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Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage

<http://www.steff.suite.dk/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at

<http://www.steff.suite.dk/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at

<http://www.steff.suite.dk/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>

FIRST BREAK-THROUGH FOR LEGAL RECOGNITION OF HOMOSEXUALS IN GERMANY

Press Release by Volker Beck (Member of the Federal Parliament of Germany; spokesperson for legal affairs, League'90 / The Greens) (Translated by Dorian Haseloff)

The advent of the red-green government brings a clear change in policies for gay men and lesbians. The "promotion of tolerance, the respect for minorities and the strengthening of their rights" is laid down in the coalition contract as one of the objectives of the new Federal Government in Germany.

In the field of interior and legal policy it was agreed: "The new Federal Government will protect minorities and work to achieve their equal treatment and full social participation. Nobody should be discriminated against on account of his/her disability, origin, colour, ethnic affiliation or sexual orientation as a gay man or a lesbian. To this end, we will initiate a law against discrimination and for the promotion of equal treatment (among other things with the introduction of a legal institution of the "Registered Partnership" with rights and obligations). The recommendations of the European Parliament on the equal rights of lesbians and gay men will be consulted."

Tough negotiations were held on this issue. The Social-Democratic Party was originally unwilling to deal with the question of gay and lesbian partnership in the coalition contract. In this case, League'90 / The Greens were able to push this through.

It is important to stress that the coalition contract says in the case of "Registered Partnership", no legal rights are excluded. Thus statements by Social-Democratic politicians that homosexual couples will, for instance, not be recognised for the purpose of taxation, are not in accordance with the text of the coalition contract.

League'90 / The Greens will insist strongly that the same rights be granted to gay and lesbian couples as to married couples.

The work has not come to an end for us. Gay and lesbian groups and associations will have to continue to fight to achieve true equality until the Federal Parliament passes the law on registered partnership.

We shall only achieve this only with united efforts. With the planned anti-discrimination law, Germany will keep pace with developments in Europe. This gives the clear signal that gay men and lesbians should no longer be second-class citizens.

DUTCH CABINET OKS GAY ADOPTION

By WILLIAM J. KOLE (AP)

The Dutch Cabinet has approved a plan to let homosexuals adopt children, accelerating a push to expand gay rights in the country in time for the new millennium.

The legislation, approved late Friday by top ministers of Prime Minister Wim Kok's coalition government, would restrict adoptions to Dutch children. It will go before parliament, probably early next year, in a drive to have it become law by Jan. 1, 2000.

Under the proposal, gays and lesbians would not be allowed to adopt children from abroad out of respect for other countries' laws, and out of concern that international adoption agencies would stop approving adoptions to all Dutch couples, heterosexuals included.

The plan would limit the right to adopt to homosexual couples who have lived together for at least three years and who have cared for the child for a full year. It would not require a couple to marry or legally register their partnership.

Prospective gay parents would have to demonstrate in court that the child they wish to adopt would be better off with them, Kok said.

The legislation, said to have broad backing in parliament, revives a push that began several years ago to further expand the rights granted to homosexuals under Dutch law.

A new law took effect on Jan. 1 permitting same-sex couples to marry and giving them the same pension, social security and inheritance rights as married heterosexual couples.

There was no discernible protest over Friday's Cabinet approval in the liberal Netherlands, which is among the few countries to allow same-sex marriage and has welcomed homosexuals to serve openly in the military since the 1970s.

Recent public opinion surveys have shown that seven in 10 Dutch people think homosexuals could make good parents.

In the past, however, Roman Catholic leaders in the Netherlands have been among those opposed to homosexual adoption on moral and biblical grounds.

Denmark, Norway, and Sweden also legally recognize gay partnerships but have not allowed them to adopt.

Some U.S. states allow homosexual adoption and a few forbid it.

Germany's new center-left government indicated this week that it intends to grant some sort of legal status to same-sex couples, but not an outright "gay marriage" and not the right to adopt children.

In France, a bill aimed at giving legal status to unmarried couples has triggered fierce debate and street protests amid fears among conservatives that it could legalize homosexual marriage and lead to gay adoption.

DECRIMINALISATION IN BELARUS CONFIRMED

by Kurt Krickler, HOSI Wien

In Euro-Letter # 57 (February 1998), doubts were expressed about whether decriminalisation of the total ban on homosexuality had taken place in Belarus (Art. 119-1 of the Belarusian penal code) as reported in Euro-Letter # 55.

