

EURO-LETTER

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IN THIS ISSUE

- * *Partnership law in Iceland*
- * *Anti-discrimination law for the private labour market in Denmark*
- * *Action appeal for Austria*
- * *Anti-discrimination proposal in Belgium*
- * *Gay British teenager challenges age of consent*
- * *Top-level EU official meets with ILGA*
- * *A bill on the partnership of same sex couples in Finland*
- * *Dutch parliament demands legislation to open up marriage and adoption for same-sex couples*
- * *EU Court rules transsexual unfairly dismissed*
- * *Answer from the CoE Committee of Ministers on Romania*
- * *Responses to protestletters about Romania*
- * *Slovenia protects gays and lesbians*
- * *News on the partnership law in Spain*
- * *Hungary recognises common-law gay marriage*
- * *Gay marriage proposed in Luxembourg*
- * *Comparative survey on the legal situation for homosexuals in Europe*
- * *Index of Euroletters*

ANTI-DISCRIMINATION LAW FOR THE PRIVATE LABOUR MARKET IN DENMARK

By Steffen Jensen

PARTNERSHIP LAW IN ICELAND

By Steffen Jensen

The Icelandic parliament (Altinget) has June 4th 1996 passed a law on registered partnership for two persons of the same sex. The law comes into force on 'Stonewall-day' June 27th 1996.

The law is built on the same principles as the partnership laws in Denmark, Norway and Sweden, i.e. the same legal rights and responsibilities as marriage except for adoption and insemination rights and the provision that one of the partners shall be citizen of the country in question. But the Icelandic law gives a registered couple right to obtain joint custody of children.

This brings the Icelandic law in front as the most progressive in the world.

[See also Euroletter 41]

The Danish parliament - the Folketing - has today passed the bill introducing anti discrimination clauses on the private labour market in Denmark.

When the law comes into force July 1st it will be

prohibited to discriminate in hiring, promoting and firing on the basis of - among other things - sexual orientation.

An anti discrimination law covering all areas of society except the private labor market has been in force in Denmark for many years, but now this remaining area is also covered.

The Danish National Association for Gays and Lesbian has lobbied for the inclusion of sexual orientation in the bill as it was not the case in the first draft from the minister of labour. But the bill put forward for the Folketing did include sexual orientation and this has not been an object of discussion at all during the parliamentary debate on the bill.

ACTION APPEAL FOR AUSTRIA

By Kurt Krickler

As you may know, the Austrian lesbian and gay movement has been fighting for criminal law reform for more than 15 years. When the new Parliament reconvened after the December 1995 elections on 15 January, 1996, the Austrian movement granted a 100-days- deadline to repeal the anti-homosexual provisions in the penal code (Articles 209, 220 and 221).

This deadline has expired. At an all-Austrian meeting called for by the Austrian Lesbian and Gay Forum (ILSF), which took place in Graz on 20 April 1996, it was decided to go ahead with the plans of internationalizing our national campaign for law reform. In detail, it was decided to ask the international community via ILGA, IGLHRC, internet and the gay/lesbian media to send protest letters to:

1) The president of the Austrian Parliament, Dr. Heinz Fischer (SPÖ) 2) The Austrian Federal Chancellor Dr. Franz Vranitzky (SPÖ) 3) The Leader of the conservative "Volkspartei", Dr. Wolfgang Schuessel, who is also Vice-Chancellor and Foreign Minister (addresses below). It was also decided to ask groups and individuals all over the world to organize other protest actions against Austria. It is up to the phantasy of everybody what kind of actions they may carry out. Here are some proposals:

* rallies, picketings, demonstrations in front of Austrian institutions abroad (tourist offices, Austrian Airlines offices, consulates, embassies)

* organizing press conferences, sending out press

releases, talking to journalists in order to place articles about the anti-homosexual situation in Austria in mainstream media

* call for a boycott of Austrian goods and for not going on holidays to Austria. In this case, people should be invited to communicate their decision not to buy certain Austrian products and not to holiday in Austria by writing to the companies which produce or distribute these products and to official Austrian tourist agencies in order to make them aware of the boycott!

* combination of the latter two ones: calling for a boycott in press conferences

* ask politicians from your national Social-Democratic and Christian-Democratic parties to exert pressure on their Austrian sister parties.

Copies of all letters and reports of actions carried out should be sent to HOSI Wien, Novaragasse 40, A-1020 Vienna. Tel./Fax (also for further information): +43-1-545 13 10; e-mail: hosiwien@via.at.

Background information

In 1971, when the total ban on female and male homosexuality was lifted, four articles were introduced in the criminal code of which three still exist today:

Art. 209 fixes the age of consent for male homosexual relationships at 18 years, while the (general) age of consent (for heterosexuals and lesbians) is 14. The law provides for prison terms of up to five years. In all these 25 years (1971- 94), there have been 885 convictions according to Art. 209, in recent years, about 20 people are convicted every year.

Art. 220 prohibits "propaganda" for, e.g., positive information on homosexuality and bestiality. There have been four convictions according to this law since 1971 but it is not clear whether it was because of homosexuality or bestiality.

Nevertheless, this article is not "dead law" because it is often used to intimidate the lesbian and gay movement and to self-limit AIDS organisations in their prevention efforts. The law is also used indirectly, e.g., confiscations of so-called pornographic products are substantiated by referring to Article 220. Also explicit AIDS leaflets for gay men, imported from the German AIDS-Hilfe for example, have been confiscated

based on Art. 220 in the past.

Art. 221 prohibits to found, recruit or be a member in a gay and lesbian organisation. This law has never been applied, and there are many groups today in Austria. However, in different political situations (right-wing government etc.), Art. 221 could easily be revived and used against the movement.

