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Editors: Steffen Jensen, Ken Thomassen, Peter Bryld, Lisbeth Andersen and Soeren Baatrup.

Contact to Euro-Letter:

E-mail: steff@inet.uni2.dk

URL: <http://www.inet.uni2.dk/~steff>

Fax: +45 2036 7856

Tel: +45 3324 6435

Mobile: +45 2033 0840

Mail: c/o Steffen Jensen, Gl. Kongevej 31, 4.th, DK-1610 Copenhagen V, Denmark

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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>

ILGA-EUROPE ACTION PLAN FOLLOW-UP:
**SECOND SERIES OF MEETINGS BETWEEN
EUROPEAN COMMISSION OFFICIALS AND
ILGA-EUROPE**

by Kurt Krickler and Alberto Volpato

In following-up the Action Plan, ILGA-Europe representatives Kurt Krickler and Alberto Volpato, who is also member of Égalité, had five meetings with the following EU officials in Brussels on 2, 3 and 8 December 1997:

- Helena Petiz, member of the cabinet of Commissioner João de Deus Pinheiro, responsible for the relations with the ACP (African, Caribbean and Pacific) Lomé Convention countries and South Africa;
- Alisdair McIntosh, member of the cabinet of Commissioner Sir Leon Brittan, responsible for the relations with North America, Australia, New Zealand, Japan, China, Korea, Hongkong, Macau, and Taiwan;
- Giuseppe Callovi, Head of Unit A3 ("Free movement of persons and citizens' rights") in DG XV, and his assistant Raquel de Vicente, administrator - they received us on behalf of Commissioner Mario Monti (Internal Market and Financial Services);
- William Aitchison and Georgios Zisimatos from the "Craft and Small Enterprises" unit in DG XXIII - they received us on behalf of Commissioner Christos Papoutsis (SMEs, Tourism);
- Brian Owen from DG 1A - he received us on behalf of Daniela Napoli, head of unit "Human rights and democratisation" (cabinet of Commissioner Hans van den Broek).

As in the first series of meetings with EU officials last May (compare "Euro-Letter" # 51, July 1997), the main purpose of the meetings was to introduce the Action Plan and to explain its "horizontal" approach of mainstreaming gay and lesbian concerns in all activities and programmes of the EU where appropriate. The portfolios of the various cabinets, however, vary in relevance for our issue.

With Petiz and McIntosh we discussed mainly human rights issues concerning third countries. We stressed the importance of including sexual orientation based discrimination in the human rights monitoring of third countries. Petiz suggested to inform Francesca Mosca, head of unit 03 in DG VIII dealing with human rights issues, and to propose a meeting between the unit and ILGA-Europe in the future. AIDS could also be an area of activity although the pattern of transmission in the ACP countries is predominantly not gay related.

McIntosh frankly declared that the EU will certainly not bring up the question of homosexuality in their relations with, for instance, the USA. The only country falling in the portfolio of Sir Leon that could be relevant in this context is China. His cabinet is also responsible for human rights projects in China for which there are certain budget lines, including NGOs. He could imagine that lesbian and gay rights projects be funded, however, all projects proposed must receive the approval of the Chinese government. He promised in any case to provide ILGA-Europe with the relevant information and guidelines.

The longest meeting we had was with Mr Callovi and Ms de Vicente who had even prepared a "Note of Analysis" on "The right to reside in a Member State other than the country of origin of a European citizen accompanied by the partner of the same gender, who is not a European citizen". The meeting lasted one and a half hours. The "note" concluded that there is no right under Community law for a right of residence in a Member State for the same-sex partner of an EU citizen living in a member state other than his/her country of origin. The only possibility would be if the Member State concerned recognised to its nationals that right "which currently does not seem to be the case in most Member States".

In the course of our long discussion, Mr Callovi finally conceded that there might be a chance for non-Danish and non-Swedish EU citizens residing in Denmark or Sweden to win a case if they are refused registered partnership in these countries. This could constitute a discrimination against other EU citizens compared to Danish and Swedish nationals. We gave him a copy of ILGA-Europe's leaflet on same-sex partnership legislation in Europe and promised to keep him up-dated on any new developments in this field.

