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Editors: Steffen Jensen, Ken Thomassen, Peter Bryld, Lisbeth Andersen and Soeren Baatrup.

Contact to Euro-Letter:

E-mail: steff@inet.uni2.dk

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

Fax: +45 4049 5297

Tel: +45 3324 6435

Mobile: +45 2033 0840

Mail: c/o Steffen Jensen, Gl. Kongevej 31, 4.th, DK-1610 Copenhagen V, Denmark

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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>

SWEDEN APPOINTS GAY OMBUDSMAN

By RFSL

The Swedish Government in an extraordinary meeting today (26-03-1999) appointed Hans Ytterberg Ombudsman against Discrimination on the Ground of Sexual Orientation (Swedish abbreviation HomO). By that Hans Ytterberg becomes the first HomO in the world.

Hans Ytterberg is a lawyer and has worked in Swedish courts, the Swedish parliament, and currently holds a post in the Ministry of Justice. Mr. Ytterberg was for several years president of the Swedish Federation for Lesbian and Gay Rights (Swedish abbreviation RFSL).

The new authority takes up its duties on 1 May 1999 when the law against discrimination in the labour market on the ground of sexual orientation enters into force. HomO will supervise the new law and bring alleged cases to court. The Ombudsman will however not be limited to fight discrimination in the labour market. Rather it might also deal with other important fields of life such as education, tourism etc. 'Sexual orientation' is interpreted as homosexuality, bisexuality and heterosexuality.

Deputy Minister of Industry Ms Mona Sahlin
Comments:

- We know there exist discrimination on the basis of sexual orientation. If Sweden is to grow as a nation we have to recognise the rights of everyone on the labour market and in the rest of society. The Government's decision to appoint an Ombudsman now is an indication that homosexuals and bisexuals are of the same worth as heterosexuals and that society does not accept people being discriminated against because of their sexual orientation.

SWEDEN MAY ALLOW FOREIGN GAY COUPLES TO REGISTER

By RFSL

Swedish Ministry of Justice today (19-03-1999) announced a proposal on improvement of the Registered Partnership Act. Non-Swedish same-sex couples are suggested to have the right to register their partnership. If parliament approves the proposed law reform the new Registered Partnership Act can enter into force on 1 March 2000.

To register a partnership today one of the parties have to be a Swedish citizen AND domiciled in Sweden. Non-Swedish same-sex couples who have lived in Sweden for a long time and perhaps have the

intention to stay there for the rest of their lives can therefore not become registered partners. Not even if they are citizens of a state with a law on registered partnership.

The Ministry of Justice now proposes that persons who have lived in Sweden for at least two years should have the possibility to register their partnership in Sweden.

The Ministry of Justice also proposes that citizens from countries with legislation similar to the Swedish Registered Partnership Act should have the same rights as Swedish citizens to register their partnership in Sweden. This concerns Denmark, Iceland, the Netherlands and Norway. This would mean that two Danes can register their partnership in Sweden without the requirement of domicile for two years.

SWEDISH GOVERNMENT BACKS EU COURT CASE

By RFSL

The Swedish Government decided in its weekly meeting on 25 March to appeal against the Court of First Instance ruling in the Sven Englund case.

The Swedish Government is of the opinion that Community law does not stipulate the notion of marriage. That notion is on the contrary defined in the national legislation.

It is now for the Court to finally decide the matter.

DOMESTIC PARTNERSHIP BILL PASSED IN ARAGON

by Cesar Leston, Fundacion Triangulo

The Regional Parliament of Aragon passed on March the 12th their domestic partnership bill.

This is the second such law in Spain after the one passed by Catalonia in June last year. Spain is divided in 17 different regions, 2 of which only have very specific provisions on civil law and who are thus able to implement such law. Although some attempts have been made in other regions, they are unlikely to reach a good end as in the case of Aragon and Catalonia for they lack the legal competence to do so.

Still, the rights / duties regulated by such laws are rather limited. Catalan or Aragonese civil law regulates basically the mutual obligations between private persons and not between such individuals / partnerships and the governments. In other words: for

instance: while the law foresees the possibility of a "divorce pension" in case the partnership splits, it does not (it can not actually) provide regulation for "widowhood" pensions for such is up to the central government to provide legislation for. Basically, rights granted by such law are the same for straight and for same-sex couples, but the right of adoption, same-sex couples not being eligible for adopting.

Politically, the same scenario which took place in Catalonia has been reproduced in Aragon but with even more dramatic changes: in Catalonia the regional-scope party (CiU) holds all the position in government and is usually supported by the ruling party at federal level, Popular Party (PP), christian-democrat. the bill was supported by all parties in chamber and the abstention of the PP.

In Aragon, the bill was introduced by the socialist party. regional left-wing nationalists (CHA) and communists wanted it to include adoption rights but eventually the idea was dropped in order to attain a support the wider the better to the bill.

The government of Aragon is a coalition between PP and PAR (a regional-scope christian-democrat party) who seat together in Parliament. When the voting came, the government coalition splitted: the PP voted against each of the articles of the law, while everyone else in chamber (left-wing regionalists, socialists and communists MP's) voted in favor of the bill. A funny thing is that the very president of the regional party in office, Mr Gomez de las Rocas, failed to attend the vote for he did not want to vote in favor; nevertheless, the MP's of his own party, who had been given freedom to vote what they wanted, voted all in favor.

Once again, after Catalonia, the pure truth is that all parties, including conservative-minded ones, vote in favor of domestic partnership bills. The party in office at federal level, PP, has only managed to stop the advances of such a law at a federal level by all kind of not-too-moral tricks failing thus to serve the demands of society and that includes the demands of many of their own voters. With the current allocation of seats at the federal parliament, should such a law be voted today, they would loose.

