

# EURO-LETTER

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Documents relating to ILGA -Europe can be found at ILGA -Europe's homepage <http://www.ilga-europe.org/>

**COUNCIL OF EUROPE PRESSURE BRINGS  
PROGRESS FOR LESBIAN, GAY AND BISEXUAL  
RIGHTS IN EUROPE**  
*ILGA-EUROPE MEDIA RELEASE*

Debates at the June session of the Parliamentary Assembly of the Council of Europe in Strasbourg contributed to some important progress for lesbian, gay and bisexual rights on a broad range of fronts, and with only one, hopefully temporary, setback.

**THE ACCESSION OF ARMENIA AND AZERBAIJAN  
TO THE COUNCIL OF EUROPE**

The Parliamentary Assembly voted last week to support the membership application of Armenia, but subject to a binding obligation that it repeal the provisions of its penal code which criminalise same-sex relationships between men. The Assembly heard that as recently as 1999 four men had been prosecuted under these provisions.

Azerbaijan's application for membership of the Council of Europe was also supported. A similar obligation was to be imposed on Azerbaijan, but was withdrawn on the news that the Azerbaijani Parliament had just approved a new penal code which lifted the ban on homosexual acts between consenting adults.

Nico Beger, ILGA-Europe's female co-delegate to the Council of Europe commented: "We are extremely pleased with these developments. 18 months of lobbying paid off when the Legal Affairs and Human Rights Committee of the Assembly insisted that the Assembly stand up for the rights of gay people in these countries".

**DEBATE ON THE SITUATION OF LESBIANS AND  
GAYS IN EUROPE**

On Friday 30th June the Assembly held its first wide-ranging debate on discrimination against lesbians and gays since 1981, on a Report and Recommendations proposed by a Hungarian Member of Parliament, Mr Csaba Tabajdi (available at <http://stars.coe.fr/doc/doc00/edoc8755.htm>).

The Recommendations included calls for European governments to remove all discrimination in their criminal law, to introduce anti-discrimination legislation protecting lesbians and gays, to make specific reference to sexual orientation discrimination in the European Convention on Human Rights, and to introduce registered partnership laws in their countries. A series of strong speeches were overwhelmingly in favour of the recommendations. Spokespersons for four of the five large political groupings in the Parliamentary Assembly (the European People's Party, the Socialists, the United Euro-

pean Left, and the Liberal Group) supported the recommendations, while the remaining grouping, the European Democrats Group (Conservative) took a neutral position. However, at the end of the debate voting was prevented by opponents of the Recommendations on the basis that the Assembly was not quorate. Voting was therefore postponed until the September session of the Assembly.

The debate was the trigger for one potentially significant event: the leader of the Romanian delegation announced that on Wednesday 28 June the Romanian Chamber of Deputies had voted to repeal completely Article 200 of the Romanian Penal code, and he stated that in September, prior to the next meeting of the Assembly, the Romanian Senate would do likewise. Article 200 is the most notorious discriminatory legislation on the books of any existing member of the Council of Europe. It has been criticised repeatedly by the Council of Europe and was again criticised by Mr Tabajdi in his Report. Its provisions include discrimination in the age of consent, the definition of privacy, and in relation to freedom of association and expression.

Adrian Coman, Executive Director of Romania's lesbian and gay organisation, ACCEPT, and Board Member of ILGA Europe commented: "This development reflects both the pressure of the Council of Europe, and also that of the European Union. If the Senate really does confirm the repeal of Article 200, that will be good news. But unfortunately it is only half the story: Article 201 of the Romanian Criminal Code (which punishes "acts of sexual perversion, committed in public or if producing public scandal") has been amended to include homosexuals. The vagueness of its wording could lead to its use in a discriminatory fashion against gay people. We strongly believe that a clear definition is needed, in order to avoid future abusive juridical practices, as happened in the past with Article 200".

**DEBATE ON ASYLUM AND IMMIGRATION  
RIGHTS FOR BI-NATIONAL SAME-SEX COUPLES**

In a further debate the Assembly voted to support recommendations that national governments recognise persecution on the grounds of sexual orientation for the purposes of asylum and grant bi-national same-sex couples the same residence rights as bi-national heterosexual couples. Ms Vermot-Mangold from Switzerland, who put forward these recommendations (available at <http://stars.coe.int/doc/doc00/edoc8654.htm>), drew the Assembly's attention to the fact that in around 80 countries homosexual acts between consenting adults remain illegal, to homophobic campaigns led by the presidents of Zimbabwe and Uganda, to the use of the death penalty in Afghanistan, Iran and Saudi Arabia, and to the recent

imprisonment and whipping of gay people in Saudi Arabia.

