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Editors: Steffen Jensen, Ken Thomassen, Peter Bryld, Lisbeth Andersen and Soeren Baatrup.

Contact to Euro-Letter: steffi@inet.uni2.dk - <http://www.steffenjensen.dk/>

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Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage <http://www.ilga-europe.org/>

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SEXUAL ORIENTATION DISCRIMINATION IN NEW EU MEMBER STATES

Press release by ILGA-Europe

ILGA-Europe launches today *Meeting the challenges of accession*, a report highlighting sexual orientation discrimination that lesbian, gay and bisexual (LGB) people face in the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. This report illustrates with percentages and quotes from LGB people the extent of discrimination in the family, in health services, in education, in the workplace, in housing, in the army and in the church. Those range from direct and indirect discrimination to harassment and physical violence.

To prevent discrimination and violence, many people tend to conceal their sexual orientation. Concealment is particularly frequent in the public sphere i.e. in the workplace, in health care and housing, in the church or in the streets. Furthermore, to bring to an end the ongoing violence and discrimination experienced, a majority of respondents consider emigration to countries perceived to be more tolerant.

The ultimate aim of the report is to place the fight against discrimination on the ground of sexual orientation at the core of the "acquis communautaires" and to reinforce the instruments dealing with discrimination. To achieve this, the report puts forward some recommendations to the new member states and to the EU institutions. At national level, these recommendations concern primarily a general ban of discrimination on grounds of sexual orientation coupled with the establishment of equality bodies to monitor and prevent discrimination. At EU level, the Commission needs to ensure that the framework directive is implemented properly and that legislation and policies go beyond the field of employment to extend to access to goods, facilities and services as it is the case for race anti-discrimination.

Christine Loudes, author of the report, said: "The importance of strong anti-discrimination legislation at national level is made clear by the current situation in some member states which recently joined the EU. The difficult position of LGB people in Poland was on the front cover of the papers recently. Meanwhile, the implementation of the Framework Directive on Equal Treatment in Employment and Occupation proves difficult in Latvia, for instance, where the Parliamentary Human Rights and Public Affairs Commission, which is responsible for the Bill, amended it and deleted the ban on sexual orientation discrimination."

BILL ON PARTNERSHIP IN SLOVENIA

By Tatjana Greif, SKUC-LL

The process of legalisation of same-sex unions in Slovenia started in 1997, when the Ministry of Labour, Family and Social Affairs Republic of Slovenia decided to take legal steps for drafting a bill. The LGBT nongovernmental organizations were actively involved in the process from the very beginning.

The first bill on registered partnerships was completed in 1998, but any further procedure was blocked. The NGOs were unsatisfied with the draft because of its limited scope and only two legal consequences, the right and duty to support socially weaker partner and the regulation of property relations between the partners, but it didn't provide any social security rights.

In 2001 the legislative initiative in the field of same-sex unions was renewed with the main goal to include social security rights (the transfer of social and health insurance, and pension rights), status of family members for the partners, inheritance rights, etc.

After many obstacles finally the new bill on same-sex unions was completed in 2003, which includes all rights comparing to marriage, apart from joint adoption rights. The Slovenian government adopted the bill on April 22nd 2004, and it was then submitted to the national parliament in April 28th 2004. The bill is now awaiting the parliamentary discussion.

In the meantime several surveys measuring the interest of LGBT citizens in Slovenia for the institute of legally recognized same-sex partnership were conducted, all of them showing a considerable interest by the respondents. In 2001 and 2003 between 61% and 77 % of interviewed LGBT would register their same sex partnership if it were legally permitted.

SWISS PARLIAMENT FAVORS PARTNER LAW

By Rex Wockner

Switzerland's Council of States (Senate) and National Council (House of Representatives) have voted, in principle, for a same-sex partnership-registration measure that would extend some marriage rights to gay couples, *Neue Zürcher Zeitung* reported June 3.

The legislation next returns to the National Council to resolve minor differences between the two bodies' versions of the bill.

The proposed law would extend spousal rights in areas such as kinship, inheritance, pensions, taxes and health insurance but not in the areas of adoption, fertility treatment or a common surname, the report said.

Switzerland's Parliament has given final approval to a gay partnership law that reportedly will include all marriage rights except for access to adoption, in-vitro fertilization and marriage itself.

However, the small, right-wing Federal Democratic Union party has promised to collect enough signatures to force a national voters' referendum on the measure.

