EURO-LETTER

No. 74 Oktober 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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THE FRENCH PaCS
by René Lalement

The French National Assembly passed the civil solidarity pact, or PaCS, by 315 votes to 249, in its last and definitive reading on October 13, 1999. The law should be promulgated by the President by the end of the year, if the Constitutional Council rules it conforms with the Constitution.

A ten year process
In 1989, the "Cour de Cassation" (the higher civil law court in France) ruled that a homosexual couple cannot benefit the few advantages which are given to cohabiting heterosexual couples, especially the transfer of a tenant's lease. The first registered partnership law proposal followed in 1990. Two years later, the "Contrat d'Union Civile" (CUC) was the aim of a new law proposal signed by eight deputies; rewritten and named "Contrat d'Union Sociale" (CUS), it was broadly supported by the gay and lesbian and AIDS-related organisations. The CUS was the main theme of Paris lesbian and gay pride March in 1996, and one of the demands of next year's Europride in Paris, the largest political demonstration of that year in France (300,000 participants).

It was only in June 1997 that a ruling coalition had this project in its electoral agenda, and three law proposals were registered soon after the 1997 elections. In January 1998, Catherine Tasca, president of the law committee of National Assembly asked MPs Jean-Pierre Michel (MdC) and Patrick Bloche (PS) to write a synthesis of previous proposals. In April, a petition against gay marriage, signed by 15,000 mayors, was published ; it was impressive enough to incite the government to keep the registration of the future contract away from town halls, while it was the place proposed until then. Dissenting voices from the homosexual movements were also heard : Aides Federation (the main AIDS organisation in France, whose president was Arnaud Marty-Lavauzelle), and a few local but highly visible groups demanded the opening of marriage to homosexual couples, and branded as discriminatory the ongoing parliamentary project. Other projects were brought to public attention, by sociologist Irène Théry (a cohabitation statute) and by jurist Jean Hauser ("Pacte d'Intérêt Commun"), leading to strong debates in the media.

In May 1998, the first draft of the PaCS, written by Michel and Bloche was published. In June, Justice Minister Elisabeth Guigou gave the government's agreement to this draft, against Thery's and Hauser's projects. Two days later, Paris Lesbian and Gay Pride march gathered 100.000 people under the slogan "Nous nous aimons, nous voulons le PaCS". The same day, President Jacques Chirac (not in charge of the government, because of a contrary majority in the Assembly) said he opposed any imitation of the marriage. After the appointment of Michel and Bloche as "rapporteurs" and the extensive hearings they organised, the law proposal came into discussion October 9, 1998 and was rejected because of a strong mobilisation of the opposition, and the defection of the majority. A new law proposal had then to be prepared.

The Assembly passed this new law proposal 316-249 on December 9, in first reading. On January 31, a demonstration gathered nearly 100,000 people against the PaCS ; some strongly homophobic slogans were heard, such as "les pédés au bûcher". The law proposal was then rejected by the (conservative) Senate by a vote of 192 to 117 on March 18. However, the Senators adopted an alternate proposal that includes in the civil code a definition of cohabiting couples, but declined an amendment, sponsored by the Left, specifying that the two people making a couple may be of any gender. In second reading, the Deputies ignored the Senate proposal, restoring the Assembly proposal, but they added a definition of cohabitation with the any gender mention on April 7. This text was then rejected by the Senate on May 11 (with no reading), adopted by the Assembly on June 15 and rejected again by the Senate on June 30. Only the last (and fourth) reading by the Assembly can overwrite the Senate rejection. It occurred on October 12 and 13, and the law was adopted by 315-249.

Contents of the law
(See also http://www.steff.suite.dk/partner.htm)
The civil solidarity pact is a contract binding two adults of different sexes or of the same sex, in order to organise their common life ; contractors may not be bound by another pact, by marriage, sibling or lineage. Adults under custody cannot contract.

The contractors have to register a common declaration by the local court where they set their common residence, if in France and by the consular authorities, if abroad.

Partners commit to mutual and material help; modalities of this help are specified by the common declaration. They are jointly responsible for debts due to ordinary expenses for the household.

A pact can be dissolved by a common statement of the partners by the court (or consulate), by the death or the marriage of one of the partners, or after a three months delay, at the request of one of the partners.

Partners are eligible for joint taxation benefits after three years (which is interesting only in case the incomes are not equal). But special allocations for people having low income are suspended or reduced

as soon as the pact is signed. Also, the tax on large assets is due from the first year on. Donations, but only after two years, and inheritance from a partner to the other benefit a tax abatement. Life insurance capital can be paid to the surviving partner.

The tenant's lease can be transferred to the partner if the other partner leaves their common home or dies.

A partner who does not have a social protection (health benefits) may enjoy the other partner's social protection.

French nationality is not required to sign a pact ; the signature of a pact must be considered by the administration when a foreigner asks for immigration rights, but the pact does not give these rights by itself.

Public servants (from national or local administrations) may ask another position from their employer in order to get closer to the other partner.

Cohabitation is also defined in this law as a de facto stable and continuous relationship between two persons of different sexes or of the same sex living together as a couple.

Moreover, the pact does not contain any clause regarding lineage, adoption or custody.

Comments on the law
The law does not achieve the equality of homosexual and heterosexual couples. Actually, heterosexual couples may cohabit, sign a pact or marry ; homosexual couples may only cohabit or sign a pact. Rights, benefits and obligations can be compared : minimal for cohabitation, they are larger for PaCS, and still larger for marriage.

However, the law is in itself an equality law, because it does not contain any discrimination against homosexual couples, for instance there is no denying of adoption or insemination as in some other partnership laws. Such discriminations do exist in other parts of the legislation (for marriage, adoption, etc), but not in the PaCS.

For the first time, a law recognises the very existence of non-married couples and states the equivalent value of homosexual and heterosexual couples. Moreover, it recognises the plurality of life styles : marriage is now only an option and no more the norm. This is both why the pact has been welcomed by the society, definitely less attracted to marriage, and fought by the conservative and religious movements.

The PaCS, once read as stating an equality principle in the Law, sheds a new light on other parts of the Law and on practices which may now appear as quite discriminatory. This side effect of the new law has already been understood by its opponents, who even think that, with the help of European Law, adoption and marriage will sooner or later follow from the PaCS. As the government is preparing another law concerning family and bio ethic issues, which will be discussed within the next year, the road is open for new advances.

Comments on the process
Seven readings in the Parliament, 120 discussion hours, thousands of amendments made of this law proposal one of the most debated of the last years. Although it was expected to be a non-partisan law, with support from the progressive right to the left (as it was the case for the abolition of the death penalty, or the laws on contraception and abortion), the right chose to strongly oppose the law, even if some leaders of the right were privately in favour of the pact. Never since 1982 (for the equalisation of ages of consent) homosexuality has been said to such extend in the Parliament. Only two MPs from the right voted for the law, one of them being long-standing supporter Roselyne Bachelot-Narquin.

This was also an open field for homophobia : both in speeches, in street demonstrations, and in the media. Some MPs did not hesitate to speak of register the pact at a veterinary service or to ask for the sterilisation of homosexual couples. MP Christine Boutin, the standard-bearer of the religious right and the leader of the January demonstration (where demonstrators shouted that fags should be burned), displayed a bible in the Assembly and uttered despising words in the guise of compassion. Most people were troubled by such behaviours; the leaders of the opposition, still very low-voiced, understood that they have made a mistake. As a result, the very concept of homophobia is now well-known from the media and the politicians, and now almost unanimously rejected. A law banning homophobic speeches will probably be planned. A stronger and more conscious acceptation of homosexuality has been obtained through one year of public debate.

