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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>

Germany: REGISTERED PARTNERSHIP BILL PUBLISHED

By Gerald Pilz

The ministry of justice in Berlin has published the official bill for the registered partnership. It is a first draft and includes only some aspects. Many GLBT organizations criticized this first draft because it excludes important rights.

Summary of the registered partnership bill:

The law will be called registered partnership law (Lebenspartnerschaftsgesetz - abbreviation: LPartG).

1. The registered partnership will be declared at the registrar's office (the same procedure as for straight marriages - church weddings as an institution with legal consequences do not exist in Germany, they have only a symbolic meaning). Persons who are already married or are registered are not admitted to the registered partnership. The same applies to minors, close relatives, sisters and brothers, and people with a restricted mental capability, who are not allowed to sign legal contracts.

2. Legal consequences of the registered partnership
The partner can determine a common name for the registered partnership (for example: if Thomas Maier and Michael Schmid are registered Thomas can choose a name: Thomas Maier, Thomas Schmid, Thomas Maier-Schmid, Thomas Schmid-Maier).

During the partnership and after a divorce the partners are obliged to grant maintenance for the livelihood if the other partner is ill or unable to work.

The registered partners can choose a property status. There are three possibilities: a common property status (in the case of a divorce every partner gets 50 percent), a separate property status (after a divorce everyone keeps his own property and earnings) and an acquired property status (after a divorce only the property and the income acquired during the partnership is shared). For straight marriages the legislator provides the acquired property status as the regular status. For registered partnerships the separate property status is the regular one. If the couple wants to change the regular status and choose another, they need a public notary contract for this change.

If one partner dies, the other will get one fourth of the estate. Normally the widows/widowers of a straight marriage get 50 percent. In registered partnerships it would be necessary to mention this explicitly in the last will.

GLBT organizations think that it does not make sense to use other legal provisions for registered partnerships. It could be to the detriment for the same-sex couples and lead to discrimination. A divorce will be conducted at the same court as for straight marriages. Concerning the tenant's lease for apartments the legal provisions for straight marriages will be applied to the registered partnerships (with one exemption). Registered partners are entitled to deny to testify against each other in a criminal trial.

All other important legal aspects like taxation laws (joint taxation, inheritance taxes), social insurances (health insurance, pensions) and immigration rights for binational couples (residence permits, labour permits) have not been added to the draft. The ministry of justice explained in a short reference that other ministries are responsible for these legal provisions (like the ministry for home affairs, the ministry for labour issues).

Many GLBT organizations are rather disappointed that this draft does not lead to a real equality and that it does not include a comprehensive solution for registered partnerships. You can find the bill for registered partnerships (more than 10 pages in German) at the website of the Lesbian and Gay Association (LSVD): <http://www.lsvd.de> (section Aktuelles - Aktuelle Infos).

LITHUANIAN PENAL CODE DRAFT INCLUDES SEXUAL ORIENTATION

By Eduardas Platovas, LGL Vilnius

Lithuanian Ministry Of Justice published a revised version of the new draft Penal Code. Article 160 "Discrimination on the basis of nationality, race, sex, origin, religion or other group membership" provides for imprisonment of up to 3 years for "acts, which were aimed to prevent population group or its member to participate equally in political, economical, social, cultural or work activity because of their nationality, race, sex, sexual orientation, origin, religion or other group membership". Although the authors omit "sexual orientation" in the article's title it is included in the text for the first time in the legal history of the country.

Article 161 of the draft document "Instigation against national, racial, ethnic, religious or other population group" provides for up to 3 years imprisonment for persons and companies which jeer, disdain or otherwise show bias towards belonging to national, racial, ethnic, religious or other population group. Lithuanian Vice-Minister of Justice Gintaras Svedas told BNS news agency, that notion "other population group" also comprises sexual minorities.

