

EURO-LETTER

No. 67

February 1999

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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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>

ILGA-EUROPE REGRETS EU COURT DECISION IN SAME-SEX PARTNERSHIP CASE

Press release by ILGA-Europe

A Swedish man, employee of the EU Council of Ministers, married to another man under the Swedish registered partnership law had asked his employer to treat him (and his partner) like his married heterosexual colleagues (and their spouses) under the terms of the EU Staff Regulations and thus claimed household allowance. The Council refused, so he brought the case before the Court which rejected his plaint last Thursday, 28 January 1999.

"We are extremely disappointed", declared Jackie Lewis, co-chair of ILGA-Europe, the European Region of the International Lesbian and Gay Association, "that the EU Court of First Instance refused to include registered partners in the definition of 'spouse' for in Sweden, registered partnership is considered to be the equivalent to marriage for same-sex couples. To recognise this would only have been logical because the EU Staff Regulations prohibit both discrimination based on sex and, since April 1998, explicitly also based on sexual orientation. The Court, however, refused to apply this provision because the request for household allowance was made before April 1998!"

"Once more, as in its February 1998 decision in the Lisa Grant case, the European Court failed to apply the principle of equality and non-discrimination to a same-sex relationship. The right to respect of the private and family life has, once more, been denied to same-sex couples", adds ILGA-Europe board member Alberto Volpato, himself an employee of an EU institution and member of Égalité, the organisation for lesbian/gay equality in the European institution. "It is rather shocking that, 50 years after the Universal Declaration on Human Rights was signed and at the eve of the entry into force of the Amsterdam Treaty which, in its article 13, pledges to combat sexual orientation discrimination, gay and lesbian citizens of the EU are being refused by the EU Court the fundamental right of being treated like everyone else."

"We hope", says Danish ILGA-Europe board member Steffen Jensen, "that the Scandinavian member states and the Netherlands and France, which have or will soon have same-sex partnership legislation, will not acquiesce in this decision and work for the recognition of the full rights of registered partners by both the EU institutions and all member states because the present situation causes severe limits to the freedom of movement within the EU of gays and lesbians." The Swedish Government had provided full support

to the complaint of the Swedish EU employee before the European Court.

(PS: The full text of the decision can be found at the following homepage: <http://www.curia.eu.int>)

PRESS RELEASE n- 5/99 from the EU COURT 28 January 1999 *Judgment of the Court of First Instance in Case T-264/97*

(<http://europa.eu.int/cj/en/cp/cp9905en.htm>)

D v Council

A Community official living with a partner of the same sex is not entitled to the household allowance

The Court of First Instance has confirmed a Council decision and refused to assimilate stable relationships between two persons of the same sex to relationships between married persons. A Community official of Swedish nationality claimed from his employer, the Council, the household allowance provided for by the Staff Regulations for Community Officials, requesting that the Council assimilate his partnership with a person of the same sex, which was duly registered by the Swedish authorities, to marriage.

Since 1995 it has been possible for two persons of the same sex to have their partnership registered by the Swedish authorities, which attach legal consequences thereto largely identical to those of marriage.

The Council refused to assimilate the registered partnership to marriage for the purposes of the Staff Regulations and dismissed the applicant's request.

The Swedish official challenged the Council's refusal before the Court of First Instance.

The Court of First Instance considered the legality of the Council's refusal, as a matter of law, in the light of the provisions applicable at the time of the request, that is to say, 1996.

The Court endorsed the Council's approach, stating that the latter was under no duty to refer to the laws of the Member States (in this case, Swedish law) in interpreting and applying the Staff Regulations for Officials, in particular as regards the consequences for a person living with a partner of the same sex. It emphasized that the regulations governing the Community civil service refer exclusively to civil marriage, in the traditional sense of the term.

Community law does not as yet assimilate stable relationships between two persons of the same sex to relationships between married persons.

Consequently, the Council was not obliged to extend the household allowance to an official living with a partner of the same sex under a status recognized by Swedish law.

Although the Staff Regulations for Officials were amended in 1998 so as to ensure equal treatment without reference to sexual orientation, it is for the Council to adopt, if necessary, the necessary amendments to take into account such situations.

NB: an appeal, limited to questions of law, may be brought before the Court of Justice of the European Communities against that decision of the Court of First Instance within two months of its notification.

This press release is an unofficial document for media use which does not bind the Court of First Instance. It is available in English, Danish, Finnish, French, German and Swedish.

DUTCH LAW REFORM IN PROGRESS

(adoption, marriage, foreign partners, age of consent)
by Kees Waaldijk (law lecturer University of Leiden)

Adoption and marriage

On 13 November 1998 the Dutch Cabinet approved a Bill to allow adoption by same-sex partners. And on 11 December 1998 the Dutch Cabinet approved a Bill to allow same-sex couples to marry.

The text of the Bills has not been made public. They are first being sent to the Council of State, for advice. The influential but non-binding advices of the Council of State can be expected around February 1999. Depending on the content of the advices, it will take the government then several weeks before it could present the Bills to Parliament. Only then they will become public. With the Bills the liberal/socialist/democrat coalition government will only be a few months late in honouring its commitments contained in the governmental programme of July 1998 (see <http://www.xs4all.nl/~nvihcoc/marriage.html>).

