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Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage

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AUSTRIA: ART. 209 EXPIRED ON 13TH AUGUST 2002

By Rechtskommitté Lambda

13. August the Criminal Law Amendment Act 2002 has been published in the Austrian Federal Law Gazette (BGBl I 134/2002, p. 1407). According to Art. I lit. 19b of the Act (p. 1410) Art. 209 CC is repealed. According to Art. IX of the Act (p. 1421) (in connection with Art. 49 par. 1 of the Federal Constitution Act 1920) Art. 209 ceases to be effective by the end of this day. The transitional provisions can be found in Art. X of the Act (p. 1422); therefore Art. 209 CC still has to be applied in all proceedings where on 14th August 2002 (0.00) the judgement of first instance will already have been delivered.

The full text of the Criminal Law Amendment Act 2002 can be found at www.bgbl.at

CYPRUS FINALLY EQUALISE THE AGE OF CONSENT

By George Psyllides (Cyprus Mail on-line, 12 July 2002)

<http://www.cyprus-mail.com/July/12/news5.htm>

THE HOUSE yesterday approved more than 50 bills, including the controversial law raising the age of consent for heterosexuals to 17, while a further 31 were withdrawn by the government.

The age of consent for heterosexuals was raised to 17 in an effort to abolish any discrimination between homosexuals and heterosexuals.

The House had initially planned last week to reduce the age of consent for homosexual males to 16 from 18, to bring it into line with legislation on heterosexuals.

But the House Legal Affairs Committee decided instead to raise the age of consent for heterosexuals to 17, to avoid having to reduce the age for homosexuals to 16.

On Wednesday both the state legal service and deputies were unable to say what the implications of raising the legal age of consent for heterosexuals would be, since it would make it illegal for anyone under 17 to have sex.

In essence it means that as from today, anyone having sexual relations with a 16-year-old will be committing a criminal offence.

The compromise law is the result of intense pressure exerted on Cyprus by the European Union to abolish discrimination between homosexuals and heterosexuals.

Homosexuality was only decriminalised in 1998, five years after gay activist Alecos Modinos won his battle at the European Court of Human Rights, which condemned Cyprus over its poor treatment of homosexuals.

The House also approved stiff sentences regarding sexual intercourse with minors yesterday.

According to the new law, any attempt to have sex with a person under 13 is punishable by up to 13 years in jail, while full intercourse can lead to life in prison.

Intercourse with a person aged between 13 and 17 is now punishable by up to three years in jail.

An opinion

<http://www.cyprus-mail.com/July/10/opinion.htm>

IN THE END, instead of lowering the age of consent for homosexuals from 18 to 16 years of age, so that it would be the same as that for heterosexuals, the legislature opted for a different formula. It lowered the age for homosexuals to 17 and raised the age for heterosexuals to 17, so nobody can accuse the Cyprus state of discrimination against gays. Attorney-general Alecos Markides had hinted at this solution in an interview with this paper several months ago, when he hinted that the age of consent for heterosexuals could be raised.

(see: <http://www.cyprus-mail.com/July/10/news5.htm>)

The issue of having the same age of consent for everyone had been shelved by the political parties, which did not want to alienate the small but vociferous anti-gay lobby. However last Thursday it became an issue of great urgency, as the chairman of the House Legal Affairs Committee tried to persuade the plenum to vote through the changes in the law on that day. As a compromise, the parties agreed to debate the bill this Thursday, the last session of the legislature before it breaks for the summer recess. This sudden urgency is, undoubtedly, linked with Cyprus' EU accession course -- the island has repeatedly come under attack from European politicians for its laws which did not

accord the same rights to homosexuals.

It has become quite clear that passing the law, given the EU pressure, cannot be delayed for any longer.

The immaturity displayed by the political parties on the issue of homosexuality defies belief. They all dragged their feet over the decriminalisation of homosexuality, only agreeing to pass the bill when it was absolutely necessary, after the government, which had assured the EU that the bill would be passed, pleaded with them to spare it further embarrassment. The new law, eventually passed in 1998, caused maximum offence to gays by making reference to "unnatural licentiousness", a phrase that was grudgingly removed two years later.