Gay groups said they are hopeful the law will not be overturned.

REPORTS ON THE SITUATION OF FUNDAMENTAL RIGHTS IN THE EU, 2003

The EU network of fundamental experts has just published its reports on the situation of fundamental rights in the EU. For more details, see:

http://europa.eu.int/comm/justice_home/cfr_cdf/doc/report_eu_2003_en.pdf

FULL TEXT OF REFUGEE DEFINITION NOW ONLINE

The final text of the Refugee Definition Directive is now on the Council register of documents under <http://register.consilium.eu.int/pdf/en/04/st08/st08043.en04.pdf>

The directive outlines when refugee status can be granted and includes provisions to award refugee status to those having a well founded fear of persecution because of their membership of a particular social group. In this context, the most important success for us is that sexual orientation is included within the concept of membership of a 'particular social group'.

As to the details – specifically with regard to the qualifications and exceptions defined – we still have to look at it more closely and wait for external opinion.

EUROPEAN COMMISSION GREEN PAPER ON THE FUTURE OF ANTI-DISCRIMINATION POLICY OUT NOW

Five years ago, huge impetus was given to the fight against discrimination in the European Union when new powers were granted to tackle discrimination on grounds of sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation.

This Green Paper sets out the European Commission's analysis of the progress that has been made so far. It seeks views about how the EU can continue and reinforce its efforts to combat discrimination and to promote equal treatment. In so doing, it responds to calls from the European Parliament and others to organise a public consultation on the future development of policy in this area. This Green Paper takes stock of what the EU has done during the last five years to combat discrimination and to promote equal treatment. It looks at how these initiatives relate to other policy developments at European and international levels. It examines new challenges that have emerged in recent years, including those linked to the enlargement of the EU. It assesses the implications of this changing context for policy development in the field of non-discrimination and equal treatment.

Responses to this Green Paper will be collected principally using an on-line questionnaire. The public consultation period begins on 1 June 2004 and ends on 31 August 2004. ILA-Europe will work on a written response to the Green Paper, where we aim to set out our key objectives in response to the European Commission strategy. More details on the process will follow asap. We encourage all of you to actively participate and get as many as your members involved in responding to the online questionnaire. For more information and access to the documents, please see:

http://europa.eu.int/comm/employment_social/fundamental_rights/greenpaper_en.htm

GERMANY TO INCREASE GAY PARTNERS' RIGHTS

By Rex Wockner

Germany's government has proposed legislation to equalize the rights of registered same-sex partners with those of married people, Deutsche Welle reported June 5.

Justice Minister Brigitte Zypries said the first of two bills will go to the Bundestag, the lower house of Parliament,

this summer and will be crafted to not require consent from the Bundesrat, the upper house, where it probably would be rejected.

"Lesbian and gay couples are a social reality in Germany," Zypries told the daily *Berliner Zeitung*. "That is why we also want to grant them, to the extent it complies with the constitution and its unique protections of marriage and family, the same rights as married couples."

Registered same-sex couples presently lack spousal rights and obligations in such areas as adoption, pensions, inheritance, taxation, financial support, court testimony and social-welfare benefits.

A second piece of legislation that does require Bundesrat approval is needed to address some of these areas. That bill will be introduced in the autumn, Zypries said.

Germany's partnership law came into force three years ago but only about 5,000 same-sex couples have taken advantage of it.

"The problem with the same-sex life partnerships is that it brings only obligations and virtually no rights. It has not been popular," activist Michael Schmidt told Britain's *The Guardian*.

A NEW CONSTITUTION: NEW BEGINNING OR PROLONGATION OF THE ODYSSEY?

ILGA-Europe press release
21 June 2004

The meeting of the European Council on the 17-18 June 2004 marks an important step in the integration of the EU. The Irish Presidency managed to get the EU member states to agree on a Constitution for the EU with relatively few changes from the draft presented. Many EU citizens might see this as another step towards the concentration of powers in Brussels. However, it is important to realise that this text offers a potential greater protection of human rights in the EU. The preamble of the Constitution states that equality and human rights are central values of the EU. The Constitution includes the Charter of Fundamental Rights of the Union, which will be judiciable in the European Court of Justice (ECJ).

It presents a substantial change in relation to the rights of lesbian, gay, bisexual and transgender (LGBT) people in the EU since it enshrines protection against discrimination of the grounds of sexual orientation and sex (which includes gender according to the case law of the ECJ) (article II-21). It also recognises, amongst others, the

rights to respect for private and family life (Article II-7) and the right to marry and found a family (Article II-9).

