

# EURO-LETTER

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## **Europol to hold data on race, sexuality and politics**

*(Source: The newsletter "Statewatch", November-December 1995 issue)*

A draft Regulation on "Work files for the purposes of Analysis" being discussed by the Council of Justice and Home Affairs Ministers would allow Europol to hold information on a persons race, sexuality and political opinions Setting out the rules to be followed, under Article 10.1 of the Europol Convention, the Regulation, Article 4,3, enables Europol to hold information on:

- 3.1 Ethnic origin
- 3.2 Political view
- 3.3 Religious views
- 3.4 Information on health
- 3.5 Information on sexuality

This interpretation under the "assurance" given in Article 10 of the Convention which refers to the Council of Europe Recommendation R (87) 15 concerning data. The draft Regulation says this data can be "collected if they are necessary for the

purposes of a specific data file". The effect will enable Europol to hold this data on "suspected" criminals, associates and others.

The draft Regulations which itself has 15 Articles, extends the range of people under Article 10 of the Convention, on whom data can be added, in Article 3: "as well as other persons not listed here, but whose registration might be of interest for a specific analysis". Article 4 enables the holding of "other information suitable for identification". So too does Article 5 which speaks of holding data on accusations, "suspicion of membership of a criminal organisation", "enterprises or organisations in communication with, or used by the suspect".

The data held is to be classified - "secret, confidential or of general interest" - and graded "according to the reliability of the information" (Article 8):

3.1 very reliable

3.2 relatively reliable

3.3 *not very reliable* (italics added)

The rules and Regulations being agreed by the Council of Ministers are not being given to the 15 EU parliaments as part of the ratification process for the Europol Convention.

*(Draft regulation regarding working databases for analysis, EUROPOL 74, 12.9.95 (Statewatch translation from German text).*

## **Europol Does Not Register Gays and Lesbians**

by Martin Andreasson, RFSL

According to the Danish newspaper "Det Ny Notat" (an anti-EU campaigning newspaper), officials of the Council of the European Union have produced a document about the European police organisation, Europol. "Det Ny Notat" refers to the newsletter "Circular Letter Fortress Europe".

The newspaper claims that Europol is proposed to get the right to establish an analysis register containing personal informations about "interesting persons", including information about race, religious and political beliefs, state of health and sexual habits.

Many in the international gay/lesbian movement have been concerned by the statements in "Det Ny Notat". Had the information in "Det Ny Notat" been true, there would have been an obvious risk for the registering of gays and lesbians solely on the basis of their sexual orientation.

RFSL has examined the statements made by "Det Ny Notat" and cannot find that they are founded in facts.

"Det Ny Notat" refers to a proposal, made by the Council of the European Union, for standards to be applied to analysis work files within Europol (9205/-95). In Article 4 of the proposal are mentioned various "categories of personal data" that would be possible to include in the data files of Europol. Article 4, Section 3 mentions some "particular personal data" that may be included, namely "racial origin", "political opinions", "religious beliefs or other beliefs", "relating to a person's health" and "relating to a person's sexual life".

However, "Det Ny Notat" ignores what is stated in Article 6 in the proposed standards:

"Personal data collection for police purposes shall be limited to what is necessary to prevent a specific danger of repress a certain criminal offence, and, specifically, the data under art. 4, section 3 - particular personal data - will be collected only if they are absolutely essential for the objective of the file involved and when such data complement other personal data, it being forbidden to select a particular category of people through the said data."

The text above is quoted from the first-draft version dated 24 July 1995, which is the version referred to by "Det Ny Notat". At least one revised version has been produced since then, dated 15 November 1995 and named 9205/1/95.

Therefore, information about a certain person's sexual habits may only be collected into the data register if it is absolutely essential for the objective of the file involved and when such data complement other personal data. It is also forbidden to select a particular category of people - e.g. homosexuals known to the police - through the said data.

It should also be remembered that Europol's field is limited to certain areas of international crime, according to the Europol Convention (publ. in OJ C

316/30, 27 November 1995). Initially, Europol is supposed to fight "illegal drug-trafficking, illegal trade with nuclear and radioactive substances, illegal immigration networks, human trafficking and the trade with stolen vehicles" (Article 2, Section 2). The Council may also give Europol authorisation to work with a certain number of other crimes, specified in an annex of the Convention. These crimes include murder, assault, illegal trade with human organs and tissues, kidnapping, hostage-taking, racism and xenophobia, organised theft and forgery.

No member states of the European Union have any longer a ban on consensual homosexual acts between adults. However, some member states have discriminatory legislation regarding ages of consent, public decency, the right to form organisations, etc. None of these "crimes" fall within the field of Europol. Persons connected with such "crimes" will therefore not be entered into the register of Europol.

