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

EMPLOYMENT DIRECTIVE

EU press release

(EU) EU/EMPLOYMENT: Approving a general directive, Council bans all forms of employment and work discrimination within Union Brussels, 18/10/2000 (Agence Europe) - "We trust that Europe will state loud and clear that it cannot accept any form of discrimination of any kind - whether of race, sex or religion -, in its employment practices".

This wish, expressed by Martine Aubry during the work of the Employment and Social Policy Council held in Luxembourg, on Tuesday, was made concrete with a unanimous Council political agreement during the evening and after six hours of negotiation on the directive concerning the creation of a general framework in favour of equal opportunities for employment and work. The agreement was obtained on the basis of a compromise text to address difficulties experienced by some Member States.

The text approved on Tuesday evening after a debate was described as "very difficult" by Commissioner Anna Diamantopoulou and should be transposed into Member States' national body of law over a transitional 3-year period. Nonetheless, this period will be extended to six years to harmonise national legislation with European provisions to counter discrimination against older people, the disabled and the armed forces (this last point is particularly valid for the United Kingdom, which requested an 8-year period of adaptation. See yesterday's EUROPE, p.9), as long as each Member State presents an annual report that shows progress accomplished in this field.

Each Member State is thus expected to propose its own legislation in the general framework of this directive, said the Commissioner.

Ms Diamantopoulou stressed on Wednesday morning, at the Commission's pressroom in Brussels, the importance and the significance of the agreement reached the day before. She recalled that, in November last year, the Commission had proposed two directives aimed at banning any kind of discrimination within the Union. Six months later, the Council, under Portuguese Presidency, had approved the first section, formally banning all discrimination based on race. Now, under French presidency, the same Council has approved the second section, banning all other kinds of discrimination, whether based on religion or creed, sexual leanings, age or handicap.

All the Ministers as well as the Commission acknowledged that this is an "historic step" which confirms that the Union is not just an economic organisation but a "Community of values".

Ms Diamantopoulou then explained that the last difficulty, raised by the Irish delegation, had been overcome with a reference to the ethos of religions. To put it clearly, the religious schools (and other bodies linked to any religion) will not be able to claim that all their teaching staff should practice the religion of the school, but that they should respect the ethos of this religion. The Council has been careful to find an appropriate translation of this Greek word in all the EU's languages, in order to avoid any ambiguity or misunderstanding.

After these desultory negotiations, the ministers held a brief discussion on the very controversial draft proposal on worker information and consultation in the Community, which aims to compel the companies of the Union, which have at least 50 employees, to inform and consult the personnel on the major events within the enterprise. The Council invited the delegations to submit their observations in writing with a view to continuing work in the run up to the Council scheduled for 27/28 November.

Finally, the ministers said farewell to Martine Aubry, for whom this was the last Council, as she is leaving the government to seek the function of mayor of Lille. Anna Diamantopoulou warmly thanked Martine Aubry for "her commitment and the major role that she has played in making the social agenda move forward". Expressing the feelings of all his colleagues, Luxembourg's Labour Minister Biltgen said "Martine Aubry is a great lady in European social policy. She has given it fresh impetus".

ILGA -EUROPE WELCOMES EU ANTI-DISCRIMINATION DIRECTIVE

ILGA -Europe is extremely pleased that the governments of the 15 EU Member States have finally agreed to a directive on equal treatment in employment and occupation. The decision by the Council of Ministers on 17 October followed almost two years of discussions and negotiations on implementing Article 13 of the Treaty of Amsterdam.

The directive will forbid discrimination on the grounds of religion or belief, disability, age and sexual orientation in all aspects of employment and occupation, including recruitment and vocational training. It is the first piece of EU legislation with relevance for all Member States that explicitly covers sexual orientation. The text will now be finalised by the lawyer-linguists before the formal legal adoption of the directive. After publication in the Official Journal of the EU, which is expected in a couple of months, the Member States will have three years to implement the measures on religion and sexual orientation and six years to implement the measures on disability and age into national legislation.

Jackie Lewis, co-chair of the European Region of the International Lesbian and Gay Association, said "It is a historic decision for lesbians and gay men. It is arguably the most important law ever introduced in relation to sexual orientation discrimination: it will lead to the banning of all aspects of employment discrimination first in the 15 European Union member states, and then in a further 13 countries, as those countries currently applying to join the European Union become members."