Callovi was also very sceptical concerning further studies about the practice of Member States to grant certain rights to unmarried couples as it was proposed in the Simone Veil report on free movement of persons. He was quite convinced that this legal question is anyhow quite clear: if unmarried couples, both heterosexual and homosexual, should receive the same rights as married couples, the definition of "spouse" simply has to be changed. On the existing legal basis of the Union, there is no way to extend the rights of married couples to unmarried couples.

The meeting in DG XXIII circled around gays and lesbians in the craft and business sector and related clearly to Action Plan idea # 24 ("European gay and lesbian business association network"). Aitchison and Zisimatos were very open and supportive, proposed to meet other people in DG XXIII, responsible for social

economy (foundations, associations), and mentioned links with DG XXII concerning professional training. This DG is currently also running the Third Multiannual Programme for small and medium-sized enterprises (SMEs) in the EU (1997-2000). In Spring 1998, there will be more tenders and calls for proposals under this programme. They provided us with the information and guidelines of this year's calls for proposals. Gay and lesbian businesses or their networks are cordially invited to submit proposals. As of 1998, the programme will also be extended to PHARE and Mediterranean countries. DG XXIII also plans to set up a web-site to diffuse information and create networks, and it might be possible to set up a gay and lesbian sub-site for a gay and lesbian network of the craft and SME sector.

Brian Owen from DG 1A's Human Rights Unit provided us with information on the budget lines concerning human rights project funding. However, he does not see any chance to fund gay and lesbian projects under these budget lines which have clearly stated priorities. These budget lines would have to be amended by the Parliament first. This is, therefore, something ILGA-Europe should take up with commissioner van den Broek and in the EP's Equal Rights for Gays and Lesbians Intergroup.

Kurt Krickler used his stay in Brussels to also meet with Paola Giaculli, co-ordinator of this newly founded "Equal Rights for Gays and Lesbians Intergroup" of the European Parliament, and MEP Outi Ojala, President of this intergroup, to discuss ILGA-Europe's participation in it. A full report will follow after ILGA-Europe's first attendance of the intergroup, e.g., of the 16 December 1997 meeting in Strasbourg.

RÉSUMÉ

The "first round" of Action Plan activities, e.g., introducing the Action Plan to the European Commission, is now successfully completed. ILGA-Europe has received written replies from almost all 20 Commissioners - with the exception of Bangemann, Bonino and de Silguy. ILGA-Europe has had meetings with representatives of all Commissioners relevant for gay and lesbian issues, i.e., Oreja, Marín, Gradin, Santer, Flynn, Cresson, Pinheiro, Sir Leon Brittan, Monti, Papoutsis and van den Broek. A meeting already offered by Commissioner Wulf-Mathies is still to be arranged.

ILGA-Europe, in these meetings, has collected a lot of information about relevant EU programmes and funding possibilities. In the second round of Action Plan activities, it will be important to motivate ILGA members to submit project proposals under the various EU programmes. Commissioner Oreja

has informed ILGA-Europe in a letter that project proposals from ILGA-Europe and its members under the "Building Europe together", "Sport in Europe" and cultural programmes would be "very welcome".

There will be, however, also further Action Plan follow-up activities of the Board of ILGA-Europe which will include intensifying contacts and cooperation with certain DGs in the Commission on specific topics.

ILGA-EUROPE PARTICIPATES IN EUROPEAN PARLIAMENT'S EQUAL RIGHTS FOR GAYS AND LESBIANS INTERGROUP

On 22 October 1997, the intergroup on Equal Rights for Gays and Lesbians had its founding meeting in Strasbourg (cf. Euro-Letter # 55). Four political groups have joined so far: GUE/NGL (Confederal Group of the European United Left/Nordic Green Left), V (The Green Group), PSE (Socialist) and PPE (European People's Party/Christian Democratic Group). That the PPE joined, caused a controversy in this group.

PPE leader Wilfried Martens, former Belgian prime-minister, agreed that his group joined without getting the consent of the group. Austrian conservative MEP Karl Habsburg demanded even an explanation publicly.

