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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>

HISTORIC VOTE AT COUNCIL OF EUROPE PROPOSES MEASURE TO COUNTER HOMOPHOBIA

Press release by ILGA-EUROPE

On Wednesday 26 January parliamentarians from across Europe voted to recommend that sexual orientation be added to the list of prohibited grounds of discrimination in a new legal instrument designed to strengthen the anti-discrimination provisions of the European Convention on Human Rights.

This historic development took place during the review by the Parliamentary Assembly of the Council of Europe of a draft protocol (draft Protocol No 12) put forward by the Council's governing body, the Committee of Ministers, with the intention of making good shortcomings in the existing anti-discrimination provisions of the Convention.

Introducing the recommendation, Senator Jurgens of the Netherlands pointed out that "many of the 41 member states of Europe still have oppressive legislation against homosexuals, and only 11 have laws against such discrimination". He went on to call for recognition that "many people, both in public life and as private citizens, still consider the expression of homophobic attitudes to be both legitimate and respectable; worse, some think it is a ground for violence." And he stressed that this was a matter of great seriousness: "we want to deal with this invidious and pernicious form of discrimination, against which people need protection".

He was supported by speakers from Spain, Hungary, the United Kingdom, Luxembourg, Italy, Belgium, Poland, and Turkey, including spokespersons for the right of centre European People's Party, the left of centre Socialist Group, and the centrist Liberal Group. Of the major parties, only the conservative European Democratic Group opposed the recommendation.

ILGA-Europe's female co-representative to the Council of Europe, Nico Beger, warmly welcomed the Assembly's recommendation, and said that ILGA Europe would urge the Committee of Ministers to take it up. "The case law of the European Court of Human Rights already recognises that sexual orientation discrimination is in violation of the Convention. The problem, as Senator Jurgens pointed out, is that for all too many people in public life, homophobia is still "legitimate and respectable".

Nigel Warner, also of ILGA Europe, added: "The inclusion of "sexual orientation" in the new Protocol to the Convention would make it clear that sexual

orientation discrimination is as odious and as pernicious as the other grounds specifically mentioned, such as race, sex or religion."

ADDITIONAL INFORMATION

The verbatim report of the Assembly's opinion and debate can be found at:http://stars.coe.fr/index_e.htm

The draft Protocol 12 can be found at

<http://www.coe.fr/cm/dec/1999/677bis/42.htm>

ILGA Europe's submission to the Council of Europe's Steering Committee on Human Rights arguing for the inclusion of sexual orientation in the draft Protocol can be found at: <http://www.steff.suite.dk/art14.htm>

LATVIA: Officials Reaction on Partnership Bill; Latvian Constituion Includes Sexual Orientation and Draft Labour Code Includes Sexual orientation

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

On 30 November 1999 the Human Rights and Public Affairs Commission of the Saeima (Parliament) of the Republic of Latvia rejected the draft law "On registered partnership between persons of the same gender" which was submitted to the Commission by the Latvian National Human Rights Office (LNHRO) on 28 September 1999. This draft law emerged from joint research carried out by LNHRO and the Homosexuality Information Centre (HIC) on the legal situation for lesbians and gay men in Latvia. The research concluded that Latvian legislation discriminates on the grounds of sexual orientation, and as a remedy to eliminate such discrimination a draft law allowing registration of partnerships between persons of the same gender was prepared.

Only two members of the Commission, representing the parliamentary fraction "For Human Rights in an Integrated Latvia", Mr Boriss Cilevics and Mr Miroslavs Mitrofanovs, supported the proposal to send the draft law to the Saeima for discussion. The other 8 members of the Commission (Mr Antons Seiksts, Ms Viola Lazo, Mr Peteris Tabuns, Ms Silvija Dreimane, Mr Ilmars Geige, Mr Janis Leja, Mr Juris Galerijs Vidins, Ms Erika Zommere) rejected the proposal. One member (Ms Inese Birzniece) was not present, owing to a business trip.

