

EURO-LETTER

No. 57

February 1998

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by Gay and Lesbian International Lobby in co-operation with The Danish National Association for Gays and Lesbians.

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IN THIS ISSUE

- **THE INTERNATIONAL LESBIAN AND GAY ASSOCIATION (ILGA) WAS GRANTED CONSULTATIVE STATUS WITH THE COUNCIL OF EUROPE**
- **NEWS FROM FINLAND**
- **PUBLIC SCANDALS: GAYS AND LESBIANS FACE STATE-CONDONED VIOLENCE AND LEGALIZED ABUSE IN ROMANIA**
- **ROMANIA'S PRESIDENT TO PARDON SOME GAY AND LESBIAN INMATES**
- **AUSTRIA CELEBRATES YEAR OF HUMAN RIGHTS WHILE PERSECUTING GAY MEN**
- **TWO AUSTRIAN CASES PUT TO STRASBOURG**
- **DECRIMINALIZATION IN BELARUS STILL NOT CONFIRMED**
- **EU-CANDIDATES: ALSO HUNGARY TO MONITOR**
- **UK GAYS TO FACE PRISON**
- **DUTCH GOVERNMENT DECIDES AGAINST SAME-SEX MARRIAGE - BUT IN FAVOUR OF ADOPTION BY SAME-SEX COUPLES**
- *Belgium:* **NEW GUIDELINES FROM THE MINISTRY OF INTERNAL AFFAIRS ABOUT DOMESTIC PARTNERSHIP**
- **AGE OF CONSENT AND OTHER INEQUALITIES IN LATVIA**
- *New book:* **SEXUALITY, YOUTH PROTECTION & HUMAN RIGHTS**

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>

THE INTERNATIONAL LESBIAN AND GAY ASSOCIATION (ILGA) WAS GRANTED CONSULTATIVE STATUS WITH THE COUNCIL OF EUROPE

Press release from ILGA-Europe

As of 15 January 1998, ILGA has finally gained consultative status with the Council of Europe. "It took quite some time to achieve this", explains Steffen Jensen, ILGA-Europe board member from Denmark who has been co-ordinating this second application for NGO status.

"ILGA's first application dates back to July 1989, and it was rejected in 1990 because our activities were not directly related to the present work programme of the Council of Europe'. It was only in March 1995 that ILGA submitted a new application. On 15 October 1997, the Secretary-General of the CoE informed the Committee of Ministers and the Parliamentary Assembly of his decision to grant consultative status to ILGA.

Since no objection has been raised by these two organs of the CoE within three months, the decision has become effective from 15 January 1998." In his substantiation, the Secretary-General writes: "The ILGA is an active and representative organisation in its field of competence. It has already established working relations with the Council of Europe. Furthermore, the organisation has a specific contribution to make to any discussion on discrimination generally as well as on more specific issues such as discrimination against people with HIV and AIDS."

"Indeed", explains Steffen Jensen, "ILGA and its member organisations have had working relations since the early days of ILGA. They gave input, for example, to the Voogd report which led to the landmark Recommendation 924 of the Parliamentary Assembly in 1981, and many ILGA members supported lesbian and gay test cases to the European Commission and Court of Human Rights. In 1981, the Court ruled that a total ban on homosexuality constitute a violation of the Convention, and in 1997 the Commission declared unequal age of consent laws for heterosexuals and homosexuals to also be a breach of the Convention.

ILGA's lobbying also influenced the admission policy of the CoE for new members from the former East-bloc. Applicant countries had to agree to adapt their penal codes to certain European standards, including the decriminalisation of homosexual acts between consenting adults. A policy that influenced law reform in Lithuania, Albania, Moldova, Romania, and Macedonia."

ILGA has also lobbied the Parliamentary Assembly for a motion to establish an Additional Protocol to the Convention which would add "sexual orientation" as a non-discrimination category in Article 14.

These efforts, so far, did not turn out successfully. The motion got stuck in the Parliamentary system. "But ILGA's new status will hopefully increase the impact of our lobbying efforts", says Jensen. "We have also contacted the European Commission against Racism and Intolerance (ECRI), a high-profile body set up according to the Plan of Action on Combating Racism, Xenophobia, Anti-Semitism and Intolerance adopted at the First Council of Europe Summit in Vienna in 1993. ECRI also feels that the existing protection in Article 14 is too weak and also has proposed that an additional protocol to provide a wider protection under the Convention be considered."

