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Editors: Steffen Jensen, Ken Thomassen, Peter Bryld, Lisbeth Andersen and Soeren Baatrup.

Contact to Euro-Letter:

<mailto:steff@inet.uni2.dk>

<http://www.steffenjensen.dk/>

Fax: +45 4049 5297

Tel: +45 3324 6435

Mobile: +45 2033 0840

Mail: c/o Steffen Jensen, Gl. Kongevej 31, 4.th, DK-1610 Copenhagen V, Denmark

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

LAW ON REGISTERED PARTNERSHIP IN GERMANY ACCEPTED

By Gerald Pilz

The parliament has accepted the law for the registered partnership. This law includes the following aspects: the legal institution of the registered partnership in the family law, the right of changing names, a health and care insurance for the registered partnership, shared custody rights for children, immigration and naturalization rights.

The second law, which has also been passed by the parliament (Bundestag), includes equal taxation rights (income taxes, inheritance taxes) and equal benefits for civil servants and the recommendation to use the registrar's office for the registration of gay and lesbian partnerships. But this second law must be approved by the upper house (Bundesrat). The debate in the upper house is scheduled for the 1 December. But it is not very probable that the conservative majority will endorse this second law.

English excerpt of a newspaper report:

The parliament (Bundestag) introduces the same-sex marriage

An act and a signal - One should be glad

The struggle for the homosexual marriage has lasted ten years. Yesterday this struggle has been won. The parliament (Bundestag) has passed two laws. And the first law cannot be vetoed by the upper house (Bundesrat). The second law, which requires the approval of the upper house, has no real chance because the coalition of the Social Democratic Party and the Green Party has no majority in the senate like upper house, which represents the province governments. It is dominated by the conservative Christian Democratic Union, which wages a kind of cultural war on gays and lesbians. But this circumstance will not demean this victory of lesbians and gays. Since registered same-sex couples are subjected to certain obligations, they must be granted legal rights and privileges, too. The courts will agree with this opinion.

(...)

This law will have a strong impact. It will reduce discrimination against homosexuality and even influence conservative milieus. People will get accustomed to state approved same-sex partnerships. This is a historical parallel to the introduction of voting rights for women at the beginning of 20th

century, the accountability of women in the civil law since four decades and the prohibition of corporal punishment in schools in the fifties. This new law for gays and lesbians represents a modern approach of a civic society.

(..)

Thirty years ago homosexuality was completely forbidden in Germany. This tradition is over. Homosexuality is now officially acknowledged by the state.

The remaining legal aspects will be a question of well prepared lawsuits. It will take years, but in the end these lawsuits will be successful. The struggle for the same-sex marriage has proved that. The life for homosexuals will become more and more peaceful. This is a reason to be very glad.

GERMAN PARLIAMENT PASSES PARTNERS BILL

By Rex Wochner

The lower house of Germany's parliament, the Bundestag, passed a two-part gay "life partnerships" bill Nov. 10.

Part one gives registered couples spousal rights and obligations in areas such as tenancy, inheritance, hospital visitation, health insurance, immigration, child custody and alimony. Part one does not need approval from the more conservative upper house of parliament and will become law in a few months.

Part two, which equalizes gay couples in areas such as taxation and welfare benefits, does need approval from the Bundesrat, and faces a tough battle there.

"Our long struggle for equal rights of lesbian and gay partnerships has been acknowledged and has now succeeded," said Manfred Bruns of the German Lesbian & Gay Association. "The debate in the parliament today and all opinion polls prove there is an overwhelming majority among politicians and in the society for the legal recognition of lesbian and gay partnerships. The 10th of November is a historical day for lesbians and gays in Germany."

The Vatican denounced the German parliament for "legitimiz[ing] a moral disorder."

Such laws "disfigure the divine project of matrimony, damage the family, and produce negative effects on society and on new generations," the church said.

Elsewhere, gay couples have nearly all rights of marriage in Denmark, France, Greenland, Iceland, the Netherlands, Norway, Sweden, and the U.S. state of Vermont. Beginning in January, gay couples in the Netherlands will have access to full marriage under the regular marriage laws.

THE DETAILS OF THE REGISTERED PARTNERSHIP IN GERMANY

By Gerald Pilz

The Green Party has published a summary of the registered partnership, which describes all the most important legal provision of the registered partnership law for lesbians and gays.

Legal provisions of the registered partnership law (first part), which has been passed by the parliament. The law will be enacted in summer 2001:

The partners will be acknowledged as relatives. They are obliged to care for each other and to grant mutually maintenance and to live together. The most important legal provisions:

- Official registration: The registration will be performed by a state authority.
- Changing names: Registered partnerships are entitled to the same possibilities of changing names as married couples (for example: if Michael Meyer marries Thomas Schmid, Michael could chose one the following last names: Meyer, Schmid, Meyer-Schmid, Schmid-Meyer).
- Inheritance law: The legal provisions for married couples will be applied to registered partnerships.
- Custody rights: If one partner has children, the other partner will get custody rights for daily life decisions (education, medical care etc.)
- Kinship: The relatives of the other partner will be considered as brothers-in-law or sisters-in-law or as a corresponding kinship.
- Denial of testifying against each other and information rights: The registered partners are allowed to deny to testify against each other in a criminal trial (or in preliminary proceedings). In hospitals and similar institutions the other partner has information rights.
- Rights of the tenant's lease: If one partner

dies, the other partner is allowed to stay in the apartment and to become the obligee of the tenant's lease.