Please find hereinafter the full text of the domestic partnership bill, in English

UNMARRIED COUPLES LAW IN ARAGON

Preamble to the Unmarried Couples Law

The Spanish society in general and the Aragon society in particular has been demanding normative

regulation of the so called unmarried couples for a long time.

Since the first and only Congress about unmarried couples took place in 1982, with auspice from the Europe Council, many European Union countries have been adopting their respective legislation in one way or another to this phenomenon, tending to equal, totally or partially, these couples to married couples.

In Spain, although there is some shy normative regulation in that respect, like the new Urban Leasing Law, in the last years it is the justice tribunals and especially the Constitutional Tribunal the ones who have been applying conjectural or emergency solutions to the specific cases that arrive; solutions that do not fully satisfy anyone.

Because it does not seem like it is Justice who must substitute the legislator in this aspect, since it is the legislator who has been constitutionally attributed the normative faculty and who must solve, through the viable legislative treatment, the questions these types of situations bring up.

Also, next to the stable heterosexual couple, there is another similar phenomenon, although of a very different nature and consequences, which is the stable marital homosexual couple living together, now ceasing to be something strange and marginal. The individual freedom principle that the Constitution fundaments, and which has traditionally constituted the essence and base of Aragon civil Right, forces the legislator to accept that every person has a right to establish a relationship according to their own sexuality.

It is in both cases a growing phenomenon, generally accepted and assumed by society, which legislative oppression only generates problems with tough solutions, and causes important injustices: in some cases, for the members of the couple; in others, and this is much graver, for the couple's progeny.

Not knowing the phenomenon from the legislative point of view implies worsening these situations of injustice that today only the Justice Tribunals try to solve.

Also, and even when the Spanish legislator tries to regulate the phenomenon from a general point of view, given the singularities of the Aragon civil order, it seems that the Aragon Courts still can't arrange the special treatment that these types of relationships need to have in our Community. That is what in a special way justifies this Law.

Articles of the Unmarried Couples Law

Article 1.- Area of application.

The present Law will be applied to non minors who, meeting the requisites and formalities established in it, are part of a stable unmarried couple in which there is a relationship of mutual affectivity.

Article 2.- Administrative registry.

Every stable unmarried couple must be inscribed in a Registry of the Aragon General Depute for the administrative measures regulated by the present Law to be applied, as well as noted or mentioned in the competent Civil Registry if the state legislation foresaw it.

Article 3.- Existence of unmarried stable couple.

1.. It is considered a stable unmarried couple when the marital couple has lived together for an uninterrupted period of two years, at least, or there is a petition to constitute it through public writing.

2.. The credit of the existence of a stable unmarried couple and the course of the two reference years, if there wasn't public writing, can be done through any means of proof admitted in law, especially, through the notoriety act or judiciary document that credits cohabitation.

Article 4.- Capacity requirements.

The following will not be allowed to constitute a stable unmarried couple of those regulated in the present Law:

- a) Those who are linked in matrimony.
- b) The parents in straight line of descendancy or adoption.
- c) The collateral from descendancy or adoption to the second degree.
- d) Those who form a stable couple with another person.

Article 5.- Cohabitation regime and supplementary application norms.

1.. The cohabitation of the couple and the corresponding rights and obligations can be regulated in its persona aspects and patrimonies through the convene stated in the public writing, guided by the the liberty of pacts principle, as long as they don't intrude in the rights or dignity of any of the receivers, and are not contrary to the imperative norms applicable in Aragon.

2.. The temporal character or condition of a stable unmarried couple cannot be agreed to.

3.. In case of a lack of agreement, the members of the stable couple will contribute to the maintenance of the home and common spending with their recourses, in proportion to their respective incomes and, if they are insufficient, according to their patrimonies, without

harming the capability of keeping their property, administration and enjoying their own belongings. Self-maintenance and that of common or not children that live with them, including the right to food, education, medical/sanitary attention and home will be considered common spending.

4.. Both members of the couple respond with solidarity to third persons to the obligations acquired by the spending to which the previous number refers, if social uses are made adequate; in any other case, only the person acquiring the obligation would respond.

Article 6.- Causes of extinction.

1.. The stable unmarried couple extinguishes:

- a) When one of the members dies.
- b) Through mutual agreement.
- c) Through unilateral decision.
- d) In case of separation for more than a year.
- e) In case of matrimony of one of its members.

1.. Any member of the stable couple can proceed, unilaterally, to its revocation, notifying the other person.

2.. Both members of the couple are to cancel the public writing if it was issued, whether separately or not.

3.. In case of an end of cohabitation, the parts can't formalize a stable unmarried couple again through public writing until six months have passed since the previous cohabitation public document was canceled.

4.. The extinction of the stable unmarried couple implies the revocation of the powers that any of the members gave in favor of the other.

Article 7.- Patrimony effects of extinction in life.

1.. In case of extinction of the stable unmarried couple for a cause different to death or declaration of death, and if the cohabitation has caused a situation of patrimonial unfairness between both cohabitants that implies an unjust enrichment, an economic compensation for the affected cohabitant can be required in these cases:

a) When the cohabitant has contributed economically or with his/her work to the acquisition, conservation or improvement of any of the common or private goods of the stable unmarried couple.

b) When the cohabitant, without retribution or with insufficient retribution, has dedicated his/her time to the home, or the common children or the other cohabitant, or has worked for him/her.

1.. At the time of the extinction of the cohabitation for the foreseen causes, any one of the cohabitants can ask for a pension from the other, if it was needed, in the supposed case that the care of the common children didn't allow for the performance of work activities or made them seriously difficult. The pension will extinguish when the care of the children ceases for any reason, or when they become legal aged or emancipate.