Indirectly, it is also used today. For instance, just recently the mayor of Dornbirn, a city in Western Austria, refused to rent the city's convention hall to the Austrian Lesbian and Gay Forum which wanted to hold its Annual Congress there in 1997.

Unnecessary to say that Austria has no anti-discrimination laws which would protect lesbians and gays against discriminatory acts such as not renting public premises to gay and lesbian organisations.

The political situation

Since the late 70s, the Austrian gay and lesbian movement has been fighting for the total repeal of these three articles.

Since 1986, Austria has had (four) coalition governments between the Social-Democratic Party (SPÖ) and the conservative christian-democratic Austrian People's Party (ÖVP). The Social-Democrats are together with the Green and the Liberal Parties in favour of this law-reform but they do not have a majority in Parliament. Both in the government and in the Parliament, the ÖVP has been blocking and vetoing any reform attempts all these years. The ÖVP is the only obstacle to law reform.

Model letters

To: Dr. Heinz Fischer, President of the Austrian Parliament Parlament, A-1017 Vienna; Fax: +43-1-40110-2345.

Dear Dr. Fischer,
We[, XXX,] are very concerned and upset that Austria still has severe anti-gay and anti-lesbian provisions in its criminal code. Articles 209, 220 and 221 are not only blatant human rights violations but also in contradiction with Recommendations and Resolutions by the Council of Europe's Parliamentary Assembly (# 924/1981) and the European Parliament (A3-0028/94). Such "medieval" law provisions are a disgrace for any democratic and civilized society, and we therefore urge you to completely repeal these articles as soon as possible.

We know that your party, Oesterreichische Volkspartei, has been blocking reform for years now. Therefore, we appeal to you to look around in

and Resolutions by the Council of Europe's Parliamentary Assembly (# 924/1981) and the European Parliament (A3-0028/94). Such "medieval" law provisions are a disgrace for any democratic and civilized society, and we therefore urge you to completely repeal these articles as soon as possible.

We also ask you to convey copies of this letter to all party leaders in the Austrian Parliament.

Sincerely yours,

to: Federal Chancellor Dr. Franz Vranitzky, Ballhausplatz 2, A-1014 Vienna; Fax: - +43-1-53115-2753

Dear Dr. Vranitzky,

We[, XXX,] are very concerned and upset that Austria still has severe anti-gay and anti-lesbian provisions in its criminal code. Articles 209, 220 and 221 are not only blatant human rights violations but also in contradiction with Recommendations and Resolutions by the Council of Europe's Parliamentary Assembly (# 924/1981) and the European Parliament (A3-0028/94). Such "medieval" law provisions are a disgrace for any democratic and civilized society, and we therefore urge you to completely repeal these articles as soon as possible.

Sincerely yours,

to: Vice-Chancellor Dr. Wolfgang Schuessel, Ballhausplatz 2, A-1014 Vienna; Fax: +43-1-535 45 30. (Schuessel can also be reached under the following e-mail address: oevp@co.at.)

Dear Dr. Schuessel,

We[, XXX,] are very concerned and upset that Austria still has severe anti-gay and anti-lesbian provisions in its criminal code. Articles 209, 220 and 221 are not only blatant human rights violations but also in contradiction with Recommendations and Resolutions by the Council of Europe's Parliamentary Assembly (# 924/1981) and the European Parliament (A3-0028/94). Europe and you will see that Austria is almost the only country in the whole of Europe that has not yet brought its law provisions in line with the general European standard.

Sincerely yours,

Individuals and organisations who plan or carry out additional actions should mention or announce them of course in their letters to the above politicians.

We hope your organisation and/or your newspaper-/magazine will support the Austrian movement in this important struggle by your actions and by publicizing the protest and the boycott appeal.

We thank you very much in advance for your solidarity with HOSI Wien and all gays and lesbians in Austria.

ANTI-DISCRIMINATION PROPOSAL IN BELGIUM

By Alan Reekie

A few days before the Belgian "Gay Pride" celebrations in Brussels on 18th May, where some 3000 lesbians, gay men and bisexuals from all over Belgium and abroad joined in a spectacular procession through the city centre, as BRT Teletext reported on p.106 on Wed. 15 May 1996 (with my comments in []): "No to discrimination against homosexuals"

The parliamentary groups of the Flemish Christian Social and Socialist Parties [within Belgium's governing coalition] have tabled a Bill intended to outlaw discrimination on the basis of sexual orientation.

The aim is to do something about discrimination against people on the grounds of their sex or on the ground that they are gay or lesbian.

Discrimination can take various forms. To refuse to rent a house to somebody, for example. And discrimination in the workplace is also common.

The penalties would be the same as those applicable under the law of 1981 against discrimination on grounds of race.

The Bill does not address the issues of gay marriage
Euan Sutherland, 19, will hear on Tuesday whether the court will accept the case which could force Britain to lower the age limit for gay sex from 18 to 16, bringing it into line with heterosexuals.

"We think we've got a pretty strong case. There's no justification for this discrimination," Sutherland's lawyer, Stephen Grosz, said on Saturday. Britain's parliament voted in 1994 to lower the homosexual age of consent from 21

or registered civil partnerships.

And a news-item in the French-language newspaper "Le Soir" began:

"Les homosexuels? Des citoyens comme les autres" (Homosexuals? Citizens like everybody else, in "Le Soir", 17 May 1996, p. 15, by Christian Laporte).

Revolution in the Flemish Christian Social Party: an anti-discrimination Bill.