- Social benefits for children: If one partner is unemployed, he/she will get higher unemployment payments if there are children in the registered partnership. This regulation applies to the general children benefits, too.
- Health and care insurance: Registered partnerships get health insurance benefits and care insurance benefits.
- Immigration rights: Foreign partners get a residence permit. The legal provisions for immigration and labor permits for married couples will be applied to registered partnerships, too.

The second registered partnership law has been passed by the parliament (Bundestag), but it requires the additional approval of the upper house (Bundesrat). This law, which is pending in the upper house, includes the following legal provisions:

- Registration at the registry office. (The federal government has proposed to chose this authority, which is also responsible for straight marriages).
- Income taxes: the obligation for mutual maintenance (livelihood) should be considered. Annual tax redcuton benefits up to DM 40.000 (about Euro 20.000) should be granted.
- Inheritance taxes and similar taxes: same provisions as for married couples.
- Law of the civil service: The legal provisions for married civil servants should be applied to registered partnerships.
- Welfare benefits (for emergency cases, housing): The income of the other partner will be considered, too.

IRELAND: ANTI-DISCRIMINATION LEGISLATION COMES INTO FORCE

By Cathal Kelly

The Equal Status Act, 2000, came into force on 25 October 2000. The new law prohibits discrimination and harassment in the provision of goods services on nine grounds, including sexual orientation. The other eight grounds are: gender, marital status, family status, religion, age, disability, race, and membership of the Traveller community. (The Traveller

community is an ethnic minority in Ireland.)

Definitions

Sexual orientation is defined in the Act as "heterosexual, homosexual or bisexual orientation". The Gay and Lesbian Equality Network had lobbied for a definition like this as a response to claims that not defining sexual orientation might extend the protection of the new law to those who said their sexual orientation was paedophilia.

The new law does not refer to transgendered people, but officials of the Equality Authority have said they believe discrimination against transgendered people is covered under the gender ground.

Disability is defined in such a way as to include people who are HIV-positive.

Discrimination is defined quite widely. It includes treating a person less favourably than another on the basis of any of the nine grounds, and covers grounds (i) that exist at present (ii) that existed in the past but no longer exist, (iii) may exist in the future, or (iv) are imputed to the person concerned. It also allows for comparisons between the victim and how another person (I) is, (ii) has been or (iii) would be treated. It also prohibits discrimination against somebody because they are associated with another person - so, for example, a heterosexual friend of a lesbian, gay or bisexual person who is treated less favourably because they are associated with the lgb person is also discriminated against.

Indirect discrimination is also covered. This arises when the provider of a service imposes a condition that affects one category of people more than another category and this condition cannot be justified as being reasonable.

However, organisations are not protected against discrimination. GLEN, the Gay and Lesbian Equality Network, has sought the inclusion of such protection. The example cited was of a lgb organisation trying to book a room in a hotel for a meeting. In the parliamentary debates, the Minister for Justice, Equality and Law Reform said that if an organisation is discriminated against, the appropriate mechanism is for an individual member of that organisation to take a case.

Illegal activity

The law makes it illegal to discriminate in disposing of goods or the provision of a service. Importantly,

the law includes a ban on discrimination when the goods or service are provided to the public generally or to a section of the public, and whether or not payment is involved.

A number of specific areas of activity are discussed in some detail in the legislation: property and accommodation, education, and private clubs.

The law prohibits discrimination in selling or renting property or providing accommodation, with certain exceptions. These exceptions deal with cases where property is left to another in a will or is a gift, where the owner or a close relative will continue to live in the property, or where the property is a small property.

Educational establishments are not allowed to discriminate against students. Again, certain exceptions apply. Most significantly, where a primary or secondary school has been established to promote certain religious values, it can refuse to admit a student somebody who is not of that religion where "the refusal is essential to maintain the ethos of the school". Single-sex schools (but not third level institutions) will be allowed to refuse to admit members of the other sex, and institutions established to train ministers of religion will be allowed to discriminate.

A club that is set up to cater for the needs of people of a particular sexual orientation (or any of the other discriminatory grounds) which refuses to admit other people will not be a discriminatory club.

The law prohibits harassment and sexual harassment. It also requires a person running a shop, bar, school, etc., not to permit any other person who has the right to be present to suffer harassment.

It is illegal to publish an advertisement that indicates an intention to engage in discrimination, and it is illegal to procure another person to engage in prohibited conduct.

