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The ILGA-Europe EU Action Plan and other documents relating to ILGA-Europe can be found at ILGA-Europe's homepage <http://inet.uni2.dk/~steff/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at <http://inet.uni2.dk/~steff/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at <http://inet.uni2.dk/~steff/partner.htm>

## **ASYLUM IN NORWAY FOR LESBIANS AND GAY MEN**

*By Gro Lindstad, LLH*

The Norwegian minister of Justice issued the day before she left government new regulations for asylum policy in Norway.

Norway is now recognising lesbians and gay men as asylum seekers and will grant asylum based on sexual orientation. This is a matter we have worked on for several years and we have had cases from countries within the latest few years.

The new regulations are done in order to comply with UN's convention on refugees. The demand for proving risk of persecution in the home country is now lowered when decisions on asylum are to be taken. The lacking ability of the home country to protect will count in the decision making - not only the lack of will. Threat of persecution not only from government but also from other groups in the society will count.

## **EUROPEAN COMMISSION OF HUMAN RIGHTS FINDS VIOLATION OF EUAN SUTHERLAND'S HUMAN RIGHTS IN THE UNEQUAL AGE OF CONSENT**

*Stonewall Press release*

### **UK GOVERNMENT TO ALLOW FREE VOTE ON AGE OF CONSENT THIS SESSION**

The European Commission on Human Rights, which screens case going to the European Court of Human Rights, today published its report on the case of Euan Sutherland, who is suing over the unequal age of consent.

The government have agreed not to contest the cases while at the same allowing Parliament a free vote on the question of equalising the age of consent. The parties have agreed to take no further steps in the cases before the Commission and the Court while Parliament considers the question. They have agreed the following terms:

- that the government will make available at the earliest opportunity time for a free vote on the reduction of the age of consent to 16.
- that such a vote will take place on a proposed amendment to the present law if an opportunity arises. If this is not possible there will a vote on the principle of reducing the age of consent in the present Parliamentary session. If there is a majority for equality the government will bring forward legislation which will introduce the substan-

tive change in the law by the end of the next parliamentary session at the latest.

Euan Sutherland, 20, and Chris Morris, 18, who is taking a similar case, claim that the unequal age of consent for gay men is a violation of their rights under Article 8, the right to privacy, and Article 14, which provides protection from discrimination.

Following a hearing of Euan Sutherland's case in Strasbourg last May the Commission have decided by a majority of 14 to 4 that

"there is no objective and reasonable justification for the maintenance of a higher minimum age of consent to male homosexual, than to heterosexual, acts and that the application discloses discriminatory treatment in the exercise of the applicant's right to respect for private life under Article 8 of the Convention".

In reaching this decision the Commission concluded:

- that society's claimed entitlement to indicate disapproval of homosexual conduct cannot constitute an objective or reasonable justification for inequality of treatment under the criminal law
- that they were unable to accept that it is a proportionate response to the need for protection to expose to criminal sanctions the young man who it is claimed are in need of protection.
- that current medical opinion, including that of the British Medical Association is to the effect the sexual orientation is fixed for both sexes by the age of 16 and that men aged 16-21 are not in need of special protection.

The Commission's report noted that Parliament had debated the age of consent in 1994 and quotes extensively from the speeches of Michael Howard, the then Home secretary who opposed equalisation and Tony Blair, then the Shadow Home Secretary who supported an equal age of consent arguing that

"It is not at what age we wish young people to have sex. It is whether the criminal law should discriminate between heterosexual and homosexual sex. It is therefore an issue not of age, but of equality. By supporting equality no one is advocating or urging gay sex at 16 any more than those who would maintain the age of consent for heterosexual sex advocate that girls or boys of 16 should have sex. It is simply a question of whether there are grounds for discrimination".

The Commission has referred the case to the European Court of Human Rights for a final ruling.

Welcoming the agreement with the government  
Angela Mason, Director of Stonewall said

"We believe this is an historic step forward. We have always argued that this issue is a question of human rights and we are delighted that the Commission has endorsed this view. A free vote in Parliament will be an opportunity to break with the centuries of discrimination and bigotry and begin the process of accepting gay men and lesbians as equal citizens in society. We would like to pay tribute to Euan Sutherland, Chris Morris and their families and to thank the Home Secretary and his colleagues who have worked for a speedy and just settlement of these claims.

