

EURO-LETTER

No. 62

August 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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<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>

AN EU HUMAN RIGHTS AGENDA FOR THE YEAR 2000

By Marc Bell

1. The competence of European Union for sexual orientation discrimination.

The EC Treaty currently contains no reference to sexual orientation discrimination. Nonetheless, there are a number of existing provisions which could provide a potential legal basis for action against this form of discrimination. First, Article 118a (1) provides the Council with the power to adopt directives so as to achieve the objective of “encouraging improvements, especially in the working environment, as regards the health and safety of workers ...”. There is a persuasive argument that the working environment should be interpreted in a broad fashion, and this has been sustained by the Court of Justice. On this basis, combating discrimination in the workplace, and particularly harassment, may be regarded as an important factor in improving the working environment. Sexual orientation discrimination damages the working environment as much as any other discrimination, and harassment in the workplace on grounds of sexuality is a significant problem for many lesbians and gay men. Thus, it seems possible that Article 118a could be relied upon to legislate against such discrimination and harassment.

More generally, sexual orientation discrimination may be regarded as a barrier to the free movement of persons. Individuals living in Member States with a high level of protection against discrimination may be deterred from moving to another Member State where they will not enjoy the same level of protection. A particular problem exists in relation to partnerships. Denmark, Sweden and the Netherlands allow same-sex couples to become ‘registered partnerships’, entitling partners to legal equality with married couples. Where moving to another Member State will involve a loss of recognition of one’s partner, and the many social, legal and financial entitlements that implies, a genuine and substantial barrier to free movement exists. Based on this free movement logic, it is possible that Article 100 could be relied upon to address the existing disparities in the Member States’ laws.

Finally, Article 235 provides a general power for the Community to act where it is necessary to attain one of the objectives of the common market, but no other Treaty provision provides the necessary powers. It is arguable that the commitment in Article 2 of the Treaty to “raising the standard of living and quality of life, and economic and social cohesion” alongside the commitment in Article 117 to the improvement of

living and working conditions make the fight against sexual orientation discrimination compatible with the objectives of the Community.

The existing situation regarding legal competence will be greatly changed following the ratification of the Treaty of Amsterdam. In particular, the new Article 13 states:

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

Whilst the Article does not create any enforceable rights against discrimination, it does provide the Council with the necessary powers to adopt legislation to create such rights. For example, it will now be open to the Council to legislate against sexual orientation discrimination in employment. The main legal question which arises in relation to Article 13, concerns its scope of application. In this respect, other language versions of the Treaty are less ambiguous. The French version of Article 13 specifies that it operates,

“sans préjudice des autres dispositions du présent traité et dans les limites des *compétences* que celui-ci confère à la Communauté” [added emphasis]

The reference to competences at the outset of Article 13 indicates that it only provides for the adoption of anti-discrimination measures within the limits of the existing competences of the Community. Thus, sexual orientation discrimination may be prohibited in those spheres of activity for which the Treaty provides the Community with the necessary competence. Naturally, it is difficult to provide a definitive list of which areas are covered and which areas are excluded. Article 13 does not indicate how much competence the Community needs to have in a given area before it may be relied upon. However, there is a persuasive argument that the Treaty already provides the Community with competence in respect of employment, education and vocational training, public health, the provision of goods and services, even housing. Relevant areas which appear to fall outside the scope of Community law are criminal law and family law, including marriage and adoption. Nonetheless, to the extent that disparities in the criminal law and family law of the Member States still form a barrier to free movement for lesbians and

gay men, it remains possible to argue that Article 100 or Article 235 could be relied upon for EC action on these issues. Given that the Treaty of Amsterdam has not even been ratified yet, it is difficult to reach a firm conclusion on how the institutions will approach the implementation of Article 13.

2. The *acquis communautaire* on sexual orientation discrimination.

The lack of any specific Treaty base for Community action against sexual orientation discrimination is reflected in the very weak state of the *acquis communautaire*. Nonetheless, there have been a variety of binding and non-binding Community instruments which deal both directly and indirectly with this issue.

Binding instruments.

The first binding EC legal instrument to refer to sexual orientation was adopted relatively recently. Regulation 781/98 amending the EC Staff Regulations inserts a new Article 1a in the regulations to the effect that “officials shall be entitled to equal treatment under these Staff Regulations without reference, direct or indirect, to race, political, philosophical or religious beliefs, sex or sexual orientation, without prejudice to the relevant provisions requiring a specific marital status.” Whilst this does not meet all the concerns of the lesbian and gay staff of the Community, particularly in respect of recognition of their partners, it does establish a basic level of protection against discrimination. For instance, it is now clear no-one may be dismissed from the EC Staff on grounds of their sexual orientation.

