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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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ON THE JUDGEMENT OF THE EUROPEAN COURT OF JUSTICE IN CASE D. AND SWEDEN v COUNCIL

By ILGA-EUROPE 7 June 2001

On 31 May 2001, The European Court of Justice (ECJ) dismissed the appeal put forward by a Swedish national and Sweden against a decision taken by the Council and upheld by the Court of First Instance (CFI).

The case (C-122/99 P and C 125/99 P) concerns a Swedish gay man who moved from Sweden with his registered partner to work for the European Council in Brussels. The partner was not recognised by the Council as a spouse according to the 'Staff Regulations of Officials of the European Communities', and could therefore not benefit from the household allowances provided for married officials.

The ECJ thus followed the Council and CFI in their traditional interpretation of the notion 'marriage' and 'spouse', stating that even in Member States, which allow arrangements for registering relationships, such registrations are being distinguished from marriage.

'We consider this judgement to be wrong and not acceptable', declares Jackie Lewis, co-chair of ILGA-Europe, the European Region of the International Lesbian and Gay Association. 'It disregards the EU Charter of Fundamental Rights adopted in Nice in December 2000. Article 21 of the Charter prohibits discrimination on grounds of sexual orientation. With its narrow interpretation the ECJ also sets a problematic precedent for same-sex registered partners and spouses who want to move freely within the European Union without losing the legal rights and protection they enjoy in their home country.'

'The Court has not only entrenched the obstacles impeding the free movement of legally recognised same-sex couples within the Union', adds ILGA-Europe co-chair Kurt Krickler, 'but also missed an opportunity to stress the importance of this Charter, which for the time being is not legally binding. By not referring to it as a source of interpretation and jurisprudence, the Court emphasised the Charter's current status as a mere political declaration and thus inflicted upon it an enormous set back.'

The Court states that it is only the legislator, which can alter the situation, for example by amending the provisions of the Staff Regulations. It is imperative that the European Union now takes action to implement the recognition of same-sex couples: with more and more Member States granting such recognition at the national level, the absence of such recognition at European level will only lead to ever more widespread discrimination against lawfully

registered same-sex partners".

For more information contact:

Mette Vadstrup, ILGA-Europe Information officer, infoofficer@ilga-europe.org (phone: +32-2-732 54 88)

Kurt Krickler, co-chair, kurt.krickler@hosiwien.at (phone: +43-1-545 13 10).

ILGA-EUROPE POSITION PAPER ON THE PROPOSAL FOR A EU Directive on the right to family reunification

Background

On 1 December 1999, the Commission proposed a Council Directive on the right to family reunification.¹ In general, this aimed to harmonise the legislation of the Member States in the area of family reunion rights for immigration purposes. The Commission proposed that the Directive would apply mainly to third country nationals residing lawfully in a Member State and holding a residence permit from that Member State for a period of at least one year; refugees and other persons enjoying subsidiary protection; and EU citizens not exercising their right to free movement – that is, residing in their state of nationality.

Following consultation with the European Parliament, Economic and Social Committee and the Committee of the Regions, the Commission amended the original proposal on 10 October 2000.² In particular, persons enjoying subsidiary protection have been removed from the scope of the Directive and will be dealt with in separate legislation. The Directive is now the subject of negotiations at the Council of Ministers.

It should be noted that the UK, Ireland and Denmark are not participating in this proposal.

The definition of family

A frequent difficulty experienced in immigration law by lesbians and gay men is the restrictive definition of who constitutes a family member, and in particular requirements for partners to be married. With the exception of the Netherlands since 1 April 2001, in no state can same-sex couples marry.

Therefore, the Commission's proposal to address this problem is warmly welcomed. The original proposal would provide a right for the individuals to which the Directive applies to be joined in the European Union by their:

spouse, or an unmarried partner living in a durable relationship with the applicant, if the legislation of

¹ COM (1999) 638.

² COM (2000) 624.

the Member State concerned treats the situation of unmarried couples as corresponding to that of married couples.³

This is not an absolute right, but is subject to satisfying certain requirements in respect of accommodation, sickness insurance and resources.

The reference to unmarried partners was not amended either by the Parliament or the Commission in its revised proposal. Nonetheless, differences of opinion exist within the Council on this issue. A note from the Presidency to the Strategic Committee on Immigration, Frontiers and Asylum of 23 March 2001 states that several Member States would prefer to leave the recognition (or non-recognition) of unmarried partners to national discretion.⁴ Moreover, there is a proposal to add the following interpretive statement to the Directive: “unmarried partner” means a third-country national living in a duly proven durable relationship with the sponsor, including a third-country national linked to the sponsor by a registered partnership, if the legislation of the Member States concerned treats the situation of unmarried partners as corresponding to that of married couples.

