

EURO-LETTER

No. 70

May 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>

ADOPTION RIGHTS TO DANISH GAY OR LESBIAN COUPLES - PARTNERSHIP LAW CHANGED

By Steffen Jensen

The Danish law on registered partnership has been changed by the Parliament nearly exactly 10 years after the same Parliament passed the first law in the world to recognise gay and lesbian couples.

The amendments to the law are further steps towards total equality between hetero- and homosexual couples.

The changes are:

Citizens from Norway, Sweden and Iceland have the same rights as Danish citizens in relation to registered partnership.

Citizens of other countries having similar legislation as the partnership law can get the same rights.

Two non-Danish citizens can enter into registered partnership if both partners have stayed in Denmark for at least two years.

A partner in a registered partnership can adopt the children of her/his partner unless the child is adopted from a foreign country.

The remaining differences between marriage and registered partnership are:

- no insemination by public health services for lesbians
- no adoption of foreign children
- no possibility of church wedding, but blessings are possible
- the two-years limit for foreigners

The Danish National Association for Gays and Lesbians (LBL) has lobbied for total equality between marriage and registered partnership since the law was passed in 1989. Bent Hansen, president of LBL, said after the Parliament had passed the changes to the law:

“We welcome and celebrate this step towards total equality between the heterosexuals and us. Especially the possibility of adoption of stepchildren is an important signal recognising the fact that gay and lesbian couples do have children - we have known that for a very long time - now the politicians also have realised that.”

“But in celebrating this victory we must not forget that we have not yet reached full equality”, Bent Hansen added. “The next step must be abolition of the stupid law forbidding public health services to assist

lesbians in artificial insemination. The politicians have realised that we have children, now we must convince them that we should also be allowed to get children!”

The new law will come into force 1. July 1999.

URGENT ACTION - LESBIAN/GAY ORGANISATIONS AND INDIVIDUALS URGED TO LOBBY THEIR GOVERNMENTS

By Nigel Warner

Overview

ILGA Europe is calling on the Council of Europe to provide express protection for lesbians and gays in the European Convention on Human Rights, through the inclusion of the words "sexual orientation" in the Convention's anti-discrimination article. If achieved, this would be of immense importance for lesbians and gays in the 41 member states of the Council of Europe, both strengthening protection in individual cases, and constituting a major symbolic statement by the governments of Europe condemning discrimination against lesbians and gays.

ILGA-Europe's submission

In a submission to the Secretary-General of the Council, ILGA Europe argues that the existing wording of the Convention is insufficient. Since the Convention's anti-discrimination article (Article 14), which lists the prohibited grounds of discrimination, makes no reference to sexual orientation, lesbians and gays are forced to rely on other grounds such as "sex" or "other status". These fail to recognise the specific phenomenon of sexual orientation, and the fact that historically it has been, and continues to be, the basis of severe and widespread discrimination in Europe.

ILGA Europe's submission points out that lesbians and gay men have been, and continue to be, killed, tortured, imprisoned and denied jobs or services because of their sexual orientation, and cites April's bombing of a gay pub in London as a recent example. It argues that only express inclusion of the ground "sexual orientation" can provide specific, symbolic condemnation of this historic and ongoing form of discrimination, and the hatred, fear and ignorance that lie behind it.

Background to the submission (For background information on the Council or Europe, see the end of this message)

In 1998 the Committee of Ministers of the Council of Europe instructed its human rights experts to propose a strengthening of Article 14 by the end of 1999. This reflected their concern that the protection

provided by that article against discrimination on the grounds of sex and race was inadequate.

Additions to the rights in the European Convention occur very infrequently. Indeed, there have been no changes to Article 14 in the nearly 50 year life of the Convention. The revision of Article 14 requested by the Committee of Ministers presents an opportunity to argue for the incorporation of "sexual orientation" in the Convention which may well not be repeated for decades.

ILGA-Europe's appeal for action

ILGA EUROPE THEREFORE APPEALS TO LESBIAN AND GAY ORGANISATIONS AND INDIVIDUALS ACROSS EUROPE TO JOIN IN DEMANDING THAT "SEXUAL ORIENTATION" BE INCLUDED AS A PROHIBITED GROUND IN ARTICLE 14.

The governments of Europe alone can make this change, acting through the Committee of Ministers of the Council of Europe. This Committee consists of the Foreign Ministers of the 41 member states. They are more likely to be influenced by lobbying at the national level than by an international NGO such as ILGA-Europe. Organisations and individuals are therefore urged to write to their Foreign Minister supporting ILGA-Europe's proposal. A suggested letter (for translation into your own language) is set out below. Please send it with a copy of the ILGA-Europe submission (see the text below, it can also be found at <http://www.steff.suite.dk/art14.htm>).