1.. The reclamation by any of the members of the couple of the rights regulated in the previous paragraphs must be formulated in the maximum time period of a year counted from the time of extinction of the stable unmarried couple, calculated in respect to the duration of the cohabitation.

Article 8.- Common progeny.

1.. In the case of rupture of the cohabitation with a cause different from death or declaration of death, whatever the couple has accorded in terms of the custody of the common progeny and visits, communication and visits regime is what will be done. Either waym the judge can equally moderate what was agreed, when in his/her judgement it is gravely harmful for any of the members or the common progeny.

1.. In case of failure to agree, the judge can agree what he/she feels appropriate in respect to the common progeny, in benefit of the children and with their presence if they have enough judgement or are twelve years of age or older.

Article 9.- Rights in case of death of one of the cohabitants.

In case of death of one of the members of the couple, the survivor will have the right, whatever the content of the constitution writing, the testament or the successor pacts, to the furniture, utensils and instruments of work that constitute the habitual home, excluding only jewelry or artistic objects of extraordinary value or those goods of family precedence. Also, the survivor can, no matter what hereditary right he/she was issued, reside freely in the habitual home for the time period of one year.

Article 10.- Adoption.

Unmarried heterosexual stable couples can adopt together.

Article 11.- Representation of the absent.

In case of judicial declaration of the absence of a member of the couple, and to the effects of his/her representation and administration of patrimony, the other will occupy the same position of the mate, in the terms foreseen in article 8 of the Aragon Compilation of Civil Law.

Article 12.- Guardianship permission.

In the supposition that one of the members of the couple was declared judicially incapable, the other will occupy the first place in the order of preference for guardianship.

Article 13.- Right to food.

The members of the couple are compelled to share food, with preference to any other people legally compelled.

Article 14.- Non-existence of relativity.

The stable unmarried couple does not generate any relative relationship between its members and the relatives of the other.

Article 15.- United testament.

The members of the stable unmarried couple can testament as united in conformity conforming to what is exposed in the Aragon succession legislation.

Article 16.- Pacts of succession.

The members of the stable unmarried couple can give pacts of succession in the terms foreseen in the Aragon succession legislation.

Article 17.- Trust.

Each member of the stable unmarried couple can order the succession of the other through trust according to what is regulated in the Aragon succession legislation.

Article 18.- Public Rights Aragon Normative.

The rights and obligations established for the couple in the Public Rights Aragon Normative, without a tributary character, will be of equal application for the members of the stable unmarried couple.

First additional disposition.- Matrimonial Capitulation.

The regime of cohabitation and rights and obligations of the stable unmarried couple, agreed in public writing, will acquire the value of matrimonial capitulation, in the case that the members of the couple married, if they had so accorded it expressively in the writing.

Second additional disposition.- Time for the creation of the administrative Registry.

In the time period of six months since the publication of this Law, the General Aragon Deputy will regulate the creation and regime of functioning of the administrative Registry of stable unmarried couples.

Final disposition.- Beginning of the Law application.

The present Law will be applied six months from its publication in the Aragon Official Bulletin.

FRENCH SENATE DUMPS PARTNERS BILL

By Rex Wockner

The French Senate March 18 rejected a measure passed by the National Assembly in December that granted unmarried couples - gay and straight, romantic or not - many of the rights and benefits of matrimony.

The vote was 216 to 99.

The Senators approved an alternate proposal by a vote of 192 to 117 that recognizes only male-female cohabiting couples.

The measure that passed the Assembly 316-249 on Dec. 9 would have granted gay couples rights in such areas as inheritance, housing, taxation, workplace benefits, social security and social-welfare programs.

FRENCH ASSEMBLY APPROVES ANOTHER PARTNER BILL

By Rex Wockner

France's National Assembly again passed a measure April 7 to grant gay and unmarried straight couples many of the rights and obligations of matrimony.

The vote was 300-253. Deputies affiliated with the leftist government parties supported the bill while deputies from the opposition parties generally rejected it.

Under the measure, partners must support each other financially and be jointly liable for debts related to housing and living expenses. Spousal rights are accorded in areas such as social-security benefits, synchronized vacation time, immigration, taxation, inheritance and housing.

A similar bill passed the Assembly last Dec. 9 but was rejected by the Senate March 18. The new measure now moves to the Senate.

UKRAINE GAY GROUP DENIED REGISTRATION

By Rex Wockner

Ukraine's Our World Gay and Lesbian Center is being denied government registration.

The group's application forms have been sent to the national Ministry of Justice for further review after local officials - who should have approved the request - declined "to give a conclusion about the legality of the existence of citizens with anomalous sexual orientation."

"Gays and lesbians were singled out into a separate group of persons and doubts were cast on the legality of their existence and the possibility for them to establish public associations of citizens," said an Our World spokesman. "It was evident discrimination of

Ukrainian citizens on the ground of sexual orientation."

Our World invites faxed letters urging the group's application be approved to Minister of Justice Suzanna Stanik at 011-380-44-226- 2416 and to Lugansk Region Department of Justice Director L.I. Pavlova at 011-380-642-538-128. Fax a copy to Our World at 011-380-642-479-422, or e-mail it to ourworld@cci.lg.ua.

CZECH GOVERNMENT OKs PARTNER BILL

By Rex Wockner

The cabinet of the Czech Republic March 10 OK'd a gay-partnership bill drafted by all the parties represented in the Chamber of Deputies except the Christian Democrats.

The proposed legislation will permit same-sex couples to execute a contract before a notary that will grant most of the property and social rights of matrimony.

Other nations with gay-partnership laws that grant nearly every right of marriage include Denmark (and Greenland), Hungary, Iceland, the Netherlands, Norway and Sweden.