The question of whether such corresponding treatment exists shall be assessed by the Member State concerned on the basis of its national legislation.⁵

Evaluation

ILGA-Europe welcomes any steps to extend the recognition of unmarried partners in European Union law in general, and immigration law in particular. However, we have reservations about the current proposal. It is helpful to consider the situation of third country nationals and EU nationals separately.

(a) Third country nationals

Under the current proposal, the rights conferred will vary significantly depending on the state concerned. If we consider, for example, the situation of a Brazilian gay man with a Brazilian male partner, he will have no right to reunion with his partner if he is living in Italy, as there is no national legislation in Italy on the recognition of same-sex partners.

In contrast, should he move to the Netherlands, he will acquire the right to reunion with his Brazilian partner as Dutch law both provides for the registered partnership of same-sex partners, as well as the possibility for same-sex marriage.

Alternatively, if he moves to France, his right to be joined by his partner will depend on whether French law, which provides a limited form of recognition for same-sex partnerships, is judged to

‘treat the situation of unmarried partners as corresponding to that of married couples.’

It seems unfair and contrary to the harmonising objective of the Directive if the right to family life fundamentally varies depending on the Member State concerned. Moreover, this conflicts in principle with the commitment to non-discrimination on the ground of sexual orientation stated in Article 21(1) of the EU Charter of Fundamental Rights. The Directive would actually institutionalise the uneven standards which already exist in this area.

(b) EU nationals

According to the draft Directive,⁶ the family reunion rights of EU nationals living in their state of nationality would be the same as the rights conferred on EU nationals exercising their right to free movement, as set out in Regulation 1612/68.⁷

As it stands, Article 10(1) of Regulation 1612/68 is limited to the right to be joined by a ‘spouse’; the Court of Justice has confirmed that this does not extend to unmarried partners.⁸ This is highly exclusionary for lesbian and gay partnerships, as same-sex marriage is only permitted in the Netherlands. Moreover, as the law stands, the Family Reunion Directive would create a strange situation where third country nationals would, in certain states, be entitled to be joined by an unmarried partner in that state, whereas this right would not exist for EU nationals. This would be a rare example of discrimination by EU law against the citizens of the Union.

This anomaly would be removed if the Council adopts the proposed amendment to Regulation 1612/68 submitted by the Commission in 1998. This would amend Article 10(1) to provide for a right to be joined by either a ‘spouse or any person corresponding to a spouse under the legislation of the host Member State ...’.⁹ However, this creates further problems. For example, a Swedish lesbian residing in Sweden would be entitled, as a Community law right, to reunion with her Australian female partner. This is based on the assumption that Swedish law, which confers most of the rights of marriage on registered same-sex partnerships, will be deemed to treat the situation of unmarried partners as corresponding to that of married couples.

In contrast, a Greek lesbian residing in Greece will have no right under the Directive for reunion with her female partner who also has Australian nationality. This is because there is no recognition of unmarried partners in Greek law.

In this respect, the proposal generates an element of

³ COM (1999) 638, Art 5(1)(a).

⁴ EU Council, Doc 7145/01 MIGR 19, 23 March 2001.

⁵ *Ibid* 5.

⁶ Art 4.

⁷ [1968] OJ L257/2.

⁸ Case C-59/85 *Reed* [1986] ECR 1283.

⁹ [1998] OJ C344/9.

discrimination between different citizens of the Union in the rights conferred by Community law. It must be questioned if this is compatible with the prohibition on nationality discrimination in Article 12 EC.

Finally, attention must be paid to wider issues of free movement rights for citizens of the Union with same-sex partners. If, based on the proposed Directive, a Swedish lesbian living in Sweden is joined by her female partner from Australia, what happens if the same individual then decides to move to Dublin to work? Community law has allowed her Australian partner to enter and reside in Sweden, but as it stands, Community law does not provide the right for her to bring her Australian same-sex partner to another EU Member State. Whilst this falls outside the remit of the Family Reunion Directive, the anomaly must be addressed.

(c) Recommendation

There are two main problems with the current proposal. First, it creates an unfair situation where individuals in some Member States will enjoy rights to be joined by their third country national unmarried partner, but individuals in other Member States will not have this right. Second, it is difficult to know in which Member States the right to be joined by an unmarried partner will apply. The Directive states this is where 'the legislation of the Member State concerned treats the situation of unmarried couples as corresponding to that of married couples'. However, as there is a varying level of legal recognition of unmarried partners in the different Member States, it is difficult to predict the application of the Directive.

Therefore, we recommend that the Directive provides a right to be joined by an unmarried partner, including of the same sex, of third country nationality in all Member States, irrespective of the recognition of unmarried partners in national law, and equally applicable to both EU nationals and third country nationals.

GENEVA GAYS TIE THE KNOT

By Rex Wochner

Gay couples in Geneva entered into Switzerland's first legally recognized same-sex partnerships May 8 at City Hall.