Draft letter:

Dear [foreign minister]
Proposal for the inclusion of "sexual orientation" as a prohibited ground of discrimination in Article 14 of the European Convention on Human Rights

I/we are writing to you in your capacity as a member of the Committee of Ministers of the Council of Europe.

I/we understand that the Council of Europe is currently considering the broadening of Article 14 of the European Convention on Human Rights. ILGA Europe (the European Region of the International Lesbian and Gay Association) has made a submission to the Secretary-General of the Council of Europe arguing that this opportunity should be taken to incorporate the term "sexual orientation" in the list of prohibited grounds in Article 14. I/we are writing in support of this submission, a copy of which is attached for your information.

The current text of Article 14, adopted in 1950, includes grounds covering most of the groups persecuted by the Nazi regime in Germany from 1933 to 1945. But lesbians and gays, who were also persecuted by the Nazis, are not clearly protected by any of the grounds in the current Article 14. These grounds do not recognise the specific phenomenon of sexual orientation, despite the fact that historically it has been, and continues to be, the basis of severe and widespread discrimination in Europe. Lesbians and gay men have been, and continue to be, killed, tortured, imprisoned and denied jobs or services because of their sexual orientation. I/We would draw your attention to a recent and particularly horrifying example - the bombing of a gay pub in London on 30 April 1999, in which three people died and at least sixty were injured.

As the submission points out, recent years have seen increasing recognition in national and international law that sexual orientation discrimination is as serious as discrimination based on sex, race and religion. Prohibition of sexual orientation discrimination is now included in many national laws.

Moreover, in 1997, under the Treaty of Amsterdam the member states of the European Union authorised the European Community to take action to combat discrimination on a number of grounds, including sexual orientation.

I/We urge you most strongly to use your influence at the Committee of Ministers to ensure that the broadened version of Article 14 includes sexual orientation as a prohibited ground of discrimination. Such a change is essential to help counter the severe and widespread discrimination faced by lesbians and gays in many parts of Europe today.

Please ask other organisations in your country to write to the Foreign Minister also, for example, human rights organisations, trades unions, and political parties.

PLEASE SEND YOUR LETTERS AS SOON AS POSSIBLE. TIME IS VERY SHORT FOR THIS PROPOSAL TO BE CONSIDERED.

Background Information on the Council of Europe
The Council of Europe is the continent's most important human rights organisation, with some 41 member states subscribing to its human rights standards. It was set up after the Second World War with the purpose of trying to ensure that the human rights atrocities of the 1930's and 1940's were never repeated again in Europe.

It "owns" the European Convention on Human Rights and is the seat of the European Court of Human Rights. It is governed by the Foreign Ministers of its member states (who together form its "Committee of Ministers") and by representatives from their parliaments (who make up its "Parliamentary Assembly"). It is of course quite distinct from the European Union.

**PROPOSED ADDITIONAL PROTOCOL
BROADENING ARTICLE 14 OF THE
EUROPEAN CONVENTION ON HUMAN
RIGHTS:**

**THE NEED FOR EXPRESS INCLUSION OF
"SEXUAL ORIENTATION"**

Submission of ILGA-Europe, the European Region of the International Lesbian and Gay Association, to the Steering Committee on Human Rights, Council of Europe 13 May 1999

I. SEXUAL ORIENTATION SHOULD BE INCLUDED AS AN EXPRESSLY PROHIBITED GROUND OF DISCRIMINATION IN THE NEW ARTICLE 14

ILGA-Europe respectfully submits that, whatever the final form of the new Article 14, and whatever new grounds besides sexual orientation are added to the new Article 14, sexual orientation should be included. The European Convention on Human Rights, and the Court and Commission established to enforce it, were motivated by a fervent desire among the member states of the Council of Europe never again to repeat the horrific human rights violations of the Second World War. The current text of Article 14, adopted in 1950, includes grounds covering most of the groups persecuted by the Nazi regime in Germany from 1933 to 1945. Jews, Gypsies and Communists, for example, are protected by such grounds as "race", "colour", "religion", "political or other opinion", "national origin", and "association with a national minority". But the minority of homosexual men and women in Europe, who were also a group targeted for persecution by the Nazis, are not clearly protected by any of the grounds in the current Article 14. Although sexual orientation arguably comes within "sex" or "other status", protection through the application of these grounds is not sufficient. These grounds do not recognise the specific phenomenon of sexual orientation, and the fact that it has historically been, and continues to be, the basis of severe and widespread discrimination in Europe. Lesbians and gay men have been, and continue to be, killed, assaulted, imprisoned and denied jobs or services because of their sexual orientation, whether by agents of the state or private individuals. Only express inclusion of the ground "sexual orientation" in the new Article 14 can provide specific, symbolic condemnation of this

historic and ongoing form of discrimination, and the hatred, fear and ignorance that lie behind it.