Exactly the same has occurred with the changing of the age of consent. The political parties have known that it had to be done for at least a couple of years, but they put it off until they could postpone it no longer; last Thursday was the third time the bill had been submitted. Once again they came up with the same excuse they used in 1998 -- we had to do it because of the EU -- thus absolving themselves of any responsibility, lest they lose the homophobic vote. Not a single deputy had the courage to stand up and say that the bill was being passed because in a democratic and liberal society gays cannot be discriminated against by the law, but should have the same rights as heterosexuals. Why did nobody mention that this was clearly a case of respect for human rights? This way, they would have brought home the fact that this was an issue of principle, and encouraged more tolerance.

The truth is that there was no strong popular opposition to the decriminalisation of homosexuality, and nor is there to lowering the age of consent. The few dozen fanatics who turn up to the legislature to oppose these bills can hardly be described as a cross section of Cypriot society. The overwhelming majority of ordinary people seem to have no problem with changing the law. It is our homophobic deputies who have made a big issue out of what should have been a routine matter, causing unnecessary embarrassment for Cyprus in the European Union.

RECOGNITION OF TRANSSEXUALS' RIGHTS

ILGA-Europe media release, Brussels 12 July 2002

Yesterday the European Court of Human Rights unanimously found the United Kingdom in breach of Article 8 and 12 of the European Convention on Human Rights in the case *Christine Goodwin v. the United Kingdom*. Christine Goodwin who is a transsexual woman having undergone gender re-assignment is legally still recognised as a man in the UK and therefore has to pay national insurance contributions until the age of 65. Had her gender identity been recognised by the UK she would like women in general cease to pay national insurance contributions when she turned 60.

This case is one of several cases against the UK, who continuously have declined to legally recognise transsexuals' gender re-assignment by maintaining the birth certificate as an un-amendable document. Whilst the Court previously has found that such decisions fell within the discretion of state competence, the Court yesterday considered "society might reasonably be expected to tolerate certain inconveniences to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost". The Court concluded that the fair balance inherent in the Convention, which previously had been favouring the UK now tilted decisively in favour of the applicant, and found the UK had failed to respect Goodwin's right to private life as set out in Article 8 of the Convention.

Another consequence of the lack of legal recognition of transsexuals' re-assigned gender is that they are not able to marry a person of opposite sex to their re-assigned gender. The Court found that there could not be found any justification for barring a transsexual from enjoying the fundamental right to marry and found the UK in breach of the Convention Article 12.

"The European Court of Human Rights has cemented an important milestone in the recognition and respect of individual's gender identity, an issue that too often is ignored in the debate of gender equality" comments Ailsa Spindler, Executive Director of ILGA-Europe. "We are working against gender identity discrimination and welcome the Court's decision. It is important to ensure the fundamental rights of every person regardless of his or her gender

identity and sexual orientation”, says Kurt Krickler, Co-Chair of ILGA-Europe.

You can read the Court's press release at:
<http://www.echr.coe.int/Eng/Press/2002/july/GoodwinjudGrand%20Chamber.htm>

GERMAN COURT UPHOLDS PARTNERSHIPS

By Rex Wockner

Germany's constitutional court July 17 upheld the nation's gay partnership law which had been challenged by three conservative states. The law took effect Aug. 1, 2001.

Bavaria, Saxony and Thuringia claimed the law makes gay partnerships equal to marriage in violation of the constitution which grants special protection to marriage.

But, in a 5-3 decision, the justices said that since the privileges granted by the partnership law are not identical to those of marriage, the law does not contravene the constitution.

The law grants registered gay couples marriage rights and obligations in areas such as inheritance, health insurance, immigration, name changes and alimony. It withholds marriage rights in areas that include adoption, taxation, pensions and social-welfare benefits.

About 4,500 gay couples have gotten hitched since the law took effect.

EUROPEAN PARLIAMENT CALLS ON EGYPTIAN AUTHORITIES TO STOP PROSECUTION ON GROUNDS OF HOMOSEXUALITY

ILGA-Europe media release, Brussels, 5 July 2002

Yesterday the European Parliament debated and adopted, as one of its urgencies, a resolution on human rights violations in Egypt, titled: Human rights: persecution of homosexuals in Egypt. It is the Parliament's third Resolution on human rights in Egypt during the past year. The resolution is a reaction to the ongoing human rights violation in Egypt and particularly to the decision on opening a new trial for 50 of the 52 men arrested at a Cairo gay night-club last year.