"It is also a historic success for the European lesbian and gay movement which has been lobbying for five years to get sexual orientation included in Article 13 and to have sexual orientation taken duly into account when it came to adopting measures implementing Article 13. Our struggle, however, is not yet over because organisations in the Member States and accession countries must now fight for comprehensive implementation into national legislation. The provisions in the directive are only the minimum, so there is much room for improvement at the national level. ILGA Europe will also continue to try to persuade the European Commission to table further proposals to prohibit discrimination in other areas of EU competence, for example in access to goods and services."

"Measures based on Article 13 must be adopted unanimously by all 15 governments, and therefore there have been tough negotiations in the Council working group dealing with this directive", added Kurt Krickler, co-chair with Jackie of ILGA -Europe. "It was quite amazing to see that it was the UK and the Irish Governments that tried until the very last minute to water down the directive, while the Austrian right-wing Austrian People's Party/Freedom Party Government fully supported the Commission proposal. The UK and Irish Governments tried to expand the exceptions provided for religious employers as widely as possible. In the end a compromise was reached which we are not really happy with, but we can live with."

The Council of Ministers also adopted a Community Action Programme to combat discrimination on the Article 13 grounds, including sexual orientation. The programme will run from 2001 to 2006 and will have a budget of almost 100 million euros. It also provides for core funding for European-level non-governmental organisations with experience of fighting discrimination and acting as advocates of people exposed to discrimination in order to promote the development of an integrated and co-ordinated approach to the fight against discrimination. ILGA -Europe expects to receive core funding from the Programme.

**PARLIAMENTARY ASSEMBLY OF THE
COUNCIL OF EUROPE DELIVERS HISTORIC
VOTE IN FAVOUR OF LESBIAN AND GAY
RIGHTS**

ILGA-EUROPE MEDIA RELEASE

Assembly calls for anti-discrimination legislation, the repeal of discriminatory sexual offences and age of consent laws, and the introduction of registered partnership, across Europe.

The Parliamentary Assembly of the Council of Europe earlier today (26 September 2000) voted overwhelmingly in favour of a sweeping series of recommendations in support of lesbian and gay rights. The Assembly, which is made up of a representative selection of members of parliament from some 41 European countries embracing a population of 800 million people, called upon the governments of Europe:

- to include sexual orientation among the prohibited grounds for discrimination in their national legislation;
- to revoke all legislative provisions rendering homosexual acts between consenting adults liable to criminal prosecution;
- to release with immediate effect anyone imprisoned for sexual acts between consenting homosexual adults;
- to apply the same minimum age of consent for homosexual and heterosexual acts;
- to take positive measures to combat homophobic attitudes, particularly in schools, the medical profession, the armed forces and the police, by means of training;
- to co-ordinate efforts with a view to simultaneously launching a vast public information campaign in as many member states as possible;
- to ensure equal treatment for homosexuals with regard to employment;
- to adopt legislation which provides for registered partnership;

The Assembly also repeated its call for sexual orientation to be added to the grounds for discrimination prohibited by the European Convention on Human Rights.

The Recommendation, put forward by Hungarian Member of Parliament Csaba Tabajdi, was the most important statement of support for lesbian, gay and bisexual rights by the Assembly since an historic declaration in 1981. It included a forthright preamble which attacked homophobic statements by certain politicians and religious leaders:

"Nowadays, homosexuals are still all too often subjected to discrimination or violence at school or in the street. They are perceived as a threat to the rest of society, as though there were a danger of homosexuality spreading once it became recognised.....This form of homophobia is sometimes propagated by certain politicians and religious leaders, who use it to justify the continued existence of discriminatory laws and, above all, aggressive or contemptuous attitudes."

The vote was due to have taken place in June, but was blocked at that stage by opponents because the Assembly was not quorate. However, a Recommendation to recognise persecution based on sexual orientation as a grounds for asylum, and the immigration rights of bi-national same-sex couples, was passed successfully, the two Recommendations demonstrating the breadth of the Assembly's support for lesbian and gay rights.

Nico Beger, ILGA Europe delegate to the Council of Europe commented: "This is a great development. The recommendations were carried by a majority of 77%! Although the vote is not binding on national governments, it represents a most powerful statement of democratic opinion across Europe, and as such will help influence the development of government policies across the continent."

