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Dutch Court allows adoption for unmarried people

Translated by Michiel Odijk

Amsterdam - A remarkable verdict of the Court of Amsterdam yesterday opened the way for adoption by unmarried couples and single persons. With this verdict, the Court set aside the Dutch legislation, that would only allow adoption by married couples.

In its decision yesterday the Court allowed adoption by an unmarried single mother, because "many unmarried parents and foster parents can provide a loving and stable educational climate for children under their care".

This particular case was about a foster mother who had been taking care of a girl for whom her natural,

Brazilian mother could not take care. The woman had been doing so from the day of the girl's birth, seven years ago. Over this period of time, the woman stayed single and never married.

Her earlier request for adoption had been refused on the basis of Dutch civil law, which does not allow such adoption. After this, the woman made an appeal at the Amsterdam Court.

The Court stated that in this case the Dutch law cannot be taken as a guiding principle, as it is in contradiction with the European Convention for the Protection of Human Rights. This convention states that the right to a family life is not limited to natural children, but should also be granted to adoptive children.

In principle, the section in the Dutch Civil Code has the objective of protection of the child's interests and of a guarantee that he or she grows up in a good parental environment. "Although this objective is justifiable, the present social circumstances can no longer justify that a good parental environment can only be granted by a married couple," says the verdict. According to the lawyer of the foster mother dr.juris J.J. van der Winden from Amsterdam, the new situation also creates perspectives for other single parents and same-sex parents.

Van der Winden also believes that the bill to broaden adoption facilities, that now still excludes single parents, will have to be revised.

According to the Utrecht professor on adoption rights Hoksbergen the situation has not changed so drasti-

cally. In his opinion, the verdict only means that juridical adoption by a single parent is now no longer excluded. "An existing situation in which a relationship has grown between a child and the adult who takes care of it, has been sanctioned juridically. He pointed out that the verdict does not mean that adoption of foreign children should now be granted to every single person.

Gay Marriage in Slovenia?

This is a report on a broadcast on the Slovene national TV's (TVS) Tednik ("Weekly") on March 23th 1995.

Slovene lesbians and gays are now trying for the second time to "legalize" same-sex marriages. The first attempt was in March 1993, when two gays tried with an initiative to the Constitutional Court, but later withdrew it because of Government's negative opinion (the whole story is in Euro-Queer digest v1.i33; you can retrieve it by sending a message with "get euro-queer-digest v1.i33" in the body of the message to majordomo@queernet.org).

In TVS's broadcast "Tednik" there was an interview with Sandi Perdih. He is one of those who started the first initiative. Apparently they started another initiative to the parliament to change the marital law. So far 155 persons have signed the petition to the parliament.

The initiative to allow same-sex marriages is co-sponsored by Government's Bureau for Women's Politics. Vera Kozmik, the head of the bureau, said it was reasonable to expect the law to be changed within two years.

In the same show there was also a lady from Pedagogical Institute in Ljubljana, saying that this law should wait for a little longer, because only one or two couples would marry and we have so many problems and so many other and more important things to do. Has anyone ever counted all those things that are more important than human rights and equality?

The interview with Perdih was held on Zale, Ljubljana's biggest graveyard. Mr. Perdih said he chose this place as a sign of respect to all those who - because of society's intolerance towards homosexuality - chose suicide as the final solution to their "problem".

According to a poll, 57% of people here oppose same-sex marriages whereas 29% believe same-sex partners should be allowed to marry. The public

opinion now is very similar to the public opinion several years ago on out-of-marriage partnership (is common law partnership the right term?).

Sweden denies asylum to gays

Swedish Immigration Board has decided to deny residence permit for one Iranian gay man and one Algerian gay man.

The two cases are now to be reviewed by the Aliens Appeals Board. We fear that the practice, laid down by the Aliens Appeals Board in 1994 not to deport gay men and lesbians to Iran, is threatened.