The consultative status of ILGA will also mean that the organisation will be heard before the Council takes measures in the field relevant to the organisation. Furthermore the CoE has three bodies for co-operating with NGOs: the Plenary Conference of NGOs, the Liaison Committee of NGOs and the Parliamentarians/NGOs joint Committee. ILGA will be invited to be part of all three bodies.

The Council of Europe is an intergovernmental organisation founded in 1949 which today comprises 40 member states (all 45 European countries except from Belarus, Bosnia and Herzegovina, Monaco, the Vatican, and Yugoslavia, e.g., Serbia/Montenegro). In 1953, The Council of Europe established the European Convention on Human Rights and an enforcement machinery whereby states and individuals may refer alleged violations of the Convention to the European Commission and the European Court of Human Rights in Strasbourg. The Council of Europe should not be confused with the European Union or the European Council, the European Court of Human Rights not with the European Court of Justice, the Court of the EU in Luxemburg!

NEWS FROM FINLAND

By Hannele Lehtikuusi

Press release dated 19th of December 1997 informed that the Ministry of Justice nominated Committee (6 members) to deal with the partnership legislation. SETA has its representative in this group, Mr Rainer Hiltunen. The committee should finish their work by the end of 1998.

Discussion on artificial insemination is in the debate in Finland at the moment. The bill is denying rights from the single women and lesbian couples to receive artificial insemination treatments.

Bill has been objected largely in the political field and it is certain that the Minister of Justice has to change the proposal. At the moment most of the clinics have been treating women regardless their sexual orientation and marital status. It is expected that this guideline will win.

Massive renovation of the Penal Code is taking its steps slowly. The committee of Law is now dealing with the next part of it that includes age of consent and deletes finally the (dead letter) piece of legislation that has forbidden to promote homosexuality.

Age of consent will be 15, regardless of the sexual orientation. This part of Penal Code should be passed during this spring.

PUBLIC SCANDALS: GAYS AND LESBIANS FACE STATE-CONDONED VIOLENCE AND LEGALIZED ABUSE IN ROMANIA

Press release from IGLHRC

(Bucharest, January 14) -- Today in Romania, gays and lesbians are routinely denied some of the most basic human rights guaranteed by international law. Despite recent amendments to the criminal code provisions relating to homosexual conduct, gays and lesbians continue to be arrested and convicted if their sexual relations become public knowledge. They face frequent physical abuse and harassment by law enforcement officials, as well as systematic discrimination in many walks of life. In 1996, for example, Gabriel Presnac and Radu Vasiliu were beaten brutally by police and now face five years' imprisonment for kissing and holding hands in a public place. Romanian law not only prohibits private sexual acts between consenting adults of the same sex, but may also be interpreted to punish speech and association that expresses a homosexual identity: in one case, Mariana Cetiner was arrested and now serves a three-year prison term for merely asking another woman to have sexual relations with her.

Human Rights Watch and the International Gay and Lesbian Human Rights Commission thus charged Romania today with sustaining a climate of legalized intolerance toward gays and lesbians. Jeri Laber, senior adviser to Human Rights Watch, and Scott Long, advocacy coordinator of the International Gay and Lesbian Human Rights Commission, presented

the joint report *Public Scandals: Sexual Orientation and Criminal Law in Romania*, at a press conference in Bucharest. "This report documents case after case of detentions, beatings, and harassment directed at gay men and lesbians," stated Mr. Long. "The Romanian government can no longer ignore this issue, they must take action now to stop the abuse".

Article 200 Continues to Punish Homosexuality

A provision dating from the era of dictator Nicolae Ceausescu, Article 200, paragraph 1 of the Romanian penal code punished "sexual relations with a person of the same sex" with one to five years' imprisonment. The Council of Europe, upon admitting Romania in 1993, insisted that the law be repealed. After three years' delay, during which homosexuality became a fiercely contested political issue, the Romanian parliament in 1996 passed a new version of the law, punishing homosexual acts "committed in public, or causing public scandal," with one to five years' imprisonment. New language also criminalized "inciting or encouraging a person to the practice of sexual relations between persons of the same sex, as well as propaganda or association or any act of proselytism," with the same punishment.