"A teacher is sacked because he is homosexual. The company health benefit plan that the X company has organised for its employees covers their partners only if they are of the opposite sex. The manager of a cafe refuses to allow a lesbian group to hire its meeting-room. Public opinion has evolved; homosexuality is no longer thought to be a sign of decadence or abnormality, but real equality has not yet been achieved. This is the issue at the root of several Parliamentary Bills for the recognition of civil partnership contracts. Attitudes are changing, but in the meanwhile there ought to be provisions to eliminate the various types of discrimination that affect those who experience human love differently. That is the aim of the bill proposed jointly by the MPs Luc Willems of the Flemish Christian Social Party (CVP) and Renaat Landuyt of the Flemish Socialist Party (SP)...."

The Bill was the subject of several other reports in the Belgian media (particularly in Flemish), and it is now clearly on the political agenda. Watch this space (or the BRT TV teletext pages reserved for GLB news: 762 and 763) for news of further developments.

GAY BRITISH TEENAGER CHALLENGES AGE OF CONSENT

By REUTERS, May 18, 1996

LONDON - A gay British teenager has asked the European Court of Human Rights to intervene in a challenge over the age of consent for sex between homosexuals.

to 18. A move to equalise it with the heterosexual age of consent at 16 was narrowly defeated.

Gay lovers who are under 18 currently risk a jail sentence of two years, although prosecutions for consenting behaviour are rare.

Sutherland claims the law breaches the European Convention on Human Rights by discriminating against him because he is gay and by failing to

respect his right to a private life.

“It's normal for a 19-year-old bloke to be going out with a 17-year-old girl. If I was doing that (with another male) it would be illegal. Both of us would be breaking the law,” he told reporters. Britain's Home Office (interior ministry) said it would contest the case vigorously. “We don't consider that it contravenes the convention,” a spokesman said.

TOP-LEVEL EU OFFICIAL MEETS WITH ILGA

By Andy Quan

For the first time, the Vice-Chairman of the Commission of the European Union, Manuel Marin, meets with the International Lesbian and Gay Association (ILGA).

May 7th, the Vice-Chairman of the Commission of the European Union, Mr. Manuel Marin, met for the first time with the Secretary-General of the International Lesbian and Gay Association (ILGA), Jordi Petit. Created 18 years ago, ILGA includes individual members and up to 300 homosexual organizations from 75 countries from all over the world.

Jordi Petit told the Vice-Chairman of the Commission about ILGA's accomplishments in recent years and underlined the need to promote equal rights for lesbians and gays as a part of the struggle for global human rights. Moreover, the representative of ILGA acknowledged the support provided by the EU to the freedom of sexual orientation, which was defended by the Ministers for social affairs of Spain and the Deputy Prime Minister of Sweden at the United Nations World Conference for Women in Beijing.

However, Jordi Petit expressed ILGA's concern at the situation of human rights and AIDS education and prevention among lesbians and gays in Latin America. On this continent, some countries such as Nicaragua, Ecuador and Chile still criminalize homosexuality. ILGA also strongly stated its opposition to mandatory HIV/AIDS testing in the Army in Argentina. Lastly, Petit expressed concern for the Intergovernmental Conference and emphasized the need to include a provision prohibiting discrimination based on sex, ethnicity, religion or sexual orientation in the new EU treaty.

The Vice-Chairman of EU promised to take into account ILGA's proposals on human rights and AIDS prevention. Jordi Petit commented, "this

meeting was a good recognition of ILGA's work, and shows our advances in the field of human rights. I was fully satisfied with the meeting.

A BILL ON THE PARTNERSHIP OF SAME SEX COUPLES IN FINLAND

By Hannele Lehtikuusi

The law bill suggests that two persons of the same sex could form a (legally binding) partnership. The regulations on the conditions of forming and dissolving such a partnership would correspond to those regulating marriage with a few exceptions. However, such a partnership would not mean marriage in its traditional sense. The bill was submitted to the Parliament on 28 May 1996.

The bill does not suggest adoption or joint custody in a same sex partnership. Church wedding would remain a prerogative of the church enjoying autonomous decision-making. The same sex partnerships would not be confirmed in a church wedding.

The judicial impact of a same sex partnership would otherwise correspond to contracting a marriage. According to the bill, in matters, such as family or inheritance the gay and lesbian couples in a partnership would be entitled to ensure a fair division of property at an end of a partnership.

The authors of the bill feel that the right of persons of the same sex to enter a (legally binding) partnership is a matter of equality. The new regulations on basic rights as written in the Constitution stipulate that no one must be subject to different treatment on the basis of one's sex, age, origin, language, religion, conviction, opinion, health, disability or any other reason pertaining to the person without an acceptable ground.

A person's sexual orientation is to the highest extent such a personal ground on the basis of which discrimination is prohibited.

In 1995, there were in Finland over 2000 paragraphs in over 200 laws which determined rights and responsibilities of married or common law couples. This situation discriminates gay and lesbian citizens without acceptable grounds.

Three Nordic countries, viz. Sweden, Norway and Denmark have already enacted laws on (legally binding) same sex partnerships. The Parliament of the Republic of Iceland is presently processing a corresponding law bill submitted by the Cabinet [has been passed, ed.]. A central issue in the

Scandinavian legislation is that the laws concerning the same sex partnership are not included in the marriage legislation of these countries. The law bill we have now submitted corresponds to the Nordic models to a great extent.

The first signatory to the bill was Ms Outi Ojala, MP (Leftist Alliance) and the bill has been signed by 45 MPs representing 7 fractions (Social Democrats 16, Left-Wing Alliance 11, Swedish People's Party 5, the Greens 8, the Young Finns 2, the National Coalition Party 2 and the Left Group 1).