Moreover, the Swedish Immigration Board (Statens Invandrarverk) has stated in its decision that the gay man should fear no persecution in Iran. The reason for this, according to the Swedish Immigration Board is that the Islamic Law states that there has to be four eye witnesses to the alleged crime (homosexuality). The Swedish Immigration Board thereby says that the Islamic Law will in fact PROTECT this gay man from persecution.

Please protest to the Swedish Aliens Appeals Board. Write two different protest faxes for the respective cases.

1. Iran. Case no. 9502-0114. Up for appeal in Utlänningsnamnden (Aliens Appeals Board). Stress that the Islamic legislation stipulates death penalty for homosexuality! Protest against the formulation of the previous decision, made by Statens Invandrarverk (Swedish Immigration Board), mentioned above.

2. Algeria. Case no 9502-0015. The gay man appealing for asylum in Sweden is listed in the "death list" of the FIS (the Islamic Fundamentalist Movement). FIS is in favour of application of the Islamic law in Algeria. (And FIS also applies the law!)

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Russia will test foreigners for HIV

by Rex Wockner

Russian President Boris Yeltsin April 3 signed into law the bill passed by parliament requiring foreigners who stay more than three months to be HIV-negative.

The law also institutes mandatory testing for Russian prisoners and for workers in certain occupations, but does not say what happens if they are positive.

AIDS groups and the European Parliament denounced the law, saying it is unenforceable and violates human rights and international agreements Russia has signed.

"There is just no way to implement such a law," said Gennady Roshchupkin of the Russian AIDS Relief organization. "They can't possibly check every single foreigner. They couldn't afford to."

"It's going to be a bureaucratic nightmare," added Kevin Gardiner, an American who works with Russian AIDS agencies in Moscow.

It is unclear if the HIV tests must be conducted in Russia or if a foreigner can submit laboratory results from abroad. Many foreigners fear Russian medical facilities because of poor sanitation and, in particular, re-use of needles.

More than 40 other nations test foreigners for HIV in some circumstances. The U.S. doesn't allow HIV-positive foreigners to enter the country without a special waiver. (Sources: Reuter, Tass, AP).

70 Dutch Cities Register Gay Couples

by Rex Wockner

Seventy cities and towns in the Netherlands now let gay couples register their relationships and legislation has been introduced in parliament to grant gay couples the legal rights of marriage, according to the International Lesbian and Gay Association.

Gays in some professions, including civil service, health care and education, as well as employees of the airline KLM, already receive spousal benefits.

Gays can register their relationships and receive all rights of marriage (except those related to adoption, artificial insemination and in-vitro fertilization) in Denmark, Norway and Sweden. And a court in

Hungary recently legalized common-law marriage for gays, which grants every right of matrimony.

Amsterdam City Council Favors Gay 'marriage'

by Rex Wockner

The Amsterdam City Council last month sent a letter urging the Dutch government to grant gay couples equal rights in the areas of parenting, adoption, kinship, inheritance and alimony, reports correspondent Bert Schuur.

More than 90 Dutch cities and towns now allow gay couples to register their relationships, but no rights are granted by the process.

Gays are allowed to enter into legal marriage-like partnerships in Denmark, Norway and Sweden, and, in Hungary, a court recently ordered the government to legalize common-law marriage for gays that will include every right of matrimony.

Dutch Church Embraces Gays

by Rex Wockner

The Netherlands' Dutch Reformed Church last week mandated that local parishes may not refuse communion to gays and must fully accept gay relationships, reports correspondent Bert Schuur.

The decision reversed a widely criticized November 1994 ruling that allowed congregations to turn away gays.

"One person should not be victimized because another has a problem with who they are and what life they lead," the church synod stated.

Homosexual rights provision in Poland

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By Piotr Dukaczewski & Grzegorz Witkowski

The Constitutional Committee issues a proposed clause listing which groups should not be discriminated against - and a reference to lesbians and gays draws the most attention.

