

Germany

Reports published in 2013

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Germany/DEU-CbC-V-2014-002-ENG.pdf>

- **Context information from ECRI**

p.9:

“The Constitutional Court has played an important role in improving the legal situation of LGBT persons. Several Länder have adopted measures and action plans to increase tolerance towards LGBT lesbian, gay, bisexual and transsexual persons (LGBT) and combat homo/transphobia. The great majority of the population are in favour of bringing the status of same-sex couples fully into line with that of married couples.”

“Since the reunification the number of murders and the level of violence motivated by racism and homo/transphobia are high in Germany. There is no reliable statistical tool for measuring the scale of violence and hate speech motivated by racism and homo/transphobia. The high rate of “under-reporting” of offences involving racism and homo/transphobia reflects a lack of confidence on the part of vulnerable groups in the effectiveness of criminal proceedings brought by the police and the prosecution services. This ineffectiveness was highlighted by the failings in the investigation of the murders committed by the National Socialist Underground (NSU) movement. A racist motivation is recognised in only a small number of judgments.”

p.10:

There is considerable discrimination towards LGBT persons, which contributes to the tendency for LGBT persons to conceal their sexual orientation. Particularly in schools, there is a high level of homo/transphobia. The situation of transgender persons is particularly bad in the employment field. Transsexualism is classed as a “disorder of personality and behaviour”. Many LGBT persons suffer discrimination from health professionals. There are significant differences in law between recognised same-sex couples and married couples.

p.11:

“The federal government and those Länder which have not yet adopted an action plan or a comprehensive programme to promote tolerance towards LGBT persons and combat homo/transphobia should take inspiration from existing plans in this field and draw up their own measures or action plan.

The right of transsexuals to change their gender marker in documents such as educational diplomas and employment certificates should be inserted into legislation. Issues specific to transgender persons should be systematically included in action plans to promote equality. Financial support for organisations campaigning for their rights should be increased.”

p.33:

98. During the last micro-census in 2011, 67 000 households made up of homosexual couples were declared in Germany. 113 27 000 homosexual couples had been registered in accordance with the Law on registered partnerships. According to official statistics, 7 000 children were living with parents of the same sex. 114 The number of transgender persons is difficult to pinpoint. Between 1995 and 2010, the courts dealt with 11 514 applications from individuals wishing to change their forenames or gender registered.

- **Legislative issues**

99. Article 3 GG, which guarantees the equality of all persons and expressly prohibits discrimination on ten different grounds, mentions neither sexual orientation nor gender identity. In 1994 the two-thirds majority required to include these grounds was not achieved, whereas it was for the ground of disability. Another initiative geared to raising the level of protection for LGBT persons was rejected by the Bundesrat in 2009. The constitutions of several Länder comprise a prohibition of discrimination on the ground of sexual identity. 116 The Law on registered partnerships came into force in 2001. It applies solely to same-sex couples and allows them to establish legal cohabitation. Most of the legal consequences are similar to those of marriage. 117 Most Länder have granted registered partners the same rights as married couples in all fields coming under their jurisdiction.

103. The Law on transsexuals came into force in 1980. In 2008 and 2011 the Constitutional Court decided that several of the conditions laid down in the law for legal recognition of gender changes were contrary to the Basic Law¹²⁵: the applicant could not be married, had to have had a surgical operation and be sterile. 126 Given that Articles 5 and 10(2) of the Law on transsexuals prohibit disclosure of the former sexual identity following the change of forename and legal recognition of the change of gender, the courts have also recognised the right of transgender persons to change their gender marker in such important documents as diplomas and employment certificates. However, this right is not widely known among employers, schools and even the organisations specialising in combating discrimination.

104. ECRI recommends that the German authorities insert into the law the right of transsexuals to change their gender marker in documents such as educational diplomas and employment certificates.

- **Transphobia and data on hate crimes in the country**

The system for recording and following up “racist, xenophobic, homophobic and transphobic” incidents should be reformed to ensure that all cases involving such a motive are recorded.* The police and prosecution services in all the Länder should set up contact points to register such complaints.

26. The statistics on politically motivated criminal offences³⁰ exhibit several shortcomings. ECRI was informed that only a small proportion of racist and homo/transphobic insults are recorded in them. For 2012, for example, they show only 186 cases of hate speech motivated by sexual orientation in all 16 Länder, whereas the Berlin prosecution department recorded 90 cases until 16 October 2013 alone. According to a survey of 24 000 LGBT persons carried out by an NGO in 2006 and 2007, 39.4 % of

them had been insulted or bothered during the last 12 months, 14.4 % had received threats and 13.6 % had been subjected to harassment or pressures. 31 The title of the official statistics suggests that they should only cover “politically motivated” offences, although a good many racist and homo/transphobic offences are not based on any political motivation. Even if the definition given by the German police of the concept of “political motivation” specifies that the statistics should include all racist and homo/transphobic hate speech, police officers may be misled by this title when recording offences.

54. ECRI considers that current statistics do not permit an assessment of the extent of racism and homo/transphobia. 67 The huge disparities between official and civil society figures should lead the police and judicial authorities in the first instance to question their statistics on racism. They should also consider whether the judicial system is sufficiently accessible for victims of racism and homo/transphobia.

56. ECRI recommends that the German authorities reform their system for recording and following up “racist, xenophobic, homophobic and transphobic” incidents in order to ensure that all cases involving such a motive are recorded (§ 12 of General Policy Recommendation No. 11).

58. ECRI was also informed that some police officers are reluctant to register complaints of offences with a racist or homo/transphobic motive. This applies not only to insults, but also to damage to property. Some police officers fear the formalities involved in registering complaints of this type. Other information suggests that racist ideas and sympathy towards extreme right-wing organisations are widespread in the police.