The full text of the law and more information can be found in the France QRD at the URL http://www.France.QRD.org/texts/partnership

JUDGMENTS IN THE CASES ABOUT GAYS IN THE MILITARY IN THE UNITED KINGDOM
Press release issued by the Registrar of the Court

In a judgment[fn1] delivered at Strasbourg on 27 September 1999 in the case of Lustig-Prean and Beckett v. the United Kingdom, the European Court of Human Rights held unanimously that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. In a second judgment delivered on the same day in the case of Smith and Grady v. the United Kingdom, the Court also found a violation of Article 8 together with a violation of Article 13 (right to an effective remedy) of the Convention. The Court reserved for separate judgments the question of an award of just satisfaction under Article 41.

1. Principal facts
Duncan Lustig-Prean and John Beckett, British nationals, were born in 1959 and 1970 and live in London and Sheffield (United Kingdom) respectively. Jeanette Smith and Graeme Grady, British nationals, were born in 1966 and 1963 and live in Edinburgh and London (United Kingdom) respectively.

All four applicants, who were at the relevant time members of the United Kingdom armed forces, are homosexual. The Ministry of Defence apply a policy which excludes homosexuals from the armed forces. The applicants, who were each the subject of an investigation by the service police concerning their homosexuality, all admitted their homosexuality and were administratively discharged on the sole ground of their sexual orientation, in accordance with Ministry of Defence policy. They were discharged in January 1995, July 1993, November 1994 and December 1994 respectively. In November 1995 the Court of Appeal rejected their judicial review applications.

2. Procedure and composition of the Court
The applications were lodged with the European Commission of Human Rights on 23 April, 11 July, 9 September and 6 September 1996 respectively. On 1 November 1998, in accordance with Article 5 § 2 of Protocol No. 11 to the Convention, the cases were transmitted to the Court.

On 23 February 1999 the Court (Third Section) joined Mr Lustig-Prean and Mr Beckett's applications and joined Ms Smith's and Mr Grady's applications. On the same day the Court also declared the complaints admissible.

A hearing in both cases was held on 18 May 1999.

Judgment in each case was given by a Chamber of seven judges, composed as follows:

Jean-Paul Costa (French), President,
Nicolas Bratza (British),
Loukis Loucaides (Cypriot),
Pranas Kuris (Lithuanian),
Willi Fuhrmann (Austrian),
Hanne Sophie Greve (Norwegian),
Kristaq Traja (Albanian), Judges,

and also Sally Dollé, Section Registrar.

3. Summary of the judgments

Complaints
Mr Lustig-Prean and Mr Beckett complained that the investigations into their sexual orientation and their subsequent discharges violated their right to respect for their private lives, protected by Article 8 of the Convention, and that they had been discriminated against contrary to Article 14.

Ms Smith and Mr Grady made the same complaints under Articles 8 and 14. They further complained that the Ministry of Defence policy against homosexuals and consequent investigations and discharges were degrading contrary to Article 3 (prohibition of inhuman or degrading treatment or punishment), and that the policy limited their right to express their sexual identity in violation of Article 10 (freedom of expression) and that they did not have an effective domestic remedy for their complaints as required by Article 13. Article 14 was also invoked in conjunction with the complaints under Articles 3 and 10.

Article 8
The Court considered the investigations, and in particular the interviews of the applicants, to have been exceptionally intrusive, it noted that the administrative discharges had a profound effect on the applicants' careers and prospects and considered the absolute and general character of the policy, which admitted of no exception, to be striking. It therefore considered that the investigations conducted into the applicants' sexual orientation together with their discharge from the armed forces constituted especially grave interferences with their private lives.

As to whether the Government had demonstrated "particularly convincing and weighty reasons" to justify those interferences, the Court noted that the Government's core argument was that the presence of homosexuals in the armed forces would have a substantial and negative effect on morale and, consequently, on the fighting power and operational effectiveness of the armed forces. The Government relied, in this respect, on the Report of the Homosexual Policy Assessment Team (HPAT) published in February 1996. The Court found that, insofar as the views of armed forces' personnel outlined in the HPAT Report could be considered representative, those views were founded solely upon the negative attitudes of

heterosexual personnel towards those of homosexual orientation. It was noted that the Ministry of Defence policy was not based on a particular moral standpoint and the physical capability, courage, dependability and skills of homosexual personnel were not in question. Insofar as those negative views represented a predisposed bias on the part of heterosexuals, the Court considered that those negative attitudes could not, of themselves, justify the interferences in question any more than similar negative attitudes towards those of a different race, origin or colour.

While the Court noted the lack of concrete evidence to support the Government's submissions as to the anticipated damage to morale and operational effectiveness, the Court was prepared to accept that certain difficulties could be anticipated with a change in policy (as was the case with the presence of women and racial minorities in the past). It found that, on the evidence, any such difficulties were essentially conduct-based and could be addressed by a strict code of conduct and disciplinary rules. The usefulness of such codes and rules was not undermined, in the Court's view, by the Government's suggestion that homosexuality would give rise to problems of a type and intensity that race and gender did not or by their submission that particular problems would arise with the admission of homosexuals in the context of shared accommodation and associated facilities.

Finally, the Court considered that it could not ignore widespread and consistently developing views or the legal changes in the domestic laws of Contracting States in favour of the admission of homosexuals into the armed forces of those States. Accordingly, convincing and weighty reasons had not been offered by the Government to justify the discharge of the applicants. While the applicants' administrative discharges were a direct consequence of their homosexuality, the investigations conducted into the applicants' sexual orientation deserved separate consideration, because the investigations continued after the applicants had admitted their homosexuality. The Government suggested that the investigations continued in order to verify the admissions of homosexuality so as to avoid false claims by those seeking an administrative discharge from the armed forces. This argument was rejected by the Court because both applicants wished to remain in the armed forces. In addition, the Court was not persuaded by the Government's argument that medical, security and disciplinary reasons necessitated the investigations. The Court rejected the Government's submission that the applicants knew they were not obliged to participate in the interviews, finding, in this latter respect, that the applicants had no real choice but to co-operate, as they wished to keep the investigations as discreet as possible. Accordingly, the investigations conducted after the applicants' confirmed their homosexuality were also considered unjustified.

The Court therefore took the view that neither the investigations nor the discharges of the applicants were justified within the meaning of Article 8 § 2.

Article 14 in conjunction with Article 8
The applicants argued that they had been subjected to discriminatory treatment as a result of the Ministry of Defence policy against homosexuals in the armed forces. The Court considered that this complaint did not give rise to any issue separate to that already considered under Article 8.

Article 41
The Court considered that the issue of just satisfaction was not yet ready for decision and reserved the question for a separate judgment.

Article 8 alone and in conjunction with 14
Since these complaints were similar to those of Mr Lustig-Prean and Mr Beckett, the Court adopted the same reasoning and reached the same conclusion.

Article 3 alone and in conjunction with Article 14
The Court noted that it had already indicated, in the context of the complaints under Article 8, why it considered that the investigation and discharge together with the blanket nature of the policy of the Ministry of Defence were of a particularly grave nature. In addition, the Court did not exclude that treatment grounded upon a predisposed bias on the part of a heterosexual majority against a homosexual minority as in the present case could, in principle, fall within the scope of Article 3. It also accepted that the Ministry of Defence policy together with the consequent investigations and discharges were undoubtedly distressing and humiliating for each of the applicants. However, the Court did not consider that, in the circumstances of the case, the treatment reached the minimum level of severity which would bring it within the scope of Article 3.

It accordingly concluded that there had been no violation of Article 3 either alone or in conjunction with Article 14.

Article 10 alone and in conjunction with Article 14
The Court considered that the freedom of expression element of the case was subsidiary to the applicants' right to respect for their private lives which was principally at issue. The Court therefore found that it was not necessary to examine the applicants' complaints under Article 10 either alone or in conjunction with Article 14.

Article 13 in conjunction with Article 8

The applicants argued that the judicial review proceedings did not constitute an effective domestic remedy within the meaning of Article 13.

The Court noted that the sole issue before the domestic courts in the context of the judicial review proceedings was whether the policy was irrational and that the test of irrationality was that expounded by Sir Thomas Bingham MR in the Court of Appeal. According to that test, a court was not entitled to interfere with the exercise of an administrative discretion on substantive grounds save where that court was satisfied that the decision was unreasonable, in the sense that it was beyond the range of responses open to a reasonable decision-maker. In judging whether the decision-maker had exceeded this margin of appreciation, the human rights context was important, so that the more substantial the interference with human rights, the more the court would require by way of justification before it was satisfied that the decision was reasonable.