Although ILGA-Europe welcomes the agreement to sign the EU Constitution by the EU member states, it also knows that this not the end but rather the beginning of the Odyssey for a fully effective Constitution. The Constitution will enter into force only in 2007 and needs to be ratified by the 25 member states. Such ratification might prove difficult particularly in countries –like the UK– which will hold a referendum in an anti-EU climate.

Riccardo Gottardi, co-chair of ILGA-Europe said: "ILGA-Europe was a little surprised but pleased with the outcome of this Council. The text offers more guarantees for the protection of human rights and equality for LGBT people. It is a first important step to build a Union closer to the people, that guarantees the basic rights of every citizens, no matter what their sexual orientation or religion is."

STONEWALL WELCOMES HOUSE OF LORDS BOOST FOR EQUALITY FOR SAME-SEX COUPLES

Press release by Stonewall

Stonewall welcomes the judgement of the House of Lords in the Mendoza tenancy case. The Lords have upheld an earlier decision of the Court of Appeal and ruled in favour of the right of a surviving partner in a same-sex relationship to succeed to the full tenancy of a shared home on his partner's death.

"This is a significant legal landmark," said Ben Summer-skill, chief executive of Stonewall, which supported the Mendoza case in the Lords. "It's hugely encouraging that the House of Lords has confirmed the validity of same-sex partnerships and accorded them equal status to heterosexual relationships".

This week's four-to-one ruling was given in the case of Juan Godin-Mendoza. It concerned Mr Mendoza's claim to succeed to the tenancy of the home he shared in west London with his partner of over 30 years, who died in January 2001. Stonewall first intervened in the case and presented the human rights arguments to the Court of Appeal in November 2002. The Court ruled then that the Human Rights Act afforded rights to same-sex couples and that it was discriminatory to differentiate between heterosexual co-habitees and gay partners. Mr Mendoza's landlord then appealed to the Lords.

The Lords now acknowledge that: "Homosexual relationships can have exactly the same qualities of intimacy, stability and inter-dependence that heterosexual relationships do." The Lords agreed with the earlier ruling, stating: "the ground for according different treatment to the survivor of same-sex couples and opposite-sex couples cannot withstand scrutiny". Baroness Hale said in her judgement: "Treating some one as automatically having less value than others not only causes pain and distress to that person but also violates his or her dignity as a human being. Such treatment is damaging to society as a whole."

Ben Summerskill said: "Now that the House of Lords has confirmed gay people's entitlement to equal treatment in this area, we hope the government will consider equality legislation on the provision of goods and services across the board. People shouldn't have to go to the House of Lords every time they want fair treatment."

ANTI-DISCRIMINATION LEGISLATION IN AUSTRIA

By Helmuth Graupner

Austria has its first AD-provision in federal legislation. The EU-Judicial Cooperation Act of 30.04.2004 (implementing the European Arrest Warrant) (BGBl I 36/2004, <http://www.ris.bka.gv.at/auswahl/>) obliges to refuse the execution of a warrant if there is objective ground for the warrant having been issued for the purpose of persecution of the person affected on the ground of his/her sexual orientation (§ 19).

So far AD-provisions could only be found in secondary legislation (Decree of Guidelines under the Security Police Act), in *travaux préparatoires* (Asylum Act) or in state-legislation (Vienna Youth Protection Act 2002).

LATVIAN MPS DELETE SEXUAL ORIENTATION FROM ANTI-DISCRIMINATION BILL

By Juris Lavrikovs

In March 2004, the Latvian Minister for Special Assignment for Society Integration Affairs proposed an Anti-Discrimination Bill, which would implement the requirements of the EU race and employment equality directive

(2000/43/EC and 2000/78/EC) and contained a proposal to ban sexual orientation discrimination.

However, after the Bill had been submitted to parliament, the parliamentary Human Rights and Public Affairs Commission, which is responsible for the Bill, amended it and deleted the ban on sexual orientation discrimination. The Bill has its second reading this autumn.

The Parliamentary Human Rights and Public Affairs Commission is notorious for its anti-gay stance: since 1995 the Commission has rejected numerous proposals from the Latvian lesbian and gay organisation, the Latvian National Human Rights Office and the Welfare Minister to ban sexual orientation discrimination and in 1999 the commission rejected the Registered Partnership Bill.