(See also EuroLetter 41; the Finnish primeminister has at a later point in time also signed the bill).

DUTCH PARLIAMENT DEMANDS LEGISLATION TO OPEN UP MARRIAGE AND ADOPTION FOR SAME-SEX COUPLES

by Kees Waaldijk (jfencw@law.LeidenUniv.NL)

ILGA's Euroletter nr. 41 reported on the resolutions of the Dutch Parliament on same-sex marriage and same-sex adoption. Unfortunately reporting was not completely accurate. Hein Verkerk referred to only one of the two resolutions on adoption. And he provided (rough) translations of resolution-texts that had been replaced by slightly different versions before voting took place. After a brief outline of the present situation, I will here give translations of all three resolutions that were adopted in the end. I am sorry that I have been so slow in informing you about the details of this remarkable development.

On 16 April 1996 the Lower Chamber of the Dutch Parliament passed a resolution demanding the preparation of a bill to allow same-sex couples to marry. In a separate resolution it demanded a bill to allow same-sex couples to adopt. And in a third it asked the government to look closer into the possibility of adoption of foreign children. Being mere parliamentary resolutions (see my translation of them in the appendix), they have no legal effect.

The Dutch political and legislative process is notoriously slow. The present government is not in favour of same-sex marriage and same-sex adoption. Therefore, these resolutions will probably only lead to an official Commission being appointed. Such a Commission will probably not meet the suggested deadline of August 1997. Since there are to be elections (at the latest) in the Spring of 1998, it is unlikely that the present government will have a chance to translate any

recommendations of the probable Commission into actual bills. So bills to enable same-sex marriage and adoption could normally not be expected before 1999. Such bills would normally not become law before 2001. And all this only, if neither the probable Commission, nor the new government, nor the Senate will decide against it.

In the meantime, Parliament will be debating and probably passing three other bills (all three proposing amendments to the Civil Code).

The first bill (nr. 23761, introduced in June 1994, partly changed in September 1995) introduces registered partnership for same-sex couples and for different-sex couples who can but do not want to marry. Registration will have almost all legal consequences of marriage, with the notable exceptions of the marital status and of any form of parenthood or parental rights and duties.

The second bill (nr. 23714, introduced in May 1994) introduces two forms of parental authority (co-custody and joint custody) for same-sex and different-sex partners who are not both the legal parents of the children they are bringing up. The government has promised to change this bill so as to give more parental rights and duties to co-custodians and joint custodians, without giving them the status of legal parents.

The third bill (nr. 24649, introduced in March 1996) extends the possibility of adoption to unmarried different-sex couples, and to individual persons (until now only married couples can adopt in the Netherlands). Adoption will remain impossible for same-sex couples, although the government has indicated that one partner in a same-sex couple would be eligible for individual adoption of the forster child of the couple, as long as the child would not get two legal parents of the same sex.

All three bills could become law before the end of 1997. Same-sex couples in the Netherlands will then have available almost all rights and duties traditionally attached to marriage and/or parenthood. It will be at least some years into the next century before they will also be eligible for the legal status of being married and the legal status of both being the legal parents of their children.

Resolution on Same-sex Marriage

Dutch Parliament (Lower Chamber), Parliamentary Papers 1995/96, nr. 22700/18 (replacing 22700/9);

proposed by Ms Van der Burg (labour) and Mr Dittrich (democrats); adopted on 16 April 1996 (81 votes in favour, 60 against; see Parliamentary Debates 1995/96, p. 4883-4884)

The Chamber,

having heard the debate,

noting that often in our society two people of different sexes and of the same sex want to enter into a lasting and committed relationship;

noting furthermore that according to the Civil Code the concluding of a civil marriage is permitted to two people of different sexes;

being of the opinion that in line with the General Equal Treatment Act there is no objective justification for the marriage prohibition for same-sex couples;

resolves, that the legal marriage prohibition for two people of the same sex be lifted;

requests the government to embark as soon as possible on the preparation of legislation to this effect, taking into account the international aspects, especially in a European context;

and also requests the government, because of the width of substance of the aforementioned preparation, to appoint a non-departmental commission in which different relevant disciplines will be represented, and to instruct it to complete a pre-draft of a bill on this matter before 1 August 1997;

and resumes the work of the day.

Resolution on Adoption by Same-sex Couples

Dutch Parliament (Lower Chamber), Parliamentary Papers 1995/96, nr. 22700/14; proposed by Mr Dittrich (democrats) and Ms Van der Burg (labour); adopted on 16 April 1996 (83 votes in favour, 58 against; see Parliamentary Debates 1995/96, also requests the government to list the advantages and disadvantages of adoption of foreign children by one person and by homosexual couples, with a view to possible adjustments to the Act on the Admission of Foreign Foster Children;

and resumes the work of the day.

EU COURT RULES TRANSEXUAL UNFAIRLY DISMISSED

p. 4884)

The Chamber,

having heard the debate,

noting that there is a social need for adequate legal protection of children who are being brought up by two people of the same sex;

considering that it is in the evident interest of the child that these couples have the possibility of adoption, provided that they meet the other conditions laid down for adoption;

resolves, that in the Civil Code adoption by two persons of the same sex and by two persons of different sexes as well as adoption by one person be permitted, and requests the government to prepare a bill to this effect;

and resumes the work of the day.