The Romanian government presents these new provisions as a liberalization. Clearly, however, they not only preserve but expand the pretexts under which persons suspected of homosexuality can be arrested and convicted. The broad reference to "public scandal" ensures that private acts need only become known to instigate legal reprisal. It effectively denies gays and lesbians equal access to privacy. Human Rights Watch and the International Gay and Lesbian Human Rights Commission also establish that no comparable provision punishes, or even mentions, sexual acts "committed in public" by persons of opposite sexes. Finally, the new language ensures that even speech sympathetic to homosexuality, as well as meeting places, organizations, publications, and demonstrations, may be subject to criminal prosecution. Gays and lesbians are denied the rights to expression, association, and assembly: any public manifestation of homosexuality is punishable under the new provisions. Effectively, being gay or lesbian having a *public identity as such* is now against the law.

Human Rights Watch and the International Gay and Lesbian Human Rights Commission also document how other vaguely written legal provisions are used to harass persons suspected of homosexuality. The report also describes a pattern of physical abuse by police and other officials. In the climate of contemporary Romania, gays and lesbians are regarded as people without rights. Prisoners

suspected of homosexuality are routinely beaten by police. In detention, they are targeted for rape and other forms of abuse by other inmates, with the knowledge and active encouragement of guards and other authorities.

Recommendations to the Romanian Government and Inter-Governmental Bodies

Human Rights Watch and IGLHRC call on the Romanian government to end discrimination based on sexual orientation, prevent harassment and physical abuse of persons perceived as gay or lesbian, and punish those responsible for such abuse in the past. Human Rights Watch and the International Gay and Lesbian Human Rights Commission call on the Romanian government:

- to eliminate all laws which permit, encourage, or enforce discrimination against persons based on their perceived sexual orientation. These include not only Article 200 of the Romanian penal code, but also a series of other laws by which gays and lesbians are prosecuted and/or more severely penalized than heterosexuals who engage in similar acts;
- to eliminate all laws which can be used to punish individuals for consensual, private homosexual acts between adults;
- to clarify or repeal ambiguous legal provisions which can be used to persecute individuals for peacefully exercising rights of expression, association, and assembly, as well as laws that arbitrarily interfere with privacy.

Human Rights Watch and the International Gay and Lesbian Human Rights Commission call on international bodies, including the Council of Europe, the Organization for Security and Cooperation in Europe, and the European Union:

to bring an end to beatings, maltreatment, and other forms of abuse practiced by police and other officials on the basis of victims' perceived sexual orientation, and to punish those found responsible for such abuses in the past;

- to press the government of Romania to undertake the above reforms;
- to investigate the multiple forms of discrimination based on sexual orientation *in addition to the simple existence or absence of laws explicitly criminalizing homosexual acts* in evaluating the human rights records of applicant as well as member states;
- to investigate and address discrimination based on sexual orientation through their existing mechanisms for rights protection, including mechanisms to protect the rights of minorities.

For more detailed recommendations, see the body of the report.

ROMANIA'S PRESIDENT TO PARDON SOME GAY AND LESBIAN INMATES

Press release from IGLHRC

In a historic meeting, the President of Romania promised to pardon all prisoners currently jailed under his country's draconian laws penalizing sexual relations between consenting adults of the same sex. During the hour-long session, held in Bucharest's Presidential Palace on January 15th, President Emil Constantinescu was briefed on the status of gays and lesbians in Romania by Scott Long, advocacy coordinator of the International Gay and Lesbian Human Rights Commission and by Jeri Laber, senior adviser to Human Rights Watch.

The President was given a copy of a report, published by Human Rights Watch and the International Gay and Lesbian Human Rights Commission, detailing a pattern of systematic abuse of the most basic human rights of Romania's sexual minorities. The report, titled "Public Scandals: Sexual Orientation and Criminal Law in Romania," demonstrates that despite recent amendments to the criminal code provisions relating to homosexual conduct, gays and lesbians continue to be arrested and convicted if their sexual relations become public knowledge. They face frequent physical abuse and harassment by law enforcement officials, as well as systematic discrimination in many walks of life. In 1996, for example, Gabriel Presnac and Radu Vasiliu were beaten brutally by police and now face five years' imprisonment for kissing and holding hands in a public place. Romanian law not only prohibits private sexual acts between consenting adults of the same sex (under article 200 paragraph 1), but may also be interpreted to punish speech and association that expresses a homosexual identity (under article 200 paragraph 5): in one case, Mariana Cetiner was arrested and now serves a three-year prison term for merely asking another woman to have sexual relations with her.

