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

LATEST NEWS ABOUT SAME-SEX MARRIAGE IN THE NETHERLANDS

*by Kees Waaldijk (Universiteit Leiden, the Netherlands, c.waaldijk@law.leidenuniv.nl)
21 December 2000*

On 19 December 2000 the Upper House (Senate) 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 bills were supported by the liberal and labour parties (VVD, D66 and PvdA) of the governing coalition, with additional support of the left-wing opposition parties. The opposition christian-democrat party, and the small strict Protestant parties voted against the bills. Two members of the governing liberal party (VVD) also voted against the adoption bill.

The debate centered around questions about the level of recognition Dutch same-sex marriages and adoptions would receive in other countries, and whether or not adoption by different-sex parents would be preferable. Intriguing questions were raised about the position of royal princ(ess)es marrying someone of the same sex, and about registrars with conscientious objections against same-sex marriages. Both questions received typically Dutch fuzzy answers.

The Lower House of Parliament already approved both bills on 12 September 2000. There the marriage bill obtained a majority of 109 against 33 votes. The adoption bill obtained a similar, but uncounted, majority. Together with the governing and left-wing parties, a few members of the christian-democrat party voted in favour of both bills.

For my translations and summaries of both bills see <http://ruljis.leidenuniv.nl/user/cwaaldij/www/>.

It is expected that the Queen (and her State-Secretary for Justice, Mr. Job Cohen, whom the government is appointing as the new Mayor of Amsterdam) will sign both bills into law before the end of the year. However, it will at least take another three months, before the laws will take effect. At present another bill is being debated in the Lower House of Parliament, proposing minor adjustments to existing legislation that are necessary because of the opening up of marriage and adoption to same-sex couples. This bill is expected to be approved by both houses of parliament in the first months of 2001.

Partnership registration of two men or two women (or between a man and a woman) has been possible in the Netherlands since 1 January 1998. More than 10.000 partnerships have since been registered (60% same-sex partnerships). Registered partnership carries most of the legal consequences of marriage.

As for foreigners marrying in the Netherlands: in each couple that wants to marry in the Netherlands, at least ONE of the partners should either have Dutch citizenship or have his or her 'domicile' and 'habitual residence' in 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).

In the case of TWO foreigners who wish to marry in the Netherlands, Dutch private international law does not require that they fulfil the conditions for marriage in the country of their citizenship (which would be impossible if they are of the same sex), provided that at least one of them has indeed 'domicile' and 'habitual residence' in the Netherlands. The latter requirement does not apply when ONE foreigner wants to marry a Dutch citizen.

It is not quite clear when living in the Netherlands amounts to having one's 'domicile' and 'habitual residence' there. The term 'domicile' seems to require being formally and lawfully registered as a resident of the Netherlands, whereas the requirement of 'habitual residence' seems to exclude people who continue to have their main home in another country while they work or study in the Netherlands for a year or less. A certain continuity of residence is required. Therefore foreign couples who would want to come to the Netherlands to marry here, should first take legal advice.

In Dutch immigration law the position of married, registered and unmarried cohabiting couples is almost identical. Therefore it will normally not be necessary to marry, or to register a partnership, in order to obtain a residence permit for one of the partners. Nevertheless, if a foreigner wants to immigrate to the Netherlands to join his or her partner there, it is advisable to first take legal advice.

EU COUNCIL DECISION ON PROGRAMME TO COMBAT DISCRIMINATION

November 2nd the Council approved the programme 2001-2006 to combat discrimination based on inter alia sexual orientation. The programme is one of three implementation instruments of article 13 of the Amsterdam Treaty.

The full text of the decision can be found at this URL: http://europa.eu.int/eur-lex/en/dat/2000/1_303/1_30320001202en00230028.pdf

EU ACCESS PROGRAMME READY

ACCESS, the follow-up programme to the EU PHARE/TACIS programmes, has now been launched in the various EU candidate countries in Central and Eastern Europe. The ACCESS programme will be implemented entirely by the European Commission's Delegations in the accession countries. Application for funding have to be made to these Delegations. Gay and lesbian organisations in these countries are encouraged to submit applications to receive funding for their projects.

The Programme Guidelines and application forms have been made publicly available at the internet (at the homepage of each Delegation and the Commission's own home page).

The ACCESS programme contact persons in the various countries can be found on the Commission's home page (<http://www.europa.eu.int>), Enlargement DG, Phare, link to Multi-beneficiary programmes, then search contact persons for ACCESS programme. If there are problems with this, inquiries can be made to Bente Madsen at the Commission (tel. +32-2-295 1481).