59. The Chief Prosecutor of the Land of Saxony-Anhalt has noted a lack of awareness and knowledge of the existing tools in the authorities responsible for prosecuting offences of “racism and discrimination”. 70 Another expert mentions the case of a prosecutor who considered that it was not in the public interest to bring a criminal prosecution against an assailant who had insulted his victim with expressions such as “bum-fucker”, “fucking queer” and “disgrace to Germany” and had told him to “go to Auschwitz to be gassed”. However, as provided for under the proposed amendments to the guidelines for criminal proceedings, the prosecuting authorities should systematically find that there is a public interest in bringing a criminal prosecution where there is a racist or homo/transphobic motive, because hate crimes not only affect the victim, but also spread fear throughout the whole group in question.

60. The survey referred to in § 7 above shows that the recording of an offence as a hate crime is, however, decisive to ensure that racist motivation is taken into account in sentencing. In practice it would seem that the onus is often on the victim’s lawyer to prove the offender’s racist motivation. These findings confirm ECRI’s belief in the importance of the police making the necessary effort to ensure that all offences with a racist or homo/transphobic motive are recognised and registered as such and that this registration is followed by an effective investigation. 71 It should also ensure that the changes under preparation in the guideline requiring an investigation into the presence of a “racist, xenophobic or other particularly reprehensible motive” are systematically complied with.

105. A recent FRA survey shows that there is still heavy discrimination against LGBT persons in Germany and that policies to combat such discrimination could be improved. 49 % of LGBT persons consider that measures to promote respect for LGB human rights are few and far between. 79 % voice the same opinion in connection with transgender persons. Despite a strong tendency for LGBT persons to conceal their sexual orientation, 15 % of the persons interviewed in Germany considered that they had suffered discrimination in job-seeking, 21 % in the workplace and 17 % when seeking housing. 130 Knowledge of the different forms and extent of discrimination against LGBT people on the housing market is still scanty.

106. Homo/transphobia is one of the main problems in German schools. 73 % of LGBT students have never spoken openly about their sexual orientation at school. 64 % have heard negative comments about a classmate who has been perceived as LGBT. The word “gay” is one of the commonest insults at school. 17 % of LGBT students have suffered discrimination from school or university staff. ECRI considers that the ministries responsible for education should make sexual diversity a cross-cutting issue in the curriculum in order to promote tolerance vis-à-vis young LGBT persons and enable them to talk openly about their sexual orientation. ECRI also encourages them to devise measures to combat the discrimination and violence¹³¹ suffered by young LGBT persons at school.

107. The situation of transgender persons is particularly difficult in the employment field. They are disadvantaged in terms of access to employment and career prospects, and they suffer rejection, harassment and even violence. They are more often affected by job loss, unemployment and poverty and are frequently overqualified for their jobs. They are subjected to transphobic conducts on the part of colleagues and superiors.

108. Where health is concerned, transsexualism is still classified as a “disorder of personality and behaviour”. There is also a lack of awareness on the part of physicians, psychotherapists and medical professional associations of the different problems for each of the component groups of the LGBT community. 12 % of LGBT persons say that they have suffered discrimination from a physician or another health professional in the past 12 months. One group which is particularly exposed to this type of discrimination is elderly LGBT persons. Many of them are afraid of being subject to exclusion after their move to a retirement home or sanatorium.

109. ECRI welcomes the fact that several Länder have adopted measures and action plans to increase tolerance vis-à-vis LGBT persons and combat homophobia and transphobia. 135 The Land of Berlin recently assessed the implementation of its 2010 Action Plan. The Action Plan implemented by the Land of North RhineWestphalia might also be mentioned as a good example. It addresses almost all the fields covered by Recommendation CM/Rec(2010)5 of the Committee of Ministers. A further strong point in these processes is the intensive participation of civil society in their development. ECRI considers that the Federation and the other Länder should follow these examples.

110. ECRI recommends that the Federal Government and the Länder which have not yet adopted an action plan or a comprehensive programme to promote tolerance vis-à-vis LGBT persons and combat homophobia and transphobia take inspiration from the existing plans to draw up their own measures or action plan.

111. ECRI notes that the problems transgender persons face have not yet become sufficiently rooted in the collective consciousness. For instance, in evaluating its action plan, the City of Berlin noted that transgender issues had only played a minor role. 136 As the transgender community set up its structures for defending its members fairly late on, they are still short of political and financial support. The ADS and the German Association of Lesbians and Gays (LSVD) in North RhineWestphalia only began publishing the first two major surveys on the situation of transgender persons in 2010.

112. ECRI recommends that the German authorities systematically include specific transgender issues in their action plans on promoting equality and increase financial support for organisations fighting for their rights.

113. As regards the low rate of declaration of discrimination by LGBT persons, ECRI once again refers to its recommendations on increasing the financial and human resources of the ADSs and setting up contact points for vulnerable groups within the police agencies and the prosecuting authorities.

- **List of recommendations from ECRI**

6. (§ 56) ECRI recommends that the German authorities reform their system for recording and following up "racist, xenophobic, homophobic and transphobic" incidents in order to ensure that all cases involving such a motive are recorded (§ 12 of General Policy Recommendation No. 11).

16. (§ 104) ECRI recommends that the German authorities insert into the law the right of transsexuals to change their gender marker in documents such as educational diplomas and employment certificates.

17. (§ 110) ECRI recommends that the Federal Government and the Länder which have not yet adopted an action plan or a comprehensive programme to promote tolerance vis-à-vis LGBT persons and combat homophobia and transphobia take inspiration from the existing plans to draw up their own measures or action plan.

18. (§ 112) ECRI recommends that the German authorities systematically include specific transgender issues in their action plans on promoting equality and increase financial support for organisations fighting for their rights.