These doubts were unfounded as it was clear from various sources that a reform must have taken place between April 1993 (ILGA Eastern Europe conference in Vienna) and July 1996 (AIDS conference in Vancouver). The recently founded "Belarus League for Freedom of Gays, Lesbians, Bisexuals - Belarus Lambda League (BLL)" has now confirmed that decriminalisation happened on 1 March 1994.

BLL, by the way, is interested in getting in contact with groups in other countries and getting material from abroad. Please, write to BLL, P.O.Box 23, BY-220006 Minsk, Belarus.

CHANGES IN THE LATVIAN CONSTITUTION

By Juris Ludvigs Lavrikovs

On 15 October 1998 the *Saeima* (Latvian Parliament) adopted and the President of the Republic announced the law "On Amendments to the *Satversme* (Constitution) of the Republic of Latvia ("Latvian Herald", Nr.308/312, October 23, 1998). Under this law the 1922 *Satversme*, which was reintroduced after the regaining of independence from the Soviet Union, is amended by the addition of a new Section 8 "Basic Human Rights".

In 1922 the *Satversmes sapulce* (Constituent Assembly) could not agree on this section, which laid down fundamental freedoms and rights, for political reasons. Therefore until recently Latvia was almost

the only country in Europe whose constitution did not contain any provisions on human rights.

In 1991 so-called constitutional law "On the Rights and Duties of the Citizen and the Individual" was adopted. Article 12 of this law contained a list of grounds on the basis of which discrimination was prohibited. Sexual orientation was not included. Also this was a "closed-end" list, that is, it contained no formula such as "other (comparable) grounds" which may have allowed the article to be interpreted as covering sexual orientation. Another problem with this law was that the Latvian legal system does not recognise laws of this category as constitutional.

Recent constitutional reform not only provides for constitutional protection of human rights in Latvia but also opens up the possibility of interpreting of the *Satversme* as protecting individuals from discrimination based on their sexual orientation. Under the law "On Amendments to the *Satversme* (Constitution) of the Republic of Latvia" the 1991 constitutional law "On the Rights and Duties of the Citizen and the Individual" is loses its force and the new Section 8 of the *Satversme* is introduced. According to new Article 91 of the *Satversme* "all people in Latvia are equal before the law and the courts. Human rights shall be exercised without any discrimination". Thus the article does not contain a list of grounds on the basis of which discrimination is prohibited, but simply states that "any discrimination is prohibited."

Although theoretically it seems that Article 91 provides protection from discrimination on grounds of sexual orientation, it is up to the future case law or official explanation to clarify whether this is the case.

EUROPEAN UNION LAUNCHES ITS HUMAN RIGHTS AGENDA FOR THE YEAR 2000

By ILGA-Europe

Comité des Sages recommends that sexual orientation discrimination be more systematically addressed through a European Commission action plan and the development of a draft directive on equal treatment.

At a conference in Vienna 9-10 October 1998, the human rights agenda for the EU for the year 2000 was launched and debated by high-level experts and officials, including from the European Commission, the European Parliament and the Council of Europe. This agenda is the result of the European Commission sponsored project "A human rights agenda for the European Union for the Year 2000" carried out by an expert team led by Professor Philip Alston, head of the Department of Law at the European University Institute in Florence. This project is marking the 50th

anniversary of the Universal Declaration of Human Rights to be celebrated in December 1998 and is intended to formulate a comprehensive future human rights policy for the EU. Based on the extensive Final Project Report prepared by this expert team, a Comité des Sages has elaborated the human rights agenda for the EU for the year 2000. The Comité des Sages consisted of Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia, Catherine Lalumière, member of the European Parliament and former Secretary-General of the Council of Europe, Peter Leuprecht, former Deputy Secretary-General of the Council of Europe, and Mary Robinson, UN High Commissioner for Human Rights.

Both the final project report and the agenda have now been published and both refer to human rights of lesbians and gays. The conclusion and recommendation of the expert team that "Discrimination based on sexual orientation continues to be widespread and should be more systematically addressed through a Commission action plan and the development of a draft directive on equal treatment" (paragraph 208 of the Final Project Report) was included in full text in the agenda of the Comité des Sages (paragraph 12).