Resolution on Adoption of Foreign Children

Dutch Parliament (Lower Chamber), Parliamentary Papers 1995/96, nr. 22700/19 (replacing nr. 22700/10); proposed by Ms Van der Burg (labour); adopted on 16 April 1996 (large uncounted majority; see Parliamentary Debates 1995/96, p. 4884)

The Chamber,

having heard the debate,

noting that there is uncertainty about the willingness abroad to consider single persons and same-sex couples as eligible for adoption;

requests the government to try to become informed (or to keep being informed) about the position of adoption countries (and the relevant organisations in those countries) with regard to adoption by one parent and by homosexual couples, so as to be able to assess future adoption possibilities; and

By Alan Reekie

On 1 May 1996 (when few newspapers were published outside the UK), the press announced that the European Court of Justice in Luxembourg (not to be confused with the European Court of Human Rights, in Strasbourg) has ruled that Cornwall College, Redruth, UK, breached the non-discrimination provisions of the European Council's Equal Treatment Directive (1976) when it dismissed a British transsexual, known only as "P.",

in 1992, apparently because he had then become a woman. The Court thus made it clear that the Directive, which requires the EU member-States to prohibit direct or indirect discrimination in employment between men and women on the grounds of their sex alone, also covers cases of discrimination on the grounds that a person has changed sex (except where that person's sex is objectively a necessary condition for their employment). Although this does not, of course, prohibit all forms of discrimination against transsexuals (eg requirements in some EU member-States that the name and sex shown on their ID papers must remain as given at birth, and that they can only marry persons of the opposite sex to that given at birth), it clearly demonstrates the EU's commitment to eliminating arbitrary discrimination.

Perhaps unsurprisingly, several right-wing British newspapers criticised the ruling by arguing that such cases should be decided in purely British courts (where, as may be deduced from the following news item, there are no legal provisions prohibiting arbitrary discrimination against transsexuals).

BTW, the following day (2 May), an Industrial Tribunal in Southampton reserved its decision in the case of a Lisa Grant, a 28-year old railway employee, whose lesbian partner Jill Percy, 36, had been refused travel concessions that would have been available to any heterosexual partner of at least 2 years' standing (whether married or not), despite Lisa's employer's proclaimed commitment in its "equal opportunities policy document" to ending unfair discrimination (including in sexual preferences). On behalf of Lisa and Jill, Cherie Booth QC, the wife of Labour Party Leader Tony Blair, argued that such discrimination is in breach of both the Equal Pay Act and the above-mentioned EU Council Directive. For the railway company, Nicholas Underhill QC claimed that "neither English Law nor European Law prohibited discrimination against homosexuals", and that previous rulings in similar cases had upheld the employer's right to exclude homosexuals from such benefits. The Stonewall Group is contributing to the cost of these proceedings.

ANSWER FROM THE COE COMMITTEE OF MINISTERS ON ROMANIA

I. Written Question No. 364 (26 January 1996, Doc. 7477)

In its Recommendation 924 (1981), the Parliamentary Assembly asked the Committee of Ministers to call upon member states where homosexual acts between consenting adults were subject to prosecution to abolish such laws and practices and apply the same age of consent for homosexual and heterosexual acts alike.

In its Opinion No. 176 (1993) on Romania's request for membership of the Council of Europe, the Parliamentary Assembly asked Romania to amend its legislation so that Article 200 of the Penal Code would no longer consider homosexual relations in private between consenting adults as an offence.

The Romanian Chamber of Representatives has passed a law legalising homosexuality unless it provokes a public scandal, in which case it is punishable with 5 years imprisonment. Under Romanian law the notion of "public scandal" has the meaning of "any act known to more than two persons who disapprove thereof." According to the Bucharest Acceptance Group, a Romanian homosexual association, the legal status of homosexuals has been altered, in appearance only, just to please the Council of Europe. In practice, the plight of homosexuals has not changed and they are still unable to be open in their public or political lives. Moreover, under Romanian law, any form of association or publicity relating to homosexuality is punishable with a long prison sentence.

Mr van der MAELEN,
To ask the Committee of Ministers,

What it intends to do so that Romania will end discrimination against homosexuals and comply with the European Convention on Human Rights which it has signed.

II. Reply from the Committee of Ministers (3 April 1996)

1. The Committee of Ministers has taken note of Written Question No. 364 formulated by the Honourable Member of the Parliamentary Assembly.

2. The Committee of Ministers wishes to point out at the outset that the Bicameral Romanian Parliament has not adopted the Criminal Code reform bill to which Question No. 364 refers. It has been made aware of the fact that the Romanian Government is about to finalise a new Criminal Code reform bill. This revised bill which the

Romanian Government will shortly be putting before Parliament will not treat as a criminal offence homosexual acts in private between consenting adults and its definition of acts punishable as criminal offences will replace the "public scandal" notion - to which the question alludes - by that of "commission in public".

3. It should further be pointed out that in July 1994 the Romanian Constitutional Court ruled unconstitutional Article 200 paragraph 1 of the current Criminal Code, on punishment of homosexual acts. Pending the reform of the legislation in force, all persons concerned now have the right to invoke this decision of the Constitutional Court before the courts of justice. According to the information which the Romanian authorities have given the Committee of Ministers, this has entailed that in practice the provisions of the Criminal Code in the field of homosexuality are no longer applied, no-one having been convicted under the above-mentioned provision since July 1994.

4. Lastly the Committee of Ministers would point out that Romania is a Party to the European Convention of Human Rights since 20 June 1994 and that, under the Romanian Constitution, international human-rights law prevails over the provisions of domestic law. Romania having made the declarations provided for in Articles 25 and 46 of the European Convention on Human Rights, anyone claiming to be the victim of a violation of the Convention, as interpreted by the Court more particularly in the Norris, Dudgeon and Modinos cases, is entitled to lodge a complaint before the organs set up by the Convention.