The Constitutional Committee, which is drafting Poland's new permanent constitution, on April 11

proposed the new constitution's human-rights clause, specifying groups of people who should not be discriminated against.

"Nobody can be discriminated against because of their sex, race, national or ethnic background, health, physical or mental disability, social background, place of birth, sexual orientation, language spoken, religious faith or lack thereof, opinions, material status or for any other reason," reads the proposed Paragraph 2, Article 22 of the new constitution. Sexual orientation - meaning gay men, lesbian women and bisexuals - was the only item on the list which caused deep divisions among deputies.

"Does this mean that intercourse with animals or a corpse will also be protected?" asked Wladyslaw Kulesza, president's representative who walked out of the committee meeting. Like Kulesza, some other deputies couldn't differentiate between sexual orientation - which most gay-rights activists and psychologists usually define as involving consensual sex between two adults - and other sexual deviancy. Committee members opposed to making a separate provision for sexual minorities warned that the proposed solution will allow homosexual marriages and children's adoption by homosexual couples. Those in favor pointed out that the ban on discrimination doesn't guarantee equal rights for everyone. Jerzy Jaskiernia, minister of justice and Democratic Left Alliance (SLD) deputy, says that the proposed regulation agrees with the standpoint of the Council of Europe and the European Parliament. "We want to create a situation where being different will not be regarded as shameful and will not be a reason for persecution," he said. He accused people who attacked the sexual-orientation provision of being "prudish" and unwilling to confront the problem. Jaskiernia quoted a report issued late last year by Lambda, Poland's national homosexual-rights advocacy group, which cited numerous cases of discrimination against gays and lesbians. According to Jaskiernia, the proposed constitutional clause would make fighting discrimination a national duty. Marek Nowicki, president and founding member of the Helsinki Human Rights Foundation, said the dispute has an emotional, not practical, basis. The ban on any discrimination reflects the lawmakers' strong opposition to discrimination as such, he said. Specifying alternative sexual orientation illustrates the lawmakers' good will and awareness that problems of homosexuality cannot continue to be ignored in Poland. "It's an attempt to break down Poles' intolerance," says Nowicki.

A well-known sociologist, Mikolaj Kozakiewicz, holds a similar opinion. "This is a dispute on general viewpoints. Those who oppose the proposed regulation can't come to terms with the fact that homosexuals did and do exist in this country."

Nowicki said that according to research conducted by sex education experts, admitted homosexuals (persons who don't maintain any heterosexual relationships) make up from 2 to 4 percent of the population. "This is not a marginal figure," says Nowicki. In his opinion, this is how homosexuals have always been treated in Poland.

Those in favor of the constitutional clause stress that democracy can be measured by the amount of protection the state offers to all minorities. "If we ban discrimination based on sex or religion, then I see no reason why we can't include sexual minorities. Especially that this discrimination really does exist," said Kozakiewicz.

Kozakiewicz and Nowicki also wouldn't object to homosexuals' rights to legalize relationships. Nowicki said that any such legalization should avoid the word "marriage," which for many Poles would mean a church sacrament; a different term denoting a civilian partnership could be used instead. Kozakiewicz cited Scandinavian countries which have introduced a registered partnership formula which provides lesbians and gays with social and financial benefits (such as alimony or the right to inherit from a deceased partner).

"These people work and pay taxes like everyone else so they should be able to benefit from the social rights granted to heterosexual couples," says Kozakiewicz.

However, according to both experts, a constitutional provision banning discrimination wouldn't be enough to legalize homosexual marriages or their right to adopt children; such rights would require a change in the family code.

No politician, even a supporter of the proposed constitutional clause, wanted to talk about further expanding rights for lesbians and gays, but then Polish homosexual activists themselves have not been actively pushing for partnership registration or permission to adopt - supporters seem to think that Polish society isn't psychologically prepared to deal with the issue. The Helsinki Committee's Nowicki, for example, objects to giving adoption rights to people living in homosexual partnerships, since the child would

find him or herself under unbearable social pressure in highly conformist Polish society.

