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## **PARTNERSHIP LAW IN PORTUGAL**

*By Associated Press, March 15, 2001*

LISBON, Portugal (AP) -- Portuguese lawmakers Thursday granted legal rights and tax benefits to gay and lesbian couples who have lived together for more than two years, allowing them the same rights as heterosexual couples in common law marriages.

The bill was passed on the votes of a majority of left-of-center lawmakers in the 230-seat National Assembly, Portugal's parliament, while right-of-center parties opposed the bill, a parliamentary spokeswoman said on customary condition of anonymity. Exact voting figures were not immediately available.

Gay and lesbian groups have lobbied for several years for equal rights with heterosexual common law couples.

In 1999 a majority of lawmakers, including some from the governing left-of-center Socialist Party, balked at a proposal to incorporate same-sex relationships in new legislation on common law marriages.

However changes to the bill, including a deal on taxes, persuaded more Socialists to approve it.

Homosexual marriages are not permitted in this mostly Roman Catholic country.

Note from the editor:

The text of the debate held on February 14th and 15th by the Portuguese Parliament on the four bills on the recognition of homosexual unions that were introduced by each of the four left-wing parties represented in the Assembleia da República can be found at the Parliament's website

([www.parlamento.pt](http://www.parlamento.pt)) at

<http://www.parlamento.pt/dari/20010214.08.2.0049>

and

<http://www.parlamento.pt/dari/20010215.08.2.0050>

the bills can be found at

[http://www.parlamento.pt/legis/inic\\_legis/19991217.08.1.0045.1.11](http://www.parlamento.pt/legis/inic_legis/19991217.08.1.0045.1.11) and

[http://www.parlamento.pt/legis/alt\\_inic\\_legis/20010118.08.1.0045.1.0001](http://www.parlamento.pt/legis/alt_inic_legis/20010118.08.1.0045.1.0001) (the one presented by the Bloco de Esquerda -- literally «Left Block -- that would allow for registered partnerships),

[http://www.parlamento.pt/legis/inic\\_legis/19991027.08.1.0006.1.07](http://www.parlamento.pt/legis/inic_legis/19991027.08.1.0006.1.07) and

[http://www.parlamento.pt/legis/inic\\_legis/20000229.08.1.0115.1.06](http://www.parlamento.pt/legis/inic_legis/20000229.08.1.0115.1.06) (the ones from the Green Party

and the Communist Party, extending the current law on heterosexual de facto unions to homosexual unions), and

[http://www.parlamento.pt/legis/inic\\_legis/20000223.08.1.0105.1.08](http://www.parlamento.pt/legis/inic_legis/20000223.08.1.0105.1.08)

(the bill introduced by the Socialist Party, that merely recognised so-called «joint» or «common

economies»). All the texts are in portuguese only. The text of the March 15th debate and the text of the bill that was passed by the Assembleia da República is still not available at this date (March 18th).

## **ADVOCATE-GENERAL REJECTS RECOGNITION OF SWEDISH REGISTERED PARTNERSHIPS**

*By Mark Bell*

On 22 February 2001, Advocate-General Mischo delivered his Opinion in the case of D. and Sweden v Council. This case concerns a Swedish gay man who moved from Sweden to work for the EU Council of Ministers in Brussels. In Sweden, he and his partner had a registered partnership and hence enjoyed many of the rights of a married couple. However, he was denied employment benefits available to married partners by the EU Council, which decided that he was single for the purpose of the EU Staff Regulations.

His challenge to this decision was rejected by the EU Court of First Instance in 1999, and he has appealed to the European Court of Justice. The Advocate-General's Opinion is not binding on the Court, but it is often followed. The decision of the Court of Justice can be expected within several months.

A-G Mischo has rejected the appeal on all grounds:

(1) He decides that the term "spouse" in the EU Staff Regulations does not include registered partnerships, but only "traditional" marriage between persons of the opposite sex. In support of this conclusion, he notes that at the time of the Council's decision, only 3 of the 15 Member States had laws giving same-sex partnerships rights similar to those of married couples. (par. 48)

(2) There is no protection for same-sex couples by reason of the general principle of equal treatment in EU law. He argues that the principle in the Grant v South-West Trains case is a "conclusion valid for Community law in general" and not only for the facts of that case (denial of free travel benefits to a same-sex partner by an employer in the UK). In the view of A-G Mischo, the key element of that case is the general principle that same-sex and opposite-sex couples are not in a similar situation - irrespective of any legal recognition - simply by reason of the differences "in nature" between heterosexual and homosexual couples. (par. 87)

This conclusion is particularly negative because it implies that same-sex couples may be treated differently solely by reason of their sexual orientation.

