

# EURO-LETTER

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Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage <http://www.steff.suite.dk/ilgaeur/>

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>

## **ANTI-DISCRIMINATION PROPOSAL PACKAGE ADOPTED BY THE COMMISSION**

25 November 1999

The European Commission has adopted this morning a Communication and three proposals to combat discrimination in the European Union. Based on Article 13 of the EC Treaty, which gives the EU new powers in this field, the move fulfils the Commission's undertaking to table measures implementing the Article as early as possible and responds to the invitation from the European Parliament and Member States - and most recently from EU leaders at their meeting in Tampere. The package, which seeks to support and build upon existing national provisions and to fill the gaps identified during the long consultation process prior to adoption, consists of:

- (i) a Directive prohibiting discrimination in employment. This proposal outlaws discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- (ii) a Directive prohibiting discrimination on the grounds of racial or ethnic origin in a wider range of areas - employment, education, the provision of goods and services, social protection;
- (iii) an action programme designed to support and complement implementation of the Directives through the exchange of information and experience and the dissemination of best practices in both legislative and non-legislative areas.

### **The full text is available here:**

[http://europa.eu.int/comm/dg05/news\\_fr.htm](http://europa.eu.int/comm/dg05/news_fr.htm)

### **ILGA-EUROPE PRESS RELEASE**

ILGA-Europe, the European Region of the International Lesbian and Gay Association, the federation comprising over 300 lesbian and gay associations all over Europe, welcomes today's decision of the European Commission to adopt a package of measures based on Article 13 of the Amsterdam Treaty, which will, inter alia, prohibit discrimination based on sexual orientation, as well as on other grounds, in the field of employment throughout the European Union.

"The proposal for a Council Directive establishing a general framework for equal treatment in employment irrespective of sexual orientation, race or ethnic origin, religion or belief, age and disability, is an essential step to make effective the pledge to combat discrimination contained in Article 13" - say Jackie Lewis and Kurt Krickler, ILGA-Europe Co-chairs.

"The prohibition of discrimination against lesbians and gays as well as discrimination based on other grounds is the essence of the principle of equality of every

individual before the law, a principle which is the at the very foundation of our society. Therefore, this principle cannot be limited to certain areas of life, nor to certain grounds.

It will be up to the European Parliament, which is called to give its opinion on the package in the next months, and to the Council which has to adopt the measures, to support the Commission proposals and to complete them, ensuring that discrimination based on all grounds listed in Article 13, including sexual orientation, is prohibited in other areas besides employment, such as education, culture, access to goods and services, social protection. Also, equal treatment of same-sex couples has to be guaranteed." - say Alberto Volpato and Steffen Jensen, ILGA-Europe Board members.

ILGA-Europe will continue its campaign together with the other members of the Platform of European Social NGOs, for a full implementation of Article 13, for its strengthening at the EU Intergovernmental Conference next year and for the inclusion of a general anti-discrimination clause in the future EU Charter of Fundamental Rights.

### **FRANCE/PaCS: LAW EFFECTIVE NOV. 17**

*By René Lallement*

Following the ruling of the Constitutional Council which occurred on Nov. 9, the law that institutes the civil solidarity pact (PaCS) was signed yesterday Nov. 15 by President Chirac, Prime Minister Jospin and seven ministers (social affairs, justice, interior, foreign affairs, economy, housing, public administration) and published today in the Journal Officiel. From now on, the PaCS is a law of the Republic.

A "user manual" has been released last week by the minister of Justice in order to explain the content of the law, the registration process and to specify the documents which must be provided. According to instructions sent by Justice minister Elisabeth Guigou to the courts, the law is immediately effective, without waiting for the government decrees (still necessary to implement some provisions of the law). This means that couples may be registered tomorrow Nov. 17th.

### **Ireland: NEW EMPLOYMENT EQUALITY ACT COMES INTO FORCE**

Act extends protection to seven new grounds

*By Carol Coulter, Legal Affairs Correspondent Irish Times*

The Employment Equality Act (1998), which came into force recently, replaces the employment Equality Act of 1977.

That Act outlawed discrimination in employment or access to training on the grounds of gender or marital status.

However, the new Employment Equality Act differs from its predecessor in that it extends this protection to seven other grounds:

Family status, sexual orientation, religious belief, age, race, disability and membership of the Traveller community.

Discrimination is described as treating one person in a less favourable way than another person has been or would be treated.

Two types of discrimination are identified in the legislation. Direct discrimination is straightforward - the less favourable treatment of one individual when compared with another.

Indirect discrimination, however, may cause more problems for employers. This covers requirements which may not appear to be discriminatory, but which adversely affect a particular class or group of people covered by the legislation. There need not be any intention to discriminate for indirect discrimination to exist.

For example, a requirement that women employees wear uniforms with short skirts, contrary to the religious beliefs of certain groups like Muslims, could be construed as discriminatory, though a case would have to be taken to prove it.

