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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>

Consolidated versions of the basic treaties of the European Union including amendments from the Amsterdam Treaty can be found at this web-site: <http://ue.eu.int/Amsterdam/en/traiteco/en1.htm>

*PRESS RELEASE from the Court of Justice
17 February 1998 LISA GRANT case:*

**DISCRIMINATION BASED ON SEXUAL
ORIENTATION IS NOT COVERED BY THE
EQUAL PAY RULES OF THE TREATY**

The refusal to grant travel concessions for an employee's partner of the same sex is not discrimination prohibited by Community law.

The situation may change after the Treaty of Amsterdam comes into force.

Ms Grant is employed by South-West Trains Ltd. That company's contracts of employment provide that employees are to enjoy free travel or travel concessions on its rail network. Those benefits are extended to an employee's spouse or to the partner of opposite sex of an employee if there has been a meaningful relationship between these partners for at least two years.

Ms Grant's request for those travel concessions for her female partner was refused on the ground that such concessions could be granted only for a spouse or for a partner of the opposite sex.

Ms Grant therefore brought proceedings before the Industrial Tribunal, Southampton, arguing that the refusal constituted discrimination based on sex, contrary to the provisions of Community law on equal pay for men and women. The Industrial Tribunal referred questions to the Court concerning the interpretation of those provisions: it asked whether the refusal by an employer to allow travel concessions for the cohabitee of the same sex with whom an employee has a stable relationship constitutes discrimination prohibited by Community law, where such concessions are granted to an employee's spouse or to the partner of the opposite sex with whom an employee has a stable relationship outside marriage.

The Court examined the question in three stages. First, it considered whether the limitation of the travel concessions to spouses and cohabitees of opposite sex constituted discrimination based directly on the sex of the worker. It found that the concessions are refused to a male worker if he is living with a person of the same sex, just as they are refused to a female worker living with a person of the same sex. The rule could not therefore be taken as discrimination based directly on sex, since it applies in the same way to female and male workers.

The Court then considered whether Community law requires that stable relationships between two persons of the same sex be treated by employers as equivalent

to marriages or to stable relationships outside marriage between persons of opposite sex. The Court noted, firstly, that the Community has not as yet adopted rules to that effect and, secondly, that the national laws of the Member States contain widely diverging provisions on the point. It also noted that the European Commission of Human Rights considers that despite the modern evolution of attitudes towards homosexuality, stable homosexual relationships do not fall within the scope of the right to respect for family life under the European Convention on Human Rights. Consequently, it concluded that, in the present state of the law within the Community, stable relationships between cohabitees of the same sex are not treated as equivalent to relationships between married couples or cohabitees of opposite sex. It is for the legislature alone to adopt, if appropriate, measures which may affect that position.

Finally, the Court addressed the question whether, in the light of its case-law and certain other international conventions, discrimination based on sexual orientation could be treated as discrimination based on sex, which is prohibited by Community law. It reached the conclusion that Community law, as it stands at present, does not cover discrimination based on sexual orientation, such as that in point in the case before it.

The Court observed, however, that under the Treaty of Amsterdam the Council will be able, on a proposal from the Commission and after consulting the European Parliament, to take measures with a view to eliminating various forms of discrimination, including discrimination based on sexual orientation.

For the full text of the judgment, please consult the Internet page <http://curia.eu.int>

**EUROPEAN PARLIAMENT ADOPTS
RESOLUTION ON HUMAN RIGHTS**

By Steffen Jensen

The European Parliament adopted 17 February a resolution based on the report on Human Rights in Europe 1996. The resolution has a section on Equal rights and non-discrimination and the following items are of specific interest to lesbians and gay men:

65. Welcomes the inclusion in Community instruments of non-discrimination clauses which provide for a ban on all forms of discrimination;

66. Considers that its above-mentioned resolution of 8 February 1994 on homosexuals has led to

improvements in many Member States and at Community level;

67. Calls on all Member States to recognize equal rights for homosexuals, notably through the establishment, where they do not already exist, of civil union contracts aimed at eliminating all forms of discrimination still suffered by homosexuals, in particular as regards tax, inheritance, social rights, etc, and, through information and education, to help combat the prejudice to which they are subject in society;

68. Calls for the Staff Regulations of officials and other servants of the European Communities to be amended without delay so as to guarantee non-married partners the same rights as those granted to spouses;

69. Calls once more on the Austrian Government to abrogate its anti- homosexual laws, and notably the discriminatory provision regarding the minimum legal age for sexual consent;

The full text of the resolution can be found through a link from ILGA-Europe's web-site.

