or permission.

---

<sup>11</sup> Ministerium für Frauen, Jugend, Familie und Gesundheit des Landes Nordrhein-Westfalen [MFJFG] (1999) *Studie über Diskriminierungs- und Gewalterfahrungen. Gewalt gegen lesbische Frauen*. Düsseldorf: Author.

- [18]. There are no recorded incidents of problems with LGBT demonstrations or venues, although there is an imbalance in the number of LGBT organisations and venues in cities compared to rural areas.<sup>12</sup>

#### C.4. Family and Other Social Issues

- [19]. In 2001, the National Civil Union Act was implemented in Germany. The law represents progress in the field of LGBT rights, but did not provide full marriage equality for homosexual couples. For example, the law whereas allows an individual to adopt his same-sex partner's child (stepchild adoption), general adoption is not granted (Deutscher Bundestag, 2006).<sup>13</sup> According to *LSVD*, civil unions are not equal to marriage in relation to tax benefits or inheritance rights.<sup>14</sup>
- [20]. Regarding employment benefits, not all federal states have equalized benefits for persons in public office who are engaged in a civil union. Allowances, benefits for travel, moving and separation, and special leaves are unequally granted between public offices.<sup>15</sup>
- [21]. LGBT youth often come out while still living with their parents, and treatment in the family is a challenging issue: Most boys and girls either lack information or only hear negative messages on homosexuality. Moreover, the attitude of parents toward homosexuality is often not affirming: About 42 per cent of mothers and 20 per cent of fathers have affirmative attitudes, according to a survey among youth. Siblings appear to be more supportive than parents. Some German studies show a suicidal tendency up to four times higher in LGB youth (for example SENSJS (2001)). Eighteen per cent of gay, lesbian and bisexual youth report that they have attempted suicide.<sup>16</sup>

#### C.5. The Labour Market

- [22]. EU Council Employment Directive (2000/78/EC) was transposed through a uniform 'Law on the Transposition of European Directives for the Realisation of the Principle of Equal Treatment' of Aug. 14,

---

12 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

13 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

14 Field trip meeting with *LSVD* (Germany, 10 April 2008).

15 Lesben- und Schwulenverband in Deutschland [*LSVD*] (2008) *Ratgeber zum Lebenspartnerschaftsrecht. Arbeiter, Angestellte und Beamte* [On-line], accessible at: <http://www.lsvd.de/194.0.html> [15 March 2008]

16 Senatsverwaltung für Schule, Jugend und Sport, Fachbereich für gleichgeschlechtliche Lebensweisen Berlin [SENSJS] (2001) *Sie liebt sie. Er liebt ihn. Eine Studie zur psychosozialen Situation junger Lesben, Schwuler und Bisexueller in Berlin*, Berlin: Author. M. Watzlawik (2003) *Jugendliche erleben sexuelle Orientierungen. Eine Internetbefragung zur sexuellen Identitätsentwicklung bei amerikanischen und deutschen Jugendlichen im Alter von 12 bis 16 Jahren*, [On-line] Accessible at: <http://www.biblio.tu-bs.de/ediss/data/20030306a/20030306a.pdf>

2006 ('Transposition Law'), which was promulgated in the Bundesgesetzblatt on August 17, 2006.<sup>17</sup> The law also transposes additional EU directives, namely Directive 2000/43/EC (the Race Directive<sup>18</sup>), 2000/73/EC (the Gender Directive<sup>19</sup>), and 2004/113/EC (the Gender Equality Directive<sup>20</sup>).

- [23]. Some areas are not adequately covered by the law with regard to sexual orientation. Particularly the continued inequality of benefits for the same-sex partners of civil servants, judges and soldiers. While married civil servants, judges and professional soldiers receive a family subsidy and their spouses receive assistance in matters of health, nursing, birth and widow payments in case of death, partnered civil servants and their partners do not receive these benefits.
- [24]. The quantity and quality of homophobia, discrimination on grounds of sexual orientation and conditions of LGBT persons in the labour market were analysed in the study 'Out im Office?!', a survey of 2,230 gay and lesbian employees.<sup>21</sup>

About 52 per cent of gay and lesbian employees either do not talk about their sexual orientation with their colleagues, or only talk with a few colleagues. Sixty-five percent did not reveal, or selectively revealed, their sexual orientation to supervisors or executives.

