

Austrian Government Affronts Constitutional Court

Discrimination in Health Insurance Partner Benefits Prolonged

RKL will put the case to Strasbourg

In the course of RKL-litigation offensive for the rights of same-sex partners last October the Constitutional Court of Austria struck down statutory partner benefits in social health insurance legislation on the basis that those benefits were restricted to partners of opposite-sex. The governing coalition now passed a new law reintroducing this discrimination.

Austrian legislation on social insurance provides that unmarried partners are entitled to claim health benefits from the insurance of their partners. The law however expressly stipulates that such partners must be of opposite sex.

In the beginning of 2005 RKL started massive litigation for same-sex partnership rights. As part of this litigation offensive RKL-Secretary-General Walter Dietz asked the Constitutional Court to repeal those discriminatory provisions in the General Social Insurance Act (ASVG) and the Industrial Social Insurance Act (GSVG). With judgment of October 10th, 2005 the Court struck down these provisions with effect from August 1st, 2006.

Instead of accepting this verdict the conservative-right majority in the federal parliament on May 24th, 2006 passed a new law, which, in new provisions, reintroduces this discrimination as of August 1st, 2006 (Decision NR 1408 Blg. XXII. GP).

Same-sex and opposite-sex couples will (as of August 1st, 2006) basically be treated equally and will be entitled to health insurance partner benefits if either in the partnership they care for minor children or if one of the partners is severely in need of nursing (§ 123 par. 7a ASVG; § 83 par. 8 GSVG; § 78 par. 6a BSVG; § 56 par. 6a B-KUVG). This however will be the case only for those partnerships which will be entered into after July 31st, 2006.

RKL again turns to Constitutional Court and to ECHR

For the vast majority of those partnerships already existing (on July 31st, 2006) the discrimination however is prolonged. Opposite-sex couples remain entitled to health insurance partner benefits, even if they neither care for minor children nor are in need of nursing nor nurse their partner. Those under 27 years of age (on July 31st, 2006) will be entitled until December 31st, 2009, those 27 and over even for life (§ 628 par. 3a ASVG; § 314 par. 3, 4 GSVG; § 304 par. 3, 4 BSVG; § 216 par. 2, 3 B-KUVG). Corresponding same-sex partners (not caring for minor children, not being in need of nursing, not nursing their partner) in existing partnerships will continue to be totally excluded from health insurance partner benefits. It was exactly this discrimination of existing same-sex couples versus existing opposite-sex couples which the Constitutional Court found unconstitutional.

“This affront of the Constitutional Court is outraging and unacceptable”, says *Dr. Helmut Graupner*, president of the Austrian lesbian and gay rights organization *Rechtskomitee LAMBDA (RKL)* and counsel of the applicant successful in the Constitutional Court, “We will now address the European Court of Human Rights and, after entry into force, also challenge the new provisions in the Constitutional Court.”

Rechtskomitee LAMBDA (RKL), founded in 1991, on a supra-partisan and denominational level is working for the implementation of human rights for homo- and bisexual men and women. In its honorary board it convenes so prominent members as the Chairman of the Social-Democratic Party of Austria (SPÖ) *Dr. Alfred Gusenbauer*, President MP *Peter Schieder*, MP *Mag. Terezija Stoisits* (Green Party), the well-known child and adolescent psychiatrist *Univ.-Prof. Dr. Max Friedrich* and the Ombudspersons for Children and Adolescents of Vienna *DSA Monika Pinterits* und *Dr. Anton Schmid*, the Secretary General of Amnesty International Austria *Mag. Heinz Patzelt* and the well-known human rights experts *Dr. Lilian Hofmeister* und *Univ.-Prof. Dr. Manfred Nowak*, the sexologists *ao.Univ.-Prof. Dr. Josef Christian Aigner*, *Prof. Dr. Rotraud Perner* and *Mag. Johannes Wahala*, the theologian *Univ.-Prof. Dr. Kurt Lüthi*, entertainer *Günter Tolar* and many more.

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