RECENT EVENTS IN BELGIUM

By Anke Hintjens and Remko van Kol

Government campaign

The Minister-for-equal-chances of the Flemish region in februari launched a large scale publicity campaign aimed at parents of gay and lesbian youth. The campaign's primary aim is to sensibilise parents to their responsibility in accepting their childrens disposition. Large posters displaying fathers and sons, mother and daughter, are distributed to schools and other designated places. The posters are accompanied by a leaflet, containing some answers to frequently rising prejudices, and the address data of the most important support centers and societies.

It is reported that this would be the first time in Europe for a government minister to conduct a campaign aimed at parents' acceptance of their childrens homosexual disposition. Anyway, the campaign shows a remarkable level of political recognition of the specific problems that gay & lesbian adolescent can get confronted with.

Custody

The Belgian court of appeal recently rejected an earlier instance court-decision that held the loss of custody of Lili Huyberechts over her children. In her divorce case, the judge had rejected her the right of custody because he overtly doubted whether her new relation with another woman, and the sole fact of her apparent disposition, could possibly fit the interests of her children. Failures in the juridical procedure were the ground for the decision of the court of appeal.

The judge who decided in the first instance divorce case, introduced by Lili because she was been physically maltreated by her husband, got knowledge of the new relation and publicly doubted whether it would last for long. Without further comment, the house, the furniture and the children got awarded to the husband. Upon this, the woman started an appeal case, on which in spite of her formal request hereto, no special arrangements would be applied. 19 months after the appeal had been lodged, the judge decided to award no changes to the original court decision. He hereby expressed his doubts whether "the appellant's, supposed, [sexual] disposition was as well her authentic and original disposition". He furthermore drew attention to the possible negative effect of the difference between the norms in society in general and those in the family to be. Finally the judge alluded to the lifestyle of Lili's friend not being suitable to be a good breeder of her own, and Lili's children.

This second stage decision has now been rejected by the court of appeal, for procedure-errors; the decision had been made without the presence of a public prosecutor for youth cases. Any case that directly involves the interests of children necessarily demands the presence of such a prosecutor. The case has now been sent through to the Brussels court of instance, for a renewed treatment.

The technical ground for the divorce having been 'insult', this being the lesbian relationship, the husband meanwhile has been convicted to four months jail for beating and wounding Lili and her friend.

Marriage: test case

On February 9th, the Antwerp Court of instance rejected the case of Priscilla, a wedded transsexual, who had asked to let her birth-certificate be adjusted to her acquired sex. This is an important decision for Belgian gay and lesbian interests, because the fact that she insisted on letting her long existing marriage with a female partner intact, was the central motive for the Courts decision.

The court sees a divorce as the only unfulfilled condition to award the requested juridical sex-change,

although the Belgian law doesn't meet the case in supplying a formal ground for a divorce.

Formerly, legal sex changes were granted to transsexuals who applied for this. The sole fact that a couple becomes a same sex couple, for the legislator apparently changes the status of the relation in such a fundamental way, that the prolongation of the official recognition of it becomes unthinkable. On the occasion of this decision FWH again fiercely protested against this unfair situation.

Several Flemish parties, among which the socialists, liberals and the greens, have yet in the past declared to be in favour of opening up the civil marriage to same sex couples. It is hoped that a consensus can be found before the coming national elections, about a proposal on registered partnership that can as well find the support of the christian-democrats.

In the mean time, Priscilla and FWH still consider further proceedings on the legal path, like the Belgian court of appeal, or the European Court for Human Rights.

DEBATE IN SPAIN OVER POLICE FILES OF TIMES PAST

By Cesar Leston.- Fundacion Triangulo

The issue is an ongoing polemic in Spain now: whether police files on homosexuals arrested during Franco's period should be destroyed.

Incredible as it may sound, the polemic took place after the police arrested recently some persons on grounds of the records from that period, who have never been destroyed and are still at hand for the police forces to use.

Such files are an very important testimonial of a not-that-long-ago bleak period of our history, when homosexuality was illegal and people were arrested, not only for what they did but mainly for what they were. And this is an important thing for future generations to be known. Written evidence is crucial when it comes to researching. Fundacion Triangulo strongly believes such records ought to be kept as a precious document for future generations to study.

Such destruction would also violate the provisions of our legislation. According to the Spanish heritage law, those records can not be destroyed; as much as any other public document, they should be transferred to a Central Registry.

The law is very clear about that. On the other hand, the law also foresees that documents containing

sensible information regarding privacy of the individuals should be kept secret at the central registry for twenty-five years after the death of the person concerned. We thus feel privacy of the living persons is well preserved for a reasonable amount of time.

On the other hand, another very important issue is that the information from such files (on paper) has been partially stored in computer and is thus accessible for police forces to use. We believe that, since homosexuality is perfectly legal in Spain, such a procedure is an unmitigated disaster and perfectly illegal and useless (at least for legal purposes) for the Spanish law (Law of protection of personal data - LORRTAD) also states that no information regarding sexual orientation / habits may be used unless authorized by the Protection Data Agency... and such authorisation has never been granted.

In a nutshell what we demand (and what we are asking you to support) is:

- 1) all police records from Franco's era regarding homosexual orientation should be taken from police premises to the Central Registries where they should be kept for twenty-five years before being made accessible. such police records should NOT be destroyed under any circumstance.
- 2) all such police records having been stored in computers should be promptly deleted. Assurances should be given either to the persons concerned (their relatives if dead) or the Government Agency for Protection of [Personal] Data that such deletion has indeed taken place

Such demands are the mere result of implementing laws in force. The danger of destruction of the files is real. Although the body ruling the judiciary authorities (CGPJ) has made it clear the files can not just be destroyed, already some authorities (MP's) have said they support it. In our view, this is a way to let the past fall in oblivion and thus face the risk of repeating it. Please, never again.

