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Anti-discrimination Law in Finland

By Rainer Hiltunen

vice-chairman of the National Gay and Lesbian Organisation - SETA

The anti-discrimination legislation in the Finnish Penal Code and The Constitution was changed in 1995 to include discrimination based on sexual orientation.

The Penal Code explicitly mentions "sexual orientation" as a prohibited reason for discrimination in offering public or commercial services or giving access to public meetings. The law also prohibits agitation against national, racial, ethnic, religious or other such group of people. In this way also sexual minorities are protected.

The third relevant paragraph explicitly mentions "sexual orientation" as a prohibited reason for discrimination in relation to hiring of an employee or the working conditions of employees. The sentences for the above crimes vary from fine to max. 2 years of prison.

The Finnish Constitution nowadays prohibits discrimination on the basis of sex, age, origin, language, opinion, health, disability or other reason characteristic of an individual. The sexual orientation is mentioned in the Governments bills preparatory works as an example of an other reason characteristic of an individual.

ILGA Input to OSCE Meeting

By Kurt Krickler

Written presentation to the OSCE Implementation meeting on Human Dimension Issues 1995, submitted by ILGA

Progress on the Implementation of Human Rights for Lesbians and Gay Men

The issue of non-discrimination based on sexual orientation has been discussed within the work of the OSCE on several occasions, such as the Follow-Up Meeting in Helsinki (1992), the Human Dimension Seminars on "Tolerance" (1992), "Free Media" (1993), and on "Building Blocks for Civic Society - Freedom of Association and NGOs" (1995), as well as in the Budapest Review Conference (1994) and the

joint OSCE/Council of Europe International Seminar on Tolerance in Bucharest last May. This topic was also discussed two years ago at the (first) OSCE Implementation Meeting and eventually included in its Final Report adopted unanimously in the Final Plenary by all delegations. The relevant paragraph reads as follows:

Participants pointed out to groups which were not "national minorities" but which none the less suffered discrimination, including women, homosexuals, migrant workers, and conscientious objectors.

It was pointed out that CSCE commitments in the area of non-discrimination cover homosexuals as well. Suggestions were made that discriminatory State policies against homosexuals, and criminalizing legislation, should be eliminated,

In July 1993, the Parliamentary Assembly of the OSCE, in its 4th (annual) session in Ottawa, adopted a Resolution which called on member States

...to ensure that all persons belonging to different segments of their population be accorded equal respect and consideration in their constitutions, legislation and administration and that there be no subordination, explicit or implied, on the basis of ethnicity, race, colour, language, religion, sex, sexual orientation, national or social origin or belonging to a minority...

Achievements on the international level

In the past two years since the last Implementation Meeting, we have witnessed remarkable progress and important achievements in the recognition of the human rights of lesbians and gay men both on the international and national levels:

On March 31, 1994 the United Nations Human Rights Committee ruled that the rights of lesbians and gay men to privacy and equality were guaranteed by the provisions of the International Covenant on Civil and Political Rights (ICCPR). The Committee ruled that criminal laws prohibiting homosexuality among consenting adults violate Article 17 of the ICCPR. Additionally, the UN Human Rights Committee noted in its decision that the reference to "sex" in article 2 (I) and 26 (of the ICCPR) is to be taken as including sexual orientation. For us in the lesbian and gay rights movement, this is the most important decision to date in the international human rights law.

Another recent landmark achievement was the adoption of the Resolution on equal rights for homosexuals and lesbians in the EC by the European Parliament on

8 February 1994. In this Resolution, the EP, the only democratically elected institution of the European Union, calls on all Member States to repeal all anti-homosexual law provisions and to end any discrimination on the basis of sexual orientation, and calls on the Commission of the EU to present a draft Recommendation on equal rights for lesbians and homosexuals which should, as a minimum, seek to end, among other things such as the discrimination by criminal law provisions, the barring of lesbian and homosexual couples from marriage or from an equivalent legal framework, and any restriction on the right of lesbians and homosexuals to be parents or to adopt or foster children.

Achievements on the national level

Since the 1993 Implementation meeting, total bans on homosexuality were repealed from the law books of Albania, Belarus, Cyprus, Kazakhstan, Moldova, and Serbia. Discriminatory ages of consent were reduced in the United Kingdom and completely abolished in West-Germany.