The Parliament calls on the Egyptian authorities to call a halt to all prosecution of citizens on the grounds of homosexuality and to protect

their individual freedoms, and stresses that particular attention must be paid to prohibiting discrimination on the grounds of sexual orientation.

The beginning of a retrial and the Parliament's resolution of yesterday come at a time where the adopted EU-Egypt Euro Mediterranean Agreement is open for ratification by the parties. The Parliament adopted in November 2001 a resolution on the conclusion of the Association Agreement expressing deep concern of the arrest, detention and trial of the 52 men on grounds relating to their homosexuality and calling on Egyptian authorities to continue their efforts to ensure greater respect for human rights.

"The Association Agreement contains a human rights clause, but the European Commission and Council have so far been reluctant to make use of such clause" explains ILGA-Europe Co-Chair Kurt Krickler and continues "if the EU proclamation on having a coherent approach in promoting human rights in the world is to be taken seriously, it is time to put words into action and start using the measures set out in the human rights clauses".

"The EU does not commit to its own human rights principles. If the EU continues to set policies of trade and economic co-operation as higher values, it sends the signal that the Egyptian authorities and authorities like them can get away with ongoing and serious human rights violations" adds Ailsa Spindler, Executive Director of ILGA-Europe. "There is more than the case of the Cairo 52 at stake - it is time for the EU to start implementing its human rights policy. By adopting this resolution, the European Parliament has shown the will to emphasize human rights, an approach we recommend to be taken by the other EU institutions".

CHANGES OF PENAL CODE IN BULGARIA?

By Desislava Petrova - vice-president Bulgarian Gay and Lesbian Organisation GEMINI

Recently, The Bulgarian Parliament has discussed the discriminatory provisions in the penal code regarding the sexual minorities.

In the draft law presented by the commission, the MPs have proposed SOME changes, but keeping other discriminatory provisions, the repealing of this degrading treatment being only partial and still discriminating against lesbian women and homosexual men.

There has been taken only one vote during the first reading of the proposed draft in the plenary session and we are still waiting for the second plenary session and for the final vote of the Parliament.

Unfortunately, the members of the Parliament have drawn these proposals without taking into consideration our position as the organisation representing and working for the achievement of same rights and freedoms for the sexual minorities in Bulgaria, proposals which were made according to the European legislation in force.

We have repeatedly sent them letters and proposals (i.e. the non-discrimination criteria) and tried to establish a regular contact, but there was no feedback

And even though the Parliament will vote for this bill and accept the changes during the second reading of the draft law, this will not make any change regarding our situation as citizens of the same country

This is the reason we are writing to you, on behalf of lesbian, gay, bisexual and transgender community in Bulgaria, to support our motion, as members of the European Parliament, before the second voting of this bill, which is supposed to take place at the end of July (the dates haven't been fixed yet).

We do not ask for a special treatment, but for the SAME treatment in terms of law, the same rights and freedoms heterosexual people enjoy.

Below you can find the recommendations of the Bulgarian Helsinki Committee, drawn according to the European legislation in force. It seems that these recommendations are not enough for our political class to change the degrading legal treatment and to vote for the improvement of our situation, because they "believe homosexuals are perverted and mentally ill".

Here, you can see the position of some MPs during the plenary meeting:

"Ivan Kozovski (National Movement "Simeon II"), holding the Bible in his hand, called homosexual acts a perversion."

"According to Luchnikov, who supported him, even the European norms are not a good enough reason for Bulgarians to run away from their national moral traditions." (BTA – Bulgarian Press Agency, June 21, 2002)

In this respect, Bulgarian Gay and Lesbian Organisation "GEMINI" demands the Bulgarian Parliament:

- to completely repeal article 157 from the Penal Code
- to change the age of consent of homosexual people
- to revise and change any other discriminatory provisions in the Penal Code
- to introduce sexual orientation and gender identity amongst the non-discrimination criteria

Bulgaria wants to become member of the EU and part of the European structures and therefore Bulgarian officials have to show their willingness to make the necessary changes in the legislation.