If you support this request, please send a message to Fundacion Triangulo cleston@lander.es , stating in the subject: "I support your request on the police files issue". Or feel free to provide us new reasons or write to Spanish authorities. Your pressure, no matter how little, is really precious.

Obviously we also encourage you to forward this message to any persons/institutions whom you may feel are interested by the subject.

ILGA-EUROPE STATEMENT IN THE INTER-PARLIAMENTARY CONFERENCE 'FREEDOM, SECURITY, JUSTICE: AN AGENDA FOR EUROPE' ON 24 MARCH

By Kurt Krickler

My name is Kurt Krickler, and I represent the European Region of the International Lesbian and Gay Association, ILGA-Europe. I would like to address two aspects of this discussion concerning lesbians and gays who are often completely ignored or neglected in this debate.

The first aspect is asylum. Some Member States recognise gays and lesbians as belonging to a 'particular social group' which is, in case of persecution, one of the five reasons for the right to be granted asylum mentioned in the Geneva Convention. Other Member States grant asylum to persecuted gays and lesbians on 'humanitarian grounds' outside the Geneva Convention. Other members do not grant asylum to people persecuted on the grounds of their homosexuality. If there is harmonisation in asylum matters in the EU, we demand that gays and lesbians be recognised as belonging to a 'particular social group' according to the Geneva Convention and, therefore, be granted asylum in case of persecution.

Moreover, some countries have 'white lists' of countries whose citizens would not be granted asylum because they are deemed as countries under the rule of law. Among the countries on those lists, there are, however, countries with a total ban on homosexuality, even between consenting adults. We demand that those countries be deleted from such lists.

Indeed, when the Lindeperg report (A4-450/98) was debated in this Parliament last months, smaller political groups tabled amendments to this effect. Unfortunately and to our great disappointment, all these amendments addressing the specific situation of gays and lesbians in asylum matters, were defeated by the majority of this Parliament, and also the rapporteur, Ms Lindeperg, did not support these amendments.

The other aspect I would like to address is the freedom of movement for gays and lesbians which is heavily impeded by the non-recognition of same-sex couples, even of those couples who are legally 'married' in their native countries. As you may know, some Member States - Denmark, Sweden and the Netherlands - have introduced 'Registered Partnership' for same-sex couples.

This non-recognition, in practical life, means that a same-sex couple cannot freely move to another Member State if one of the partners is either a non-EU citizen (although legally residing in the

Member State of the partner) or an EU citizen but cannot find work in the potential host EU country. A married heterosexual couples in either of these circumstances would not have any problem to move together to another Member State.

Since the free movement of citizens is one of the main pillars of the Union, it is totally unacceptable that such obstacles to the free movement still prevail. We appeal to this Parliament to remedy this situation.

Again, last month, when the Lehne report (A4-045/99) was debated in this Parliament, some smaller political groups tabled amendments to this effect but again, the great majority of this House rejected them.

ILGA-Europe regrets the lack of support for equal rights of gays and lesbians in this Parliament. It is not enough to condemn the violation of the human rights of lesbians and gays in the annual EP reports on the respect of human rights in the EU. This Parliament has a crucial role in defending the equal rights of all people.

BRITISH COLONIES MUST LEGALIZE GAY SEX

By Rex Wockner

Britain will offer U.K. citizenship to the residents of its colonies on the condition that the colonies end corporal punishment, legalize gay sex and tighten financial controls to prevent money laundering and other problems, Foreign Secretary Robin Cook said last week.

The dependent territories include Anguilla, Ascension Island, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat, the Pitcairn Islands, St. Helena, South Georgia, Tristan de Cunha, and the Turks and Caicos Islands. Territories that presently have no permanent residents are also included - the Chagos Islands, the British Antarctic Territory, and the South Sandwich Islands. People in Gibraltar and the Falkland Islands already have British citizenship.

"We require changes in the law in a minority of Overseas Territories which retain corporal punishment and criminalize consensual homosexual acts in private," Cook said.

Gay sex is banned in the Virgin Islands, Turks and Caicos Islands, Cayman Islands, Anguilla and Montserrat.

If a territory refuses to decriminalize homosexuality it will be forced to do so by London, Cook said.

CAYMANS WILL NOT LEGALIZE GAY SEX

By Rex Wockner

The Cayman Islands government is up-in-arms over Britain's plan to offer U.K. citizenship to the residents of its colonies if the territories end corporal punishment, legalize gay sex and tighten controls to prevent money laundering.

The government said April 1: "We abide by the views of the vast majority of Caymanians who live in a Christian community based on firmly held religious beliefs that homosexuality should not be legalized."

Last year, the Caymans denied landing rights to a cruise ship carrying 900 gay men.

British Foreign Secretary Robin Cook says London is willing to force the changes on its Overseas Territories if they refuse to act. Gay sex is illegal in Anguilla, the British Virgin Islands, Montserrat, the Caymans and the Turks and Caicos Islands.

Other dependent territories covered by the citizenship plan include Ascension Island, Bermuda, the Pitcairn Islands, St. Helena, South Georgia, Tristan de Cunha, the Chagos Islands, the British Antarctic Territory, and the South Sandwich Islands. People in Gibraltar and the Falkland Islands already have British citizenship.

BRITAIN TO WELCOME GAY ASYLUM SEEKERS

By Rex Wockner

A March 26 ruling by Britain's highest court, the House of Lords, opened the door for foreign gays seeking asylum from persecution based on "sexual identity."