The Court also noted that Sir Thomas Bingham MR emphasised that the threshold beyond which a decision would be considered irrational was a high one and it considered that this was confirmed by the judgments of the High Court and of the Court of Appeal. Both of those courts had commented very favourably on the applicants' submissions challenging the Government's justification of the policy and both courts considered that there was an argument to be made that the policy was in breach of the United Kingdom's Convention obligations. The Court observed that, nevertheless, those domestic courts were bound to conclude, given the test of irrationality applicable, that the Ministry of Defence policy could not be said to be irrational.

The Court therefore found that the threshold at which the domestic courts could find the policy of the Ministry of Defence irrational had been placed so high that it effectively excluded any consideration by the domestic courts of the question of whether the interference with the applicants' private lives had answered a pressing social need or was proportionate to the national security and public order aims pursued by the Government, principles which lie at the heart of the Court's analysis under Article 8.

The Court concluded, accordingly, that the applicants did not have an effective domestic remedy in relation to the violation of their right to respect for their private lives.

Article 41
As in the Lustig-Prean and Beckett case, the Court considered that the issue of just satisfaction was not yet ready for decision and reserved the question for separate judgment.

Judge Loucaides expressed in both cases a partly dissenting and partly concurring opinion which is annexed to the judgments.

The Court's judgments are accessible on its Internet site (http://www.dhcour.coe.fr) on the day of their delivery.

Footnote
[fn1] The judgment becomes final subject to Articles 43 and 44 of the Convention:

Under Article 43, within three months from the date of the Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. A panel of five judges accepts the request if the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance.
Under Article 44, the Chamber judgment becomes final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.

ILGA EUROPE PRESS RELEASE AFTER THE JUDGEMENT

ILGA-EUROPE CALLS ON GERMANY, GREECE, POLAND AND TURKEY TO LIFT THEIR RESTRICTIONS ON MILITARY SERVICE BY LESBIANS AND GAY MEN FOLLOWING EUROPEAN COURT OF HUMAN RIGHTS RULING

Yesterday's overwhelming and unqualified condemnation by the European Court of Human Rights of the UK's ban on service in the armed forces by lesbian and gay persons leaves no doubt that similar restrictions in certain other member states of the Council of Europe are in clear violation of the European Convention on Human Rights.

In Germany, lesbians and gay men are disqualified from becoming officers or military instructors. Defence Minister Rudolf Scharping recently supported these restrictions, commenting that "homosexuality is cause for considerable doubt of suitability and shuts out employment in such functions as leading, education and training in connection with soldiers."

In Greece and Poland lesbian and gay service personnel can be discharged on the basis that they suffer from a personality disorder, while in Turkey a law dating from 1996 states that those who engage in "unnatural sexual intercourse" are to be expelled from the army.

ILGA Europe calls on the governments of these countries to lift their restrictions immediately. As parties to the European Convention on Human Rights, they are under an obligation to secure for their citizens the rights and freedoms protected by the Convention. Yesterday's judgment leaves no doubt that these rights include that of lesbians and gay men to serve in armed forces of their country.

EUROPEAN COURT ON HUMAN RIGHTS: DIFFERENTIAL TREATMENT OF UNMARRIED COHABITATION AS COMPARED TO MARRIAGE WITHIN MARGIN OF APPRECIATION

by Helmut Graupner, Rechtskomitee LAMBDA, Vienna

On June 29, in Nylynd v. Finland (Application No. 27110/95) (available at http://www.dhcour.coe.fr/hudoc), the Court declared inadmissible (as "manifestly ill-founded" within the meaning of Art. 35 § 3 of the Convention) the complaint of a Finnish man who claimed to be the biological father of a child born to his former partner who, at the time of birth, was married to another man. He (inter alia) asserted a violation of Art. 14 of the European Convention on Human Rights (ECHR) (prohibition of discrimination) in connection with Art. 8 ECHR (right to respect for family and private life) because under Finnish law - since the child was born in wedlock and therefore the husband of the mother is legally presumed to be the father - he has no right to have his biological paternity examined and is totally barred from having his paternity established against the wishes of the mother (who objected to such examinations). He maintained that the mother's absolute right to decide on her child's fatherhood infringes his rights under Article 14 of the Convention. Countering the claim of the Finnish authorities, that this inequality was justified by the need to protect the family the child now lives in, he argued that such legitimate considerations as equality of sexes and the protection of the biological parent-child relationship, including the rights of the father and child, outweigh the need to defend the social institution of family. He points out that the family unit, consisting of the then pregnant woman and himself, enjoys no less protection under Article 8 of the Convention than does a family created through marriage.

What in this case seems relevant for same-sex partnership cases is the reasoning of the Court in rejecting the arguments of the applicant. First the Court, by referring to its judgement in the transgender-case Sheffield & Horsham (1998), explains that "not every difference in treatment will amount to a violation of this Article [Art. 14] . Instead, it must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment, and that there is no reasonable or objective justification for this distinction [...] Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law". Then the "Court finds that, though in some fields the de facto relationship of cohabitees is recognised, there still exist differences between married and unmarried couples, in particular, differences in legal status and legal effects. Marriage continues to be characterised by a corpus of rights and obligations that differentiate it markedly from the situation of a man and woman who cohabit." Therefore the Court concluded "that the [unmarried] applicant was not in a situation analogous to that of the [married] child's mother". So a legitimate aim and the reasonableness and objectiveness of the differential treatment of mother and father need not even be examined, neither proportionality of means employed to aims sought. Only at the time of their cohabitation they could be considered to have been in an analogous or relevantly similar situation and the differential treatment only insofar has to be examined if pursuing a legitimate aim, being reasonable as well as objective and proportionate as regards aims and means employed. (The Court found these criteria be fulfilled in the present case.)

By denying that unmarried and married persons are in an analogous or relevantly similar situation the Court even goes beyond the decision in Saucedo Gomez v. Spain (Appl. 37784/97) (Jan. 26) where the Court assumed unmarried and married persons to be in an analogous situation (regarding provisions on allocation of the matrimonial home and payment of alimony) then holding that differential treatment would be reasonable and objective since the regulation of the legal status of married and unmarried couples would fall into the Member States margin of appreciation. The Court stated that "social reality shows the existence of stable unions between men and women [outside marriage] ... It is not however for the Court to dictate, nor even to indicate, the measures to be taken in relation to such unions, the question being one within the margin of appreciation of the respondent government, which has the free choice of the means to be employed, as long as they are consistent with the obligation to respect family life protected by the Convention."

Any way - be it for a lack of a relevantly similar situation or for the reasonableness and objectiveness of the distinction - it seems that (unmarried) same-sex couples could not successfully claim a breach of the Convention (Art. 14) by the mere argument that they are treated less favourable then married partners. (1)

One argument however remains. In Saucedo Gomez v. Spain the Court qualified the differential treatment as (also) proportionate since the applicant freely decided not to benefit from the advantages inherent in the status of spouse by not marrying her partner. Since same-sex partners however are barred from marriage it follows from this argument of the Court that disadvantageous treatment of unmarried couples in general is reasonable and objective (since falling into the States margin of appreciation) but that such unfavourable differentiation affecting (unmarried) (same-sex) partners who are barred from marriage would be disproportionate. (2) (3)

(1) Both decisions have been taken by Section IV of the Court (composed of seven judges from Germany, Finland, Portugal, Ireland and Croatia in both cases plus the Ukraine and Bulgaria in Nylynd and Spain and Switzerland in Saucedo Gomez; by majority in Saucedo Gomez, unanimously in Nylynd). So it seems not impossible - though not very probable - that another section finds to other decisions.