Anti-discrimination legislation explicitly including "sexual orientation" has been adopted in Finland this year. In a May 1993 ruling, the Canadian Supreme Court stated that the country's Charter of Rights and Freedoms also prohibits discrimination based on sexual orientation.

Proposals to include "sexual orientation" as a non-discrimination category in the new constitutions are debated in Poland and Germany.

In 1994, Greenland and Sweden have joined Denmark and Norway in enacting "registered partnership" laws recognizing same-sex relationships. Similar laws are proposed and debated in Iceland, Finland, Spain, the Netherlands, and the Czech Republic. In March 1995, the Hungarian Constitutional Court ruled unconstitutional the definition of common-law marriages restricting them to those formed between adults of different sex only. The Court ordered Parliament to change the existing law on common-law marriages or to enact new legislation which would give the same common law rights to same-sex couples by March 1, 1996.

Actions to be taken

Despite these positive developments in various OSCE member states, continuing legal and social discrimination against gays and lesbians have to be observed in other OSCE countries.

To our knowledge, the penal codes of Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Romania, Tajikistan, Turkmenistan, Uzb-

kistan and more than 20 States of the USA still provide for a total ban on homosexual activity.

Discriminatory ages of consent still exist in the penal codes of Austria, Cyprus, Hungary, Liechtenstein and the United Kingdom.

The penal codes of Austria and Liechtenstein prohibit positive information on homosexuality, thus violating the fundamental freedom of thought and expression. In Austria, this law has also led to the confiscation of AIDS prevention material for gay men, thus contributing to the further spread of this pandemic.

The penal codes of Austria and Liechtenstein prohibit the founding of homosexual organisations, thus violating the fundamental freedom of association.

We therefore appeal to those countries to take their commitments under the CSCE process seriously and to bring their legislation in line with the human rights standards already prevailing in the OSCE region.

Anti-discrimination clause in the new EU Treaty?

By Alan Reekie

The following extract from the official report on the preparations for the InterGovernmental Conference on the Revision of the European Treaties next year indicates that the inclusion of a broad anti-discrimination Article, including "sexual preference" among the grounds on which discrimination would be prohibited, is already widely supported. However, some member-State Governments appear to be opposed to any such extension of the Treaties beyond narrow "economic" issues. ILGA member-groups in those EU member-States should therefore start lobbying their government now.

Extract from the "Progress Report from the Chairman of the Reflection Group on the 1996 Intergovernment Conference (SN 509/1/95 (Reflex 10) Rev.1) - Madrid, 1 September 1995:

Topic 4. The Citizen and the Union - Part 1 European Citizenship

A. Basic points

- The rights of the citizen (...)
- With regard to the content of the rights in question, the following were mentioned:
 - * express condemnation of racism and xenophobia by means of an analogous provision

to the one proposed in 1991 by the European Parliament

- * general clause prohibiting discrimination (in addition to the one prohibiting discrimination on grounds of nationality in Article 6) on grounds of gender, religion, opinion, sexual preferences etc.

In the opinion of some, the principle of equality between men and women should have general application, and not be restricted as currently to the economic sphere (Article 119); it should also be worded in a positive way in the Treaty and not simply as the result of a ban on discrimination.

There was general support for the amendments listed in the two previous sub-paragraphs; the same does not apply to the following, at least on a first reading:

- * Prohibition of the death penalty
- * Protection of minorities
- * Socio-economic rights; specifically, inclusion in the Treaty of the content of the European Social Charter. (...)
- * Employment and the quality of the environment
- * Some members put forward the idea of a European voluntary service, or "Peace Corps", for humanitarian action.

As regards the way in which such rights might be embodied in the Treaty, two possibilities were considered:

- * The Union, if it takes on legal personality, or the Community, at any rate, would have to accede to the European Convention on Human Rights (...)
- * Independently of the above, some members pointed out the advantages of including a Bill of Rights in the Treaty, either in the enacting terms or an annex, or in the preamble. (...)

From the point of view of individual protection, it was clear that only accession by the Community to the European Convention and inclusion of a Bill of Rights in the enacting terms would confer a full guarantee, either by the Luxembourg and Strasbourg Courts in the first case or only by the Luxembourg Court in the second.

In response to the majority view, some members point out that adoption of European citizenship is perceived as a threat to national identity in some member-States, and that, unless that perception is corrected, they do not think it appropriate to develop either the content or the essence of the concept. They also regard

Community accession to the European Convention on Human Rights as unnecessary and, furthermore, do not see the usefulness of including a Charter of Human Rights in the Treaty, since all the member-states already guarantee them in their territory. Among those who support this view, some would however accept a Bill of Rights in the preamble to the Treaty.