The most common types of discrimination are gossip or rumours (54.6 per cent), mockery or ridicule (44.4 per cent), and inappropriate and disproportionate interest in private life (34 per cent).

Twenty-eight per cent of respondents said that they had been unequally treated in job appreciation, performance pressure, advancement, training, earnings, or holiday. Sexual orientation discrimination with direct consequences for employment was reported by 11.6 per cent of respondents.

The study also illustrated differences in specific sectors: The military and churches, for example, do not establish an atmosphere of LGBT acceptance. Disclosure in such sectors is much lower than in social organisations, marketing, sales and distribution or NGOs.

---

17 Germany/BGBI I p. 1897.

18 Council Directive 2000/43/EC from 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L EC No. L 180 p. 22).

19 Directive 2002/73/EC of the European Parliament and of the Council amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L EC No. L 269 p. 15).

20 Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L No. L 373, 21.12.2004 p. 37-43).

21 D. Frohn (2007) „Out im Office?!“ *Sexuelle Identität, (Anti-)Diskriminierung und Diversity am Arbeitsplatz*. Köln: Schwules Netzwerk NRW e.V. (ed.) funded by Ministry for Intergenerational Affairs, Family, Women & Integration of North Rhine-Westphalia.

The study also found that diversity management activities and an open-minded culture (including partner benefits, for example) have an influence on the openness of employees.

## C.6. Education

- [25]. The extent and character of curricula in relation to LGBT issues varies between federal states.<sup>22</sup>
- [26]. Discrimination against LGBT pupils in school is relatively prevalent. More than half of gay pupils experience ridicule or gossip, 38.6 per cent said that they had lost friends, 27.8 per cent reported name-calling or defamation and 7 per cent were victims of physical assaults.<sup>23</sup>

## C.7. Health Service

- [27]. The German health care system does not consider the specific needs of LGBT persons.<sup>24</sup> At the same time, however, any form of unequal treatment in access to health care is officially prohibited. Studies show that many LGBT persons remain closeted during contact with health institutions due to fear of discrimination.<sup>25</sup>

## C.8. Religion

- [28]. Most people in Germany belong to the Protestant or Catholic Christian church, and findings in this section refer to the dominant religions.
- Examples of religious organisation homophobia have been identified in local communities, the personal level and within official church institutions themselves:<sup>26</sup>

---

22 Bundeszentrale für gesundheitliche Aufklärung [BZgA] (2004) *Richtlinien und Lehrpläne zur Sexualerziehung*, Köln: Author.

23 Niedersächsisches Ministerium für Frauen, Arbeit und Soziales, [NMFAS] (2001) *Schwule Jugendliche: Ergebnisse zur Lebenssituation, sozialen und sexuellen Identität*, [On-line]. Accessible at: [http://www.mfas.niedersachsen.de/master/0,,C779581\\_D0\\_O674,00.html](http://www.mfas.niedersachsen.de/master/0,,C779581_D0_O674,00.html) [22 January 2002].

24 H. Seyler (2004) *Lesben, die unsichtbaren Patientinnen*. Düsseldorf: Paper Presentation to the Commission on 'Frauengerechte Gesundheitsversorgung in NRW.' [10 February 2004]. And G. Wolf (2006) 'Diskriminierung und Gewalt gegen Lesben, Schwule und Bisexuelle im medizinischen und psychotherapeutischen Setting', in *Verhaltenstherapie und psychosoziale Praxis*, 38 (3).

25 G. Dennert (2004) *Die gesundheitliche Situation lesbischer Frauen in Deutschland: Ergebnisse einer Befragung* [Dissertation], Nürnberg: Med. Diss. FAU Erlangen-Nürnberg.

26 The following examples are from: D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

Personal level: Cardinal Joachim Meissner, archbishop of Cologne, is known to be a ‘hardliner’ concerning LGBT issues. With reference to homosexuality, Meissner has said: ‘If such ways of sexual contact would have been considered, God would have created human beings in a different way’ (Bürger, 2001: ‘Der Schöpfer hätte den Menschen anders konstruieren müssen, wenn auch solche Formen der Sexualität gedacht worden wären.’).<sup>27</sup>