(2) This argument however presupposes the ban from marriage as unjustified. A ban justified (legitimate aim, objective and reasonable, proportionate) would of course not render unfavourable treatment of such unmarried couples (in relation to married ones) disproportionate (cf. the problem of incestuous relations or underage partners). To be successful applicants therefore would not only have to claim the unfavourable treatment in relation to married partners and their ban from marriage but they would also have to show their ban from marriage in itself being unjustifiable.

(3) Under Nylynd v. Finland however this argument would fail, since in this decision the Court denies an analogous or relevantly similar situation between unmarried and married couples (thus exempting distinctions from the examination of a legitimate aim, objectivity and reasonableness and proportionality). According to that decision unmarried same-sex couples could only be considered to be in a relevantly similar situation with unmarried different-sex couples. So under this decision no violation of Art. 14 could be argued if unmarried different-sex and unmarried same-sex couples would be treated alike but both less favourable then (different-sex) married partners. A violation could only be argued if unmarried same-sex couples are treated less favourable then unmarried different-sex couples.

LATVIA: PROGRESS ON PARTNERSHIP LAW
by Juris Ludvigs Lavrikovs, Homosexuality Information Centre, Riga, Latvia

On 5 October 1999 the Human Rights and Public Affairs Commission of the Saeima (Parliament) of the Republic of Latvia discussed for the first time a draft law "On Registered Partnership of the Persons of the Same Gender".

This draft law was prepared by the Latvian National Human Rights Office in cooperation with the Homosexuality Information Centre (HIC) and submitted to the Parliamentary Commission on 28 September 1999. (See below)

Mr Olafs Bruveris, the Director of the Latvian National Human Rights Office, was invited to the meeting of the Commission. During the meeting it was decided not to reject the draft law but to send it to the Legal Office of the Parliament. This office consists of 5 independent lawyers and its task is to provide the parliamentary commissions with legal advice. The Legal Office was asked to consider the draft law and to give advice on what is the best way to change existing legislation to guarantee the rights of same-gender couples.

At the same time the Homosexuality Information Centre, in cooperation with two Riga gay clubs, "Purvs" and "XXL", organised a demonstration in support of the draft law near the Parliament building. Supporters of the draft partnership law held posters reading "Lesbian and gay rights are human rights", "Families are different", "Isn't it nice to make people happy?", "All are equal but some are more equal than others", etc. This demonstration attracted very lively interest, not only from the Latvian media; journalists from Russia and Western Europe were also present.

Opposite the demonstration three people were held one poster: "Against homosexual marriage". As those three people explained to journalists, they were from the newly-created organisation "Latvian Society without Homosexuals".

In the week prior to the meeting of the Parliamentary Commission on Human Rights and Public Affairs the issue of legal recognition of lesbian and gay partnership was one of the most discussed topics in the Latvian media. With few exceptions, TV and radio programmes and publications were neutral and factual rather than negative and aggressive.

On 3 October 1999 a Member of the Latvian Parliament, Mr Tabuns, who is a member of the Parliamentary

Commission on Human Rights and Public Affairs, expressed his negative attitudes towards all homosexual people in the main evening TV news progamme, calling them "moral and physical cripples", and denouncing homosexuality as "moral and physical deformity". The Homosexuality Information Centre regards such statements as humiliating hate speech and in the nearest future intends to sue the MP for stirring up hatred against lesbians and gay men.

The Homosexuality Information Centre would like to thank individuals and organisations in Latvia and abroad for the letters of support they sent to the Parliamentary Commission. HIC regards this as a first step toward legal recognition of lesbian and gay partnership, and welcomes the decision of the Human Rights and Public Affairs Commission of the Parliament to discuss the draft law further.

LATVIA: PARTNERSHIP LAW PRESENTED TO THE MEDIA AND SENT TO PARLIAMENT

by Juris Ludvigs Lavrikovs, Homosexuality Information Centre, Riga, Latvia

On 23 September 1999 a proposal to adopt a same-gender registered partnership law was presented to the Latvian media during a press conference at the Latvian National Human Rights Office. On 28 September 1999 the proposal was sent to the Human Rights and Public Affairs Commission of the Saeima (Parliament) of the Republic of Latvia for discussion. This is an unprecedented event in Latvia, with a state institution admitting that lesbian and gay rights in the country are being seriously violated and suggesting that it is the state's obligation to adopt a partnership law.

History

During the last five years Latvian lesbian and gay organisations (the Latvian Association for Sexual Equality (LASE) and its successor, the Homosexuality Information Centre (HIC)) have twice appealed to the Latvian authorities to adopt legislation that would outlaw discrimination against lesbians and gay men, as well as to introduce legislation on same-gender registered partnership. Foreign lesbian and gay organisations have been asked to support these efforts through the sending of letters to the Latvian authorities. This has not, unfortunately, led to any debate on such laws, much less the adoption of legislation. Parliament's Commission on Human Rights and Public Affairs, the Chancellery of the President of Latvia and the Foreign Ministry, after receiving letters from Latvian and foreign lesbian and gay organisations, requested that the Latvian National Human Rights Office examine the legal situation for lesbians and gay men in Latvia and in other countries and to present a report on the problems that exist and solutions that might be adopted.

The Latvian National Human Rights Office was created in 1996 as an "independent state institution established for the purpose of promoting the observance of human rights and the fundamental rights and fundamental freedoms of citizens … in the Republic of Latvia, in accordance with international human rights agreements and conventions signed by Latvia [and] the Constitution [of the Republic of Latvia]" (The law "On the National Human Rights Office", adopted 17 December 1996, Article 1).

Research on lesbian and gay rights

In 1998 and 1999, the Latvian Human Rights Office, in co-operation with the Homosexuality Information Centre, conducted a research project called "Analysis of the Legal Situation for Lesbians and Gay Men in Latvia". This research project was one of the first of its kind in Latvia, examining the issue of homosexuality in general and the matter of homosexuality and the law in particular. The work resulted in an extensive, 140-page report. The report consists of four major segments. The first analyses whether Latvian legislation guarantees legal protection to individuals irrespective of their sexual orientation and examines whether same-gender couples are granted the possibility to establish unions legally and to enjoy the rights and obligations that are granted automatically to married couples. The second focuses on the way in which these issues are addressed in other countries.

A third segment examines the way in which the issue of homosexual rights is addressed by such international organisations as the Council of Europe, the Organisation for Security and Co-operation in Europe, the European Union and the United Nations. A detailed examination of decisions taken by the European Court of Human Rights, the European Court of Justice and the UN Committee is included. The final segment of the research report contains conclusions concerning the legal situation for lesbians and gay men in Latvia.

At this time only the Latvian version of the report is available at the Information and Documentation Centre of the Latvian National Human Rights Office and at the Web site of the Homosexuality Information Centre at http://www.gay.lv/projekts. Copies of the research report will be distributed to various state institutions, colleges and universities and non-governmental organisations in Latvia. In the near future an English translation of those sections of the report that are relevant to Latvia will be provided.

Results

According to the research, there is no legal protection for individuals on the basis of sexual orientation in Latvia. Discrimination against homosexuals is practised, and it is not illegal. A prohibition against marriage between persons of the same gender and a failure to provide any alternatives for same-gender unions - these represent a serious violation of the rights of lesbian and gay couples.

It is concluded in the research report that situation violates the principles of a democratic and pluralistic state. It is Latvia's international obligation to protect human rights, and this includes meeting the requirements that are levelled against candidate countries for accession to the European Union, as well as the requirements of the Latvian constitution.

The authors of the research report have proposed a set of legislative reforms to improve the situation and to provide legal equality for lesbians and gay men. One of the proposals is that a registered partnership law be introduced.

Explanatory notes to the proposed law
Partnership among persons of the same gender is not recognised in Latvian law, and same-gender couples suffer serious legal disadvantages and discrimination. The adoption of a law on registered partnership for persons of the same gender can reduce this discrimination and improve the situation for same-gender couples.

The research provides a complex of legislative reforms to improve this situation and provide lesbians and gay with the legal equality. One of these proposals is to introduce a registered partnership law.