Stephen Grosz of Bindman & Partners, solicitor for Euan Sutherland and Chris Morris said

"The Human Rights Commission has decisively rejected the last Government's attempt to justify discrimination against homosexuals, and we would expect the Court to do the same. We are delighted that the Home Secretary has approached this issues in a constructive and enlightened way with the clear aim of enhancing the protection of gay rights in this country. The object of these applications to Europe will be achieved only when the age of consent has been reduced to 16, and we hope that the government will move quickly to achieve this end."

Over the coming months Stonewall will be organising a campaign to ensure a resounding victory when Parliament votes on the age of consent.

The full text of the Commission's decision can be found through a link from ILGA-Europe's homepage:  
<http://inet.uni2.dk/~steff/ilgaeur.htm>

## **UK TO RECOGNISE SAME-SEX COUPLES IN THE IMMIGRATION RULES**

*By Mark Watson*

From Monday 13 October same-sex couples in long term, committed relationships will be able to apply for residency in the UK

The Immigration Minister, Mike O'Brien, has today announced that he will introduce a policy to allow same-sex couples in long term, committed relationships to stay in the UK. The policy will come into affect as from Monday 13 October.

Mike O'Brien said:

"The position we inherited for common-law and same-sex couples was unsustainable and may have breached human rights law.. We have therefore decided to introduce a concession outside the Rules in

respect of these couples.. Under this concession a couple must show that they have been living together for four years or more and intend to continue to live together permanently. Once admitted they will have to show that the relationship has subsisted for a further year before being granted settlement.'

Applicants will have to show that:

- they have a relationship akin to marriage with a person (of either sex) who is present and settled in the UK (or is here in a category leading to settlement or has been granted asylum);
- any previous marriage (or similar relationship) by either partner has permanently broken down;
- they are legally unable to marry (other than by reason consanguineous relationships or age);
- they have been living together in a stable relationship which has subsisted for four years or more; and they intend to continue to do so permanently;
- they can maintain and accommodate themselves adequately without recourse to public funds.

Mark Watson, Chair of the Stonewall Immigration Group, said today: 'We are very pleased that the Immigration Minister recognises that the policy of the previous government was unjust and unsustainable. We have had a very difficult struggle for the right to live with and love the partner of our choice. This has been won because a number of courageous couples have been prepared to fight for the right to live with the partner of their choice and demanded that their relationships be treated with equal respect.

However we are disappointed that the criteria are so strict and much tighter than for those who can marry. The previous common-law policy required that couples be together for only two years. Many same-sex couples will still face an uncertain future because the Immigration Rules will prevent them developing a relationship for four years.'

## **PARTNERSHIP IN PORTUGAL?**

*By Goncalo Diniz*

As mentioned in a earlier press release, Portugal is moving towards recognition of gay and lesbian couples.

Excluding homosexual couples from adoption rights, this bill is a huge step forward. A revolutionary aspect in this bill is the rights of aliens in a partnership for at least two years (article 7). Foreigners may stay in

the country without the usual bureaucracy if they can prove that they are in a relationship with a Portuguese national for at least two years.

In the last month, three parties proposed individual bills on registered partnerships: The Green Party, The Communist Party and the Socialist Party. The first parliamentary discussion took place on June the 25th, having the Green and Communist Bills failed the vote on the 26th. The Socialist Bill, (which is copied in this mail), will probably only be discussed in parliament after the summer break, and voted upon early next year.

In the past few weeks, this bill has been subject of a national debate over gay and lesbian registered partnerships, on television, newspapers, radio etc.

Associacao ILGA-Portugal is confident that the positive atmosphere surrounding the whole issue will provide a passing of the bill in early 1998. There are, however, still a few socialist MPs reluctant on the vote.

The Socialist government holds a majority in Parliament but will need the other left votes (communist and green) to get this bill passed.

As the national Lesbian and Gay organisation, we initiated a postcard campaign in early June directed at the Prime-minister Antonio Guterres regarding this bill. We are also very happy that the lobbying aimed at the Prime Minister before the Amsterdam IGC bore its fruits with the inclusion of Sexual Orientation in the European Union Treaty.

This is the draft text of the Portuguese Socialist Party Partnership Bill:

#### Article 1 (Aim)

This diploma equalises the rights of members of a family living together to married couples, in what concerns civil, fiscal, social and labour matters, maintaining however the specificities of either situation.

#### Article 2 (Application)

1. The present diploma applies to those who, having attained majority or being emancipated, notoriously live in a situation similar to married couples for at least two years.

2. What is stated in the preceding item does not apply to those who still maintain marriage links or those subjected to marriage impediments specified in the Civil Code.