A. APPLICATION OF "SEX" OR "OTHER STATUS" IS NOT SUFFICIENT

The application of the current Article 14 to questions of sexual orientation discrimination is uncertain, because the European Court of Human Rights has considered only three cases of sexual orientation discrimination, and in all three found it unnecessary to consider Article 14. The Court instead held that blanket prohibitions of all private, consensual sexual activity between adult men (and implicitly also between adult women), which formed the legal basis for Nazi persecution of homosexual men, violate the right to respect for private life in Article 8 of the Convention. Because the interference with private life through a threat of imprisonment was so severe, the Court did not need to consider the discrimination inherent in the fact that private, consensual sexual activity was legal in each case between a man and a woman or two women.

From 1955 to 1996, the European Commission of Human Rights applied Article 14 in over 20 cases of sexual orientation discrimination and found no violation. However, in its Report in *Sutherland v. United Kingdom*, adopted on 1 July 1997, the European Commission of Human Rights for the first time found a violation of Article 14, combined with Article 8, in a case involving sexual orientation discrimination. It held that the age of consent to male-male sexual activity in United Kingdom criminal law, which is 18 rather than 16 (17 in Northern Ireland) for male-female or female-female sexual activity, violated the Convention. The Commission observed (at para. 50) that "[t]he different minimum ages for lawful sexual relations between homosexuals and heterosexuals are a difference based on sexual orientation. In terms of Article 14 ..., it is not clear whether this difference is a difference based on 'sex' or on 'other status'. ... The Commission ... considers that it is not required to determine whether a difference based on sexual orientation is a matter which is properly to be considered as a difference on grounds of 'sex' or of 'other status'. In either event, it is a difference in respect of which the Commission is entitled to seek justification." The Commission then examined the justifications advanced by the United Kingdom Government and concluded (at para. 66) "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 [Euan Sutherland's] application discloses discriminatory treatment in the exercise of the applicant's right to respect for private life under Article 8".

Pursuant to an agreement between the applicant and the United Kingdom Government, the Sutherland case has been suspended, to permit the Government to attempt to amend the offending legislation, and thus has not yet been heard by the Court. This means that the Court has not had an opportunity to accept or reject the Commission's reasoning in Sutherland. However, the Court has recently declared admissible, under the new Protocol No. 11 procedures, three cases in which the applicants complain of sexual orientation discrimination violating Articles 8 and 14. In the case of *Smith and Grady v. U.K.*, and *Lustig-Prean and Beckett v. U.K.*, which the Court will hear on 18 May 1999, a lesbian and three gay men are challenging the United Kingdom Government's policy of dismissing all lesbian, gay and bisexual members of the armed forces, because of their sexual orientation and without regard to their performance in their jobs. In *Salgueiro da Silva Mouta v. Portugal*, a gay father is challenging an appellate court's citing his sexual orientation against him in reversing a trial court's decision to grant him parental authority over his daughter. And in *A.D.T v. United Kingdom*, a gay man is challenging his conviction for engaging in consensual, non-sado-masochistic, sexual activity with four other adult men in the privacy of his own home, where comparable male-female or female-female sexual activity would have been legal.

The Court could find it unnecessary to consider the Article 14 issues in these three cases. However, if the Court chooses to address Article 14, it will have the opportunity to decide whether a distinction based on sexual orientation is a distinction based on "sex" or on "other status". If the Court were to hold that distinctions based on sexual orientation are distinctions based on "sex", this would have the advantage of bringing sexual orientation discrimination within the Court's case law on sex distinctions (which can only be justified by "very weighty reasons"). It would also recognise that distinctions based on sexual orientation ultimately involve telling men and women that their sex determines what choices they may make with regard to their emotional and sexual relationships with other persons. However, it is now doubtful whether the European Court of Human Rights would reach such a conclusion, in view of a recent judgment of the European Court of Justice. In *Grant v. South-West Trains* (1998), the Court of Justice held that a distinction based on sexual orientation did not also involve sex discrimination. The European Court of Human Rights is likely to agree with the Court of Justice, and to hold that distinctions based on sexual orientation can only be on the ground of "other status".

