

EURO-LETTER

No. 48

March 1997

The Euro-Letter is published on behalf of ILGA - The International Lesbian and Gay Association - by The Danish National Association for Gays and Lesbians in cooperation with Gay and Lesbian International Lobby. Editors: Steffen Jensen, Ken Thomassen, Peter Bryld and Lisbeth Andersen

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ILGA-Europe's Action Plan that was supposed to be published in this EuroLetter is not yet finalized, but it will be for EuroLetter 49.

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe and guides to the structure of the European Union, the Council of Europe and The Organisation for Security and Cooperation in Europe can be found on this URL:

<http://www.inet.uni-c.dk/~steff/gilil.htm>

EUROPEAN PARLIAMENT FOR GAY AND LESBIAN RIGHTS

By Egalité

The EP voted February 20th by a clear majority of 114 to adopt a series of amendments to draft EU legislation which, if adopted by the Council of the European Union, would guarantee equal treatment to gays and lesbians who are employed by the EU's institutions.

On the basis of a report written by Swedish Green MEP Malou Lindholm, the Parliament decided to ask the Commission and the Council to change the Staff Regulations (the terms and conditions of employees of the EU) to include a general non-discrimination clause and, in particular, to allow non-married cohabiting couples - including same sex couples - to register their partnerships with the EU and receive treatment similar to that extended to married couples.

The measures are just one part of a wider package designed to eliminate discrimination in the EU institutions against women, members of ethnic minorities and lesbians and gays on their staff. Under the package, the institutions would be required to monitor more closely the status of women and ethnic minorities and to take positive actions to ensure that the EU's institutions become more representative of the population as a whole. In addition, they will be required to extend "marital" benefits to staff who have registered partnerships in their own country (e.g. Sweden and Denmark) and allow other staff to register their partnerships with their employer.

This step was welcomed by Marion Oprel and Roy Dickinson Co-Presidents of EGALITE, the 350 strong group of lesbians and gays working in the EU institutions. "The European Parliament has shown that it is determined to take account of the realities of modern society and to adopt modern employment rules in line with many private and public sector employers elsewhere."

But the package really is just a first step in two ways. At this stage it only affects employees of the EU institutions, such as the European Commission and the European Parliament. Similar legislation at the European level which would cover all workers in the Union is still some way away.

And even these measures still have several hurdles to overcome before they become law. First they must be adopted by the European Commission. Although the Brussels executive - like the EP - already registers its employees' non-married partnerships for more or less symbolic reasons, it seems unwilling to consider extending any real benefits to these people in line with

the Parliament's demands. The Commissioner responsible, the Finn Erkki Liikanen, concedes that gays and lesbians have a right to be free from discrimination, but thinks that it is the job of the Council to translate this into concrete measures.

The Catch-22 here is that the Council needs a proposal from Mr Liikanen before it can act. "Convincing the Commissioner to have the courage of his stated convictions may not be easy," said Marion Oprel. "The Commissioners and ministers cannot simply ignore the unequivocal support for lesbian and gay rights given by the EU's one democratically elected body. We have every expectation that the Dutch Presidency of the Council will want to resolve this rapidly, in line with the Netherlands' own draft legislation on partnership rights and the proposed ban on discrimination which is to be included in the revised Maastricht Treaty."

DUTCH EU PRESIDENCY HAS ABOLISH NON-DISCRIMINATION BASED ON SEXUAL ORIENTATION

By Hein Verkerk

The Dutch Presidency has deleted the non-discrimination clause as far as age, disabilities and sexual orientation are concerned. This has been revealed by Nel van Dijk, MEP for the dutch GroenLinks party, on her web site:

<http://www.xs4all.nl/~nelvdijk/nonpapers6.html>

In the Irish proposal the text for a new article in the treaty read :

Non discrimination

New Article 6a in the TEC

"Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to prohibit discrimination based on sex, racial, ethnic or social origin, religious belief, disability, age, or sexual orientation."

Comments

1. With regard to the categories of discrimination against which action could be taken by the Community, further detailed examination by the Conference will be required in order to agree a definitive list and precise definitions.
2. It has been suggested that provision might also be made in the Treaty to take special account of persons with a disability. Such reference could be made, for example, in Article 127 or Article 100a of the TEC.

In the Dutch revision it reads now:

New Article 6a in the TEC

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic [word deleted] origin or religious belief [words deleted].