Previously, at its meeting on 5 October, members of the Parliamentary Commission on Human Rights and Public Affairs had decided to send the draft law to the Legal Office of the Saeima (Parliament) for its conclusion on whether the proposed draft law complies with Latvian legislation and international human rights obligations and whether equality on grounds of sexual

orientation is guaranteed in Latvia. At the same time the Commission sent the draft law to the Justice, Interior, Finance, Welfare, Science and Education Ministries for their conclusions.

A translation of the conclusion of the Parliamentary Legal Office is given below.

Legal Office of the Saeima (Parliament) of the Republic of Latvia 16 November 1999 12/17-254

To Human Rights and Public Affairs Commission

Following receipt of a letter from your Commission the Legal Office examined the draft law "On registered partnership between persons of the same gender" prepared by the Latvian National Human Rights Office and considered whether existing legislation provides equality on grounds of a person's sexual orientation.

The first part of the conclusion sets out the Legal Office's opinion regarding the draft law. The second part examines whether Latvian legislation provides equality on grounds of a person's sexual orientation and whether there is a need for amendments to the existing legislation.

The Legal Office examined the draft law from three points of view:

- 1) the usefulness of the draft law;
- 2) whether the draft law complies with the standards of international law which are binding on Latvia;
- 3) whether the draft law is in compatible with existing legislation in Latvia.

1. Usefulness of the draft law

Existing legislation in general does not regulate personal relations between persons of the same gender. Therefore the fact that two homosexual persons live together does not have legal consequences. Nor does legislation make any special provision for the regulation of individual issues (for example in the social sphere or in regard to immigration rules). Therefore, the general rules are applied to homosexual persons living together in regard to the full range of legal issues.

At the moment persons of the same gender can sign mutual contracts and regulate civil and legal relations (for example, leave property to a partner by will or regulate mutual property relations by signing a contract of association). Therefore, according to existing legislation, partnerships between persons of the same gender are not recognised by the State in terms of public law, however, the possibility exists for the partners to define their mutual relations in terms of private law.

Under the draft law prepared by the Latvian National Human Rights Office, partnerships between persons of the same gender would be legalised and private contracts would no longer be the only option for defining mutual relations. Granting the same rights and obligations to registered partners as to married persons, the law would recognise the partnerships of persons of the same sex as having legal effect.

The Legal Office has also considered whether the chosen form of legislation - a law - is the most appropriate way of regulating this issue. Taking account of the nature of the legal relations which form the basis of the draft law, the conclusion is that a law is the most logical option.

In examining the usefulness of any draft law it is very helpful to consider to how wide a circle of people the draft law would apply. The Legal Office does not possess any data regarding how many homosexual persons there are in Latvia who could and would wish to make use of the right to registered partnership provided by the draft law. However in this case it has to be borne in mind that data about a person's sexual orientation belongs to the most intimate sphere of a person's life and is protected by the right to privacy. Consequently, every person has a right not to reveal such data and in such circumstances statistics cannot reflect the real situation.

Because the draft law touches upon issues of a moral nature, before deciding whether to support or reject this it, it would be useful to find out society's attitudes. However, society's attitudes cannot be the only consideration for such a decision, since the Saeima (Parliament) has a right, in the interests of the State or in the interests of a particular group in society, to define standards concerning which society in general does not have a united view.

On the international level, human rights are in constant development and some of the relations between the State and individuals are gradually evolving in favour of individuals. This is of the essence of human rights and the principles of the democratic State.

Partnerships between persons of the same gender in different States are subject to different regulations. One means of regulation is to allow persons of the same gender to register their partnerships and some States have already chosen this path.

Important too is the issue of what would be the de facto legal effect of supporting or rejecting the draft law. The Legal Office cannot evaluate whether, if the draft law were rejected, the number of homosexual persons would decrease, or conversely, if it were

supported the number would rise. Similarly, the Legal Office cannot evaluate whether supporting the draft law would increase and rejection it decrease the number of homosexual couples actually living together.

We acknowledge that there may also be other arguments which bear upon the usefulness of the draft law (for example its possible impact on the budget).