President Constantinescu promised to pardon all prisoners convicted under article 200 paragraph 1 and article 200 paragraph 5, including Mariana Cetiner. The President stated that his pardon should send a signal to the Romanian public and added, homosexuality is the last remaining human rights problem we have to address in Romania, and we will address it."

"We are very encouraged by the President's response," said Mr. Long, "but we will have to wait and see how

the decision is implemented. We will monitor the situation closely." Currently neither the President nor the Minister of Justice have a final list of prisoners convicted under article 200 paragraph 1 or 5. According to Romanian law, the prisoners themselves will have to continued individually petition the President for a pardon in order to initiate the proceedings. "We are mindful that the President's pardons are not equivalent to a repeal of the discriminatory laws," declared Mr. Long. "We call on the Romanian Parliament to follow the President's lead and put an end to the abuse."

The unprecedented meeting with the President Constantinescu was preceded by similar gatherings with Romania's Prime Minister, Justice Minister, General Inspector of Police, General Director of Penitentiaries, and members of the Senate's Human Rights and Judiciary Committees.

AUSTRIA CELEBRATES YEAR OF HUMAN RIGHTS WHILE PERSECUTING GAY MEN

by Helmut Graupner, Rechtskomitee LAMBDA, Vienna

While Austria in its Criminal law still discriminates against gay men it intends to commit the 50th anniversary of the UN-Declaration on Human Rights by celebrating the Year of Human Rights 98. This year of Human Rights is planned to culminate in big celebrities on the International Day of Human Rights as part of the Vienna meeting of the European Council.

Two Austrian l/g associations, *Rechtskomitee LAMBDA* and *HOSI Wien*, are represented in the National Committee for of Human Rights and they, and the rest of the Austrian l/g movement, will not allow that the Austrian celebrates human rights without being called to account for its continuing violation of our human rights.

TWO AUSTRIAN CASES PUT TO STRASBOURG

by Helmut Graupner, Rechtskomitee LAMBDA, Vienna

In December two men who have been convicted to prison sentences under the discriminatory age of consent (Art. 209 CC: 18 for gays; 14 for heterosexuals and lesbians) sent complaints to the European Commission on Human Rights.

One of them, a man of 29, has been sentenced (to 8 months imprisonment on probation) after confiscation of his date-block. This date-block with Christian

names and ages has been the only evidence in the case. The courts did not see any of the youths nor did they clarify their real existence or their real age (see Euroletter 40, 5).

The other one, 28, has been convicted (to 6 months imprisonment on probation) for consensual sexual relations with a 15 year old adolescent who himself had started the initiative to the relation.

Rechtskomitee LAMBDA who assists the complainants is confident that - as in the Sutherland-Case - the Commission will find the Austrian discriminatory age of consent legislation in violation of the European Convention of Human Rights (Art. 14 & 8).

DECRIMINALIZATION IN BELARUS STILL NOT CONFIRMED

by Helmut Graupner, Rechtskomitee LAMBDA Vienna

Euroletter 43 (12) reported that a delegate to teh XIth International Aids-Conference insisted that Belarus - as the first of the successor states of the Soviet Union - did decriminalize homosexual relations between consenting adults as early as 1991.

In August 1993 however the Ministry of Justice of Belarus in a letter to Helmut Graupner indicated that Art. 119, outlawing anal and oral intercourse between men, was still in force. It reported that a new Penal Code was under elaboration and that the new Code would not take over the total ban and introduce an equal age of consent of 16 (Art. 126 of the draft CC). Later on however it was not possible to get any further information on the state of this announced reform.

Euroletter 55 again reported that the total ban in Belarus would have been repealed but it gave no source for that.

So the reports of decriminalization in Belarus are still unconfirmed and we should suppose that the ban still does exist.

EU-CANDIDATES: ALSO HUNGARY TO MONITOR

by Helmut Graupner, Rechtskomitee LAMBDA, Vienna

Among the five states invited for accession to the European Union not only Cyprus but also Hungary has discriminatory criminal laws for homosexuals. While the age of consent for heterosexual relations is

set at 14, the age limit for gays and lesbians is 18 (Art. 199 CC). Moreover sexual contacts with children (under 14) can be prosecuted upon complaint only if the contacts are heterosexual, but are prosecuted ex officio if they are homosexual (Art. 209, 31 CC).