Comment of the Dutch presidency:

The suggested amendments aim at:

1. making it clear that action under this provision could only be taken within the sphere of Community competence;
2. avoiding any direct effect;
3. and narrowing down the list of categories of discrimination against which actions could be taken.

The Presidency acknowledges the wish of certain delegations to mention explicitly handicap, age, social origin and sexual orientation. However, it can be wondered whether a non discrimination provision would adequately meet those delegations' concerns; the Conference could rather consider whether those concerns wouldn't be better addressed in the context of the existing substantive policy provisions (e.g. social policy, education, vocational training and youth, public health).

The Dutch want to finalize a last draft for the end of this month So URGENT action is NOW needed. The actions should target at least the Dutch presidency They run a web site on:

<http://hermes.bz.minbuza.nl/europe97/index.html>

Ministry of Foreign Affairs

Minister: H.A.F.M.O. van Mierlo

State Secretary: M. Patijn Mail Address: P.O. Box 20061 2500 EB Den Haag

Main switchboard: +31 70 348 6486

Chief press officer: B.H. Hiensch Europe Press Officer: F.F.M. Kemperman Telephone: +31 70 348 6331

The State Secretary responsible for gay and lesbian emancipation is:

State Secretary: Erika.G. Terpstra

Main switchboard: +31 70 340 7911 Chief press officer: I.E. van Geest-Jacobs Europe Press Officer: B. Bruggink Telephone: 31 70 340 6001 Europa informatie

You also may address the Dutch Embassies in the European Capitals: and of course your own governments and the national parliaments.

Before it was known that the Dutch presidency had dropped age, disabilities and sexual orientation the COC send a letter to their government.

Here is it's text translated into English, you might adapt it and use it as a basis for your actions:

To the Minister of Foreign Affairs of the Netherlands

Mr. H.A.F.M.O. van Mierlo

P.O Box 20061

2500 EB Den Hag

February 25, 1997

regards: revision of the Treaty of the European Union.

Dear Mr. Van Mierlo,

The board of the Dutch Association for Integration of Homosexuality COC, is closely following the developments in the Intergovernmental Conference for the revision of the Treaty of the European Union, that will be finalized under your Presidency.

We are aware of the big problems that play a role in the revision , but we do want to ask your attention for an aspect that has caught our special interest: the insertion of a non- discrimination paragraph, explicitly forbidding any discrimination based on sexual orientation.

We write you because we are very alarmed as we heard several statements by Dutch officials and have to conclude that the Dutch government is not really prepared to take a firm stand for the inclusion of sexual orientation as a category of discrimination that deserves counter measures from the European Union.

There is a need for a legal basis in the European Treaties to counter act discrimination and to enable the development of policies in this area.

The European Parliament already pointed this out in February 1994, in its resolution based on the Roth Report on discrimination of lesbian women and gay men.

The European Commission over the last years repeatedly mentioned this lack of legal basis. Requests from the European Parliament or from European society with regards to a policy in the area of gay men and lesbian women, had to be refused by the Commission under reference to the lacking legal basis for such policies .(1)

Firstly a legal basis is needed to strip of existing European Law and regulations from implicitly discriminatory provisions with regards to same sex partners. In referring to "legal spouses" e.g. in transferring quota under the Common Agricultural Policy, same sex partners that have a relationship are indirectly discriminated against. Also in the free movement of persons, in secondary labour conditions and on the European labour market, same sex partnerships over and over cause trouble. As far as the staff of the European Institutions are concerned, the European Commission in the mean time has submitted proposals, that want to stop this .(2)

This need for a legal basis increases, as in several member states on a national, regional and/or local level legislative and regulatory measures are taken, e.g. which allow for greater rights for same sex relationships then there are now. The removal of borders within the Union requires a removal of discrimination based on sexual orientation, namely with regards to employees and self employed people. Such legislation in many cases is a follow up of the lifting of the penalization of homosexual acts. For the rest, we think that penal codes should stay submitted to the principles of subsidiarity. We also think that the envisaged non-discrimination provisions should not replace or supersede arrangements in the international civil law system, which directly or indirectly relate to partnership legislation.

In the preparatory process that preceded the IGC, repeatedly and from various sides, the need was pointed out for a strengthening of the fundamental rights of the European Citizens. There also was made reference to the position of gay men and lesbian women in the European Union.

This was done by the so-called Groupe de Réflexion, presenting its report to the European Council in Madrid, December 5th, 1995.