At the moment partnership of the persons of the same sex are not recognised by the Latvian law and same-sex couples are suffering from serious legal disadvantages and discrimination. Adoption of a law on registered partnership for the persons of same sex can reduce this discrimination and to improve situation for same-sex couples.

Summary of the law
The proposed law would provide same-gender couples with an opportunity to register their partnerships. With the exception of those provisions which regard religious institutions, the registration and dissolution of such partnerships would be regulated by civil law, as well as other normative acts regarding the registration and dissolution of marriages.

Registered partnership would have a similar legal effect as does marriage. After adoption of the law, those laws and other normative provisions which refer to marriage and married partners (except for provisions that concern the adoption of children) would apply to registered partnerships and registered partners. Registered partners would have similar rights and obligations to those of married partners.

The authors of the report point out and used as example similar laws adopted in Denmark, Norway, Sweden, Iceland and the Netherlands, and a law drafted in Finland.

Aims and reasons for the proposed law
The main reason for the proposed law is that there is a need to allow two men or two women to form legally based partnerships in Latvia. The law "On registration of the partnership of two persons of the same gender" would regulate mutual relations between the two persons of the same gender insofar as legal issues are concerned, as well as the relationship between such persons and third parties, society, and the state.

Marriage is the only form of cohabitation that is presently recognised by law. When entering marriage, a man and a woman can express their will to create a family in public. Marriage does not, however, have only a symbolic meaning. Married partners gain certain mutual rights and obligations, including toward third parties, society and state. Article 35.2 of the Civil Law of the Republic of Latvia currently prohibits marriage between two persons of the same gender. There is no other law or normative act that provides legal recognition of persons of the same gender. Such people, in other words, are denied an opportunity to express their will to live together and to regulate in a legal way personal, property and civil relations mutually and with respect to third parties and the state.

The institution of registered partnership between persons of the same gender would in no sense set up a legal comparison to the institution of marriage between a man and a woman. The proposed partnership law would not abolish the aforementioned article of the Civil Law which prohibits marriage between two persons of the same gender. Taking into account the specific nature of the registration of a partnership between two persons of the same gender, the form and procedure of the existing institution of marriage have been taken merely as an example for the registration of same-gender partnerships. The proposed law would provide that registered partners have rights and obligations that are similar to those of married persons, but that would not be the case in all instances. The main goal of the proposed law is to achieve legal recognition of partnerships between persons of the same gender. The proposed law would provide same-gender partners with a legal basis for building and regulating mutual relations, as

well as relations with third parties and the state. The adoption of the law would provide a better opportunity for same-gender partners to regulate their lives as they wish and choose to do. The law would promote formation of long-term and responsible unions between same-gender individuals. The law would also have an important educational purpose - recognition of partnerships between same-gender persons by the state would set a good example of tolerance in society. The institution of registered partnership would allow same-gender partners the choice of formalising their relationships or refraining from doing so - a choice which couples of opposite gender already have.

Recognition of and a positive attitude toward committed and long-term relationships between same-gender partners will also help to decrease the incidence of unstable, casual relations, and that will significantly help to decrease the spread of HIV infection.

The proposed law is ethically neutral. The authors of the draft law believe that it is not a task of legislation to tell capable adults how to regulate their private lives or to condemn certain forms of cohabitation. Instead the state must provide them with support and help in forming and regulating their lives as long as their choices do not threaten the security and health of other members of society. The registration of same-gender partnerships - a process which primarily concerns the private relationship between two adults - simply cannot create any such threats. On the contrary: This law would provide legal recognition to a significant segment of society, allowing people to form and regulate their relationships in a civilised manner. Objections and intolerance toward the registration of same-gender persons, as expressed by some members in society, can in no way justify a denial of human rights for lesbians and gay men through a failure to provide legal recognition for their partnerships.

The protection and promotion of human rights and equality for all persons in society is a cornerstone for every pluralistic and democratic society. Since the restoration of its independence, the Republic of Latvia has been expressing its will to build such a society.

The proposed law is also neutral from the point of view of religion. It does not contain any provisions concerning the registration of same-gender partnerships by religious institutions, because this is an internal issue for each religious denomination. Religious objections against such registration cannot be a reason to reject this law, because the Latvian law on religious organisations provides for a separation between church and state in Latvia. The primary task of the state, indeed, must be to provide help for all of its citizens and residents, along with recognition concerning issues related to their personal and civil relationships.

Registration
Registration of same-gender partnerships, according to the draft law, would take place under the auspices of existing laws concerning the registration of marriage. These are Articles 32-83 of the second sub-section, “Registration and dissolution of marriage”, of the first part (“Family law”) of the Latvian Civil Law, Articles 13-21 of the third sub-section, “Registration of marriage”, of the law “On acts of civil status”, and Articles 19-56 of the third sub-section, “Registration of marriage”, in the Ministry of Justice instruction “On the registration of acts of civil status in the Republic of Latvia”. The provisions of these documents relating to religious institutions would not be relevant for registered partnership.

Conditions for partnership registration
These are Articles 32 to 83 of the second subsection "Registration and dissolution of marriage" of the fist part "Family Law" of the Civil Law; Articles 13 to 21 of the third subsection "Registration of marriage" of the law "On acts of civil status"; and Articles 19 to 56 of the third subsection "Registration of marriage" of he Instruction of the Ministry of Justice "On Registration of acts of civil status in the Republic of Latvia".

These provisions of the above mentioned documents related to religious institutions will not be relevant to registered partnership.

The law “On registration of the partnership of persons of the same gender” would apply only to two persons of the same gender. Two persons of the same gender who wish to register their partnership and who can satisfy the conditions that are laid down in the proposed law will, provided that there are no legal obstacles, be able to register their partnership officially.

Such persons will have to satisfy the same conditions which apply to those who wish to register a marriage. They will have to be at least 18 years of age, although in exceptional conditions a person aged 16 or older would be permitted to register a partnership if his or her parents or custodian gave authorisation and if the other person were at least 18 years of age. If a parent or custodian refuses permission without reasonable explanation, the refusal can be appealed to the Latvian Orphans’ Court.

Registration would not be permitted for persons declared uncapable by a court for reasons of mental disturbance. Registration would be prohibited among relatives of the first degree, brothers, sisters, half-brothers, half-sisters, adopters and adoptees, and custodians and persons in custody. The latter rule

would not apply in those instances when the civil relations established by adoption or custody have ended. Persons already registered in a marriage or another partnership would not be allowed to enter a new partnership. At least one of the parties to the partnership would have to be a citizen or permanent resident of Latvia.

Announcement
Prior to the registration of a partnership there would be an official announcement, the aim of which would be to allow anyone who has an objection to the registration or whose rights would be violated by the registration to express his or her concerns.

The registration ceremony
The registration of a partnership between two persons of the same gender would involve a specific ceremony. A clerk from the office for registration of acts of civil status would be present in official capacity, and the registration would occur in the presence of both partners and two witnesses of full age. A note of the registration of the partnership would be recorded in a special register, and the note would be signed by the partners, the witnesses and the official who is present. A seal with an image of the national emblem would confirm the note.

The partners would receive a certificate of the registered partnership, and notation of same would be marked in their passports, noting the registered partner's name and surname, identification number and date of birth, as well as the place and time of registration and the number of the registered partnership.

Dissolution of a registered partnership
The dissolution of a registered partnership would occur in accordance with existing laws on the dissolution of marriages. This would be an issue that is the competence of the Latvian courts.

A registered partnership would be considered dissolved from the day on which the relevant court ruling takes effect. Courts would be allowed to dissolve a registered partnership at the request of one or both of the registered partners.

A request for dissolution could be filed on the following grounds:

- the other partner has created a threat to the life or health of the petitioner;
- the other partner has left the petitioner and the absence has lasted for at least one year;
- the other partner has, since the registration of the partnership, become ill with a long-term or untreatable mental disease or a serious infectious disease;
- if the other partner has committed an offence which compromises the petitioner's honour or has lived so dishonestly or immorally that further cohabitation is impossible;
- if the registered partnership has become meaningless to the point where future cohabitation is not possible;
- if the registered partners have lived separate lives for at least three years;
- if both parties agree to the dissolution (these grounds can be claimed for dissolution no sooner than one year after the registration of the partnership).