ILGA's lobbying towards the EU

By Steffen Jensen

Up to the Intergovernmental Conference in 1996 the future development of the European Union it is very important that ILGA keeps up a constant pressure on the governments of the member states in order to create an understanding for the importance of including a non discrimination clause in the treaty - and that it includes sexual orientation as an area of non discrimination.

Members of ILGA's EU working party on the EU - and other ILGA member groups in EU member states - are invited to lobby their governments about this, using the following guidelines.

As start of this lobbying towards EU institutions ILGA has got the opportunity to deliver a speech at a meeting in the European Parliament about the upcoming intergovernmental conference. The co-secretary general Inge Wallert will represent ILGA at the gathering.

ILGA's General Policy toward the European Union

ILGA is taking an active and coordinating role in promoting lesbian and gay rights within the policies of the European Union. ILGA will influence the institutions of the European Union in order to gain full equality for lesbians and gays in the European Union as well as in all member states.

ILGA is working for the inclusion of an anti discrimination clause covering sexual orientation in a new or revised treaty, in accordance with the European Parliament resolution of 1994 (Roth report)

ILGA is working for the redefinition of the term 'legal spouse' to include homosexual relationships with or without registered partnerships.

ILGA is working for the inclusion of gays, lesbians and their children in the concept of family, including the right to family life. Furthermore ILGA works for

- * recognition of same sex partnerships
- * abolishing of discriminatory provisions in the partnerships laws
- * adoption possibilities for gays, lesbians and same sex couples
- * the right to artificial insemination for lesbians
- * the right to joint custody and authority for same sex parents.

ILGA works for the adoption of EU measures to effectively combat sexual orientation based discrimination, notably in the field of employment.

EU Policy Areas of Interest of ILGA

Free movement of people

The most obvious obstacle for lesbians and gays in the three directives on the Free Movement of persons is the use of the wording 'legal spouse' as the only acknowledged relationship.

Family policy

ILGA is addressing the problems linked with children coming from lesbian and gay relationships, insemination, adoption and the like. The ongoing strongly ideological offensive of the religious and political right can not only be answered to by bringing forward practical solutions. The family concept has changed in most European Union member states and the conservative positions are superseded by the developments in society. Many institutions use already the wording family for a broad range of relationships of various nature. It would be wise to take a stand in the ideological debate by including our concepts in a new family ideology.

Employment Rights

ILGA is working towards the following changes

- * Introduction of non discrimination provisions in EU labour market
- * That the Equal Pay Directive should be extended to include sexual orientation
- * That the forthcoming Directive on dismissal should include sexual orientation.

The inclusion of sexual orientation in the new Commission staff regulations is also important to ILGA.

Health Policy/HIV AIDS

As gay men still are the one group most influenced by HIV and AIDS ILGA is supporting the measures taken by the EU to combat HIV and AIDS and discrimination caused by the HIV status of people.

External Relations

There is a need to introduce a human rights dimension in external treaties and ILGA is promoting the human rights of lesbians & gay men in all countries with which the EU has external relations.

Change of the Romanian Penal Code

Reuter - Romania has eased a communist-era ban on homosexuality, with a parliamentary vote to make gay sex a crime only if it creates a public scandal.

Late Monday parliament's lower Chamber of Deputies voted changes to the penal code, punishing homosexuality with up to five years in jail if it stirs a "public scandal" and with up to seven years if it involves under-age persons.

The changes, which parliament's upper Senate passed last year, have yet to be promulgated by President Ion Iliescu before they take effect.

Homosexuality is still widely frowned upon in the Balkan country. Treatment of homosexuals is among issues which aroused protests from human rights groups, despite substantial improvement of the situation in Romania after the 1989 collapse of communist rule.

A recent survey by the London-based human rights group Amnesty International said 11 Romanians were imprisoned under Romania's old penal code, which made homosexuality a crime.

In communist times, secret police used the issue to persecute dissidents who were often sent to jail on gay charges. Punishment for homosexuality was jail sentences of up to seven years.

Critics say the new rules are still ambiguous, with homosexuals facing long jail sentences if witnesses declare they are offended by their public gestures.

