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Contributions to the Euroletter are most easily sent either by e-mail to steff@inet.uni-c.dk or by fax to Steffen Jensen at +45 4049 5297 URL: <http://inet.uni-c.dk/~steff>

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Council of Europe on Romania

As an answer to ILGA's letter of 9 February 1996 to the Secretary General of the Council of Europe (see EuroLetter 39) we have received the following letter from the director of the office of Secretary General:

Thank you for your letter of 9 February 1996 addressed to the Secretary General, regarding Article 200 of the Romanian Penal Code.

In Opinion no. 176. adopted on 28 September 1993, the Parliamentary Assembly gave a favourable reply to Romania's request for membership of the Council of Europe. In this Opinion (para 7) the Assembly "expects that Romania will shortly change its legislation in such a way that Article 200 of the Penal Code will no longer consider as a criminal offense

homosexual acts in private between consenting adults" (ii).

On 4 October 1993 the Committee of Ministers adopted its Resolution (93) 37, inviting Romania to become a member of the Council of Europe and to accede to its Statute "in the light of the commitments entered into and the assurances for their fulfilment given by the Romanian Government in its contacts with the Council of Europe. including its Parliamentary Assembly."

Under Assembly Order No. 488, subsequently revised through Order No. 508 (adopted 25 April, 1995), the Parliamentary Assembly monitors the obligations and commitments of member states following their entry into the Organisation.

A first report on the state of affairs in Romania was presented in the Assembly in the fall of 1994. At that time the relevant article of the Penal Code had not been modified.

The Assembly Rapporteurs have subsequently paid a second visit to Romania 18-20 December 1995. A report on this visit and the present state of affairs regarding the country's commitments will shortly be drafted and presented in the Assembly. The Rapporteurs are likely to comment again on the need to revise the Penal Code. This will provide an important opportunity to consider the extent to which Romania has fulfilled its commitments as a member of the Council of Europe.

On 20 June, 1994, Romania ratified the European Convention for the Protection of Human Rights. The Romanian Government has accepted articles 25 and 46 of the Convention (pertaining to the right of individual petition and to the jurisdiction of the Court). Any group, organisation or association claiming to be a victim of a violation of the rights guaranteed by the Convention and/or its caselaw can thus submit complaints to the Commission of Human Rights and eventually to the Court of Human Rights.

You may rest assured that the Secretary General of the Council of Europe, together with the Parliamentary Assembly and the Committee of Ministers, will make every effort to ensure that the high standards of this Organisation are maintained, and that every appropriate opportunity is also taken to discuss outstanding matters with the diplomatic, parliamentary and other representatives of the member states and organisations concerned.

Remarks to Euroletter # 39

by Kurt Krickler, HOSI Wien

Law Reform in Austria Postponed

The Austrian Parliament reconvened on January 15, 1996 after the December 1995 general elections which did not bring much change in the political powers: The right wing (christian-democratic and ultra-right freedom party) lost only one of their seats and continue to have a majority in Parliament (93 of 183 seats). It is very likely that there will soon be formed again a coalition government between Socialdemocrats and Christian-Democrats. It will be the fourth coalition between these two parties since 1986 - in all these years, the conservative coalition partner has vetoed and blocked the repeal of the three anti-gay and anti-lesbian provisions in the Austrian penal code (articles 209, 220 and 221). We are afraid they will continue to do so also in the new government. Anyway, on this 15 January, the very first day of the new parliamentary session, the Socialdemocrats, the Greens and the Liberals, holding 90 seats now, have introduced new bills to repeal the three laws.

On 31 January 1996, the Parliament voted a motion fixing the 1 November 1996 as the deadline for putting the vote upon the proposed bills on the Parliament's agenda. By this date, the decision process, officially initiated by an expert hearing in a sub-committee of the Parliament's commission on legal affairs on 10 October 1995, should be finished. In that hearing, by the way, HOSI Wien president Waltraud Riegler was one of the 13 experts who were

invited by the Parliament to be heard. It was a premiere in Austrian parliamentarism: For the first time in history, an openly lesbian woman and representative of the lesbian and gay movement was heard in a Parliamentary committee on law reform plans!

