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Press Release

Adoption ban for same-sex partners found unconstitutional

Barring same-sex partners from adopting a child is unconstitutional.

The corresponding provisions in the General Civil Code (ABGB) and in the Act on Registered Partnership have been repealed. The deadline for redress is 31 December 2015.

The Constitutional Court has allowed a claim by a lesbian couple which had filed an application with the Constitutional Court. Currently, a couple must be married in order to qualify for joint adoption. The Act on Registered Partnership explicitly bans a joint adoption by registered partners.

In its decision, the Constitutional Court finds that there is no objective justification for differing provisions based on sexual orientation which would generally exclude registered partners from jointly adopting a child. Moreover, this would create unequal treatment between registered partners when jointly adopting a child and (same-sex or heterosexual) partners adopting a step child.

The Court further held that fundamental concerns according to which growing up with same-sex partners would be against the best interests of a child are “from the start unqualified” to justify this ban. Equally, it argued that “protecting marriage” or the traditional family is not a suitable argument to back such a ban.

Press information of 14 January 2015

Decision no: G 119-120/2014