Amnesty has urged the Council of Europe to "ensure that Romania implements the reforms recommended by the Parliamentary Assembly to bring Romanian law and practice in line with European standards."

Protest against Law Reform in Romania

By Michael Shafir, OMRI

The Chamber of Deputies on 12 September voted to ease Penal Code provisions on homosexual acts, Romanian media reported. These will now be punished only if they are committed in public, in cases of rape, or in incidents involving those under the age of

consent. The opposition was split on the vote, with the National Peasant Party Christian Democratic opposing the amendment. The daily *Curierul* national on 12 September reported that the Association of Christian Orthodox Students in Romania pledged to continue a drive to gather signatures opposing homosexual relationships among consenting adults. It has so far gathered nearly 200,000 signatures and needs 500,000 to have the matter submitted to a national referendum.

Gay Reactions

By Rex Wochner

The gay Bucharest Acceptance Group (BAG) says that the new clause actually permits police to jail almost any gay and lesbian at whim.

BAG explained: "Comments by members of parliament during the long debate made it perfectly clear what the purpose of the revision was: to enact a cosmetic change while making it punishable for gays or lesbians to develop any public or political identity. The only existing definition of 'public scandal' in Romanian law dates from 1938, and identifies it as 'any act which becomes known to more than two persons who disapprove of it.'

"Moreover," BAG said, "new language added to paragraph 5 of Article 200 drives the point home: 'proselytizing, associations, or any form of propaganda' for homosexuality will be punishable by a stiff prison term.

This language ensures that any public expression of homosexuality will lead directly to the prison cell. Not only gay love but gay organizations, politics, clubs, bars, meetings - gay life itself - will remain persecuted by police."

EU Budget for 1996

By Hein Verkerk

In the coming weeks European Parliament is discussing the budget for 1996. The Green Group has proposed amendments in order to support several gay initiatives.

The proposals concern the budget on social affairs: Barto Pronk (dutch christian democrat) is rapporteur for the budget and proposes measures to assist families.

The Green amendments read:

1. To amend the heading of the budget line into:

Measures to assist families and family units 'Family units' was the compromise formulation made up last year december to include other households than 'normal' ones when talking about the family.

2. Pronk proposes 2.5 Mio ecus for a range of measures.

One of them reading: information in particular the regular production and presentation of demographic data and information on measures relating to the family (structure of households, female employment, birth rates, information and awareness concerning the protection children etc) to be carried out using information from the network of experts set up by the commission and from the studies produced on specific subjects.

The Green propose the following amendments (text after amendments): information in particular the regular production and presentation of (delete demographic) data and information on measures relating to the family (structure of households, the consequences of changing family legislation in some member states, female employment, birth rates, information and awareness concerning the protection children etc) to be carried out using information from the network of experts set up by the commission and from the studies produced on specific subjects.

3. A further amendment on the money allocated to this budget line. The Greens propose to take out 500.000 ECU of the 2.5 Million of Pronks proposal and to transfer it to budget line B3-4012 on Measures to achieve equality between women and men.

500.000 ecu to be used on the European Level for organisations, actions and studies related to discrimination in workplaces on the basis of sexual orientation and other problems in this field.

Dutch Government Presents Plans on Partnerships and Family

By Bert Schuur

THE HAGUE. Last week, as expected, justice parliamentary undersecretary Mrs. Schmitz in a letter to Dutch parliament presented the government's ideas on laws concerning relationships, adoption and family. The main point from her letter termed the "Nota Leefvormen" is that she does not favour the opening up of marriage to gays, as was hoped by gay lobbying groups. Also she does not advocate adoption by single parents of a foreign child contrary to a ruling in a Dutch court this spring allowing the adoption of a Brazilian girl by a single Dutch woman. As, in her

view, adoption by single parents and gay couples would lead to negative reactions from other, especially third-world, countries where most children adopted in Holland come from, she proposes to allow adoption in these cases only when the adopted child is Dutch. But as only some 40 Dutch children are put up for adoption each year with demand much higher and Dutch law states that the natural mother has to agree with the family adopting the child it is expected that the natural mother of the child will in the vast majority of cases prefer the child to grow up with a heterosexual married couple.