Although Parliament has agreed to vote upon the bills by 1 November 1996, this, however, does not say anything yet about the result of this vote. Due to the right wing majority in Parliament, the bills could also be rejected. The Austrian gay and lesbian movement, therefore, has decided to allow the Parliament only 100 days to repeal the three law provisions, as Guenter Strobl reported in Euroletter # 39. If these laws still exist in mid-April, HOSI Wien and other gay and lesbian organisations will call for strong international protests including a boycott on Austrian goods and tourism. We hope you will respond to this call, details will be announced at the end of April/beginning of May 1996.

The gay, lesbian and transgender parade on 29 June 1996 will, of course, not be the first in Vienna, as Guenter reported in Euroletter # 39, because there have been Christopher Street Day parades in Vienna before, e. g., in 1984, 1986, 1989, 1991, and 1993.

Free movement of people within the EU - new group established

By Steffen Jensen

A group at high level has been established by the European Commission. The purpose of the group is to deal with aspects of free movement of people and the chairman of the group is Mme Simone Veil.

ILGA's EU working party has written the following letter to Mme Veil in order to make her aware of the problems lesbians and gay men are facing as far as free movement is concerned.

Dear Mme Veil

The International Lesbian and Gay Association welcomes you as a chairman of the newly established group on the free movement of persons.

We would like to draw your attention to the lack of free movement within the European Union for gay men and lesbians.

The idea of a borderless Europe where you can go wherever you want to live and work, is a beautiful one, but in the practical world the free movement is

limited by many things: language, culture, money, family relations etc.

One of the most moveable groups of people in fact is gay men - so why claim that homosexuals do not have the same possibilities of free movement as other groups?

It is correct that gay men moves around a lot. This is probably caused by the fact that many gay men do not have stable family relations and/or social networks - yet. But we think this is rapidly changing as the social acceptance and visibility of homosexuals is increasing. It is much easier to establish a homosexual family when there is less pressure from the surroundings and when you do not have to hide.

What are the obstacles for lesbians and gay men to our free movement? It is obvious that as long as some member states do discriminate us we cannot move around and enjoy the same rights as other citizens.

For instance, a Danish or Swedish registered couple cannot move to another EU member state and obtain the same rights as a married couple - as they can in Denmark and Sweden. Even though there is a provision of bringing a spouse with you if you as an EU citizen go to another EU country to have a job, your same sex spouse is not in general permitted to stay in the country. Apart from inter Danish-Swedish relations we know only of one positive exception to this: A Danish lesbian who got a job in the Netherlands, was allowed to bring her partner.

When formally registered spouses cannot be brought, then of course other same sex partners can either. This is a main obstacle for the free movement of gay people.

One of the basic elements of society in all the member states is the family. And the family is traditionally considered as man, woman and children. Any other grouping of people living together are some places seen as a threat against the concept of family and against society itself.

We think, that if full equality shall be obtained and gays and lesbians be respected and considered as citizens of the society, it is important that the concept of family is challenged. A new definition of the family must be introduced, so that also the homosexual family consisting of man and man or woman and woman with or without children is considered a family with all the implementations of e.g. free movement.

It is essential that we not only obtain legal recognition of the homosexual family, but also a social and cultural recognition of our families.

Not even within the EU institutions homosexual families are accepted. A Danish registered couple - of which one is an employee of the EU - has been denied the same salary provisions as married couples.

A first and simple demand to the EU must be that partnerships are recognized not only within the EU institutions but also in other member states. In the Roth resolution from February 1994 the European Parliament has included such a recommendation and now we are waiting for the Commission to back it.

The EU must recognize that about 10 % of its citizens belong to the homosexual minority and act accordingly in order to obtain the same legal, social and cultural standards for us as for all other citizens.

As we have been object to discrimination, neglection and marginalising for many years throughout Europe, there are needs and reasons for strong support to the gay and lesbian community.

It is important that lesbian and gay men are visible. And visibility demands personal strength, safe and confident surroundings and empowerment of our selves. We ask the European Community to support our community in order to gain that.