"We now have the same rights as heterosexual couples," activist Yves de Matteis told swissinfo.org as he tied the knot with his lover, Patrick Berguer.

"The authorities are recognizing our life together, and that may give our relationship a more lasting perspective."

Under the law, which applies only in Geneva canton, registered gay and straight couples will be

treated the same as married couples in dealings with the state except in the areas of taxation, adoption and social-security benefits, swissinfo said.

HUMAN RIGHTS WATCH: World Report 2001 - Lesbian And Gay Rights

<http://www.hrw.org/wr2k1/special/gay.html>

Protection from abuse remained elusive for lesbians, gay men, and bisexual and transgender people in 2000, despite the reaffirmation in the Universal Declaration of Human Rights that "All people are born free and equal in dignity and rights." In virtually every country in the world, people suffered from de jure and de facto discrimination based on their actual or perceived sexual orientation or gender identity. Sexual minorities were persecuted in a significant number of countries and in many ways, including the application of the death penalty or long prison sentences for private sexual acts between consenting adults. In some countries, sexual minorities were targeted for extrajudicial execution. In many countries, police actively participated in the persecution. Pervasive bias within the criminal justice system in many countries effectively precluded members of sexual minorities from seeking redress.

These attacks on human rights and fundamental freedoms also occurred in international fora where states were supposedly working to promote human rights. For example, in New York in June at the five year review meeting for the Fourth World Conference on Women, many delegates refused to recognize women's sexual rights and some states continued to defend violations of women's human rights in the name of religious and cultural practices. Activists stressed the connection between the need for states to recognize women's right to control their sexuality and enjoy physical autonomy if states were serious about wanting to reduce violence against women. Many delegates refused to acknowledge that discrimination against lesbian and single women created a climate in which attacks on such women were deemed justified.

Other intergovernmental bodies played a significant role in upholding the human rights of lesbian, gay, bisexual, and transgender individuals. In July, for example, the Council of Europe's Parliamentary Assembly approved Armenia and Azerbaijan's applications for membership with the understanding that each country would repeal legislation that discriminated against lesbian, gay, bisexual, and transgender persons. In a further debate the assembly voted to support recommendations that national governments recognize persecution on the grounds of sexual orientation for the purposes of asylum and grant bi-national same-sex couples the same residence rights as bi-national heterosexual couples. In September, the Parliamentary Assembly called upon its

member states to include sexual orientation among the prohibited bases of discrimination, revoke sodomy laws and similar legislation criminalizing sexual relations between consenting adults of the same sex, and apply the same age of consent for all sexual relations.

Despite the council's laudable efforts, the International Gay and Lesbian Association (IGLA) reported to the Parliamentary Assembly's Legal Affairs and Human Rights Committee in March that "discrimination against lesbian, gay and bisexual persons remains endemic and extremely serious" in Europe and that "[h]omophobic violence is common, even in countries like Sweden which are world leaders in their support for lesbian and gay rights."

Persecution:

Lesbian, gay, bisexual, and transgender individuals were vilified by officials of several states. Their claims to equal enjoyment of rights and equal protection before the law were routinely denied in many states. State-sponsored hostility and entrenched bias toward lesbian, gay, bisexual, and transgender people not only placed them at risk of violence and persecution by agents of the state, but virtually guaranteed that they would face serious obstacles if they turned to the state for protection or redress when attacked by private actors.

World Pride 2000, an international event calling attention to human rights violations of lesbian, gay, bisexual, and transgender people, held in July in Rome, came under heavy criticism from the Vatican. In the wake of the Vatican's criticism, Italy's prime minister Giuliano Amato ordered the country's minister for equal rights to cancel her ministry's official sponsorship of World Pride. The pope went on to condemn the event as "an offense to the Christian values of the city."

Leaders in Namibia, Uganda, and Zimbabwe continued to denounce lesbian, gay, bisexual, and transgender individuals during the year. Zimbabwean President Robert Mugabe continued his longstanding anti-gay campaign. At a New Year's Day celebration, he characterized same-sex marriage as "an abomination, a rottenness of culture, real decadence of culture." In Namibia, President Sam Nujoma was regularly quoted as calling lesbians and gays "unnatural" and against the will of God. State television reported in October 2000 that Home Affairs Minister Jerry Ekandjo urged new police officers to "eliminate" lesbians and gays "from the face of Namibia."

Ugandan President Yoweri Museveni appeared to back away from his September 1999 directive to Criminal Investigations Division officers to "look for homosexuals, lock them up and charge them." At a news conference in November 1999, he criti-

cized lesbians and gays for "provoking and upsetting" society but suggested that they could live in Uganda as long they "did it quietly."