RESPONSES TO PROTESTLETTERS ABOUT ROMANIA

By Bjoern Skolander

I have received a response to our letter of protest regarding Romania, from Denmark's Minister of Foreign Affairs, Mr Niels Helveg Petersen. Another listmember has received a response from Mr Wolfgang Wittstock-Eberhard, President of the Commission of Human Rights, Religions, and Sincerely,
Niels Helveg Petersen
(Minister of Foreign Affairs, Denmark)

Dear Mr ---,

First let me thank you for the concerned letter you sent me about the criminalisation of

National Minorities, Romania. I have received a letter from Mr Eberhard-Wolfgang Wittstock, where he reacts to the letter of protest he and about 40 other Romanian politicians received, with signatures from members of EuroQueer and other mailing lists. All three responses are included:

Dear Bjoern Skolander,

Thanks for your letter of the 21th April 1996, where you call my attention to the ban on homosexuality in the present Romanian Penal Code Article 200, as well as in the draft law for a new article 200, which has been approved by the Senate, but not yet by the Chamber of Deputies.

The question regarding artikel 200 in the Romanian Penal Code has just been discussed in the Parliamentary Assembly of the Council of Europe. In this discussion the Romanians assured, that the government wanted a change of the Penal Code on this point, but that the decision was in the hand of the Parliament.

Further the Romanians stated, that the Romanian Court of Constitution in July 1994 declared the present article 200, paragraph 1, of the Penal Code being unconstitutional. According to the Romanian authorities this has lead to the fact, that there have been passed no sentences on the basis of article 200, paragraph 1, since July 1994.

The Parliamentary Assembly of the Council of Europe took the opportunity to clarify, that Romania on 20th June 1994 had ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and in this connection has accepted the individual right to appeal, and the Courts binding competence after article 46 regarding violations, that happened after the Convention came into force regarding Romania, e.g. 20 June 1994.

Denmark will continue to monitor the situation closely and as far as possible keep the political pressure upon Romania with the aim to hold the country to its international commitments.

homosexuality. As far as I personally am concerned, I should like to tell you I am in complete agreement with you, and that I shall vote against discrimination against homosexuals when the new debate on the proposed revision of the Penal Code takes place.

However, as you know, it is for the majority to decide whether a bill is adopted or not. Nevertheless, I hope that following the debate, the

Parliament will be able to adopt a Penal Code fully in accordance with internationally recognised Human Rights.

Yours sincerely,

Wittstock Eberhard - Wolfgang
President of the Commission of Human Rights,
Religions, and National Minorities, Romania

Dear Sir,

Thank you for your letter and for your preoccupation concerning the respect of human rights in Romania.

The Chamber of Deputies debates indeed a new attempt of revising of the Romanian Penal Code. But the new provision on homosexuality does not criminalize, at least directly, the consensual and private same-sex relations. It is true, its expression is not the better, but it comprises a progress as against the provision in operation. Thus, according to the new Article 200, only those same-sex relations which take place in public or cause scandal are criminalized.

Instead, your concern regarding the intention of banning the associations of gays and lesbians is, to a certain extent, real. As for me, I do what I can so as to allow the freedom of association for all the persons. I mean that I shall plead in the Chamber of Deputies for to oust this provision.

Yours sincerely,

Eberhard-Wolfgang Wittstock
President

SLOVENIA PROTECTS GAYS AND LESBIANS

By Rex Wockner

Slovenia's new penal code bans discrimination and special rights based on sexual orientation, activists have reported.

Article 141 states, "He who, on the grounds of nationality, race, color, religion, ethnic background, gender, language, political or other conviction, sexual orientation, material wealth, birth, education, social standing, or any other circumstance, deprives a person of any human right or fundamental freedom, acknowledged by the international community or stated in the Constitution or a law, or restricts such right or freedom to a person, or who on the basis of such discrimination grants a

person a special right or privilege, is punished with a fine or prison up to a year."

"[It's] better than nothing," activist Bogdan Lesnik told an Internet mailing list. "It compensates for not including the protection against discrimination on the grounds of sexual orientation in the Constitution, which should have been done in 1991."

In Finland, meanwhile, the latest draft of that nation's proposed new constitution bans anti-gay discrimination. Sexual-orientation-based discrimination is already illegal under the penal code.

Only one nation, South Africa, protects gays constitutionally.

NEWS ON THE PARTNERSHIP LAW IN SPAIN

By Cesar Leston, the Fundacion Triangulo.

What I am sending you now below is the translation of an article which appeared in the Spanish press (El Mundo, June 7th 1996, page 29).

At the end of it, I will add my own comments so you can understand better this news.

Convergencia i Unio says a Partnership Bill will be passed within this legislature. The Catalan Group will support the proposal of other groups or will either negotiate a text with the Partido Popular (PP).

A Partnership Bill will be implemented within this legislature. Convergencia i Unio (CiU) assured yesterday that such is the will of their Parliamentary Group: that partnerships (including lesbian & gay ones) will have their rights recognized in issues such as inheritances, pensions and social security.

Such was the pronouncement made by the CiU MP Carles Campuzano to members of the Fundacion Triangulo por la Igualdad Social de Gays y Lesbianas. Furthermore, he said, CiU would be backing the bills on partnerships made by other parties or else will negotiate a text with the Popular Party. In any case, he said, unmarried couples would have their Law passed within this legislature. CiU's choice is so important, for it stresses their commitment in defense of the equality of citizens, said after the meeting Miguel Angel Sanchez, President of the Fundacion Triangulo.