Including sexual orientation within the scope of "other status" does not provide sufficient protection,

because it is clear from the case law of the European Court of Human Rights that "other status" can include any conceivable ground of distinction between persons. The Court has held that Article 14 "prohibits ... discriminatory treatment having as its basis or reason a personal characteristic ('status') by which persons or groups of persons are distinguishable from each other". Putting sexual orientation under "other status" lumps it with many distinctions that might be relatively trivial or generally justifiable or infrequently used. For example, in *Larkos v. Cyprus* (18 Feb. 1999), the Court found a violation of Article 14 in conjunction with Article 8 ("respect for home") where legislation made a distinction between tenants in government-owned dwellings and tenants in privately-owned dwellings. It would be hard to argue that "tenants in government-owned dwellings" as a group face widespread discrimination, for that sole reason, throughout Europe. Relegating sexual orientation to the residual category of "other status" in the new Article 14 would fail to recognise that sexual orientation is, like sex, race and religion, a very sensitive ground of distinction, and that discrimination based on sexual orientation has been historically, and continues to be, one of the more serious kinds of discrimination in Europe. Specific, symbolic condemnation of this kind of discrimination requires the express inclusion of sexual orientation in the new Article 14.

B. THE GROWING NUMBER OF PRECEDENTS IN NATIONAL AND INTERNATIONAL LAW JUSTIFIES EXPRESS INCLUSION OF SEXUAL ORIENTATION

Since the 1970s, national anti-discrimination legislation and bills of rights in national constitutions, within and outside Europe, have increasingly recognised that sexual orientation discrimination is as serious and generally unjustifiable as discrimination based on sex, race and religion. (For official citations for the national, state and provincial legislation and constitutions discussed below, see the Appendix at the end of this submission.) Within the member states of the Council of Europe, the term "sexual orientation" (or a similar ground intended to cover sexual orientation or same-sex sexual orientation) appears as a prohibited ground of discrimination in the legislation of 11 states: Denmark, Finland, France, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Slovenia, Spain, and Sweden. In Canada, it appears in legislation at the federal level, in 9 of 10 provinces, and in 1 of 3 territories, and the Supreme Court of Canada has ordered that it be "read into" the legislation of the 3 remaining jurisdictions. In Australia, it appears in the legislation of 5 of 6 states and in both territories. In the United States, it appears in the legislation of 10 of 50 states, the District of Columbia, and most major cities (including Boston,

Chicago, Cleveland, Denver, Detroit, Kansas City, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Phoenix, Pittsburgh, Portland, Saint Louis, San Diego, San Francisco, Seattle, and Tampa). It also appears in legislation in Israel, Namibia, New Zealand and South Africa, and in a number of cities in Argentina and Brazil.

Since 1989, the trend in national anti-discrimination legislation has been reflected in the bills of rights of national constitutions, or of the constitutions of individual states within federal countries. The first national constitution in the world to include sexual orientation in its non-discrimination provision was the transitional Constitution of South Africa in 1993. Sexual orientation was retained when the final Constitution of South Africa was adopted in 1996. Section 9(3) of the final Constitution reads as follows:

"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

South Africa is a country in which the majority of people have long and bitter experience of racial discrimination. Those who adopted the transitional and final Constitutions recognised the similarity between discrimination based on race and discrimination based on sexual orientation.

In 1998, Ecuador became the second country to add sexual orientation to the non-discrimination provision of its national constitution. In Ireland, a review of the Constitution has recommended an amendment to Article 40.1, adding a list of prohibited grounds, including sexual orientation. And at least five states in federal countries have added sexual orientation to the non-discrimination articles of their constitutions: two Brazilian states (Mato Grosso and Sergipe) in 1989, and three German states (Brandenburg, Thuringia and Berlin) in 1992, 1993 and 1995.

Developments in national law have now been reflected at the international level. In *Toonen v. Australia* (1994), the United Nations Human Rights Committee observed, in finding that a blanket prohibition of all private, consensual sexual activity between adult men violated Article 17 ("privacy") of the International Covenant on Civil and Political Rights, that "the reference to 'sex' in Articles [2(1)] and 26 is to be taken as including sexual orientation". And in *Laskey v. United Kingdom* (1997), the European Court of Human Rights stated that "[t]here can be no doubt that sexual orientation and activity concern an intimate aspect of private life".

