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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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CIVIL PARTNERSHIP BILL IN UK

By *STONEWALL*

17 November 2004

Stonewall elation as House of Lords backs Civil Partnership in "historic step forward"

Stonewall is celebrating today's House of Lords decision to introduce Civil Partnerships for same-sex couples - the key vote was won by 251 votes to 136.

Ben Summerskill, Stonewall chief executive, said: "This is a historic step forward. Finally, the House of Lords has recognised that Britain is a tolerant twenty-first century nation. We're elated. Same-sex couples in long term relationships have waited too long to enjoy the same rights and responsibilities as married people."

A number of peers, led by Baroness O'Cathain and sponsored by the Christian Institute, fought vigorously to introduce amendments to the Civil Partnership Bill which would have made it unworkable.

During report stage, opponents of the Bill in the Lords had denounced "unnatural sexual practices".

Stonewall had lobbied strenuously for passage of the Civil Partnership Bill. At Third Reading in the House of Commons on 9 November, MPs supported the Bill by 389 to 47. Michael Howard was among MPs who voted for the Bill. Today's Lords' Consideration of Commons Amendments was the Bill's final stage in parliament.

"We're delighted that the House of Lords has rebuffed those peers who indulged in offensive sneering at Britain's lesbian and gay population," said Ben Summerskill. "For the first time, the front benches of all three major political parties have backed equality for gay people. That represents a hugely positive change."

The first registrations under the new Civil Partnership Act 2004 will not take place until next autumn. Once the Act receives royal assent, it will require extensive amendments to be made to the tax and benefits systems as well as training for registrars. It will be possible to hold civil partnership ceremonies in exactly the same venues as civil weddings, from registry offices to stately homes.

"We're keen that the government seeks to implement the provisions of the new Act as soon as possible," said Ben Summerskill. "Thousands of people want urgently to register their relationships."

ILGA-EUROPE WELCOMES CIVIL PARTNERSHIP LEGISLATION IN THE UK

18 November 2004

On 17 November 2004, the House of Lords approved the Civil Partnership Bill which will give registered same-sex partners almost all marriage rights and responsibilities.

ILGA-Europe is very pleased about this development and congratulates both the UK organisations lobbying for this legislation and the UK government and parliamentarians for supporting this historic legislation.

The UK has now joined a growing family of the European countries recognising same-sex partners and removing unjust discrimination same-sex partners experienced for years.

Patricia Prendiville, ILGA-Europe Executive Director, said: "We are glad to see the increase in the numbers of European countries recognising same-sex partnerships. This clearly demonstrates that same-sex relationships are not only becoming socially acceptable in Europe, but Europe is also moving towards true democracy where all forms of discriminations are removed."

ILGA-Europe hopes that the UK development will also positively influence current processes in Ireland, Hungary and Spain, where the issue of legal recognition of same-sex partnerships is being debated at the moment. During the ILGA European conference in Budapest last month, the Hungarian Minister for Equal Opportunities emphasised their work towards comprehensive partnership legislation, Spain is about to become the third European country to allow same-sex marriage and in Ireland, a lesbian couple is taking a legal challenge to the High Court in order to validate their marriage registered in Canada.

EU ENLARGEMENT

By *ILGA-Europe*

On 6th October 2004, the Commission adopted a Strategy paper on Bulgaria's and Romania's progress towards accession. This Strategy paper contains the pre-accession strategy for Croatia. The Commission also adopted its Recommendation on Turkey. As in previous years, the Commission has also released 3 Regular Reports on the progress towards accession of Bulgaria, Romania and Turkey for 2004. This enlargement package also contains a Paper on issues arising from Turkey's membership per-

spective. The Report on Turkey is addressing various problems of Turkey including discrimination on the basis of sexual orientation.

To read these document please go to:

http://www.europa.eu.int/comm/enlargement/report_2004/

EU CONSTITUTION SIGNED IN ROME

By ILGA-Europe

On 29 October 2004 Heads of State or Government and Ministers of Foreign Affairs of 28 European countries were in Rome to attend the ceremony and signed the Treaty and the Final Act establishing a Constitution for Europe (the Treaty and the Final Act were signed by the 25 Member states of the European Union - the Candidate Countries Turkey, Bulgaria and Romania also signed the Final Act).