According to what was suggested for Cyprus (Euroletter 55) we would like to suggest, that ILGA Europe informs its political contacts within the EU structure about this discrimination of gays and lesbians in Hungary. Discriminations which have repeatedly been denounced by the European Parliament and hold to be in violation of the European Convention on Human Rights by the European Commission of Human Rights (on 1st July 97 in Sutherland v. UK). We believe that a political discussion in the European Parliament would be extremely helpful at this point in time to have the discrimination abolished.

UK GAYS TO FACE PRISON

By Paul

Shock & Disbelief

A sense of shock and disbelief is spreading across the UK's Gay community as seven men from Bolton North West England face possible prison sentences on charges of Buggery, Gross Indecency and under age gay sex with a 17 year old male.

Antiquated laws used

The nature of the charge of buggery relates to having anal sex below the age of 18. The charge of Gross Indecency has been made under an antiquated law which makes criminals two men having sex in a building where there is another person present, whether or not in the same room. Gay sex with an male below the age of consent relates to the law which make a criminal of a male below the age of 18 having any form of sex with another male whether or not anal sex has occurred. Sources advise that the 17 year old male in this case is only a few months short of his 18th Birthday. A birthday he could now spend in prison.

UK Gays in Danger

Whilst the seven men have gone to ground in fear of their lives after fire bombing and beatings there is a sense of fear spreading through the Gay community as it becomes more apparent that a successful prosecution of these men will set a dangerous precedent which could lead to the legal persecution of the UK's Gay community. Sources advise that a test case of this nature could be the tip of the Iceberg of

more cases to follow. The case is being seen as a back door to making a criminal offence of gay culture.

Government Silent

Despite the growing crisis, and election promises by the New Labour Government of changes to equalise the legal situation for Gay people in the UK the Government remains silent. The British Government have received an urgent letter from the European Court of Human Rights requesting a full explanation, we have no reports of any response so far.

EU Presidency

It will be smacking in the face of EU principles on Human Rights if the U.K government now succeed in gaining the Presidency of the E.U. As we reported last month applications from other countries to join the E.U are being delayed or turned down on grounds of similar Human Rights Violations.

UK Gays need outside help

The larger campaigning organisation have remained silent about the growing crisis, some wonder if they are gagged or just complacent. The UK Gay population needs your help, we are in danger of facing the worst persecution of gay people seen in our country in over two decades. We need you to write to News papers, UK and world wide Lesbian and Gay Organisations, Members of the Government, talk about this on I.R.C, Bulletin Boards, News groups and please link your web site. We still have freedom to speak and now have the benefits of the Computer Age, use it now.

DUTCH GOVERNMENT DECIDES AGAINST SAME-SEX MARRIAGE - BUT IN FAVOUR OF ADOPTION BY SAME-SEX COUPLES

By Kees Waaldijk

On Friday 6 February 1998, the Dutch Cabinet finally decided how it would act on the recommendations of the Kortmann Committee. This Committee of legal experts was established in June 1996, following the adoption of resolutions in Parliament asking for legislation to open up both marriage and adoption to same-sex couples. In October 1997 the Committee recommended unanimously to allow same-sex couples to adopt and by a majority of five against three to allow same-sex couples to marry. Now the Cabinet has decided to prepare legislation to give effect to the unanimous recommendation, but not to the majority recommendation.

This legislation would amend three laws which have been adopted only very recently:

A. The law on registered partnership (in fact a complex of several laws amending the Civil Code and more than 100 other statutes) came into operation on 1 January 1998. Same-sex and different-sex couples can now have their partnership registered. Apart from some minor differences between the way in which it is entered into and the ways in which it can be terminated, registered partnership is almost identical to marriage. The main exceptions are:

- A foreigner without a valid residence entitlement cannot register a partnership in the Netherlands (neither with a Dutch citizen, nor with another foreigner). It is not yet clear in law what exactly amounts to a residence entitlement. A residence permit for less than one year (as is routinely given to European Union citizens looking for work in the Netherlands) may not be enough, let alone a mere tourist visa. (It should also be remembered that in the case of two foreigners, at least one of them needs to officially reside in the Netherlands; the same condition applies to heterosexual marriage.)
- The existence of a registered partnership does not affect the position of the children of either partner. For example, the parent's partner does not become a parent, nor will this partner have any authority over, or maintenance duties towards the child. However, there are a few exceptions to this, notably in tax law.
- Certain entitlements to widow's or widower's pension are withheld from registered partners.
- Most rules based on international or European law that apply to marriage have not been declared applicable to registered partnership.
- Many rules of Dutch secondary legislation have not been made applicable to registered partnership yet.
- In law, words like 'marriage', 'spouse', 'wedding' etc., together with their social status and symbolic meaning, remain the exclusive domain of married heterosexuals.