Perhaps the most compelling evidence of this international trend was the decision of the 15 member states of the European Union to sign the Treaty of Amsterdam on 2 October 1997, which inserted (from 1 May 1999) the following new Article 13 into the European Community Treaty:

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

In drafting a new Article 14, the Council of Europe must look to evidence of international consensus as to what grounds should appear in a list of prohibited grounds of discrimination in an international treaty, a national constitution, or national legislation. In 1950, when the Convention was adopted, there was certainly no international consensus that sexual orientation should be treated like sex, race or religion. In 1982, when the Canadian Charter of Rights and Freedoms was adopted, it was still too early to say that there was such an international consensus. The fact that only Norway (in 1981) had adopted legislation prohibiting sexual orientation discrimination at the national level (as opposed to the state, provincial, city or county level), and only Québec (in 1977) had done so among the 10 provinces within Canada, probably explains why sexual orientation was not mentioned in the non-discrimination provision of the Canadian Charter (Section 15(1)) in 1982. If Canada were to amend Section 15(1) today, nearly two decades later, sexual orientation would almost certainly be included, as it was in South Africa in 1993 and 1996. Indeed, the Supreme Court of Canada held in *Egan v. Canada* (1995), that sexual orientation is an "analogous ground" under Section 15(1), similar to sex, race and religion, and that discrimination based on sexual orientation is implicitly prohibited by Section 15(1).

It is important to note that the judicial addition of sexual orientation was only necessary in *Egan* because the list of express grounds had been closed in 1982 and it was unlikely that Section 15(1) of the Charter would be amended so soon after its adoption. When an existing list of grounds is reviewed, as should be the case in connection with the new Article 14 (see Part II below), those conducting the review should not rely on potential judicial addition of other grounds, but should endeavour to determine which kinds of discrimination are considered the most serious at the time of the review. In 1999, it is clear that there is sufficient international consensus,

particularly within Europe, that sexual orientation is a ground similar to sex, race or religion, and that any list of prohibited grounds of discrimination should include it.

C. EXPRESS INCLUSION WILL NOT PREVENT THE COURT FROM DETERMINING THE JUSTIFIABILITY OF DISTINCTIONS BASED ON SEXUAL ORIENTATION ON A CASE-BY-CASE BASIS

Including sexual orientation in Article 14 will not mean that the Court must find that every distinction based on sexual orientation automatically violates the Convention. The Court established in the Belgian Linguistic Case (1968) that a difference in treatment on any ground, including grounds expressly mentioned, may be permitted under Article 14, provided that the difference in treatment has an objective and reasonable justification and is proportionate to a legitimate aim. The Court will still be able to consider in each case whether, in light of the consensus among Council of Europe member states regarding the particular issue, and the resulting breadth of the margin of appreciation of the member states, there is an objective and reasonable justification for the particular distinction based on sexual orientation, which renders the distinction non-discriminatory. For example, in *Casado Coca v. Spain* (1994), the Court upheld a ban on advertising by lawyers under Article 10, observing that "[t]he wide range of regulations and the different rates of change in the Council of Europe's member states indicate the complexity of the issue. Because of their direct, continuous contact with their members, the Bar authorities and the country's courts are in a better position than an international court to determine how, at a given time, the right balance can be struck between the various interests involved ..." The same analysis applies in the context of Article 14.

The Court has frequently held that the member states "enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin of appreciation will vary according to the circumstances ... one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States."

II. THE LIST OF GROUNDS IN ARTICLE 14 DOES NOT INCLUDE SERIOUS KINDS OF DISCRIMINATION RECOGNISED IN EUROPE SINCE 1950 AND THEREFORE NEEDS TO BE REVISED

One argument that might be made against the inclusion of sexual orientation is that the current list of 13 grounds is long enough, and is non-exhaustive. If the original list of grounds, adopted in 1950, is opened

up, there will be no end to the additions that could be proposed. It is better to leave the addition of new grounds to the European Court of Human Rights.

This argument must be rejected, because it assumes that the list of grounds of discrimination the Convention can explicitly condemn, by including them in Article 14, was frozen for all time in 1950. This is completely contrary to the European Court of Human Rights' approach to interpreting the Convention, which is to ensure that it grows with changing social conditions in Europe. The Court has said that "the Convention is a living instrument which, ... must be interpreted in the light of present-day conditions". When Article 14 is amended, the Council of Europe will have a chance to continue the growth of the Convention by bringing its text up to date, so that it better reflects the kinds of discrimination deemed most serious in Europe in the year 2000, fifty years after the original text of Article 14 was adopted. The current list of grounds in Article 14 was taken directly from Article 2 of the Universal Declaration of Human Rights (1948), with only one addition ("association with a national minority") to take account of conditions in Europe. The text of a new Article 14 can address the needs of European societies at the beginning of the 21st century.

