

Austria

Constitutional Court Affirms Sexual Apartheid

Rechtskomitee LAMBDA speaks out against preferential treatment of homosexuals

In a decision delivered yesterday the Austrian Constitutional Court declared admissible the exclusion of heterosexual couples from registered partnership, which bounds couples more loosely than marriage and is easier to dissolve. Heterosexuals would be no historically disadvantaged group. Their exclusion from registered partnership would not exceed legislature's margin of appreciation. *Rechtskomitee LAMBDA (RKL)*, Austria's LGBT civil rights organisation, speaks out against disadvantageous treatment of heterosexuals and announced to bring the case before the European Court of Human Rights.

Helga Ratzenböck and Martin Seydl for many years have been living in a stable partnership and they have an adult daughter. Traditional civil marriage never was an attractive option for them. So they never married.

Registered partnership, introduced in 2010, much more fits to their idea of a modern legal institution for couples. It, for instance, has shorter waiting-periods for divorce and carries lesser maintenance-obligations after divorce. There is no obligation to monogamy, but instead a duty to a comprehensive relationship of trust. The couple does not wish further children, and so they don't care about the numerous discriminations of registered partners in the care for children. In addition restriction, solely on the basis of sex, of a new legal institution introduced in the 21st century they consider intrinsically discriminating.

Helga Ratzenböck and Martin Seydl asked the City of Linz to allow them to register their partnership and took their case up to the Constitutional Court. The 13 judges in their decision of 22 September 2011 (B 1405/109) declared admissible their exclusion from registered partnership. Heterosexuals, they said, are not a historically disadvantaged group (par. 23). Their exclusion from registered partnership rests within the legislature's margin of appreciation. Homo- and heterosexual couples would not only be not identical, but not even comparable in each respect (par. 30). So they may be separated into marriage on the one hand and registered partnership on the other (par. 30).

No strict scrutiny for discrimination of heterosexuals

In sharp contrast to its hyphen-decision (B 518/11), delivered the same day, in which the Court decided on discrimination of homosexual couples, the judges in the case of the heterosexual couple did not apply a strict scrutiny test, checking whether their exclusion from registered partnership is necessary for "particularly serious reasons".

Rechtskomitee LAMBDA (RKL), Austria's LGBT civil rights organisation, deplores this judgment and the fact that the Constitutional Court, called to be the watchdog of human rights, affirmed sexual segregation into a homosexual ghetto (registered partnership) on the one hand and a heterosexual ghetto (civil marriage) on the other. The case now goes up to the European Court of Human Rights.

„We homosexuals are asking for equal rights and equal obligations, we do not want to be disadvantaged“, says *Dr. Helmut Graupner*, president of Austria's LGBT civil rights organisation *Rechtskomitee LAMBDA (RKL)* and counsel of Ms. Ratzenböck und Mr. Seydl, „We, however, neither want preferential treatment for us and disadvantage for heterosexuals“. „Protection against discrimination should not be a one-way road; heterosexuals must be protected as strictly as homosexuals“.

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-Organisator 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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