My personal assumption is that the registration of a person's sexual habits should only be necessary when investigating cases of child smuggling for the purposes of sexual abuse, possibly also in cases of similar activities involving adults.

Each country participating in Europol will have a national monitoring organ to follow the activities of Europol. There will also be a European monitoring organ.

It is, of course, important to control that the data files of Europol are not used for unjust registration of gays and lesbians. However, the Europol Convention and the proposed standards to be applied to analysis work do not pave the way for such registration. The statements made by "Det Ny Notat" are therefore unfounded.

The Europol Convention (in Swedish) and the two versions of the proposed standards to be applied to analysis work (in English) are available from RFSL (fax + 46 8 30 47 30, E-mail [rfsl@rfsl.se](mailto:rfsl@rfsl.se)).

### **Other reactions to the Europol proposal**

The Danish government has announced that it opposes the proposal and the two Danish members of the European Parliament Kirsten Jensen and Freddy Black have filed questions to the Council of Ministers on the issue.

### **Polands Draft Constitution Includes Sexual Orientation**

The Parliament of Poland will soon be considering a new permanent constitution drafted by its Constitutional Committee. On April 11, 1995, the Constitutional Committee proposed the human rights clause of the draft, outlining groups who should not be discriminated against. The proposed clause (Paragraph 2 - Article 2) reads 'No one 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 reasons.

The inclusion of sexual orientation in this non discrimination clause caused immediate division among many of the deputies. At the time, former President Lech Walesa's representative walked out of the committee meeting, commenting "does this mean that intercourse with animals or a corpse will also be protected?" The Catholic Church has also strongly opposed the clause, citing it as an Example leading toward extremes which cannot be accepted by any normal society.

Lambda, a national gay and lesbian rights organization in Poland, has been lobbying the government for over two years to back a non-discrimination clause for gay men, lesbians and bisexuals. A report issued by Lambda last year detailing cases of discrimination against gays and lesbians was instrumental in convincing commission members of the need for such a provision.

In the wake of recent general elections in which the former head of the Constitutional Commission, the now President-elect Aleksander Kwasniewski, defeated Walesa, Lambda predicts the next few months to be a critical period of decision making in the Polish Parliament. Please support their efforts by sending letters to the following officials expressing your support for the proposed human rights clause.

Letters should include the following points:

- It is the inherent responsibility of every government to respect and protect each citizens right to be free from persecution and discrimination regardless of sexual orientation. Including sexual orientation in

Poland's new Constitution is a necessary step towards a society tolerant of minority populations.

- This is a unique opportunity for Poland to fashion a long lasting Constitution that replaces the existing Stalin-era 1952 constitution with a document protecting individual freedoms and liberties, but that also will benefit future relations with European institutions including the Council of Europe (CoE) and the European Parliament of the EC. The Parliamentary Assembly of the CoE (Recommendation 924/81 and Motion for Recommendation 6348/90) as well as the European Parliament (Resolution on Sexual Discrimination at the workplace) have both urged their member states to entirely equate homosexuals with heterosexuals in all fields of legislation.

Write to:

Marszalek Sejmu R.P.  
(Speaker of the Sejm)  
ul. Wiejska 4/6/8  
00-902 Warszawa, Poland

Marszalek Senatu R.P.  
(Speaker of the Senate)  
ul. Wieska 4/6/8  
00-902 Warszawa, Poland

Prezydent Aleksander Kwasniewski R.P.  
Kancelaria  
ul. Wiejska 10  
00-902 Warszawa, Poland

## **Austrian Law Reform Postponed**

*by Helmuth Graupner, Platform gegen § 209, Vienna*

On November 13 Austrian parliament decided to postpone the vote on the planned repeal of the three anti-homosexual criminal laws of the country until some time in 1996.

Austrian criminal law still knows three anti-gay/-lesbian provisions:

Art. 209 of the criminal code (CC) sets the minimum age limit for gay sex ("samesex-lewdness") at 18, whereas the age of consent for lesbian and heterosexual contacts is fixed at 14 (Art. 206f CC). A man over 19, who has sex with a man between 14 and 17 therefore is liable to imprisonment between six months and 5 years. Each year around 60 new

proceedings are instituted and over 25 men are convicted to prison sentences.

Art. 220 CC bans public approval of homosexuality ("samesex-lewdness") and sanctions contravention with imprisonment of up to six months. This provision regularly is used to confiscate and forfeit emancipatory Aids-prevention material.

Art. 221 CC threatens with incarceration of up to six months anyone who founds, is a member of or recruits members for a group' one of whose aims is the promotion of homosexuality ("samesex-lewdness") and which is able to cause justified public annoyance. Gay/lesbian groups are reported to police regularly for violating this law. Currently authorities do not act on these reports but they could start instituting criminal proceedings from one day to another.