APPENDIX OF INTERNATIONAL TREATIES, NATIONAL CONSTITUTIONS, AND NATIONAL LEGISLATION EXPRESSLY MENTIONING "SEXUAL ORIENTATION" (OR A SIMILAR GROUND)

1. INTERNATIONAL TREATIES

European Union

Treaty establishing the European Community, Rome, 25 March 1957, Article 13
(inserted as Article 6a by Article 2(7) of the Treaty of Amsterdam, 2 October 1997, and renumbered as Article 13 by Article 12(1) and the Annex of the Treaty of Amsterdam) ("sexual orientation") (in force on 1 May 1999)

2. NATIONAL CONSTITUTIONS

Brazil

Mato Grosso - Constitution, 1989, Article 10.III ("orientação sexual")

Sergipe - Constitution, 1989, Article 3.II ("orientação sexual")

Ecuador - Constitution, 1998, Article 23(3) ("orientación sexual")

Germany

Berlin - Constitution, 1995, Article 10(2) ("sexuelle

Identität")

Brandenburg - Constitution, 1992, Article 12(2) ("sexuelle Identität")

Thuringia - Constitution, 1993, Article 2(3) ("sexuelle Orientierung")

South Africa - Constitution of the Republic of South Africa Act, No. 200 of 1993, Section 8(2) (transitional Constitution) ("sexual orientation")

- Constitution of the Republic of South Africa, 8 May 1996 (as amended on 11 Oct. 1996), Sections 9(3), 9(4) (final Constitution) ("sexual orientation")

3. NATIONAL LEGISLATION

Australia

Australian Capital Territory - Discrimination Act 1991, No. 81, s. 7(1)(b) ("sexuality")

New South Wales - Anti-Discrimination Act 1977, No. 48, as amended by Anti-Discrimination (Amendment) Act 1982, No. 142, s. 5, Schedule 2, Anti-Discrimination (Amendment) Act 1994, No. 28, s. 3, Schedule 4 ("homosexuality" added in 1982)

Northern Territory - Anti-Discrimination Act 1992, No. 80, s. 19(1)(c) ("sexuality")

Queensland - Anti-Discrimination Act 1991, No. 85, s. 7(1)(l) ("lawful sexual activity")

South Australia - Equal Opportunity Act, 1984, No. 95, ss. 5(1), 29(3), as amended by Equal Opportunity Amendment Act, 1989, No. 68, Schedule ("sexuality" included in 1984)

Tasmania - Anti-Discrimination Act 1998, No. 46 ("sexual orientation" and "lawful sexual activity")

Victoria - Equal Opportunity Act 1995, No. 42, s. 6(d) ("lawful sexual activity")

Canada

Federal Level - Canadian Human Rights Act, R.S.C. 1985, c. H-6, ss. 2, 3(1), as amended by S.C. 1996, c. 14 ("sexual orientation")

British Columbia - Human Rights Act, S.B.C. 1984, c. 22, ss. 3-6, 8-9, as amended by S.B.C. 1992, c. 43, ss. 2-7 ("sexual orientation")

Manitoba - Human Rights Code, S.M. 1987-88, c. 45, s. 9(2)(h) ("sexual orientation")

New Brunswick - Human Rights Act, R.S.N.B. 1973, c. H-11, as amended by S.N.B. 1992, c. 30, ss. 1-8 ("sexual orientation")

Newfoundland - Human Rights Code, R.S.N. 1990, c. H-14, ss. 6-9, 12, as amended by S.N. 1997, c. 18, s. 2 ("sexual orientation")

Nova Scotia - Human Rights Act, R.S.N.S. 1989, c. 214, s. 5(1)(n), as amended by S.N.S. 1991, c. 12, s. 1 ("sexual orientation")

Ontario - Human Rights Code, R.S.O. 1990, c. H.19, ss. 1-3, 5-6 ("sexual orientation" originally added by S.O. 1986, c. 64, s. 18)

Prince Edward Island - Human Rights Act, R.S.P.E.I. 1988, c. H-12, s. 1(1)(d), as amended by S.P.E.I.

1998, c. 92, s.1 ("sexual orientation")

Québec - Charte des droits et libertés de la personne, R.S.Q. c. C-12, s. 10 ("orientation sexuelle" originally added by S.Q. 1977, c. 6, s. 1)

Saskatchewan - Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1, ss. 9-19, 25, 47(1), as amended by S.S. 1993, c. 61, ss. 4-15, 18 ("sexual orientation")

Yukon Territory - Human Rights Act, S.Y.T. 1987, c. 3, ss. 6, 34 ("sexual orientation")

Denmark - Law of 9 June 1971, nr. 289, as amended by Law of 3 June 1987, nr. 357; extended to private employment by Law of 12 June 1996, nr. 459 ("seksuelle orientering" added in 1987)

Finland - Penal Code (as amended by Law 21.4.1995/578), c. 11, para. 9, c. 47, para. 3

("sukupuolinen suuntautuminen" or "sexual orientation")