"This reference is, after Article 13 TEC as amended by the Treaty of Amsterdam, another clear and strong commitment and mandate for the European Union to combat sexual orientation discrimination and to treat it in the same line as other human rights violations", states ILGA-Europe co-chair Kurt Krickler who attended the two day-conference in Vienna. "And it is another lobbying success of ILGA-Europe because ILGA-Europe had submitted a contribution on sexual orientation discrimination to the expert team which was prepared by Mark Bell, a PhD researcher at the European University Institute in Florence, and supplemented by the recommendations of ILGA-Europe's report 'Equality for lesbians and gays men - A relevant issue in the civil and social dialogue' published last June."

The agenda and the final project report, two key documents on human rights in the European Union indispensable for all working and lobbying in this field, have been posted on the internet at www.iue.it/AEL/welcome.html. French and German translations of these documents are supposed to also be available at this website by 16 October.

WILL HUMAN RIGHTS BE IGNORED IN ELECTION FOR EUROPE'S TOP HUMAN RIGHTS JOB?

By ILGA-Europe

1999 sees the election of a new Secretary-General of the Council of Europe. ILGA-Europe strongly supports the work of the Council of Europe in setting and maintaining Europe-wide human rights standards. It is most concerned that the human rights record of individual candidates be given proper attention in the election process.

The existing rules for the election make no reference to a candidate's human rights record.

ILGA-Europe has therefore written to the Foreign Ministers of the 40 member states, and to the 286 national Representatives to the Parliamentary Assembly, proposing that a clear commitment to the human rights standards of the Council of Europe be an essential election criterion. ILGA-Europe is also recommending that Non-Governmental Organisations and other independent organisations in the human rights field be invited to submit evidence on the human rights record of all candidates, so that the shortlisting of candidates takes place in full knowledge of the essential facts.

For its part, ILGA-Europe is submitting evidence in respect of its field of competence. It has already expressed grave concern at the record of the current favourite to win the election, Walter Schwimmer. In the Austrian Parliament Mr Schwimmer has on several occasions voted against law reforms intended to bring Austrian legislation in line with the human rights standards of the Council of Europe. In particular, he voted to deny the fundamental rights of freedom of expression and freedom of association to lesbians and gay men (guaranteed under Articles 10 and 11 of the European Convention on Human Rights) and against the removal of discriminatory age of consent laws for gay men (despite a ruling by the European Commission on Human Rights that such laws contravene the Convention). He also voted to refuse compensation to the lesbian and gay victims of the Nazis, criminals being the only other group imprisoned under the Nazis in Austria denied such compensation. [Further information on Walter Schwimmer's record, and on the relevant Articles of the Austrian penal code, is given below]

ILGA-Europe considers that the case of Walter Schwimmer illustrates beyond doubt the need for the Council of Europe to give proper consideration to the human rights record of all candidates for its top job. The election of a person who has opposed implementation of the Council's own standards

would be greatly damaging to its all-important human rights work. It would give the impression that the Council did not take its own human rights standards seriously, and leave the Council with a Secretary-General whose moral authority to insist on compliance with these standards by member states was gravely weakened. It would also undermine the Council's reputation with all those concerned for human rights in Europe, and, not least, with Europe's 50 million lesbian, gay, bisexual and transgendered people.

ILGA-Europe places the greatest value on the human rights work of the Council of Europe. This, together with its concern for the rights of lesbian, gay, bisexual and transgendered people, has caused ILGA-Europe to call upon Europe's Foreign Ministers and the Representatives to the Parliamentary Assembly to secure the withdrawal of the candidacy of Walter Schwimmer.

ADDITIONAL INFORMATION

THE COUNCIL OF EUROPE

The Council of Europe's main role is to strengthen democracy, human rights and the rule of law throughout its member states. Founded in the wake of the Second World War, it is the continent's most important human rights organisation, with some 40 member states committed to observing its human rights standards. The European Convention on Human Rights is the most significant of its many human rights treaties. Complaints of violations of this Convention are settled by the European Court of Human Rights (until October 1998 aided by the European Commission on Human Rights).