In May 1995 three of the five parties in Parliament, the Socialdemocrats, the Greens and the Liberals (together holding 89 of 183 seats), introduced a proposal to repeal these three laws.

On October 10 the Committee of justice heard 19 scientific experts, including three representatives of the Austrian gay and lesbian movement nominated by the platform Against Art. 209 and the lesbian and gay forum. 11 of these 13 experts demanded the immediate repeal of all the three anti-homosexual laws. Just one, a barrister, vehemently opposed the proposal.

Immediately after this parliamentary hearing the coalition government broke over budgetary problems and reelections was scheduled for December 17.

At the last session of parliament Socialdemocrats, Greens and Liberals applied for an immediate vote on their proposal but this application has been defeated by the parliamentary an majority of the christian-conservative Peoples Party and the rightist Freedom Party (89:92 votes).

Jörg Haider, leader of the Freedom party, declared that his party rejected the application because they did not want a vote on such a sensitive and controversial issue during an election campaign. This would not mean that all his MP's would finally vote against the repeal. Some of them supported the proposal and he personally too favoured the abolishment of discriminatory provisions.

The Austrian lesbian and gay movement has been outraged by the renewed delay of the reform and strongly protested the continuing persecution enabled by the People's and the Freedom Party coalition.

Platform against Art. 209, a nationwide coalition of 38 organizations including nearly all associations of the Austrian gay and lesbian movement, the National conference of the Austrian Children and Youth Attorneys, the National Probationary Service, the National Youth Council, the National Students Union, all Aids help organisations a.o., announced that they will press for a vote on the issue immediately after the elections at the beginning of 1996.

The platform recently has produced a videofilm (*Kein Recht zu Lieben? - Schwule Jugendliche in Österreich*) presenting 14 to 20 year old gay adolescents telling their experience with Art. 209 and demanding their right to sexual self-determination. The film has been produced by the world-famous filmmakers Rossacher & Doleczal (known for their videoclips for groups like Queen a.o.) as part of the Council of Europe campaign against racism, xenophobia, anti-semitism and intolerance. Before the vote in parliament each MP will get one copy of this video together with the corresponding brochure and other educational material.

The video and the brochure are available at:  
Platform against Art. 209  
c/o Rechtskomitee LAMBDA  
Linke Wiencelle, 102, A-1060 Vienna, Austria

For organisations one copy is for free. Others pay ATS 200,- per copy.

### **Dutch Minister awaits Verdict ny Equal Treatment Commission on Exclusion of Gay Men for Blood Donation**

*By Michiel Odijk*

Gay men and drug users are not accepted by blood banks as donors. This rejection will be for the rest of their life. Prostitutes and their clients will be told that their blood will not be accepted in the first year.

This practice has now been formalized by an official decision in 1994 by the Dutch Council of Blood Transfusion. The formal decision has entered the first of January, 1996. Informally, this policy has been

carried out since many years. The Council thinks that this rule is necessary to protect the health of both donors and receivers of blood and blood products.

The Council is an independent body that can make its own policy. It does not need approval by the Minister of Public Health, Welfare and Sports. Twice the Minister has tried to convince the Council to change this policy, but she failed in doing so.

In the Parliament, questions have been raised about this exclusion policy. MP's want to know whether this is acceptable under the new General Equal Treatment Act, which forbids exclusion of people because of i.e. their sexual orientation. The Minister has answered that discrimination on the basis of sexual orientation indeed is not acceptable. However, the exclusion is not based on the orientation, but on sexual practice: men who have had with men are excluded. Yet, she waits the verdict of the Commission for Equal Treatment, an independent body, where two complaints have been received about the blood bank policy.

The Commission will announce its verdict in June, if not later. The Council is willing to change its policy, if it is proven to be a prohibited form of discrimination.

### **Dutch Minister Promises to include Lesbian/Gay Rights in Development Aid**

*By Michiel Odijk*

There were many reactions in the Dutch press when in Autumn 1995 the Dutch Minister Jan Pronk did not respond to provocative anti-gay remarks by Robert Mugabe (Zimbabwe) at a meeting in Maastricht. In January, 1996, the Dutch Minister took the initiative to talk to some representatives of gay and lesbian organizations. He explained why he did not start a debate on lesbian/gay rights at the Maastricht meeting and promised to incorporate attention for gay and lesbian rights in the Ministry's policy. This is not meant as a way of exporting Dutch ideas about sexuality to other countries; the support is meant for local lesbian/gay groups in developing countries.