The Law Lords' 4-to-1 ruling came in the case of two Pakistani women who sought refuge to escape flogging or stoning for adultery.

The court said women from Islamic nations and gays from various countries could seek asylum in the United Kingdom under the "particular social group" provisions of the 1951 Geneva Convention on Refugees.

Anti-gay persecution could be direct, as under anti-sodomy laws, or indirect, as when a government fails to protect homosexuals and heterosexuals equally, the Lords said.

AUSTRIA: 11 MEN JAILED UNDER ANTI-GAY STATUTE

by *Helmut GRAUPNER, Rechtskomitee LAMBDA, Vienna*

According to recent information (1) given to the Austrian parliament by the Austrian Minister of Justice, Dr. Nikolaus Michalek, currently (01.03.99) 11 men are jailed in Austrian correctional institutions under the anti-homosexual Art. 209 CC which does set a special (additional) age of consent for (consensual) gay sex of 18 years while the general age limit (for all hetero- and homosexual relations alike) is set at 14 years (Art. 206, 207 CC).

These 11 men are jailed either solely on the basis of Art. 209 (which is classified as a "crime" as opposed to a "misdemeanor") or on the basis of Art. 209 and a petty offence only. Men convicted (or suspected) of Art. 209 as well as of another "crime" are not included in this number. 5 of these 11 are being held in custody on remand and 5 in corrective custody. One of the 11 men is even held in a psychiatric institution for "psychically abnorm breachers of the law", for an indefinite term ... (1a)

In November 1996 Austrian parliament voted upon the repeal of Art. 209. The result: 91 votes for, 91 against; the law stayed. Hitherto repression continuously intensified.

According to the criminal statistics reports to police more than doubled from 1996 to 1997 (1996: 45, 1997: 115), the number of ascertained suspects raised by 50% (1996: 26, 1997: 39). Even before the vote in 1996 the courts reacted to the reformatory efforts with inexorable severity. In 1995 the proportion of prison sentences (compared to all convictions under Art. 209) climbed to the highest peak of the 10 years before (88%) and in 1996 this proportion climbed to even 94%, a number reached only in 1980 and before 1975, while in the case of sexual abuse of children (under 14; Art. 206, 207 CC) Austrian courts in this year 1996 inflicted prison sentences in only 83% of convictions.(2)

More and more gay adolescents are being dragged into criminal proceedings under Art. 209. In 1994 34% of reported suspects were under 25, 10% even under 20 and 5% under 19; in 1995 11% have even been between 14 and 16 years of age.(2)(3) Reports of adolescents mistreated in police stations in order to get them testify against their partners are numerous. Recently the case of a 16 year old young gay man caused sensation. He had been called to a police station to question him for sexual contacts with men. The interrogation lasted 4 hours at night and the adolescent alleges that due to his unwillingness he has

repeatedly been hit on his head. He went to a hospital where a contusion of the skull has been diagnosed. His complaint against the mistreatment has been dismissed by the "Independent Administrative Senate for Vienna". The official there judging the case however himself is a police officer just on leave from the "Federal Police Authority of Vienna" to judge complaints against exactly this authority. He expressed doubts on the diagnosis by the hospital and dismissed the case. Both the Constitutional Court and the Administrative Court of Austria refused to accept complaints against this decision; they saw no serious question of law. The case is pending before the European Court on Human Rights.(4)

Austrian courts also continuously stiffened their case-law on Art. 209. In 1997 the Supreme Court decided that the offence of Art. 209 is as grievous an offence as sexual abuse of children (under 14; Art. 207) and custody on remand can therefore be imposed on the same terms as in the case of sexual contacts with children under 14(5). In 1998 the Supreme Court abandoned its longstanding case-law that (as opposed to the cases of sexual abuse of children under 14, Art. 207 CC) "mere touching" of the genitals does not constitute the offence of Art. 209 but attempt of the offence only (6). Hitherto "mere touching" provokes the full severity of the law. Finally in 1998 the Administrative Court of Austria decided the case of a man who had been suspected of sexual relations with 16 and 17 year old young men. In spite of the fact that his innocence has been proven the police refused his application to delete his criminal identification data (fingerprints, fotos etc.) from the files as the law affords in the case of proven innocence. The Constitutional Court refused to accept his complaint against this decision and the Administrative Court upheld the decision claiming that despite of his proven innocence and - as the court expressly held - despite the fact that he never even intended to commit an offence the man for special reasons is to be considered as a potential criminal since he was found by police sitting in his car chatting with two adolescents (of 15 and 16 years of age) and in his flat he had erotic pictures (no porn!) of young men of about 16 (7). As a result his criminal identification data will be stored in the nation-wide computer based criminal identification data base (and therefore potentially also in the "Europol Information System EIS") up to (at least) his 80th birthday. Also this case is pending before the European Court on Human Rights (8).

Given the continued intensification of repression and the stalemate in parliament the Austrian l/g/b movement called on the (non-party) Minister of Justice, Dr. Nikolaus Michalek, and the (socialdemocratic) Minister of Interior, Mag. Karl Schlögl, within

their field of competence to mitigate the consequences of Art. 209. They refused to do so.

The president of the republic has the power to pardon convicts (and even to stop every criminal proceedings whatsoever). He however can do so only on a respective recommendation by the Minister of Justice. Minister Michalek refused to do so even in the infamous "calendar case" where a young man of 28 has been convicted solely on the basis of notes in his calendar while the court did never ascertain the identity of the alleged "victims" (young men mostly 16 and 17, some 15) which appeared in the calendar with their christian names and age only and whose identity also the defendant never knew. He alleged he had relied on the names they told and just estimated their age. In 1998 the Minister refused to pardon this first-time "offender" who being an epileptic suffered a psychic breakdown in court-room and as a result of the proceedings did loose his job and hitherto has to live from emergency relief (9). Also the case of this man is pending before the European Court on Human Rights (9a).