The Council of Europe is governed by the Foreign Ministers of its member states (who together form its decision-making body, the "Committee of Ministers") and by Representatives from their parliaments (who make up its "Parliamentary Assembly", a deliberative body which elects the Secretary-General). The Secretary-General has a crucial role, as head of the International Secretariat, in promoting the human rights standards of the Council, and in ensuring the efficient operation of the Council as a whole. More information on the Council can be obtained from its website, www.coe.fr

WALTER SCHWIMMER'S RECORD

In 1995 Walter Schwimmer voted against an amendment to the Federal Nazi Victim Compensation Act whose purpose was to make compensation available to homosexual victims of the Nazis. The amendment was defeated. Criminals were the only other group imprisoned under the Nazis to whom such compensation was not made available. The thinking

inherent in Mr Schwimmer's position, that homosexuals are no better than criminals, conflicts with the judgements of the European Court of Human Rights in the Dudgeon, Norris and Modinos cases.

In 1996 he voted against the repeal of Articles 220 and 221 of the Austrian penal code. Article 220 effectively made illegal the publication of information about homosexuality, in violation of Article 10 of the European Convention, which guarantees freedom of expression. Article 221 effectively banned the formation of organisations for homosexuals, in violation of Article 11 of the European Convention.

In 1998 he voted against the abolition of a discriminatory age of consent for male homosexuals (Article 209), despite the ruling in 1997 of the European Commission on Human Rights in the Sutherland case that such a law violated Article 8 of the Convention, taken in conjunction with Article 14. The Commission's conclusion read as follows:

"66. Consequently, the Commission finds that no objective and reasonable justification exists for the maintenance of a higher minimum age of consent to male homosexual, than to heterosexual, acts and that the application discloses discriminatory treatment in the exercise of the applicant's right to respect for private life under Article 8 of the Convention. 67. The Commission concludes, by fourteen votes to four, that in the present case there has been a violation of Article 8 of the Convention, taken in conjunction with Article 14 of the Convention."

THE AUSTRIAN PENAL CODE: INFORMATION ON THE FORMER ARTICLES 220 AND 221, AND THE EXISTING ARTICLE 209

Although the complete prohibition of consensual homosexual acts in Austria was repealed in 1971, new laws were introduced with provisions which were profoundly discriminatory:

a. Article 220 (which was repealed in 1996) effectively banned the publication of information about homosexuality, violating Article 10 of the European Convention. The text of Article 220 reads as follows:

"A person who by means of printed matter, film or in any other public manner incites to lewd homosexual acts or to acts of lewdness with animals or who approves publicly of such acts in such a way as to encourage lewd acts is to be sentenced to a prison term of up to six months or a fine up to 360 x a fixed daily rate, which sentence can only be suspended if a more severe sentence is pending".

The phrase "who approves publicly of such acts in such a way as to encourage lewd acts" was so broad in scope as to make illegal any non-condemnatory presentation of homosexual relationships. While convictions under this law were rare, the threat of prosecution was used relatively frequently by the police in the 1970s and early 1980s to harass the lesbian and gay movement. The existence of the law was also used by public authorities as a justification for refusing services to lesbian and gay organisations. Finally, the law was used to confiscate safe-sex material, the most recent occasion being in 1994, when the Regional Court of Wels ordered the confiscation of a safe sex video shown by AIDS-Help of Upper Austria at an AIDS prevention event.

b. Article 221 (also repealed in 1996) banned the formation of any organisation which promoted "lewd homosexual acts", thus effectively banning lesbian and gay organisations, in violation of Article 11 of the European Convention. The text of Article 221 read as follows:

"A person who founds an organisation of a larger number of persons, the purpose of which is, even though not exclusively, to further lewd homosexual acts and which is apt to constitute a public nuisance, furthermore, anyone who is a member of such organisations or recruits members for it, is to be sentenced to a prison term of up to six months or a fine of up to 360 x a fixed daily rate."

Again, the phrases "to further lewd homosexual acts" and "apt to constitute a public nuisance" were so general, and so ill defined, as to leave any organisation for homosexuals open to prosecution. While there were no convictions under this law, the threat of prosecution was also used by the police to harass the lesbian and gay movement in the 1970s and early 1980s.

c. Article 209 (still in force) established an age of consent of 18 for male homosexuals, compared to 14 for heterosexuals. There are typically 50 police investigations and 20 convictions each year under this law.

UPDATE ON AUSTRIA

By Helmut GRAUPNER, Rechtskomitee LAMBDA, Vienna

In October the Austrian coalition Platform Against Art. 209 took the offensive to get international human rights organs to condemn Austria for its discriminatory higher age limit for gay male sex (18) as

compared to heterosexual and lesbian sex (14) (Art. 209 CC).