Earlier Vice-Minister of Justice also acknowledged that under the current Penal Code of Lithuania the age of consent for heterosexuals and lesbians is 16 and for gay men 18 years of age. "Such regulation has also caused criticism of Lithuanian lawyers - a voluntary satisfaction of sexual lust between pubescent men can not be rated as a crime, since in this case there is no violation of sexual self-determination or inviolability" Vice-Minister Gintaras Svedas wrote in his explanation to European Committee of Seimas (Parliament). He told BNS news agency, that the new draft Penal Code does not contain such discriminatory regulation.

The first draft of the new Penal Code (published in 1996) did not include "sexual orientation", "other group" or related terms to protect lesbians and gays. Lithuanian Gay League responded to Parliament and Government institutions with non-discriminatory legislation campaign supported by mainstream media.

It is expected that the new Penal Code will be adopted by the Lithuanian Seimas (Parliament) this year. Hopefully, the provisions to protect lesbians and gays will be passed although they might be opposed by the Conservative and Christian Democrat majority coalition.

Another Vice-Minister of Justice Rasa Budbergyte recently commented on same sex marriages. She said, that Lithuanian society is not ready to accept same sex marriages. A new draft of the Civil Code specifically bans same sex marriage by Article 3.12 of book 3 "Ban to marry for same sex persons".

"The majority of people in Lithuania are Roman Catholics and maintain antagonistic attitude towards homosexuality", she told BNS.

ILGA-EUROPE CONTINUES LOBBYING THE EUROPEAN UNION

By Kurt Krickler

In the past few weeks, ILGA-Europe has undertaken a couple of activities in pursuing two aims at the European Union level: the comprehensive implementation of measures based on the anti-discrimination clause, Article 13, of the EC Treaty (cf. Euro-Letter # 74 and # 75) and the explicit inclusion of "sexual orientation" in an anti-discrimination clause in the planned EU Charter of Fundamental Rights to be prepared during the next intergovernmental conference and presented to the EU Summit in Paris in December 2000. As a result of ILGA-Europe's continuous and consistent activities over the past three years, the association is increasingly recognised as the lesbian and gay lobby in Brussels.

Meeting with Finnish EU Presidency

On 10 November 1999, ILGA-Europe representatives met with high officials of the Finnish Foreign Ministry in Helsinki to discuss these two issues. While the Finnish Government in principle is supportive of these demands, they seem to tend to support the idea of the European Union signing up to the European Human Rights Convention. They obviously doubt that there would be unanimity between all member states to incorporate a binding Charter into the EU Treaty. Some governments prefer this "Bill of Rights" to only become a non-binding declaration describing the status quo. Signing the Convention by the Union as such would thus to be a kind of compromise. In this meeting, ILGA-Europe was also invited to participate in the First EU Human Rights Discussion Forum which the Finnish Presidency organised in Brussels on 30 November and 1 December 1999.

Having meetings with the EU presidency, by the way, has become almost a tradition for ILGA-Europe. Such meetings took already place with representatives of the Austrian EU Presidency in Vienna in July 1998 and with the German one in Bonn in May 1999.

Participation in the EU Human Rights Discussion Forum

The Forum gathered a quite exclusive circle of 150 participants, representatives from member states, the EU institutions, academic institutions, and from a small number of NGOs. Finnish Foreign Minister Tarja Halonen opened the conference. The first EU Annual Report on Human Rights was presented. It was drawn up following the relevant Vienna Council Declaration of 10 December 1998 (cf. Euro-Letter 74). Nigel Warner, one of ILGA-Europe's representatives to the Council of Europe, had prepared a paper on "Sexual Orientation Discrimination in Member States of the European Union and the Accession Countries" which was distributed at the Forum. Co-chair Kurt Krickler represented ILGA-Europe and actively participated in the discussions of working group III on racism and non-discrimination which focussed on the implementation of Article 13.

Hearing in the European Parliament

ILGA-Europe was also invited to participate - as one of about 25 European and international NGOs - in the "preparatory hearing with a view to the 1999 debate on an area of freedom, security and justice (AFSJ)" organised by the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs in Brussels on 30 November 1999 and to which also representatives of the national parliaments were invited. ILGA-Europe's document "Sexual Orientation Discrimination in Member States of the European Union and the Accession Countries", together with a

written contribution, was distributed in the hearing. Kurt Krickler took the floor in the session dealing with the "Implementation of the area of freedom, security and justice: current position and prospects" (see the full text of his statement below).