## **Gay/Lesbian Marriages in Pisa?**

*By Arcigay Arcilesbica Pisa*

The Council of Pisa province has approved a motion to recommend:

- 1) the Italian national Parliament to make a law for the gay & lesbian civil unions;
- 2) the municipal councils of the Pisa province to register the gay & lesbian couples in the waiting for the national law.

The municipality of Pisa should be the first in Italy to have the register!

## **The Current Political Situation in Austria for Homosexuals; Plans for the Austrian Gay Movement**

*By Guenter Strobl*

The political situation for gay and lesbians in Austria has been difficult over years. Mostly because we still have three discriminating laws (Art. 209, 220, 221) which i.e. enable officials to put activists into jail at any time and discriminate gay relationships of men aged 14-18. There have been many (unsuccessful) approaches by Austrian activists over the years to get rid of these laws.

January 15th Austrian parliament had its first meeting and there has been - once more - a political push to the right when congress voted for a right-wing populist to become the third president of the Austrian congress.

The special situation in Austria is that although Jörg Haider's right wing party (FPO) and the Austrian people's party (ÖVP) have the majority in congress they won't be able to form a government because of fear of loss of Austria's international reputation. This will lead to a socialist-conservative government again - which mostly will affect national budget issues. In questions concerning society there is expected to be an informal alliance between the conservative party (ÖVP) and the right wing party (FPO) which will make the situation for G/B/L/T even more difficult and unpredictable.

The Austrian Gay and Lesbian Movement intends to offer a last call to the Austrian congress to erase those discriminating laws (which are unique in Europe)

within the next 100 days of legislature. Then (around mid April 1996) we plan an offensive international campaign in which we will call for international support. We intend to provide the European Parliament and the international press with detailed information about the situation of gays, lesbians and transgender people in Austria to put international pressure on the Austrian congress.

## **First G/B/L/T Pride Parade in Vienna June 29, 1996**

*By Guenter Strobl*

Austrians name appeared first in the year 996 so we are celebrating 1000 years Austria this year. We will take this opportunity to arrange the first Pride parade in Vienna on June 29, 1996. The success of this parade will affect the future situation of human rights for G/B/L/T in Austria.

An organisation committee has been founded and all our efforts will be necessary to have it led to a successful event. At the same time we will have to count on international support.

## **"Corruption of Minors" repealed in Spain**

*By Helmut Graupner, Rechtskomitee LAMBDA, Vienna*

On November 24, 1995 Spain enacted a new Ordinal Code. This Code not only introduced extensive anti-discrimination provisions which are protecting "sexual orientation" (Art. 510- 512, 515-521) but also abolished the offence "Corruption de Menores" (Art. 452 bis b of the old CC).

The former law under certain conditions could cover the "corruption" of people under 18 into homosexuality.

The new Criminal Code contains clear and non-discriminating provisions for the protection of children and adolescents: an age of consent of 12 (Art. 181f CC) and a ban on seduction by deception until 16 (Art. 183 CC).

Moreover it is an offence protecting all age groups to violate a person's sexual liberty by sexual contact without consent or even with consent if this consent is obtained by taking advantage of a relationship of

superiority which reduces a persons sexual liberty (Art. 181f CC).

## **Law in Spain recognizes de-facto couples**

*By Pere Cruells, CG-L*

1995 was a good year for gays and lesbians living in Spain. After the law of Urban Arrangements in which de-facto couples were recognized regardless of their sexual orientation, a new penal code was approved that penalizes discrimination on the basis of sex, ethnicity, etc., including also sexual orientation, we finish the year with another law that recognizes homosexual couples. This time it is dealt with in the law of aid and assistance for victims of violent crime and against sexual liberty. In Ch. 1, art 2, sec 3a of this law where it specifies who can be the beneficiaries of aid for spousal injuries, the text states:

The spouse of injured person, if not legally separated, or the person who shares live with the injured one in a permanent manner effectively analogous to a spousal relationship, regardless of sexual orientation, for at least two years prior to the time of the injury, unless they are related, in which case it will be considered mere living together.

This law as with the law of Urban Arrangements previously mentioned demonstrates more evidence of the lack of a law of de-facto couples. Actually the Spanish government has proposed a law but because general elections are coming soon it is impossible that this law will be approved during this legislature.

For this reason, in the campaign for the Vota Rosa (Vote Pink), which we are organizing because of these elections, several of the points that we are calling for which will be included in the electoral programs of the parties that are presented with reference to the law of de-facto couples that we hope to enact soon.