Taking into account the complexity of the subject regulated by the draft law, the Legal Office cannot uniformly answer how useful it would be to support it. The abovementioned considerations should be regarded as elements which need to be taken into account when deciding in principle the issue of the usefulness of the draft law.

2. The draft law's compliance with the standards of international law

Latvia is a signatory to a number of international human rights documents. Significant in relation to the right of persons of the same gender to register their partnerships are the International Covenant on Civil and Political Rights ("the Covenant") and the European Convention on Human Rights and Fundamental Freedoms ("the Convention").

Neither the Covenant nor the Convention provide a clear formulation of a right for homosexual persons to register their relationships.

Although the appropriate terminology is not used, the draft law in fact equates partnerships between persons of the same gender with marriage. Article 23 of the Covenant and Article 12 of the Convention state that men and women have a right to marry and found a family. Within the framework of the Convention, discussion on whether this right applies to transsexuals, that is, persons who during their lives have changed their sex, has already started (See *Rees v UK*, A.106 (1986); *Cossey v UK*, A.184 (1990)). In the *Cossey* case, see especially the Report of the Commission (A.184, p.51) and the dissenting opinion of Judge Marten (A.184, p.33)). This Article does not apply to homosexual persons.

Article 17 of the Covenant and Article 8 of the Convention provide everyone with a right to privacy. A person's sexual orientation most decidedly belongs to a person's privacy. Therefore homosexual persons' complaints to the European Court of Human Rights are based on claims that the rights to privacy and family life enshrined in Article 8 of the Convention have been violated in various ways by States. Despite the fact that the Convention is a "living instrument" and understanding of the substance of this right as it relates to persons with homosexual orientation has

changed in various aspects (*Dudgeon v UK*, A.45 (1981) and *Norris v Ireland*, A.142 (1988)). The European Court of Human Rights declared that State legislation criminalising homosexual relations between adults persons violates the right to privacy. Further development is seen in the case of *Sutherland v UK* (Report of the Commission of 1 July 1997) in which the Commission stepped away from its previous case law and expressed its view that establishing different age for relations between homosexual persons (18 years) and between heterosexual persons (16 years) as criminally punishable acts discriminatorily violates the right to privacy. The Commission based this report on the development of modern views, especially the views of medical doctors (para.60). At the moment the case is being considered by the Court, the case law of the European Court of Human Rights has not developed so far as to consider non-recognition by the State of partnerships of persons of the same gender as a violation of Article 8 of the Convention.

Within the framework of the European Union there is no unified catalogue of human rights which is binding on the Member States. Moreover, binding rulings have not been adopted in regard to the right of persons of the same gender to register their partnerships. The States are legally free to determine whether or not persons of the same gender may register their partnerships.

After the Treaty of Amsterdam comes into force, Article 13 of the Treaty establishing the European Community will state, acting on a proposal from the Commission and after consulting the European Parliament, the Council may take action to combat discrimination based, among other things, on sexual orientation. Up to now, no documents legally binding on Member States have been adopted which stipulate that a prohibition on the registration of relationships between persons of the same gender is regarded as discrimination on grounds of sexual orientation.

Therefore, international human rights as they have developed to date do not legally obligate States to recognise the right of persons of the same sex to register their partnerships. On the other hand, States are not prevented from registering such partnerships, since international documents contain minimum standards on human rights and each State has the right to define more favourable rights for individuals or groups of individuals than those provided for in international obligations.

3. The draft law's compatibility with the existing legislation system

Although the title of the draft law suggests that this law regulates only the registration of partnerships

between persons of the same gender, its content is wider: it defines the partners' status after the registration of their relationship and also regulates the dissolution of partnerships.

As already mentioned above, the draft law does not use the term "marriage" in relation to partnerships between persons of the same gender. The draft law provides that legislation regulating the registration and dissolution of marriage shall be applied to the registration and dissolution of partnerships between persons of the same gender (Article 2(1) and Article 4(1)). Also, after a partnership has been registered the partners will acquire the same rights and obligations as married partners (Article 3(1)), and those laws and other normative acts which relate to marriage and married partners will also apply to registered partnership and registered partners (Article 3(2)). The only exception is that married persons' right to adopt a child will not apply to registered partners (Article 3(3)). Therefore registered partnership is in substance equated with marriage. At the same time, Article 35 of the Civil Law states that marriage between persons of the same gender is prohibited.