The European Parliament in its preparatory process in two documents (in 1995 and 1996) with great majorities pressed the point of the inclusion of a non-discrimination clause, explicitly forbidding discrimination based on sexual orientation.(3)

As from the beginning of the negotiations in the framework of the IGC, this resulted in proposals to include a provision in the new treaty. The Italian Presidency at the Florence Council concluded that such a clause should comprise more than just the aspects of race and gender. The Irish Presidency submitted to the Council of Dublin proposals on this aspect, which next to race and gender also added, ethnic and social origin, religious beliefs, disabilities, age and sexual orientation.

Being an interest group of gay men and lesbian women in the Netherlands, we consider this a positive development, a opinion we share with the International Lesbian and Gay Association (ILGA) European Region and our fellow organizations in almost all 15 member states.

In the preparatory process leading up to the IGC, ILGA, on a hearing by the European Parliament with emphasis pleaded for the inclusion of such a clause. The Irish gay and lesbian organization, GLEN in July 1996 insisted with the Irish Presidency to include such a clause in its proposals. And it did.

Over years the defense of gay and lesbian rights have been an integral part of Dutch national and foreign policies. The entire European gay and lesbian movement is right to have great expectations of the Dutch government, which has a great reputation with regards to the defense of gay and lesbian rights in the entire world. So it is disappointing that the State Secretary for European Affairs, Michiel Patijn in November in the First Chamber of Dutch Parliament rejected the inclusion of a non-discrimination clause and that the Minister for Social Affairs and Emancipation Mr Ad Melkert took a reluctant position in the Second Chamber. As the IGC process progresses, it turns out that there is broad support in Europe for inclusion in the Treaty. Austria and Italy, during the Irish presidency submitted proposals that supersede the Irish wording. The European Parliament in its reaction to the Irish proposals indicated that it "Welcomes the insertion of the clause on non-discrimination, but considers that it should be directly applicable and that the role of the European Parliament must be strengthened by means of the co decision procedure in what is an important area of citizens' rights; (4).

We ask you to bring about an active dedication of the Dutch government to include a non-discrimination article in the Treaty of Amsterdam, having direct effect and enabling co-decision of the European Parliament.

Footnotes:

(1) Recently in reply to written questions of a Dutch and Danish MEP, E-22424/96 NL Flynn to van Dijk, October 3 1996 and E 2040/96 Official Journal C385/86 dated 19.12.96 Liikanen to Jensen

(2) see also the Modified Proposal for a regulation (Euratom, ECCS, EC) from the Council to change the Statute of the civil servants of the European Communities etc. with regards to the equal treatment of men and women (COM(96)77 def March 6, 1996

(3) Resolutions based on the Reports of Martin-Bourlanges and Dury- Maij Weggen dated May 17th, March, 13th 1996(A4-0068/96)

(4) Resolution of the European Parliament dated January 16th nr.B-0040/97

FINNISH PARTNERSHIP LEGISLATION PROCEEDS WITH LITTLE STEPS

By Hannele Lehtikuusi

The Committee of Law decided on February 27, that they will take under consideration the Bill on Recognized partnership. Decision was made after hearing Mr Helin from Ministry of Justice. Mr Helin is responsible of the report prepared by the Ministry last October dealing with the legal effects of partnership legislation. Report was requested by the Committee of Law in mid June 1996 and was made public in early October 1996.

Today, February 28, the Committee of law decided to request reports and opinions from the juridical side (University), on the religious side (Lutheran Church) and also from the people that it concerns (SETA, the Finnish National Organization for Sexual Equality). After hearing these comments the Committee of Law will decide on further proceedings.

There should be more news to tell in April when the Committee of Law has received the reports and heard the three commentators. More details from me.

FRENCH PARTNERSHIP BILL INTRODUCED

By Rex Wockner

France's Socialist Party introduced a domestic-partnership bill in the National Assembly Feb. 3.

The measure creates "social-union contracts" to "provide a legal dimension for the union of those women and men who, though unmarried, still jointly plan on having a true, lasting life together," supporters said.

In a communique to the media, the Socialists declared: "Totally preserving the role and the institution of marriage, it takes away no right whatsoever and does not amend rules pertaining to the status of children but it does open up new room for freedom in accordance with the Republic's principles."

SM GAYS LOSE EURO APPEAL IN SPANNER CASE

By Rex Wockner

Three British gays who were imprisoned for engaging in consensual sadomasochistic sex in their own homes lost their appeal to the European Court of Human Rights Feb. 19.