(3) Decisions in the Court of Human Rights recognising sexual orientation as a prohibited category of

discrimination under Article 14 of the European Convention on Human Rights do not affect the above finding.

Instead, he sets these to one side, and justifies his decision by reference to the standards found in the EU Charter of Fundamental Rights, agreed at Nice in December 2000. In particular, he refers to the fact that the explanatory memorandum from the body which drafted the Charter states that there is no obligation to recognise same-sex couples as a result of the Charter. (par. 97)

This is obviously one of the first occasions where the Charter has been used in EU law. It is very concerning that the Charter is used here to argue in favour of lower standards of human rights protection - and apparently in preference to stronger case-law from the Court of Human Rights. Moreover, although the Advocate-General refers to the non-binding Charter as inspiration, he does not discuss Article 13 EC or the Framework Directive which will forbid employment discrimination on the ground of sexual orientation. Finally, he ignores Article 21 of the Charter which forbids discrimination on many grounds, including "sexual orientation".

The Opinion can be found at:  
<http://curia.eu.int/index.htm> - search under 'recent case law'.

### ***PRESS RELEASE by ILGA-Europe***

On 22 February 2001, Advocate general Mischo proposed in his conclusions to the European Court of Justice to reject the appeal of an EU official and of the Kingdom of Sweden against the decision of the European Court of First Instance (CFI) of 28 January 1999.

The CFI decision of 1999 refused to recognise, for the purposes of the EU Staff Regulations, the EU official's status of same-sex registered partner<sup>1</sup> in Sweden, in spite of the fact that under Swedish legislation registered partnership entails similar rights and obligations to marriage.

Sweden, as well as Denmark and the Netherlands, supported the EU official's appeal

The European Region of the International Lesbian and Gay Association, ILGA-Europe, believes the Advocate general's suggestion to the Court to be wrong and not acceptable as it disregards Article 21 of the EU Charter of Fundamental Rights, just recently solemnly proclaimed at the European Council in Nice, which prohibits discrimination based on sexual orientation.

The EU Charter is only referred to by Advocate general Mischo in paragraph 97 of his conclusions in relation to its Article 9 which states that "The

right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights<sup>2</sup> and to a statement by the Presidium of the Convention tasked to draw up the Charter, with no legal value, referring to the fact that Article 9 of the Charter does not prohibit nor prescribe same sex marriage.

Despite the Charter's Articles 9 and 21, the latter not even being mentioned by the Advocate general, he concludes to ignore the Swedish laws governing the exercise of the right to marry and to found a family and suggests to uphold a discriminatory treatment of a stable relationship on the grounds of the sex and the sexual orientation of the partners in this relationship.

ILGA-Europe calls for the Court of Justice to reverse the decision of the Court of First Instance and not to accept the Advocate general's conclusions, in order to fully respect and apply the EU Charter of Fundamental Rights.

### **AGE OF CONSENT IN PORTUGAL**

*By Miguel Freitas*

Correction to EuroLetter 82

In Portugal the age of consent for sexual intercourse with adults (i.e. over 18) is set at 14 for heterosexual sex, and at 16 for homosexual sex (articles 172 and 175 of the Portuguese penal code). The Portuguese penal code also considers it a crime for adults to have sexual intercourse with a minor between 14 and 16 if the minor is entrusted to them or under their authority (article 173), if the adult takes advantage of the inexperience of the minor, in the case of heterosexual sex (article 174) or if the adult involves himself in «homosexual acts» with the minor or has him involved in such acts with other persons (article 175).

### **CZECH REPUBLIC: COUPLES LAW GAINS STEAM**

*By Michael Mainville*

<http://www.praguepost.cz/news030701c.html>

Cabinet approves gay and lesbian marriage, but outcome uncertain

After suffering two legislative rebuffs in as many years, gay and lesbian couples are making another pitch for equal status under the law. This time, however, they have a powerful backer: the ruling Social Democratic Party (CSSD) and its Cabinet.