Local community level: *Kolpingwerk* is a Catholic social organisation founded by Adolph Kolping focussing on education (mainly children’s homes and youth centres). Organisations with a religious structure are exempt from anti-discrimination law. As a consequence, *Kolpingwerk* tendered notice of termination to a gay employee because his supervisor discovered his sexual orientation (Welt Online, 2007).<sup>28</sup>

Official church institution level: *Christival*, a congress for young Christians that operates independently from any denomination, has held a workshop entitled ‘Understanding Homosexuality – a Chance for Transformation’ (‘Homosexualität verstehen – Chance zur Veränderung’) created to help young homosexuals to reduce homosexual feelings (*Deutscher Bundestag*, 2008).<sup>29</sup>

## C.9. Sports

- [29]. Homophobia is highly prevalent in mainstream and professional sport. Sport is characterised nondisclosure of gay and lesbian players and intense discrimination by fans and institutional structures.<sup>30</sup>
- [30]. Non-heterosexuality remains invisible and ‘other’ in sports, especially in football. This fact is further substantiated by the masculine spirit of football and its function for male socialisation.<sup>31</sup> Gay professional players remain closeted and under intense psychological pressure to conform.<sup>32</sup> Defamatory language and homophobic slogans are used by fans to ridicule referees or the opposing team.<sup>33</sup>
- [31]. For women and lesbians in particular, the masculinisation of football plays out in the guise of sexism. Women are not taken seriously in their capacity to participate in a rough, aggressive and physical game. At the same time, however, these features of the game accommodate

---

27 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

28 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

29 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

<sup>30</sup> D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

31 T. Walther (2006) *Kick It Out: Homophobia in Football*, European Gay and Lesbian Sport Federation (ed.), Berlin, Amsterdam.

32 O. Lück, R. Schäfer (2006). ‘Ein Outing wäre mein Tod’, in *Spiegel Online Sport*. [On-line]. Accessible at: [http://www.spiegel.de/sport/fussball/0,1518,4\\_53765,00.html](http://www.spiegel.de/sport/fussball/0,1518,4_53765,00.html) [21 March 2008].

33 T. Walther (2006) *Kick It Out: Homophobia in Football*, European Gay and Lesbian Sport Federation (ed.), Berlin, Amsterdam.

an escape from traditional female gender roles for women who play football.<sup>34</sup>

## C.10. Media

[32]. The representation of LGBT persons and issues in German media is diverse. LGBT assessment of media representations has identified some noteworthy trends:

- Regarding visibility, 63 per cent of respondents in a study on LGBT TV representations thought that non-heterosexuality remained taboo.<sup>35</sup> Another study found that 62 per cent of LGBT respondents found distorted portrayals of lesbian and gay lifestyles on German TV.<sup>36</sup>
- German media are suffused with stereotypical representations of non-heterosexuality. Some German print and Internet media cater to a non-heterosexual audience and draw a nuanced picture, but mainstream TV often depicts homosexuals in a clichéd or stereotypical way.<sup>37</sup> In addition, some TV series heteronormalise lesbians and gays.<sup>38</sup>

## C.11. Asylum and Subsidiary Protection

[33]. Regarding the intersection of sexual orientation and asylum seeking, no quantitative data are available

[34]. Following the jurisprudence of the Federal Constitutional Court, the right of asylum in article 16a of the Basic Law is grounded in the inviolability of human dignity, and no state has the right to endanger or injure the body, life or personal freedom of the individual solely on grounds of his/her political beliefs, religious convictions or in innate or immutable characteristic.<sup>39</sup>

[35]. In 1988, the Federal Administrative Court recognised ‘irreversible, predestined, homosexual character’ as relevant to asylum.<sup>40</sup> However, the criminal prosecution of homosexual activity by itself does not necessarily constitute a targeted infringement of homosexual disposition relevant to asylum.

---

34 T. Walther (2006) *Kick It Out: Homophobia in Football*, European Gay and Lesbian Sport Federation (ed.), Berlin, Amsterdam.

35 V. Jung (2003) *Darstellung von Homosexualität in TV-Unterhaltungssendungen*. [Thesis], Bamberg: University of Bamberg.

36 M. Stuber (2003) *Anders Fernsehen. Studie: TV und Homosexualität*, Köln: Author.

37 S. D. Walters (2001) ‘Take my Domestic Partner, Please: gays and marriage in the era of the visible’, in: M. Bernstein, R. Reimann (eds.), *Queer families, Queer Politics: Challenging Culture and the State*. New York: Columbia UP.