France - Nouveau Code pénal, arts. 225-1, 225-2, 226-19, 432-7; Code du travail, arts. L. 122-35, L. 122-45 (originally added by Loi No. 85-772, 25 July 1985, Loi No. 86-76, 17 January 1986) ("moeurs" or "morals, manners, customs, ways")

Germany

Saxony-Anhalt - Gesetz zum Abbau von Benachteiligungen von Lesben und Schwulen (Law on Reducing Discrimination Against Lesbians and Gay Men), 22 Dec. 1997 (public sector only) ("sexuelle Identität")

Iceland - General Penal Code, No. 19/1940, s. 180, as amended by Act No. 135/1996, s. 1, and Act No. 82/1998, s. 91 ("sexual orientation" added in 1996)

Ireland - Unfair Dismissals Act, 1977, No. 10, s. 6(2)(e), as amended by Unfair Dismissals (Amendment) Act, 1993, No. 22, s. 5(a); extended to other aspects of employment by Employment Equality Act, 1998, No. 21, s. 6(2)(d) ("sexual orientation" added in 1993)

Israel - Equal Opportunities in Employment Act 1988, as amended by Book of Laws, No. 1377 of 2 Jan. 1992 ("neti'ya minit" or "sexual orientation")

Luxembourg - Code pénal, arts. 454-457, added by Law of 19 July 1997 ("orientation sexuelle" and "moeurs")

Namibia - Labour Act, 1992, No. 6, s. 107 ("sexual orientation")

Netherlands - Penal Code, arts. 137f, 429 quater (inserted by Law of 14 Nov. 1991, Staatsblad 1991,

nr. 623); General Equal Treatment Act, arts. 1, 5-7 (Law of 2 March 1994, Staatsblad 1994, nr. 230) ("hetero- of homoseksuele gerichtheid" or "hetero- or homosexual orientation")

New Zealand - Human Rights Act 1993, No. 82, s. 21(1)(m); New Zealand Bill of Rights Act 1990, No. 109, s. 19, as amended by Human Rights Act 1993, No. 82, ss. 21(1)(m), 145, Second Schedule ("sexual orientation")

Norway - Penal Code, para. 349a, Law of 8 May 1981, nr. 14 ("homofile legning, leveform eller orientering" or "homosexual inclination, lifestyle or orientation")

Slovenia - Penal Code (1 Jan. 1995), art. 141 ("spolni usmerjenosti" or "sexual orientation")

South Africa - Labour Relations Act, 1995, No. 66, s. 187(1)(f) (dismissal); extended to other aspects of employment by Employment Equity Act, 1998, No. 55, s. 6 ("sexual orientation" added in 1995)

Spain - Penal Code, Organic Law of 23 Nov. 1995, No. 10/1995, arts. 314, 511-12 (see also arts. 22(4), 510, 515(5)) ("orientación sexual")

Sweden - Criminal Code, c. 16, para. 9, Law of 4 June 1987, SFS 1987:610 ("homosexuell läggning" or "homosexual inclination"); extended to employment by Law of 11 March 1999, SFS 1999:133 ("sexuell läggning" or "sexual inclination")

United States

California - Cal. Labor Code s. 1102.1 ("sexual orientation" added in 1992)

Connecticut - Conn. Gen. Stat. ss. 4a-60a, 45a-726a, 46a-81b to 46a-81r ("sexual orientation" added in 1991)

District of Columbia - D.C. Code Ann. ss. 1-2501 to 1-2533 ("sexual orientation" originally added in 1973)

Hawaii - Haw. Rev. Stat. ss. 378-1, 378-2 ("sexual orientation" added in 1991)

Massachusetts - Mass. Gen. Laws Ann. ch. 151B, ss. 3, 4 ("sexual orientation" added in 1989)

Minnesota - Minn. Stat. Ann. ss. 363.01(45), 363.03 ("sexual orientation" added in 1993)

New Hampshire - N.H. Rev. Stat. Ann. (e.g.) ss. 21:49, 354-A:7, 354-A:10, 354-A:17 ("sexual orientation" added in 1997)

New Jersey - N.J. Rev. Stat. ss. 10:5-5.hh.-kk., 10:5-12 ("affectional or sexual orientation" added in 1991)

Rhode Island - R.I. Gen. Laws (e.g.) ss. 11-24-2 to 11-24-2.2, 28-5-2 to 28-5-7.3, 28-5-41, 34-37-1 to 34-37-5.4 ("sexual orientation" added in 1995)

Vermont - Vt. Stat. Ann. tit. 1, s. 143; tit. 21, s.495 ("sexual orientation" added in 1991)

Wisconsin - Wis. Stat. Ann. ss. 101.22, 111.31 to 111.36 ("sexual orientation" added in 1982)

Major U.S. cities with prohibitions of sexual orientation discrimination extending to private sector employment include Baltimore, Boston, Chicago, Cleveland, Denver, Detroit, Kansas City, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Phoenix, Pittsburgh, Portland, Saint Louis, San Diego, San Francisco, Seattle, and Tampa. See

<http://www.hrc.org/issues/workplac/nd/ndjuris.html>.

