

# Legal victory for victimised German nurse

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A variety of reports have emerged documenting the intolerable conditions prevailing in old peoples homes in Germany. Following years of struggle, geriatric nurse Brigitte Heinisch, who exposed the abuses in her workplace and was subsequently sacked, has won a significant legal victory at the European Court of Human Rights (ECHR).

On July 21 the Strasbourg court ruled that the dismissal of an employee due to the publication of grievances in the workplace violates the right to freedom of expression under Article 10 of the European Convention on Human Rights.

Brigitte Heinisch began working as a geriatric nurse in a nursing home operated by Vivantes Network for Health GmbH, Berlin's largest operator of hospitals and nursing facilities, in 2002. In the home, located in the Berlin's Reinickendorf district, she confronted catastrophic conditions.

Elderly care home residents were tied to their beds in order to keep them quiet. Often they were tied to their beds covered in urine and faeces until midday due to the lack of care staff. As the only qualified nurse on the ward, Heinisch was on occasion responsible for 45 patients on two floors. She was expected to wash and care for them while simultaneously supervising inadequately trained staff. The nurses were encouraged by the home supervisors to fill out incorrect documentation and make claims for treatments which were never administered.

First of all, Heinisch informed her supervisors of the conditions, but without success! She then organised a petition which a number of her co-workers signed. Her complaints were confirmed by the health insurance medical service (MDK), which investigated the home in 2003. But both the nursing home management and the trade union refused to respond. Instead they told Heinisch that nothing could be done. A co-worker who also signed a letter of complaint at another home in

Berlin-Zehlendorf was reprimanded.

Finally, in December 2004, Brigitte Heinisch lodged a complaint against her employers for fraudulent accounting. The complaint stated that: "Residents were only showered once a week and sometimes spent hours lying in their faeces before being washed and their bed cleaned". Then at the beginning of 2005 she was summarily dismissed on the grounds that she had disclosed internal grievances to an extent that made any continuation of her employment unreasonable.

Her complaint against Vivantes was duly dismissed in May 2005 by the Berlin public prosecutor, while the dismissal of the nurse was confirmed in 2006 by the Regional Labour Court in Berlin. The Federal Constitutional Court refused to take up the case.

The European Court of Human Rights has now overturned these judicial decisions. The court ruled that the reputation of the company did not outweigh the public interest in exposing abuses by nursing homes. In earlier evidence to senior management, the company refused to respond, thereby confirming the suspicion of deliberate cover-up. Brigitte Heinisch has now been awarded €15,000 compensation from the ECHR.

The verdict is a blow not only for the German judiciary, but also for the Berlin Senate and its coalition parties, the Social Democratic Party (SPD) and the Left Party, who pushed through the partial privatisation of hospitals and nursing facilities in the city. The Left Party fills the post of health senator in the person of Katrin Lompscher who sits on the Board of the Vivantes Group. Other members of the Vivantes executive include Finance Senator Ulrich Nussbaum (independent, nominated by the SPD) and the district mayor of Berlin-Marzahn, Dagmar Pohle (Left Party).

The Vivantes hospital group, founded in 2001, merged former Berlin municipal hospitals into a private company. The state of Berlin is the sole shareholder and thus responsible for the company's policy. The

nursing homes were spun off into the subsidiary “Forum for Seniors” and, based on free market criteria, expanded into “profit centres”, according to the Vivantes Annual Report of 2003.

After the founding, the city administration invested €230 million in the Vivantes company. Controlling nine hospitals, and twelve nursing homes in Berlin, Vivantes was able to make a €6.3 million profit in 2010. This is double the figure for 2009 (€2.6 million). Turnover also rose from €785 million in 2009 to €837 million in 2010.

At the time of its setting up, however, the company was deep in the red, and threatened with insolvency. In 2004, the ver.di trade union, representing health service employees, signed a contract whereby staff were forced to forgo holiday and Christmas bonuses to prevent the impending bankruptcy.

The downside of the company’s current profitability is a steady reduction of staff. At the end of 2005, the firm slashed 350 of 1,500 doctor posts. Many temporary contracts then expired in 2008. Between 2001 and 2010 the company generated savings of approximately €125 million in personnel costs, cutting 3,000 jobs.

Despite this track record, Senator Katrin Lompscher used her speech at the ceremony on “10 years of Vivantes” on February 10, 2011 in the Berlin City Hall to sing the praises of the company. Vivantes carries out “reliable high-quality patient care” and together with the Charité University hospital is a “beacon for health in Berlin” (Vivantes Annual Report 2010). When Lompscher gave her speech, the “Heinisch file” was already being considered by the European court!

In fact there is no “beacon for health” for patients and workers in Berlin. Complicit in this state of affairs is the ver.di trade union. Although it represented Brigitte Heinisch in the later stages of her complaint, the union bears a major responsibility for the job cuts and worsened working conditions for nurses, thereby undermining the quality of patient care.

The disastrous role of ver.di was one again evident in May 2011 when nursing staff at the Berlin Charité hospital walked out to fight for better working conditions and pay. At a critical moment in the strike, union officials moved to strangle the strike and reached a contract entirely in the interests of management. The contract covers approximately 10,000 nurses for a total

of five years. During this period employees are banned from taking industrial action.

The partial privatisation and outsourcing of hospitals and care homes in Berlin have also been agreed to by leading trade union representatives, a number of whom also sit on the board of Vivantes.



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