INFORMAL MEETING OF HIGH LEVEL OFFICIALS TO DISCUSS ARTICLE 13 OF THE TREATY OF AMSTERDAM

The meeting (see details below) is due to take place in Oxford 8-9 April 1998 and ILGA member groups in the EU member states are requested to contact the delegate of their country in order to focus on the need for action in the field of discrimination based on sexual orientation, re. e.g. the Grant case.

As part of the UK Presidency programme, the Department for Education and Employment will be hosting an informal meeting of high-level officials to discuss options for progress at Community level on Article 13 of the Treaty of Amsterdam. The Presidency is working closely on this with the European Commission (DG V).

This note sets out the broad purpose and nature of the proposed meeting. It also requests that delegations rapidly inform their capitals and identify the most appropriate participant from their Member State.

PURPOSE OF THE MEETING

Article 13 will make a very important advance in the competence of the European Union to take action to tackle discrimination in the area of gender, race, disability, national origin, religious belief, age and

sexual orientation. The purpose of the meeting will therefore be to identify the options for:

- type of action at Community level (ranging from legislation to programmes of support, dissemination of effective practice and networks of contacts across the Union);
- the scope of action (ranging from employment to education, access to goods and services, or more widely still);
- possible priorities, in terms of types of discrimination and specific actions.

NATURE OF DISCUSSION

The discussion would be "without commitment" but authoritative and forward looking. There will be no formal conclusions, but a record could be produced of the key themes and points arising at the meeting (without attribution to a particular individual or Member State if that is what participants would prefer). The purpose of the report would be to assist the Commission in its future deliberations on the ways forward on Article 13, including key contacts in the Member States.

DOCUMENTS FOR THE DISCUSSION

The Presidency, working with the Commission, will produce a short list of suggested questions for discussion. In addition, each Member State is requested to produce a short note (3-4 pages) on their own constitutional and legislative provisions, institutions, policies and programmes and other arrangements directly relevant to tackling the types of discrimination identified by Article 13. These will then be collated and distributed to participants before the meeting.

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

by Kurt Krickler

After the first two series of meetings with EU officials in May and December 1997 (cf. Euro-Letter # 51 and 56), the talks with EU officials continued in Brussels on 3 and 4 March 1998. Due to the very positive reply by Commissioner Oreja (cf. Euro-Letter # 56 and ILGA-Bulletin 1/98), Directorate General X was the main target this time. Kurt Krickler as Co-Chair of the Board met people from five different units in DG X and was accompanied in two cases by Égalité member Alberto Volpato.

All DG X officials were quite supportive and would encourage ILGA members to submit project proposals under the various programmes.

Philippe Cova is in charge of the Raphael programme, and they support, besides the cooperation between museums and the restoration of historical sites, exhibitions and seminars. Precondition for any project to be funded is that at least three member countries are involved. A joint exhibition such as the prestigious Berlin show "100 years of gay movement", e.g., would be eligible for funding by DG X. A new call for proposals is due in the period June - September 1998. Cova also pointed out to the "Community Support for cultural development projects", the call for proposals 1998 had a deadline which has already expired (1 March) but the programme continues and new calls will be published.

ILGA-Europe was also in telephone contact with Cova's colleague Blanca Sánchez Velasco, responsible for European film festivals. Organisers of gay and lesbian filmfestivals in Europe should consider to apply for funding from DG X - a new call for proposal is due this Spring (probably already in March).

The conversation with Nathalie Labourdette, responsible for among other things the new audiovisual media, centered around the issue of the "Green paper on the protection of minors and human dignity in audiovisual and information services". ILGA-Europe pointed out that human dignity must also comprise protection from homophobic hatred speech in these new services such as the internet, and that it must be avoided that gay and lesbian information be banned from these services under the pretext of the protection of minors or morals. It became, however, quite clear that the EU is very much building and relying upon self-regulation and hot-lines to which people can report illegal or undesired contents of providers. ILGA-Europe, therefore, encourage all gay and lesbian users to watch out for anti-homosexual propaganda in the new audiovisual services and alert and report any incidence. She promised to include ILGA-Europe in the list of associations which are regularly consulted on this subject.