The parliamentary procedure to approve the Bills will probably take at least a year. In the Lower House of Parliament there is a clear majority in favour of same-sex marriage and same-sex adoption. The position in the Senate is less clear, but normally they follow the political lead of the Lower House.

The Cabinet's press release of 11 December 1998 reveals some details of the Marriage Bill. Registered partnership (available to same-sex and different-sex couples since 1 January 1998) will not be abolished by the Bill. For at least five years it will exist alongside same-sex and different-sex marriage. For couples who have registered their partnership already (4000 couples did in the first ten months of the year, including 1500 between men, and 1200 between women), it will be made possible to convert it into full marriage.

The only legal difference between same-sex marriage and different-sex marriage mentioned in the press release relates to paternity: the female spouse of a married woman who bears a child will not be deemed to be the 'father' of the child (whereas her male spouse would be 'father', even in the absence on any biological link between him and the child). However, it will normally be possible for the female spouse to adopt the child.

According to the Cabinet's press release of 13 November 1998 adoption by same-sex partners will become possible irrespective of their being married or registered as partners. Intercountry adoptions are excluded from the Bill. (On 1 October 1998 the Hague Adoption Convention entered into force in the Netherlands; it only allows intercountry adoptions by two persons who are married, or by one person, whether single or in a relationship.)

Under the terms of the Adoption Bill, same-sex couples wishing to adopt a child must meet the same criteria as different-sex couples. A new strict condition, applicable to all adoptions, is being introduced: all possibility of the child being cared for by its original parent(s) must have disappeared.

Foreign partners

The State Secretary for Justice, Job Cohen, has also announced some improvements for the position of foreign partners.

Under the present law it is somewhat easier to marry a foreign partner than to register a partnership with a foreigner. For partnership registration both partners need to have either Dutch nationality or a 'valid residence entitlement'. For marriage it is enough that only one of the two partners is a Dutch national or a legal resident. In a letter to Parliament of 2 November 1998 the State Secretary announced a Bill which would make the condition that now applies to marriage equally applicable to partnership registration. This Bill (still to be drafted) would also contain other minor improvements in family law.

Until that Bill (or the Marriage Bill) becomes law, foreign same-sex partners can still fall victim of the inequality between married and unmarried partners in the immigration rules: the income requirements for legal residents of the Netherlands who want to be joined by their foreign partner are higher in the case of unmarried partners than in the case of marriage. However, on 30 September 1998 the State Secretary has amended the Immigration Rules slightly: the higher income will no longer be required in cases where the resident of the Netherlands is older than 57 1/2 years or permanently and fully incapacitated (whose social security benefits would normally be insufficient to meet the requirement). The same amendment to the Immigration Rules confirms that registered partners will be treated in the same way as married partners.

Age of consent

Under existing Dutch penal law it is a criminal offence to have sex with someone under the age of 16. However, if the other person is 12 years or older, a prosecution can only take place if there is a formal complaint by or on behalf of the youngster by his or her parents or the Child Care and Protection Board. (This explains why sometimes it is claimed that the Netherlands have 'an age of consent of 12'). Now research commissioned by the Ministry of Justice has suggested that the complaint requirement sometimes forms an obstacle to prosecution in cases of abuse. In response the Cabinet Minister for Justice, Benk Korthals, has hinted on 30 November 1998 that he might prepare the abolition of the complaint requirement.

MPs VOTE YES TO GAY EQUALITY (AGAIN!)

Press release from STONEWALL

Tony Blair tonight led a 183-strong cross-party majority of MPs in voting for an equal age of consent for gay men, in the second vote on this issue in seven months. The Sexual Offences (Amendment) Bill passed its second reading tonight with very little opposition from MPs. Most of those who voiced concerns last June were now satisfied that this Bill provided for both equal treatment and equal protection of young people.

The gay and lesbian lobby group, Stonewall, celebrated this success as a prelude to an even bigger majority when the Bill returns to the Commons for its third reading next month before consideration by peers.

Last July the House of Lords rejected proposals to equalise the age of consent. At that time, the Home Secretary pledged to use the Parliament Act to push

the measure through the upper House if peers voted against the will of the elected House of Commons again.

Angela Mason, Stonewall's Executive Director, tonight said:

"We are thrilled that, after a long and reasoned debate, MPs have voted for the principle of equality, yet again.

"This vote signifies the great will that exists to welcome young gay men into society.

"The majority of MPs realise that this Bill provides for equal treatment and equal protection for all young people. The objections raised by the Lords last July have been dealt with."

For more information please call Mark Watson on 0961 415605 or 0171 336 8860

GUERNSEY LOWERS AGE OF CONSENT TO 18

By Matt Aston, STONEWALL

The Guernsey Parliament has lowered the self-governing island's age of consent for gay sex. The age (previously 21) was lowered to 18, but remains unequal to the heterosexual age of consent of 16.

The amendment to lower the age to 18 was passed by 30 votes to 24 - a narrow majority of 6.