In the month after President Museveni ordered the arrest of lesbian, gay, bisexual, and transgender Ugandans, the International Gay and Lesbian Human Rights Commission (IGLHRC) received reports that several students had been expelled from schools for their involvement in same-sex relationships. The offices of *Sister Namibia*, a magazine known for its strong support of gay and lesbian rights, was set on fire on July 10 in what appeared to be a deliberate attack; the Namibian National Society for Human Rights noted, "While the motive for the attack is not yet known, the attack occurred barely a week after Namibian President Sam Nujoma launched a verbal attack on the homosexual community."

According to the Lebanese human rights organization Multi-Initiative on Rights: Search, Assist and Defend (MIRSAD), Beirut Morals Police (Police des Mours) officers entered the offices of Destination, a Lebanese internet service provider, in April to obtain information about the owners of a website for Lebanese gays and lesbians that was accessible to internet users in Lebanon but maintained in the United States. Later that month, officers questioned the general manager and another senior staff member at the Hobaich police station. When MIRSAD posted an urgent action message on several websites, the military prosecutor charged MIRSAD and Destination officials with "tarnishing the reputation of the Morals Police by distributing a printed flier," in violation of article 157 of the Military Penal Code; their trial was scheduled for September 25. If convicted, they would face three months to three years of imprisonment.

Gay men, lesbians, and transgender people have been subjected to a campaign of terror, violence, and murder in El Salvador over the last several years. Governmental indifference to these offenses was compounded by state agents' active participation in violence. A person who identified himself as a member of the special Presidential Battalion used his weapon to threaten a transgender person who was participating in Lesbian and Gay Pride Day celebrations in the Constitution Plaza in San Salvador. Asociación "Entre Amigos" Executive Director William Hernández repeatedly received death threats. The Salvadorean police acknowledged that Hernández and "Entre Amigos" qualified for protection due to the repeated attacks and threats to which they had been subjected. Nevertheless, the chief of the National Civil Police initially refused to appoint any officers to provide protection because officers who "do not share the sexual tastes" of those they should protect would feel uncomfortable doing their work. Hernández was placed under special police protection following an international

campaign.

In August, a longstanding prohibition against the use of a public park in Aguascalientes, Mexico, by "dogs and homosexuals" became the focus of public attention after a sign announcing the ban was repaired and reposted at the park entrance. Asked for his thoughts on the gay community in interviews broadcast on the Mexican network Televisa and in the national newspaper *La Jornada*, Aguascalientes Director of Regulations Jorge Alvarez Medina stated that he was against "this type of people" and declared that he "will not allow access to homosexuals" while he remained in charge of municipal regulations. In a welcome development, however, National Action Party (Partido de Acción Nacional, PAN) National President Luis Felipe Bravo Mena denied that Alvarez Medina's remarks reflected the policy of the PAN, the governing party in Aguascalientes. Declaring that "we reject and repudiate" Alvarez Medina's remarks, Bravo Mena stated, "If any doubt remains, I can say that I feel that this is absolutely reprehensible. We do not believe in any type of discrimination and reject it."

At least four transgender persons in Valencia, in the Venezuelan state of Carabobo, were reportedly detained without judicial order by Carabobo police, according to Amnesty International. In July, police improperly detained two transgender persons for eight days; in August, officers forced two other members of Valencia's transgender community to undress in the street, beat them, and then held them for several days in August without permitting them legal, medical, or family visits.

In September, the Brazilian GLBT Pride Parade Association of São Paulo (Associação da Parada do Orgulho GLBT de São Paulo) received a letter bomb, one day after several gay and lesbian rights organizations and other human rights NGOs received letters threatening to "exterminate" gays, Jews, blacks, and persons from Brazil's northeast. There were an estimated 169 bias-motivated killings of sexual minorities in Brazil in 1999, according to a May report issued by the Grupo Gay de Bahia; the states of Pernambuco and São Paulo recorded the highest number of killings.

The Criminalization of Private Sexual Conduct: Over eighty countries continued to criminalize sexual activity between consenting adults of the same sex, according to the IGLHRC. Elsewhere, national or local legislation discriminated against lesbian, gay, bisexual, and transgender persons by imposing different standards for the legal age of consent. In addition, lesbian, gay, bisexual, and transgender persons were often targeted for arrest under provisions relating to "scandalous conduct," "public decency," loitering, and similar charges.

In Saudi Arabia, where sodomy was punishable by

the death penalty, six men were executed for that crime in July. In April, nine men were sentenced to up to 2,600 lashes each for transvestism and "deviant sexual behavior"; because the sentence could not be carried out in a single session without killing the men, it was to be carried out at fifteen-day-intervals over a period of two years.

Sri Lanka's Press Council fined a gay rights activist in June for filing a complaint against a newspaper that had published a letter urging that lesbians be turned over to convicted rapists. The council declared that being a lesbian was an "act of sadism" and that the activist, rather than the newspaper, was guilty of promoting improper values.