Nigel Warner, male co-delegate of ILGA Europe to the Council Europe commented: "This is a great development. These are areas of acute concern for some members of our community. We will now have to persuade the Committee of Ministers of the Council of Europe to take up these Recommendations, and propose them formally to their member governments."

Commenting on the achievements of the week as a whole, he added: "This is tremendous progress for just one week. But it does highlight a disgraceful fact: in all too many countries throughout Europe governments and parliaments simply do not respond to calls from their lesbian and gay communities to repeal discriminatory laws. The Council of Europe, whether through the Assembly, the European Court of Human Rights, or the Committee of Ministers, remains an essential driving force for the recognition of fundamental rights for lesbians, gays and bisexuals."

#### **AZERBAIJAN LIFTS BAN ON SEX BETWEEN MEN**

*MEDIA RELEASE BY ILGA-EUROPE*

Gay activists in Azerbaijan report that the ban on sexual relationships between men in that country has been lifted. A special edition of "Azerbaijan", the official newspaper of the Parliament, published on 28 May, reports that the Parliament has approved a new Criminal Code, and that the President has signed a decree bringing it into force in September. The text of the new Criminal Code is also published. From this it is clear that the old Article 113 (inherited from the Soviet era, and which punished an al sex between men with three years imprisonment) has been replaced with a new Article 150, which bans only forcible sexual acts.

Azerbaijan has applied for membership of the Council of Europe, and the Parliamentary Assembly of the Council of Europe is due to vote on its application on Wednesday 28 June. The introduction of the new Criminal Code is part of the widespread legal and institutional reforms undertaken by Azerbaijan in order to bring its institutions up to the standards required by the Council of Europe. These standards include the abolition of laws which ban same-sex relationships.

ILGA Europe has been campaigning for the last 18 months to ensure that Article 113 is repealed as a condition of membership of the Council of Europe. Last month a Committee of the Parliamentary Assembly proposed that acceptance of Azerbaijan's membership on 28 June be made subject to a specific obligation to repeal Article 113.

Nico Beger, ILGA -Europe co-delegate to the Council of Europe, commented: "This is very good news. Article 113 created real problems for gay people, particularly through extortion by corrupt police officers." Her co-delegate Nigel Warner added: "Since the historic ruling by the European Court of Human Rights in the Dudgeon case in 1981 some 22 countries and territories in Europe have repealed laws banning gay relationships. In the whole of Europe only Armenia, the Republika Srpska entity of Bosnia Hercegovina and the Chechen Republic still maintain such laws".

#### **CHANGES OF LAW in ROMANIA**

*Mediafax, Bucharest, June 21*

The Legal Committee of the Chamber of Deputies approved, on Wednesday, the draft bill initiated by the Government to harmonize certain provisions from the Penal Code with Resolution 1123 (1997) of the Council of Europe, which provides, among other things, the repeal of article 200 from the Romanian Penal Code referring to homosexuality, Deputy Ervin Szekely (Romanian Magyars' Democratic Union), member of the Legal Committee stated.

Article 200 from the Penal Code reads that same-sex relations are punished with imprisonment, if taking place in public or resulting in a public scandal.

The Report drawn by the Legal Committee over the draft bill initiated by the Government is now to be analyzed by the plenum of the Chamber of Deputies.

#### **REPEAL OF DISCRIMINATORY LAWS IN CYPRUS**

*MEDIA-RELEASE BY ILGA-EUROPE*

NB: After the press release was released doubt about the age of consent issue has been raised. When clarified it will be published in EuroLetter.

On 8th June the Cyprus Parliament enacted legislation which eliminates the main remaining areas of discrimination against gay men in the criminal law: it equalised the male age of consent (albeit by raising the age of consent for heterosexual males from 16 to 18, while setting that for women at 16), eliminated the pejorative description of gay sex (replacing "unnatural licentiousness" with "intercourse between men"), and eliminated the discriminatory provisions on privacy (which had deemed as "in public" any sexual acts between men where more than two people were present). Provisions banning "indecent behaviour or invitation or provocation or advertisement aimed at performing unnatural acts between males" have been restricted to such actions directed at those under 18.

