

# EURO-LETTER

No. 86

February 2001

The Euro-Letter is published on behalf of ILGA -Europe - The European Region of the International Lesbian and Gay Association by The International Branch of The Danish National Association for Gays and Lesbians with support from the European Community - The European Union against Discrimination.

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

## **AFTER NICE – PROGRESS FOR GAYS AND LESBIANS IN THE EU**

By *ILGA-Europe*

The European Council, which took place 7-10 December 2000, concluded the Intergovernmental Conference (IGC) and adopted the Treaty of Nice. The results of this Council (summit) meeting and the new Treaty are also relevant for gays and lesbians. Here is a short overview of the relevant issues:

### *The Charter of Fundamental Rights*

The Charter was solemnly signed in Nice but not incorporated into the Treaties and, therefore, is not legally binding. The Court of Justice in Luxembourg, however, cannot ignore the Charter and will have to take it into consideration when deciding in future cases. In its Article 21, the Charter provides for a general prohibition of all discrimination based, inter alia, on sexual orientation. Article 21, first paragraph reads:

"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

However, Article 51 restricts the scope of application of the Charter, legally binding or not, "to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law". And paragraph 2 states explicitly: "This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties."

This means, for example, that family law and criminal law, which are the most important sources of inequalities and discrimination on the basis of sexual orientation and which still reside with the Member States, are not covered by the Charter. However, the Charter could be invoked in challenging the non-recognition of same-sex partnerships registered in some EU Member States (and soon of same-sex marriages under Dutch law) by those Member States that do not have such legislation. This non-recognition constitutes a huge obstacle to the free movement of EU (EAA) citizens who are registered in their home country with a non-EU (EAA) citizen. The right to free movement is not only EU competence governed by community law but also one of the most important pillars the EU is founded upon.

### *Article 13 TEC amended*

The first legal measure based on Article 13 and dealing with sexual orientation ("Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation",

adopted by the Council on 27 November 2000) had only been in force a couple of days (since publication in the Official Journal of the European Communities, no. L 303, on 2 December 2000) when Article 13 was amended through the treaty revision in Nice.

A second paragraph was inserted to the effect to allow adoption of support actions to fight discrimination by a qualified majority in the Council and under the co-decision procedure with the European Parliament. However, legal measures continue to need to be adopted unanimously by all Member States. The new paragraph in Article 13 TEC reads as follows (preliminary text):

"(2) By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in this Article, it shall act in accordance with the procedure referred to in Article 251."

However, this new provision might never be used because the current Anti-Discrimination Action Programme, which was also adopted last November (Council Decision 2000/750/EC) and published in the Official Journal on 2 December, will last until 2006. The next IGC leading up to a treaty revision is planned to start in 2004. Hopefully, the unanimity provision in Article 13 will then be changed as to provide for qualified majority vote in the Council and co-decision with the EP even for the adoption of legal measures.

### *Action Programme Committee set up*

For the implementation of the above-mentioned "Community action programme to combat discrimination (2001-2006)", a programme committee of representatives of the Member States and the European Commission has been set up. This committee already had a first meeting on 11 December 2000 where it was decided to make an assessment and inventory of existing data and studies with regard to discrimination against the groups referred to in Article 13. A questionnaire has been produced for that purpose and is obviously being circulated at the moment by the social affairs and/or labour ministries in the Member States.

HOSI Wien has already received, from the Austrian ministry of labour, such a questionnaire and was asked to fill it in. The deadline for Member States to return the collected questionnaires to the European Commission is the 31 January 2001.

**Therefore, gay and lesbian organisations in the Member States should contact their national ministry of labour to make sure that they get involved in this assessment exercise in case they**

**have not received the questionnaire yet.**

#### *Fundamental Rights Article amended*

Article 7 TEU was also amended in Nice to define more precisely the procedure by which the Member States can act upon violations of the common European values and principles laid down in Article 6 TEU, i. e. inter alia the respect of human rights, by a Member State. The amended article provides now for a four-fifths majority instead of unanimity for determining whether there is a risk of a serious breach by a Member State of these principles. The initiative for such a procedure can also be taken by the European Parliament which shall act by a two-thirds majority of the votes cast, representing a majority of its members. The amended article provides for the Member States to call on independent persons to submit a report on the situation in a Member State suspected of violating these principles, thus implementing officially the procedure used in the case of Austria after the right-wing Freedom Party (FPÖ) had entered the government in February 2000. By these amendments, the use of this article is only made slightly easier. However, it might be worth trying to use this article to force Member States such as Austria to repeal criminal law provisions that are a clear violation of human rights such as discriminatory age of consent laws.

#### *European Social Agenda*

The Nice European Council also endorsed the European Social Agenda 2001-2005 which had been adopted by the Social Affairs Ministers Council of 27-28 November after negotiating conflicting proposals of the European Commission and the French Presidency. The full text of the Agenda is annexed (Annex I) to the Conclusions of the Presidency of the European Council.

This new social policy agenda refers again to Article 13 and formulates, under the heading "III. Fighting Poverty and All Forms of Exclusion and Discrimination in order to Promote Social Integration", the following aim:

"f) Ensure effective implementation of Community legislation on combating all types of discrimination on grounds of gender, race or ethnic origin, religion or beliefs, disability, age or sexual orientation. Develop exchanges of experience and of good practice to strengthen these policies."

