



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Germany
Title:	Same-sex marriage
Date:	3 July 2017
Expert:	Mahlmann, Matthias
<u>Context</u>	
Issue at stake:	Same-sex marriage
Ground of discrimination:	Sexual orientation
Source:	Legislation
Field:	Other (Marital status)
Applicable law:	Sec. 1353 Civil Code (Bürgerliches Gesetzbuch)

Content

Law development: The German parliament, the Bundestag, passed on 30 June 2017 a law that introduces the possibility of same-sex marriage. To achieve this end, the German Civil Code (*Bürgerliches Gesetzbuch*) is amended. The regulation on marriage will include a clause that clarifies that marriage is concluded for life between persons of different or of same sex (Sec. 1353 para. 1 sentence 1 Civil Code as amended by the bill, Bt. Drs. 18/6665; 18/12989). Couples having concluded same-sex registered partnerships can opt to change their partnership into a marriage. Such partnerships can be continued but cannot be concluded in the future. The marriage of same-sex partners gives them access to all rights connected to this legal institution, including adoption. Given further mandatory procedural steps in the legislative process, including signing of the legislative act by the Federal President and preparation time for magistrates, the first same-sex marriages are foreseen to be concluded at the end of 2017.

Key points of analysis: The bill passed by the Bundestag establishes full equality for same-sex partners by legalising same-sex marriage and grants people irrespective of sexual orientation equal legal rights. This includes the – so far controversial – right to full adoption. Step-child adoption has already been legalised. The main question is whether a complaint will be filed with the German Federal Constitutional Court (*Bundesverfassungsgericht*). This is a possibility given political opposition to the bill by various actors. Whether the court would regard the bill as reconcilable with the protection of marriage (Art. 6) in the German Basic Law (*Grundgesetz*) is legally an open question.

Internet link source:

<https://www.bundestag.de/#url=L2Rva3VtZW50ZS90ZXh0YXJjaGl2LzIwMTcva3cyNi1kZS1laGUtZnVlci1hbGxllzUxMzY4Mg==&mod=mod493052>.