The action of the Cyprus Parliament is a belated response to a 1993 victory at the European Court of Human Rights [see below for background information] by leading gay rights campaigner Alecos Modinos, in which he challenged the total ban on same-sex relationships between men that existed at that time. After much debate, and intense hostility from the Orthodox Church in Cyprus, the Cyprus Parliament repealed the complete ban on gay male relationships in 1998, but replaced this legislation with the discriminatory provisions described above.

Under the terms of the European Convention on Human Rights, the Committee of Ministers of the Council of Europe is empowered to ensure that actions taken by governments and parliaments in response to a judgment of the European Court of Human Rights do indeed fully rectify the human rights violations identified in the judgment. The Committee of Ministers was not satisfied that the 1998 legislation complied with the judgment, and the latest legislation is the outcome of discussions between the Committee of Ministers and the Cyprus Government.

ILGA Europe extends its warmest congratulations to Alecos Modinos. It has taken eleven years from when Alecos started his legal challenge to finally eradicating all the major areas of discrimination in the criminal law. Such victories are only won with great courage and determination, and at no small cost, emotionally and materially, to the individuals concerned. In this particular case, Alecos Modinos had to face intense personal attacks by the Orthodox church.

For example, following the initial ruling on his case by the European Commission on Human Rights in December 1990, the Archbishop of Cyprus, in his Christmas Encyclical (read out in all churches of the island and broadcast on the national radio) protested at the Commission's decision and called for all Christians to fight it. In a press interview on 27th December 1990 he added that "homosexuality can be concealed but we will excommunicate known homosexuals and deprive them from all their Christian rights and a Christian burial".

ILGA Europe also welcomes the fact that the Committee of Ministers of the Council of Europe has insisted that the original legislative changes of 1998 were insufficient. There is little doubt that only a few years ago they would have been unlikely to insist on the additional changes. This is a further indication of the consensus among the governments of Europe that discrimination on the basis of sexual orientation in the criminal law is unacceptable.

Nigel Warner, ILGA-Europe co-delegate to the Council of Europe commented: "This is a real step forward. But it is a pity that the Cyprus parliament did not have the good sense to remove all discrimination, and could only see its way to equalising the male age of consent by raising the age for heterosexual men to 18. Imposing an unrealistically high age will merely bring the law into disrepute. Moreover the difference in age between men and women amounts to sex discrimination".

## **THE STORY OF THE CHANGE OF LAW IN CYPRUS**

*By Alexander F. Modinos*

On Thursday afternoon, the 8th June 2000, quite unexpectedly and without being on the Agenda, the Parliamentary Legal Committee, brought to the House a new law on Homosexuality taking all the 40 MPs present by surprise.

In Cyprus, Homosexuality is a subject "taboo", in spite of the publicity given since 1989 when the Cypriot Architect and gay activist, Alexander Modinos complained to the European Commission on Human Rights against Cyprus and accused his Country of violating his human rights as a homosexual person

It is well known that in April 1993 the European Court, almost unanimously - 8 of the 9 judges condemned Cyprus, and only one, the Cypriot judge, disagreed(!) - found that Cyprus was violating the Human Rights of homosexual people and the existing antiquated anti-gay

law must be abolished.

After a lot of pressure and five years later the 1885 anti-gay law was revised in May 1998 in such a way to satisfy the powerful Orthodox Church, the 57 Christian organizations and the majority of the opposing MPs, that the revised law was full of discrimination and worse than the old law. In fact the Attorney General in a press conference, stressed the point that "We did not make homosexuality legal, on the contrary we have regulated the law, so as to make homosexuality a punishable act"!!

The main discriminatory articles were the following:

- The title under which homosexual relationships were placed was "Licentiousness against the order of Nature" and this has only negative meanings.
- The age of consent, 18, is two years higher for homosexual relationships. It is 16 for heterosexuals. The law completely ignores lesbians of any age, as if they do not exist at all.
- The privacy of our homes becomes public place in the presence of a third person.
- The maximum penalty of 14 years imprisonment was raised to life imprisonment.
- The notorious article 174a considers a criminal offence punishable with one year imprisonment if we "... provoke, invite, advertise, publish - - - etc. in view of sodomy".

Immediately I strongly opposed to this discriminatory law. The two Human Rights and other Scientific Organizations of the island expressed their view, that this law was unfair.

Amnesty International also opposed this discriminatory law and a European Union Committee also expressed their view that with this law, Cyprus cannot become a member of the European Union.

Through my lawyer, Achilleas L. Demetriades, I have send five letters to the Council of Ministers - May 1998, September 1998 and three other letters since - pointing out the discriminatory provisions and stressing the points that this law was not in agreement with the European Convention.