If we want to create a united Europe we must establish the same high standards for all European citizens, we must put an end to discrimination of all kind.

The EU member states must be forced to end all discrimination on the ground of sexual orientation - also in the labour market, to introduce the same age of consent for all people, to recognize homosexual couples on an equal footing with heterosexual couples.

And the EU itself must take a stand on countries - member states and other - that continue to discriminate on the ground of sexual orientation.

Lesbian & gay marriage expected soon in the Netherlands

All three dutch coalition parties will support legalization of gay & lesbian marriage. This became obvious at a meeting organized by RozeLinks in Utrecht today. Members of Parliament Mohammed

Rabbae (GroenLinks = Green Left) and Mieke van de Burg (PvdA = Social Democrats) discussed with the audience the government's proposals for registered partnership. Ms van de Burg explained that she had been in contact with the other two coalition delegations in Parliament, and vice minister Schmitz on this issue. Ms. Schmitz will not propose legislation for gay & lesbian marriage, but is willing to accept such proposals from the Parliament. She will stick to the government's proposal on registered partnership.

Mr. Rabbae said that it is obvious that the GroenLinks delegation, based on the principle of equal rights, will support legalization of gay & lesbian marriage. The support by the social democrats delegation however will not be complete. In a television interview PvdA MP Apostolou reacted on van de Burg's statements. He declared that people have to accept their biological limitations and that marriage is intended for one man and one woman. He will be the only social democrat voting against.

Mr. Rabbae, born in Morocco, also raised the issue of polygamism. He suggested that the Netherlands might recognize muslim marriages of foreign workers who have been invited to the Netherlands in the sixties. These people had to obey dutch law and recognize just one of their spouses.

Children from other wives could also not been recognized. RozeLinks is in favour of legislation that will take into account the wide variety of relationships that exists in dutch society.

Dutch Parliament Favours Gay Marriage

By Bert Schuur

In contrast to the Dutch government's view on gay marriage, MP's of the three parties forming the coalition have said that their factions almost unanimously support the opening up of marriage to gay and lesbian couples. The government's view expressed in the "Nota Leefvormen", drawn up last september by undersecretary for Justice Ms. Schmitz on the matter was that marriage should be reserved for heterosexual couples with a separate registration for gay and unmarried straight couples much to the dismay of gay lobbying groups like "Vrienden van de Gaykrant" and the COC. The proposed registration would give gay couples much the same rights as straight married couples without the right to adopt the reason given being that other countries would stop allowing children to be put up for adoption in Holland. This argument was dismissed by spokespersons for the three parties saying that only a

few countries have said they would stop sending children to Holland for adoption if gays were given the right to adopt.

The factions in the Dutch lower house of the ruling Social-Democrats (PvdA), Liberals (VVD) and Social-Liberals (D'66) say that it is in the interest of the child to have clear legal relations between the people that raise it and this is not served by creating exceptions for different kinds of relationships, an issue raised by gay lobbyists. In the government's view the lesbian lover of a woman with a child would have no special rights regarding the child even though she may be very much involved in its upbringing. "The argument that a Dutch gay marriage would not be recognised in other countries is no reason that Holland should withhold them rights as well, as this would mean copying discriminating laws from other countries."

One of the MP's opposing gay marriage, social democrat Mr. Apostolou said he found the idea of gays getting married ridiculous and that "Gays should accept that their relationships are more limited than heterosexual relationships."

Ms. Schmitz, who last september tried in vain to convince her colleagues in cabinet to open up marriage to gay couples said that she would gladly try again but also said that there were emotional sides to the discussion for many of her colleagues.

MP's Van der Burg (PvdA), Dittrich (openly gay MP for D'66) and van der Stoel (VVD) said their faction's plans may be radical but that the first Dutch government in over 80 years without Christian parties meant a great opportunity to push ahead with reforms. "We know that we are being closely watched by MP's from other countries. Holland would be the first country in the world to open up marriage to gays and a change in the law here may well lead to changes in other countries' legislation".