No other binding legislative measure expressly mentions ‘sexual orientation’, but there are several instruments which may indirectly benefit lesbians and gay men. The parental leave directive 96/34/EC provides a right for three months unpaid leave on the birth or adoption of a child, and compassionate leave where ‘urgent family reasons in cases of sickness or accident’ make the presence of the worker indispensable. A significant question is whether this will include lesbian or gay partnerships. For example, will compassionate leave be granted in respect of same-sex partners, or parental leave granted to a same-sex partner on the birth or adoption of a child by the other partner? It is relevant that the Commission recorded a statement in the minutes of the Council meeting which adopted this directive to the effect that “the directive should be implemented without any discrimination based on race, sex, *sexual orientation*, colour, religion or national origin”.

Another instance where lesbians and gay men may benefit from EC law is the Personal Data Directive, which guarantees special protection of data relating to one’s “sex life”. (Article 8) Arguably, this now precludes the keeping of secret files on sexual orientation by private organisations, including employers.

It must also be recognised that in many instances EC legislation actively discriminates against lesbians and gay men through referring to ‘spouses’ and not making provision for other unmarried partners. For example, Regulation 1612/68 on the free movement of workers provides, in Article 10(1), for the right of the worker to be joined by his or her “spouse”. In 1986, the Court of Justice held that this could not be interpreted as including unmarried partners, heterosexual or homosexual, although it did leave open the possibility that this could change with social and legal developments. More recently though, the Court stated that “in the present state of law within the Community, stable relationships between two persons of the same sex are not regarded as equivalent to marriages or stable relationships outside marriage between two persons of the opposite sex.” This is an example of yet another barrier to free movement as lesbians and gay men do not enjoy an equal right to bring their partners with them if they decide to live and work in another Member State. This is especially difficult in respect of same sex partners who are non-EU nationals.

Non-binding instruments.

The Commission have addressed the concerns of lesbians and gay men in a number of contexts. The most important recognition of sexual orientation discrimination came in the terms of the Code of Practice on measures to combat sexual harassment which the Commission adopted as an annex to a 1991 Recommendation on the dignity of women and men at work. The introduction states:

“research in several Member States, which documents the link between the risk of sexual harassment and the recipient’s perceived vulnerability, suggests that [...] lesbians and women from racial minorities are disproportionately at risk. Gay men and young men are also vulnerable to harassment. It is undeniable that harassment on grounds of sexual orientation undermines the dignity of those affected and it is impossible to regard such harassment as appropriate workplace behaviour.”

The Commission have also demonstrated an increasing sensitivity to the needs of lesbians and gay men in policy formulation and legislative proposals.

In the Commission's proposal for the parental leave directive, non-discrimination on grounds of sexual orientation would have been explicitly forbidden in the implementation of the directive. This clause was though subsequently deleted by the Council of Ministers. Alternatively, in the Commission's 1996 *Communication on illegal and harmful content on the Internet* the need to protect the anonymity of lesbian and gay users of the Internet was acknowledged. Finally, the Commission have funded a number of small-scale programmes concerning sexual orientation discrimination. For example, in Dublin, the group 'Lesbians Organising Together' was provided with funding under the aegis of the New Opportunities for Women (NOW) programme, to run a course on Lesbian Education and Awareness.

The European Parliament has expressed its rejection of sexual orientation discrimination on many occasions. As early as 1984, the Parliament called on the Commission to "submit proposals to ensure that no cases arise in the Member States of discrimination against homosexuals with regard to access to employment and dismissals." However, the most significant expression of support from the Parliament came in 1994, when a Resolution was adopted calling on the Commission to present a "draft Recommendation on equal rights for lesbians and homosexuals". The resolution states that the Recommendation should seek to end, *inter alia*, discriminatory ages of consent for homosexual and heterosexual acts, any discrimination in criminal, civil, contract and commercial law, all forms of discrimination in labour and public service law, and the electronic storage of data concerning the sexual orientation of an individual without his or her knowledge or consent. It also demands an end to the barring of lesbian and homosexual couples from marriage or from an equivalent legal framework, and an end to any restrictions on the right of lesbians and homosexuals to adopt or foster children. This sweeping programme for equality has since been endorsed by the Parliament on a variety of occasions, most recently in its *Resolution on respect for human rights in the European Union (1996)*, adopted 28 January 1998.