Participation at Citizens' Agenda 2000 NGO-Forum

With the support of the Finnish Government and the Finnish EU Presidency, Finnish and European NGOs organised a huge Forum of the civil society in Tampere from 3-5 December 1999. It gathered around 1,500 representatives from a wide range of NGOs. ILGA-Europe was represented by board members Isabelle Cruette and Kurt Krickler and, together with EuroLink Age, had prepared and presented a theme seminar on Article 13. For the various members of the Platform of European Social NGOs working with this issue, the seminar was a good opportunity to exchange first views on the proposals to implement Article 13 which the European Commission had just approved a week earlier. Co-operation and joint campaigning of all Platform members concerned are important and crucial to successfully lobby for a comprehensive implementation of Article 13. Already last October, the Platform had adopted and conveyed to the Commission a common response to the Commission's draft proposals on a framework action plan and two directives to implement Article 13. In this common response, the Platform, in complete accordance with ILGA-Europe's position, demands that directives to prohibit discrimination must include all grounds listed in Article 13 and cover all areas of EU competence.

Participation in other Platform activities

Since the Platform of European Social NGOs has become an important ally, literally a "platform" for ILGA-Europe to pursue its goals and to enhance the impact of its lobbying activities, ILGA-Europe is keen to intensify the networking with the Platform members. To this end, ILGA-Europe participated also in the European Anti-Poverty Network (EAPN)'s conference on "national and European policies to combat poverty and social exclusion" (Helsinki, 8-9 November 1999) and in the Platform's conference "Civil Dialogue and the European Union: Strengthening Social Cohesion" (Lisbon, 18-19 November 1999) which was not only marked by strong Portuguese NGO participation but also by strong participation of high-level Portuguese politicians.

The Platform has also started to initiate national conferences to facilitate the networking and exchange of information between the national member organisations of the various Platform members. ILGA-Europe member Fundación Triángulo participated in such a conference for Spanish NGOs held in Madrid on 12 November 1999, in which Article 13 once again was an important topic discussed.

STATEMENT of ILGA-Europe in the "preparatory hearing with a view to the 1999 debate on an area of freedom, security and justice (AFSJ)" of the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs:

"Before addressing two important issues for lesbians and gay men in the context of a European area of freedom, security and justice, I would like to make some remarks to the statement of the representative of the British House of Commons who complained that Europe wants to decide upon the composition of her Majesty's armed forces, however without specifying the background. He obviously refers to a recent decision of the European Court of Human Rights which ruled that the ban on lesbians and gays to serve in the British army constitutes a violation of the European Human Rights Convention. I find it really puzzling that he is questioning the decision of the Court in such a way. We normally hear such arguments from the Chinese government complaining about interference in internal matters when reminded of human rights. Human rights definitely is an area where the principle of subsidiarity is not acceptable. It's not up to each state to define human rights for itself. I wonder whether the representative of the British Parliament would consider it all right if Jews or black people were excluded from serving in a country's army – as it has occurred in history.

There are two things I want to stress in this discussion about an area of freedom, security and justice. There cannot be a real, genuine such area if gays and lesbians continue to be discriminated against. This discrimination varies considerably in the Member States of the Union and the accession countries but I will not go into the details here. ILGA-Europe has prepared a written contribution for this hearing with a survey of sexual orientation discrimination in the Member States of the European Union and the accession countries. Copies of it have been made available in this room. I just want to stress that the discrimination of lesbians and gays also constitutes a severe obstacle to the free movement of persons, especially for same-sex couples legally registered in one Member State. If they would like to move to another Member State without similar legislation, they would lose their status as a quasi married couple and be considered as complete strangers to each other. This is completely unacceptable.