Because registered partnership is not called marriage, but according to the draft law all laws and other normative acts regulating the institution of marriage would be applied to registered partnership, there is a possibility of contradictory interpretation - whether registered partnership is regarded as marriage or such partnerships is a completely different form of personal relationship. If partnerships are regarded as marriage, then the draft law contradicts the Civil Law. To avoid such contradiction it is necessary either to make appropriate changes or to define a special procedure for the registration and dissolution of partnerships between persons of the same gender.

The draft law does not stipulate whether partners in a registered partnership have at the same time a right to register marriage with a person of the opposite gender. Article 64 of the Civil Law states that marriage is considered invalid if at the time of its registration one of the persons was in another marriage. Similarly, according to Article 3(1) of the draft law partners can form only one partnership. It is not clear whether in such circumstances it should be considered whether registered partners are permitted to be married to a person of the opposite gender.

Taking the above into account, we consider that it is necessary to resolve these issues conceptually.

4. Conclusion on the draft law

Firstly, according to existing international human rights standards and existing case law, a State does not have a legal obligation to recognise partnerships

between persons of the same gender. Therefore Latvia has freedom of action in resolving the issue of registration of partnerships between persons of the same gender, which should be settled in accordance with the considerations mentioned in this document.

Secondly, if the Commission considers that partnerships between persons of the same gender require legal regulation, then the most appropriate form is a law.

Thirdly, the draft law "On registration of partnerships of persons of the same gender" allows for divergent interpretations and it is therefore not clear whether partnership is considered as marriage or is a completely different form of personal relationship. If partnership is considered as marriage, then the draft law contradicts the Civil Law. At the same time, if partnerships between persons of the same gender are a different form of personal relationship, then a detailed definition of the substance of partnership and the stipulation of a special procedure for the registration and dissolution of such a relationship would be required, instead of employing the provisions regulating the registration and dissolution of marriage contained in the Civil Law.

II Prohibition of discrimination in various legal relations, as an integral element of human rights, is one of the bases of democratic society. According to Article 1 of the Satversme (Latvian Constitution) Latvia is a democratic state and it arises from this Article that equality of all people is provided for in Latvia at the constitutional level. Further, according to the existing hierarchy of law in Latvia, relevant legislation directly prohibiting discrimination will be examined.

Article 91 of the Satversme stipulates that all people are equal before the law and the courts and that human rights shall be implemented without any discrimination. Therefore, complementary to Article 1 of the Satversme, Article 91 also directly stipulates that discrimination on all grounds is prohibited, consequently also on grounds of sexual orientation. If a law makes a different stipulation, then it contradicts the Satversme and cannot be enforced.

Both the Covenant "On Civil and Political Rights" and the Covenant "On Economic and Cultural Rights", as also the European Convention on Human Rights and Fundamental Freedoms, contain norms prohibiting discrimination on various grounds. Defining prohibition of discrimination as a constant right (Article 26 of the Covenant "On Civil and Political Rights") or prohibiting discrimination in regard to rights protected in an international treaty (Article 2 of the Covenant "On Economical and Cultural Rights"; Article 14 of the European Convention on Human Rights), sexual orientation is not mentioned as one of the grounds.

However, in substance it is included because neither of the abovementioned international treaties provide detailed list of grounds on the basis of which discrimination is prohibited.

At the moment existing legislation has a dual approach regarding the grounds on the basis of which discrimination is not permitted in various legal relations. One set of laws mentioning grounds leaves an open-ended list, while another set of laws provides a closed list. The latter is considered to contradict Articles 1 and 91 of the Satversme and the abovementioned international treaties. To prevent such contradiction of Articles 1 and 91 of the Satversme and the international treaties and also to clarify possible doubts regarding which laws are to be applied, amendments to the following laws are required:

- Article 1 of the Latvian Code of Labour Laws;
- Articles 4(2) and 51(2) of the law "On the power of the courts";
- Article 2 of the law "On Social Security";
- Article 3 of the Education Law;
- Article 11(3) of the law "On private pension funds";
- Article 3(1) of the law "On Cooperative Society".