#### Article 3

(Extension of rights in civil matters)

Partners living together receive the same benefits of protection the married couples do, and rights such as:

a) transmission of lease rights

b) adoption

c) nourishment

d) right of residence

The 85th article of the Urban Lease Regime will be changed as follows:

#### Article 85

(Transmission of lease rights)

1. Lease contract will not end by death of the first tenant. Not even with the death of the person in the following situation: consort not judicially separated or person living in union with the first tenant for at least two years, when the tenant is not married or judicially separated. (...)

#### Article 4

(Adoption)

1. Heterosexual couples living together for a minimum of four years and being at least 25 years old may adopt, according to article 1979 of the Civil Code, if they are not married or judicially separated.

2. Couples living together may also adopt each other's children.

#### Article 5

(Rights related to the end of the union of unmarried couples living together)

1. The members of the union in this situation will be subjected to the same condition of married couples in what concerns nourishment and according to the items stated in the Civil Code.

2. In the situation mentioned above, the court may give lease to each of the members of this union, if required, the family residence if it belongs to the other partner, considering the interests of their children.

#### Article 6

(Rights related to the end of the union due to the death of one of the partners)

1. If one of the members of this union dies, and he is the owner of the family residence, the other member has the right of keeping it if there is not anything against this in a Will.

2. The right of residence ends when the surviving member remarries or begins a new relationship.

#### Article 7

(Legislation related to foreigners and the right of asylum)

In what concerns legislation about entry, exit or expulsion of foreigners from the national territory and the rights to asylum, members of a union have the same rights of consorts when notoriously living together for at least two years.

#### Article 8

(The same fiscal rights)

Registered union of unmarried couples living together, as stated in article 1 of this document, will benefit, in what concerns taxes, of the same rights established for married couples.

#### Article 9

(The same social rights)

In social security matters, registered unions of unmarried partners living together will benefit the same way married couples do.

#### Article 10

(The same rights in working matters)

As for holidays and absences from work, registered unions of unmarried couples living together have the same rights of married couples.

#### Article 11

(Register)

1. Due to what is expressed in articles 11 through 13 of this diploma, the unions above mentioned have to be registered in a book existing in Regional Social Security Centres of the members of the union's area of residence.
2. The above mentioned register depends on the testimony, under oath, attesting the existence of the union.
3. Members of the union may cancel the register anytime, declaring this intention together or individually.
4. It is not possible a new register without cancelling the previous one.

#### Article 12

(Estate of Property)

The estate of property applied to unmarried couples living together is separate estate. However, other options are possible if the members of the union declare their intention in a contract.

#### Article 13

(Regulation)

Government will approve, 90 days after the publication of the present diploma, the necessary legislation to provide its execution.

#### Article 14

(Coming in force)

The present diploma comes in force with the approval of the budget for the economic year of 1998.

The MPs of the Socialist Party.

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1997 will go down in Portuguese history as the year of the gay and lesbian awakening. During the current year, several major events have irreversibly changed the Portuguese lesbian and gay community and given it the largest visibility ever. During 1996 the first gay and lesbian organisation became official, and started immediately working with the community.

In mid 1996 our organisation started political lobbying in order to equalise the age of consent between homosexual and heterosexual sex and to push for a partnership law that would recognise the rights of homosexual couples.

In January 1997, while the country's first (national) gay and lesbian newspaper celebrated its first birthday, the government approved the new penal code contemplating the same age of consent between homo- and heterosexual sex (16 y.o.). On May 4th 1997, roughly 400 people marched down Lisbon's Liberty Avenue remembering those lost to AIDS in the "First AIDS Candlelight Memorial and March". In early June, after more than a year of lobbying and a national campaign directed at the Prime-Minister, the government party announces a domestic partnership bill to recognise the rights of homosexual couples (excluding adoption), sparking a national debate over the issue. The voting on the bill, for political reasons, was postponed till January 1998. Later, on June the 28th, in Lisbon again, Portugal's first Pride Festival was held successfully attracting an attendance of close to 3000 people. In August, the first AIDS awareness and prevention leaflets targeting the gay and lesbian community in Portugal, were published by our organisation with the financial aid of the Health Ministry.

Currently, from September 13th to September 28th, Europe's largest Gay and Lesbian Film Festival (in terms of the number of films shown - 66 different films), the "Lisbon's First Gay and Lesbian Film Festival", is attracting large crowds to theatres, selling-out almost all the screenings in this 15-day festival. The festival is being staged in three different theatres across the city and has the patronage of the Lisbon Mayor. By the end of the film feast, we predict that approximately 5000 people will have attended the event.