It should be noted that no exceptions exist for church weddings (which have no legal effect in Dutch law) nor for artificial insemination (for which being married is not generally a precondition). Most discrimination between married spouses and registered partners by employers or by commercial or non-profit organisations is outlawed by the General Equal Treatment Act, which not only prohibits direct and indirect discrimination based on sexual orientation, but also discrimination based on civil status. The status of being a registered partner is now considered to be a new type of civil status.

B. Also on 1 January 1998 legislation introducing joint authority and joint custody for non-parents came into operation. Now a parent and his or her (same-sex

or different-sex) partner can obtain a Court order giving the couple joint authority over the child of the parent. Similarly a (same-sex or different-sex) couple of foster-parents, can now obtain a Court order giving them joint custody over their foster-child. Such joint authority-custody entails a maintenance duty for both partners towards the child. It also reduces the inheritance tax to be paid when the child benefits from the last will of the non-parent. So far, other parental rights and duties have not been attached to it.

C. On 1 April 1998 a major revision of the law on paternity and adoption will enter into operation. Until then, adoption in the Netherlands is only possible for married couples and for married stepparents. From April marriage will be no longer a condition for adoption. Then adoption by an individual person (single or forming part of a relationship, heterosexual or homosexual) will become possible. Also adoption by an unmarried couple will become possible, provided it is a different-sex couple.

Now the Government is already proposing changes to these three laws. As far as parenting is concerned, the Government seems to follow the recommendations of the Kortmann Committee in detail:

- Adoption of a Dutch child by a same-sex couple will be made possible. Foreign children (who make up more than ninety percent of all children adopted in the Netherlands by couples) will be excluded from adoption by same-sex couples.
- Adoption of a child by the same-sex partner of the child's parent will also be made possible (this will probably happen far more often, as it will not only allow for adoption by a gay or lesbian stepparent, but also give the lesbian partner of a mother a chance to become the second mother of a child born during their relationship, for instance by artificial insemination).
- A new, strict criterion will be introduced to limit adoption (by a heterosexual couple, by a homosexual couple, by a parent's partner, or by an individual) to situations in which the child has nothing more to expect from his or her original parent(s) (for instance because the donor is unknown).
- The existing paternity rules will not be extended to female partners of mothers. For instance, according to Dutch law, a man can become a legal father simply by being married to a woman who gives birth to a child. This rule does not and will not apply to the registered partner of a childbearing woman.
- However, some change is proposed to the new law on registered partnership: if a child is born to a woman in a registered partnership, the other

partner will automatically share the parental authority over the child with the mother. Since January 1998 such joint authority can already be obtained, but only by Court order. It is now proposed that such an order will not be required if the partners are registered and the child is born during the registered partnership.

- Probably the scope of joint authority/custody will be extended to intestate inheritance and to other parental rights and duties.

As far as the question of same-sex marriage is concerned, the Government is following the minority of the Kortmann Committee. The Government considers that the new law on registered partnership, together with the extended possibilities for joint authority/custody and adoption, offers virtual equality of rights for homosexual couples. The main reason why the Government is not now prepared to create also an equality of status for homosexual couples, seems to be that same-sex marriage would not generally be recognised abroad. (The Kortmann Committee held a survey among family law experts in the Council of Europe, the outcome of which suggests that same-sex registered partnership would be met with only marginally more recognition abroad than same-sex marriage would.) The Government does not want to contemplate the opening up of marriage to homosexual couples before the new law on registered partnership will be evaluated in the year 2001.

There is a small chance that the present Parliament will insist on making full marriage possible for same-sex couples. However, there is no time left during this Parliament to even start legislation on the topic. Elections will be held in May 1998. It seems more likely that some time this year a Bill will be introduced to give effect to the Government's proposals about adoption and automatic joint authority for registered partners. (That Bill will also provide an opportunity to correct the numerous errors made in the legislation introducing registered partnership.) With the customary slowness of the Dutch legislative machine, such a Bill would probably not become law before the year 2000. And full marriage rights for same-sex couples in the Netherlands should not be expected before 2005, if ever.