## **EU Proposal for Health Funding**

*By Alan Reekie*

According to the European Parliament's Press Statement "Info Memo 17" of 31 January 1996, the European Parliament and the Council of Ministers have reached agreement on the funding of the three

five-year European Union Health Action Programmes. The outcome of the conciliation procedure, needed to resolve the difference between the Council of Ministers' initial "common position" and the Parliament's proposal, is that the funding for these Action Programmes will be:

- 64 Million ECU for the fight against cancer;
  - 49.6 Million ECU for AIDS prevention, and
  - 35 Million ECU for public health promotion.
- (1 ECU = about \$US 1.27 )

As these figures are what the Parliament originally proposed, there is no doubt that it will approve the corresponding final texts when they are submitted during its forthcoming Plenary Session in Strasbourg.

On the basis of its four objectives:

- surveillance and monitoring of transmissible diseases;
  - the fight against such transmission;
  - Information, education and training;
  - assistance to HIV-positive people and those with AIDS, and the fight against discrimination,
- the main effort of the AIDS prevention programme is addressed to:
- increasing the emphasis on sexual education, notably by an information campaign in schools;
  - co-ordinating the studies and information concerned with the problems, the modes of transmission, and the situations of "persons engaging in high-risk behaviour" ( intravenous drug-use, prostitution...) or in high-risk environments (on travel, in jail...).
  - exchanging experience obtained with preventive actions and with risk-reduction methods;
  - promoting the appropriate preventive actions and on pilot projects, eg by encouraging the availability and the use of reliable condoms (including instructions on how to use them to prevent the transmission of STDs);
  - promoting the information campaigns undertaken in the member-States on how best to use condoms to prevent HIV transmission;
  - promoting studies, pilot projects and actions on the psycho-social aspects of HIV/AIDS, notably in the case of HIV-positive children in the school environment.

The European Commission will undertake the management of the Action Programme in close collaboration with the EU member-States, and taking into account what has already been done or is now under way in them.

The European Commission alone will be responsible for ensuring the coherence and complementarity between the actions being undertaken in this context and the other Community policies. Although the legal basis of this activity is Art. 129 of the Treaty of European Union, which provides only for action "... directed towards the prevention of diseases...", the Council's Common Position, and even more the Conciliation Committee expressed the desire also to incorporate "treatment actions" such as "therapy and other means of helping HIV-positive persons and AIDS patients".

## Finland Update

*By Hannelee Lehtikuusi, chairperson of SETA*

### **Some History - -Some Progress - Some Backlashes**

The debate about the same-sex marriage has been going on since the beginning of this decade. The legislation was recommended after thorough committee preparations in 1992. There was also a private bill handed in by MP Ojala (Left-Wing Alliance) in 1993. This was, however, effectively buried by both submitting it to further committee consideration as well as the lack of action by the Centre Party Ministers of Justice (Mrs Pokka and Mrs Jaatteenmaki). Due to the Parliament elections the private bill expired in March 1995.

There has also been a massive project going on in form of a fundamental reform of the Finnish Constitution and Penal Code. It is proceeding in stages and, so far, it has been a pleasure to watch the results. Last autumn, the anti-discrimination law (Penal Code) saw the light. The Constitution also confirmed equal rights to all citizens, making it clear in the explanatory statement that discrimination on the basis of sexual orientation is prohibited. In the debate, the Constitution has been the most important element in our favour.

The progress of the law reform stagnated during the term of office of the previous Parliament. A lot of attention was paid to the matter in the media, but it led to no results or action by the Ministries or the Parliament. The debate has come up three times during the past years. First of all, the same-sex marriage laws in Norway and Sweden speeded the situation up a bit.

Then, SETA organized in August 1994, in connection with the Helsinki Gay Pride, a visibility campaign in which four couples were married in the Park next to the Helsinki City Hall. It was a very moving moment, even representatives from the Helsinki yellow papers were crying. Later, the issue was also debated in the election campaigns.

### **Background to the Present Situation**

SETA has been lobbying the new Parliament strongly and has mostly received positive reactions to the law bill. Maybe the long process, taking place simultaneously with Norway and Sweden, is finally coming to an end this year and the law bill will be submitted by the government at last.

The Cabinet currently consists of the Social Democrats, the National Coalition Party, the Left-Wing Alliance, the Swedish People's Party and the Greens. This government is often called the Rainbow Government (which sounds nice).

After the last Parliament elections, and after the Cabinet was formed, our hopes were high. All parties in the government had been more or less in favour of the same-sex marriage. The new Minister of Justice (National Coalition Party) Mr Niinisto had no strong feelings about this law bill. Unfortunately, the Minister of Justice was replaced on Friday, February 1, making the future of the precipitated law quite insecure.

Still, we will know more in a fortnight, when the answers are at hand. At that point, SETA will also introduce a study on the gay marriage titled "Officially complete strangers" (Virallisesti ventovieraat) which refers to the taxation law and the handling of the legal position of one's partner in cases of next of kin and of death.