Mme Maruja Gutierrez is responsible for publications in DG X. She mentioned that 80 % of her budget this year is earmarked for information on the single currency so that her scope of action is limited. She mentioned that she is preparing various leaflets on the Treaty of Amsterdam. The first one has already been published, it is a general one but Article 13 has been introduced and "sexual orientation" has been mentioned as non-discrimination category.

The second leaflet is now under preparation. It is specifically on Article 13 and prejudices which are

presented by way of a comic strip. It should be used in schools as a starting point for discussing the various forms of discrimination. Gutierrez provided a first draft of the comic which in general is quite good. Gays are included, lesbians, however, not.

ILGA-Europe, therefore, sent a fax after having studied the draft and asked for including lesbians in one of the comics. ILGA-Europe offered to provide a list of lesbian and gay groups in the various EU member states to be appended in the leaflet in order to allow interested teachers to contact these groups. ILGA-Europe has already provided such a list. Such an address list could again be included in the third planned leaflet on the Treaty. Gutierrez also agreed to add ILGA-Europe to the list of organisations she would consult on her various projects. It was discussed that her unit could also do various publications, f. inst. a short leaflet on the conclusions and recommendations of the ILGA-Europe report in the context of the EU project "Equality for Lesbians and Gay Men - A Relevant Issue in the Civil and Social Dialogue" or translations of the report in languages others than provided by the project itself. ILGA-Europe also presented the Manifesto '98 and asked her to consider to support this activity. ILGA-Europe will come back to her about that.

The conversation with Santiago Herrero Villa centered around various programmes including "Building Europe Together" which again would be an appropriate programme under which ILGA members could submit project proposals. The two main targets of the new call for proposals (due to be published in the Official Journal around 20 March) are youth and women. Most of the projects funded under this programme are seminars dealing with all kinds of issues.

The possibilities of huge programmes such as MEDIA were also discussed; they are designed for TV channels and broadcast productions and are probably too ambitious for ILGA members.

ILGA-Europe also presented the Manifesto '98 to Herrero and asked him to consider to support a campaign (posters, video clips etc.) to promote non-discrimination. There seem to be financing possibilities also for a conference/meeting in the margin of the ILGA European conference in Linz in October 1998.

The question of a European survey on the state of discrimination vis-à-vis gays and lesbians (opinion polls) was also raised and will be addressed by him with the responsible person, Ms. Melich.

The last meeting in DG X was with Jaime Andreu, responsible for sports. He mentioned that gay and lesbian sports events in principle would be eligible for support by the EU and that, in fact, the Amsterdam Gay Games have applied for funding. There is a new policy not to give small sums, any project that does not need big funding should be financed on a local or regional basis. The minimum support by the EU programmes would be 50,000 ECU. The EURATLON programme will launch a new call for proposals in June (deadline end of October). Money would not only be available for events such as the Eurogames or Gay Games but also for studies or info campaigns (f. inst. AIDS in the sports, anti-violence, anti-racism).

Additionally, Kurt Krickler met with Georges Vlandas of DG XVI as proposed by Commissioner Monika Wulf-Mathies. The only programme that may be used for gay and lesbian projects would be ECOS-OUVERTURE. However, this seems to be very ambitious. It would involve the participation of local or regional authorities. One idea could be a cooperation between cities about equal opportunities offices for gays and lesbians.

It has been said before: The success of the Action Plan will depend on a large extent upon the commitment and creativity of ILGA members and their ability to make use of the financial possibilities which exists for funding by the EU. ILGA-Europe, therefore, encourages again all member organisations to consider submitting projects to the Commission.

More information about various other programmes and contact persons in the EU Commission has been published in the ILGA-Bulletin # 1/98 (pp. 5-6) and can be found on ILGA-Europe's website.