38 T. Maier (2005) *Medien, Macht und Rezeption: Feministische Perspektiven einer kritischen Fernsehwissenschaft* [Dissertation], Oldenburg: Carl von Ossietzky Universität Oldenburg.

39 Germany/Bundesverfassungsgericht/76/143.

40 Germany/Bundesverwaltungsgericht/79/143, 146-147.

[36]. Specific issues arise from current implementation of German law with respect to non-heterosexuality and refugee or asylum-seeker status<sup>41</sup>:

- Upon arrival and case processing, asylum-seekers reside with other applicants in asylum-seeker accommodation centres. As a consequence, homosexual applicants are confronted with discrimination, harassment and marginalization by other applicants. This is exacerbated by shared rooms and facilities that do not allow for privacy.
- Applications are often turned down in consideration of a ‘privacy rationale’ inherent in sexual orientation. In other words, the ‘invisibility’ of homosexuality allows for a conduct in privacy and individual management. This issue has been highlighted in a number of cases; one recent case addressed the situation of a 31-year-old Iranian woman who emigrated due to her homosexuality. However, German courts did not acknowledge her non-heterosexuality, suspecting pretence in her claim. The decision was based on a conversation with the applicant’s mother, who denied her homosexuality. Despite massive public protests, no further consideration took place and the woman is awaiting deportation to Iran where she was sentenced to death during her absence.

## C.12. Family Reunification

[37]. Little evidence is available on the situation of gay and lesbian family reunification in Germany. The introduction of the Civil Union Act in 2001 brought about significant changes for bi-national couples living as families in Germany. These mainly concerned the basic right of international partners to reside with their significant others in Germany.<sup>42</sup>

[38]. German law allows for child adoption by the non-biological partner in a same-sex civil union.<sup>43</sup> In consequence, this right also applies to bi-national couples who are engaged in a civil union. However, adoption regulations and approval in bi-national same-sex couples has remained a blind spot in the provisions of civil union law.

## C.13. Transgender Issues

[39]. Despite their special situation, issues of transgender and transsexual persons are commonly and legally subsumed under anti-discrimination settings that consider sexual orientation.

---

41 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

42 V. Beck (2006) ‘Zuwachs für Ehe und Familie: Fünf Jahre Lebenspartnerschaftsgesetz’, *Profil: Grün*, 5 (9), 8-10.

43 Deutscher Bundestag (2006) *16. Wahlperiode, Antwort der Bundesregierung auf die kleine Anfrage gleiche Rechte, gleiche Pflichten - Benachteiligungen von Lebenspartnerschaften abbauen. Drucksache 16/534. 06 February 2006.* [On-line]. Accessible at: <http://dip.bundestag.de/btd/16/005/1600534.pdf> [15 March 2008].

- [40]. According to the *Law on Transsexuals*, transgender persons may obtain a given name for their desired gender. The prerequisite for this is that the person concerned feels that she or he belongs to the other gender and has done so for at least three years. Furthermore, it is necessary for two medical experts to confirm that the applicant's feeling of belonging will not change. With the change in given name, transsexuals have a right to new official documents issued with their new name. This applies to employers<sup>44</sup> and government institutions. However, despite the change in given name, the law still regards the transsexual as belonging to the gender to which he or she does not identify (para. 1(1) of the *Law on Transsexuals*). Under para. 7 of the *Law on Transsexuals*, the change in given name is nullified if the person in question gives birth to a child or marries.
- [41]. For the determination of belonging to the other gender/sex (paras. 8-12 of the *Law on Transsexuals*), the law also demands that the transsexuals are unmarried and have undergone a sex reassignment operation making them incapable of reproduction (para. 8(1) of the *Law on Transsexuals*).
- [42]. Provided that appropriate experts state that the person affected suffers a psychological strain due to his/her transsexuality that can only be remedied or alleviated by a sex reassignment operation and not through psychotherapeutic measures, health insurance must pay the cost of the sex reassignment process.<sup>45</sup>
- [43]. The standard of care in the reassignment process, although relatively high in comparison to other European countries, needs a more affirmative and respectful perspective. For example, personal competence must be respected and the diverse lifestyles of transsexual and transgender persons should be considered more comprehensively (Recla, 2008).<sup>46</sup>
- [44]. In its current version, the *Law on Transsexuals* does not only apply to Germans and persons entitled to asylum, but also to foreigners who have their legal domicile or usual residence in Germany, and whose home law contains no comparable regulation (para. 1(1)(3) of the *Law on Transsexuals*).
- [45]. There is no data specifically on living conditions for transgender persons. However, the *Federal Anti-Discrimination Agency*, which regards transgender as a gender issue, has accounts of problems related to the labour market (including termination) during the time of sex reassignment process, and with regard to problems getting health insurance, since insurance companies regard transsexuality as an illness.<sup>47</sup>

