

NGO Submission
– UPR on the FEDERAL REPUBLIC OF GERMANY –
September 14, 2017

Submitted by: Lesbian and Gay Federation in Germany (LSVD)

The Lesbian and Gay Federation in Germany (LSVD) is Germany's national organization of lesbians, gays, bisexuals, trans* and intersex persons (LGBTIQ*). Our organization was founded in February 1990 in Leipzig as part of the civil rights movement in former East Germany. Nowadays the LSVD counts around 4.500 individual members and around 100 member organizations. Apart from the organization on the national level, there are LSVD associations in the 16 regions (federal states) and LSVD has offices in several cities in Germany. We work for equal rights and non-discrimination policies for LGBTIQ* people. The LSVD fights against all legal and other discrimination based on sexual orientation and gender identity. By means of campaigning we try to increase the acceptance of LGBTIQ* persons in Germany. Furthermore, we offer support and (legal) advice for LGBTIQ* persons. The LSVD has been strengthening LGBTIQ* families for many years. Since 2002 we conduct the rainbow families project. The aim of the project is to enhance the personal, social and legal status of LGBTIQ* families in Germany via counselling and networking.

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Summary

1. In 2016, the number of reported offenses on the grounds of sexual orientation rose, from 171 in 2015 to 205 in 2016. A further increase is feared for 2017: the German Ministry of the Interior indicated that 130 offenses had been recorded by July 2017, up from 102 in the same period last year. The true number is in any case likely to be higher, because many offenses are either not reported or are classified incorrectly by the police. They are treated only as "other hate-motivated grounds". The LSVD considers the omission of homophobic- and transphobic-motivated crime from the

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Association (ILGA)

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amended Section 46 (2) Sentence 2 of the Criminal Code to be a deliberate, structural exclusion.

2. In its coalition agreement, the Federal Government held out the prospect of homophobia and transphobia being included in the **“National Action Plan of the Federal Republic of Germany to Fight Racism, Xenophobia, Anti-Semitism and Related Intolerance”**. However, much time elapsed without any visible efforts. In July 2016, the LSVD, together with the Trans* Federal Association and many other civil society organizations, presented the “Cornerstones for Extending the National Action Plan against Racism to include Homophobia and Transphobia

In this submission, we will be referring to the sexual orientation recommendations made – in Cycle 2- to Germany.

Reference point:

Recommendations

A 124.122 Continue its important efforts to combat hate crime based on sexual orientation (Norway)

A 124.121 Continue its efforts and take further initiatives to combat hate crimes based on sexual orientation (Netherlands)

In 2016, the number of reported offenses on the grounds of sexual orientation rose, from 171 in 2015 to 205 in 2016.¹ A further increase is feared for 2017: the German Ministry of the Interior indicated that 130 offenses had been recorded by July 2017, up from 102 in the same period last year.² The true number is in any case likely to be higher, because many offenses are either not reported or are classified incorrectly by the police.

1. Hate crime legislation

The LSVD has long demanded **improvements to hate-crime legislation**. In 2015, a reform came into force with the amendment of Section 46 (2) Sentence 2 of the Criminal Code. The amendment’s aim was to ensure that hate motivation would play a greater role in determining penalties, and that public prosecutors would examine perpetrators’ hate motives better and earlier in investigations. We

¹ See German Bundestag, 18th parliamentary term, minutes of the plenary session 18/205; 20456.

² Federal Ministry of the Interior, answer to written question submitted by Member of Bundestag Volker Beck, Berlin 03.08.2017; p. 2.

welcomed the objectives pursued by the amendment, also the fact that an express reference is made in the Criminal Code to racist motivation. However, the Federation was also strongly critical of the fact that other forms of hate crime are treated only as “other hate-motivated grounds”. The LSVD considers the omission of homophobic- and transphobic-motivated crime from the amended Section 46 (2) Sentence 2 of the Criminal Code to be a deliberate, structural exclusion. Offenders who make hate-motivated attacks on LGBTIQ* persons are aiming to drive them out of the public space and render them invisible. We regret that the Government invisibilized homophobia and transphobia in the wording of the law. Massive criticism of this selective approach was voiced in the expert hearing on the draft bill in the Bundestag Committee on Legal Affairs. Unfortunately, in March 2015 the Federal Government and the Bundestag parties in the government ignored the objections of experts and of civil society organizations.