On 18 June the European Heads of State and Government reached an agreement on the European Constitution in Brussels. After the Treaty is signed on 29 October the Member States have to ratify the Constitution in accordance with their respective internal requirements. This process is expected to last about two years.

For the full text of the Constitution please go to:

<http://ue.eu.int/igcpdf/en/04/cg00/cg00087.en04.pdf>

Debate of the future of the European Union:

http://www.europa.eu.int/futurum/index_en.htm

You can also read an article on the Constitution in our latest Newsletter (September 2004) downloadable from our website www.ilga-europe.org, pp.5-6.

2005 WORK PLAN AGAINST DISCRIMINATION

By ILGA-Europe

Under the Community Action Programme to combat discrimination (2001-2006), the European Commission published its work plan and budget breakdown for the period January – December 2005. This can now be downloaded from:

http://europa.eu.int/comm/employment_social/fundamental_rights/prog/index_en.htm

MARRIAGE LAW IN BELGIUM DECLARED CONSTITUTIONAL

By Helmuth Graupner

The Court of Arbitration of Belgium in a judgment in October declared the Belgian same-sex marriage law constitutional.

You can find the text of the law at www.arbitrage.be. The German text specifically at

<http://www.arbitrage.be/public/d/2004/2004-159d.pdf>

EUROPEAN LGBTs SUPPORT BARROSO'S STAND ON HUMAN RIGHTS

By ILGA-Europe

Barroso's recent actions for human rights are supported by 100 European LGBT rights organisations attending the ILGA European Conference in Budapest, Hungary. The organisations reacted to a flood of e-mails sent to Members of the European Parliament and other European politicians yesterday, in support of the designation of Rocco Buttiglione as Commissioner for Justice, Freedom and Security.

ILGA-Europe and the organisations present signed a petition to the European Union supporting not only the decision to postpone the vote, but also the pledge made by Barroso to the Parliament to strengthen the EU equality agenda through comprehensive legislation, covering all grounds of discrimination.

The NGOs acknowledge and thank the Members of the European Parliament who stood firm in their defence of human rights and confirmed that rights of lesbian, gay, bisexual and transgender people are an integral part of human rights in the EU.

At the conference opening address given by the EU Presidency, the Dutch government re-confirmed its support for LGBT rights in saying that these rights are not negotiable when accepting new members to the EU. The equal treatment for LGBT people is one of the cornerstones of the new and modern European society, the EU Presidency stated.

ILGA-EUROPE WELCOMES FRATTINI STATEMENT ON RIGHTS FOR SAME-SEX PARTNERS

17 November 2004

ILGA-Europe welcomes Franco Frattini, Commissioner-Designate for Justice, Freedom and Security, statements on rights for same-sex partners in the EU.

During the hearings at the European Parliament (LIBE and JURI Committees) on 15-16 November 2004, Franco Frattini, responding to the questions from the members of the European Parliament, stated that same-sex partners who are legally recognised in one of the EU member states should enjoy the same legal recognition throughout the European Union.

Franco Frattini pointed to the sensitivity over the issue of homosexuality in different EU member states and acknowledged the difference between how EU member states recognise the rights of same-sex partners. At the same time he stressed the importance for all EU member states to uphold the European Charter of Fundamental Rights. He said that freedom of movement is a basic right which must be guaranteed irrespective of that fact that some member states have or do not have legal rules regarding same-sex couples.

Ensuring the principles of freedom of movement and family unification for same-sex partners in the EU and is one of the ILGA-Europe's current campaigns. If Franco Frattini is approved as a Commissioner for Justice, Freedom and Security, ILGA-Europe will closely follow up and scrutinise his action to ensure his statement at the Parliament are implemented in practice.