In the 19 November 1997 meeting of the intergroup, the official name of the intergroup was decided upon. Outi Ojala (GUE/NGL, Finland) was elected president, Claudia Roth (V, Germany), Richard Howitt (PSE, UK) and Peter Pex (PPE, Netherlands) were elected vice-presidents of the intergroup. ILGA-Europe and *Égalité* were invited to permanently participate in the intergroup. In this session, the intergroup also fixed its aims.

In the 14 December 1997 meeting of the intergroup in Strasbourg, Marion Oprel, president of *Égalité*, and ILGA-Europe board members Maren Wuch and Kurt Krickler gave presentations on their respective organisation. The history and structure, the main activities and achievements of ILGA were presented. Maren and Kurt also introduced the ILGA-Europe Working Programme towards the EU as adopted at the ILGA-Euro Conference in London last October. ILGA-Europe also made a list of proposals for joint activities and actions within the intergroup. The full text of ILGA-Europe's presentation is printed below and is also available on ILGA-Europe's website (<http://inet.uni2.dk/~steff/ilgaeur.htm>)

ILGA-Europe will continue to participate regularly in the intergroup meetings which are scheduled to take place once a month in Strasbourg at least until the summer break. The next meeting will be on 14 January 1998.

ILGA-Europe member groups are cordially invited to cooperate with the intergroup, either directly with the MEPs involved or via ILGA-Europe, and to put forward any suggestions they seem appropriate for the intergroup.

PRESENTATION OF ILGA-EUROPE TO THE EQUAL RIGHTS FOR GAYS AND LESBIAN INTERGROUP OF THE EUROPEAN PARLIAMENT

Strasbourg, 16 December 1997

The International Lesbian and Gay Association, ILGA, was founded almost 20 years ago, in 1978. It is a worldwide federation of national, regional and local organisations and groups dedicated to work for equal rights for lesbians, gay men, bisexuals and/or transgendered people. It is registered as a non-governmental non-profit international association under Belgian law.

ILGA World has today more than 300 member organisations in around 70 countries on all continents. Its structure is still very grass-roots oriented, ILGA is basically a network, and the strength and success of ILGA lie to a large extent in the achievements and progress made by the many member groups. Since its foundation, ILGA World had been holding annual world conferences, since 1995 these conferences are held in two-years intervals.

ILGA has also organised regional conferences, for instance in Asia and Latin America, although on an irregular basis. In Europe, however, there have been annual regional conferences on a regular basis ever since 1980. In the past, in the pre-internet times, these conferences have been the most important opportunity for ILGA activists from around the world to communicate, to exchange information, and to network.

Recently, ILGA has also taken some important steps to become a more streamlined organisation. For that purpose, it may sound a little paradoxical, ILGA started a regionalisation process, at the end of which ILGA will have six regions corresponding grosso modo to the defined continents. All ILGA regions will have independent organisational structures. In December 1996, ILGA-Europe was the first of these regional associations to be founded. ILGA-Europe is

also registered as a non-profit international association under Belgian law. Each ILGA region elects two representatives, one female, one male, to the Executive Board of ILGA World. Gender parity is an important feature in all ILGA business, the Board of ILGA-Europe also consists of equal numbers of women and men. Another important feature is diversity.

During the 19 years of its existence, ILGA has called for and carried out innumerable campaigns for law reform in many countries, campaigns against discrimination and against cases of violation of the human rights of gays and lesbians. ILGA has arranged countless protest actions and amnesty international-style letter writing campaigns.

ILGA has also given impetus and support to gay and lesbian groups in Latin America and in South Africa.

ILGA has played a crucial role in the emergence and development of the first gay and lesbian organisations in the former East-Bloc. ILGA's "Eastern Europe Information Pool", which operated from 1982 to 1990, had lent support to the young movement in Eastern Europe, sometimes even to the irritation of the secret police of these countries, and so the names of ILGA activists for instance ended up in the files of the GDR intelligence service STASI as we have found out after the collapse of the Berlin Wall. ILGA helped also organise ten sub-regional conferences for Eastern Europe in the years 1987 to 1996 to allow the participation of people who could not travel to conferences in the West and to specifically address the problems and needs of gays and lesbians in this part of Europe.