Finally, it is important to recall the terms of the 1989 *Community Charter of the Fundamental Social Rights of Workers*. In particular, the preamble of the Social Charter states:

"in order to ensure equal treatment, it is important to combat *every form* of discrimination, including discrimination on grounds of sex, colour, race, opinion and beliefs." [emphasis added]

On the one hand, this brief overview has demonstrated that sexual orientation is an issue which has been addressed by the EU institutions with some regularity. On the other hand, it still remains a relatively unexplored issue at the EU level. The adoption of Article 13 should provide a foundation for a new interest on the part of the Union in the needs of lesbians and gay men. In particular, the connection between sexual orientation discrimination and the free movement of persons needs to be more thoroughly examined, and practical solutions are required to enable the free movement of same sex partners. It is especially necessary that the situation of registered partners from the Netherlands, Sweden and Denmark is addressed, as currently these partnerships are rendered invisible when persons move outside of these states.

Sexual orientation is not an issue which the EU can simply ignore. In many legislative instruments, the EU faces a choice between positive recognition of the particular needs of lesbians and gay men, or reinforcing their invisibility in law. The parental leave directive is a good example of this. Furthermore, given the well-established body of law on sexual discrimination in employment and social security, it is a relevant question why other groups do not enjoy equivalent protection against discrimination. Article 13 provides the Union with the opportunity to rectify the current imbalance in EU equality law. This has been made even more urgent following the judgment of the Court of Justice in *Grant v South-West Trains*, of 17 February 1998. This confirmed that sexual orientation discrimination is not prohibited in existing EU equality law.

UN-HIGHCOMMISSIONER FOR HUMAN RIGHTS, MARY ROBINSON, IN VIENNA: PATRON OF MINORITIES

by Helmut GRAUPNER, Rechtskomitee LAMBDA, Vienna

During her recent visit to Vienna Mary Robinson, UN-Highcommissioner for Human Rights, on 25th June met with representatives of the Austrian Network of Human Rights NGOs, which Rechtskomitee LAMBDA and HOSI-Wien are members of.

In this meeting Helmut Graupner, president of Rechtskomitee LAMBDA, in an oral presentation addressed discrimination of lesbians and gay men in Austria and asked Mrs. Robinson for her support.

In her answer Mrs. Robinson said that the problems presented to her are of high importance and that she

understands herself as a patron of minorities. She will always call for international standards to be complied with.

Text of the oral presentation to Mrs. Robinson:

The situation of ethnic and social minorities in Austria

The situation of minorities in society is an important indicator of its liberality and tolerance. Experience shows that discrimination against individuals very often is based on belonging to an ethnic, social or religious minority. Minority groups facing particular difficulties in Austria are the six legally recognised ethnic minorities, migrants and refugees, lesbians and gay men as well as disabled people.

Discrimination finds its political expression in the exclusion from certain rights, in social life, it is experienced as prejudice, ignorance and social exclusion. Since 1994, minorities and their supporters have been the target of several letter bomb attacks, injuring a number of people; four members of the Travelling community (Roma) have even been killed in a bomb trap.

Legally recognised **ethnic groups** are defined as groups of Austrian citizens residing in the federal territory, having a non-German mother tongue and a specific tradition. These are the **Slovenians** in the provinces of Carinthia and Styria, the **Croats** in the province of Burgenland, the **Czechs** and **Slovaks** in Vienna, the **Hungarians** in Burgenland, and the **Roma** and **Sinti** in the whole of Austria.

One year ago, the Volksgruppenbeirat, the Ethnic Groups Advisory Board, presented a memorandum to the Federal Government demanding that the Republic of Austria should in its Federal constitution officially profess its commitment to Austria's cultural, linguistic and ethnic diversity, historically grown and developed. Specific and considerable shortcomings in the fields of education, media, usage of the minority languages in local authorities and topographic signposting were stressed. The Austrian government has not yet even reacted to this memorandum.

Moreover, although Austria has ratified the Framework Convention for the Protection of National Minorities, Austria has not ratified the European Charter for Regional or Minority Languages.

The situation of **disabled people** is characterised by the ignorance and non-recognition of their needs in public life. There is no transparent (?) and

operational legislation, the current legal provisions are full of exceptions, thus there are no uniform rules concerning suitable public transport, parking areas or accessible buildings. Most theatres, cinemas, restaurants and other public places do not have access or toilets suitable for wheel-chairs.

The integration of disabled children in educational institutions is only possible after surmounting huge bureaucratic obstacles. The overall problem is rather seen in a medical context than in the context of human rights and inclusion.

As concerns **homosexuals**, the Austrian situation is one of the most backward in Europe and it must be said that its reputation in this respect is disastrous. Austria still even in its Criminal Law is discriminating against its homosexual citizens.