POLAND GIVES PRELIMINARY APPROVAL TO SAME-SEX PARTNERSHIP RIGHTS

By The Advocate

Poland's upper house of parliament approved a bill Friday that would give gay couples legal partnership rights, immediately drawing sharp criticism from the nation's powerful Roman Catholic Church. The senate voted 38-23, with 15 abstentions, to send the draft to the lower house, or Sejm, where the bill was expected to meet resistance. If it becomes law, the bill would allow gay couples to register with city or town officials, which would give them inheritance rights and other legal guarantees--though not the right to adopt children. Senator Maria Szyzkowska, a member of Prime Minister Marek

Belka's Democratic Left Alliance who authored the bill, said the decision marks the "start of building tolerance in Poland."

But Father Jerzy Kloch, spokesman for the Polish Episcopate, blasted the measure, saying it violates Poland's constitution, which reads that "a marriage is a union between a man and a woman." "If this bill was implemented, it would bring irreparable social damage for marriage and family and upbringing of children," Kloch said. "The church has made its stand on the issue known many times during meetings between the church and the government, and we hope such law will not be implemented in Poland."

Pope John Paul II, a native of Poland whose words carry great sway in this predominantly Catholic country, last month reiterated his outspoken opposition to same-sex marriage. He warned against attempts to tamper with what he called "the irreplaceable" institution of marriage-based family in an apparent reference to moves like granting gay couples social benefits.

Szymon Niemiec, the head of Poland's Association of Gays and Lesbians, said the upper house's decision is a "huge success for Poland's democracy" but acknowledged it will be an uphill struggle to get the bill passed into law. "This is the first very difficult and very important step toward making this a normal country," Niemiec told Polish news agency PAP. "A long and hard road is still ahead of us, but the most important step has been taken. This is a huge change."

GERMANY'S LOWER HOUSE OF PARLIAMENT THE BUNDESTAG, GRANTED MORE RIGHTS TO REGISTERED SAME-SEX COUPLES OCT. 29.

By Rex Wockner

The measure does not need assent from the upper house, the Bundesrat, and will take effect in January.

Registered gay couples will be allowed to access state widow/widower pensions, adopt each other's biological children, and refuse to testify against each other. They also will be treated as married in the areas of operation, divorce, alimony and division of assets.

"Gays and lesbians are still not treated equally in how they are able to live their lives, and there is no reason for that," Justice Minister Brigitte Zypries said in support of the changes.

She hopes to eventually extend every right of matrimony

to registered same-sex couples.

EUROPEAN COURT OF HUMAN RIGHTS AGAIN CONDEMNS AUSTRIA FOR PERSECUTION OF GAY MEN

By Platform against art. 209

Platform Against Art. 209 calls for immediate rehabilitation and compensation of all victims

With a recently announced judgment (*Woditschka & Wilfling vs. Austria*) the European Court of Human Rights again condemned Austria for its years of criminal persecution of gay and bisexual men. The repeal of the anti-homosexual statute, Art. 209 Criminal Code, (in 2002) did not affect the victim-status of persons convicted under that law (age of consent of 18 for gay men vs. 14 for lesbians and heterosexuals). The Republic of Austria has to pay EUR 61.000,-- compensation.

The then criminal proceedings against the two applicants in Austria caused sensation .

Michael Woditschka in July 2000 has been convicted by the Regional Criminal Court of Vienna for – as 19-year-old - having had consensual sexual contact with a 16-year-old young man.

Wolfgang Wilfling in summer 2001 has been convicted by the Regional Court of Wiener Neustadt to 15 months imprisonment for a love affair with a 17-year-old he met over the internet. The mother of the adolescent had found love-letters and reported the then 36-year-old to the police. He has been arrested and prosecuted. While the first instance court suspended 14 of the 15 months on probation, the Court of Appeals raised the unsuspended part from one to five months. Wolfgang Wilfling finally spent one month in jail. His detention caused the bankruptcy of his enterprise.