The issue of AIDS has been another focus of ILGA and has always been integral part of ILGA conferences. ILGA has been closely co-operating with the Global Programme on AIDS of the World Health Organization and later with its successor, the joint UN agency to fight AIDS, UNAIDS.

Major successes of ILGA's lobbying on the international level include the deletion of "homosexuality" from the World Health Organization's International Classification of Diseases, and the inclusion, into the mandate of amnesty international, of persons imprisoned solely on the grounds of their sexual orientation.

ILGA has been lobbying many international organisations, such as the Council of Europe, the United Nations, the Organisation for Security and Cooperation in Europe (OSCE), and of course the European Union. ILGA has participated as an NGO in many international conferences, such as the 2nd

UN World Conference on Human Rights in Vienna in 1993 or the 4th UN World Conference on Women in Beijing in 1995, as well as in regional preparatory conferences to these world conferences. ILGA has participated in the so-called Helsinki Process since the Human Dimension Meeting in Moscow in 1991, and successfully lobbied the recognition of non-discrimination based on sexual orientation as an OSCE commitment in the 1993 Implementation Meeting of the OSCE.

ILGA has also successfully lobbied the Council of Europe to demand from candidate members, as a pre-condition for admission, to repeal laws which provide for a total ban on homosexuality which was relevant for membership applicants such as Lithuania, Romania, Albania, Moldova, and Macedonia. This autumn, ILGA was granted consultative status with the Council of Europe.

ILGA and its European members have also lobbied the European Communities and their institutions, especially the Parliament. And we very much appreciate the landmark "Resolution on equal rights for homosexuals and lesbians in the EC" which the Parliament adopted in February 1994. We also appreciate the reiteration of the demands of this resolution in the annual reports and resolutions on the observance of human rights in the EU for 1994 and 1995.

ILGA has also been involved in three projects carried out for the European Commission: In 1993, ILGA, in association with the European University Institute and the European Human Rights Foundation, produced a pioneering report for DG V entitled "Homosexuality: a European Community Issue", a second report researched Lesbian Visibility in the EU member states, and in 1995/96 ILGA carried out a project under the PHARE/TACIS Democracy Programme helping set up gay and lesbian organisations in the three Baltic countries and in St. Petersburg and Moscow.

We also succeeded to get "sexual orientation" included in the new Article 6a of the Amsterdam Treaty.

Even before ILGA-Europe was founded as an independent region one year ago, the lobbying activities towards the European institutions and organisations - EU, Council of Europe, and OSCE - were carried out by a European Working Party composed of several European ILGA members. The know-how, knowledge and skills of this working party are now reassembled in ILGA-Europe's Executive Board who will continue the lobbying work towards all three of these European organisations.

ILGA-EUROPE'S WORKING PROGRAMME TOWARDS THE EUROPEAN UNION

As most of you are aware, ILGA-Europe has adopted an Action Plan towards the European Union. This Action Plan was drafted by Égalité and further elaborated with ILGA-Europe and its members.

This Action Plan is meant to be adopted and implemented by the European Commission. We have used this year to introduce the Action Plan to the various cabinets and to explain its "horizontal" approach which, for us, means mainstreaming the issue so that all cabinets should include and integrate lesbian and gay concerns in their activities and programmes where appropriate. Future budgetlines and funding programmes should also be designed in a way to address gays and lesbians, for instance youth, education, sports, cultural, human rights, scientific, research and other programmes. The human rights of gays and lesbians and the observance and violation thereof should become an integral part of the EU human rights monitoring and reporting on third countries.

We have to say that ILGA-Europe is quite satisfied with the official responses of the Commission to the Action Plan. ILGA-Europe has received replies from all but three commissioners so far, and we had meetings with representatives of all commissioners whose portfolios we consider especially relevant for our demands, e.g., we met with officials in the cabinets of commissioners Oreja, Marín, Gradin, Santer, Flynn, Cresson, Pinheiro, Sir Leon Brittan, Monti, Papoutsis and van den Broek. Another meeting with someone in the cabinet of commissioner Wulf-Mathies has been offered and will be arranged.