At this writing, the Romanian Senate was considering the abolition of article 200, which criminalized all sexual relations between consenting adults of the same sex if "committed in public or if producing public scandal." The article was interpreted to include casual gestures of intimacy such as holding hands and kissing. The measure passed the Chamber of Deputies, the Romanian Parliament's lower house, on June 28. The measures under consideration did not address article 201, which continued to penalize "acts of sexual perversion" if "committed in public or if producing public scandal" with one to five years of imprisonment. A 1998 report jointly published by Human Rights Watch and the IGLHRC documented the human rights abuses suffered by lesbian, gay, bisexual, and transgender persons in Romania as a result of both provisions.

In response to a 1993 decision of the European Court of Human Rights, Cyprus amended its criminal laws in June to equalize the male age of consent, setting it at eighteen. Before the amendment, the age of consent for men engaging in heterosexual sex had been sixteen, while the age of consent for men engaging in homosexual sex had been eighteen. The age of consent for all women continued to be sixteen. Other European countries continued to maintain unequal ages of consent. A notable example was Austria, where the age of consent was fourteen for heterosexual males and eighteen for men who had sexual relations with other men.

In the United States, fifteen states retained laws prohibiting consensual sexual relations between adults of the same sex, classifying these acts as "sodomy," "sexual misconduct," "unnatural intercourse," or "crimes against nature." A Texas court overturned the state's sodomy law in June, while the highest court of the neighboring state of Louisiana upheld the state's "crimes against nature" statute in July. A challenge to Massachusetts' sodomy law was pending at this writing. Massachusetts was the only state in New England to retain legislation prohibiting sexual relations between consenting adults of the same sex.

In August, former Malaysian Deputy Prime Minister Anwar Ibrahim and his adopted brother Sukma Dermawan were both convicted of sodomy. Anwar was sentenced to nine years in prison; Sukma received six years and four lashes with a rattan cane. The prosecution of Anwar was widely viewed inside and outside Malaysia as a case of political revenge against Anwar and his supporters, who had grown increasingly critical of Prime Minister Mahathir in the months prior to Anwar's ouster and arrest. Anwar's prosecution was also seen as undermining the integrity of the Malaysian judiciary, which had already been criticized widely for its lack of independence (see Malaysia chapter).

In May, the Zimbabwe Supreme Court upheld former President Canaan Banana's 1998 conviction for sodomy and indecent assault. Banana was quoted in 1999 as describing homosexuality as "deviant, abominable, and wrong according to the scriptures and according to Zimbabwean culture."

Even in countries where the laws criminalizing private consensual conduct between adults were not enforced, the existence of these laws provided the foundation for attacks on sexual minorities. Men and women who identified as gay, lesbian, or bisexual were attacked as immoral and putative criminals. Thus, discrimination on the basis of this characterization was deemed justified.

The Military:

In September 1999, the European Court of Human Rights ruled that the United Kingdom's ban on lesbian and gay service members violated the Convention on Human Rights and Fundamental Freedoms. In July 2000, the court awarded four gay British service members compensation for their discharge.

Lesbian, gay, bisexual, and transgender individuals were not barred from military service throughout much of the rest of Europe. In remarks published in the French gay magazine *Têtu* in May, Gen. Alain Raevel declared of France's policy with regard to lesbian, gay, bisexual, and transgender service members, "The army which we are building is an extension of society. We need to recruit boys and girls for 400 different types of work. The fact that they may be homosexual does not concern us." Similarly, lesbian, gay, bisexual, and transgender individuals served in Canada and Israel without official retaliation.

With most of its allies either allowing homosexuals to serve openly or having no policy on the subject they considered unrelated to job performance, the United States found itself increasingly isolated in maintaining restrictions on lesbian, gay, bisexual, and transgender servicemembers. Turkey was the only other member of the North Atlantic Treaty Organization (NATO) that continued to ban gays and lesbians from its armed forces. Six years after the

U.S. military codified and implemented its "don't ask, don't tell" policy, its own investigations found that training on implementation of the law was lagging and that anti-gay comments and harassment were pervasive. Although the "don't ask, don't tell" policy was ostensibly intended to allow a greater number of gay, lesbian, or bisexual service members to remain in the military, discharges increased significantly after the policy's adoption. From 1994 to 1999, a total of 5,412 service members were separated from the armed forces under the policy, with yearly discharge totals nearly doubling, from 617 in 1994 to 1,149 in 1998. In 1999, the number of separations dropped slightly, to 1,034; nevertheless, the discharge rate was still 73 percent higher than it was prior to the implementation of "don't ask, don't tell." Women were discharged at a disproportionately high rate. In addition, the policy enabled male harassers to threaten to "out" women -- and end their careers -- if the women rejected their advances or threatened to report them.