"After the lower chamber struck down the bill last time, we came up with the idea that the only plausible way to get this passed was to make it the Cabinet's initiative," said Jiri Hromada, spokesman for

Gay Initiative and a longtime campaigner for gay rights.

Czech lawmakers rejected same-sex partnership bills in 1998 and again in December 1999. The Cabinet approved a draft of a new partnership bill late last month and is expected to submit a final version to the Chamber of Deputies by early autumn. The draft is an omnibus bill -- a piece of legislation that changes the wording of a number of laws in one fell swoop.

"It's the same Parliament as the one that voted against it last time," Hromada admitted. "So we know it's still going to be a fight. But as a proposal of the Cabinet, this bill has much better chances of being passed."

Andrea Barsova, the deputy director of the government's human-rights office, said the proposal is modeled on laws adopted in Scandinavian countries that create "legal partnerships" for same-sex couples and lay out the procedures for registering and ending those partnerships.

If adopted, the bill would, for example, allow homosexuals to legally inherit their spouses' goods and collect social benefits as a couple. They would also be taxed as a couple and have the right to share housing as legal partners. And they would be granted the rights of family members under health and citizenship laws.

"These are very basic rights," said Jana Stepanova of Appeal 2002, one of the groups that pressured the government to draft the bill. "Right now, if my partner has to go to the hospital I have no right to know how she is doing or what kind of treatment she will be getting because I'm not considered a relative."

Some critics argue that such changes will extend "special benefits" to lesbians and gays, but Hromada disagrees. "You always hear about how these are advantages for same-sex couples, but they are not," he said. "This is a leveling off at zero, with same-sex couples going from minus one to zero."

The bill will not address one basic issue, however: equal rights to raise and adopt children. But both Hromada and Stepanova said that would not prevent them from supporting it. "This is the only thing that is not addressed in the bill, but I think this still has to bide its time for a while," Hromada said.

#### LEGISLATION VARIES

Canada Some rights have been granted piecemeal. Quebec has passed legislation giving same-sex couples the same legal standing as common-law heterosexual couples.

Denmark , Norway, Sweden Couples can sign a

"registered partnership" document, which grants benefits similar to marriage. France Couples can sign "civil solidarity pacts," offering some of the tax, welfare and inheritance rights that married couples have.

Great Britain No recognition of same-sex partnerships. Hungary Homosexual couples have the same rights as common-law heterosexual couples. Netherlands Only country where same-sex couples can be legally married.

United States No federal recognition of same-sex couples. In Vermont, couples can form "civil unions" similar to marriages.

When the Chamber of Deputies voted on the last same-sex partnership bill in December 1999, it lost 91-69, with 13 abstentions. Lawmakers from across the political spectrum voted against the bill. Some said they were opposed in principle to granting legal status to homosexual couples, while others criticized the way the bill had been drafted, saying it left too many legal questions unanswered.

The bill's staunchest opponents were the Christian Democrats (KDU-CSL), whose 20 deputies voted as a bloc against it, joined by, among others, 26 Civic Democrats (ODS) and about a third of the CSSD's 74 members. Hromada is convinced the situation is now different. He doubts Social Democrats will oppose a bill sponsored by their own government.

Moreover, Justice Ministry experts are drafting the bill, something Hromada believes will prevent Members of Parliament from using its wording as an excuse to vote against it. "Of course, the Christian Democrats will not change their minds. ... Their sole interest is to prevent this at all cost," he said. "But I think the sensible group of MPs will understand what we are after."

Barsova of the human rights office makes no predictions, but is optimistic. "We can't foresee what the Parliament will do and there may not be a decision by the end of the year," she said. "But the government does not submit a bill that has no chances."

#### **DOMESTIC PARTNERSHIP LAW TO BE PASSED IN VALENCIA AND THE BALEARICS**

*By Cesar Leston, Fundacion Triangulo*

Valencian Parliament will soon pass a preliminary bill aimed at recognizing rights for partnerships of either sex. Although the scope of this law is very similar to the ones already in force in Catalonia and Aragon, it has gathered some criticism. The Government-promoted bill (the Conservative Party PP

also in office at federal level) has notwithstanding gathered criticism from the opposition (mainly the Socialist Party) and the local gay groups for, although it acknowledges the existence of a "love-based relationship", the modifications the text had suffered have seen the loss of the words "analogous to matrimony" which were included in the original draft.