The Austrian Criminal Code sets a minimum age limit for heterosexuals and lesbians of 14 years but of 18 for gay men. So while heterosexual and lesbian adolescents are free to engage in self-determined consensual sexual relations from the age of 14 onwards gay male adolescents are denied this right to sexual self-determination. Men over 19 who engage in consensual sexual relations with a young man of 14 to 18 can be punished with imprisonment from 6 months to 5 years. About 20 men are convicted under this law every year and more than 50 new criminal proceedings instituted. Penalties inflicted by the courts are even increasing and adolescents are often pressured by police to testify against their partners and in case of their unwillingness to do so often subjected even to police brutality. Respective complaints with state authorities in most cases are not dealt with seriously. It should be underlined again that such relations if heterosexual or lesbian do not bother any state authority.

International organs did condemn this discrimination as violating international human rights law. The *European Parliament* in its *Resolutions on the Respect for Human Rights within the European Union* in the years 1997 and 1998 called on Austria to immediately repeal Art. 209 CC. And the European Commission on Human Rights declared higher minimum age limits for homosexual relations than for heterosexual ones to be in violation of the *European Convention on Human Rights*. Austria consistently is ignoring all of these decisions.

In this context, we would also highlight the 1994 decision of the United Nations Human Rights Committee which ruled in the submission *Toonen vs. Australia* that the rights of lesbians and gay men to privacy and equality were guaranteed by the provisions of the International Covenant on Civil and

Political Rights. What makes this decision to the most important one to date in international human rights law, however, is that the Committee also noted that the reference to 'sex' in Articles 2 (1) and 26 of the Covenant is to be taken as including 'sexual orientation'.

Gays and lesbians are not protected against sexual orientation discrimination. There is no such legislation on the constitutional or any other legal level, banning for example discrimination in the provision of goods and services or outlawing collective defamation or the stirring up of hatred.

The largest area of discrimination, which has the severest repercussions on the everyday life of lesbians and gays, is the complete non-recognition of same-sex partnerships. This non-recognition entails discrimination in many fields such as housing, social insurance, inheritance, tax, immigration, adoption, parenting and co-parenting rights, joint custody over children, artificial insemination, etc.

In general, it can be stated that the acceptance of **diversity** in Austrian society is still not as developed as in most European countries. Comprehensive anti-discrimination legislation would improve the situation of ethnic and social minorities in Austria and, therefore, is one of the central demands of the human rights movement in our country.

And we are asking you, dear Mme. High-Commissioner, for your support in this respect and to raise these issues in your talks with the Austrian Government, as regards the criminal persecution of gay men. I.e. with the Austrian Foreign Minister who in other, i.e. international, areas does carry human rights heavily on his lips but as chairman of the conservative party here in Austria blatantly blocks any reform which would end this shameful criminal persecution of gay men.

PARTNERS MEASURE INTRODUCED IN GERMANY

By Rex Wockner

Three German states have introduced a bill in the upper house of parliament, the Bundesrat, to ban discrimination against same-sex couples.

The measure extends to gay partners nearly every privilege of matrimony -- including access to adoption and the right not to testify against each other in court.

If Helmut Kohl's center-right government loses office in September's federal elections, the measure has a good chance of becoming law, activists said.

Meanwhile, more than 200,000 people turned out for Berlin's gay and lesbian pride parade June 28, walking from the glitzy Kurfuerstendamm shopping street to Bebelplatz Square on the east side of the city.

At the post-parade rally, gay Member of Parliament Volker Beck demanded that gays be allowed to marry.

ROMANIA REJECTS LEGALIZATION OF HOMOSEXUALITY

By Rex Wockner

Romania's Chamber of Deputies voted down full legalization of homosexuality June 30, setting the nation up for a conflict with the Council of Europe
European

Union and NATO.

"It would be immoral to legalize homosexual sex," said Christian Democrat MP Emil Popescu.

"Homosexual couples are sterile. They cannot breed. We want a healthy nation."

Current law states: "Same-sex relations taking place in public or resulting in a public scandal shall be punished by one to five years imprisonment. Enticing or seducing a person to practice same-sex relations as well as propaganda, association or other forms of proselytizing with the same aim shall be punished by one to five years imprisonment."

Gay activists say the wording of the law not only outlaws gay organizations but also criminalizes private relations between consenting adults if some member of the "public" manages to become "scandalized" by the relationship.

"Romania has missed again the chance to part from a repressive and archaic legislation which serves a totalitarian mentality and a police-oriented practice which have brutally and repeatedly violated human rights in Romania," commented the Bucharest gay group ACCEPT.

BLEAK NEWS ON THE REFORM OF THE MILITARY JUSTICE CODE

By César Lestón, Fundación Triángulo

The Spanish Lower House Defence Committee has been assessing the Discipline Regulations of the Army. In spite of the initial aims, this text retains the considerations currently in force on "attempt against

military dignity" a real nice way to call pursuits against same-sex relationships one of whose member is in the Army. The final draft was eventually voted by a plenary session of the Lower House of Parliament (Congreso de los Diputados) at the end of June with no changes on this issue.