### **What is Going on in Finland?**

On January 24, the Finnish national gay and lesbian organization SETA sent an inquiry to all members of the present Cabinet, ministers.

SETA asked two questions:

1. Should there be a law on the same-sex marriage in Finland?
2. What kind of a time schedule would be required to prepare such a law and when would the government be ready to submit the law bill to the Parliament?



SETA is expecting to have the answers by February 16. SETA will hold a press conference about the results hopefully already on February 19.

The Finnish Ministry of Justice has prepared a report on the preparations of this law and it has been announced that the report is available in the beginning of February. (The report is turned out to be quite useless since it is just shortly explaining the legislation in other Nordic countries.)

The media has been paying a welcome interest in the inquiry as well as the situation as a whole. In most cases, however, the issue has been strongly connected to the "marriage" of the Swedish celebrity Eva Dahlgren, which has even been interpreted as the reason behind the inquiry and demands of the gay community for equal rights.

Today, the afternoon papers reported that in the National Coalition Party, there are people who are generating strong resistance to the law bill.

#### **The Content of the Finnish Law Proposal**

SETA has been lobbying the new Parliament with background material (explaining why there is a need for a law on same-sex marriage, including the history and situation in other countries) and proposals to the legislator concerning the law bill on same-sex couples' possibility to marry. The work has been going on for years - all along the process with the other Nordic countries.

#### **Terms Used**

The phrase SETA is using in Finnish is more or less literally "recognized companionship" or "legalized spouses", which may sound a bit poetic, in fact. The vocabulary has been debated a lot along the proceedings and we have not found "the registered partnership" (the term used in the other Nordic countries) quite appropriate.

In addition, it may give an impression that homosexuals are listed up in registers. This is why I also refer to the same-sex marriage below as to a separate law bill under discussion.

#### **The Lobbying**

SETA's message when it comes to the law bill on the same-sex marriage is the following:

First of all, there are two ways to solve the situation in legislation.

1. to change the marital law to include same-sexed couples, too.
2. to follow the Nordic model by issuing a separate law which is in force parallel with the marital law.

If the legislator ends up with a separate law on the same-sex marriage there are some major areas in the law that have to be solved. Basically, the law has the same effects as the conventional marriage law.

The areas below are shortly debated in SETA's paper:

- inheritance, pensions
- right to the same family name (surname)
- maintenance liability
- widow's pension etc.
- the rights of the children in the a with same-sexed parents
- social welfare legislation as a whole
- adoption
- taxation as a whole
- agreement with the other Nordic countries recognizing the same-sex marriages contracted in the other Nordic countries
- dissolving the same-sex marriage
- legislation referring to family and spouses as a whole

Please note that adoption and the rights of children are presented separately. The other Nordic laws on the same-sex marriage do not include adoption.

SETA sees it quite possible that the rights of the children with married same-sexed parents are confirmed by the law. SETA has asked the legislator to solve the problem: given that there are children in gay families, how are the legislators going to secure the children's rights to parents and a secure and respecting environment.

#### **Romania**

It was decided at the Riga meeting of the European region of ILGA that all European ILGA members should contact their governments and members of the Parliamentary Assembly in order to focus on the fact that Romania has not yet repealed the ban on homosexuality.

A letter has been sent to the Danish government - but an answer has not been received yet.

## **Letter to the Secretary-General of the Council of Europe on Romania**

*By ILGA's CoE Working Party*

Dear Mr Tarschys,

When Romania was admitted as 32nd member state to the Council of Europe in October 1993, the country committed itself to bring its legal and democratic system in line with the requirements made upon a member of the Council. One of these obligations was the repeal of the total ban on homosexuality provided for by Article 200 of the Romanian Penal Code. The Parliamentary Assembly of the Council of Europe insisted on this (cf. the Assembly's Opinion 176/1993 and Order 488/1993, the reports of the three Assembly Committees instrumental in preparing Romania's admission, the Memorandum "The Honouring of the Commitments Entered into by Romania on its Accession to the Council of Europe" submitted by the rapporteurs Mr Jansson and Mr König on 3 May 1994) because Article 200 obviously constitutes a violation of the European Convention on Human Rights due to earlier decisions of the European Court for Human Rights in similar cases such as *Dudgeon vs. UK*, 1981, *Norris vs. Ireland*, 1988, and *Modinos vs. Cyprus*, 1993.

Almost two and a half years have passed since Romania's admission to the Council of Europe without Romania having honoured this commitment although various bills to reform Article 200 had been introduced in Parliament. Actually, the long chronology of the rather peculiar ping-pong play between both Chambers of the Romanian Parliament of voting for and against these various propositions finally ended, for the time being, on 21 November 1995 with the complete refusal of the proposed new Penal Code which would also have provided for a reform of Article 200.