It is urgently required for Section 46 (2) Sentence 2 of the Criminal Code to explicitly reference LGBTIQ*-hostile motives. The same also goes for the concurrent amendment of No. 15 of the Instructions on Criminal Procedure and Administrative Fines (RiStBV). Our experience shows that if homophobic and transphobic hate crime are not expressly cited in the law, little attention is paid to these grounds in investigations by police and public prosecutors, and therefore also in criminal proceedings. A mention in the explanatory memorandum to the law will effect little change. There are also fears that education and training of the police and judiciary – which is eminently important – will fail to engage appropriately with manifestations of hate crime that are not explicitly referenced in the law. We see a comparable problem in the crime of incitement to hatred against certain groups (Section 130 of the Criminal Code). This section expressly highlights national, racial or religious groups or groups defined by their ethnic origins as potential targets. LGBTIQ* persons are not mentioned, nor are people with disabilities. There are very few cases in which LGBTIQ*-hostile incitement has led to a conviction under Section 130 of the Criminal Code. Here also, further clarification is required.

2. Criminal Investigation Department Reporting Service for Politically Motivated Crime

The **Criminal Investigation Department Reporting Service for Politically Motivated Crime (KPMD – PMK)** as a framework for monitoring and reporting hate crime also presents problems. By placing hate crime within the context of extremism, and assuming it has to be a “political” act, the department fails to do justice to the different backgrounds and manifestations of hate crime based on sexual orientation, gender identity and expression and sex characteristics, directed against LGBTIQ* persons. It is apparent that many police

authorities still have major issues in the way they perceive and classify such offenses. It is necessary to provide a sound, non-discriminatory basis for recording statistics and carrying out public monitoring of hate crimes against lesbians, gay , bisexuals, trans*, inter* and queer people, since only a fraction of relevant hate crime has in fact been recorded by the Criminal Investigation Department Reporting Service.

It is positive to note that in some states of Germany, progress is being made on identifying and prosecuting anti-LGBTIQ* hate crime, as well as on preventing secondary victimization. This has been achieved in particular by measures aimed at building trust and confidence in the authorities, and by appointing contact persons for LGBTIQ* individuals within police forces; Berlin has additionally appointed contacts in the public prosecutor's office. However, many measures are limited in reach, and often remain dependent on the commitment of individuals. There are still challenges, for example there are reports of disparaging treatment and victim-blaming by police, which discourages LGBTIQ* people from reporting acts of violence.

3. Continued legal discrimination of LGBTIQ* persons

Deficits in how anti-LGBTIQ* hate crime is perceived, recorded and combated must also be viewed in the context of continued legal discrimination. Hate crime feeds on ideologies of inequality whose essence is to devalue human beings. Such ideologies are permanently re-affirmed as long as Germany does not grant equal rights to lesbians, gay, bisexuals, trans*, inter* and queer people, instead treating them as second-class citizens. With the adoption of the Same-Sex Marriage Bill on 30 June 2017, the German Bundestag eliminated a major legal discrimination that also had fundamental symbolic effect. However, there are still major legal and political shortfalls, particularly vis-à-vis trans* and inter* people. A credible strategy to combat anti-LGBTIQ* hostility and the ensuing hate crime must therefore also eliminate legal discrimination for good. In particular, the essential measures are to:

- Enact a human rights-oriented reform of 'transsexual law' that is defined around self-determination
- Assert the basic right of intersex people to physical integrity and to accord intersex people self-determination within our legal system
- Add sexual orientation and gender identity to Article 3 (3) of the Basic Law (on human rights protections), formulated as "sexual orientation and gender identity"

4. Homophobia and transphobia

Right-wing populist, authoritarian, and Christian fundamentalist tendencies and organizations also provide a platform to homophobic and transphobic slogans and actors, i.e. in protests against diversity education. Well-networked groups such as "Demo for All" or "Concerned Parents" protest against school lessons engaging with LGBTQ* persons as part of mainstream society. Protests usually take the form of fact-twisting rhetorical slogans that allege "early sexualization" of children and debase LGBTIQ* persons.³

5. National Action Plan

In its coalition agreement, the Federal Government held out the prospect of homophobia and transphobia being included in the "**National Action Plan of the Federal Republic of Germany to Fight Racism, Xenophobia, Anti-Semitism and Related Intolerance**". However, much time elapsed without any visible efforts. In July 2016, the LSVD, together with the Trans* Federal Association and many other civil society organizations, presented the "Cornerstones for Extending the National Action Plan against Racism to include Homophobia and Transphobia".⁴

It is important that **measures to combat hostility against lesbian, gay, bisexual, trans*, inter* and queer people are not isolated** – instead, they should be adopted in the context of preventing and combating other manifestations of hostility against particular groups. This opens an intersectional perspective which takes into account not just the diversity of LGBTIQ* persons, but also the multiple forms of discrimination and structural disadvantages to which LGBTIQ* people are subject – i.e. due to gender, nationality, ethnicity, age, origin, social status, external characteristics or disability.