The liberal and democristian catalans in CiU asked for this wording ("relationships endangering military honour") in section 8.22 of the law to be removed from the text during the Commission draft phase, something which was eventually not voted in such phase mainly because of procedural reasons.

At the moment of the voting in plenary session, the MP's from CiU eventually voted against any such changes in section 8.22 after high pressure from the Government benches and Ministry of Defence officials.

Nevertheless, after she was warned by the Fundación Triángulo, the socialist Congresswoman Ms Carmen Calleja made a brilliant speech hinting that such wording had always been used and could equally be used hereinafter as well to hamper sexual freedom. The parties sustaining section 8.22 (PP in office and CiU mainly) stated publically though that this article can not be used merely on the grounds of a same-sex intercourse. The ball is now on the roof of the military courts (usually very conservative) when they will have to face a judiciary case where "military honour" and same-sex intercourse come together.

Currently in a professionalization process, where conscription will be abolished in a maximum period of five years, this is still bad news for the future of the Army. Applicants coming from the most varied sectors will certainly not be attracted by low wages and the, no matter how vague, likelihood of being pursued for such an undefinable thing as "military honor". With this measure in force, diversity is not likely to become an asset of our Army.

The parties in parliament have declared nevertheless that article 8.22 of this law will under no circumstance will be used against free sexual options (as stated in Parliament records, something very important in a Court case). Nevertheless, recent rulings from military courts -using the law currently in force, with the very same wording for this issue- show terrific resemblances with those used by civil courts during the Franco period, when homosexuality was explicitly forbidden.

ILGA-EUROPE LAUNCHES EU REPORT

ILGA-Europe's brand-new report "Equality for Lesbians and Gay Men - A Relevant Issue in the Civil and Social Dialogue" which was first presented at the European Social Policy Forum organised by the European Commission in Brussels 24-26 June 1998, is now available at ILGA-Europe's internet page under the following address:
<http://inet.uni2.dk/~steff/report.htm>

The publication of this 104-page report is part of a project (with the same title) for which ILGA-Europe had received funding from DG V; the project is also financially supported by the Austrian Federal Ministry for Labour, Health and Social Affairs and the Austrian Federal Minister for Women's Affairs and Consumer Protection. Donations to the costs of the project were also received from UNISON (the public sector trade union in the United Kingdom) and two of ILGA-Europe's project partners, Landsforeningen for bøsser og lesbiske (LBL), the Danish National Association for Gays and Lesbians, and HOSI Wien, Austria's First Lesbian and Gay Association.

The report contains two general chapters on the manifold forms of discrimination gays and lesbians are exposed to in the Member States of the EU and on the recent developments of EU law and policy on sexual orientation discrimination as well as contributions about the situation of lesbians and gays in the fifteen Member States. These articles draw an exhaustive picture of the many forms of social and legal discrimination against lesbians and gays throughout the EU, but also of the many positive developments in the pursuit of achieving full equality for them. They also highlight examples of good and best practice in this context.

ILGA-Europe has produced this report as part of a project to promote the co-operation between non-governmental organisations and to strengthen the social and civil dialogue. A dialogue in which ILGA-Europe wishes to participate in a very active way at the European level. One of the first steps in order to pursue this aim was to apply for membership in the Platform of European Social NGOs which was granted in March 1998. The Platform has at the moment 25 members, all of them European federations of NGOs working in a variety of areas, such as disability, migration, women, children, youth, age, poverty, unemployment, homelessness, etc. ILGA-Europe board members already participated in the Platform's steering group meeting (Brussels, May 1998) and a mini-conference to prepare for the Social Policy Forum (London, June 1998).

The report is designed as a tool and instrument to inform other NGOs and associations in the social and human rights field about the legal and social situation of lesbians and gay men in the 15 Member States, and provides a basis for discussion with potential allies and partners in the fight against all forms of discrimination.

On 25 May, ILGA-Europe had invited European social and human rights NGOs to a first one-day meeting in Brussels to enter into this dialogue and specifically to discuss the draft version of the report and its recommendations. The meeting was attended by several NGO representatives. ILGA-Europe board members and other experts presented various aspects of the report. MEP Outi Ojala (GUE/NGL, FIN), president of the EP Equal Rights for Gays and Lesbians Intergroup also gave a presentation, as did Kevin Walsh of DG V. The NGO representatives gave valuable input both to the main chapter of the report and for the recommendations. This meeting was also part of the ILGA-Europe project, another meeting with social and human rights NGOs is scheduled to take place in November of this year as part of the project.