---

44 Germany/Bundesverfassungsgericht/2 BvR 1833/95 (15.08.1996); *Neue Juristische Wochenschrift* (NJW) (1997), p. 1632.

45 This was decided by the Federal Social Court: Germany/Bundessozialgericht/62, 83.

46 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

47 Field trip meeting with the *Federal Anti-Discrimination Agency* (10 April 2008).

## C.14. Multiple Discrimination

- [46]. In regard to ethnicity and migration, LGBT persons experience considerable obstacles and discrimination because of their 'otherness', in terms of both sexual orientation and ethnicity. When coming from a non-Western culture, LGBT persons oftentimes experience pressure, discrimination and harassment from the LGBT community and from their respective migrant community in Germany. For instance, some Muslim and Christian Orthodox communities harshly oppose lesbian and gay identity.<sup>48</sup>
- [47]. Regarding LGBT youth, it is worth noting that the coming out age is decreasing. As a consequence, coming out now often occurs when the gay, lesbian or bisexual youth is still living with her parents or is attending school. Research shows that coming out generates severe psychological stress. The younger the LGBT person, the more challenging the process of anticipating the reaction of family members and peers. Discrimination by peers is often not foreseen.<sup>49</sup>
- [48]. In interviews, experts on the situation of elderly LGBT persons identified the following issues:<sup>50</sup>
- [49]. The difficult history of discrimination of LGBT persons in Germany has generated more secrecy on sexual orientation in elder generations. The higher rate of closeted persons renders elders more vulnerable to social isolation and associated psychological stress. A specific difficulty for LGBT elders emerges when it becomes necessary to live in a residential home for the elderly or in a nursing home. LGBT persons are often confronted with stereotypes and discrimination by staff and by other residents.<sup>51</sup>
- [50]. The question of care is particularly relevant for LGBT disabled persons. Leaving home to meet other LGBT persons is difficult for disabled LGBT persons, especially if discretion is desired. The

---

48 D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report. And field trip meeting with LSVD (Germany, 10 April 2008).

49 D. Frohn (2007) „*Out im Office?!' Sexuelle Identität, (Anti-)Diskriminierung und Diversity am Arbeitsplatz*. Köln: Schwules Netzwerk NRW e.V. (ed.) funded by Ministry for Intergenerational Affairs, Family, Women & Integration of North Rhine-Westphalia. Senatsverwaltung für Schule, Jugend und Sport, Fachbereich für gleichgeschlechtliche Lebensweisen Berlin [SENSJS] (2001) *Sie liebt sie. Er liebt ihn. Eine Studie zur psychosozialen Situation junger Lesben, Schwuler und Bisexueller in Berlin*, Berlin: Author. M. Watzlawik (2003) *Jugendliche erleben sexuelle Orientierungen. Eine Internetbefragung zur sexuellen Identitätsentwicklung bei amerikanischen und deutschen Jugendlichen im Alter von 12 bis 16 Jahren*, [On-line] Accessible at: <http://www.biblio.tu-bs.de/ediss/data/20030306a/20030306a.pdf> [28 June 2003].

50 Ministerium für Gesundheit, Soziales, Frauen und Familie des Landes Nordrhein-Westfalen [MGSFF] (2003) *Grundlagenforschung zu Ursachen und Auswirkungen. Einsamkeit und soziale Isolation schwuler Männer*. Düsseldorf: Author.

<sup>51</sup> D. Frohn, P. Stärke (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Germany*, Sociological country report.

sexuality of disabled LGBT persons appears to be ignored in the field of care.<sup>52</sup>

## D. Good Practice

[51]. Good practices are described in Annex 1.

---

<sup>52</sup> T. Rattay (2007) *Volle Fahrt voraus – Lesben und Schwule mit Behinderung*, Berlin: querverlag.