The legal effect of a registered partnership
The legal effect of a registered partnership, with a few exceptions, would be similar to the legal effect of a marriage. The laws and normative acts which apply to marriage and married partners would, with some exceptions, also apply to registered partnerships and partners. The main exception is that registered partners would not be allowed to adopt children (Articles 162-176 of the Civil Law, which relate to this right, would not apply to registered partners). Laws on the personal rights and obligations of partners (Articles 84-88 of the Civil Law), and the property relationship between partners (Articles 89-145) would apply to registered partners. The same is true with respect to laws and normative acts relating to inheritance issues (Articles 382-840), pensions and social insurance, taxation, immigration and citizenship, registration of residential space, medical issues, civil service, and the rights of partners during a criminal process.

In the field of social security, too, registered partners would have the same obligations and rights as married partners - in decisions on the allocation of social and unemployment benefits to one partner, for example, the income of the other partner would be taken into consideration.

The adoption of the law would create a new concept in Latvian civil law - "registered partnership". Under civil status, persons who have registered a partnership would be "registered partners".

International law
International treaties to which Latvia is party would not apply to registered partnerships and partners unless the contracting parties to the respective treaty have agreed otherwise. Registered partnerships from other countries would automatically be recognised in Latvia.

Draft Law of the Republic of Latvia
"On Registration of the Partnership of Persons of the Same Gender".

Article 1
Two persons of the same gender can register their partnership.

Article 2
Registration of partnership

(1) Registration of partnership takes place according to Articles 32 to 58 of the second subsection, "Registration and Dissolution of Marriage", of the first part, "Family Law", of the Civil Law of the Republic of Latvia,
Articles 13 to 21 of the third subsection, "Registration of Marriage", of the law "On Acts of Civil Status", and - Articles 19 to 56 of the third subsection, "Registration of Marriage", of the Instruction of the Ministry of Justice "On Registration of Acts of Civil Status in the Republic of Latvia".
All provisions of those documents regarding religious institutions are not covered by this law.

(2) Partnership can be registered if both parties or at least one party is a citizen of the Republic of Latvia, or a citizen of another country or person without citizenship who possesses a valid permanent residency permit in the Republic of Latvia.

Article 3
Legal effect of partnership registration

(1) After a partnership is registered, parties to the partnership will have the same rights and obligations as married partners.

(2) All laws and legislative acts regarding marriage and married partners will automatically cover registered partnership and registered parties.

(3) Laws and legislative acts regarding the joint adoption of children will not cover registered partners.

(4) All laws and legislative provisions referring to married partners depending upon their gender, such as husband and wife, will not cover registered partners.

(5) International treaties will not cover registered partnership. International treaties will cover registered partnership in those instances when parties to the respective treaty have agreed to do so.

(6) Similar partnerships registered in other countries will automatically be recognised in the Republic of Latvia.

Article 4
Dissolution of partnership

(1) Registered partnership will end or will be dissolved according to Articles 59 to 83 of the second subsection, "End and dissolution of marriage", of the first part, "Family Law", of the Civil Law of the Republic of Latvia.

(2) Partnerships registered according to this law can be dissolved only by the Latvian courts.

BAN ON SEXUAL ORIENTATION DISCRIMINATION PROPOSED IN ITALY

By Mark Bell, University of Leicester.

New proposals for anti-discrimination legislation in Italy include discrimination based on sexual orientation [‘orientamento sessuale’]. The initiative has been brought forward by the Minister for Equal Opportunities, Laura Balbo, and was formally approved as a legislative proposal by the government on 8 October.

The draft law seeks to promote the full realisation of the principle of equality by ensuring non-discrimination on grounds of sex, race, ethnic origin, language, religious or personal conviction, political opinion, disability, age, sexual orientation, personal or social condition (Article 1). The ban on discrimination is with a view to ensuring the effective participation of all in the political, economic and social life of the country (Article 1). As such, the law applies beyond relations in the employment sphere, although there seems to be an expectation that this will be one of the areas most directly affected.

Article 2 forbids indirect discrimination. Significantly, paragraph 4 of Article 2 requires the public administration to integrate the principles of non-discrimination and equal opportunities into general policies. Moreover, there is specific mention of the need to incorporate equal opportunities into employment policy.

Article 3 provides for means of redress. In particular, a judge may not only order an end to the discriminatory behaviour, but also the removal of its effects, which is potentially more far-reaching. Paragraph 4 of Article 3 provides for actions by associations representing the rights and interests of the groups affected by discrimination where the discrimination is of a collective character.

The penalties for an act of discrimination are a maximum of 3 years imprisonment or a fine between L. 200 000 and L. 2 000 000.

This is an ambitious and worthy initiative, clearly drawing inspiration from the new commitment to non-discrimination in Article 13 of the EC Treaty. As such, the Italian government has given an example to the other EU member states (and those wishing to accede to the EU). Article 13 EC may not require immediate implementation of new anti-discrimination norms, but it should prompt governments all over Europe to reconsider the sufficiency of the existing legal resources. The hard work of getting the proposals through the parliament naturally still lies ahead. Nonetheless, the proposal must be commended for its forward-looking nature, and valuable innovations which should instruct law reforms in other states. In particular, the requirement for the integration of non-discrimination into policies across the public administration, as well as the legal standing provided for non-governmental associations seem important to enhancing the ultimate effectiveness of the law.

Sources: La Repubblica, 8-11 October 1999, http://www.repubblica.it
For the text of the law, see http://www.repubblica.kataweb.it/images/cittadino.lex/cittadino.gif

SWISS PARLIAMENT VOTES FOR REGISTERED PARTNERSHIP
From AFP, Paris, Tuesday 28 September 1999

BERNE (AFP) - On Monday, 27 September, a large majority of the Federal Assembly voted in favour of a private member's motion proposing that same-sex couples should be entitled to register their partnerships officially.

In response to the initiative of Jean-Michel Gros (Swiss Liberal Party), the Assembly instructed its Legal Affairs Committee to draft a Bill intended to eliminate the discrimination that such couples now experience. The motion was adopted by 105 members against 46. It reccommends that the provisions currently applicable to heterosexual couples for mutual assistance, joint responsibility for debts and joint income tax returns should be extended to such partnerships and that in the event of one partner's death the other should become the residuary legatee by default. Furthermore, provided the partners were really co-habiting, a foreign registered partner would be entitled to a residence permit.

On the other hand, registration would not entitle the partners to any right to adoption or assisted procreation. The conservative opposition hopes that the rural population will be opposed to any such initiative. Whether this is indeed the case will become apparent when the results of the consultation regarding the Report on the legal status of same-sex couples within each Canton are published, which will probably be at the end of 1999.
The Federal Department of Justice and the Police launched this consultation, which puts forward five options ranging from specific provisions for lesbians and gay men to enabling them to get married, at the end of last June.

According to the Swiss Consitution, any MP is free to table a Bill which, if it is adopted by both legislative Chambers under the rules of procedure, cannot be blocked unless a sufficiently large number of citizens call for it to be subject to a referendum. According to several opinion polls, the official registration of homosexual partnerships is acceptable to a substantial majority of Swiss citizens.

REPEAL SECTION 28 HITS THE ROAD
By Stonewall

The campaign to repeal one of the most significant anti-gay laws, Section 28, is to intensify over the next few months. Stonewall, the lesbian and gay lobbying group, are running a series of roadshows across the country in the lead up to the Queen's Speech in November.

The Section 28 Roadshow will involve five high profile meetings in the Town Halls of Manchester, Birmingham, Bristol, Brighton and Newcastle.