A general exception allows reduced fees to be applied to married couples, to people with their children, to people in a specific age group, or to people with a disability.

Promoting and enforcing equality

The legislation provides for a number of approaches to promoting and enforcing equality. These include redress for individuals, mechanisms for dealing with

particular organisations, and mechanisms for dealing with discrimination in particular sectors of industry or in a geographical area.

The Equality Authority is empowered to conduct research and to disseminate information.

Individuals who have experienced discrimination

A person who has been discriminated against can take a case to the Director of Equality Investigations.

Before they take a case, a person has to write to the discriminating person stating their allegation and saying that they intend to take a case if not satisfied with the response. They are entitled to question the discriminating person in order to obtain information to help them decide whether or not to take a case.

This must be done within two months of the incident. (The Director of Equality Investigations may extend the two-month period to four months in exceptional circumstances.) The person against whom the allegation is made has one month to reply.

The Equality Authority - a separate body from the Office of the Director of Equality Investigations - can take a case to the Director if the Authority believes that discrimination is generally being directed against people. The Authority can also take a case when discrimination has been directed against an individual who has not taken a case and it is not reasonable to expect the person to do so. An individual can also ask the Equality Authority to assist them in taking a case.

If both parties agree, the Director can deal with the case through mediation. When mediation fails or is opposed by either party, the Director holds an investigation in private. If an investigation is held, the Director may order compensation be paid or that the persons take action specified by the Director. The maximum compensation the Director can order to be paid is (at present) ir£ 5000 (6348.) Orders of the Director can be appealed to the Circuit Court.

The Director and her staff have the right to enter premises and obtain any records they need. She can also require somebody to appear before her to give evidence.

Dealing with organisations

The Equality Authority, which was established under the Employment Equality Act 1998 (see Euro-Letter, No. 75, November 1999) has been established

* to work toward the elimination of discrimination,

* to promote equality of opportunity in relation to matters covered by the Equal Status Act,

* to provide information to the public about the new law, and

* to keep the new law under review and to make proposals to the Minister for Justice, Equality and Law Reform for amendments to the new law.

The Equality Authority has the power to set up advisory committees. It has set up two such committees, one of which deals with lesbian, gay, and bisexual people.

The Equality Authority has the power to prepare draft codes of practice (for submission to the Minister). A code of practice that has been approved by the Minister can be used in evidence in a case taken under the Act.

The Equality Authority has the power to conduct inquiries, and if the inquiry finds that a person is discriminating, the Authority may serve a non-discrimination notice on that person. A non-discrimination notice sets out what steps the person must take to end the discrimination.

A number of mechanisms are available under the new law for conducting equality reviews or audits and for preparing equality action plans. The focus of an equality review is a business or service provider, a group of businesses or the businesses making up a particular industry or sector of an industry or in a geographical location. The definition makes clear that the activity does not have to be for profit. However, businesses with less than 50 employees are exempt from equality reviews and equality action plans.

The Equality Authority can invite a business (or group of businesses) to carry out an equality review or to prepare and implement an equality action plan, or it may do so itself. The law provides procedures requiring people to produce any information or documents the Authority needs to conduct a review.

Further sources of information

The full text of the Equal Status Act (in English) is 40 pages long and can be downloaded at

<http://www.ir.gov.ie/justice/Publications/Equality/Equal%20Status/equalstat8.htm> (the link was functioning on 17 October 2000). The text of the

Employment Equality Act can be downloaded at http://www.odei.ie/ee_act.htm (the link was functioning on 26 October 2000).

The Equality Authority plans to publish two guides to the Equal Status Act (a long and a short guide). They

will be published on the Equality Authority's web site <http://www.equality.ie> (the site is still under construction as of 24 October 2000).

The website of the Director of Equality Investigations is <http://www.odei.ie/> (functioning on 26 October 2000).

SEXUAL ORIENTATION INCLUDED AS AN EXPRESSLY PROHIBITED GROUND OF DISCRIMINATION IN THE NEW PENAL CODE OF LITHUANIA

By Eduardas Platovas, LGL, www.gay.lt

The Parliament of Lithuania confirmed new Penal Code on 26 September 2000. It will be enforced by the end of 2001 at the earliest after the harmonisation with Administrative code and other codes. Some experts say that the process might take up to four years to complete. The new law will ban a wide range of discrimination forms including sexual orientation discrimination.

Article 169 (Discrimination on the grounds of nationality, race, sex, origin, religion or other group membership) states:

A person, who undertook acts, which were aimed to prevent a population group or its member from participating equally in political, economic, social, cultural, work or other activities or to restrict such rights or freedoms of a population group or its member because of their sex, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or opinions, shall be punishable by public works or fine, or freedom restriction, or arrest, or imprisonment up to three years.

Article 170 (Instigation against any national, racial, ethnic, religious or other population group) also imposes a possible three years imprisonment on persons or companies "which jeer, disdain, instigate to hatred or initiate discrimination towards a population group or its member because of their sex, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or opinions".

