

**NEWS REPORT**

**Date:** 8 September 2009  
**Expert:** Matthias Mahlmann  
**Title:** Federal Constitutional Court dismisses objection against “stepchild-adoption”  
**Country:** Germany

**Context**

**Issue at stake:** constitutionality of provision which allows for “stepchild-adoption” in registered same-sex partnerships

**Ground of discrimination:** of sexual orientation

**Source:** national court decision

**Field:** Other

**Legislative provisions:** Sec. 9.7 Gesetz über die Eingetragene Lebenspartnerschaft

**Content**

**Case:** In the case, a woman wanted to adopt the today 3 year old child of her partner with whom she forms a registered same-sex life partnership (eingetragene Lebenspartnerschaft). After both the mother and the (biological) father of the child agreed to it, the competent youth welfare office (Jugendamt) recommended the adoption with respect to the child’s well-being. However, the competent Amtsgericht (Local Court) Schweinfurt suspended the adoption procedure and referred the case to the Federal Constitutional Court (Bundesverfassungsgericht), holding that the relevant Sec. 9.7 sentence 2 Law on Registered Civil Partnerships (Gesetz über die Eingetragene Lebenspartnerschaft) which - under further conditions – allows for the adoption of the registered-life-partner’s child, was in breach of the German Basic Law (Grundgesetz), in particular its Art. 6.2 sentence 1, which states that care and education of the child are the natural rights and the duties of the parents.

**Decision of the Court:** The Federal Constitutional Court held<sup>1</sup> that the Local Court’s submission was inadmissible not only because of formal shortcomings, but also because of its lack of adequate substantial justification. The Constitutional Court made it clear that according to its previous jurisdiction regarding Art. 6.2 Basic Law, the biological parenthood does not take priority over the legal as well as social-familial parenthood. It furthermore pointed out, that the Local Court misinterpreted the jurisdiction of the Federal Constitutional Court: contrary to the

<sup>1</sup> Constitutional Court decision, No. 1 BvL 15/09 of 10.8.2009.



Local Court's interpretation, the Constitutional Court did not state that only the child's mother and father could be regarded as its parents. In fact, it didn't address the question of the parents' sex at all in its jurisdiction.

**Internet link source and additional information:** Decision of the Federal Constitutional Court (in German): [http://www.bverfg.de/entscheidungen/lk20090810\\_1bvl001509.html](http://www.bverfg.de/entscheidungen/lk20090810_1bvl001509.html)