This recent amendment to the Anti-Discrimination Bill by the Commission, deleting an explicit ban on sexual orientation discrimination, directly contradicts Latvia's obligation under EU law. Since 1 May 2004 Latvia has been an official member of the European Union and is under the obligation to ban sexual orientation discrimination in employment. Latvian lesbian, gay and bisexual workers are under real threat from discrimination: European and national polls reveal that the Latvian population is one of the most homophobic in the European Union and the 2002 report 'Sexual Orientation Discrimination in Lithuania, Latvia and Estonia' (www.discrimination.gay.lv) demonstrated that in Latvia:

- 2.6% individuals who completed the questionnaire had lost their job because of their sexuality;
- 9.3% had encountered attempts to sack them because of their sexuality;
- 6.7% reported having been dismissed from a job because of their sexuality;
- 17% had encountered harassment at the workplace;
- 58% felt their sexuality had to be kept hidden in any job.

An explanation from members of the Parliamentary Human Rights and Public Affairs Commission as to why such amendments deleting sexual orientation discrimination have taken place have been requested and over this summer all efforts will be concentrated on ensuring that the ban on sexual orientation discrimination is reinstated. Nevertheless the chance that such a ban will be reinstated or supported is 'near to nil' according to Boriss Cilevics, a member of the Human Rights and Public Affairs Commission of the Latvian parliament. Mr Cilevics, who represents the left-wing People's Harmony Party, supports an explicit ban on sexual orientation discrimination but does not believe the commission will comply. He has suggested that a complaint against Latvia to the European Court of Justice might be the most effective way to

achieve implementation of directive 2000/78/EC.

STONEWALL 'DISTRESS' AT GOVERNMENT DEFEAT ON CIVIL PARTNERSHIP BILL

Press release by Stonewall

STONEWALL has reacted with 'deep disappointment' to the 148-130 vote defeat inflicted on the government in the House of Lords earlier today at report stage of the Civil Partnership Bill. Peers supported an amendment moved by Conservative peer Baroness O'Cathain which would extend the bill to cover all carers and family members living in the same property. The effect of the change would be to stall passage of the Bill as the necessary legal provisions would be completely different.

"We're desperately disappointed," said Ben Summerskill, Stonewall chief executive. "It's a number of years since we have heard peers referring openly to 'unnatural sexual practices' and 'hijacking' of the word gay. Sadly, it suggests that making provisions for family carers was not the only motive for attempting to amend the Bill today."

Stonewall has called for a separate Family & Domestic Partnership Bill to address the domestic needs of carers. Experts, including the Law Commission in its report *Sharing Homes*, have acknowledged significant legal difficulties.

"The Civil Partnership Bill is urgently needed," said Ben Summerskill. "It's tragic that it may now be derailed. Just three months ago the Conservative Party held a gay summit but today more than 100 of their peers voted to frustrate this measure. We're deeply saddened."

Lord Alli, the only openly-gay peer in the House of Lords, spoke against Lady O'Cathain's amendment. It was supported by Norman Tebbit, the former conservative party chairman, Lord Strathclyde, leader of the Conservatives in the House of Lords, and Baroness Wilcox, the Conservative frontbench spokeswoman on the Civil Partnership Bill.

PROPOSAL ON PARTNERSHIP LAW IN IRELAND

By Cathal Kelly

Fine Gael has proposed giving greater rights to same sex couples and heterosexual couples who choose not to marry. [Fine Gael is the second largest political party in

Ireland, currently in opposition. At a European level, they are members of the EPP]

The party's Civil Partnership proposals, launched this afternoon by spokesperson Senator Sheila Terry, would allow a gay or straight couple to formally register their partnership with the State.

This would allow them to avail of rights in the areas of pensions, social welfare, property, tax, succession and next of kin.

The Gay and Lesbian Equality Network welcomed the Fine Gael initiative. It particularly welcomed the clear recognition of the rights of non-EU partners of Irish people.

[Below is the press release posted on the Fine Gael web site.]

<http://www.finegael.ie/newsuploads/CivilPartnership.pdf>

FG Civil Partnership policy sets out rights for cohabiting couples - Terry

Fine Gael's Civil Partnership proposals will allow cohabiting couples -of either the same sex or of opposite sex - to formally register their relationship with the State, Fine Gael Equality Spokesperson, Senator Sheila Terry said today (Thursday) at the policy launch.