We do believe that these changes will take place in the nearest future and that Bulgaria will become a non-discriminative country of Europe where people enjoy same equal rights and freedoms, no matter their sexual orientation.

ART. 157 AND THE DISCRIMINATION AGAINST HOMOSEXUALS IN BULGARIA

Presently in Bulgaria we can talk about discrimination against homosexuals not only by the society, by the employers and the relatives, but also by the law. During 1997, 15 men aged 14 to 39 have been charged with homosexual activities under article 157 from the Penal Code. The minors (under 18) have been sent to the Reforming House in Boichinovci (a small town in North-Western Bulgaria where young criminals are sent) and the others were imprisoned. Most people are ethnic Bulgarians. There are several Roma and a Turk. This should make us think that Art. 157 from the Penal Code is still active and its restrictive and repressive power will be applied at the moment when we start fighting for fully equalizing our legal rights with these of the straight people. Please read the official English translation of Art. 157 below and then see a lawyer's opinion on it.

Penal Code
II. Special Part
Chapter II. Crimes against the Person
Section VIII. Debauchery.

Art. 157

(1) (As amended - SG, No. 28/1982) A person who performs sexual intercourse or acts of sexual satisfaction with a person of the same sex, by using for that purpose force or threat, or by taking advantage of a position of dependency or supervision, as well as with a person deprived of the possibility of self-defence, shall be punished by deprivation of liberty for one to five years, as well as with public censure.

(2) (As amended - SG, No. 28/1982, 89/1986 & 62/1997) The same punishment shall be imposed on a person who performs such homosexual acts with regard to a person who has not completed 16 years of age.

(3) (New - SG, No. 89/1986) The punishment under paragraph (1) shall be imposed also on a person of full age, who performs such homosexual acts with respect to a minor or to a person who could not understand the essence and meaning of the act.

(4) (Former paragraph (3) - SG, No. 89/1986) A person who performs homosexual acts in public or in a scandalous way or in such a manner as to induce others along the road to perversion, shall be punished by deprivation of liberty for up to two years or by corrective labor, as well as by public censure.

(5) (As amended - SG, No. 28/1982; former paragraph (4) - SG 89/1986; as amended - 10/1993) A person who performs homosexual acts for the purpose of procuring for himself material benefit, or acts for this purpose as procurer or procuress with regard to another for such acts, as well as a person who, by giving or promising benefit abets others to homosexual acts, shall be punished by deprivation of liberty for up to three years and by a fine of up to six thousand Bulgarian leva, whereas the court may rule compulsory domicile.

New book

**EQUALITY FOR SAME-SEX COUPLES:
THE LEGAL RECOGNITION OF GAY
PARTNERSHIPS IN EUROPE AND THE
UNITED STATES**

New book by Yuval Merin

ABSTRACT

During the past three decades, nations all over the world have been debating whether to allow same-sex couples to marry, or at least grant these couples various rights associated with marriage. In *Equality for Same-Sex Couples*, Yuval Merin presents the first comparative study of the legal regulation of same-sex partnerships worldwide, as well as a unique survey

of the status of same-sex couples in Europe and the United States.

Merin begins by providing a historical overview of the transformation of marriage from antiquity to the present. He then identifies and critically compares four principal models for the legal regulation and recognition of same-sex partnerships: civil marriage, registered partnership, domestic partnership, and cohabitation. Merin concludes that all of the models except civil marriage discriminate against gays and lesbians just as the "separate but equal" doctrine discriminated against African Americans; thus, so-called alternatives to marriage, even if they provide the same rights and benefits as marriage, are inherently unequal and therefore unconstitutional.

Merin also argues that gender equality serves as an indicator for the degree of equality that can be achieved by same-sex couples in any given state or country, and provides an important account of what he defines as a socio-legal "necessary process" that should take place before gay couples can be placed on an equal footing with opposite-sex married couples. This approach also enables him to assess the feasibility of opening up marriage to same-sex couples both in Europe and the United States.

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<http://www.press.uchicago.edu>

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