#### *Relevant web-sites:*

Charter:

<http://europarl.eu.int/df/default.asp?lang=en>

Treaty of Nice: <http://ue.eu.int/en/summ.htm>

Conclusions of the Presidency, European Council, Nice, 7-10 December 2000:

<http://ue.eu.int/en/info/eurocouncil/index.htm>

## **THE DUTCH MARRIAGE LAW**

*By Kees Waldijk*

The Dutch Bills to open up marriage and adoption to same-sex partners now have become law (although they will not enter into force before April 2001). On 21 December 2000 Queen Beatrix of the Netherlands signed Bills 26672 (marriage) and 26673 (adoption) into law. Both Laws of 21 December 2000 were officially published on 11 January 2001 (Staatsblad 2001, nr. 9 and 10).

I have adjusted my translations of these bills on my website:

<http://ruljis.leidenuniv.nl/user/cwaldijk/www/> (see also the Latest news item there).

The Bill allowing partnership registration in situations where only one of the partners has Dutch citizenship or residency (bill 26862) was also signed into law on 21 December, and published on 11 January 2001 (Staatsblad 2001, nr. 11).

Whether these three Laws will indeed enter into force on 1 April 2001, depends on the speedy adoption of Bill 27256, which provides for various adjustments in other legislation that have become necessary as result of the opening up of marriage and adoption. This bills introduces gender-neutral formulations into those laws that still use gender-specific words for parents and spouses (e.g. in definitions of polygamy, half-orphans, etc.). It specifies that an intercountry adoption will only be possible by a different-sex married couple or by one individual (opening up intercountry adoption to same-sex couples would not be useful, because the authorities in the original country of the child would not allow it to be adopted by Dutch same-sex partners). It also replaces the old rule, that child benefit will be paid to the mother in case of disagreement between father and mother, by a gender-neutral rule: now the benefit office will decide to whom to pay the benefit in such circumstances. Finally it arranges the price for the new possibility of converting an existing registered partnership into a marriage (or vice versa). All this is not very controversial, but it will need a full debate in the Lower House of Parliament, and possibly in the Senate, too. That will take a couple of months.

The only danger for the opening up of marriage and adoption in the Netherlands is the possibility of a breakup of the present governing coalition. If that happens, there would probably be a delay of several years. However, it now seems unlikely that the current coalition of labour and liberal will break up soon.

## **CALL FOR PROPOSALS UNDER THE 'EUROPEAN INITIATIVE FOR DEMOCRACY AND HUMAN RIGHTS'**

European Commission launches new Call for Proposals under the 'European Initiative for Democracy and Human Rights'

The European Commission has launched a new Calls for Proposals under chapter B7-70 of the EU budget, the European Initiative for Democracy and Human Rights (EIDHR), for a sum of EURO 38 million. To ensure greater impact and the best use of resources, the EC will focus on 10 priority areas in key regions- countries, including support for human rights education, measures to protect minorities, promoting freedom of expression, the rights of children, the abolition of the death penalty, strengthening the rule of law, promoting democracy and good governance, and conflict prevention.

Commissioner for External Relations Chris Patten said : "Calls for Proposals demonstrate the strong commitment of the EU to promoting human rights and democracy by building a capacity from the grassroots up, through citizens' organisations, without whose involvement no true civil society can develop".

This Call for Proposals builds on a 1999 pilot call that proved effective in identifying valuable activities proposed by the non-governmental sector in a manner that was both fair and transparent.

Applicants, who must be non-profit making and non-governmental (but may include local authorities and public sectors such as universities and broadcasters), are invited to apply for a minimum grant of 300.000 euro for projects directed at, or taking place in, one or more of the third countries identified by the Commission for these priority activities. Grants may cover up to maximum 80% of project costs (for local organisations in the developing world up to 100% of project costs). The deadline for submitting applications is Monday 19 March 2001. Grants will finance projects with activities lasting up to 36 months.

The 2001 Call for Proposals and the projects selected will be managed by the Commission's newly created EuropeAid Co-operation Office.

For further details see the Official Journal C15 of 17/01/2001 or the Commission's website:  
[http://www.europa.eu.int/comm/scr/tender/index\\_en](http://www.europa.eu.int/comm/scr/tender/index_en)

## **SWEDEN MAY LEGALIZE ADOPTION BY HOMOSEXUAL COUPLES**

STOCKHOLM, Jan 31 (AFP) - A Swedish parliamentary committee on Wednesday recommended the legalization of adoption by homosexual couples, saying that same-sex parents were just as capable as heterosexual ones of giving a child a balanced upbringing.

The right to adopt children would be extended to both married and unmarried same-sex couples.

In common with other Scandinavian countries, Sweden has authorized a form of legal union for same-sex couples.

Legal specialist Goeran Ewerloef, who chaired the committee and presented the proposal to the press, said that "research has shown that children with same-sex parents have neither more nor less difficulty in growing up socially and psychologically balanced, and enjoy the same level of attention as other children."

Justice Minister Thomas Bodstroem, who has already said he is in favour of a change in the law, is expected to follow the committee's recommendations.

However a spokesman for the opposition Conservatives said that they opposed the proposal.