"Fine Gael has set out a number of fundamental rights that couples will be awarded upon registration, including:

Succession

Should a partner die intestate, the surviving partner will be entitled to his/her entire estate, and will not be liable to inheritance tax. If the deceased partner has children (perhaps from a previous relationship) this automatic entitlement is reduced to one third.

Next of Kin

Civil Partnership will bestow next of kin status upon a registered partner.

Beneficiary of Pensions

In the event of the death of a registered partner, the surviving partner will be entitled to benefit from the pension provisions that have been made in the same way as are available to married couples under the same State or private scheme.

Tax

The equivalent of the married tax-free allowance and married mortgage allowance will be conferred on registered couples.

Social Welfare Benefits

For the purposes of social welfare benefits registered couples will be considered Adult Dependents and will be assessed according to their joint income.

Workplace Entitlements

Registered partners will be entitled to compassionate leave from employers in the event of serious illness or the death of their partner, along the lines granted to married couples.

Property

Although it is almost universal practice that new homes are bought in the name of both partners, the Family Home Protection Act will be widened to include Registered Couples in order to avoid any chance of a 'secret sale' of the home of a registered couple that may be in the name of only one member of that couple.

"This policy is not 'gay marriage' and does not represent an attack on the traditional family model. Our policy document clearly states that marriage will remain the choice of the majority and we have no wish to alter that.

"However, Ireland is changing. Traditional attitudes have been altered and as a political party we have to recognise that. As part of Fine Gael's agenda to strengthen families - in all their modern forms - we recognise that Ireland needs a modern social legislative base to give the necessary protection to those whose families fall outside the tradition nuclear family model.

"Fine Gael Civil Partnership policy is the culmination of a decade of legislative and social change in Ireland."

Not mentioned in the press release is that the policy document contains a section on homophobia in schools. Here is the text of that:

<BEGIN EXTRACT>

Tackling Homophobia In Schools

If we wish to make Ireland a more equal and tolerant society, then we must examine the way in which we educate our children and young people in these qualities.

For this reason, any attempt to combat homophobia should include young people at school. Already, the Social, Personal and Health Education (SPHE) course

stresses the importance of respect and tolerance for others. However, it is critical that this curriculum is offered in all schools, and should also be expanded to specifically address homophobic attitudes and prejudice within the Junior Cycle.

These negative attitudes are far too prevalent in our education system. SPHE aims to provide for the emotional health and well being of students. However, the well being of young people who are homosexual and in full time education has been overlooked for far too long.

In addition, it is important that Ireland develop a Youth Worker programme that properly meets the needs of all young people, particularly those in at-risk groups such as lesbian and gay teenagers who may be more likely to leave school early and suffer from isolation and depression because of their inability to 'come out', for fear of the repercussions such an act could provoke.

Fine Gael is concerned that homophobic attitudes in Ireland's schools and among young people are leading to an increased incidence of bullying, intimidation and harassment. This negative and destructive behaviour needs to be challenged to make our schools happier and safer places for all of our young people.

<END EXTRACT>

TENSIONS IN THE STRUGGLE FOR SEXUAL MINORITY RIGHTS

Que(e)rying political practices in Europe

New book by Nico J. Beger

Tensions in the struggle for sexual minority rights is the first queer and poststructuralist reading of political rights concepts in the specific European transnational context. In the last thirty years Europe has seen the rise of gay, lesbian, bisexual, and transgender movements fighting nationally and transnationally for participation rights in society. In addition academic theorists have increasingly paid attention to the epistemological and ontological roles gender and sexuality play in modern politics. However, in the political process of arguing for rights the centrality of those roles is mostly hidden from view in official institutional and movement discourses.

This book investigates the conceptual themes of lesbian, gay, and transgender rights and lobby politics in Europe and their open and hidden relations to binary and hierarchical orders of dominance. It contributes to an understanding of the conditions upon which politics of inclusion, participation, social justice, and equality rest and

why struggles for sexual minority rights have been so difficult and slow.

Tensions in the struggle for sexual minority rights illuminates how the paradigms of political discourses constitute, consolidate, and contest the meaning and cultural significance of gender and sexuality in modern, democratic, capitalist European societies.

The book is important for academics and students with an interest in gender and sexuality in the field of Law, Cultural Theory, Philosophy, and Political Science and for political activists with an interest in queer theory.

Nico J. Beger teaches academic courses on gender and sexuality theory in Amsterdam, and currently coordinates the EU Civil Society Contact Group, the joint body of the EU social, environment, development, and human rights NGO platforms.