With the "National Action Plan Against Racism – Positions and Measures for Tackling Ideologies of Inequality and Related Discrimination", presented in May 2017, the Federal Government passed up on the opportunity to extend the anti-racism action plan to cover homophobia and transphobia. Together with the Network Against Racism, the Trans* Federal Association (BVT*) and Lesbian and Gay Federation (LSVD) have

³ see for example the Education & Science Trade Union: Pro diversity education – arguments against ultra-conservative, populist and Christian fundamentalist claims, https://www.gew.de/fileadmin/media/publikationen/hv/Gleichstellung/Lesben_Schwule_Bisexuelle_Trans_und_Inter/201602_Fuer_eine_Paedagogik_der_Vielfalt.pdf

⁴ See: http://lsvd.de/fileadmin/pics/Dokumente/Aktionsplan/2016_07_18_NAP-Eckpunkte_final.pdf

spelled out what it would take to eliminate discrimination.⁵

In principle, it is welcomed that for the first time an attempt has been made at national level to consider the needs and life situations of lesbian, gay, bisexual, trans*, inter* and queer people but unfortunately it becomes clear that the Federal Government is not pursuing a coherent strategy for equal rights, diversity and respect. The plan adopted by the Federal Government is not forward-looking or sustainable. In many instances, it is no more than a review packaged in euphemistic terms. It marginalizes LGBTIQ* by its title alone, fails to offer any specific measures and remains non-committal. The LSVD and BAT* therefore view this as a disappointing breach of the coalition agreement, which pledged to expand the “National Action Plan against Racism, Xenophobia and Anti-Semitism” to cover homophobia and transphobia. Given current developments within society, the need for such an addition appears even more pressing. As outlined, religious fundamentalists, right-wing populists and the extreme right are mounting an energetic and increasingly well-networked attack to continue to deny LGBTIQ* persons equal rights and opportunities, and to drive them out of the public space. LGBTIQ*-hostile attitudes and actions can be encountered far beyond this spectrum – also in the very middle of society. Structural and institutional barriers still stand in the way of full participation of LGBTIQ* persons in society, preventing LGBTIQ* individuals from fully asserting and enjoying their human rights. Especially in a changing society, with an increasingly globalized economy and the challenges of immigration, there is a need to continually re-affirm fundamental human rights in everyday life, such as the prohibition of discrimination and the right to equal treatment regardless of sex, age, religion, social affiliation, the presence of disability, sexual orientation, or gender identity.

6. These are our specific recommendations:

- To further improve hate crime legislation and expressly include hate crimes committed on the bases of sexual orientation and gender identity and expression and sex characteristics in Section 46 (2) Sentence 2 of the Criminal Code.

⁵ The joint paper [Protecting Human Rights – Eliminating Discrimination](https://www.bmfsfj.de/blob/jump/116798/nationaler-aktionsplan-rassismus-data.pdf) (German only), a compilation of civil society demands with respect to the government’s National Action Plan, highlights which measures would be effective in reducing disadvantages and taking a preventive approach to ideologies of inequality (<https://www.bmfsfj.de/blob/jump/116798/nationaler-aktionsplan-rassismus-data.pdf>).

- To make express reference to LGBTIQ* persons, and also to persons with disabilities, as possible victims in the law on incitement to hatred against certain groups (Section 130 of the Criminal Code).
- To make express reference to sexual orientation and gender identity in Article 3 Paragraph 3 of the Basic Law (human rights protections) to expressly grant LGBTIQ* persons protection against discrimination in the wording of the constitution.
- To present a sustainable National Action Plan that effectively counters homophobia and transphobia and, in particular, provides clear targets with defined timeframes, tenable self-commitments by state authorities, and appropriate resources to prevent and combat homophobia and transphobia.
- To enable a better police assessment of the current situation concerning anti-LGBTIQ* violence in Germany, as well as targeted prevention and training measures in the police and the judiciary. It should also provide for the appointment of police contact persons for lesbian, gay, bisexuals, trans*, intersex* and queer persons – adequately resourced and mandated with appropriate powers.
- To establish an independent complaints commissions and measures for target-group-aware victim assistance.
- To tackle the striking lack of research in Germany on anti-LGBTIQ* hate crime by commissioning relevant studies – one objective being to obtain empirical data on the extent and manifestations of anti-LGBTIQ* hate crime, and to gain reliable insights into how this is dealt with by police and judiciary.