

Austria

Constitutional Court: Same-Sex Couples are Family

Rechtskomitee LAMBDA calls on the government to allow reason to prevail

In a decision delivered yesterday the Austrian Constitutional Court ceased hyphen-discrimination of registered partners. Also same-sex couples enjoy the constitutional protection of the family. Disadvantageous treatment of registered versus married couples require particularly serious reasons. Separation as an end in itself (on principle) is inadmissible. Rechtskomitee LAMBDA (RKL), Austria's LGBT civil rights organisation, now calls on the federal government to allow reason to prevail and repeal all the differences between registered partners and spouses.

Austrian legislation explicitly stipulates a hyphen for a double-name acquired by marriage. There is no such provision for registered partners. The Minister of Interior therefore insisted that double-names of married partners have to be connected by a hyphen, while double-names of registered partners must not be connected by a hyphen. The result is permanent mandatory outing. Who has a double name including a hyphen is heterosexual and married. Who has a double-name without a hyphen is homosexual and a registered partner. A judge involved in the drafting of the partnership-law called this distinction as the "pink triangle of the law of names".

Jörg Eipper-Kaiser registered his partnership as the first couple in the Styrian capital Graz. He acquired the name of his partner and wanted to use his right to carry a double-name (combining the joint name and his former name). The City of Graz ordered that he can do so, but only without a hyphen.

First branding of a social group since 1939

Before the introduction of registered partnership the last branding of a social group by names had been ordered by the "Second Executive Order to Implement the Act on Changing Family Names and Fore Names". This was 1939. Then Jews had been branded by the obligatory forenames "Israel" and "Sara" ...

In addition, under Austrian law, so far only bigamists could have double-names without a hyphen. So double-name without a hyphen even carried a criminal connotation.

Jörg Eipper Kaiser, represented by RKL-president Dr. Helmut Graupner, applied for a double-name connected with a hyphen and carried his case, which had been supported also by the Styrian NGO Rosa Lila PantherInnen, up to the Constitutional Court.

Separation on principle is inadmissible

The Constitutional Court decided, that also registered partners, as married partners, connect their double-names by a hyphen. Also same-sex couples, the 13 judges said, do enjoy the constitutional protection of the family (par 21). Disadvantageous treatment of registered versus married couples require particularly serious reasons (par 21f). And the Court emphasized that separation as an end in itself (on principle) is inadmissible (par. 23).

Furthermore the Court followed the applicant also on another difference between marriage and registered partnership. It issued proceedings to strike down the provision that registered partners may opt for a double-name only at registration, while married partners can do so also anytime after marriage.

„Given this ground-breaking judgment we are calling upon the federal government to finally allow reason to prevail“, says Dr. Helmut Graupner, president of Austria’s LGBT civil rights organisation Rechtskomitee LAMBDA (RKL) and counsel of Mr. Eipper Kaiser, “If they continue prohibiting marriage, they should at least ultimately repeal the other still prevailing 59 differences between registered partnership and marriage“.

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 as prominent members as former Prime Minister Dr. Alfred Gusenbauer, President of Federal Parliament Mag. Barbara Prammer, former Minister of Justice Mag. Karin Gastinger, the Honorary President of the Parliamentary Assembly of the Council of Europe Peter Schieder, Federal Ombudsman Mag. Terezija Stoisits, Senator Marco Schreuder, former Director of Public Security Dr. Erik Buxbaum, the former President of National Judges Association Dr. Barbara Helige, the Chairwoman of the National Judges Association’s Working Party on Fundamental Rights Dr. Mia Wittmann-Tiwald, the Vice-President of the Vienna Bar-Association Dr. Elisabeth Rech, the former President of D.A.S.-legal expenses insurance company Dr. Franz Kronsteiner, the President of Weisser Ring Dr. Udo Jesionek, the Secretary General of Amnesty International Austria Mag. Heinz Patzelt, the Vice-Chairperson of the Executive Board of the European Union Agency for Fundamental Rights Univ.-Prof. Dr. Hannes Tretter, and the well-known human-rights experts Dr. Lilian Hofmeister and Univ.-Prof. Dr. Manfred Nowak, the constitutional law professors Univ.-Prof. Dr. Christian Brünner, Univ.-Prof. Dr. Bernd-Christian Funk, Univ.-Prof. Dr. Heinz Mayer and Univ.-Prof. Dr. Ewald Wiederin, famous child- and adolescent psychiatrist Univ.-Prof. Dr. Max Friedrich and the Vienna Child- and Youth-Ombudspersons DSA Monika Pinterits and Dr. Anton Schmid, sexologists Univ.-Prof. Dr. Josef Christian Aigner, Univ.-Prof. Dr. Rotraud Perner and Univ.-Lekt. Mag. Johannes Wahala, Life-Ball-Organisor Gery Keszler and many more. October 2nd, 2006, RKL’s 15 years anniversary has been celebrated in historic Ceremonial Act “Against Sexual Apartheid“ in the lower chamber of Austrian federal parliament. This first honouring of an lgbt organisation in the plenary session hall of a national parliament worldwide took place in attendance of over 500 guests including highest representatives from the judiciary, administration and politics (<http://www.rklambda.at/festakt/index.htm>). Since 2010 RKL is a member of the Fundamental Rights Platform of the European Union Agency for Fundamental Rights (www.fra.europa.eu).

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