Homosexual-rights activists say that they are satisfied that their views have been taken into direct consideration in such an important document as the constitution. "This is a real psychological breakthrough," says Piotr Brodacki, president of Lambda's Warsaw chapter. "We want people to see that we do exist."

Critics, even those who say they oppose discrimination against lesbians and gays, have said that the provision should not be included in the new constitution. Two years ago, President Lech Walesa proposed a Rights and Liberties Charter which would have offered homosexuals the kind of protection that the constitution's writers are proposing today.

"The legal import of the constitution is far too great for it to deal with marginal issues like alternative sexual orientation," says Piotr Nowina-Konopka, a deputy of the Freedom Union (UW), the largest opposition party. In his opinion, the problem of lesser rights offered to people with different sexual orientation doesn't really exist because sexual preferences are an intimate issue, "not as visible as gender or skin color."

According to the leader of the Confederation for an Independent Poland (KPN), Krzysztof Krol, sexual minorities don't need a separate regulation since even today they may battle for their rights in court. The situation wouldn't change much if the proposed constitutional provision passes, since disputes could still involve court action.

The church unanimously criticized the proposed clause. Bishop Tadeusz Pieronek regarded it as "an example leading toward extremes which cannot be accepted by any normal society." Ryszard Czarnecki, the president of the Christian-National Union (ZChN), a pro-Catholic party which is not currently represented in the Sejm, is strongly opposed to the regulation. "This is a first step leading to growing demands of these people. The next step would be accepting deviations such as pedophilia or zoophilia," he says. The resulting commotion creates a nonexistent problem, he said, since no minority is discriminated against in Poland.

Review of Freedom-of-Association Policies Towards Lesbians and Gay Men

presented to OSCE Human Dimension Seminar on Building Blocks for Civic Society: Freedom of Association and NGO's, Warsaw, 4-7 April 1995
By Tom Lavell

The creation of civic groups has led to an inevitable focus on the role of minority groups, a focus which this seminar has addressed extensively.

The concept of an individual's being in an *ethnic* minority is perhaps more easily understood by the OSCE-ODIHR seminar delegates than the concept of being in a *sexual* minority. Most individuals are raised in circumstances which at the very least recognize if not promote their ethnic identity. Some individuals - particularly those of mixed marriages in pluralistic societies - are raised with no particular ethnic identity. Although some of these would say they are uncomfortable at not fully fitting in under either parent's ethnic heritage, they may have two or more recognized heritages to choose from, or can choose not to identify with an ethnic group at all, focusing energy instead on nationality or other interests.

The homosexual individual, however, is extremely unlikely to have been raised with any sort of support for his or her sexual identity from that most basic unit of identity-building, the family. Since most families assume that all their children are heterosexual, individuals who often secretly, only to themselves - realize that they don't fit into the standard heterosexual model are in greater need of joining a group that can sustain their identity in some sort of a proper civic context. ILGA, the International Lesbian and Gay Association, calls on the OSCE to recognise that need by ensuring through specific OSCE guarantees - that groups representing sexual minorities have same the rights to assemble as do others representing ethnic, religious or others with alternative points of view.

In many OSCE countries, groups representing lesbian women and gay men have in recent years achieved recognition as being a proper civic avenue for allowing homosexual individuals to express their identities. Indeed, in many countries, particularly in the West, there is a full range of such groups active on everything from politics to social activities to professional interests. ILGA is an umbrella group of about 400 of those organisations worldwide.

The recognition of the right to form lesbian and gay groups not universal. Nor is that failure to recognise this minority restricted to former East Bloc countries. In the United States, recent moves have been

considered-so far unsuccessfully to restrict some federal workers rights to form gay or lesbian associations. ILGA itself has been a victim of this hostility, thanks to misrepresentation and on the part of certain hostile American politicians. malign interpretations of this organisation's aims.