The report formulates a series of recommendations to improve the situation of lesbians and gay men in the Union, recommendations directed both at other NGOs, the social partners, the Member States and the European Union which has been given the competence by the Treaty of Amsterdam to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The report will also be presented at a number of other forums during the year 1998, including the international conference on 'Trade Unions, Homosexuality and Work' in Amsterdam in July, EuroPride in Stockholm, the EP Intergroup mentioned above in September, and of course, the ILGA-Europe Conference in Linz in October 1998. At that time, French and German translations of the report should also be available.

AUSTRIAN PARLIAMENT FAILS TO REFORM AGE OF CONSENT LAW

by Kurt Krickler, HOSI Wien

On 17 July 1998, Austrian Parliament's conservative majority (Christian Democrats and far right-wing Freedom Party) voted down an amendment to a penal code reform bill providing for the repeal of Article 209, the discriminatory age of consent law (18 for gay men contrary to 14 for heterosexuals and lesbians). The Austrian Parliament, thus, ignored both the

decision of the European Human Rights Commission in the Sutherland versus United Kingdom case ruling that an unequal age of consent is a violation of the European Human Rights Convention and two appeals by the European Parliament in 1997 and 1998 which had urged Austria, on the occasion of the adoption of the annual reports and resolutions on the observance of human rights in the EU, to repeal the unequal age of consent law. Only the members of the Green and the Liberal parties voted in favour of abolishing Article 209. The largest group, the Social-Democrates, was in a great dilemma and left the plenary in a move unheard of before, because the did not want to vote against the amendment but neither to vote for it and thus to breach the government coalition agreement with the conservative party.

With the same penal code reform bill, Parliament voted, however, the inclusion of same-sex partners in the definition of "next of kin" (or significant others) in Article 72 of the Penal Code regulating the right to refuse to testify in court against certain family members. This is a real precedent, for the first time, same-sex partners have been recognised in Austria's legal system. This amendment was tabled by the Liberal Party in the Law Committee during the negotiations leading up to the penal code reform Bill according to a proposal made by the gay and lesbian organisation HOSI Wien in its statement in the hearing process of the draft bill.

TWO PIECES OF GOOD NEWS FROM LATVIA:

By Juris Ludvigs Lavrikovs

I. AGE OF CONSENT EQUALISED.

This summer the Saeima (Latvian Parliament) adopted a new Criminal Law ("Latvian Herald", NO. 199/200, 8 July 1998). Until then the Criminal Code of the Republic of Latvia, which was an amended version of the Soviet model of the Criminal Code, was in force. Under the former Criminal Code the age of consent for heterosexuals and lesbians was 16 and for gay men 18 years of age (see Euroletter No. 57). Article 161 of the new Criminal Law "Sexual acts with a person who has not reached the age of 16" provides for imprisonment of up to 4 years for "sexual acts with a person who has not reached the age of 16, where the latter is in material or other dependence on the person committing the sexual act, or where such act is committed by a person who has reached the age of 18." Thus the new Criminal Law does not distinguish between heterosexual and homosexual acts and defines 16 as the minimum age for all sexual acts.

The only remaining difference between heterosexuals and homosexuals in the new Criminal Law is that the legislator has separated heterosexual rape from violent homosexual and lesbian acts. At the same time, both Articles define criminal action in a similar fashion: Article 159 "Rape" deals exclusively with heterosexual acts committed with violence or threats of violence, or taking advantage of victim's defencelessness (Article 159.1), and Article 160 "Violent sexual gratification" penalises "pederasty or lesbianism or other forms of unnatural sexual gratification" if such are committed with violence or threats of violence, or taking advantage of the victim's defencelessness (Article 160.1). Similarly, both Articles define circumstances in which the penalty is increased - where the victim is younger than 18 years of age, where the act is committed by a person who has previously committed a similar offence or where the act is committed by a group of persons (Article 159.2 and Article 160.2), or where the act causes serious damage to the victim or is committed against a person younger than 14 years of age (Article 159.3 and Article 160.3). The reason for such separation becomes clear when the penalties are examined. For the criminal activities covered by Article 159 the legislator has provided for heavier punishments compared to those covered by Article 160: 159.1 - imprisonment for up to 7 years, 160.1 - imprisonment for up to 6 years; 159.2 - imprisonment for 5 to 15 years, 160.2 - imprisonment for 3 to 12 years; 159.3 - life sentence or imprisonment for 10 to 20 years, 160.3 - imprisonment for 5 to 15 years.

Dr.jur. Aivars Niedre, Chairman of the Latvian Council of Sworn Advocates, who is the author of the new Criminal Law, explained that the only reason for such separation and the heavier penalty for heterosexual rape is that heterosexual rape can have more damaging consequences for the victim in the form of unwanted pregnancy. Dr.jur. Niedre also said that documents of the Council of Europe and European Union regarding equal age of consent were taken into account during the adoption of the new Criminal Law.