Already last year the Platform supported two cases be put to the European Commission on Human Rights. These two cases, submitted on the International Human Rights Day 1997 (10.12.), consist of applications of young men (in their twenties) convicted under Art. 209 CC (to imprisonment) for consensual sexual relations in private with male adolescents between 14 and 18 (for details see Euroletter 57, 5). The new case submitted recently exactly parallels the Sutherland-Case with a 17-year old gay male adolescent (from the state of Salzburg) applying to the Commission. His application however will not be dealt with by the Commission anymore. From 01.11.1998 the Commission and the (old) Court are replaced by the new European Court on Human Rights. All applications submitted to the Commission and not yet declared admissible will be transferred to this new Court. So also the two applications mentioned above will be transferred. With also the Sutherland-Case already submitted to the (old) Court the new Court will at its very beginning be confronted with a total of four (gay) age of consent-cases.

Currently the UN-Human Rights Committee considers Austria's periodical report under the International Covenant on Civil and Political Rights (ICCPR). Platform Against Art. 209 therefore petitioned the Committee to highlight the violation of the human rights of gay men in Austria and in its report to call on Austria to repeal Art. 209 CC.

The European Commission Against Racism and Intolerance (ECRI) is a body of the Council of Europe set up by the first summit of heads of state and government of the member states of the Council of Europe held in Vienna in October 1993. Its activities which are multidisciplinary and wide-ranging are (amongst others) to formulate general policy recommendations to member states and to elaborate country-by-country reports thereby examining the situation in each member state with a view to drawing up concrete tailor-made proposals to each government. Platform Against Art. 209 petitioned the Commission to "urge the Republic of Austria immediately to repeal Art. 209 of the Austrian penal code and to pardon all persons convicted according to this law, for instance in (its) country-report on Austria".

Finally Platform Against Art. 209 also petitioned the European Parliament to continue its highly appreciated committed support for the human rights of gay men in Austria and (after the entry into force of the Treaty of Amsterdam) to initiate the procedure under Art. 7 TEC (concerning the suspension of rights of a

member state consistently and seriously violating human rights).

The text of the three petitions can be obtained from Platform Against Art. 209. The application(s) to the European Commission on Human Rights are not available due to the confidentiality of the proceedings.

Platform Against Art. 209 is a non-partisan and interdenominational coalition uniting 34 organisations against the discriminatory higher age of consent for gay males (18) than for heterosexuals and lesbians (14) (Art. 209 CC). The coalition consists not only of nearly all associations of the Austrian l/g movement but (to about half) mainstream-organisations, as Aids-Service-Organisations, the Permanent Conference of the Children- and Youth-Ombudspersons of Austria, the Austrian Federal Youth Council, the National Students Union, the Austrian Probationary Service, the Austrian Society for Sex Research and others.

COURT CONDEMNS DUTCH MP FOR OFFENDING HOMOSEXUALS

By Michiel Odijk

October 6, 1998, the The Hague Court condemned right-wing Christian politician and member of the Dutch parliament Leen van Dijke because of the offending nature of remarks he made about homosexuals. In an interview two years ago, the MP told that he considered homosexual people who practice their orientation as in the same category as swindlers. In the court session Van Dijke based his defence on the fundamental rights of religion and speech.

The penalty "a fine of 300 guilders, about 140 US dollars, or six days of imprisonment" was equal to the sentence as demanded by the Officer of Justice. The judge did not want to take into account that the leader of the Reformatory Political Federation had shown remorse since the publication of the interview in 1996.

During the session two weeks ago Van Dijke also said that he had been "silly" to approve the text of the interview before publication.

Van Dijke reacted with dismay on the verdict that came as a complete surprise to him. "I never had the intention to offend people." he said. His lawyer S. Voogt told that almost certainly they will appeal, if necessary even to the European Court. The court ruled that Van Dijke wrongly tried to avoid a sentence by referring to the freedom of religion and speech. These liberties also have their limits, the court said. It is a misunderstanding that under European law priority would be given to these

liberties. Moreover, the treaties are meant to offer protection against discrimination. The defence that Van Dijke did not intend to offend homosexuals, but intended to criticize the hypocrisy in his own circles was unacceptable.

The court did take into account that Van Dijke had suffered from the publicity in this case, and expressed this consideration in the verdict.