Even more disturbing than the increase in the number of service members separated from the military under this policy was the continued failure of the U.S. Department of Defense to hold anyone accountable for violations of the policy. This lack of accountability spilled over to the murder case of Barry Winchell, a gay army private at Fort Campbell in 1999. A U.S. Army review, issued in July, of the circumstances surrounding the beating death of Winchell on the base, concluded that no officers would be held responsible for the killing and that there was no "climate" of homophobia on the base. This conclusion contradicted a Defense Department inspector general report issued in March which found that harassment based on perceived homosexuality was widespread in the military. It also contradicted numerous reports that Winchell was relentlessly taunted with anti-gay slurs in the months before he was murdered.

Marriage and Discrimination Based on Family Configuration:

Barriers to the legal recognition of lesbian, gay, bisexual, and transgender families continued to crumble slowly in a number of countries throughout the world. In March, the European Parliament, the legislative body of the European Union, called on its member states to "guarantee one-parent families, unmarried couples, and same-sex couples rights equal to those enjoyed by traditional couples and families."

On September 13, the Dutch Parliament passed legislation permitting marriage between same-sex couples. The legislation, which was limited to Dutch citizens and to those with residency permits, also provided for adoption rights and access to the courts in cases of divorce. The law was expected to go into effect in early 2001, making the Netherlands the first country to allow same-sex couples to

marry.

Denmark, Greenland, Iceland, Norway, and Sweden had provisions for registered partnerships, which did not provide all of the benefits of civil marriage - often according limited or no adoption rights, in particular -- and were generally limited only to citizens or to residents who had lived in the country for several years. France's civil pact of solidarity (pacte civile de solidarité, PACS) and Hungary's cohabitation law had similar limitations. In June, Iceland expanded its registered partnership law to permit same-sex couples to adopt each other's biological children. The law was also extended to cover Danes, Swedes, and Norwegians living in Iceland; other foreigners were permitted to enter into registered partnerships after they had resided in Iceland for two years.

A comprehensive same-sex partnership bill introduced in Germany on July 5 would grant same-sex couples spousal rights in taxation, inheritance, immigration, social security, child custody, health insurance, name changes, and other areas. The plan was expected to pass the Bundestag, the lower house of the German parliament; support in the Bundesrat, necessary to enact some aspects of the proposal, was not assured.

The U.S. state of Vermont enacted legislation in April providing for civil unions between same-sex couples. The law was passed in response to a December 1999 decision of the Vermont Supreme Court holding that the state's constitution required Vermont "to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law." Although civil unions carried virtually all of the state rights and responsibilities of marriage, they were not recognized by the federal government or any other U.S. state.

Brazil granted same-sex partners the same rights as married couples with respect to pensions, social security benefits, and taxation in June. This step was achieved by decree: legislation to provide for civil unions between persons of the same sex remained pending in the federal Chamber of Deputies.

In November 1999, the Latvian Parliament's Human Rights and Public Affairs Commission rejected proposed legislation that would provide for registered partnerships for same-sex couples. In August, Slovak Justice Minister Jan Carnogursky announced that same-sex partnerships would not be registered in Slovakia, reportedly stating that such partnerships would "degrade" heterosexual families.

Israel's Interior Ministry announced in July that it allowed same-sex partners to receive immigration benefits on equal terms with heterosexual common-law spouses. Under the ministry's policy, the non-citizen partner is granted a renewable one-year

tourist permit with employment authorization and may request temporary resident status after four years; eventually, the partner may seek permanent residence and then citizenship.

With the addition of Israel, at least fourteen countries offered immigration benefits to same-sex couples. Unlike most countries' immigration policies with regard to married heterosexual couples, these policies typically required same-sex couples to demonstrate that they had had a committed relationship for one to two years or more before they were eligible for any immigration benefits. Australia required same-sex couples to show "a mutual commitment to a shared life" for at least the twelve months preceding the date of application. In New Zealand, same-sex couples had to have been "living in a genuine and stable de facto relationship" for two years. The United Kingdom required applicants to show that they had had "a relationship akin to marriage" for two years or more. Belgium required a relationship of at least three and a half years' duration. The other countries that offered same-sex immigration benefits were Canada, Denmark, Finland, France, Namibia, the Netherlands, Norway, South Africa, and Sweden.

Harassment and Discrimination Against Students: Lesbian, gay, bisexual, and transgender students in the United States and elsewhere were frequently targeted for harassment by their peers. Lesbian, gay, and bisexual youth were nearly three times as likely as their peers to have been involved in at least one physical fight in school, three times as likely to have been threatened or injured with a weapon at school, and nearly four times as likely to skip school because they felt unsafe, according to the 1999 Massachusetts Youth Risk Behavior Survey. Moreover, the survey found that those who identified as lesbian, gay, or bisexual were more than twice as likely to consider suicide and more than four times as likely to attempt suicide than their peers.