THE BELGIAN CIRCULAR ON SAME-SEX PARTNERSHIP AND IMMIGRATION

By Alan Reekie

The Circular Letter issued by the Belgian Minister Vande Lanotte (Flemish Socialist party) on 30 September 1997 defines the status of same-sex partnerships in which one partner is not a Belgian citizen (Based on the article by Chille Deman in "Tels Quels", March 1998)

As relatively little information about the Circular Letter issued by the Minister of Internal Affairs, Mr Vande Lanotte, on 30th September 1997 has so far appeared in the French-language media, the following description of its provisions may be of interest.

The Circular Letter, which bears the title: "Circular regarding the granting of a residence permit on the basis of co-habitation during a long-lasting relationship", is addressed to the mayor of every municipality in Belgium.

In the introduction, the Minister observes that most relationships now begin by a period of co-habitation outside marriage, and that the number of "cross-border relationships" is increasing. Some people get married as an obligation, rather than out of conviction. "Furthermore, it is evident that the homosexual partner of a Belgian citizen or of a foreign citizen who is entitled, or has been authorised, to live in Belgium cannot at present obtain permission to stay in Belgium on the basis of that relationship. (...) Indeed, such discrimination against homosexual partners is unacceptable in our society. Consequently, it is appropriate to grant residence permits directly to these persons on the basis of co-habitation in the context of a long-lasting relationship, provided they comply with a certain number of strict conditions that are intended to prevent any abuse."

The conditions are as follows:

1. One of the partners must be Belgian, or a citizen of the European Union, or a foreigner holding a Belgian residence permit valid for not less than three months (asylum-seekers are thus excluded).
2. Neither partner may already be married.
3. Both partners must be not less than 18 years old.
4. It must be proved that the relationship is long-lasting.
5. The partners must co-habit during the whole time of their relationship.
6. They must have a shared household, in accordance with a binding 'contract for living together' prepared by a notary public and signed within six months from the date on which a provisional residence permit has been issued. This contract must specify that the Belgian citizen (or other person already entitled to live in Belgium) is legally responsible, if necessary, for any debts incurred by his partner for the first three and a half years of residence.
7. The partner already living in Belgium must have a stable net income of not less than 35,000 BEF (about \$US1000) a month.
8. The partner already living in Belgium must sign an indemnity by which he commits himself to repay any of the costs that might be incurred by the Belgian state or any local social security agency, including those for health care or the repatriation of the other partner, during the first three and a half years of his presence in Belgium.
9. The person seeking a residence permit for himself under these provisions must provide a certificate of

good behaviour ("certificat de bonne vie et moeurs").

The procedure

Where the person seeking a residence permit for him/herself under these provisions already holds a residence permit (eg as a student) (s)he may apply for it in Belgium. Where that person does not already hold a residence permit, the application must be made from his/her country of nationality. There is a long list of documents that must accompany the application.

The decision

The applicant who satisfies all the conditions initially receives a provisional residence permit valid for six months. This can then be renewed for one year at a time. After a period of continuous residence for three years six months, the provisional permit is replaced by a permanent one for an unlimited duration. It should be noted that provisional residence permit-holders are not allowed to obtain employment.

This residence permit is not granted where the claimed relationship is a sham, and the circular gives a list of grounds for suspicion that this may be the case. For example, where one partner engages in prostitution, or where their ages are very different.

Furthermore, the Circular states that "the mayor of the municipality where the partners are in fact living should organise an inspection from time to time so as to confirm that they are indeed co-habiting."

The Circular also lists the circumstances in which the provisional residence permit should be revoked and the holder ordered to leave Belgian territory. On the other hand, it states that the permit may be renewed where there are humanitarian grounds for doing so (eg to avoid disrupting the relationship with children who have been brought up by the partners).

While the discriminatory provisions defined by this Circular certainly represent considerable progress compared with the previous complete disregard of same-sex partnerships in this context, they also indicate that there is still significant prejudice against homosexuality within the Belgian administration. Regardless of their sexual orientation, relatively few people would be willing to commit themselves to taking full legal responsibility during three and a half years for a foreign partner who is forbidden to take employment - and unlikely to be able to find it again after such a long period of idleness. As recognised by the Circular itself, many cross-border relationships begin during brief visits abroad, and the outright hostility towards - or at best the lack of legal recognition of - same-sex partnerships in many parts

of the world inevitably prevent most of those concerned from satisfying the bureaucratic requirement to demonstrate an existing long-term relationship. But until the Belgian government has enacted legislation providing for the legal recognition of same-sex domestic partnerships among its own citizens, it would not be realistic to expect anything more positive.