ACCESS CAN ALSO BE USED TO GET SCHOLARSHIPS TO ATTEND NEXT ILGA - EUROPE CONFERENCE

One of the strands of the ACCESS programme, the so-called "Networking Facility" strand, could also be used to apply for funding to participate in the next ILGA -Europe annual conference to take place in Rotterdam, the Netherlands, 24-28 October 2001. People and groups interested, however, should react immediately because there might be imminent deadlines (which vary from country to country).

For any assistance you can also contact the ILGA - Europe board at: ieboard@egroups.com.

UK: GAY CONSENT AT 16 TO BECOME LAW

BBC News

http://news.bbc.co.uk/1/hi/english/uk_politics/newsid_1047000/1047291.stm Thursday, 30 November 2000

The age of consent for homosexuals in Britain is set to be reduced from 18 to 16 by late on Thursday.

The House of Commons Speaker Michael Martin has announced that the government is using special powers to push the measure through Parliament.

The Speaker told MPs that the rarely used Parliament Act had been invoked to get the measure onto the statute book. The move is going ahead in the face of bitter opposition from the House of Lords and religious leaders.

This means that the bill to equalise the age of consent for homosexuals could complete its journey through Parliament by late on Thursday.

For the first time the Bill will see gay men and lesbians have the same age of consent as heterosexuals. The age of consent for gay men had previously been 18.

The age of consent in Northern Ireland will be 17.

Special powers

Ministers were entitled to use the special powers granted under the Parliament Act after the measure was approved twice in the Commons, but blocked in the Lords.

But Baroness Young, the former Tory minister who has led the Lords campaign against the Bill, said the government's decision was "a constitutional outrage".

"The Commons never had an opportunity to look at the compromises we put up.

"It has never been sent back to MPs. It is a classic example of by-passing parliament," she said.

Lady Young ruled out a legal challenge against the government's use of the Parliament Act, saying that she had been advised against it.

But she pointed to a poll in Tony Blair's Sedgefield constituency which said 70% of Labour supporters were against the government using the Parliament Bill on the issue.

"This is a piece of legislation driven by Metropolitan, London attitudes and is completely out of step with the rest of the country," she told a news conference.

Gerald Howarth, Conservative MP for Aldershot, said he was seeking a meeting with the Speaker to urge him not to use the Parliament Act on legislation that has been rejected by the House of Lords and has not been debated by MPs.

"A lot of us have put him (Mr Speaker) under pressure to exercise his independence from the executive and assert his function to protect the rights of MPs.

"I shall seek to do that, but we only have a few hours left - it is a tight timetable."

Religious objections

Earlier, in a letter to The Daily Telegraph, religious leaders pleaded with the government to think again, to "protect young people of both sexes from the most dangerous of sexual practices".

Among the 17 signatories are Archbishop of Canterbury George Carey, Cormac Murphy-O'Connor head of the Roman Catholic Church in England and Yousof Bhailok, secretary general of the Muslim Council of Great Britain.

Moral objections

The letter says: "There are strong moral and health objections to what is proposed, which also goes against the beliefs of many religious people - Christians, Jews, Muslims, Hindus and Sikhs.

"The Bill has been subject to a free vote in both Houses, and should be a matter of conscience. We believe that the Parliament Acts should not be used on this Bill."

Gay rights campaign Stonewall said the religious leaders had "missed the point" about the proposed new law.

"This bill is about the principle of equality and principle of protecting young people," Stonewall spokesman Sebastian Sandys told BBC News Online.

"The Archbishop and his co-signatories cannot cherry-pick the law because they disagree with the House of Commons.

"It is a perfectly proper use of the Parliament Act.

"Most other civilised countries in the world have an equal age of consent and we do not believe that the dire predictions of the Archbishop and Baroness Young have any basis in reality."

NORTHERN IRELAND: CONSENT AGE FOR GAYS LOWERED TO 17

By Billy Foley, Irish News, December 1, 2000

Thousands of gay people in Northern Ireland yesterday celebrated the lowering of the age of consent to 17 after a 40-year battle.

The Sexual Offences (Amendment) Bill was forced through the House of Commons after it was consistently rejected by the Lords.

Gay rights campaigners said the new legislation was a victory for equality.

There are an estimated 60,000 gay men and women in Northern Ireland. President of the Northern Ireland Gay Rights Association, PA MacLoughlin, said "a deep injustice has been righted".

"We want to see all people treated the same and this is taking a very major step forward to achieving this," he said.

The new legislation brings Northern Ireland into line with the Republic where the age of consent is also 17.

In Britain, the age of consent for gay and straight sex is now 16.