It is the first time in the country's legal history that "sexual orientation" has been mentioned in law. The first draft of the new Penal Code, published in 1996, offered no protection from discrimination on the grounds of sexual orientation. Vigorous lobbying by the Lithuanian Gay League, the leading national NGO

for lgbt rights, supported by the media, has resulted in the new breakthrough legislation.

CROATIA: NEW PENAL CODE

by Helmut GRAUPNER, Rechtskomitee LAMBDA, Vienna

Croatia adopted a new Criminal Code in 1997 (Official Gazette "Narodne Novine" No. 110/97). This new Code did away with the prior discriminatory age of consent for homosexual relations.

The (first) Yugoslav Criminal Code of 1929 banned "Lewdness Against the Order of Nature" (anal intercourse) between human beings (Art. 286). Thereby it recriminalized anal intercourse in those parts of the new Yugoslav state, which formerly belonged to the Turkish empire (which decriminalized in 1858) and to the Kingdoms of Serbia and Montenegro. Socialist Yugoslavia restricted the offence to homosexual anal intercourse (Art. 186 CC 1952; maximum sentence reduced from 2 to 1 year in 1959).

In 1971 the competence for Criminal Law legislation (with some exceptions) was referred to the six republics and the two autonomous regions. These enacted their own Penal Codes in the late seventies. While Bosnia-Herzegovina, Macedonia (decriminalized in 1996), Serbia (decriminalized over 18 in 1994) and Cosovo kept the total ban on homosexual anal intercourse, Slovenia, Montenegro and Vojvodina did away with it and hitherto treated homo- and heterosexual contacts alike (age of consent: 14). Croatia did away with the old total ban but introduced a new offence of homosexual relations with persons under 18, thereby decriminalizing homosexual anal intercourse over 18 but at the same time newly criminalizing lesbian contacts (over 14 and) under 18 as well as other gay male contacts than anal intercourse (over 14 and) under 18.

The new Penal Code of 1997 does not contain such a provision anymore. It establishes a general age of consent of 14 years (Art. 192, 193 CC). Also cohabitation with a 14-under 16 year old adolescent in a non-marital relationship is penalized equally (Art. 214 CC).

The new CC contains extensive offences for violating fundamental rights. Of particular relevance for l/g/b-rights seem the offenses of "Violation of the Equality of Citizens" (Art. 106 CC: denying or limiting freedoms or rights laid down in constitution, statutes or other legal provisions on the basis of ... other characteristics ... or on the basis of such difference granting

any privileges or advantages ...), “Violation of the Right to Work and Other Labor – Related Rights” (Art. 114 CC: denying or limiting the right to work, the freedom of work, the free choice of vocation or occupation, access to a work place and to duties offered everyone under the same terms ...) and “Racial and Other Discrimination” (Art. 114 CC: persecution of organizations or individuals for promoting equality between people).

Art. 61 of the Croatian Constitution of 1998 orders (some) legal recognition of non-marital relationships: “The family enjoys special state-protection. Marriage as well as the legal conditions in marriage, in non-marital communities and the family are regulated by law.”

NEW IMMIGRATION RULES IN THE UK

By Matthew Davies, STONEWALL

On the 2nd October new immigration rules came into effect. The unmarried partners concession has now become an immigration Rule. It is Rule 295D-O. All the requirements are the same.

This is an important development. An Immigration Rule is a statutory instrument and of far more importance than a mere concession. It means that if an application is refused and you lodge an appeal you can actually win the appeal if you can persuade the immigration adjudicator that you meet all the requirements of the Rule (whereas before the immigration adjudicator could only allow the appeal in very limited circumstances).

An immediate practical implication is that the Home Office have now designed a form specifically for unmarried and married partners which is the new **FLR(M)**. This requires both applicant and partner to sign a declaration that they have lived together in a relationship akin to marriage which has subsisted for two years. If you do not meet this criteria it is arguable that you should still use the old form **FLR(O)** since your application will be outside the Rules

The form says that straightforward urgent applications may be dealt with on the same day if you attend in person or alternatively within 3 weeks if sent by post. The form says that more complicated cases should be completed within 12 weeks.

These are important positive changes putting the immigration position of same sex partners on a more secure legal foundation. Coming just three years after the Concession was first introduced it is another step

on the road towards equality

New Immigration Categories

Those who do not qualify under the Unmarried Partners Rule may be interested to know of a few new other categories that have now been introduced (either as rules or policies);

- Innovators pilot scheme
a new category designed to attract and select outstanding entrepreneurs whose business proposals will result in exceptional economic benefit to the UK. It is open to applicants with plans for establishing a business in any sector but is especially tailored to those entrepreneurs who plan to exploit the economic opportunities of the rapidly developing science and technology based sectors, including businesses specialising in e-commerce. There are three minimum requirements which if met will entitle the application to be selectively assessed against a points scoring system (points given for personal characteristics, quality of business plan and economic benefits to the UK). The minimum requirements are that the business will create two full-time jobs, the applicant will have at least 5% shareholding and will be able to support themselves without working other than in the business. Full details on the Home Office web site.
- Re-sits of examinations / writing up a thesis / students unions sabbatical officers
Special categories have been introduced for these situations which may be of help to those currently here as students – not that we would encourage you to fail your exams or enter student politics just to build up the two years!