II. ASYLUM MADE POSSIBLE FOR PERSECUTED HOMOSEXUALS

In 1997 Latvia ratified the UN 1951 Convention Relating to the Status of Refugees and adopted a law on "Asylum Seekers and Refugees in the Republic of Latvia" ("Bulletin of the Saeima and the Cabinet of Ministers of the Republic of Latvia", No. 16, 4 July 1997). Article 2 of this law defines refugees as individuals "who enter or have already entered Latvia because they have a well-founded fear of being persecuted for reasons of race, religion, nationality,

membership of a particular social group, or political opinion".

The same law established, as part of the Ministry of the Interior, the Centre for Refugees, which deals with applications from asylum seekers in Latvia. Representatives of the Homosexuality Information Centre met Ms Baiba Kozule of the Centre for Refugees and learned that despite the fact that lesbians and gay men are not specifically mentioned in the law, the Centre will closely follow the UN High Commissioner for Refugees' interpretation of the phrase "social group", which appears in the Latvian law, as including lesbians and gay men. Ms Kozule said that oppressed lesbians and gay men have to demonstrate a well-founded fear of being persecuted because of their sexuality. Ms Kozule also gave examples when such fear is well-founded: homosexual acts are totally banned, homosexual persons are persecuted or their rights violated by the State authorities, or by other individuals where the State fails to provide adequate protection.

NEW DUTCH GOVERNMENT COMMITTED TO OPENING UP MARRIAGE AND ADOPTION TO SAME-SEX COUPLES

By Kees Waaldijk

On 3 August 1998 a new government was sworn in in the Netherlands, a continuation of the coalition of the labour, liberal and democrat parties, which have been in power since 1994. Its agreed government programme (published on 20 July) includes a paragraph on "homo-marriage", with the following text (my translation):

"In the interest of strengthening the equal treatment of homosexual and lesbian couples, the Cabinet shall before 1 January 1999 introduce a bill to open civil marriage to persons of the same sex. Before the same date a bill shall be introduced for adoption of Dutch children by same-sex couples."

With this commitment, the new Dutch government is following the recommendations of the lower Chamber of Parliament and of a committee of legal experts (see <http://www.xs4all.nl/~nvihcoc/marriage.html>). It will probably take several years for the legislation to come into effect. Until then same-sex couples and their children will have to make do with the legislation on "registered partnership" and "joint authority" which came into effect on 1 January 1998.

The government programme also includes a paragraph on immigration of spouses and other partners. The income requirements for legal residents of the Netherlands who want to be joined by their

foreign spouse/partner, will be equalised. For married partners these requirements will be raised to that already applicable to unmarried partners (of the same of opposite sex), i.e. an income level deemed sufficient to support a couple. This is of course bad news for the married, but it effectively abolishes a highly controversial form of indirect discrimination against low-income same-sex couples (who could not enhance their immigration rights by getting married).

The new deputy minister of Justice, now responsible both for family law and for immigration, is Professor Job Cohen, a labour senator, lawyer, and until recently Rector of the University of Maastricht. He is expected to do a good legislative job.

RECRIMILASATION OF PROSTITUTION IN SWEDEN

By Martin Andreasson, vice president, RFSL

Helmut Graupner's article about the recriminalisation of prostitution in Sweden (Euroletter no. 61) calls for some clarifications. Graupner writes:

"Why didn't we hear of any protest from gay rights associations so far? Didn't it reach us or hasn't there been any? If not, how can that be possible?"

As a matter of fact, RFSL (the Swedish Federation for Lesbian and Gay Rights) has protested the new legislation ever since it was proposed by a governmental committee in 1995. Our position is that the social problems connected with prostitution cannot be solved by a criminalisation. On the contrary, the social problems for persons selling sexual services are only likely to get worse. Furthermore, we fear that the new law will lead to police persecutions of gay men cruising in public areas, as experience has shown that few police officers or social workers have enough competence to tell the difference between gay prostitution and gay cruising in public areas.

RFSL has tried to stop the new legislation by newspaper articles, meetings with politicians from different parties, joint action with other associations and other means of lobbying. Much of this work has been reported in our newsletter News from Swedish Lesbian/Gay Politics, which contains a summary in English (see our website at <http://www.rfsl.se>).

We can only deplore that our work was not successful: the proposal to make it an offence to pay for a sexual contact was supported by 70 percent of the members of the Swedish parliament. Only the Conservative and Liberal parties voted against. The new law will come into effect on January 1, 1999.