The gay lobbying group "Vrienden van de Gaykrant", the first to start lobbying for the opening up of marriage to gays, in a first reaction was pleased to see their idea was finally adopted by the ruling parties. COC-spokesman Joop van der Linden also showed himself pleased and said that the COC would accept it when a few countries (among these Ethiopia and one or more South-American states) objected to children from these countries being adopted by gay couples, an issue that will have to be dealt with in a separate law on adoption. Van der Linden concluded: "We are really talking about opening up the institute of marriage, no strings attached, no separate

registration, with full rights and obligations that go with it."

UK Minister attacks unmarried heterosexual's to get at lesbian and gay coup-les.

Stonewall Press Release

In response to calls from MPs to include lesbian and gay relationships in the immigration rules the Immigration Minister Timothy Kirkhope stated that the long standing policy of treating unmarried heterosexual couples the same as married couples for immigration purposes has been withdrawn.

A Stonewall amendment to the new Asylum and Immigration Bill, which would have obliged the Secretary of State to make provision for both homosexual and heterosexual common law relationships in the immigration rules, was proposed by Labour MP for Walthamstow, Neil Gerrard and Conservative MP for Brigg and Cleethorpes Michael Brown. The amendment was based on the Australian immigration rules which include a category for "Interdependent partners".

In a cynical move Timothy Kirkhope rejected the amendment stating "The only objective test for the strength of a relationship in an immigration context is marriage. He went on to say that from now on only married couples can apply to remain together. Alan Howarth MP pointed out that Australia, Canada, Denmark, Finland, the Netherlands, Norway, New Zealand and Sweden all manage to assess whether a common-law relationship is genuine or not and have provisions for same-sex relationships in their immigration rules.

Mark Watson, Chair of the Stonewall Immigration Group stated "This is a cynical move by the Home Office to get at us. Since 1988 the Home Office have allowed foreign common-law spouses to remain in the UK. It is only because lesbians and gay men have demanded that they be treated the same that the Home Office is changing that policy. The Minister states that you have to be married but won't let lesbians and gay men marry. What does he expect us to do? We are not going to go away and we refuse to enter into bogus straight marriages - we are here to stay and sooner or later the Minister will have to recognise that fact.

Persecution of Gay Men in Austria

by Helmut Graupner, "Plattform gegen § 209", Vienna

Persecution of Lesbians and Gay Men in Austria has reached a new climax on 8th February when the Vienna Regional Court for Criminal Affairs sentenced a gay men to one year incarceration for allegedly engaging in consensual sex with young men aged 15 to 17. The excessive penalty has been applied in spite of the fact that the defendant had no criminal record in sexual offenses.

The court has not been able to name one single of the adolescents with whom the defendant allegedly had sexual contact. The verdict has been based solely on a personal date-block which has been found in a house-search. In this date-block the defendant noted down the first names and the estimated age of his partners, a minority of which has been under 18.

The prosecution - unbelievably - read: 'same-sex lewdness with a multitude of unknown, no more identifiable adolescents on unknown, no more identifiable places in Austria, Slovakia, Czechia, the Netherlands and Italy'. The counsel applied for an investigation into the identity and the age of the young men. The court rejected.

All what is known are the first names, the youths told the defendant, and the age he estimated. No one knows who the young men are and how old they really have been. The prosecutor does not know, the court does not know, the counsel does not know and even the defendant himself does not know, since he never demanded ID-cards from his partners.

Moreover under the respective countries the alleged contacts would have been prosecutable in Austria only. The defence therefore applied for an investigation into the states, where the contacts should have taken place and into the laws of the respective countries. Rejected: Therefore - even if some of the young men really have been under 18, what nobody knows - nobody neither knows, if the contacts did not take place in a country where they would not bother any public prosecutor anyway.

Since none of the men has been identified in the verdict it is not guaranteed that the defendant can not be sentenced a second time for the same 'offence'. If later on he is charged (again) for sexual contact in the same time period with a (may be then known) young men he will not be able to defend himself. He could not argue that he has been sentenced for contact with this young man already since he will not be able to name the adolescents he has been sentenced for. So the defendant will be sentenced a second time for the same young men. An open violation of one of the

fundamental principles of a fair criminal trial: "no bis in idem".