The Minister of Interior in his turn refused to waive criminal identification data storage for suspects of Art. 209 (10). On the contrary he even ordered to store DNA-data of Art. 209-suspects in each and every case and thereby equalized Art. 209 with offences like rape (Art. 201), (Grave) Sexual Abuse of Children (Art. 206, 207), Child Pornography (Art. 207a) and Misuse of a Relationship of Authority over a Minor (Art. 212). Such a measure (as now taken for Art. 209) has however not been taken for Procurement of Minors (of 14 and over; also by their parents, guardians etc.) into sexual relations with other persons (Art. 213), Procurement into Prostitution (Art. 215), Pimping (Art. 216), not even for Trafficking in Humans (Art. 217).(11)

Both, the Minister of Justice and the Minister of Interior, point to the fact that Art. 209 still is valid law and therefore has to be enforced (1)(11)(12). As to the report of the European Commission on Human Rights in *Sutherland vs. UK* (01.07.97) the Minister of Justice declared that the case concerned English law and that the Commission with this decision departed from its longstanding case-law on the issue. It would still be open, if the European Court on Human Rights will follow this development of interpretation of the Convention (1).

By now five cases in connection with Art. 209 are pending before the European Court on Human Rights. Besides the three mentioned above there is the case of a young man of 27 convicted for consensual sex with a young man of 15 (13) and the case of a young gay man of 17 from an Austrian rural area who alleges

that - given his lacking attraction to peers and furthermore the widespread invisibility of gays of his age - Art. 209 in fact refuses him the possibility to engage in mutually consensual and fulfilling intimate relations. The constant fear of criminal investigation against his (potential) partners and him being involved in criminal proceedings being pressed to testify against his partners puts him under considerable distress. This irksome situation even already caused him to consider suicide.(14)

(1) Information 5312/AB-NR/1999 (19.03.99)

(1a) According to Art. 21 CC such an incarceration for an indefinite period is admissible only if a danger is established that the person in question will commit an offence causing grievous harm (as opposed to "light consequences" or "not just light consequences").

(2) For details see *Ius Amandi* (4) 98 (1)

(3) Men under 19 can not be principals of the offence since Art. 209 expressly covers "same sex lewdness between a person of 19 and over with a male person between 14 and under 18". Adolescents between 14 and (under) 19 however can fulfil the crime of aiding and abetting the crime of Art. 209 (Art. 12, 209 CC). Persons under 14 can not be punished (Art. 9 Juvenile Justice Act).

(4) Case No. 46608/99; For details see *Ius Amandi* (4) 98 (1)

(5) OGH 09.07.1997 (13 Os 104/97) (for details see *Ius Amandi* (6) 97 (3)); Austrian law on custody on remand distinguishes between offences causing "light consequences", causing "not just light consequences" and causing "grievous harm". The Supreme Court now holds that consensual gay male relations with young men of 14 to 18 and sexual contacts with persons under 14 do both cause "not just light consequences". Custody on remand based on the fear of repetition can therefore also be imposed on first time offenders.

(6) OGH 24.11.1998 (14 Os 142, 143/98)

(7) VwGH 24.06.1998 (97/01/261)

(8) Case No. 46611/99

(9) For details see *Ius Amandi* (4) 98 (2) and Information 5035/J-NR/1998

(9a) ECmHR App No. 39392/98 (application introduced with the Commission but not declared admissible until 01.11.98)

(10) Information 4173/AB-NR/1998 (21.07.1998)

(11) Information 5301/AB-NR/1999 (18.03.99)

(12) Information 5312/AB-NR/1999 (19.03.99)

(13) ECmHR App No. 39829/98 (application introduced with the Commission but not declared admissible until 01.11.98)

(14) Case No. 45330/99

SEXUAL LAW REFORM IN LIECHTENSTEIN: DISCRIMINATION OF GAY MEN TO BE EXTENDED LESBIANS

by *Helmut GRAUPNER, Rechtskomitee LAMBDA,
Vienna*

In February 99 the Liechtenstein government presented to parliament a proposal for a major reform of the law on sexual offences.

Traditionally Liechtenstein took over the Austrian Criminal Law. Also the current Criminal Code of the year 1989 is an almost identical copy of the Austrian CC of 1975.

In 1996 however the Liechtenstein government installed a working group of experts to independently revise its CC. This working group presented its report in 1997 and the government decided - in a first step to a total revision of the Code - to revise the law on sexual offences.

The current proposal will remarkably modernize the sexual offences law and the government expressly declared its intention to free the law from moralistic intentions. Significantly the heading of the respective section will be changed from "Offences Against Decency" to "Offences Against Sexual Self-Determination". Also the offences of "Advertising Lewdness with Persons of the Same Sex or with Animals" (Art. 220 CC 1989) and "Associations for the Propagation of Samesex Lewdness" (Art. 221 CC 1989) shall be repealed.

The more astonishing it seems that the government refuses to equalize the currently unequal ages of consent for gay male and other sexual relations. Art. 205 and 206 CC 1989 set a general limit of 14 years (for all hetero- and homosexual relations) and an additional limit for gay males of 18 (Art. 208 CC 1989).

According to the draft bill the general age limit should be kept at 14 (Art. 205, 206) and a new offence be created that should outlaw sexual relations with 14 and 15 year old youths if they occur "against remuneration" or if a "position of distress" ("Notlage") is practised upon (Art. 208 par. 1 lit. 2). With this new provision the government follows the model of the German CC which introduced such a law in 1994 (1). At the same time however Germany did abolish the special higher age limit for gay male relations (former Art. 175: 18 years) while the Liechtenstein government now wants to keep the special provision against gay male relations, only the age limit should be reduced from 18 to 16 (Art. 208 par. 1 lit. 1). And it even intends to extend this provision to lesbians (ibid).