Efforts to provide a safe, supportive environment for lesbian, gay, bisexual, and transgender students in the United States were hampered by discriminatory legislation in several states. In addition, many students also faced hostile school administrations. In two particularly prolonged disputes, school districts in Utah and California attempted to deny students the right to form clubs known as gay-straight alliances, in violation of the federal Equal Access Act. Both school districts began to permit the student groups to meet in September 2000, doing so only after the students who sought to form the groups filed lawsuits against the districts.

SAME-SEX MARRIAGE DEBATE HEATS UP IN LUXEMBOURG

By Dermot Murphy

Luxembourg's Prime Minister Jean-Claude Juncker (CSV Social Christian Party) has opened up a public debate on same sex marriage legislation in his recent State of the Nation speech (03 May). As well as dealing with issues such as pension reform, the environment and taxation, the Prime Minister surprised many commentators by addressing for the first time in public the possibility of official recognition of gay relationships and ending discrimination against couples who cohabit but are not married.

Luxembourg's gay and lesbian rights group Rosa Lëtzebeurg gave a cautious welcome to Juncker's mention of same sex relationships and the need for legislation to deal with this social phenomenon. According to Rosa Lëtzebeurg, the Prime Minister's announced intention to prepare a bill dealing with the rights of cohabitating couples – both hetero- and homosexual, was a brave step for him to take in such a keynote speech. However, the group also warned that the PM's language indicated that Luxembourg was still a two-class society – those couples who did not want to marry and those who could not marry.

Juncker's surprise announcement comes hot on the heels of a public row following homophobic statements by leading politicians. Earlier this year, Minister for Justice Luc Frieden (CSV) was quoted as saying that same sex marriage was 'contrary to public order'!

Rosa Lëtzebeurg's annual GAY MAT celebrations (a mini-Gay Pride event) drew attention to the fact that such comments by leading public figures is a reminder of the often hidden but deeply enshrined homophobic sentiment that runs through Luxembourgish political life, despite the positive statement of intent announced by the Prime Minister.

US GOVERNMENT GRANTS HALF MILLION DOLLARS TO ACKNOWLEDGE GAY VICTIMS OF THE NAZIS

This week the Pink Triangle Coalition received \$504,210 from the United States' portion of the International Nazi Persecutee Relief Fund. According to the award letter from the US Department of State, the funds were specifically granted "to promote public education and remembrance of the gay men and lesbians who were murdered by the Nazis or otherwise persecuted during the Nazi period."

The Pink Triangle Coalition was formed in 1998 by eight gay advocacy organizations in Europe, Israel and the United States to co-ordinate affairs relating

to the Nazi persecution of gay men and lesbians.

"Our Coalition is heartened by this opportunity to finally honor the memories of these gay men and lesbians who were killed by the Nazis and we are appreciative to the US government for acknowledging these non-Jewish victims," remarked Julie Dorf, one of the founders of the Pink Triangle Coalition and former Director of the International Gay & Lesbian Human Rights Commission. "But it also underscores how little has been done by a number of governments, particularly Germany." Ralf Dose of the Magnus Hirschfeld Society added, "We are still waiting for the German government to even consider true reparations for the gay victims of the Nazi period."

Last year, the US portion of the International Nazi Persecutee Relief Fund allocated \$70,000 for the Pink Triangle Coalition to redistribute to these seven survivors and for a Berlin-based research project to help uncover additional survivors. Also this year, the Austrian member of the Pink Triangle Coalition secured \$33,000 from the Austrian portion of the International Nazi Persecutee Relief Fund. The Swiss and Austrian members of the Pink Triangle Coalition have also secured smaller amounts of money from other sources for gay survivors of the Nazis.

The International Nazi Persecutee Relief Fund was created in 1997 as the final resolution of the left over money that the Tri-Partite Gold Commission had taken back from the Nazis after World War II. During the war, the Nazi government had stolen gold from the countries, which it occupied, and the US, British and French governments set up the Tri-Partite Gold Commission to handle the redistribution of these monies after the war. In London in 1997, governments from 23 countries met to discuss how to handle the left over funds and there they created the International Nazi Persecutee Relief Fund, from which the US distributed 25 million dollars in total.

This grant of a half million dollars will be distributed to three projects in Germany and one international project. Together these projects will greatly contribute to the educational resources our communities have available to remember what happened to gay men and lesbians at the hands of the Nazis. Through film, books, study guides, the Internet and CD-ROMS, these three projects will create a long-lasting body of materials that will finally bring this hidden piece of history to a larger public.