Her co-delegate, Nigel Warner, added: "this is a tremendous success both for the members of parliament from many nationalities who have worked so hard on this issue, and for the many lesbian and gay individuals and organisations from across Europe who have lobbied so effectively".

The Report and Draft Recommendation are available at: <http://stars.coe.fr/doc/doc00/edoc8755.htm>; the final text of the Recommendation will be available tomorrow at the Parliamentary Assembly website, <http://stars.coe.int/asp/DocByDate.asp>.

SITUATION OF LESBIANS AND GAYS IN COUNCIL OF EUROPE MEMBER STATES

Recommendation 1474 (2000) by the Council of Europe

1. Nearly twenty years ago, in its Recommendation 924 (1981) on discrimination against homosexuals, the Assembly condemned the various forms of discrimination suffered by homosexuals in certain Council of Europe member states.

2. Nowadays, homosexuals are still all too often subjected to discrimination or violence at school or in the street. They are perceived as a threat to the rest of society, as though there were a danger of homosexuality spreading once it became recognised. Indeed, where there is little evidence of homosexuality in a country, this is merely a blatant indication of the oppression of homosexuals.

3. This form of homophobia is sometimes propagated by certain politicians and religious leaders, who use it to justify the continued existence of discriminatory laws and, above all, aggressive or contemptuous attitudes.

4. Under the accession procedure for new member states, the Assembly ensures that, as a prerequisite for membership, homosexual acts between consenting adults are no longer classified as a criminal offence.

5. The Assembly notes that homosexuality is still a criminal offence in some Council of Europe member states and that discrimination exists in a great many others with regard to the age of consent.

6. The Assembly welcomes the fact that the European Court of Human Rights, in its *Dudgeon v. United Kingdom* judgment as early as 1981, held that the prohibition of sexual acts between consenting male adults infringed Article 8 of the European Convention on Human Rights, and that more recently, in 1999, it expressed its opposition to all discrimination of a sexual nature in its *Lustig-Prean and Beckett v. United Kingdom* and *Smith and Grady v. United Kingdom* judgments.

7. The Assembly refers to its Opinion No. 216 (2000) on draft Protocol No. 12 to the European Convention on Human Rights, in which it recommended that the Committee of Ministers include sexual orientation among the prohibited grounds for discrimination, considering it to be one of the most odious forms of discrimination.

8. While laws on employment do not explicitly provide for restrictions concerning homosexuals, in practice homosexuals are sometimes excluded from employment and there are unjustified restrictions on their access to the armed forces.

9. The Assembly is pleased to note, however, that some countries have not only abolished all forms of discrimination but have also passed laws recognising homosexual partnerships, or recognising homosexuality as a ground for granting asylum where there is a risk of persecution on the basis of sexual orientation.

10. It is none the less aware that recognition of these rights is currently hampered by people's attitudes, which still need to change.

11. The Assembly therefore recommends that the Committee of Ministers:

i. add sexual orientation to the grounds for discrimination prohibited by the European Convention on Human Rights, as requested in the Assembly's Opinion No. 216 (2000);

ii. extend the terms of reference of the European Commission against Racism and Intolerance (ECRI) to cover homophobia founded on sexual orientation, and add to the staff of the European Commissioner for Human Rights an individual with special responsibility for questions of discrimination on grounds of sexual orientation;

iii. call upon member states:

a. to include sexual orientation among the prohibited grounds for discrimination in their national legislation;

b. to revoke all legislative provisions rendering homosexual acts between consenting adults liable to criminal prosecution;

c. to release with immediate effect anyone imprisoned for sexual acts between consenting homosexual adults;

d. to apply the same minimum age of consent for homosexual and heterosexual acts;

e. to take positive measures to combat homophobic attitudes, particularly in schools, the medical profession, the armed forces, the police, the judiciary and the bar by means of basic and further education and training, as well as in sport;

f. to co-ordinate efforts with a view to simultaneously launching a vast public information campaign in as many member states as possible;

g. to take disciplinary action against anyone discriminating against homosexuals;

h. to ensure equal treatment for homosexuals with regard to employment;

i. to adopt legislation which makes provision for registered partnership;

j. to recognise persecution against homosexuals as a ground for granting asylum;

k. to include in existing fundamental rights protection and mediation structures or establish an expert on discrimination on grounds of sexual orientation.