Other main topics of ILGA-Europe's lobbying towards the European Union include:

- to work for that the new article 6a of the Treaty of Amsterdam, once ratified by all member states, be translated into concrete action, for example into a general non-discrimination directive;
- to work for the re-definition of the term "legal spouse" in order to recognise partners in same-sex relationships and registered partnerships and to include same-sex partners and their children in the concept and definition of "family" - which also should affect adoption and joint custody of children as well as artificial insemination for lesbians. This is of great importance for the free movement of persons within the EU.

ILGA-Europe has also submitted three project proposals under various programmes, one has been recently approved. It is called "Equality for lesbians

and gay men - a relevant issue in the civil and social dialogue". The project has three main objectives: first to start and intensify communication and contacts with other NGOs which are working in related areas such as human rights in general, women's equality, xenophobia, anti-racism, youth, family issues, or handicap but also trade unions and employers' organisations; second to draw up a report on the existing legal and social situation of lesbians and gays in all member states, and third to promote, between gay and lesbian organisations in the EU, the exchange of experience and information and to disseminate examples of good practice and policies of non-discrimination based on sexual orientation. The mentioned report could also become an important piece of information for the intergroup.

COOPERATION WITH THE INTERGROUP

ILGA-Europe would like to use this opportunity to stress and emphasise its strong commitment to work together with the inter-group, to offer its expertise in the area of human rights for gays and lesbians, to support any initiative to be taken by this inter-group both towards the Commission and on the European Parliament level, and to assist in all activities to be carried out.

In this context, we have also several ideas and proposals for possible initiatives which relate to the issues we have just mentioned:

Article 6a of the Treaty of Amsterdam, which has only the character of a declaration of intent so far, needs to be filled with life, the measures enounced must be put into reality, for instance as a substantial and comprehensive anti-discrimination directive; Monitoring the human rights record of applicant members should also cover sexual orientation based discrimination. The admission of any country that does not achieve a basic standard of non-discrimination towards lesbians and gays must be opposed. We believe that Cyprus for instance, with its total ban on male homosexuality, cannot be seriously considered eligible for membership in the EU. Both the European Court of Human Rights and the United Nations Human Rights Committee have ruled in the past that such a total ban is a violation of the European Human Rights Convention and of the International Covenant on Civil and Political Rights respectively. Cyprus, thus, would persistently breach Article F paragraphs 1 and 2 of the TEU. The same attitude would likewise apply to all third countries which the Union concludes agreements with; The non-recognition of same-sex partners as "spouse" is a severe impediment to the free movement of persons within the Union. This is even more serious for same-sex couples who have registered their partnership in Denmark or Sweden and are

considered quasi married in these countries. As soon as they move to other EU countries, they will only have the status of strangers to each other. This is unacceptable and unworthy for a civilised and humane society. In this field, we see a very urgent need for action;

The intergroup and the Parliament as a whole could question the Commission about their intentions and plans concerning the implementation of the Action Plan proposed by ILGA-Europe;

ILGA-Europe could also feed into the annual reports and resolutions on the observance of human rights in the EU - in the past two years gay and lesbian concerns have been prominently addressed. This should continue;

In order to make it easier for ILGA-Europe and its members to obtain funding for concrete projects, the budgetlines and programme guidelines of the various Directorates-General should be designed in an inclusive way. DG 1A for instance informed us in the meeting with them that their budgetlines specifically address 15 priorities, and since "sexual orientation based discrimination" is not one of these, they cannot fund any human rights projects for gays and lesbians; for such a purpose, the budgetlines would have to be amended, and the Human Rights Sub-Committee of the Parliament would be responsible for that. The intergroup, therefore, could monitor the design of all of the programme guidelines and budgetlines and try to amend them accordingly.

We would like to thank you again for the opportunity to address this intergroup and to cooperate with it, and we are convinced that this cooperation will be very useful and fruitful for both the European Parliament and ILGA-Europe and our common concerns.

ILGA-EUROPE HAS GOT EU FUNDING FOR A HUMAN RIGHTS PROJECT

By Steffen Jensen

The European Commission has granted ILGA-Europe 39.600 ECU covering 60 % of a Human Rights Project in order to start and intensify ILGA-Europe's collaboration with other NGO's and to draw up a report on the situation for lesbians and gay men in the EU member states. See project description on ILGA-Europe's homepage.