Triangulo has already met the parliamentary leaders

of the PSOE, IU, ERC and CiU. All of them - Pilar Rahola (ERC), Jesus Caldera (PSOE), Presentacion Irun (IU) and, yesterday, Carles Campuzano (CiU)- have stated their position in favour of a Partnership Bill. If they were to vote together, those four groups would be able to have such Bill passed in Parliament.

Nevertheless, the PP's member and Secretary of State for Social Affairs, Ms Amalia Gomez, has stated that the regulation of partnerships is no priority issue at the moment.

Soon, members of the Fundacion Triangulo will meet representatives of the PP. "We want this law to be the result of a consensus as wide as possible, and we do not think the PP should oppose a law affirming the civil rights when most of the Parliament is in favour, and while other countries in the world are heading in that direction" said Miguel Angel Sanchez.
(End of quote)

Well, I understand all that is a bit fussy unless you know a bit the Spanish political situation. I will try to put it in a more understandable way for the foreign reader:

The Fundacion Triangulo has already held meetings with virtually all the political parties in Parliament but the party currently in office, the Partido Popular or PP, conservative christi an-based. We got in touch with all the parties who responded setting dates for the meetings, but the PP who just failed to respond.

The PP is currently, since last March's elections ousted the PSOE socialists after thirteen years in office, in a minority situation and depends heavily on the support of other parties in Parliament, particularly CiU. The support CiU provides to the PP is crucial. Without it, new elections should be held.

CiU (a Catalan coalition of Christian-Democrats and Social Democrats) has already held in the past strong views in favour of the Partnership bill; thence, the PP had better make their own mind ready to the idea of being left alone in Parliament voting against such Bill. The declarations of CiU's MP quoted in the article leave little room for doubt: The PP had better start a draft of the Bill and Geza Juhasz of the gay group Rainbow told Reuters: "We welcome the fact that parliament passed this law but I don't think this proves that most MPs are more enlightened. The law was ... imposed on parliament by the Constitutional Court."

submit it to voting in Parliament.

Otherwise, they will be supporting whichever other bill irrespective of the party submitting it to Parliament. The other parties quoted in the article are: IU - Izquierda Unida, former Communist Party plus a wide coalition of green and small socialist groups; ERC - Esquerra Republica de Catalunya, radical indepen-dentists with very progressive views on social / lesbigay affairs.

On the other hand, after her arrival in office, the Secretary of State for Social Affairs, Ms Amalia Gomez, did state that the partnership bill was no priority to her, nor to the conservative PP in office: just nice words to conceal their unwillingness to have such bill passed in Parliament.

Nevertheless, their minority in Parliament is too thin to start quarrelling with CiU on the matter (the consensus at a social level which existed at the time my article was published in Euroletter still stands) which is after all no key issue to them. Besides, the Fundacion will soon hold talks with the PP, though this has been said at an unofficial level.

HUNGARY RECOGNISES COMMON-LAW GAY MARRIAGE

By Rex Wockner

Hungary legalized common-law gay marriage May 21. Gay couples who live together and have sex will have all the rights of heterosexual spouses -- including to inheritance and pensions -- but will not be allowed to adopt children.

Parliament voted 207-73 in favor of the change, heeding a March 1995 Constitutional Court ruling that mandated legalization of same-sex common-law marriage within one year.

The court ruling had been completely unexpected and was not the result of any campaigning by gay groups.

"This will help homosexuals to live together in a legal framework," gay activist Laszlo Rusvai told AP. "I hope this ruling will help the further demolition of social prejudices."

The 1995 court ruling declared, "It is arbitrary and contrary to human dignity ... that the law withholds recognition from couples living in an economic and emotional union simply because they are same-sex."

At the same time, the court ruled that formal

marriage is for heterosexual couples only.

"Despite growing acceptance of homosexuality [and] changes in the traditional definition of a family, there is no reason to change the law on [civil] marriages," the justices wrote.

Three other countries -- Denmark/Greenland, Norway and Sweden -- let gays marry via registered-partnership laws that withhold only the rights to church weddings, adoption and artificial-conception services. Iceland is expected to follow shortly [the law has been passed, ed].

Holland's parliament recently urged the government to legalize full gay marriage. And the U.S. state of Hawaii is expected to legalize authentic gay marriage in the next year or so.

Scores of cities in the U.S. and Europe register gay couples but the registrations confer few legal rights. [See also EuroLetter 41]

GAY MARRIAGE PROPOSED IN LUXEMBOURG

By Rex Wockner

Green Party MP Renee Wagener introduced a bill in the Luxembourg parliament May 9 to legalize full gay marriage.

No further information was available at press time.

COMPARATIVE SURVEY OF THE LEGAL SITUATION FOR HOMOSEXUALS IN EUROPE

Country	Ban on homosexuality	Age of consent 1) (if different for heterosexual and homosexuals)	Special provisions	Anti-discrimination clauses	Partnership law
Andorra					
Albania					
Austria		H 14 L 14 G 18	"Promoting" or "encouraging" homosexuality forbidden. L and G organizations prohibited.		
Belarus	Yes 2)				
Belgium					
Bosnia-Herzegovina	Yes				
Bulgaria		H 14 L 18 G 18			
Croatia		H 14 L 14 G 18			
Cyprus		H 16 L 16 G 18			

Czechia					
Denmark				Yes	Registered Partnership
Estonia		?			
Finland		H 16 L 18 G 18	"Promoting" or "encouraging" homosexuality forbidden	Yes	
France				Yes	
Germany					
Greece			Male homosexual prostitution banned		
Hungary		H 14 L 18 G 18			Same-sex common-law marriage
Iceland					Registered Partnership including common custody of children
Ireland				Yes, but only in terms of dismissal in employment	
Italy					
Latvia		?			
Liechtenstein		H 14 L 14 G 18	"Promoting" or "encouraging" homosexuality forbidden. L and G organizations prohibited		
Lithuania		?			
Luxembourg					
Macedonia	Yes				
Malta					
Moldovia		?			
Monaco					
Montenegro					