TRANSLATIONS OF DUTCH SAME-SEX MARRIAGE AND ADOPTION BILLS

By Kees Waaldijk

At last I have found time to incorporate the various amendments into my translations of the Dutch legislative proposals on same-sex marriage and adoption. See my revised summary-translations of the marriage bill <http://ruljis.leidenuniv.nl/user/cwaaldijk/www/NHR/transl-marr.html> and of the adoption bill [Http://ruljis.leidenuniv.nl/user/cwaaldijk/www/NHR/transl-adop.html](http://ruljis.leidenuniv.nl/user/cwaaldijk/www/NHR/transl-adop.html)

The sum up the news of last month:

On 12 September 2000 the Lower House of the Dutch Parliament has approved the two bills, introduced by the Government on 8 July 1999, to open up both marriage and adoption to same-sex partners. The marriage bill obtained a majority of 109 against 33 votes. The adoption bill obtained a similar, but uncounted, majority.

The bills have now been introduced in the Upper House (the Dutch Senate). This part of Parliament has a full power of vetoing any bill. However, a clear majority in favour of both bills seems politically very likely. It is hoped that the Upper House will vote on it before the end of the year 2000. Then the bills would acquire the signature of the Her Majesty the Queen, and of the responsible minister (Mr. Job Cohen, State-Secretary for Justice). If all goes as quickly as now planned, the new laws would take effect on 01.01.01. But it could also be a few months later.

As to foreigners marrying in the Netherlands: in each couple that wants to marry in the Netherlands, at least ONE of the partners should be either a Dutch citizen or a resident of the Netherlands. This rule has been applicable to different-sex marriages, and will be applicable to same-sex marriages. There is another bill in Parliament, which would make the same rule applicable to partnership registrations (replacing the existing requirement that EACH registering partner should be either a Dutch citizen or a lawful resident).

RECENT SPANISH SUPREME COURT RULING HAS EQUATED DP'S AND MARRIAGES FOR RESIDENCE PERMITS FOR FOREIGNERS
by Cesar Leston, Fundacion Triangulo

On the same day four bills on DP rights were defeated in Parliament, a setback to Government refusal to acknowledge DP's

When it comes to granting residence permits, a ruling by the Spanish Supreme Court says, DP's and marriages must be considered on an equal footing, in order to preserve family re-groupment rights. Such was the outcome of Fernando's lawsuit, a south american citizen in a DP with a Spanish female, who applied for a residence visa because of the "exceptional circumstance" of family regrouping.

This ruling of the Supreme Court reversed a previous one by the Catalonia Higher Court when, in December 1995, a request from Fernando, a former south american priest who applied for a residence permit, was turned down.

Wedding arrangements

According to the evidence submitted during the process, this foreign citizen was in a permanent domestic partnership for more than three years with a person living legally in Spain; they even had made some wedding arrangements. Also, Fernando had a clean criminal record.

The Catalan Higher Court (lower instance than the Supreme Court) dismissed the request on the basis that marriage and domestic partnership can not be viewed on an equal basis for granting residence permits for, among a number of reasons, the Constitutional Court ruled some years ago that DP and marriage are not equivalent, since the commitments of both derive not from law but from cohabitation.

Also the Catalan Higher Court said that the partnership should be proven and ought to be stable and not intermittent, and that this circumstance should be well-known and public. According to the rule, the request by the former priest also infringed some rulings according to which a foreigner in a partnership could not be considered in an equal footing when applying for residence permits on family regroupment grounds.

Notwithstanding, the ruling by the Supreme Court says that "although marriage and domestic partnership may not be equivalent, this does not mean that every measure targetting marriages should exclude permanent domestic partnerships, for this would violate juridical equality and ban on discriminations".

"IRREPARABLE DAMAGES"

The Supreme Court ruling also says that "marriages and stable partnerships may be considered in equal footing when the rules to be implemented are solely or mainly about cohabitation when affection/love are involved". Another issue the Supreme Court assessed are the "irreparable damages" an interruption of cohabitation might generate in a domestic partnership.

The ruling of the Supreme court means that in this case the situation may be deemed similar as that of a marriage and hence similar criteria should be used.

SPANISH GOVERNMENT SAYS "NO" TO SAME-SEX PARTNERS

by Cesar Leston, Fundacion Triangulo

AFTER SEVERAL YEARS TRYING TO LOOK MODERATES, RULING PARTY LOSES HIS FACE IN AN AGAINST-ALL VOTING IN PARLIAMENT.