Section 28 is a highly symbolic piece of legislation for the lesbian and gay community. Passed in 1989 under the Thatcher Government, it was intended by its creators to prevent schools dealing with lesbian and gay issues. 56% of teachers believe the existence of Section 28 is damaging young lesbians and gays in schools (Playing it Sate, Institute of Education, 1998)

At each meeting Stonewall will chair a panel of speakers including the local council representatives, teachers and a local Member of Parliament.

It is well known that the Local Government Minister, Rt. Hon Hilary Armstrong MP, supports the repeal of section 28, and these roadshows will make the case for repeal through the forthcoming local Government Bill.

Already 30,000 people have sent Stonewall's campaign postcards to urge the Minister to do just this.

The momentum behind this timely campaign has gathered pace since the horrific bombing in April of a gay pub in Soho. Ministers have acknowledged the

link between discriminatory laws, the prejudice they foster, and the hate crimes such as the Soho bombing. Campaigners are determined that the Government should make good their longstanding commitment to repeal Section 28.

Angela Mason, executive director of Stonewall, said: "Our campaign roadshow meetings will be a focus for grassroots campaigners and will demonstrate to the Government the great support that exists around the country for repealing Section 28.

"Section 28 will be a real test for this Government. It's not a time for excuses or backtracking. It must now seize the chance to prove itself on equality issues and to continue the process of welcoming lesbians and gays into society rather than reinforcing their alienation from it."

ROMANIA: SAME SEX RELATIONS
By Adrian Coman

On September 24, 1996, the (Parliament) Committee to mediate the law regarding the modification of the Penal Code, adopted the Senate version of article 200. Same sex relations were punished if taking place in public places or if causing public scandal.

At the same time, this version (currently in force – see art. 200 annexed) denies explicitly the rights of gays and lesbians to free association and free expression.

After the change of the regime in the end of 1996, the Romanian Government submitted to the Parliament (May 1998) a draft law to modify the Penal Code and the Penal Procedure Code, that included the abolishment of article 200. The Government draft law was rejected by the Chamber of Deputies (lower Chamber of Parliament).

After 3 years, on September 23, 1999, the Romanian Parliament is again asked to decriminalize consenting same sex relations between adults. Romania is the only member state of the Council of Europe that maintains a criminal anti gay legislation, despite the many international pressures.

Below you find more information about the current Government initiative, as reflected by two MEDIAFAX press releases (translation into English by ACCEPT).

Art. 200 – ACCEPT Reaction / ACCEPT Welcomes the Ministry of Justice Initiative to Abolish Article 200

BUCURE*TI, September 24, 1999 (MEDIAFAX) – The human rights association "ACCEPT" welcomes the Ministry of Justice initiative to abolish article 200 of the Penal Code on same sex relations, initiative that is provided for by the draft law on modifying the Penal Code and Penal Procedure Code, adopted on Thursday by the Government.

"We are happy because the Government maintains its policy regarding sexual minorities and we hope that this institution be officially and unofficially supporting its approach also at the moment of debating this draft law in Parliament. We have the experience of the last year failure, taking into account that the same draft law was rejected last ear by the Chamber of Deputies" stated Adrian Coman, Executive Director of "ACCEPT" on Friday, for MEDIAFAX.

"ACCEPT" is a non governmental human rights organization fighting for gay rights in particular.
In June 1998, the Chamber of Deputies rejected the draft law on the modification of the Penal Code, missing 5 votes in favor. The draft law had been adopted article by article, and at the final vote a majority of 172 deputies was need, being an organic law. In favor of the law were 67 deputies, 94 were against and 81 were not present.

At that moment, the consequences of not adopting the modifications of the Penal Code were related to the European requests regarding humosexuals (…)
The Ministry of Justice submitted on Thursday 4 draft laws previously approved by the Government regarding the modification of the Penal Code and Penal Procedure Code (…). MEDIAFAX

Romanian Orthodox Church (BOR) maintains its point of view on article 200 regarding homosexuality

BUCURESTI, September 24, 1999 (MEDIAFAX) – BOR maintains its point of view on the abolishment of article 200 of the Penal Code on punishing same-sex relations, according to sources within Romanian Patriarchy, on Friday, quotes MEDIAFAX.

BOR considers that legalizing homosexuality by abolishing art. 200 may present homosexuals as "people with a normal behavior", whose "moral promiscuity" may be an alternative to the Christian Morality. High BOR representatives think that maintaining punishment for homosexuality may protect citizens confronted with the spread of this vice against human nature.

But at the same time, BOR considers that the punishment to prison is not the most efficient solution to "eradicate the scourge called homosexuality".

“The Orthodox Church condemns the sin and not the sinner. What we want is to identify clear formulas to underline the status of abnormality of homosexual practices. We believe that public manifestations of those who practice this vice, including by means of propaganda in clubs, own magazines, etc., should not be encouraged. The Church is trying to make the Romanians aware that this is an abnormal practice, with very serious consequences for the Romanian people’s spirit, in the context where family is still very important for the Romanian society”, high officials have stated several times since the conflict on this issue aroused […]”.
MEDIAFAX News Agency

EUROPEAN CHARTER OF HUMAN RIGHTS?
Brussels, 13/10/1999 (Agence Europe)

At a press conference organised two days before the summit, British Liberal-Democrat Andrew Duff and Austrian Green Johannes Voggenhuber, co-rapporteurs for the European Parliament on the European Charter for Fundamental Rights which is to be one of the topics of the extraordinary Council of Tampere, called on the Heads of State and Government to come down in favour of a binding Charter.

Mr. Duff notes that, according to the Council's draft, the Charter would only be a simple description of the "status quo", without real guarantees, whereas what is needed is a "mandatory" document not only for European institutions but also for Member States. "We shall provide our representatives within the body drawing up the charter (see below) the brief to promote this concept of a binding 'Bill of Rights'", Mr. Duff stated, while saying he was aware of the delicate problems that this exercise raised, notably regarding relations between the European Union and the "Court of Strasbourg" (the European Court on Human Rights), the jurisprudence "of our own Court of Justice" and the question of "privileged access" for citizens to this Court. All these problems will be raised at the next Intergovernmental Conference on the review of the Treaty, he noted. As for Mr. Voggenhuber, he called on the Tampere Summit to agree to amend the procedure for drawing up the Charter and the remit of the body responsible for drawing up the document, especially in order to update the catalogue of citizens' rights, including those relating to the information society and new technologies. The Charter must be binding and cover all EU policies, and, therefore, the three pillars of the Treaty, he said, stressing that fundamental rights were "indivisible", and that a catalogue of "empty rights", without any guarantee, would be more of an "alibi" than progress.

Drawing up such a document was a "natural task for the representatives of the people", he said, stressing the role Parliament would have to play in the future body which will draw up the Charter.

On Monday, the EU Council reached agreement on the composition of the body that will draw up the draft Charter, and which will therefore be made up of: one representatives of each of the Heads of State or Government, a representative of the President of the European Commission, sixteen representatives from the European Parliament (which it will itself choose), thirty representatives of national parliaments (two per parliament). In addition, agreement was also reached on the presence of observers and bodies invited to give their views, exchanges of views with applicant countries and the solemn proclamation of the Charter by the European Parliament, the Commission and the Council (also see EUROPE of 11/12 October, p.4).

5.(EU) EU/HUMAN RIGHTS: Council approves its first annual report

Luxembourg, 13/10/1999 (Agence Europe) - During its meeting on 11 October in Luxembourg, the General Affairs Council approved its first annual report on human rights, drawn up following the Vienna Declaration of 10 December 1998 on the 50th anniversary of the Universal Declaration of Human Rights, which provides for the annual publication of this report as one of the means for stepping up action by the EU with regard to human rights. The report stresses that the Union's policy in the field of human rights applies in relations between the EU and third countries, but it must begin at home.

The policy mainly focuses on the fight against racism (recalling that the European Commission must present draft directives on job discrimination and on social security, education, sporting and cultural activities before the end of the end) and states that human rights cannot be disassociated from economic development and social justice.