Finally in September 1999 the Council of Ministers declared this law unacceptable. So a new law had to be made in accordance with the European Convention and the spirit of our times.

The Orthodox Church is at present facing two major scandals. A 50 year old Archdeacon is accused of having an affair with a young woman and being the father of her two daughters. The Archdeacon in his turn, is accusing the Bishop of Limassol of homosexuality. A 22 page letter was brought to the "Holly Synod", written by a 33 year old ladies hairdresser from Salonica Greece, who is a defrocked monk. The hair dresser accuses the Bishop that 18 years ago, when he was 15 years old and both of them were monks at a Mount Athos monastery, that they had sexual relationship together. A church committee has been terribly busy investigating both cases, so the Parliamentary Legal Committee found the opportunity to pass a new law on homosexuality. In fact, when reporters asked the Archbishop of Cyprus to express his opinion, the day after the law was passed, the Archbishop asked "What law"? "On homosexuality, Homosexuality it is now legal", was the reporters answer. "We are greatly saddened to hear this, that the Parliament has legalized perversion". This was the Archbishop's firm statement.

The Archbishop was not the only one surprised by the sudden and urgent pass of the new law. A local paper wrote that "From the 40 MPs present in the Chamber, about 27 of them walked out of the room, and not to pass water! From the 13 who remained most of them from the right wing, 2 voted against, 11 in favour, so the new law that regulates homosexual relationships is now a fact."

The new law is a great improvement with the only major discrimination, the 2 years higher age of consent for homosexual intercourse. Of course Cyprus is not the only member of the Council of Europe who bares the shame of discriminating in this respect.

Briefly the new articles are as follows;

- "Sexual intercourse between men" has replaced licentiousness against the order of nature.
- The privacy of our home remains private no-matter how many persons are involved in the sexual act, provided the public is prevented from having a view.
- The notorious art. 174a is now a criminal offence only if it is addressed to persons under the age of Consent.

I believe that the Council of Ministers will find that Cyprus, with this new law of 8.6.2000, has finally conformed to the European Court's decision of 1993. It is sad that even now, at the beginning of the 21E' century, we, the homosexual persons need to spend so much time and energy, with a lot of anxiety and so many sleepless

nights, not to mention the amount of money wasted, to secure equal rights, in our own countries as the heterosexual people.

It saddens me also, that the homosexual persons of Cyprus do not share the same aspiration as myself and they settle for so little. To this day only two gays have come out in the open, the others remain shut, suffocating in their closets. Is this the destiny of lesbians and gays who live in small societies?

There is still a very long way to go and a very difficult task to be done single handed. The equality of all citizens in the eyes of the law is only a minimum demand. What must be achieved is true equality in the minds of all people, in every day life.

### **SCOTLAND REPEALS SECTION 28**

*By Rex Wockner*

Scotland's newly created Parliament voted June 21 to locally repeal Section 28, a 10-year-old U.K. law that prohibits cities from "intentionally promot[ing] homosexuality" or teaching "the acceptability of homosexuality as a pretended family relationship" in schools.

The vote was 99 to 17 with two abstentions.

Nicola Sturgeon of the Scottish National party commented: "A discriminatory and shameful piece of legislation that was imposed on Scotland by Westminster will today be repealed by the Scottish parliament ahead of other parts of the U.K. That says something about the state of Scotland that we can all be proud of."

Trish Godman, Labour MSP for West Renfrewshire, said, "After all the raised voices, this is a day for quiet pride as we point the way to a new and tolerant Scotland."

Legislation to scrap Section 28 in England has been stonewalled by the Conservative-dominated House of Lords.

### **SECTION 28 NOT REPEALED IN THE UK**

*By Mike Peacock, REUTERS, July 24, 2000*

LONDON - British Prime Minister Tony Blair is struggling to save one of his Labour party's flagship policies after being dealt an embarrassing defeat in the House of Lords.

The upper house of parliament voted late on Monday to reject the Local Government Bill, which would have scrapped a clause introduced by Margaret Thatcher's Conservative government that forbids local authorities to "promote homosexuality."

Blair insisted he remained committed to repealing the ban, enshrined in a clause known as Section 28, but gave little indication of what he might do.

With parliamentary time running short, he may shelve his long fight to scrap the ban -- which schoolteachers say prevents them from dealing with homophobic bullying and ignorance -- and save the wider bill that includes measures to elect city mayors and other reforms to local government.