It is not the first time that such a judgement - inconsistent with a fair trial - has been passed by Austrian courts in enforcing Art. 209 Criminal Code. All in all more than 60 criminal investigations are instigated and more than 25 people are sentenced each year under this law, which punishes sexual relation. between men over 19 and adolescents between 14 and 17 with imprisonment from 6 months to five years. For lesbians and heterosexuals the age limit is fixed at 14 (Art. 206, 207 CC)

In October 1995 the Judicial Committee of the Austrian Parliament heard 13 experts on Art. 209 CC and the two other anti-homosexual laws ("Advertisement for Same-Sex Lewdness", Art. 220 CC; "Associations Promoting Same-Sex-Lewdness", Art. 221 CC). 11 of the experts demanded the immediate abolishment of all three laws. Only one opposed it.

So the time is more than ripe for the repeal of the three anti-homosexual laws. Nevertheless parliament set the time-limit for a vote on the issue as late as November, 1st

In the parliamentary debate the Spokeswoman on Judicial Affairs of the Austrian People's Party (ÖVP), Maria FEKTER, stated that her party opposes the repeal because due to their small number - homosexuals are particularly prone to search adolescent partners, The low age limit for lesbians (14 years) should be raised.

Please support our struggle for equal rights and send letters to the following institutions expressing your outrage over the recent Vienna anti-gay verdict and over the renewed delay in the repeal of the infamous anti-homosexual laws (Art. 209, 220, 221 CC) as well as demanding the Immediate abolishment and - as the least - the guarantee of a fair criminal trial until the day of repeal:

- 1) The Austrian Federal Government, Ballhausplatz 1, A-1014 Vienna, Austria
- 2) Dr. Maria FEKTER, Chairwoman of the Judicial Committee of the Austrian Parliament, Austrian Parliament, Dr. Karl-Renner Ring 1, A-1017 Vienna, Austria
- 3) Dr. Nikolaus MICHALEK, Minister of Justice, Museumsstr. 7, A-1070 Vienna, Austria.

Please send copies of your letters to:

Plattform gegen § 209, c/o Rechtskomitee LAMBDA, Links Wienzeile 102, A-1060 Vienna; Fax: ++431/876 30 61

Citizens' Appeal for the Same-Sex Marriage in Finland

The following appeal has been send to the Finnish prime minister by a number of Finnish citizens:

Mr Paavo Lipponen, Prime Minister
Distinguished Members of the Parliament

We, the signatories to this Appeal would like to express our deep concern about the unwillingness to take up the law bill to ensure a human and legal position of same-sexed couples in our society. Gay men and lesbian women wish to recognize their partnerships not only for the sake of solving a variety of practical problems but also for reasons of human rights and principle.

A partnership of two persons of the same sex is based on the same emotional bonds, mutual love as in the marriages and as well as common-law partnerships of couples of opposite sexes. The legalization of a partnership is a sign of the stable and serious nature of the relationship to the couple themselves, but also to their beloved ones as well as all the social environment, no matter what kind of love - hetero- or homosexual is concerned.

It is common that in a family of two persons of the same sex, there are children who regard the partner for life of their parent as their other guardian. The rights of these children should be protected without delay, as today, in any legal context the so-called social parent is treated as a complete stranger in relationship to the children, e.g. in the case of the death of the biological parent.

We the signatories request that this human rights issue be immediately rectified and as regards the human and legal position of the couples of the same sex rendered on a par with couples of different sexes.

EuroGames 1997 in Paris

The 1997 EuroGames (European Gay & Lesbian Championships) will be organized in Paris (France) from 20-23 June next year. The European Gay & Lesbian Sport Federation made this decision at its annual general assembly, held last weekend in Cologne (Germany).

In the coming months the Paris organizers will work on the latest details. The finals plans and program will be presented during the EuroGames 1996 in Berlin (16-19 May).

More information on the 1996 Berlin EuroGames can be found at the GAYSPORT web-site of the EGLSF. As soon as the final Paris' plans are ready, these will be published here too.

The GAYSPORT-site can be reached at URL:
<http://www.gaysport.org>