For the socialist party in the opposition the bill is "restrictive" as "it fails to acknowledge the very fact that domestic partnerships are indeed families". The local gay group Col.lectiu Lambda has declared the bill is indeed an improvement for it actually acknowledges the fact that "partnerships are based on affective reasons" but regrets that the new law is "still insufficient" since domestic partnerships need a "full and total legal recognition".

The text is still to be approved by the Valencian Parliament but will certainly have the votes to be passed for it will be backed by the MP's of the party in office. Surprisingly, for it is indeed a conservative and basically catholic-minded party, the Valencian government officials have dismissed criticism from church authorities and stated its determination for the text to be passed. The support at public level is also very high (60 % according to opinion polls).

As for the Balearic Islands, another domestic partnership bill still in an earlier stage is being considered at the proposal of the ruling coalition (socialists and others forces mainly) and although much more daring initially, references to adoption made in previous drafts will actually not be included in the bill.

### **TRANSGENDER PERSONS "OFFICIAL" SEX MAY CHANGE TOO**

*By Cesar Leston - Fundacion Triangulo*

Although Spanish transgenders who had undergone reassignment surgery were allowed since the mid-eighties to change their name by a ruling of the Constitutional Court, this same ruling still prevented them to change their sex in official documents. In other words, an male to female transgender person was allowed to switch name from "Pedro" to "Maria" but her i/d still designed her as a "male". An estimated 5000 transgender persons might benefit from such legal move.

In the words of a legal advisor for one of the transgender persons groups, Transexualia, Mr Juan Vazquez, this was only a natural result of the demands transgendered persons have been making for the last twenty years. He also said new laws should allow the transgendered person to change or remove whatsoever official document (ID, passport) altering or providing inaccurate information on the sexual identity of the individuals.

The Senate approved on March 7th a proposal for the Lower Chamber (Congress) to make the necessary legal changes and will have probably be voted for by the the party in opposition (Socialist Party), who submitted the measure, and the party in office (Conservative) who holds the necessary majority in the Lower Chamber for the law to pass. Both parties voted for the proposal in the Senate.

This change is more than cosmetic: the transgender person being able to change his/her legal sex mean they will also be able to marry someone of their (now) opposite sex or adopt children, for instance. As for the name change, now possible but demanding a procedural hurdle in court, the requirements for transgenders will be eased and they will now only need to file an application at the Civil Registries.

The bills considered specify that reassignment surgery is needed.

### **PARTNERSHIPS IN THE NETHERLANDS**

*By Kees Waaldijk*

As to the present state of the laws opening up marriage and adoption to same-sex couples (see my website <http://ruljis.leidenuniv.nl/user/cwaaldijk/www/> and that of the Ministry of Justice [http://www.minjust.nl:8080/a\\_BELEID/fact/fact.htm](http://www.minjust.nl:8080/a_BELEID/fact/fact.htm)), the latest is that the (Same-Sex Marriage and Adoption) Adjustment Bill (nr. 27256) has been approved by both houses of Parliament, and has been signed into law on 8 March 2001. Thereby the last political obstacle for an entry into force of the two "opening-up laws" on the planned date of 1 April 2001 seems to be removed. Most probably, that date will be fixed by royal decree early next week. But you never know.

Already, the first same-sex marriage ceremony is being planned, for the night of 31 March to 1 April. At midnight the registered partnerships of several same-sex couples will be converted into full civil marriages (see <http://www.gaykrant.com/index.html>)

The (provisional) statistics of Dutch partnership registrations in 2000 have now become available (source [www.cbs.nl](http://www.cbs.nl)):

- registrations of two women: 785 in 2000 (was 864 in 1999, and 1324 in 1998)
- registrations of two men: 815 in 2000 (was 897 in 1999, and 1686 in 1998)
- registrations of one woman and one man: 1322 in 2000 (was 1495 in 1999, and 1616 in 1998)

So in three years time more than 6000 same-sex

couples registered their partnership. An earlier survey suggested that more than 60% of these couples would hope to convert their partnership into a marriage. This could mean that within a year or so some 10,000 gays and lesbians might be married -- to someone of the same sex!