Not only the long delay of Romania's compliance with its commitments is very disturbing, but also the contents of the proposed amendments to Article 200 would hardly satisfy the expectations of the Council of Europe. The proposed revision would still punish homosexual acts between consenting adults, if committed in public or causing public scandal, with one to five years' imprisonment. This would leave the way open for continued prosecution, blackmail and police harassment of homosexuals in Romania. Moreover, a completely new provision in the

proposed new version of Article 200 would punish any "organising, associating, or any act of proselytism" for homosexuality - this would constitute a severe violation of the freedoms of speech, assembly, and association as guaranteed by the European Convention of Human Rights. For these reasons, the proposed revisions have been widely criticized by both amnesty international and other human rights organisations.

In this context, we would like to ask you about the findings and results (since the Memorandum of 3 May 1994 mentioned above) of the activities of the Political Affairs Committee and the Committee on Legal Affairs and Human Rights which are, according to Order 488, closely monitoring the honouring of commitments entered into by Romania "at regular six monthly intervals until all undertakings have been honoured".

We, would also like to know what additional steps the Council of Europe is planning to take in this matter in the near future. We consider it high time that the Council of Europe increase its pressure on Romania in order to make the country finally comply with its commitments in a way that is in line with both the text and the spirit of the European Human Rights Convention.

### **EU Intergovernmental Conference on a new Treaty**

The Danish National Organisation for Gays and Lesbians (LBL) has contacted all 16 Danish members of the European Parliament and the Danish minister of foreign affairs asking about their attitude towards the inclusion of an anti-discrimination clause in a new European treaty.

Up till now four of the parliamentarians have answered and they all supports the inclusion. The minister of foreign affairs has answered that the government is ready to consider the inclusion of an anti-discrimination clause in the new treaty.

### **Explanatory note concerning the new European Treaty**

The current Treaty of the European Union (Maastricht-treaty) came into force on 1 November 1993.

The idea of a new treaty is to help the Union succeed new challenges which the member-States must meet in order to prepare Europe for the 21st century, ie. for the next five years (according to the Council of Ministers):

- carry out adjustments to the Treaty on European Union;
- make the transition to a single currency in line with the timetable and conditions set;
- prepare for and carry out the enlargement negotiations with the associated countries of Central, Eastern and Southern Europe which have applied for membership;
- determine, in parallel, the financial perspective beyond 31 December 1999;
- actively continue the policy of dialogue, co-operation and association already under way with the Union's neighbouring countries, and in particular with Russia, Ukraine, Turkey and the Mediterranean countries.

### History

On 17 May 1995 the European Parliament votes a "Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference : Implementation and development of the Union" (ref. PE 190.440 -A4-0102/95, for more information). Some extracts which might concern lesbians and gays:

*"A treaty for the citizens of the Union*

*More rights for EU citizens and improved protection of the fundamental rights of all EU residents:*

- inclusion of an explicit reference in the Treaty to the principle of equal treatment irrespective of race, sex, age, handicap or religion.

*In addition, the Treaty should contain a clear rejection of racism, xenophobia, sexism, discrimination on grounds of a person's sexual orientation, anti-semitism, revisionism and all forms of discrimination and guarantee adequate legal protection against discrimination for all individuals resident within the EU".*

End May 1995 the European Commission edits a report "INTERGOVERNMENTAL CONFERENCE 1996 - Commission Report for the Reflection Group" (ref. ISBN 92-827-4178-8, for more information). The report does not mention human rights explicitly, but here is a small extract:

*"Over and above citizens' rights, certain fundamental rights not mentioned in the part of the Treaty dealing*

*with citizenship but incorporated into the common provisions (Article F(2)) make explicit reference to the European Convention for the Protection of Human Rights and the constitutional traditions common to the Member States. Respect for these fundamental rights is expressed as a binding obligation on the Union. The Commission has asked the Council for authorization to start negotiations for the accession of the Community to the European Convention on Human Rights; however, the Council has asked the Court of Justice for its opinion on whether accession would be compatible with the Treaty".*

On 2 June 1995 a Reflection Group was set up consisting of representatives of Member States' foreign ministers and of the Commission President and two representatives of the European Parliament in order to prepare the 1996 Intergovernmental Conference and give ideas. The Reflection Group delivered their Progress Report on September 1, 1995 (ref. SN509/1/95 REV 1 (REFLEX 10) for more information).