Ruling in the infamous "Operation Spanner" case, the court said: "The state was unquestionably entitled to regulate the infliction of physical harm through the criminal law. The determination of the tolerable level of harm where the victim consented was primarily a matter for the state's authorities."

The history of the case is as follows: In 1987, Manchester, England, police found video tapes of private consensual SM scenes. To avoid prosecution, the owner of the tapes gave the police names of some men into SM. By seizing address books and through alleged intimidation, the police enlarged their investigation, questioning more than 200 men over a period of two years at a cost of \$6 million. Every witness reportedly said that nothing occurred against anyone's wishes, that everyone was an adult over the age of consent, and that no one was hurt. Nonetheless, 42 men were arrested.

Eventually 16 men were charged with assault (tops), aiding and abetting an assault (bottoms), keeping a disorderly house (hosting the activities) and publishing obscene articles (making tapes) -- and British courts declared it illegal to harm another person's body even when the person requests the harm for purposes of sexual gratification. (The video tapes showed such acts as penis torture, rubbing testicles with sandpaper and genital flagellation.)

Eight of the men were sentenced to up to four and one-half years in prison. Some of the sentences were reduced on appeal.

SPANISH GAYS SEEK HELP WITH PARTNERSHIP BILL

By Rex Wockner

Spanish gay leaders are requesting lobbying from abroad in their push for a national gay partnership law.

Draft legislation has received support from all parties in the lower house, the Congress of Deputies, except the ruling Partido Popular, which has yet to state its position.

"A change of attitude can be expected if an adequate degree of pressure is exerted," gay groups said in a press release. "Given the distribution of seats at the Parliament, the vote of the Partido Popular on this issue is crucial. Their voting 'no' would mean the bill would be dismissed."

The party can be lobbied via D. Luis de Grandes Pascual, Grupo Parlamentario Popular, Congreso de

los Diputados, Plaza de las Cortes, 28014 Madrid, Spain. Fax: 011-34-1-420-2516.

PORTUGUESE PENAL CODE

By Alan Reekie

Here are the current Portuguese Penal Code articles, (with an English translation), for your records and possible mention in the next Euro-letter. Goncalo Diniz has kindly corrected my original draft, so I conclude that the remaining uncertainties (eg: what exactly does 'act of sexual relevance' mean?) are in the original. Note that the 'age of criminal responsibility' in Portugal is sixteen years.

Art. 163

Whoever coerces another person to perform or submit to an act of sexual relevance, either with himself or with somebody else, by means of or after violence, serious threats, taking advantage of a state of unconsciousness or inability to resist, shall be punished by imprisonment for between one and eight years.

Art. 165

Sexual abuse of a person unable to resist

1. Whoever performs an act of sexual relevance with a person who is unconscious or unable to resist for any other reason, by taking advantage of that state or inability, shall be punished by imprisonment for between six months and eight years.
2. Whoever performs vaginal intercourse or anal intercourse under the circumstances specified in the previous paragraph shall be punished by imprisonment for between two and ten years.

Art. 172

Sexual abuse of children

1. Whoever performs an act of sexual relevance with or on a child under 14 years old, or induces such a child to perform the said sexual act on himself or another person, shall be punished by imprisonment for between one and eight years.
2. Whoever performs vaginal or anal intercourse with a child under 14 years old shall be punished by imprisonment for between three and ten years.
3. Whoever
 - a) performs an act of an exhibitionist nature in the presence of a child under 14 years old or,
 - b) exposes a child under 14 years old to obscene speech or writing, or to pornographic scenes or objects, or uses that child to produce pornographic photography or moving images or recordings, shall be punished by imprisonment for not more than three years.
4. Whoever performs any of the acts specified in the previous paragraph for lucrative purposes shall be

punished by imprisonment for between 6 months and 3 years.

Art. 173

Sexual abuse of adolescents and dependents

1. Whoever performs a sexual act as defined in Art. 172 No. 1 or 2, or induces a person to perform the said sexual act:
 - on a minor between 14 and 16 years old who has been entrusted to his education or care, or;
 - on a minor between 16 and 18 years old who has been entrusted to his education or care, by means of the abuse of the function he exercises or the position he holds, shall be punished by imprisonment for between 1 and 8 years;
1. Whoever performs a sexual act defined in Art. 172 No. 3 on any of the minor persons specified in this Art. No. 1 and under the conditions specified therein shall be punished by imprisonment for not more than one year.
2. Whoever commits or induces any person to commit any of the offences specified in the previous paragraph for lucrative purposes shall be punished by imprisonment for not more than three years.