The areas covered by this legislation include not only employers but trade unions, vocational training bodies, employment agencies, collective agreements and advertisements. Also covered are not only access to employment, but conditions of employment, access to promotion and equal pay.

The legislation also extends to harassment of a person on any of the nine grounds and sexual harassment. For the first time in Irish law this is defined by statute. It covers unwelcome, offensive, humiliating or intimidating actions and extends to employers, employees, clients, customers or business contacts.

An employer may take positive action to promote certain groups of people without being open to charges of discrimination. This includes measures to integrate into employment people over the age of 50, with a disability or who are members of the Traveller

community, as well as action to remove existing inequalities affecting opportunities for women.

There are exemptions to the general thrust of the legislation. These include benefits to women in connection with maternity or adoption, where the sex of a person is an occupational qualification for the job, personal services like caring for an elderly person in his or her own home, and employment in the Garda Síochána or prison service.

There is also an exclusion in relation to religious, educational and medical institutions run by religious bodies who are allowed to discriminate to maintain their religious ethos.

Those who feel they have been discriminated against should initially raise the issue with their employer. If this fails to resolve the issue, they can go to the Equality Authority for advice and help and then pursue a claim for redress through the office of the Director of Equality Investigations.

## **STATUTORY COHABITATION CONTRACT IN BELGIUM**

*By Alan Reekie*

Any two adults, neither of whom are already married or bound by another Cohabitation Contract, may bind themselves by the statutory Cohabitation Contract, regardless of whether they form a same-sex or opposite-sex couple or whether they are kin or not. Eg: a brother and sister, or two unrelated men or women.

To be valid, the contract must be signed in the presence of a notary public and entered in the Register of Population of the municipality where they are living together.

While the contract is in effect, both partners are jointly responsible for the expenses incurred in their life together and all reasonable debts contracted for this purpose, in proportion to their means. Each benefits individually from his or her earned income.

All heritable property and other assets acquired while the contract is in effect are deemed to be owned jointly, in the absence of proof of individual title.

Notwithstanding any contract, each partner:

- remains liable to submit an individual income tax return.
- retains parental authority over his or her children. The existing legal provisions regarding family membership and guardianship of minor children are similarly unaffected.

- remains regarded as an individual for the purpose of adoption and medically assisted procreation.
- remains regarded as an individual so far as social security and pension rights are concerned.

Furthermore, the contract has no impact on:

- the existing legal provisions regarding inheritance and the various rates of taxation payable by the legatees.
- the existing legal provisions regarding the nationality and right of abode of either partner.

The contract can be terminated at any time by agreement between the partners, or at the initiative of either of them, without necessarily undertaking any legal proceedings; however, the local Magistrates Court is competent to rule in the event of any dispute on the practical aspects in this context, eg occupation of accommodation, settlement of accounts, division of jointly-acquired property.

## LANDMARK UK RULING ON INTERPRETATION OF 'FAMILY'

From <http://news.bbc.co.uk/>

Ruling recognises status of "long term" same sex relationships

Gay couples are celebrating a House of Lords victory in a battle to gain equal housing rights with heterosexual families.

Former Royal Navy serviceman Martin Fitzpatrick, who lived with his gay partner for almost 20 years until his death in 1994, won his appeal for the same tenancy succession rights as a husband or wife.

In a case marking an important advance in gay rights, the Law Lords ruled by 3-2 that Mr Fitzpatrick was a member of his partner's family, for the purposes of the Rent Act laws.

Mr Fitzpatrick, whose partner John Thompson was the official tenant of their west London flat, was served notice to quit by a housing association after Mr Thompson's death. He took his case to the House of Lords after the Court of Appeal ruled in 1997 that he could not succeed his partner's tenancy because the law did not recognise the rights of same sex partners.

The couple had shared a devoted and monogamous relationship, meeting in 1969 and living together in the flat at the centre of the case from 1976. Mr Fitzpatrick looked after Mr Thompson, a silversmith, for the last nine years of his life after he suffered irreversible brain damage from a fall downstairs.

### *'Intimate mutual love'*

Lord Nicholls, allowing the appeal, said the question in the case was whether a same sex partner was capable of being a member of the other partner's family for the purposes of the Rent Act legislation.

### *Ruling is an advance in gay rights*

"I am in no doubt that this question should be answered affirmatively. A man and woman living together in a stable and permanent sexual relationship are capable of being members of a family for this purpose.

"Once this is accepted, there can be no rational or other basis on which the like conclusion can be withheld from a similarly stable and permanent sexual relationship between two men or between two women. He added: "Where sexual partners are involved, whether heterosexual or homosexual, there is scope for the intimate mutual love and affection and long-term commitment that typically characterise the relationship of a husband and wife."