Organisations working in the field of adoption welcomed the restrictions fearing non-cooperation from other countries from which some 700 children are adopted in Holland each year. The N.V.I.H.-COC (Dutch gay liberation movement) in a first reaction termed the idea of not allowing gay couples to adopt "unacceptable", as the welfare of the child only depends on growing up in a stable home, whether this be provided by a single parent, a gay or a heterosexual married or unmarried couple. The COC is glad that via single parent adoption an indirect possibility is created for gay couples to adopt.

Marriage will, in the government's plan, not be opened up to gays. Although in favour of giving the same rights to registered gay and straight partnerships as married couples Mrs. Schmitz stops short of opening up marriage altogether, in this case following the official party line of the Social Democrat Party PvdA.

The COC in its first reaction is pleased to see that at last the government put the legal situation of gay couples on the agenda and expressed hope that unlike in the case of the law on equal treatment the proposals would quickly lead to changes in legislation. The COC is disappointed at the decision not to open up marriage to gays, thereby perpetuating a discriminatory situation and unnecessarily complicating the process of law-making. This point of view can be termed remarkable, as the COC until recently rejected the idea of partnership-registration and gay marriage, as merely an "emulation of straight marriage". The COC's final reaction, according to COC-lobbyists will be "highly critical" of the government's plans. A survey this spring by "De Gay Krant" showed a majority of the Dutch population favouring adoption by gay couples and making it possible for gay couples to marry instead of "registering their relationship" with hardly any legal consequences.

Political Parties Favour Gay marriage

THE HAGUE. Contrary to the ideas expressed in Mrs. Schmitz letter to parliament regarding partnership registration it looks like a majority in Dutch parliament will be in favour of opening up marriage to gay couples, with possible restrictions only in the field of parental rights (a gay couple's child often stems from an earlier straight relationship) and adoption. Coalition partners VVD (Liberals) and D'66 (Social Liberals) and the opposition Green party, together holding 60 seats in the 150-seat Dutch lower house, have declared themselves in favour of opening up marriage to gays.

Much depends on the Social Democrat PvdA (37 seats), which officially favours a separate registration of gay and straight unmarried couples. It is quite likely however that enough Labour-MP's will oppose the government plans to tip the balance in parliament, in effect telling Mrs. Schmitz, also a member of the PvdA, to do her homework again. Mrs. Schmitz, who when she was mayor of Haarlem showed herself a pragmatic and energetic politician, is said to be willing to meet the wishes of parliament. The discussion in parliament will probably not lead up to a single new bill, but will lay the foundation for a number of changes in current legislation.

The Christian fundamentalist parties and the right-wing CD (together 10 seats) are expected to resist any changes in the laws, although this spring the fundamentalist SGP did put forward the idea of registering unmarried couples but only so that their social benefits could be cut to the level of married couples, without giving them any of the rights of married couples. The idea was not taken seriously.

The opposition CDA (Christian Democrats, 34 seats) is generally positive towards the government plan, with the exception of allowing single parents to adopt.

Reactions from Abroad

ROME. The vatican "Osservatore Romano" sharply criticized the ideas put forward by Mrs. Schmitz, especially her idea to improve partner-registration for gay couples and her ideas on single-parent adoption, fearing the approval of gay lifestyles will undermine the "natural traditional family model". Lawmakers should not merely follow social changes and Holland should not try to play a leading role in Europe in this field.

French and Belgian Cities Registers Gay Couples

by Rex Wockner

The French Atlantic port city of Saint-Nazaire started issuing registration certificates to gay couples Sept. 14, reported Reuter.

Deputy Mayor Maxime Batard said the document will help gays obtain benefits now available to unmarried heterosexual couples - such as access to national health care for a non-working partner, family travel fares and rent subsidies.

"All we have sought to do is give homosexuals the same rights as other citizens," Batard said. "If it can get things moving on a national level, that would be pretty good."

National authorities will now have to decide whether to go ahead and open up such programs as the socialized-medicine system.

The Belgian cities of Gent and Antwerp quietly created partnership registration for gay and lesbian couples in September.

No legal rights are conferred by the registration but the move has important symbolic impact in the historically conservative Flanders region, gay activists said.

There has not been any opposition to the decision yet.

Austrian Case rejected by Human Rights Commission

A person not known to any of the Austrian gay organizations has filed a case against Austria at the European Human Rights Commission concerning the different age of consent for homo- and heterosexuals in Austria.

After a rather superficial treatment of the case it was rejected by the commission. HOSI is very concerned about the case because a revision of the law is being discussed in parliament right now - and the case can give support to the conservative party which is against the law reform.