Free Presbyterian minister, Rev David McIlveen, deplored the new legislation which, he said, and put young people under pressure from predatory men to have sex.

Rev McIlveen said it was ironic the legislation was passed on World Aids Day.

He accepted that HIV was not exclusive to gay men but said it was more prevalent in the gay community.

ILGA-EUROPE WELCOMES THE REPEAL OF ALL ANTI-HOMOSEXUAL PROVISIONS IN THE LIECHTENSTEIN PENAL CODE

By ILGA-Europe

On 13 December 2000, the Parliament of Liechtenstein, the tiny principality between Switzerland and Austria, adopted the completely reformed 10th chapter of its criminal code dealing with sexual offences. With 23 out of 25 votes the Landtag repealed all four anti-homosexual provisions that were introduced into the penal code when Liechtenstein abolished the total ban on female and male homosexuality in 1988. These four provisions provided for a ban on positive information about homosexuality (Art. 220), a ban on gay and lesbian associations (Art. 221), a ban on male homosexual prostitution (Art. 209) and a higher age of consent for male homosexual acts (18 years) than for lesbian and heterosexual relations (14 years; Art. 208). These articles were directly taken from the Austrian penal code of 1975 as Liechtenstein has traditionally been widely using the Austrian criminal code.

"We are very pleased with the complete repeal of all four laws", declares Jackie Lewis, co-chair of the European Region of the International Lesbian and Gay Association, "because the first Government bill presented to the Landtag in Spring 1999 had still provided for an unequal age of consent. In September 1999, ILGA-Europe, therefore, wrote letters to all members of the Landtag and to the prime minister of Liechtenstein demanding a complete reform and an equal age of consent. The Landtag, in October 1999, rejected the bill and asked the Government for a new proposal providing for an equal age of consent. On several occasions ILGA-Europe also lobbied Liechtenstein diplomats concerning this issue at meetings of the Organization for Security and Co-operation in Europe (OSCE) both in Warsaw and Vienna."

"In 2000, the reform process had been severely delayed because of the financial and money laundering scandals that shook the principality and lead to a constitutional crisis during which the ruling prince Hans Adam II even had threatened to abdicate and 'seek exile' in Vienna", explains ILGA-Europe co-chair Kurt Krickler. "But now we can be pleased with this complete reform leaving no traces of inequality between homosexual and heterosexual acts."

With regard to the new age of consent provisions which now apply for all sexual orientations equally,

Liechtenstein opted for the German model: The general age of consent is now fixed at 14.

However, sexual relations of a person over the age of 18 with a 14 or 15 year old person remain illegal if the older person takes unfair advantage of a situation of distress of the younger person ("Ausnuetzung einer Notlage") or renders a remuneration ("gegen Entgelt").

In addition, the new penal code includes same-sex domestic partners in the definition of 'next of kin' for the purpose of the penal code. The population of Liechtenstein has now the opportunity to initiate a referendum against this reform by 19 January 2001. If this is not the case, the reform will be put into force.

Austria has repealed the ban on male homo sexual prostitution in 1989, and articles 220 and 221 in 1996. Austria's age of consent provision (Art. 209) is still on the law books.

FINLAND PROPOSES TO LEGALISE HOMOSEXUAL UNIONS

Reuters, November 30, 2000

HELSINKI (Reuters) -- Finland plans to legalise homosexual unions as other Nordic countries have already done, officials said on Thursday.

The Finnish government accepted a proposal by the justice ministry on Wednesday to give legal status to homosexual relationships, and will begin discussing the issue in parliament next month. But some parties are expected to be split on the matter when the legislation comes to a vote next year.

The law would give gay and lesbian couples many of the same legal rights and responsibilities as heterosexual couples, but such unions would not have the status of marriage, nor would it allow homosexual couples to adopt children.

Social Democrat, Left Alliance and Green party officials said their representatives were likely to vote almost unanimously for the law, while the small Christian League is expected to vote against it.

Officials of the Centre and Conservative parties said they expected their deputies to be split on the issue, but did not comment on the balance between supporters and critics.

A similar bill was narrowly rejected by parliament in 1996 when it ran into conservative resistance.

"I'm sure that some people will oppose it tooth and nail, but I would be disappointed and surprised if it did not pass this time," said Rainer Hiltunen, head of the Finnish National Organisation for Sexual Equality (SETA).

This country of five million, which is generally perceived as liberal and egalitarian, was the first in Europe to give women the right to vote in 1906, and elected its first female president, Tarja Halonen, this year.

Halonen, who has supported gay and lesbian rights for years, was the chairwoman of SETA for a brief term in the 1970s.