PENAL CODE AND HOMOSEXUALITY IN BULGARIA

By Nikolai Zhorov Georgiev

Here I like to clarify the legal situation of homosexuality in Bulgaria. Note: OG = Official Gazette

*PENAL CODE, Division VIII - Debauchery
Article 157*

(1) (OG, issue 28 from 1982)

Whoever commits a sexual intercourse or acts of sexual satisfaction with a person from the same sex with the use of force or intimidation, or uses a position of dependence or supervision, or with a person deprived of ability for self-defence, is punished with imprisonment from 1 to 5 years and with public censure;

(2) (OG, issue 28 from 1982, issue 89 from 1986, issue 62 from 1997)

The same punishment is imposed on the one who commits homosexual acts with a person not completed 16 years of age;

(3) (OG, issue 89 from 1986)

The punishment according (1) is also imposed on a person of age who has committed such homosexual acts with a person not of age or with a person who could not understand the nature and the significance of the deed;

(4) (OG, issue 89 from 1986)

Whoever does homosexual acts in public or in a scandalous way or in a way to lure somebody else into the way of perversion is punished with imprisonment up to 2 years or with correctional labor, and with public censure;

(5) (OG, issue 28 from 1982, issue 89 from 1986)

Whoever commits homosexual acts with the aim to obtain a real estate gain or with such an aim lures somebody else into such acts, and the one who lures somebody else into homosexual acts through giving or promising gain is punished with imprisonment up to 3 years and a fine up to 600 leva, whenever the court may enact a compulsory settlement.

Comments:

1. The (3) has been changed this year(!) from 14 to 16 years. I remember when the MPs voted on the new Penal Code but they probably did not pay so much attention on this single Article. So we are worse off since July 1997 speaking about age of consent for homosexual people.

2. The fine in (5) is rather old. In 1986 it would cost about 300 USD while now it costs exactly 0.60 DEM

BRITAIN TO LIFT GAY BAN IN MILITARY

By Rex Wockner

Britain will move this winter to lift its ban on gays in the military rather than be forced to do so by rulings expected from the European Court of Human Rights and the European Court of Justice.

Proposed legislation reportedly draws on the U.S.' failed 'don't ask, don't tell' policy.

One of the European cases likely will open the floodgates for about 4,000 gays and lesbians who were kicked out of the military since 1978 to sue for damages -- at a cost to the British government of up to \$1.7 billion.

"As well as compensation for loss of pay and pensions, sacked gay personnel will get massive punitive damages for being put under surveillance, arrested, interrogated, imprisoned and humiliated," said gay activist Peter Tatchell of the group OutRage! "For every week the government continues to defy the [European Union] Equal Treatment Directive, the bill grows bigger."

PORTUGAL: PROPOSAL TO (NEARLY) EQUALIZE AGE OF CONSENT FAILED

*by Helmut Graupner, Rechtskomitee LAMBDA
Vienna*

Within the past months the Portuguese government presented to parliament a proposal for a revision of the sexual offences provisions of the Criminal Code.

This proposal among others also contained a revision on the homosexual age of consent.

According to the bill the age of consent (now 14 for HTS and 16 for HS; see Euroletter 55) would have been equalized at 14 but an inequality would have remained in the provisions on "seduction" (of 14 and 15-year old adolescents): seduction to HTS acts would have been criminal only in the case of vaginal, anal or oral copulation (Art. 174 CC) while HS seduction would have been criminal in all cases (also manual sex, petting etc.) (Art. 175 CC).

The Government proposal however did not get a majority in parliament and failed.

KYRGYZSTAN DECRIMINALIZES CONSENTING SAME-SEX RELATIONS

Amnesty International, the International Secretariat reports that the new Criminal Code of Kyrgyzstan which entered into force on 1 January 1998 decriminalizes consenting same-sex relations between adults.

Article 130 of the new criminal code - "violent actions of a sexual nature" - - punishes "homosexual, lesbian or other actions of a sexual nature resorting to the use of force or to the threat of force against the victim or against other individuals or taking advantage of the weakness of the victim" with a prison sentence of between three to eight years.