To ensure that these laws comply with the Satversme and international treaties it is suggested that they be amended so that they do not contain closed lists of grounds on which discrimination is not permitted, rather than amending them by inserting an additional ground - sexual orientation.

In our view a discussion on Articles 160, 161 and 162 of the Criminal Law is also necessary, to clarify whether equal treatment regardless of sexual orientation is safeguarded. (These articles regulate sexual offences and define age of consent, J.L.L.)

Regarding those laws which, in various legal relations, define different rules for homosexual couples and heterosexual married couples, see the conclusion on the draft law. At the moment discrimination in the form of different regulations is not considered to be discrimination in the interpretation of legally binding human rights standards.

Director of the Legal Office
G. Kusins

Like the Parliamentary Legal Office, Minister of Justice Dr Valdis Birkavs, in his conclusion, identified similarities between the institution of marriage and the proposed institution of registered partnership. In his view the aim of the draft law in substance is to abolish Article 35(2) of the Civil Law which prohibits marriage between persons of the same gender. The Minister writes that indirect legalisation of marriage between

persons of the same gender is the most radical means of abolishing discrimination on grounds of sexual orientation and destroys the traditional meaning of marriage. He questions whether it would not be possible to eliminate discrimination on grounds of sexual orientation by other means, such as anti-discrimination provisions, and suggests that the draft partnership law not be adopted, but instead that those laws which have been identified by the Latvian National Human Rights Office as discriminatory on the grounds of sexual orientation be amended.

The Minister also adds that the prepared draft Labour Law contains a provision prohibiting discrimination on grounds of sexual orientation.

In the view of the Ministry of Justice, the Constitutional Court is the body most competent to deliver an answer, in the form of a judgement, as to whether Latvian legislation provides equality regardless of sexual orientation and whether amendments to existing laws are needed.

In its conclusion, signed by State Secretary Mr A. Sraris, the Ministry of the Interior did not in principle support the proposed draft law on registered partnership, without giving any reasons. The Ministry of the Interior provided a list of comments, identifying the in their view unclear or mistaken provisions of the draft law. The Ministry also suggested that a working group should be created in the case where a decision to support the draft law was adopted by the Parliamentary Commission.

Minister of Welfare Mr R. Jurdzs did not support further discussion on the draft law on registered partnership, and argued that society is not sufficiently tolerant on issues of human rights in various areas. He also suggested that in the improvement of Latvian legislation, the experience of European democracies has shown that it is very important to preserve each nation's traditional and historical understanding of marriage and family and their values. In the view of the Ministry of Welfare the first steps in discussion of the issue of registered partnership should be education of society and research on the experience of democratic States, while at the same time preserving the traditional historical values of the Latvian State and nation.

Minister of Finance Mr E. Krastins did not give his Ministry's conclusion, since he could not tell what the impact of the adoption of the draft law on the State budget would be.

Minister of Education and Science Ms S. Golde doubted that, without a broad analysis of the sociological, social and cultural aspects of registered partnership between persons of the same gender, this

issue was timely from the point of view of Latvian society. She expressed the Ministry's view that the suggested draft law is not in accordance with the predominant understanding of marriage and family in Latvia. Moreover, she added that the concept of the draft law contradicts the cultural and everyday traditions of Latvian society and that there is no social or psychological need for the adoption of such a law.

Thus the draft law "On registered partnership of persons of the same gender" has not reached the stage of discussion in Parliament.

The Latvian National Human Rights Office and the Homosexuality Information Centre have already prepared an alternative draft law which provides for an amendment the Latvian Civil Law inserting a new section "Registered Partnership" and further amendments to a number of other laws relating to marriage and married partners, in order for them to cover registered partnership and registered partners.