If the law is passed, Finland will follow in the footsteps of Norway, Sweden, Denmark and Iceland, all of which have legalised homosexual relationships. Holland has similar legislation, and Germany is following suit.

ILGA-EUROPE REPRESENTED AT 50TH ANNIVERSARY OF EUROPEAN CONVENTION

By Robert Wintemute

Having participated in the Council of Europe's preparatory NGO Forum on 21-22 February 2000, ILGA-Europe was invited to attend the "Commemorative Ceremony for the 50th anniversary of the European Convention on Human Rights" on 4 November 2000. Both events were held at the Italian Ministry of Foreign Affairs in Rome. Dr. Robert Wintemute (School of Law, King's College London) attended both events as the representative of ILGA-Europe.

The Commemorative Ceremony lasted about 90 minutes, and consisted of a series of speeches by Mr. Lamberto Dini (Italian Minister for Foreign Affairs), Lord Russell-Johnston (President of the Parliamentary Assembly of the Council of Europe), Mr. Walter Schwimmer (Secretary General of the Council of Europe), Mr. Luzius Wildhaber (President of the European Court of Human Rights), Ms. Nuala Mole (Chair of the NGO Forum), and Mrs. Mary Robinson (United Nations High Commissioner for Human Rights). The texts of some of their speeches can be found at:
<http://press.coe.int/ECHR50/Default.asp?L=2>

(Schwimmer, Russell-Johnston) and
<http://www.unhchr.ch/hurricane/hurricane.nsf/newsroom> (04/11/2000) (Robinson)

Mrs. Robinson, who argued David Norris's case against Ireland in 1988 when she was a practising lawyer, referred to the case law of the European Court of Human Rights: "Many landmark judgments have been made - on torture, on treatment of prisoners, criminal laws against homosexuality, freedom of the press, corporal punishment, the rights of the mentally ill and the equal status of children in families, to mention just some examples."

Lord Russell-Johnston called on the 41 Council of Europe member states present:

"Firstly, to provide the Court with sufficient resources to deal with the growing burden of new applications. This may require a budget separate from the Council of Europe as a whole ... Secondly, to undertake measures which will confirm and reinforce the Convention's role as a principal reference, and the Court's supremacy as an arbitrator, in all human rights questions in Europe. This should include negotiating new protocols which adapt the Convention to new challenges ... Thirdly, to respect ... Court judgements unconditionally, without delay"

The Commemorative Ceremony was preceded by a European Ministerial Conference on 3-4 November ("The European Convention on Human Rights at 50: What future for the Protection of Human Rights in Europe?"). The participants included representatives of the Council of Europe, the 41 member states, the Holy See, the USA, Canada, Japan, Mexico, Armenia, Azerbaijan, Bosnia and Herzegovina, Monaco and Yugoslavia; judges of the European Court of Human Rights; members of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe; the Human Rights Commissioner of the Council of Europe; and five non-governmental organisations: the AIRE Centre (London), Amnesty International (London), the International Federation of Human Rights Leagues (Paris), the Marangopoulos Foundation for Human Rights (Athens), and the European Center (Tirana).

The Ministerial Conference adopted two Resolutions (<http://press.coe.int/ECHR50/Default.asp?L=2&ID=40>). Resolution II ("Respect for Human Rights, a Key Factor for Democratic Stability and Cohesion in Europe: Current Issues") includes "C. Principles of equality and non-discrimination" (paragraphs 15-27). This part of Resolution II mentions "racism, xenophobia, anti-semitism and intolerance", "discrimina-

tion against migrants, refugees, stateless persons and asylum-seekers on grounds of their national, ethnic or cultural origin, their language, or religion, whether they belong to national minorities or not, and referring notably to the situation of Roma/Gypsies", and "inequalities between women and men". In spite of the Conclusions of the NGO Forum (Rome, 21-22 February), which recommended that Resolution II urge member states "to adopt legislation prohibiting discrimination ... based on sex, race, ethnic or national origin, religion, disability, age, sexual orientation and gender identity", the Steering Committee for Human Rights refused to insert any reference to "disability, age, sexual orientation and gender identity" in Resolution II. The most the Committee was willing to include was paragraph 24: the Ministerial Conference "ENCOURAGES member States to consider further legal, policy and other measures at the national level prohibiting incitement to hatred and discrimination". However, in her speech at the Commemorative Ceremony, Ms. Nuala Mole of the AIRE Centre (London), as Chair of the NGO Forum, expressed the Forum's regret that discrimination based on disability, age and sexual orientation had not been mentioned in Resolution II.