Belgium:

NEW GUIDELINES FROM THE MINISTRY OF INTERNAL AFFAIRS ABOUT DOMESTIC PARTNERSHIP

By Pierre Noël

On 30 September 1997, Mr Vande Lanotte, Minister of Internal Affairs, circulated to all mayors in Belgium new guidelines concerning granting of stay permits to foreigners on the basis of domestic partnership.

The Minister - who belongs to the Flemish Socialist Party (SP) - begins with stating that "in the present circumstances, one can note that most people involved in a relationship first live together, and eventually marry. The growing international traffic implies many transnational relationships. However, the foreign partner can stay in Belgium only if he/she marries his/her Belgian partner or a foreigner with a stay permit. Those people do not marry because they believe they should, but rather because they are forced to do it by the regulations related to stay permits. If these regulations were based on domestic partnership, those people would have an opportunity to learn about one another and there would be no need for a final stay permit. In case the relationship would not last, the foreign partner would have to leave the country. That is not the case with marriage, since then the married partner receives an unlimited stay permit after six or twelve months. Furthermore, it was found that homosexual foreigners involved in a relationship with a Belgian citizen or a foreigner who has a stay permit cannot stay in the country on the basis of that relationship. They have to go through other channels (student visas, internships or fake marriages) in order to live with their partners. This represents an abuse of the alternative stay permits, which should not be encouraged and does not constitute an alternative solution for homosexual couples. Also, discrimination towards homosexual partners in our society is unacceptable".

Conditions are to be met in order to qualify for this new stay permit: the Belgian partner or foreigner with the stay permit must commit to supporting his/her lover. An unlimited stay permit will only be delivered after three years and six months of living together and periodic controls will be done. (For more details on requirements to be met and the procedure to follow, see the *Moniteur* - the official Belgian gazette - of 14 November 1995, p. 334 ff).

Interestingly, the Minister notes that "people with fraudulent intentions will try a fake marriage rather than a fake relationship, because the unlimited stay permit is easier to get in the first case and the financial commitment is lesser?" It is also recognised in these new guidelines that Belgium is following in this way the path open by the Netherlands and other European countries, and that those other countries have not found abuses of the law or massive influx of new immigrants.

AGE OF CONSENT AND OTHER INEQUALITIES IN LATVIA

By Juris-Ludvigs Lavrikovs

In 1992 the Latvian Parliament repealed paragraph 124.1 of the Criminal Code and thus decriminalised sexual acts between consenting men over 18 years of age. Nevertheless, homosexuals in Latvia do not enjoy legal equality with their heterosexual fellow citizens, and are not protected from discrimination.

Since the Soviet occupation of Latvia and until 1992, paragraph 124.1 made all sexual acts between men a criminal offence punishable by up to 5 years imprisonment. Paragraph 124.2 (or now simply 124 - "Pederasty") criminalises sexual acts between men if the act is committed with the use of violence or the threat of violence, taking advantage of the victim's helplessness or dependent status, and if the sexual act is committed with a person younger than 18 years of age. At the same time the present Criminal Code's paragraph 122 ("Sexual acts committed with a person who has not reached the age of 16") provides that it is a criminal offence punishable by up to four years imprisonment to have a sexual relations with a person younger than 16 years of age. The current paragraph 124, which establishes 18 years as the minimum permitted age for sexual acts between consenting men, therefore discriminates against homosexual men as compared to heterosexuals and homosexual women. A salient feature of the Latvian Criminal Code, as it clear from paragraphs 122 and 124, is that consenting sexual acts either between a women and a man or between women do not constitute a criminal offence if both parties to the acts are under 16. The same can be concluded regarding consenting sexual acts between men if both parties are under 16 or between 16 and 18.

The higher age of consent for gay men is not the only legal disadvantage suffered by homosexuals in Latvia. Among other legal provisions which directly discriminate against homosexuals is paragraph 35.2 of the Latvian Civil Law. Under this paragraph same-sex marriages are prohibited. The paragraph was introduced by the Latvian Parliament in the early 1990s when the Civil Law from the 1930s (the first period of Latvian independence) was re-adopted. As a result of this provision same-sex couples are not entitled to any of the rights which opposite-sex couples are granted automatically after marriage. Common-law cohabitation, whether between persons of different sexes or the same sex, is not legally recognised in Latvia. Thus lesbian and gay couples have no opportunity to regulate legally their relationships, property, finance, to name but a few.