Norway				Yes, but not covering the private labour market	Registered Partnership
The Netherlands				Yes	
Poland					
Portugal					
Romania	Yes				
Russia		?			
San Marino					
Serbia		H 14 L 14 G 18			
Slovakia					
Slovenia				Yes	
Spain				Yes	
Sweden				Yes, but not covering the private labour market	Registered Partnership
Switzerland					
Turkey					
United Kingdom		H 16 L 16 G 18, Northern Ireland: H 17 L 17 G 18	Schools and municipalities may not promote homosexuality		
Ukraine		?			
Vatican					

Notes:

- 1) H=heterosexuals, L=lesbians, G=gay men.
- 2) It is unclear whether the ban has been lifted or not.

Sources: Comparative Survey of the legal and social situation of homosexuals in Europe (updates version) by Alexander Duda and EuroLetter.

Compiled by EuroLetter, June 1996

Please send corrections and comments to EuroLetter, and indicate source when quoting.

INDEX TO LETTER 1-10, ECLETTER 1 AND EUROLETTER 1-41

This is the full index to the EuroLetter. We have collected the most important issues from the 52 letters that have been written since LBL in 1991 overtook the task of informing the working parties about EU and COE/OSCE.

The first ten letters are only dealing with COE and CSCE. Number 1 from January 91, number 2 February 1991 and number 3 May 1991 and so on up to 10. All these are in the index named L and the number.

One EC-letter was sent out in 1992. It is named EC in the index. The remaining EuroLetters are named with the

number in the index.

EUROPEAN UNION (EU)

Aids	EC, 29, 30, 31, 39	
Antidiscrimination		
campaign	12, 22	
Code of practice	EC, 1, 2	
Committee of regions	26	
ECAS (including seminar)	EC, 1, 12, 15, 17, 19, 28, 35	
EGALITÉ	17, 25, 29	
Employment	29, 32, 35	
EU		
Staff regulations	17, 22, 29, 32	
Structure	20	
Europol	38, 39	
Family	EC, 1, 10, 17, 21, 29,	30
Free movement	40	
Funding	EC, 2, 18, 25, 29, 36,	39
Forum for L&G Rights	EC, 10, 18, 29	
"Homosexuality - a Community Issue"	EC, 1, 6, 7, 10, 12, 13, 29	
Lesbian Visibility	EC, 9, 22, 29	
PHARE-Project	9, 13, 18, 22, 27, 29	
Roth-Report	EC, 1, 2, 5, 7, 10, 12, 16, 22, 23	
Sitges 92	7, 9, 10	
Sitges 94	22, 25, 28, 29	
Social Policy	19	
Test cases	EC, 10, 29	
Working Party		
Structure	12, 25, 26, 29, 31	
Task & members	EC, 7, 10, 12, 18, 19,	29, 30, 31, 36, 38

COUNCIL OF EUROPE (CoE)

Additional protocol to The European Convention on Human Rights	L1, L2, L3, L4, L5, 6, 7, 12, 18	
Aids and hiv	LI, L5, 8	
CoE		
Member states	L2, 11, 21	
Membership application	L1, L4, L5, L6, L7, L10, 1, 7, 10, 12, 13, 14, 17, 16, 19, 20, 21, 22, 23, 31	
Albania	22, 23, 26, 27, 29, 30,	31
Baltic States	16	
Macedonia	41	
Moldovia	32, 34	
Romania	12, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 35, 36, 37, 38, 39, 40	
Country by country		
survey	8, 13, 16, 15, 22, 24, 29, 31, 32, 35	
Cyprus	4, 16, 31	
Finland	36, 39	
Gibraltar	2, 12	
Ireland	1, 7, 12	
Isle of Man	1, 2, 4	
Latvia	41	
Netherlands	30, 33, 36, 41	
Poland	33, 39	

Portugal	41	
Russia	38	
Slovenia	33	
Spain	30, 37	
Family law	18, 20	
ILGA as NGO	L1, L4, 7, 9, 12, 22, 29,	32
ILGA as NGO in UN	15, 18	
Working party		
Task & members	7, 12, 18, 30, 31, 38	
World Conference on		
Human Rights	11, 12, 13	

ORGANISATION ON SECURITY AND COOPERATION IN EUROPE

Conferences

Moscow September 91			
Official conference	L3, L5, LS, L9, L10	ILGA contribution	15
Parallel activities	L3, L5, L7, L8		
ILGA Contribution	L5, L7, L8	Warsaw September-October 93	
Final Document		Official conference	18, 20, 21
		ILGA contribution	19, 21
Oslo November 91		Warsaw November 93	
Official conference	1	Official conference	20
Parallel activities	L8, 1	ILGA contribution	21
ILGA contribution	1		
Helsinki March-June 92		Budapest December 94	
Official conference	3, 6, 7, 8	Official conference	30
Parallel activities	1, 2, 6, 7	ILGA contribution	27, 28, 30
ILGA contribution	L9, L10, 1, 4, 6, 7, 8	NGO	16,21
Final document	7, 8	OSCE structure	29, 31
Warsaw November 92		Parliamentary Assembly	26, 35
Official conference	8, 9, 11	UN Human Rights Vienna	19
ILGA contribution	8, 11	Working Party,	
Warsaw April 93		Task & members	L1, L5, 2, 7, 12, 26,
Official conference	14		31, 38