Later this year, on October the 20th, Portugal's first Gay and Lesbian Community Centre will open to the public in Lisbon's city centre. The community centre will have one-on-one (as well as telephone) legal, medical and psychological support and counselling; it will be equipped with a coffee-shop, a documentation centre, a library, an Internet access point and a small bookstore. The large space where the community centre will be functioning was given to our organisation by the City Council and a grand opening with the Mayor's presence is already confirmed.

These happenings were unthinkable in Portugal in 1995, when the gay and lesbian community were at a total void. Just two years ago there were no gay and/or lesbian organisations and the concept of community was something we were used to witnessing in other developed countries. The radical and sheer speed with which the homosexual movement has developed over the past 24 months even manages to surprise us. Gay owned and gay-friendly businesses are starting to pop up at a steady rate, increasing the overall quality of life of the community. The Portuguese miracle seems to be well on its way.

#### **FOREIGN SAME-SEX PARTNERS CAN OBTAIN PERMIT TO LIVE IN BELGIUM**

By Alan Reekie

The Federation of Working-Groups on Homosexuality (FWH) reports that:

According to a circular letter now being sent to all municipal authorities in Belgium by the Minister of Internal Affairs, Johan Vande Lanotte, any foreigner who is a partner of a Belgian citizen can now obtain a provisional permit to live in Belgium. It states that any applicant for a residence permit on these grounds must satisfy certain criteria.

In particular, (s)he must show that the relationship is a permanent one. The registered address of both partners must be the same, and they must be bound by a contract for living-together drawn up by a notary public.

The Minister issued the circular letter to make it clear that a Belgian wishing to live with a foreign partner are not obliged to get married to him or her. And thus gay men and lesbians can also live with foreign partners from now on.

According to the FWH, this circular letter is a very welcome concrete response to a concrete problem. However, it does not mean that the case of people who are living together with foreign partners need not

be taken into account in the (future) provisions on registered partnerships.

#### **AMNESTY INTERNATIONAL WORKING AGAINST LAWS PUNISHING SEXUAL RELATIONS BETWEEN MEN IN THE COMMONWEALTH OF INDEPENDENT STATES**

*(Excerpt from working paper distributed to the Amnesty g/l/t network) by Michael Moestrup*

Consenting sex between adult men is still criminalized in most of the countries of the CIS (i. e. Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan). In one of them, the Russian Federation, although consenting same sex activity has been decriminalised in federal law since 1993, one territory within the Federation the Chechen Republic Ichkeriya is reportedly implementing its own separate criminal code which punishes consenting same sex acts between men by caning and even by death. In seven other CIS countries men who have consenting sex with other men in private can be imprisoned.

Amnesty International is lobbying for repeal of the relevant laws. Amnesty International considers that use of "sodomy" laws to imprison men for same sex relations in private is a grave violation of human rights, including the rights to privacy, to freedom from discrimination, freedom of expression and association, protected in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which all the states featured in this report are bound by accession or by their status as successors of the USSR.

AI's position finds support in the decisions of several intergovernmental human rights mechanisms. In March 1994 the Human Rights Committee, created by the ICCPR to oversee states party's adherence to their obligations under the Covenant, found that provisions of the Tasmanian Criminal Code criminalizing consensual homosexual relations in private violated Articles 2 (1) and 17 of the ICCPR.

Article 2 (1) provides that each state party shall ensure to all individuals the "rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Committee noted that, in its view, the prohibition of discrimination on grounds of "sex" referred to in Articles 2 and 26 of the ICCPR "is to be taken as including sexual orientation".

Article 17 provides that none shall be "arbitrarily subject to arbitrary or unlawful interference with his privacy". The Committee considered that consensual sexual activity in private was indisputably covered by the concept of privacy. It rejected both justifications advanced by the Tasmanian authorities for restricting this right with regard to homosexuals.

Criminalization, the Committee found, was not "a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV", nor was it essential to the protection of public morals, in view of the repeal of other similar laws in other Australian jurisdictions and the non enforcement of the laws of Tasmania. The Committee stated that an effective remedy for this violation would be the repeal of the relevant provisions of the Criminal Code. They were repealed in 1997.

Since then, the Human Rights Committee has also criticised legislation in other countries outlawing same sex relations, including the "sodomy" laws of several states of the USA and certain provisions of the Penal Code in Romania.

The European Court of Human Rights has also found that laws criminalizing same sex sexual relations in the United Kingdom (Northern Ireland), the Republic of Ireland and Cyprus violated the right to privacy enshrined in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Northern Ireland and the Republic of Ireland subsequently repealed the relevant legislation. Approval of legislation repealing the "sodomy" provisions in Cyprus is pending at the time of writing.