DENMARK: GAY MAN GOT COMPENSATED FOR ILLEGAL SACKING

By Bjørn Skolander

For the first time in Denmark a employer has agreed to financially compensate an employee, who had been sacked on grounds of his homosexuality. Denmark has had a law against discrimination on the labour-market since 1996, including discrimination on the grounds of sexual orientation. But due to difficulties to prove discrimination no cases have previously been tested.

22 year old Frank Wolff Hinrichs from southern Denmark did, however, hide a tape recorder in his pocket, when he was called for a discussion with his employer. And from the tape recording it was evident that he had been sacked because he was gay.

The case has created optimism within the Landsforeningen for Bösser og Lesbiske/The Danish National Association for Gays and Lesbians (LBL), as they believe that many lesbians and gay men do experience discrimination at their jobs, in connection with job interviews etc. The association is therefore in favour of an investigation of the extent of the labour-market's discrimination of homosexuals. LBL is referring to a Swedish study from 1997. It showed that a third of the participants felt discriminated against due to their sexual orientation. And that 50% did not dare to be open about their orientation out of fear of negative reactions.

The Danish minister responsible for labour-market issues, Ove Hygum, has made it clear that he is ready to make funds available for an investigation, if the unions and the employers' association also contributes financially. The unions are positive to an investigation, but have not yet decided if they will support it financially. The employers' association, on the other hand, does not agree that there is a need for such an investigation. And they demand that LBL can prove that their exist a real need for an investigation of

labour-market discrimination against lesbians and gay men. And it is not enough to come with 2-3 cases, the association says.

However, one of the unions is of the opinion that the current law concerning discrimination on the grounds of sexual orientation has to be changed. According to the union, it should be the employer who should prove that a dismissal etc. has not happened due to a employee's sexual orientation. And not as now is the case, the employee who must prove that she or he has been discriminated against. Such a law would be similar to discrimination on the grounds of pregnancy. If the present law is not changed we are forced to recommend our members to hide a tape recorder in their pockets when they go a job interview etc, says a spokesman for the union.

SPANISH PARLIAMENT CALLS FOR TRANSEXUAL SURGERY COSTS TO BE INCLUDED IN THE SOCIAL SECURITY

by Cesar Leston, Fundacion Triangulo

As you may recall (see Euroletter 68), a proposal was due to be voted in the Spanish Parliament regarding the costs of transgender surgery. The proposal called for our Social Security to take in charge the costs of such surgery.

When in 1995 the Spanish Minister of Health Ms Amador published the first list of medical coverage at the expense of the social security, the transgender surgery was excluded. Before such list was published though, transgender surgery was seldom, if ever, taken in charge by our National Health System. Identidad de Genero (Gender Identity Association) has since then fought to have such provision changed.

Significant last moves was Andalusia deciding to include reassignment surgery within their own health system. Immediately after, a bill was introduced in federal parliament calling on the National health system to undertake a similar move.

Though initial prospects were pretty bleak, the lower house of parliament eventually voted on April 15th to call on the National Health System to take in charge the costs of gender reassignment surgery. The most remarkable feature was the change in the attitude of the ruling party, PP, who initially was against the move. Nevertheless, the vote actually had also the support of the PP members of parliament, the bill having then been voted unanimously.

The effects of the bill are not immediate though: the bill is just a call, not a law. Thus, the ministries concerned must know consider how to change the

laws in force in order to meet the requirement of the parliament. Nevertheless, given the fact that it enjoyed the full support of government party MP's, it certainly looks like the right measures will be implemented in a reasonable period of time.

The bill also calls on the Ministry of Justice to have transexual persons assigned, when arrested an imprisoned, to men or women prisons in according with their "social sex" as opposed to their "legal one". That is, beyond the gender stated in their ID's, what will prevail now is what those persons actually are/want to be. It was about time for common sense to prevail.

The bill also wanted transexuals to be regarded as eligible for political asylum. I am sorry to say this proposal was defeated by only one vote.

According to the own statements of Ms Maria Jose Hernandez, member of the transgender movement, she feels "happy but not satisfied" for she feels what has been accomplished is just the beginning and that so much work still remains ahead in order to attain full social integration.