The possibility of challenging the constitutionality of paragraph 35.2 of the Civil Law as discriminating on the basis of the gender of the partners in same-sex couples, and allowing to marry only couples in which the partners are of different sexes is very limited. Firstly, the Satversme (Latvian Constitution) does not contain any provisions regarding basic rights. Although in 1991 the Latvian Parliament adopted a so-called constitutional law "On the Rights and Duties of Citizens and Men" which contains a prohibition of discrimination on grounds of gender, the Latvian legal system does not recognise laws of this category as constitutional. This legal problem will hopefully be resolved by the incorporation of a list of basic rights into the Satversme, which is being discussed in Latvia at the moment and is expected after the parliamentary elections later this year. The second problem is that citizens of Latvia do not have a right of petition to the recently established Constitutional Court. Only a limited number of state organs can initiate procedures before the Constitutional Court.

Discrimination on the grounds of sexual orientation is not illegal in Latvia. The abovementioned constitutional law "On the Right and Duties of Citizens and Men" does not guarantee protection against discrimination on the grounds of sexuality. Nor is such protection provided by paragraph 69 of the Criminal Code. According to this paragraph, any discrimination on the basis of race or ethnic origin is a criminal offence.

The Homosexuality Information Centre in Riga is planning to complete a project later this spring which will examine the legal disadvantages lesbians and gay men face in Latvia, and will offer suggestions on legal reform with the goal of providing homosexuals with legal equality with the rest of society. The same project will provide information on the legal situation of homosexuals in different countries in Europe and worldwide. The project will examine the activities regarding lesbian and gay equality of such organisations as the Council of Europe, the European Union and the United Nations. The Latvian State Human Rights Bureau is extremely interested in and supports our project. After the project is completed, the two organisations are planning a campaign aimed at Latvian State institutions, MPs, and other officials and politicians, to lobby for legislative reform.

We would therefore greatly appreciate any information regarding lesbian and gay rights in other countries. If you want to know more about the project or share your information, please contact Juris Lavrikovs on juris@andy.zynet.co.uk.

New book:

SEXUALITY, YOUTH PROTECTION & HUMAN RIGHTS

Helmut Graupner, president of the Austrian l/g rights organisation *Rechtskomitee LAMBDA* and co-chairperson of the *Austrian Society for Sex Research*, on the International Human Rights Day (10.12.97) presented his book „*Sexualität, Jugendschutz & Menschenrechte*“ in the Austrian parliament. The book is a published version of his doctoral thesis and has been printed by the Austrian Ministry of Justice whose Commission for the Revision of the Law on Sexual Offences (appointed in Dec 96) Graupner is a member.

General principles found in the case law of the European Court on Human Rights suggest that the European Convention on Human Rights should be interpreted as providing comprehensive protection of the right of children and adolescents to sexual self-determination, namely both the right to effective protection from (unwanted) sex and abuse and the right to (wanted) sex.

In his book Graupner examines the extent to which common sexual offences concerning minors protects this proposed comprehensive right to sexual self-determination.

The examination is based upon the findings of natural and social science as well as an extensive and detailed international survey of national legal provisions.

This proposed comprehensive right to sexual self-determination would oblige legislators to criminalize sexual contacts by and with sexually immature children. Moreover, general criminalization of sexual contacts by and with youths under 14 would be permissible. However, age of consent regulations banning consensual sexual relations by and with adolescents over the age of 14 would violate this right. Certain offences targeting "seduction" of minors would be permitted up to age 16, and the criminalization of misuse of a relationship of authority would be permitted until full age. Effective screening would have to be guaranteed to sort out cases which do not require criminal prosecution. Hetero- and homosexual contacts would have to be treated equally.

Helmut Graupner (1997): *Sexualität, Jugendschutz & Menschenrechte - Über das Recht von Kindern und Jugendlichen auf sexuelle Selbstbestimmung*, 2 Volumes, 1 400 pages, Fft/M, Bern, Berlin, Paris, Vienna, New York: Peter Lang.

The book can be ordered at:

Peter Lang GmbH Eschborner Landstraße
42-50D-60489 Frankfurt/M. Tel.: +49/69/780705-0

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