Europe's highest court in human rights affairs qualified discrimination of homo- and bisexuals as serious as discrimination on the basis of race, origin, colour and sex. The judges thereby explicitly held that the repeal of the law from the books in 2002 did not terminate discrimination since Austria never acknowledged Art. 209 and the criminal persecution based upon it as human rights violations and since Austria did not afford adequate redress for the victims. Also the Austrian Constitutional Court, the Court said, did not acknowledge let alone afforded redress for the violations of the Convention.

Austria has to pay more than EUR 61.000,-- just satisfaction to the two applicants. As a contribution to the costs

of legal representation and as redress for distress and humiliation suffered by the criminal proceedings, in particular, by the trial during which details of the applicant's most intimate private life were laid open in public. Those proceedings have to be considered as profoundly destabilising events in the applicants' lives which had and, it cannot be excluded, continue to have a significant emotional and psychological impact on each of them, the Court said.

Austrian government must act now

Platform Against Art. 209 calls for immediate and comprehensive compensation and rehabilitation of all victims of Art. 209. Despite the repeal of the law in 2002 victims of Art. 209 have not been compensated and they are still registered in the nationwide registry of criminal offenders.

The two applicants *Woditschka and Wilfling*, having been successful in Strasbourg, now are entitled to a renewal of their criminal proceedings and subsequent acquittal. Only victims of Art. 209 who gain a judgment by the European Court of Human Rights in their favour can do so. All other victims who did not go to Strasbourg remain stigmatised, are not rehabilitated, neither for the costs of their defense and the destruction of their life nor for the costs of their defense.

“We are calling upon the federal government of Austria to act immediately and to rehabilitate and compensate the victims of Art. 209”, says Dr. Helmut Graupner, spokesperson for “Platform Against Art. 209” and attorney of the applicants, “It is unacceptable that those who did not have the power to go to the European Court of Human Rights, are degraded again - as second class victims .”

The interdenominational and supra-partisan Platform Against Article 209 comprises more than 30 organisations that joined in the fight against the discriminatory supplemental minimum age of 18 years for homosexual relationships between men only (in addition to the general age of consent of 14 for heterosexuals, lesbians and gays alike), as set forth in article Art. 209 of the Criminal Code. Nearly all associations of the homosexual movement, but also general organizations are members of the Platform, like AIDS-help-organisations, the Ombudspersons for Children and Adolescents of the States of Vienna and Tyrol, the Austrian National Student Union, the National Association of Probation, the Austrian Society for Sexual Research, and many others more. After the repeal of Art. 209 the Platform works for the release of all prisoners, for the deletion of all verdicts from criminal records and for just satisfaction of all victims of Art. 209. In addition it monitors the enforcement of the new Art.

209-substitute-provision, Art. 207b Criminal Code.

Press release by the European Court of Human Rights:
<http://www.echr.coe.int/Eng/Press/2004/Oct/Chamberjudgments211004.htm>
The full text of the Court's judgment:
<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=753425&skin=hudoc-en&action=request>

AUSTRIA'S CONSTITUTIONAL COURT DISMISSES SAME-SEX FREEDOM OF MOVEMENT CASE

By HOSI Wien

Homosexuelle Initiative (HOSI) Wien, Austria's oldest and leading gay and lesbian organisation that just celebrated its 25th anniversary with a big party in Vienna City Hall last Friday, is appalled by the decision published last week by the country's Federal Constitutional Court (Verfassungsgerichtshof, VfGH) in a complaint brought forward by a US citizen. Lon Williams who is married to a German citizen in the Netherlands challenged a decision of the Austrian immigration authorities which had refused to recognise the same-sex marriage done in the Netherlands and, consequently, to grant residence and work permits to Mr Williams. They insisted that they would have to apply the definition of marriage provided by Austrian law (limiting it to a relationship between a man and a woman).

However, EU law unequivocally provides for any third-country ³spouse² to join his or her (EU) spouse exercising the right to free movement within EU territory. Due to this refusal of the Austrian immigration authorities, the German citizen, in the end, could not take up a position offered to him by an international organisation in Vienna, and the couple had to continue living and working in the Netherlands.