Furthermore, the Council welcomed the fact that the first regular Forum for discussion on human rights, in the context of follow-up to the Vienna Declaration that the European summit of 11 and 12 December 1998 had taken on board, is to be held on 30 November and 1 December. The Declaration and the Forum are initiatives that may also contribute to transparency and encourage dialogue with civil society, by bringing the Union closer to citizens, state the conclusions, which specify that the Council has agreed to use the annual report as an element for discussion during this first Forum.

ILGA-EUROPE LAUNCHES GUIDE ON THE TREATY OF AMSTERDAM

On 1 May 1999, the Treaty of Amsterdam came into force. It brought about a couple of changes relevant for lesbians and gays in the European Union, including a new anti-discrimination clause, Article 13, which covers discrimination on the grounds of sexual orientation, together with sex, racial or ethnic origin, religion, belief, disability and age. It is the first time that discrimination on the grounds of sexual orientation has been mentioned in the EU Treaties. Article 13 however has no direct effect but only provides the legal basis for the EU to take appropriate action to combat discrimination.

With the financial support of the European Commission and the Federal Government of Austria, ILGA-Europe has put together a 80-page guide on the new opportunities offered by the Treaty of Amsterdam with regard to the protection from sexual orientation discrimination for the lesbian and gay citizens of the European Union. The Guide presents the historic developments leading up to the Treaty and the key changes introduced by it, and explores in detail the scope and limitations of Article 13 and the other new provisions relating generally to human rights. It also contains useful background information on the European Union and presents a set of recommendations for action under the current Treaty framework as well as for further revisions to be debated at the next intergovernmental conference to start in January 2000, including the adoption of an EU Bill of Fundamental Rights. Authors contributing to the Guide include Mark Bell, Sejal Parmar and Kees Waaldijk.

ILGA-Europe's Guide – entitled "After Amsterdam: Sexual Orientation and the European Union" – has been produced in print in four languages: English (5000 copies), French, German and Spanish (1000 copies each). It can be ordered at the following email address: ieboard@egroups.com. The Guide is now also available at ILGA-Europe's web-site: http://www.steff.suite.dk/ilgaeur/

Seminar in Vienna

The Guide was launched at a seminar organised by ILGA-Europe in Vienna from 2-3 October 1999. The seminar gathered around 45 representatives from lesbian and gay organisations in the EU member states and the candidate countries to discuss the new opportunities offered by the Treaty of Amsterdam and further joint lobbying strategies to work for a comprehensive implementation of Article 13 and further protection from sexual orientation discrimination under future Treaty revisions, such as the proposed Bill of Rights. The seminar also debated activities to make sure that the respect of the human rights of gays and lesbians and non-discrimination based on sexual orientation be adequately addressed in the accession process of new members and be made a pre-condition for membership in the European Union.

The seminar also discussed in detail the draft proposals of the Commission for the implementation of Article 13 presented by the Commission last May. The Commission proposals consist of two directives and one action programme. While the proposed directive to prohibit discrimination in employment and occupation and the action programme cover all grounds listed in Article 13, the proposed directive to prohibit discrimination in other areas of
Community competence, such as social protection, provision of and access to goods and services, education, culture and sports, is limited to the grounds of race or ethnic origin. ILGA-Europe has been advocating to extend this proposed second directive to all grounds mentioned in Article 13 and communicated this view to the responsible Commission services, e.g. the General-Directorate Employment (formerly DG V). The seminar has endorsed this demand. ILGA-Europe and its member organisations in the EU countries will try to convince the Commission to alter its approach in order to avoid the promotion of a hierarchy in the protection from discrimination on the various grounds. The Commission will decide upon its proposals on 25 October 1999.

OSCE REVIEW CONFERENCE

Vienna, 20 September - 1 October 1999 in the Human Dimension Working Group
Oral statement by Kurt Krickler

Thank you for giving me the opportunity to address this meeting on behalf of the European Region of the International Lesbian and Gay Association (ILGA), a federation of organisations fighting discrimination against homosexual women and men, with members in almost all European countries.

ILGA has been participating as an NGO in the Human Dimension of the OSCE since the Moscow meeting in 1991. Since 1993, we have been presenting oral statements to the Human Dimension, reporting positive developments in participating States with regards to the respect of the human rights of lesbians and gay men but also reminding non-complying States to honour their commitments entered not only under the OSCE process but also under the International Covenant on Civil and Political Rights and the European Human Rights Convention.

Since last year's Implementation Meeting in Warsaw, we can note that in some countries progress has been made in this field, but we also realise that others are still very reluctant to comply with the demands to stop sexual orientation discrimination.

On the positive side, we can note that Bosnia and Herzegovina, Tajikistan, and Georgia have repealed the total ban on homosexuality. Liechtenstein is also voting on law reform these days but unfortunately, the Bill does not provide for the complete elimination of all existing anti-homosexual legislation in the criminal code. We can also note with satisfaction that Switzerland included "lifestyle" as one ground of protection in its new Constitution, thus banning all discrimination on the grounds of sexual orientation. We can also state on the positive side that Sweden and Slovenia introduced anti-discrimination legislation prohibiting sexual orientation discrimination at the workplace.

On the negative side, we have to note that a total ban on homosexuality still exists in Armenia, Azerbaijan, Uzbekistan, and in more than 20 states of the United States of America – despite the fact that in 1994, the United Nations Human Rights Committee has ruled that such a total ban violates Article 17 of the UN Covenant.

Again on the negative side, we have to note that discriminatory unequal age of consent law provisions continue to exist in Albania, Austria, Bulgaria, Croatia, Cyprus, Estonia, the Faroe Islands, Hungary, Liechtenstein, Lithuania, Moldova, Portugal, Romania, Serbia, Ukraine and the United Kingdom – despite the fact that, in 1997, the European Human Rights Commission has ruled that such unequal age of consent for homosexual and heterosexual constitutes a violation of the European Human Rights Convention.

Again on the negative side, we have to report an increase of hate crimes against lesbians and gay men, especially in the United States of America, but also in some European countries.Two years ago, we brought to your attention the fact that, in Sweden, 27 gay men and lesbians had been murdered in hate crimes between 1987 and 1997. Last August, the gay pride week in Stockholm was marked by brutal attacks of skinheads and neo-nazis against gay men that left several heavily injured. In a survey among gay men in Sweden this year, a third of all gay men declared to have been victim of violent attacks. Although this serious problem has been persisting for a couple of years now, Sweden has failed to date to introduce hate crime legislation and to extend existing laws against racist violence to also cover homophobic violence. A neglect that, for certain people, obviously is perceived as an invitation and encouragement to continue their verbal and physical violence against lesbians and gay men.

ILGA-Europe urges the OSCE to emphasise non-discrimination against lesbians and gay men being part of the respect of human rights, and to monitor this more closely with non-complying countries.

We also urge once more the delegations of the countries concerned to more firmly report back to their governments and parliaments that they ignore relevant decisions both of the UN Human Rights Committee and the European Court of Human Rights and that they do not honour their OCSE commitments in this field.

Last year in Warsaw, the distinguished delegate of the Council of Europe mentioned the plans for broadening Article 14 of the European Human Rights Convention to make it a real anti-discrimination article. On that occasion, ILGA-Europe expressed its hopes that "sexual orientation" be explicitly listed as a non-discrimination ground in the new Article 14. However, last August, when the Committee of Ministers of the Council of Europe published the proposed draft for a new Article 14, we had to realise that this draft does not include sexual orientation. We, therefore, would like to use this opportunity to appeal to the Council of Europe to reconsider this decision and to explicitly list sexual orientation as a new ground in Article 14 of the Convention.

We are also very disappointed that, due to the resistance of certain countries, non-discrimination on the grounds of sexual orientation has not been included in the document, the Charter, that is being prepared for the Istanbul Summit. Regretting this, however, we would like to thank the Dutch delegation for their efforts to have such a clause included. And we call upon this meeting and all delegations to reconsider this decision and to explicitly mention sexual orientation discrimination which should no longer be ignored by any international human rights platform of real significance.