Art. 174

Statutory rape

Whoever performs vaginal intercourse with a minor between 14 and 16 years old by taking advantage of their inexperience shall be punished by imprisonment for not more than two years or by a fine of not more than 240 daily units.

Art. 175

Whoever, being adult, performs an act of homosexual relevance with a minor between 14 and 16 years old, or induces such a minor to perform the said act on somebody else, shall be punished by imprisonment for not more than two years or by a fine of not more than 240 daily units.

Art. 176

Prostitution of a minor

1. Whoever incites, encourages, facilitates or exploits prostitution with a minor between 14 and 16 years old, or an act of sexual relevance for that purpose,
2. In the case that violence, serious threats, deceit or fraud is used for that purpose, or it is undertaken as a profession or for lucrative purposes, or takes advantage of any mental incapacity of the victim, or the victim is under 14 years old, the punishment shall be imprisonment for between 2 and 10 years.

NEXT EUROPEAN ILGA CONFERENCE

The next conference of the European Region of ILGA, ILGA-Europe, will take place in London 9 - 13 October 1997. The conference will be arranged by the British union UNISON.

PAPERBACK EDITION OF "SEXUAL ORIENTATION AND HUMAN RIGHTS"

Oxford University Press has now published a paperback edition of "Sexual Orientation and Human Rights: The United States Constitution, the European Convention, and the Canadian Charter" by Robert Wintemute of the School of Law, King's College, University of London. Copies are £15.99 and may be ordered by post (OUP, Saxon Way West, Corby NN18 9ES, GB), telephone (+44-1536-454-534), fax (+44-1536-746-337), or e-mail (orders@oup.co.uk). The ISBN is 0-19-826488-7.

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ROMANIAN PENAL CODE

By Steffen Jensen

The Danish Ministry of Foreign Affairs has got an official translation from the Romanian Ministry of Justice of article 200 of the penal code (it is quoted exactly as written by the Romanian authorities and I am aware of some linguistic and other mistakes):

"Sexual relations between persons of the same sex, if committed in public or causing scandal, are punished with imprisonment from one to 5 years.

The adult who is having sexual relations with a minor of the same sex shall be punished with imprisonment from 2 to 7 years and interdiction of certain rights.

Sexual relations with a person of the same sex who is not able to defend itself or to express its will or if they are undertaken by means of compulsion are punished with imprisonment from 3 to 10 years and interdiction of certain rights.

If the act provided in paragraphs 2 and 3 is causing great harm to physical integrity or health, the punishment shall be imprisonment from 5 to 15 years and interdiction of certain rights and if is causing the

death or suicide of the victim, the punishment shall be imprisonment from 15 to 25 years and interdiction of certain rights.

Enticing or seducing of a person in order to determine sexual relations between persons of the same sex, as well as propaganda or associating or any other acts of proselytism committed with the same purpose are punished with imprisonment from one to 5 years."

SECRET IGC DOCUMENTS PUBLISHED ON THE INTERNET

Press release by Groen Links, 1 March 1997

Nel van Dijk, MEP for GroenLinks (NL), as of today will publish on the Internet a selection of documents drafted by the Dutch EU presidency for the Intergovernmental Conference (IGC).

The location (URL) is <http://www.xs4all.nl/~nelvdijk>
The IGC is preparing the revision of the Treaty on the European Union, to be concluded at the Amsterdam Euro Summit coming June.

The utterly confidential documents are the so-called non-papers, containing the Dutch Presidency's proposals for the revision of the Maastricht treaty. Two documents are published to start with, one on flexibility in the European Union and another on the extension of qualified majority voting in the council of ministers. In the coming days other documents will appear on Nel van Dijk's Internet site.

Nel van Dijk: "Some days ago the media reported that the Dutch presidency had been criticized by other governments for going beyond the limits of openness. On a Internet server of a European research and developments program, CORDIS, (<http://www.cordis.lu/dutch.html>) the Dutch presidency in a special corner had published the minutes of a European working party on R & D. Well even that was too much for some. I cannot trace anymore the document that caused the uproar. Furtively deleted ?

The documents that I publish concern the future of Europe and should be public. Secrecy in Europe, namely on Council level is that strict that the documents even are not entitled to a name, so they call them non-papers.

I think interested citizens are entitled to know where we are heading. And what I read in the documents, is not exactly predicting much for democracy, however if they are accessible anyone can get to know them unfiltered and make up his /her minds.?"