HOUSE OF LORDS STALLS AGE-OF-CONSENT CHANGE

By Rex Wockner

Britain's unelected House of Lords vetoed the House of Commons' reduction in the age of consent for gay-male sex July 22. The vote was 290-122.

The Commons overwhelmingly passed the measure June 22 by a vote of 336-129, lowering the age for male-male sex from 18 to 16, which is the legal age for lesbian and heterosexual sex.

Among the Lords voting against gay teens was former Prime Minister Margaret Thatcher.

The House of Lords, which includes the nation's Anglican bishops, has repeatedly thwarted Britain's new Labour government since the government announced plans to deprive hereditary Lords of their guaranteed seats in the chamber.

Peter Tatchell of the gay group OutRage! called the vote "a disgraceful decision and an insult to democracy."

The gay lobby group Stonewall said: "There is absolutely no justification for the criminalization of gay men between the ages of 16 and 17. [Stonewall] deplores the intemperate and downright insulting tone of some of the speeches made in the House."

Gay Labour MP Ben Bradshaw said of the three-hour debate before the vote, "I have never heard so much bile, so much ignorance."

When the vote was announced on radio, about 100 gays stormed the entrance to Parliament but were turned back by police. Later, as the Lords left the building, the activists shouted, "Shame! Parasites! Scum!"

For the time being, the government will likely capitulate to the Lords' homophobia and drop the age-of-consent fight in order to salvage the measure it is attached to, the Crime and Disorder Bill, a major Labour initiative.

Austria is the only other European Union nation to retain differing ages of consent for gay and straight sex.

UK GOVT PROMISES GAY RIGHTS REFORM NEXT YEAR

REUTERS, July 27, 1998

LONDON, July 27 (Reuters) - Britain's Labour government said on Monday it would not try to overturn a vote in the House of Lords last week blocking the lowering of the age of consent for gay sex from 18 to 16.

But it promised campaigners for a change in the law that it would help them push forward the reform in the next session of parliament.

Ann Keen, the Labour MP who sponsored the original clause lowering the age of consent, told a news conference: "We are delighted by the outcome."

She spoke after receiving a letter from Home Secretary Jack Straw which explained why the government did not want to put at risk its flagship Crime and Disorder Bill by challenging the upper house just before parliament's summer recess.

"There is every prospect that if the Commons rejected the Lords' amendment on Tuesday and sent the Bill back to the Lords, the Lords would reject it again in turn," Straw wrote.

Straw said the government was neutral on the issue and would allow a free vote when the issue returned to the Commons in the next session, beginning in October.

"I will reluctantly recommend the Commons, with your support, to abide by the decision of the Lords to omit your amendment," he wrote to Keen.

Keen said returning her amendment to the Lords would only have allowed the peers to "come out with more bigotry and offensive remarks."

The government is under pressure to reform the law because of a pending court case in the European Court of Human Rights alleging that British law discriminates against homosexuals because the heterosexual age of consent is 16.

Peers voted by 290 to 122 in a free vote on July 22 to overturn an overwhelming House of Commons majority the previous week in favour of the reform.

Ann Mason of the gay rights lobby group Stonewall told the news conference she was happy with the compromise and Straw's promise.

AGE OF CONSENT IN THE UK

Stonewall pres release

MPs will have their day

Stonewall and Ann Keen MP today welcome Home Secretary Jack Straw's announcement that Government legislation will be introduced as soon as possible to ensure that the UK gets an equal age of consent for gay men.

The Home Secretary has also pledged to invoke the Parliament Act if necessary to ensure the measure's safe passage through the parliamentary process. We expect the Bill to become law in the New Year.

Crucially, by today's move the Government has asserted the principle that all sexual offences legislation in future must be non-discriminatory.

Ann Keen MP said: "It is vital that the Crime and Disorder Bill receives Royal Assent and so I have reluctantly agreed to withdraw my amendment in the light of the assurances I have received from Jack Straw. I am delighted that there will now be Government legislation to achieve age of consent equality.

"I have received all-party support, and the support of Jack Straw, for an Early Day Motion reaffirming the House of Commons' commitment to the principle of equality in the age of consent and urging the earliest possible introduction of a Government Bill to achieve it."

Angela Mason, executive director of Stonewall, said: "The Government is determined to see the huge vote for equality by MPs is translated into legislation. It will invoke the Parliament Act to prevent the Lords defeating the will of the House of Commons.

"It is also of enormous significance to us that this will be Government legislation with a Minister speaking to it, making the case for equality. Jack Straw has made it clear that any measures relating to sexual offences will, from now on, apply equality to both boys and girls and men and women and will be absolutely non-discriminatory. This is exactly the principle we have been fighting for.