Some extracts which might concern lesbians and gays:  
*"There is therefore consensus within the Group on the need to insert an Article into the Treaty providing for the suspension of its rights or even the expulsion of a Member State which infringes fundamental human rights or basic democratic principles. 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".

On 15-16 December 1995, the Madrid European Summit confirmed much of the content of the Report from the Reflection group. In the "Presidency Conclusions" of the Madrid European Council (ref. doc. SN400/95, for more information), under Annex 15, (reproduction of the Reflection group report) it says:

*"Human rights already form part of the Union's general principles. For many of us they should, however, be more clearly guaranteed by the Union, through its accession to the European Convention on*

*Human Rights and Fundamental Freedoms. The idea of a catalogue of rights has also been suggested, and a provision allowing for the possibility of sanctions or even suspending Union membership in the case of any State seriously violating human rights and democracy. Some of us take the view that national governments already provide adequate safeguards for these rights.*

*Many of us think it is important that the Treaty should clearly proclaim such European values as equality between men and women, non-discrimination on grounds of race, religion sexual orientation, age or disability and that it should include an express condemnation of racism and xenophobia and a procedure for its enforcement.*

*One of us believes that the rights and responsibilities we have as citizens are a matter for our nation-States: reaching beyond that could have the opposite effect to that intended".*

#### **Some dates**

Opening of the Intergovernmental Conference in Turin, Italy on 29 March 1996.

During 1996: negotiations.

Spring/Summer 1997: The new Treaty should be finished. National parliaments are asked to ratify the Treaty. The European Parliament gives it opinion. Referendums will be held in seven or eight countries.

1.1.1998: the new Treaty comes into force.

Information from the Commission can be found on the Internet on the "Europe" Web server - URL: <http://www.cec.lu/>

Each member state also have information offices from the Commission and the European Parliament. An important budget has been voted in order to enable more public debate on the new treaty.

#### **Statement to be signed by European ILGA members**

*will be sent out by EGALITÉ*

The European gay and lesbian organizations that have signed this statement demand that the follow-up treaty to the Maastricht Treaty on European Union includes an anti-discrimination clause covering sexual orientation.

Such a clause has been recommended by the European Parliament and is included in the Reflection

group report that the December 1995 Madrid-summit saw as a proper basis for discussions for a new treaty.

We consider an anti-discrimination clause to be a precondition for further steps to establish equal treatment of all European Union citizens.

#### **Danish bill on anti-discrimination on the private labour market**

*By Steffen Jensen*

As mentioned in EuroLetter 38 a bill on anti-discrimination on the private labour market has been introduced in the Danish parliament including sexual orientation as an area of non-discrimination.

The bill defines 'discrimination' as any direct or indirect form of discrimination based on race, colour, religion, political belief, sexual orientation, national, social or ethnic origin. According to the bill it is forbidden for an employer to discriminate an employee - or a person who seeks employment - at hiring, firing, replacement, promotion, salary or other work conditions. Furthermore it is forbidden to discriminate as far as access to education and training and in-service-training is concerned.

The law will not be valid for companies with an explicit purpose to promote a specific political or religious purpose.

In the remarks to the bill the inclusion of sexual orientation is motivated by the fact that sexual orientation is included in the rest of the Danish anti-discrimination provisions.

The parliament has had the first reading of the bill - and some parties are opposed to the bill as such for other reasons - no one mentioned the inclusion of sexual orientation as an argument against the bill.

The bill is expected to be passed by the parliament and to come into force by July 1st 1996.

#### **New interpretation of European Convention of Human Rights?**

In a preliminary opinion in a case about dismissal of a transsexual man in UK the advocate-general of the Court of Justice of the EU has stated that the provision in the European Human Rights Convention

on sex discrimination also should cover sexual orientation.

If this interpretation stands it is a very important new development. In the 80'es a serie of court cases at the European Court of Human Rights were rejected based on the assumption that 'sex' does not include 'sexual orientation' - even though politicians of the Council of Europe had expressed the opposite opinion.

### **LBL invited to NGO backing group for the Danish membership of UN Human Rights Commission**

*By Steffen Jensen*

The Danish National Organisation for Gays and Lesbians (LBL) has been invited to be part of a NGO backing group for the minister of foreign affairs during Denmark's membership of UN's Human Rights Commission.

The NGO group will be summoned before every meeting of the commission to discuss the agenda and representatives of the group will be invited to be part of the official Danish delegation to the meetings of the commission.

### **New book on Sexual Orientation and Human Rights**

Robert Wintemute, lecturer at School of Law, King's College, University of London, has published a book: Sexual Orientation and Human Rights, Oxford University Press, Clarendon Press, November 1995, 326 pp, £40,00.

Robert Wintemute examines the United States Constitution, the European Convention on Human Rights and the Canadian Charter.