The other issue I wanted to comment on is the Charter of Fundamental Rights which the Union is planning to prepare during the next intergovernmental conference and which has already been mentioned a couple of times this morning. We strongly believe that such a Charter must be more than just a declaration, it must be

incorporated into the Treaties to become enforceable, and such a Charter must contain an anti-discrimination clause modelled after Article 13 of the Amsterdam Treaty that makes explicit mention of "sexual orientation" as one non-discrimination ground."

JUDGMENT IN THE CASE OF SALGUEIRO DA SILVA MOUTA v. PORTUGAL

Press release issued by the Registrar of the European Human Rights Court

In a judgment delivered at Strasbourg on 21 December 1999 in the case of Salgueiro da Silva Mouta v. Portugal, 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) taken together with Article 14 (prohibition of discrimination) of the European Convention on Human Rights, and that it was unnecessary to rule on the complaints made under Article 8 taken alone. Under Article 41 (just satisfaction) of the Convention, the Court held that the judgment constituted of itself sufficient just satisfaction for the damage alleged by the applicant; it awarded him 1,800,000 Portuguese escudos (PTE) for costs and PTE 350,000 for expenses.

1. Principal facts

The applicant, João Manuel Salgueiro da Silva Mouta, a Portuguese national, was born in 1961 and lives in Queluz (Portugal).

He was prevented by his ex-wife from visiting his daughter M., in breach of an agreement reached at the time of their divorce. He sought an order giving him parental responsibility for the child, which was granted by the Lisbon Family Affairs Court in 1994. M. lived with the applicant until 1995 when, he alleges, she was abducted by her mother. On appeal, the mother was given parental responsibility whereas the applicant was granted a contact order which, he maintained, he was unable to exercise. The Lisbon Court of Appeal gave two reasons in its judgment for granting parental responsibility for M. to her mother, namely the interest of the child and the fact that the applicant was a homosexual and living with another man.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 12 February 1996.

The case was transmitted to the Court on 1 November 1998 under the transitional provisions of Protocol No. 11 to the Convention and declared admissible on 1 December 1998. A hearing was held on 28 September 1999 in private.

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

Matti Pellonpää (Finnish), President,
Georg Ress (German),
Antonio Pastor Ridruejo (Spanish),
Lucius Caflisch (Swiss),
Jerzy Makarczyk (Polish),
Ireneu Cabral Barreto (Portuguese),
Nina Vajic (Croatian), Judges,
and also Vincent Berger, Section Registrar.

3. Summary of the judgment Complaints

The applicant complained of an unjustified interference with his right to respect for his private and family life, as guaranteed by Article 8 of the Convention and discrimination contrary to Article 14 of the Convention. He maintained, too, that contrary to Article 8 he had been forced by the court of appeal to hide his homosexuality when seeing his daughter. Decision of the Court

Article 8 taken together with Article 14 of the Convention

The Court noted at the outset that under the case-law of the Convention institutions Article 8 applied to decisions concerning granting parental responsibility for a child to one of the parents on a divorce or separation. The judgment of the Lisbon Court of Appeal constituted an interference with the applicant's right to respect for his family life in that it had reversed the judgment of the Lisbon Family Affairs Court granting parental responsibility to the applicant.

The Court went on to observe that although the court of appeal had considered the interest of the child in deciding to reverse the judgment of the Lisbon Family Affairs Court and, consequently, to grant parental responsibility to the mother rather than the father, it had had regard to a new factor, namely the fact that the applicant was a homosexual and living with another man. There had therefore been a difference in treatment between the applicant and M.'s mother based on the applicant's sexual orientation, a notion that fell within Article 14 of the Convention. Such a difference in treatment was discriminatory under that provision if it had no objective or reasonable justification, that is if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

The court of appeal had pursued a legitimate aim in reaching its decision, namely the protection of the child's health and rights. In order to decide whether there was no reasonable basis for the decision that was finally made, the Court examined whether the new factor taken into account by the Lisbon Court of Appeal - the applicant's homosexuality - was a mere obiter dictum with no direct impact on the final

decision, or whether, on the contrary, it was a decisive factor. To that end, the Court reviewed the Lisbon Court of Appeal's judgment and noted that after finding that there were no sufficient reasons for depriving the mother of parental responsibility - which the parents had agreed she should exercise - it had gone on to say: "... even if that had not so, we consider that the mother should be granted custody of the child". In so doing the court of appeal had noted that the applicant was a homosexual and living with another man and had stated: "the child must live in ... a traditional Portuguese family" and "it is unnecessary to examine whether or not homosexuality is an illness or a sexual orientation towards people of the same sex. Either way, it is an abnormality and children must not grow up in the shadow of abnormal situations".