As a result lesbian and gay relations with 14 and 15 year old young women and men would be criminal in each and every instance while heterosexual relations would be legal unless remuneration is granted or a position of distress be practised upon.

While the Government in its draft bill calls the current Art. 208 a "discriminatory provision" and points to longstanding criticism from lawyers, practitioners and academics, it states that the possibility of a fixation of sexual orientation by homosexual experience would (also) be given after 14 (up to 16) what would afford a total ban of lesbian and gay sex in that age group. The government does not give a (scientific) basis for its conviction.

While the Supreme Court of Liechtenstein expressly welcomed the new Art. 208 several groups and organisations criticized the continuation of the discrimination of homosexual relations, among them the Psychological Association, the Liechtenstein Federation of Teachers, the Office for Social Services, the Women Refuge Center, the Equal Treatment Authority and others.(2)

We suggest that ILGA-Europe takes action and does urge the Liechtenstein parliament ("Landtag") to end the current discrimination of gay men by securing that all provisions apply equally to homo- and heterosexual relations instead of even extending discrimination to lesbians.

The Liechtenstein government however did not take over the third variant of Art. 182 German CC: "practising upon a lack of ability to sexual self-determination"; and it changed the term "constraint" ("Zwangslage") of the German law into "distress" ("Notlage").

cf. Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Abänderung des Strafgesetzbuches (Sexualstrafrecht) und Stellungnahme der Regierung zur Initiative der Freien Liste, (58ff) Vaduz (1999)

THE ANTILLES MAY NOT ACCEPT GAY/LESBIAN PARTNERSHIPS

By *Michiel Odijk*

MARCH 1999. The perspective of the opening of Dutch marriage legislation for same-sex couples is not appealing for everyone. The government coalition (social-democrats, social liberals, right-wing liberals) of the Netherlands is working on legal changes so that same-sex couples can not only have a partnership registration, but exactly the same legal construction

as opposite-sex couples can have – including the adoption rights. The Minister of Justice of the Dutch Antilles, Mr Martha, however, recently declared that he will consider changing the Antilles rule by which Dutch marriages and adoptions are automatically recognized in the Antilles when the Netherlands will introduce these legal changes. The Antilles gay organization has protested against this view and has asked a meeting with their Minister.

YOUNG GAY MEN DENIED EQUALITY BY BRITISH HOUSE OF LORDS

Press release from STONEWALL

The outdated House of Lords 13 April threw out government-backed proposals to equalise the age of gay consent. Gay lobbyists and child care organisations expressed anger at the rejection of the Sexual Offences (Amendment) Bill, which would also have provided equal protection from sexual exploitation for all young women and men.

Tonight's vote, however, was much closer. Baroness Young's majority was slashed from last July's 168 votes to just 76. 222 Lords voted with her to wreck the Bill, but 146 voted for equality. The quality of speeches made tonight was much higher than on previous occasions, with Lord Alli throwing his personal and moving testimony of life as a young gay man behind the argument for an equal age of consent.

The vote against equal treatment and equal protection, marshalled by Baroness Young, has exposed the great divide between the House of Lords on one side and expert and public opinion on the other. This Bill was supported by all the major organisations concerned with the welfare of Britain's young people, by medical opinion, by the House of Commons and by two thirds of the British public. (NOP poll 1999) Young, backed by the far-right Christian Institute, invoked a rare parliamentary procedure to wreck the Bill, preventing any further debate. The Lords have denied to all young people extra protection from those who may abuse their authority, solely to prevent young gay men receiving equal treatment under the law.

The Government, however, has made it quite clear they will ensure that the decision of the elected House will prevail and that they will invoke the Parliament Act (1949) to see the age of consent proposals through the Lords and into law.

Angela Mason, executive director of Stonewall, said:

"This is a very sad night for those who believe in equality. It is quite clear that the Lords are completely

out of touch with modern Britain. "All those concerned with the welfare of young people supported this Bill. We hoped that the Lords would listen not only to the experts but also to medical opinion, to the elected House and to two-thirds of public opinion - all supporting this Bill."

NEW ILGA LEGAL SURVEY

By Nigel Warner

The International Lesbian and Gay Association has published a survey of the legal and human rights situation of sexual minorities around the world at its web site. It is believed to be the most extensive survey of its kind ever produced.

The purpose of the survey is to provide a comprehensive, authoritative, source of information for all people working to promote the human rights of lesbians, gays, bisexuals and transgendered people. It will be a "living" resource, continually updated to reflect developments in the world wide campaign for LGBT rights.

The survey includes a page for each country in a standard format with sections covering the sexual offences law, freedom of expression and association, anti-discrimination legislation, employment protection legislation, recognition of lesbian and gay partnerships, parenting, asylum, violence against LGBT people, police harassment, and human rights issues affecting transgendered people and people with HIV/AIDS. The country pages are linked to other more detailed sources, including legal texts, government reports and legal judgements.

There are also some 50 summaries listing everything from countries where lesbian and gay relationships are illegal to countries where adoption by lesbians and gays is permitted.

Inevitably there are many gaps, and the quality of some of the information is uncertain. Indeed, the survey as now published is very much a start point. ILGA hopes that individuals and organisations with a good knowledge of the legal and human rights situation in their country will join with ILGA in working to improve the quality of the information and in keeping it up to date. All sources of information will be acknowledged.

If you have a web site, please provide a link to the ILGA web site,