Williams basically argued that the right to marry is guaranteed under national – in this case Dutch – law (Article 9 of the EU Charter of Fundamental Rights). Therefore, the non-recognition of his marriage for the purpose of free movement and family reunion regulated by EU law is a violation of the Charter's Article 21 prohibiting any discrimination on the grounds, inter alia, of sex or sexual orientation in the application of EU law by member states. In addition, Williams, referring to the July 2003 European Court of Human Rights judgment in *Karner* versus Austria, considers the discriminatory treatment by Austria's immigration authorities to be a violation of the European Human Rights Convention. However, the Constitutional Court ruled that there was neither a breach

of EU law nor of the human rights convention nor of Austria's constitution.

³There are two things that makes the Court's ruling so appalling², explains HOSI Wien secretary-general Kurt Krickler. ³Firstly, the Court's arguments are partly wrong, completely arbitrary and offensive as the Court refuses to accept that the couple is already married and insinuates wrongly that the couple would seek its ³other² relationship to be treated equally with marriage upon which the Court bases most of its negative substantiation. Secondly, the Court refused to refer the case to the European Court of Justice in Luxembourg which is the competent body to decide upon controversial questions of EU legislation. Instead, the Constitutional Court dismissed the case, referring it to Austria's Supreme Administrative Court which, however, cannot rule on whether the immigration authorities' dealings had been unconstitutional or in breach of human rights.²

Lon Williams is also appalled by the ruling: ³The decision of the VfGH is fundamentally flawed, and I am irreversibly opposed to every argument because the reasoning behind each finding is discriminatory even in the most primitive sense. With that I must reiterate that I am married, and, therefore, the freedom of movement, as provided by EU law, does come into play. My basic human rights have been arbitrarily denied, and my civil status has been deliberately ignored. Hence, I am determined to challenge every single legal statement from this decision no matter how long it takes, and I will not discontinue my legal proceedings until every question is clarified.²

³We have to wait for the Federal Administrative Court's ruling now², explains Krickler. ³We hope that the decision will be a different one, or that at least the case now be referred to Luxembourg. In case the ruling is not any different from that of the Constitutional Court, the only legal remedy will be to file a complaint to the Strasbourg-based European Human Rights Court, which Mr Williams is determined to do, and HOSI Wien will continue to support him in that. But the problem with Strasbourg is that it can take up to 7-8 years before a ruling is handed down. If the Administrative Court will not refer the case to Luxembourg, we will finally have to consider persuading the Dutch government to take Austria to the Luxembourg Court.²

SLOVAKIA TAKES STAND AGAINST GAY MARRIAGE

From press reports The Slovak Spectator
<http://www.slovak spectator.sk/clanok-17742.html>

AT A MEETING of European Union foreign affairs ministers in Brussels November 2, Slovakia unilaterally declared that it would not recognise gay marriages conducted in other EU member countries, according to the TASR news wire.

"Slovakia has taken this measure unilaterally, which means that we will have different laws in this area than the rest of the EU," Foreign Affairs Minister Eduard Kukan explained.

According to Kukan, the aim of this step is to secure a cast iron guarantee against the mutual recognition of homosexual marriages.

The EU programme for justice and home affairs, of which the mutual recognition of gay marriages is a part, is due for approval at a summit of EU leaders later this week.

The main opponents of gay marriages are the Christian Democratic Movement (KDH) politicians, Interior Minister Vladimír Palko and Minister of Justice Daniel Lipšic.

TWO NEW BOOKS

Helmut Graupner & Vern Bullough (ed.): Adolescence, Sexuality & the Criminal Law, New York: Haworth Press (2005)

<http://www.haworthpress.com/store/product.asp?sid=30HUEMR0G2WK9K7UPUAHTP5XPAJX08R9&sku=5494&AuthType=4>

Helmut Graupner & Phillip Tahmindjis (ed.): Sexuality & Human Rights, New York: Haworth Press (2005)

<http://www.haworthpress.com/store/product.asp?sid=30HUEMR0G2WK9K7UPUAHTP5XPAJX08R9&sku=5493&AuthType=4>