The Court was of the view that those passages from the judgment of the Lisbon Court of Appeal were not simply clumsy or unfortunate, or mere obiter dicta; they suggested that the applicant's homosexuality had been decisive in the final decision and thus amounted to a distinction dictated by factors relating to the applicant's sexual orientation that it was not permissible to draw under the Convention. That conclusion was supported by the fact that, when ruling on the applicant's contact rights, the court of appeal had discouraged the applicant from behaving during visits in a way that would make the child aware that he was living with another man "as if they were spouses".

The Court therefore held that there had been a violation of Article 8 taken together with Article 14.

Article 8 of the Convention taken alone

The Court held that it was unnecessary to rule on the alleged violation of Article 8 taken alone as the case made out on that point was, in substance, the same as that considered under Article 8 taken together with Article 14.

Article 41 of the Convention

The applicant had sought "just reparation" but had failed to quantify his claim. In the circumstances, the Court held that the finding of a violation in the judgment was of itself sufficient just satisfaction for the alleged damage.

However, it awarded the applicant PTE 2,150,000 for costs and expenses.

The Court's judgments are accessible on its Internet site (<http://www.dhcour.coe.fr>).

This judgment is not final. Under Article 43 of the European Convention on Human Rights, within three months from the date of a 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. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

NO TO REGISTERED PARTNERSHIP IN CZECH REPUBLIC

By Miluska Kotisova

Czech Parliament (Prague) rejected December 2, 1999, the once again redrafted bill on registered partnership for same sex couples, with 91 votes against the proposal and 69 in favour. The bill was adamantly opposed by a group of Christian Democrats led by the party's Deputy Chairperson Cyril Svoboda voicing the evergreen counterarguments such as "it would corrupt the family values," "this law would become a forerunner of unacceptable adoption of children by homosexuals," including of course "this proposal is not prepared well technically." Mr. Zahradil, one of the bill's co-writers, considers these mere excuses and cover-ups of homophobia. He also concluded that the working group would propose the bill again and again, although given the current composition of the Parliament, he is rather sceptical.

Interestingly, Cyril Svoboda has no objections, as he stated during his interview for the local glb radio programme "Bona Dea", to the biological parent keeping his/her child OR raising him/her with his/her homosexual partner. Provided that the child comes before the partnership, NOT the other way round!

SOHO, Czech glb association, will definitely persevere with its lobbying and cultural activities to further raise awareness. In a reaction to the recent development, the lesbian activists are preparing a new, broader and more intensive initiative to be presented to the MPs and the public alike at the start of the year. It will also be available in English on the web.

IRELAND BANS DISCRIMINATION

By Rex Wockner

Ireland's new Employment Equality Act bans direct and indirect job discrimination based on sexual orientation, the International Lesbian and Gay Association reported Dec. 2.

The law also prohibits unwelcome, offensive, humiliating or intimidating actions.

Religious institutions are exempt from the act in instances where it conflicts with their teachings.

LATVIA KILLS PARTNER MEASURE

By Rex Wockner

Latvia's parliament rejected a gay registered-partnership bill Nov. 30.

The measure died in the Human Rights and Public Affairs Committee which declined to send it to the full parliament.

"There is still a high level of intolerance in our society, manifesting itself not only against homosexuals, but other groups, such as refugees, as well," said MP Boris Cilevics. "This is dangerous for our democratic development."

The bill was drafted by the national Human Rights Office as part of its effort to reduce anti-gay discrimination.