“Family visitor” defined to include unmarried partners

Other new immigration regulations (SI2000/2446 and 2244) include the phrases “member of family” and “family visitor”. The latter is in the context of giving people the right to appeal if they are refused a visa to visit a family member. These phrases are, for the first time, defined to include unmarried partners (including same sex) where a couple have been living together for two of the preceding three years. Anyone who applies for a visitors visa in order to visit their partner will have a right of appeal if it is refused but *only* if they have lived together with their partner for two of the preceding three years. This obviously will be of no help to those visiting their partner in order to build up the two years so they can make a relationship application – their only remedy for a visitors visa refusal will remain judicial review (and possibly a Human

Rights Act appeal – see over).

Partners of EEA nationals

The Regulations (SI 2000/2326) setting out who can accompany an EEA national to the UK have been changed to include “members of the household”. This is defined as a person who (a) is dependent on the EEA national; (b) is living as part of the EEA national household outside the UK or (c) was living as part of the EEA national household before the EEA national came to the UK.

This new regulation is open to interpretation and on the face of it there would appear to be nothing stopping a non European partner of an EEA national from claiming to be a member of the household if the above conditions are met regardless of the length of the relationship. This interpretation would comply with the purpose and spirit of European Union law, which is to place no obstacles in the way of a person exercising their freedom of movement rights.

Human Rights Act – How it might help

The unmarried partners concession has dramatically changed many people’s lives for the better. However there are still those who despite the concession (or Rule as it is now) remain separated from their partners or face removal from the UK because they do not meet the requirements of the Rule.

The answer for some may lie in the new Human Rights Act combined with the coming into force of the Immigration and Asylum Act 1999. These incorporate the European Convention on Human Rights into British law and mean that any immigration decision can be appealed against if it breaches a person’s human rights. Article 8 of the Convention gives everyone the right not to have their private life interfered with by the Government unless it can be justified. It is arguable that insisting that you have two years continuous cohabitation before allowing you to enter or extend your stay in the UK is an unjustified interference with your right to have a relationship with the person of your choice. Subsequent removal of a person from the UK causing a separation is likely to be a breach of Article 8 if there are real obstacles to the couple continuing their relationship elsewhere.

To make out a claim that removal (or continued separation) breaches the Human Rights Act it will be necessary to consider the following in respect to the country of origin of the foreign partner;

- Is the British (or settled) partner *entitled* under the immigration laws of his partners country of origin to join him/her there.
- If so, are they able to meet the requirements im-

posed by those laws

- Can the British partner speak the language
- Will the British partner be entitled to and be able to obtain employment
- Will the British partner be able to continue to pursue his/her career
- Would the “moral and physical integrity” of either party be at risk (i.e. would they face prosecution for homosexual acts or would they face violence/harassment from the government, general populace or family members)
- Is it reasonable to expect the other family members to leave the country of their home and citizenship considering their other family ties.

Depending on the answers to these questions it may be possible to show that there are clear obstacles to continuing your relationship if removal takes place or separation continues. If the partner is from the EU rather than being British the same questions arise but you will also need to consider whether the couple can live together in the EU country.

Once you have established that there are obstacles to you continuing your private life in the foreign partners country the burden shifts to the Home Office to justify the interference with your private life. They can only justify it on the basis of specified legitimate aims and the interference has to be proportionate to the aim pursued.

There appears to be great scope for immigration adjudicators to find that either no legitimate aim is being pursued or that separation is such a drastic consequence as to be disproportionate to any aim pursued. There is no case law from the European Court of Human Rights on a gay immigration case to influence adjudicators one way or the other. The four “homosexual immigration cases” that have been taken to Europe to date were all declared inadmissible so never reached the Court. Lawyers representing should however be aware of these cases and the admissibility decisions can be found at the Council of Europe’s website at www.coe.fr. The cases are; 16106/90, 14753/89, 12513/86, and 9369/81.

There is also scope for argument that the two year rule is discriminatory on the grounds of marital status since it does not apply to married couples. This discrimination is arguably in contravention of Article 14 of the ECHR combined with Article 8. Discriminatory treatment in the immigration context is in itself arguably degrading or inhuman treatment contrary to Article 3 of the ECHR (the Court has previously held racial discrimination in the immigration context to breach Article 3). An excellent text on the subject is

"Sexual Orientation and Human Rights" by Robert Wintemute, Clarendon Press Oxford, 1995.

Our Website

The new Sig website at www.stonewall-immigration.org.uk, entirely produced in house by one of our volunteer team, was launched simultaneously with the office move and has proved an invaluable resource.