One project will ensure that a recent documentary film by Academy Award-winning directors Rob Epstein and Jeffrey Friedman, "Paragraph 175" will be seen and discussed around the world (<http://www.tellingpix.com>). A second project will create a "virtual" and real memorial to those killed

as well as institutions destroyed by the Nazis in the form of a museum exhibition at the Gay Museum in Berlin (<http://www.schwulesmuseum.de>), a CD-ROM and an Internet site for educational uses. A third project will publish a memorial book of the names of gay men and lesbians in Berlin who were murdered by the Nazis (<http://me.in-berlin.de/~hirschfeld/>). The funds will be distributed through the Astraea Lesbian Action Foundation, based in New York City (<http://www.astraea.org>).

In February, the Dutch government also allocated approximately 1.4 million dollars of funding- although not from their portion of International Nazi Persecutee Relief Fund- for research and exhibition projects related to gay and lesbian persecution by the Nazis and its broader impact for Dutch gay and lesbian life during and after the German occupation of the Netherlands. Representatives of various gay and lesbian groups, including of the Pink Triangle Coalition, have worked with the Dutch government on this important development.

For additional background information, visit <http://www.iglhrc.org/issues/nazi/index.html>

ESTONIA REPEALS DISCRIMINATORY AGE OF CONSENT FOR SAME-SEX ACTIVITY

By Lillian Kotter

Wednesday, June 6, the Riigikogu, the Parliament of the Republic of Estonia voted (51:1) for a new Penal Code (Karistusseadustik). It will substitute the current Criminal Code (Kriminaalkoodeks), an amended version of the Soviet model of the Criminal Code which came into force in June 1, 1992. Since then the only anti-gay article in the criminal law provided for a higher age of consent for gay relations (16 years) than for heterosexual intercourse (14 years), had special article for gay sex and gay rape and did not change pejorative phraseology (pederasty).

Article 141 of the new Penal Code does not differentiate between gay and heterosexual rape and provides 14 years as the same minimal age of consent for both whereas the punishment for rape remains the same - 2-5 years of confinement. The punishment for consenting sexual intercourse with a person under 14 years of age has become remarkably milder - up to 3 years of confinement (Article 145) instead of previous confinement of 4 years (vaginal intercourse) and from 2 to 10 years (anal intercourse). Article 146 provides confinement for up to 2 years for satisfaction of sexual desire with a person under 14 years of age otherwise than by sexual intercourse.

A slight setback can be observed in a special chap-

ter dedicated to political and human rights. Article 151 provides provisions for incitement of social hatred or violence on the basis of nationality, race, colour, sex, language, origin, religion, political opinion, property or social status. Article 152 deals violating rights or providing illegal advantages on the basis of nationality, race, colour, sex, language, origin, religion, political opinion, property or social status. The list follows that mentioned in Article 12 of the Constitution of the Republic of Estonia with one difference: "or on other grounds" is omitted in the new Penal Code. At the same time sexual orientation is still missing in the list and cannot even theoretically be regarded as "other grounds" within this law.

The adoption of the Implementation of the Penal Code Act will fix the exact date of enforcement of the Penal Code. The new Penal Code is expected to be in force in about one year's time.

ILGA-Europe

The European Region of the
International Lesbian and Gay Association

Proudly presents the newly established
Brussels office at:

Avenue de Tervueren 94/1
B-1040 Brussels
Tel.: +32 2 732 54 88
Fax: +32 2 732 51 64
E-mail: info@ilga-europe.org
Web-site: www.ilga-europe.org

– from now on the ieboard@egroups.com
address should not be used anymore –

We would also like to introduce our staff:

Administration Officer: Olivier Collet,
adminofficer@ilga-europe.org
Information Officer: Mette Vadstrup,
infoofficer@ilga-europe.org

New millennium, new resources, new opportunities!

As from December 2000, ILGA-Europe is receiving core funding from the European Commission under the support programme “for the co-ordination activities of organisations operating at European level and active in fighting discrimination”. This breakthrough offers many opportunities. The establishment of an office in Brussels and the hiring of two paid staff members bring new resources for ILGA-Europe and will also benefit the people and organisations working at the national level to push back boundaries of discrimination.

The European Union’s Community action programme to combat discrimination (2001-2006), adopted last November, provides for further core funding possibilities for European NGOs fighting discrimination on the grounds mentioned in Article 13 of the Treaty establishing the European Community (as amended by the Treaty of Amsterdam). Discrimination on grounds of

sexual orientation is now on the European agenda, and ILGA-Europe is hoping to continue receiving funding from the European Commission.

We look forward to strengthening and expanding our network and co-operation with the NGO community and the European Parliament Intergroup on Equal Rights for Gays and Lesbians, and to intensifying our lobbying activities towards the European institutions. We also look forward to providing our members with information and assistance in pursuit of our common goal: to combat all kinds of discrimination on grounds of sexual orientation and gender identity across Europe.

ILGA-Europe will soon publish the first issue of its new quarterly Newsletter financed under the current contract with the Commission. If you want to receive a copy of the ILGA-Europe Newsletter on a regular basis, please provide us with your mailing address.