In the most outrageous recent incident in an OSCE country, three members of the Shoqata Gay Albania group were arrested on 14 October 1994, and charged with belonging to an illegal organisation. Police beat them for several hours, demanding the names of the president and other members of the group. Since then (on 20 January 1995), Albania has repealed its law banning consensual homosexual acts between adult men. It is hoped that Albanian authorities will recognise that, since the ban on consensual homosexual activity has been repealed, Shoqata and similar groups will no longer be viewed as promoting an illegal activity and can thus hold meetings openly with no further disruption. Similar Soviet-era bans on homosexual activity are still on the books in Belarus and Moldova; their repeals are under discussion and we urge those countries to lift the bans as soon as possible.

Lifting bans on private activity is only one step towards allowing homosexual citizens the same rights to speak out and to gather together that others enjoy. There remain a number of obstacles:

In Romania in July 1994, an attempt to hold a lesbian and gay cultural festival, featuring performers from several Scandinavian countries, was closed on orders of the Bucharest district mayor. Armed police with dogs surrounded the performance venue and prevented the event from taking place. The Romanian law criminalising adult consensual homosexual acts "which cause public scandal remains too vague and may be used to prohibit virtually any homosexual gathering or any public expression of gay or lesbian identity.

In Turkey, the governor of Istanbul banned the country's first Congress of Homosexual Solidarity in 1993. Police arrested 25 foreign and three Turkish delegates who attempted to hold a press conference to protest the last-minute banning.

Official registration of gay and lesbian organisations is often made difficult compared to registration of other civic groups. A lesbian and gay group in Romania was unable to register for a year as group leaders were sent by a court on a quixotic quest for unobtainable approval by government ministries. Hungary and Lithuania have denied legal status to

groups, citing a dubious pretext that the term "gay" is not a legitimate, indigenous expression. In Moscow, gay and lesbian organisations have been denied registration on the basis of a 1990 Soviet law which provides that "the creation and activity of civil unions that aim to harm the health and morals of the population... shall be punishable by law."

Penal codes in Austria and Liechtenstein explicitly forbid the founding of homosexual organisations. Those penal codes, plus that of Finland, prohibit the dissemination of so-called "positive" information on homosexuality. In Austria, this has led to confiscation of Aids-prevention material aimed at gay men, contributing to the further spread of this epidemic.

Communities in all of the OSCE must explicitly recognise the rights of lesbians, gays and bisexuals to associate, assemble, express themselves and discover and articulate a collective identity. That an individual has a homosexual orientation may be unrecognised in standard society (particularly within the family), yet the homosexual condition exists in some individuals in all societies, and such individuals need to develop responsible expressions of that identity.

Steps are being taken in most OSCE member states to recognise the private expression of sexual intimacy, but that is only one step in people's formation of a sexual identity. The ability to meet in groups to openly express one's identity is an essential ingredient in helping an individual take a responsible attitude, both towards the more private, intimate relationships and towards society as a whole. Gay, lesbian and bisexual groups are an essential bridge in the development of civic society; the right to form such a group should be a standard of a country's success in sustaining democratic values.

OSCE seminar rescheduled

The planned seminar in Ashgabat, Turkmenistan, on "Drafting Human Rights Legislation" has been rescheduled from May to 19.-21. September 1995.

IGLYO President member of EU Youth Forum

The president of the IGLYO Bureau, Thomas Tichelmann has been elected member of the bureau of the Youth Forum of the European Union.

The EU Youth Forum is dealing with youth policy, unemployment, education and training, mobility and human rights.

The Spanish Government is changing its Penal Code

By Pere Cruells

The "Coordinador Gai-Lesbiana" encouraged to all the parliamentary groups to make some amendments in order to include anti-discrimination laws related to sexual orientation.

Last week, some news papers (El Pais, El Periodico 27-4-95) announced these amendments were aproved. We don't have the final version of the law, but, the important thing is that for the first time in the Spanish history we will have a law which will punish discrimination against lesbians and gays.

Greetings from Barcelona