Meanwhile, most regions keep their trend towards granting rights to unmarried couples.

At the beginning of the current legislature, a few months ago, four bills on domestic partnerships of either sex were introduced in Parliament by opposition groups. Among other rights, adoption was considered in three of the bills submitted.

The Government party had been promising throughout last year that they were moving to the "center" of the political spectrum; in other words, they would be more liberal on social issues. It then came as a major blow when a Government spokeswoman, ms Rosa Estaras, announced on Friday before the parliamentary debate through EFE, a government-related news agency, that the Popular Party (PP) would vote against a same-sex partner bill next Tuesday. This decision, said Estaras, was 'coherent with PP's position last year on the same issue.' In the aftermath of last election, when PP (with some 38 % of the votes) won an absolute majority, they proclaimed they would rule on the basis of consensus and would not impose their majority on others. But they missed a nice occasion to prove it now. The result of the vote were adamant: the only party who voted against was the PP. All other parties voted for or abstained (this was the case when adoption was the issue).

Gay rights organizations in Spain reacted immediately. Pedro Zerolo, President of the State Federation of Lesbians and Gays said on Friday: 'If this news is confirmed it would be terrible.

After years of fighting and convincing society, the most difficult part, PP has aligned itself with the most reactionary viewpoints'. According to Zerolo lesbian and gay rights in Spain have 'reached a standstill' and the reason could be the power achieved by Opus Dei, a right-wing catholic group, inside the governing party, PP. 'This situation is incredible,' he added, 'PP is the only party that is blocking gay and lesbian rights.' Miguel Angel Sanchez, president of the Triangle Foundation said: 'Spaniards don't deserve this.' Sanchez said that the news about gay marriages with full adoption rights in Holland made him very happy. 'We are proud to be part of the same union - the European Union - as they are.' Nevertheless, Sanchez complained bitterly about the situation in Spain: 'We are always lagging behind Europe,' he said, 'PP should stop trying to be the most right-wing government in the E.U. and vote in favor of granting domestic partnership rights. Otherwise, we are going to be the last country in Europe to have a domestic partnership law.'

According to Mr Sanchez, this showed that "it is clear know who sets the guidelines in the [ruling] party: conservatives and ultra-catholics". "The opposition of the PP" he also said "is at the same moral height than their former opposition in issues such as divorce, use of condoms or abortion".

This is not the first time that a partnership law has been discussed in parliament. Last year PP issued a draft for what they called "civil unions". The draft said that the relationship held by the partners was "not analogous to marriage" and a sexual relationship between the partners was not a prerequisite for signing a union. Gay organizations in Spain were outraged. The bill, they said, could have entitled anyone to form a civil union and be granted certain rights, even neighbors. Miguel Angel Sanchez said: 'This is absurd, and it is really disappointing to see that PP has no intention of acknowledging that gays and lesbians exist. We do not oppose neighbors being entitled to widowhood rights. The thing is we believe that this has nothing to do with the demands of the Spanish society.'

Navarra, Catalonia and Aragon lead the trend. The situation regarding same-sex couples is different in regions such as Catalonia, the first region in Spain to grant same-sex couples legal rights in 1998. Aragon passed a bill the following year, also legally recognizing same-sex couples. But both laws barred the way for adoption rights. Navarra was the first region to allow homosexual couples to adopt children (they are the only ones who can, given their self-ruling status), and, according to the "Movement Against Intolerance", MCI, in neighboring Aragon, it looks like the regional government is rethinking its decision of allowing only heterosexual couples adoption rights. MCI said that the recently approved domestic partner bill could be modified allowing gay couples adoption rights, but that favorable votes are still not completely guaranteed. 'Marcelino Iglesias, the socialist president of the regional government of Aragon,' said an MCI spokesman on Thursday, 'has verbally agreed to the proposal, but the outcome of the voting depends on what the regionalist party (PAR) decides.'

Also other regions have been thinking about it: Andalusia, whose self-rule allows decisions on children temporary fosterings, has already considered granting fostering to same-sex couples while the Balearics are also giving some thought to the matter. Nevertheless, last but not least, the most remarkable issue has been Valencia's government having announced that they will be producing a DP bill. Quite surprising since the ruling party in Valencia is the same than at federal level (PP).