Negotiations with the parliamentary fraction "For Human Rights in Integrated Latvia" on the introduction of the alternative draft law, together with legislation which would outlaw discrimination on grounds of sexual orientation, have been opened by the Homosexuality Information Centre, and it is believed that these drafts will be put forward for consideration directly to the Saeima (Parliament) by MPs from this fraction.

BRITAIN LIFTS MILITARY GAY BAN

By Rex Wockner

Britain lifted its ban on gays in the military Jan. 12, implementing a Sept. 27 European Court of Human Rights ruling that the policy violated servicemembers' rights to privacy and family life.

"Homosexuality will no longer be a bar to service in Britain's armed forces," said Defense Secretary Geoff Hoon. "The law is the law. We cannot choose the decisions we implement. ... There is no longer a reason to deny homosexuals the opportunity of a career in the armed forces. ... The status quo is not an option."

Like heterosexual servicemembers, gay servicemembers will be prohibited from engaging in behavior while on duty that undermines the "efficiency or operational effectiveness" of the armed forces -- such as unwanted sexual come-ons, offensive displays of affection, or taking advantage of a subordinate.

People who have been kicked out of the military for being gay are being invited to rejoin.

UKRAINIAN GAY AND LESBIAN CENTRE GETS STATE REGISTRATION

By Andriy Maymulakhin

Nash Mir (Our World) Gay and Lesbian Centre has been registered as non-governmental organisation in Ukraine. The certificate No. 408 of November 30, 1999, was issued by the Department of Justice in Lugansk Region.

The state registration of the first openly gay&lesbian organisation is an extremely important precedent for Ukraine. Main goals of the organisation mentioned in the Statute are:

- assistance to defence of human rights and freedoms of homosexuals and improvement of their legal defence, fight against sexual orientation discrimination;
- assistance to improvement of society's attitude towards homosexuality and homosexuals, reduction of homophobic sentiments in societal consciousness;
- assistance to upbringing of gays' and lesbians' self-consciousness as equal and valuable members of society.

Our World Centre was established on December 27, 1998, and has passed a long way for its recognition in the state.

After illegal delays while examining the Centre's statute documents the Department of Justice in April of 1999 denied us state registration. The wording of denial called the reason for denial discrepancy of the Statute's provisions to Ukrainian law. Formally the denial did not touch gay issues.

However other evidences and officials' statements particularly indicated that the authorities just did not want to recognise officially an organisation for defence of gay&lesbian rights.

Of course we did not give up. Our question had been analysed by high-professional lawyers who did not find the reasoning of the Department satisfactory. Basing on these conclusions the founders of the Centre sued the Department of Justice. However virtually all lawyers knowing the reality of the current Ukrainian court system did not consider this variant as good enough. Courts indirectly but quite strongly depend on bodies of justice.

Preliminary hearing of the case in a district court revealed that we had a very little chance to win the case.

Along with the court examination our organisation draw attention of advanced world community to the appeared problem as a part of wider problems of non-observance of gays' and lesbians' equality in Ukrainian society.

We are very grateful for great help that we obtained from:

Amnesty International which carried out a campaign for support of Our World Centre. As far as we know the Ministry and the Department of Justice have received lots of letters from all the world which called to them to register our organisation;
Ukrainian branch of Soros Foundation Network (Renaissance Foundation) which lobbied our question in the Ministry of Justice and render legal assistance to us;
ILGA-Europe which promoted to draw attention of the Council of Europe to our problems.

Unfortunately despite all our appeals we got virtually no support from Ukrainian human rights organisations. Only Ukrainian section of the International Society for Human Rights supported us in the country.

Eventually the authorities have seen that it is impossible anymore to evade granting gays and lesbians the same rights, including the right of associations, which the other citizens have.

Because of all these efforts of Our World Centre and its huge support, the authorities were compelled to recognise and register officially our organisation.

Our experience clearly shows that there is a lot of work to do to achieve real equality for gays and lesbians in Ukrainian society.

We thank all who supported us in our struggle and hope for your help and co-operation in the future.

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"Nash Mir" (Our World) magazine in Internet:
<http://www.geocities.com/WestHollywood/2118/>