From 20th June to 8th September, 2000, over 2,800 people have visited the site which contains a full copy of the briefing document (recently updated to reflect the change from concession to immigration rule) and includes advice on how to fill out the new form FLR(M).

In the same period our volunteers have received and answered over 450 emails and we continue to operate an information phone line three afternoons/evenings per week.

There could hardly be a clearer indication of the ongoing need for the Stonewall Immigration Group.

SWITZERLAND: GOVERNMENT FOR "LIGHT REGISTERED PARTNERSHIP"

By Martin Abele

The Swiss government, the Bundesrat, has decided, that lesbian and gay couples must receive a legal recognition of their partnerships. The federal department of Justice is now officially mandated to present a draft for a registered partnership. The new law however shall not lean on to the established Scandinavian model. The Bundesrat expressly wishes a solution, that keeps clearly distinct from marriage.

Mandated by a parliamentary resolution dating back to 1996, the department of Justice last year published a report on the situation of gay and lesbian couples in Switzerland. It then presented four possible solutions for their judicial problems. The reactions to this promulgation showed that a vast majority of the Swiss cantons (regions), parties and organisations favoured the model of a registered partnership. However, many of them demanded, it had to be clearly avoided, that the marriage could be devaluated by the new law.

The minister of Justice, Christian Democrat Ruth Metzler, now took up these voices and decided for a light version of the registered partnership. She argued,

religious feelings of the people had to be taken in mind. "The new law", said Metzler, "should take in consideration the special nature of same-sex couples". In the ministers opinion these are for example, that gays and lesbians don't have children and that normally both of them are earning money. Metzler herself does not have children and both her and her husband are money-makers.

The Swiss gay federation Pink Cross and the lesbian organisation LOS commented the decision as disappointing. LOS-spokeswoman Gioia Hofmann said: "We want the same rights, not special rights". And the president of Pink Cross warned, the governments decision kept the door open for further discriminations. "There is a big risk, that at the end of the legislative process only a poor product will remain", he noted. The new law is expected to come into force not before the year 2003.

Federal court rules against lesbian couple
This is already the second disappointment for the Swiss gay and lesbian movement within two months, after this August's ruling of the federal court, that the foreign partner of a lesbian woman was not granted the right to stay in Switzerland. Two judges voted in favour of the couple, three against. The judges ruled, that on principal foreign partners of Swiss homosexuals do have the right to receive a residence permit. In this case however, they ruled it bearable for the couple to live in the partners home-country New Zealand. The two women got to know each other in New Zealand and also spent the last year there, after the local authorities had rejected the request for a residence permit. The judgement is rather schizophrenic, since it recognises the right of lesbian and gay couples to receive a residence permit if they live in a stable long-term-partnership, but at the same time doesn't leave the possibility to settle in Switzerland.

PS: For more informations in German see:
<http://pinkcross.ch/german/fax.html>
<http://tagesanzeiger.ch/ta/taZeitungRubrikArtikel?ArtId=43577&ausgabe=329>
http://tagesanzeiger.ch/ta/taFrameSet.html?framemitt e=/service/smdsearch/index.htm&framerechts=/service/archiv_nav.htm

**EUROPEAN COURT OF HUMAN RIGHTS:
CASE "SZIVÁRVÁNY et. al. VS. HUNGARY" -
A MAJOR BACKLASH FOR L/G/B RIGHTS**
by Helmut GRAUPNER, Rechtskomitee LAMBDA,

Vienna

After the landmark judgements of the new European Court of Human Rights in Strasbourg, *Lustig-Prean & Beckett, Smith & Grady vs. UK and Salgueiro da Silva Mouta* of last year and *A.D.T vs. UK* this year, the Court issued a decision which turns out as a major backlash for l/g/b (human) rights.

In 1996 the Hungarian Constitutional Court declared constitutional the ban on gay (rights) organisations which do not restrict membership to persons over 18. In its reasoning the Court speaks of adolescents as “children” (whereas no language in the world ever used the term “child” for persons after their early teens) and considers membership in gay or lesbian (rights) organisations to involve concrete risks endangering the development of the “child”. The state had to protect the “child” from taking risks in connection with which, because of his/her age (presumed to correlate with physical, mental, moral and social maturity), he/she is not able get to know and evaluate either the possibilities or the consequences of his/her choices for his/her own personality, later life and social adaptation. Also lesbian, gay and bisexual adolescents would have to go along with the age limit “exactly in the interest of minors of the same age group which is to be protected”. According to the Hungarian Constitutional Court the setting of an age limit for membership primarily protects the responsible and mature decision of those who will bear the consequences of their decision for their whole life.