"Whether it's done in a single bill or a separate bill, it's the issue that's got to be decided," Blair told grassroots party supporters in London shortly before the vote.

A government minister in the upper chamber, Lord Whitty, said the issue was one of equality.

### **EQUALITY FOR ALL?**

"We believe that those whose sexuality is different from the majority...are entitled from the public authorities of this realm to equal treatment," he said.

"This House has always seen itself and has constitutionally had a special responsibility to protect the rights of minorities. If we retain Section 28, this House is doing precisely the opposite."

The House of Lords has handed the government a series of defeats since Blair threw out most hereditary peers last year.

In February it rejected the repeal of Section 28 by 45 votes. Since then, Blair has appointed 30 new Labour and Liberal Democrat peers.

His government has also responded to conservative pressure by amending an education bill to say that in sex education schoolchildren should "learn the nature of marriage and its importance for family life and the bringing up of children."

But Monday's margin of defeat -- by 270 votes to 228 -- was almost identical to February's.

Conservative peer Baroness Young, who spearheaded opposition to the government over the issue, said she was delighted with the vote but was totally against anti-gay prejudice.

I believe that the House of Lords has yet again clearly spoken for the majority of the British people," she said.

"Tony Blair should now abandon his obsession with promoting homosexuality and get down to what he was elected (for) three years ago -- governing for the middle majority, not dancing to the tune of the politically correct few."

The Scottish parliament scrapped the clause in June.

## **JUDGMENT IN THE CASE OF A. D. T. v. THE UNITED KINGDOM**

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

The European Court of Human Rights has today notified in writing judgment in the case of A. D. T. v. the United Kingdom [fn]. The Court 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 and that it was not necessary to examine the case under Article 14 (prohibition of discrimination). Under Article 41 (just satisfaction), the Court awarded the applicant 20,929.05 pounds sterling (GBP) in respect of damages, and GBP 12,391.83 for legal costs and expenses.

### 1. Principal facts

The applicant, a British national born in 1948, is homosexual. Following a police search of his home, he was arrested and taken to the local station where he admitted that certain videos seized during the search contained footage of himself and up to four adult men engaging in sexual acts in his home. He was convicted of gross indecency between men contrary to Section 13 of the Sexual Offences Act 1956 and on 20 November 1996 was conditionally discharged for two years.

The applicant submits that being charged and convicted for his participation in sexual acts with more than one other consenting adult male in the privacy of his own home constituted an interference with his private life, as guaranteed by Article 8 of the Convention. He further complains of discrimination, under Article 14 of the Convention, as a group of heterosexual individuals or homosexual females involved in similar sexual activities would not have been prosecuted, there being no legislation prohibiting such acts.

### 2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 25 March 1997.

On 16 March 1999 the Court (Third Section) declared the application admissible. A hearing was held on 30 November 1999. Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul Costa, (French), President,  
Willi Fuhrmann (Austrian),  
Loukis Loucaides (Cypriot),  
Pranas Kuris (Lithuanian),  
Sir Nicolas Bratza (British),  
Hanne Sophie Greve (Norwegian),  
Kristaq Traja (Albanian), judges,  
and also Sally Dollé, Section Registrar.

### 3. Summary of the judgment

#### Complaints

The applicant complained that his rights guaranteed under Articles 8 and 14 of the European Convention on Human Rights had been violated.

#### Decision of the Court

#### Article 8

The Court found an interference with the applicant's right to respect for his private life both as regards the existence of the law prohibiting consensual sexual acts between more than two men in private, and as regards the conviction itself.

The Court noted that the conviction was based not on the fact that the recordings had been made, but on the activities themselves. Further, the activities in the case were purely and genuinely private in the sense that there was no real likelihood of the video recordings entering the public domain. In such circumstances, the margin of appreciation allowed to the respondent State was narrow.

The Court found no "pressing social need" which could justify either the legislation at issue in the case or its application in the proceedings against the applicant, and therefore found a violation of Article 8.

Article 14 taken in conjunction with Article 8

Having found a violation of Article 8, the Court considered that it was not necessary to examine the case under Article 14 as well.

Article 41

The Court awarded the applicant the sum of GBP 20,929.05 for damages and GBP 12,391.83 for costs and expenses.

The full text of the judgement is available at:

<http://www.echr.coe.int/hudoc/ViewRoot.asp?Item=2&Action=Html&X=801102850&Notice=0&Noticemode=&RelatedMode=1>