After the Commemorative Ceremony, the representatives of the 41 member states left for a second ceremony at the Campidoglio in central Rome, at which Protocol No. 12 (non-discrimination) to the European Convention was opened for signature. The NGOs who had attended the Commemorative Ceremony, and were effectively representing victims of discrimination throughout Europe, were not invited to witness this historic event, at which 25 of 41 member states signed. A full list of signing states can be found at <http://conventions.coe.int> ("Search", "Search on Conventions in ETS", "You Know the ETS Number", type in 177, click on the Protocol, "Chart of Signatures and Ratifications"). This web page will be updated and can be used to monitor the number of member states that have signed and ratified Protocol No. 12. Once 10 member states have ratified it, the Protocol will come into force, but only for ratifying states.

Protocol No. 12 is a "free-standing" prohibition of discrimination, implicitly including discrimination based on sexual orientation or gender identity, and eliminates the requirement under Article 14 of the Convention that a lesbian, gay, bisexual or transgendered applicant link the facts of their case to one of the other Convention rights. This is usually (but not necessarily always) possible for discrimination based on sexual orientation or gender identity (Article 8, "private life"), religion (Article 9) or political opinion

(Articles 10 and 11). But it is often impossible for discrimination based on sex, race, disability or age. All ILGA-Europe member organisations whose national governments have either not signed or not ratified Protocol No. 12 should urge them to do so as soon as possible.

AUSTRIA: APPEALS COURT LEGALIZES GAY PORNOGRAPHY

by *Helmut GRAUPNER*, *Rechtskomitee LAMBDA (Vienna)*

With a landmark decision the Upper Regional Court of Graz acquitted a man who has been accused of selling gay pornography.

The man has been charged under the Pornography Act of 1950 which outlaws trade in "lewd" material. Until the seventies indeed all sexual explicit material has been considered "lewd". Then the Supreme Court restricted the absolute ban to so called "hard" pornography what it defined as the depiction of criminal sexual acts, namely with children and sexual violence. Homosexual acts have been (partly) legalized in 1971 but the Supreme Court included them into the definition of "hard" pornography referring to the ban on "Advertisement of Same-Sex Lewdness" (Art. 220 Criminal Code).

Already in 1989 the Upper Regional Court of Innsbruck (competent for the states of Tyrol and Vorarlberg) legalized commerce in gay pornography, but no such decision followed in the rest of Austria. After the repeal of the ban on "advertisement" of homosexuality (Art. 220 CC) gay pornography widely was considered to have been legalized as well.

Not so in Graz. There the Regional Court for Criminal Affairs in fall 1998 ordered the search of an erotic-center as well as the seizure of more than 200 videos and sentenced the owner to a considerable fine.

This verdict now has been quashed by the Upper Regional Court of Graz which ruled that gay pornography as such cannot be considered "hard" pornography anymore. The Court rejected the arguments of the prosecution that homosexuality still in part is a criminal offence (Art. 209 CC: discriminatory age of consent of 18) and that (prosecutor: "I say this with full deliberation") "such acts against the order of nature" should not be accepted by the law. The Appeals Court noted that the term "lewdness" has to be interpreted according to prevailing attitudes and that it cannot ignore the respective changes in society.

The judges stressed that in 1989 the ban on gay prostitution (Art. 210 StGB) has been lifted and in 1997 the ban on "advertisement" of homosexuality (Art. 220 StGB) and the ban on lesbian and gay associations (Art. 221 StGB) and that in 1998 same-sex partnerships have been equalized with non-married partners of different sex in the whole area of the Criminal Law and the Law on Criminal Procedure. The Appeals Court also emphasized recent judgments of the European Court on Human Rights which outlawed inequality between heterosexuality and homosexuality.

The Austrian gay rights organisation Rechtskomitee LAMBDA welcomed the decision. "The Appeals judges ruled for equality and against discrimination. Thereby they fulfilled their task to dispense justice in its most noble form", says Helmut Graupner, president of Rechtskomitee LAMBDA and defense-counsel for the acquitted man, "For this they deserve our deepest respect."

OUR WORLD CONFERENCE: EQUALITY AND COOPERATION

By Andriy Maymulakhin

On October 19-21, 2000, an international conference "Our World: Equality and Cooperation" was held in Kiev.

On the last day of the conference's work, three documents were adopted: Appeal to the lesbian & gay community of the Eastern European countries, Appeal to the presidents, governments and parliaments of the Eastern European countries, and Declaration of the conference. The documents and a conference report are published on the web at:
<http://www.gay.org.ua/actions/confres-e.html>