LATVIAN OFFICIAL REJECTS IDEA OF HOMOSEXUAL EQUALITY AND SUGGESTS HOMOSEXUALS KEEP QUIET

By Juris-Ludwig Lavrikos

The Latvian lesbian and gay organisation has been working for a number of years on legislative amendments which would provide equality and legal protection for non-heterosexual citizens. Recently the Latvian State Human Rights Office has joined in our efforts and now supports our claims. Moreover, the Office organises monthly TV programmes and a series of articles in the press on human rights, including those of homosexuals. One such TV programme broadcast on St Valentine's Day was about homosexual rights. Representatives of the homosexual movement, the Parliamentary Human Rights Commission, medical authorities and clergy were invited to take part in the discussion. The most reluctant was the representative of the Parliamentary Human Rights Commission, Mr Antons Seiksts, who believes that it is not the right time to deal with the problems of homosexuals, since there are many other "more urgent" problems in Latvia to be resolved. On another occasion, answering a question put by the weekly newspaper "Fokuss": "Are the rights of homosexuals violated in Latvia?", which opened Fokuss' weekly discussion on the issue of homosexual rights, Mr Seiksts confidently replied "No". He continued: "What is happening today in Latvia in this area (homosexual claims for equality) is possible only because of the present circumstances of the establishment of a new democracy. Further stirring up of the issue of sexual rights will inevitably cause confrontation between homosexuals and the rest of society, incomprehension and even a backlash on the part of society, which would not be in the interests of sexual minorities. Legislative changes are not necessary at this time, since demands to legalise same-sex marriage and to allow the adoption of children by same-sex couples are absolutely unreasonable, even in the light of human rights."

GAY MARRIAGE IN SLOVENIA

By Ales Pecnik

After several attempts by activists to force the government to adopt registered partnership legislation, Slovenian government finally began working on it by forming a workgroup. The workgroup consists of six members, one of them is representative of Slovenian national gay and lesbian organization Roza klub and one of them is representative of gay group Magnus and lesbian group LL.

The group's mission is to prepare a draft of a registered partnership law. On government's request, another draft has already been prepared by the Institute for Civil, Comparative and International Law at the Faculty of Law of the University of Maribor. This draft is totally unacceptable by Slovenian gay and lesbian movement because there are no legal consequences for registered partners except for a piece of paper. Because of this - according to Mr Tone Bricman, representative of Roza klub in the workgroup - the draft has no chance of receiving sufficient support from the workgroup.

Media has reported widely about the formation of the workgroup, vast majority of articles being positive.

Previous attempts for legalization of gay and lesbian marriage in Slovenia include:

- A motion from the government's Bureau for Women's Politics to the government, which proposed deletion of the part of marriage law which requires the partners to be of the opposite genders. The motion was never taken seriously by the government.
- A motion from a gay couple and a group of gay and lesbian couples to Slovenian Constitutional Court (the highest court in the country) to find the part of the marriage law, which requires the partners to be of the opposite genders, unconstitutional. The motion was later withdrawn by the proposers because they estimated that the court wouldn't find that article unconstitutional.

FRENCH PARTNERSHIP LAW PLANNED

By Rex Wockner

The government of France is planning to change its civil code so cohabiting gay couples can sign contracts that give them most of the legal and tax benefits of matrimony.

The "common interest pacts" also will be available to heterosexual lovers and couples whose relationship is not sexual.

The scheme will not extend rights to adoption or state-funded artificial insemination.

Other nations with marriage-like gay-partnership laws include Denmark, Greenland, Hungary, Iceland, the Netherlands, Norway and Sweden.

AUSTRIA: ADMINISTRATIVE COURT OPENS MARRIAGE FOR TRANSEXUALS

by Helmut Graupner, Rechtskomitee LAMBDA, Vienna

Austria's Administrative Court in a decision of 30.09.1997 opened marriage for transsexuals. According to the ruling a sex change operation effects that the person also legally changes its gender and therefore it is allowed to marry members of its former (biological) gender. There is no law in Austria regulating sex change operations or the legal status of Transgender-Persons.