The (potential) founders of the gay organisation involved applied to the European Court on Human Rights which delivered its decision on 12th May 2000 (*Szivárvány, Juhász & Palfy vs. Hungary*, appl. 35419/97). In this decision the Court declared the application as being manifestly ill-founded and therefore inadmissible. The reasoning of the Court confines itself to the statement that the ban of persons under 18 from membership in gay (rights) organisations was prescribed by law, pursued the legitimate aims of protection of morals and the rights and freedoms of others, and that the inference (the ban) was proportionate to the aim pursued and could, therefore, reasonably be regarded as necessary in a democratic society. Mere repetition of the criteria a law has to fulfil to be in conformity with the Convention. But no reasons why these criteria should be fulfilled. And moreover the Court even departed from its hitherto case-law (starting with the *Handyside-Judgement* 1976) which established that an inference for being qualified as being “necessary in a democratic society” there must be a “pressing social need” for the inference in questions and a relationship of proportionality

between the means employed and the aims sought. In the current decision the Court does away with the requirement of a “pressing social need” for the inference and lets a relationship of proportionality suffice.

The decision is not only deplorable in its core area, the right of association (Art. 11 ECHR) (e.g. l/g/b youth groups can now be banned by law!!), but also is bad news for the four age of consent cases currently pending before the Court (one from the UK and three from Austria). It seems not clear if the applicants made an equality argument (Art. 14) as well but nevertheless this decision lets fear for the age of consent cases since on the one hand the Court does not feel itself to be bound by the arguments of the parties and on the other the reasoning of the Hungarian Constitutional Court, now upheld by the European Court of Human Rights, painfully reminds of the traditional justifications put forward to defend discriminatory age of consent regulations: that homosexuality were the result of a decision, that such a decision involved concrete risks for personality, later life and social adaptation, that it had consequences which had to be borne for the whole remainder of one’s life and that therefore minors have to be banned from taking such potentially dangerous decisions ...

Hungarian Constitutional Court
DECISION 21/1996: 17 MAY 1996
ON THE MINIMUM AGE FOR MEMBERSHIP OF
HOMOSEXUAL-ORIENTED ASSOCIATIONS

“DECISION.

1. The right of the child to protection and care necessary for proper physical, mental and moral development to be provided by the State (Art. 67(1) of the Constitution) establishes the constitutional duty of the state to protect the development of the child. This duty of the State serves as a constitutional basis for the legislature or the courts to restrict -- primarily in the public sphere -- the child in exercising his/her fundamental rights, including the right of association guaranteed in Art. 63 of the Constitution.

Article 67 of the Constitution also means that the state has to protect the child -- beside influences harmful to his/her development -- from taking risks in connection with which, because of his/her age (presumed to correlate with physical, mental, moral and social maturity), he/she is not able get to know and evaluate either the possibilities or the consequences of his/her choices for his/her own personality, later life and social adaptation.

2. On the basis of the above, the child’s membership in associations “related to homosexuality” can be excluded or restricted in laws or in court

decisions. The actual restriction on the child's exercise of his/her right of association has to adjust to the concrete risk endangering the development of the child. In the course of considering whether the right of the child to protection for his/her development may lead to the restriction on his/her right of association, the age of the child and the nature of the association has to be evaluated together and from the point of view of whether the child is able to know and evaluate the choices in connection with his/her relationship to homosexuality and the consequences of his/her choice for his/her own personality, later life and social adaptation, including those consequences which might ensue from membership in the association in question and the public assumption of the concept of homosexuality prevalent there.

REASONING

[...]

The first argument of restriction -- the protection of mature decision about how to relate to his/her own homosexuality -- does not, of course, apply to the minor motivated solely by rights protection. The necessity of restricting the right of association which was founded by the interest of homosexual or potentially homosexual minors, also extends to them. They have to go along with the age limit exactly in the interest of minors of the same age group which is to be protected. For setting an age limit for membership primarily protects the responsible and mature decision of those who will bear the consequences of their decision for their whole life.”

STATEMENT to the OSCE IMPLEMENTATION MEETING ON HUMAN DIMENSION ISSUES Warsaw (23 October 2000)

By Kurt Krickler

Thank you for giving me the opportunity to address this meeting on behalf of the European Region of the International Lesbian and Gay Association (ILGA), a federation of organisations fighting for equality and equal rights of lesbian, gay, bisexual and transgendered people and against discrimination based on sexual orientation. ILGA-Europe has around 160 member organisations in almost all European countries.

ILGA has been participating as an NGO in the Human Dimension of the OSCE since the Moscow meeting in 1991. Since 1993, we have been presenting oral statements to the Human Dimension, reporting positive developments in participating States but also reminding non-complying States to honour their commitments entered not only under the OSCE

process but also under the International Covenant on Civil and Political Rights and the European Human Rights Convention.

Since last year's Review Conference in Vienna, we can note that some quite remarkable and substantial progress has been made in particular at the European level:

The Parliamentary Assembly of the Council of Europe voted two historic reports and resolutions. On 30 June, one on the “situation of gays and lesbians and their partners in respect to asylum and immigration in the member states of the Council of Europe”, calling for the recognition of persecution on the grounds of sexual orientation for the purposes of asylum and for granting bi-national same-sex couples the same residence rights as bi-national heterosexual couples. Only a month ago, on 26 September, the other resolution – on the “situation of lesbians and gays in Council of Europe member states” was adopted calling upon all 41 member states to include sexual orientation among the prohibited grounds for discrimination in national legislation; to decriminalise homosexuality among consenting adults, to apply the same minimum age of consent for heterosexual and homosexual acts, and to give legal recognition to same-sex couples by providing registered partnership legislation.