Lord Clyde and Lord Slynn also allowed the appeal. But Lord Hutton and Lord Hobhouse delivered dissenting judgments. While he fully recognised the strength of the argument that Parliament should change the law to give same sex partners equal rights, Lord Hutton said that only Parliament could change the law.

### *'A wonderful victory'*

After the ruling Mr Fitzpatrick said: "I am thrilled that after a five-year battle their Lordships have taken a stand against discrimination. "I only wish that it had not taken so long and that John was alive today to share this event with me."

Reacting to the ruling Stonewall, which campaigns for gay and lesbian equality, said it was the first time that lesbian and gay relationships had been defined as a family. Angela Mason, executive director, said: "This is a wonderful victory for Martin and for all the lesbians and gay men in this country." She added: "This country has lagged behind the developments. This case and the introduction of the human rights act will give a new chance for lesbian and gay partners to achieve recognition."

The full text of the ruling can be found at this URL:

<http://www.parliament.the-stationery-office.co.uk/pa/ld199899/ldjudgmt/jd991028/fitz01.htm>

## **Scotland: SCHOOL'S GAY BAN TO BE LIFTED**

From BBC News Friday, October 29, 1999

Scotland's First Minister Donald Dewar has described as "a badge of shame" the law which bans schools from promoting homosexuality.

Chief political correspondent John Morrison: "A mixed reaction to the repeal" The Scottish Executive is planning to scrap the law, known as Section 28, in new legislation to be put before the Scottish Parliament early next year.

Gay rights campaigners in England and Wales hope the move will prompt similar action south of the border.

Introduced in 1986 by right-wingers in the Thatcher government, the law forbids schools and councils from using lessons or publications to promote homosexuality.

The legislation will be part of the Ethical Standards in Public Life Bill and will be steered through parliament by the Communities Minister Wendy Alexander.

She said the executive's main reason for repealing the law was to cut down on bullying in schools.

"If we are serious about tackling bullying in schools we need to acknowledge that bullying based on sexuality is a real problem."

She pledged that allowing councils to promote homosexuality would cut down on discrimination Mr Dewar told BBC Scotland: "The repeal of Section 28 is justified because it is a clause that was put on the statute book amidst great controversy.

"It has always given deep offence and both my party and the Liberal Democrats pledged to remove it when we got that opportunity.

Donald Dewar: "Section 28 is a badge of shame", "It has become really a badge of shame in the eyes of a very important part of our community and I think we're right to remove that."

He added that he expected the Westminster Parliament to repeal the ban in England and Wales as well.

Gay rights group Stonewall said it would be putting pressure on the government in England and Wales to include legislation in the Local Government Bill which is expected to be announced in the forthcoming Queen's Speech.

"This is the ideal opportunity to repeal the legislation. The government has said it will repeal the law at the earliest opportunity. That opportunity is now."

He added: "The legislation is damaging young lesbian and gay people. It is wrong to treat them as second class.

"It would be a shame if people in Scotland were faring much better than people in England and Wales." 'Too much promotion'

But Conservative MSP Phil Gallie said Labour was wrong to remove Section 28. "We should leave in place what has worked," he stated.

Mr Gallie disputed Wendy Alexander's belief that the move would prevent gays being bullied in schools. "The gay campaigners are there to promote homosexuality.

"I've no problems with people who live within their own premise and do their own thing quietly and in the background but there's far too much of a promotion aspect in things today and this clause refers to the promotion of homosexuality."

Roman Catholic church spokesman Monsignor Tom Connolly said: "Clearly we are not in favour of promoting homosexuality, either in schools or in society in general.

"On the other hand, in today's world, sex education is very important but I stress the word 'education' and not 'instruction'.

Spiritual values

"I fear that too often people give instruction and pretend it is education. Education, I believe, is where you explore spiritual values of sexuality and base it firmly on human relationships."

Tim Hopkins: "Homophobia rife in our schools" The church would closely study the consultative document on the changes and respond to it, he added.

Tim Hopkins, from the Lesbian and Gay Equality Network in Edinburgh, said: "Sex education does have to be based on human relationships but it needs to be inclusive and it needs to include young gay people in the class.

"At the moment it can't do that because of Section 28. Teachers can't give the support they should be giving to young gay people to protect them from homophobic bullying which is rife in our schools."

**The Russian Federation has dropped "homosexual orientation" from its new classification of mental and behaviour disorders**

*By Nigel Warner*

ILGA has been advised that the Russian Federation's new classification of mental and behaviour disorders excludes "homosexual orientation". Professor T.B. Dmitrieva, Director of the Serbsky National Research Centre for Social and Forensic Psychiatry, has written as follows:

"On the 4th of July 1999 the Ministry of Health of the Russian Federation approved the new classification of mental and behaviour disorders which is the adapted version of class V of ICD-10. In accordance with this classification "homosexual orientation" is not within the list of mental disorders."

Under the previous classification, which dated from 1982, homosexuality was classified as a personality disturbance.