This is indeed a very far-reaching Recommendation. And perfectly in line with recent judgements of the European Court of Human Rights. In September last year, the Court ruled that the ban against gays and lesbians to serve in the British armed forces constitutes a violation of the European Human Rights Convention, challenging similar provisions in Germany, Greece, Poland and Turkey. In December 1999, the Court ruled that the decision of a Portuguese court to take away from a man custody rights over his daughter because of his homosexuality also was in breach of the Convention. And in July of this year, the Court ruled that the total ban in the United Kingdom on homosexual acts between consenting adult men in case that more than two persons are involved, again constitute a violation of the Convention.

Also at European Union level, there have been some very positive developments in the last twelve months. On the very day of the opening of this meeting, last Tuesday, the Council of Social Affairs ministers adopted a directive to prohibit discrimination on various grounds, including sexual orientation, in all aspects of employment and occupation. Within three years, all 15 Member States will now have to

implement the directive into national anti-discrimination laws. And all 13 accession countries will also have to implement this directive before joining the EU. On the same occasion, the Council adopted a 6-year programme to combat discrimination on various grounds, with a budget of almost 100 million euros.

Earlier this month, the Convent tasked to draw up a Charter of Fundamental Rights of the European Union presented its draft to the European Council meeting in Biarritz. Article 21 in this draft provides for the prohibition of all discrimination based, among other grounds, on sexual orientation.

Clearly, ILGA-Europe is quite satisfied with all these extremely positive developments at the European level. Therefore, we feel it is time for the OSCE to also speak out against discrimination on the grounds of sexual orientation in an appropriate statement. This aspect of human rights should no longer be ignored by any platform of significance.

Also at the national level we can report some positive achievements. I will only mention a few, the most important ones: Azerbaijan repealed the total ban on male homosexual relations, Armenia accepted a similar commitment in the context of her admission to the Council of Europe. France has introduced registered partnership legislation last October, and the Dutch Parliament, last month, voted to open up even traditional marriage for same-sex couples.

However, there are still a few countries that prefer to completely ignore these developments and resolutions and continue to violate basic human rights of homosexuals. One of the worst cases among all OSCE countries certainly is Austria where the discriminatory age of consent continues to be applied. This summer the case of a 20 year old man who was convicted because he, at the age of 19, had a consenting sexual relation with another young man, who was almost 17, made international news. Similar cases have been reported in the last months. In another case in Austria, the abuse of psychiatry and justice against one homosexual convicted under this provision can only be compared to the abuse in former Soviet gulags. The man was sentenced to a one-year prison term and due to previous convictions, to detention in an institution for mentally abnormal offenders. When the Court had to do its annual review with regard to the necessity for a continuing detention, the prolongation of the detention was ordered although neither the judge nor the psychiatrist who gave his expert assessment had seen the detainee face-to-face.

The European Union missed a unique chance to force Austria to stop these human rights violations against homosexuals this summer when the 14 failed to put this as a condition for lifting the measures against the Austrian government. By doing so the European Union not only approved of these human rights violations and reinforced Austria in its position but also gave the impression that human rights violations against homosexuals actually do belong to the so-called common European values.

Austria has ignored two recommendations by the Council of Europe, five resolutions by the European Parliament, a decision by the European Human Rights Commission and a request by the United Nations Human Rights Committee after its consideration of Austria's third periodic report submitted under Article 40 of the International Covenant of Civil and Political Rights, all demanding the repeal of this criminal law provision.

The refusal of Austria to stop these human rights violations is a disgrace for Europe. We, therefore, strongly appeal to all of you to exert pressure on Austria to stop these abuses, stop the gulag and to immediately release from prison all those jailed under this law, a demand also made by the European Parliament on two occasions already.

ISRAEL LOWERS AGE OF CONSENT FOR GAY SEX

By Rex Wochner

Israel has lowered the age of consent for gay sex from 18 to 16, in line with that for heterosexuals.

The penal code was changed in July but the move was not publicized until Nov. 1 when gay activists realized that gay teens were unaware of the change.

Homosexual relations also were legalized for 14- and 15-year-olds as long as their sexual partners are not more than three years older than they are.

Many European nations have a lower age of consent than Israel, including Malta, the Netherlands, Portugal and Spain (12); Germany, Iceland, Italy, San Marino and Slovenia (14); and the Czech Republic, Denmark, France, Greece, Poland, Slovakia and Sweden (15), according to testimony presented to the Knesset by the Association for Civil Rights in Israel and the Association of Homosexuals and Lesbians.