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ILGA-EUROPE CALLS UPON EU TO INSIST ON THE RESPECT OF HUMAN RIGHTS IN EGYPT

ILGA-Europe media release, 29 November 2001

Today, the European Parliament approved, by a great majority (429 to 11), the Association Agreement between the European Union and Egypt. In the run-up to the vote, members of the EP expressed serious concerns regarding the human rights situation in Egypt, notably for Christians, intellectuals and homosexuals. A series of activities to postpone the debate and approval of the Agreement were initiated to leave to the Egyptian authorities the time to inform the Parliament how they would address the problems raised.

Last May, 52 men were arrested in Cairo for alleged homosexuality and tried in a special Emergency State Security Court under fabricated charges for "obscene behaviour" and "contempt of religion" - homosexuality as such is not illegal in Egypt. On 14 November 2001, 23 of them were sentenced despite of massive international protests, including from Amnesty International and the International Lesbian and Gay Association.

"We understand that the majority of EP members wanted to go ahead with the Agreement to honour that Egypt has improved its general human rights record in recent years. The Agreement also contains a human rights clause that, in theory, could be used to further encourage Egypt to comply with its human rights obligations", comments ILGA -Europe co-chair Jackie Lewis. "We therefore urge all EU institutions to closely monitor developments in Egypt and to insist that human rights abuses as described come to an end and the men convicted be pardoned and released from prison."

"If the human rights clause is not used and the EU does not follow-up these cases, the authorities in Egypt will take this as a signal that they could get away with human rights violations and the EU, in reality, is not committed to its own human rights principles", adds ILGA -Europe co-chair Kurt Krickler. "A failure by the EU to live up to the principles would be immensely damaging, not just for the cause of those persecuted, but also for the European Union's entire human rights policies."

BULGARIA

In September 2001 Boyko Boev, a lawyer from the Bulgarian Helsinki Committee completed a research on "Bulgarian and International Legislation About Homosexuals". The research is the first attempt to analyze Bulgarian legislation regarding homosexuals. It was made possible thanks to the financial assistance of the Dutch Organization St. Fonds de Trut.

One of the main purposes of the research was to identify discrepancies between the domestic law with the international human rights standards and to inspire campaigns for legislative reforms. The research is available in Bulgarian and English on the websites of Bulgarian Helsinki Committee (www.bghelsinki.org) and Bulgarian Gay and Lesbian Organization "Gemini" (www.bgogemini.org). The versions in the two languages are different. The Bulgarian version includes examples of positive solutions in proving equality and fighting against discrimination on the basis of sexual orientation around the world. The English version is shorter because it is intended for foreigners who are interested in the Bulgarian legislation on homosexuals. The research consists of 3 chapters analyzing Bulgarian criminal law, family and social security law and anti-discrimination legislation.

Based on the findings the author recommends legislative changes, which should at minimum meet the following requirements:

- 1.** The different approaches to seeking criminal responsibility from heterosexual and homosexual persons for sex crimes should be removed.
 - 1.1.** The Criminal Code should be based on orientation-neutral approaches and should not contain texts that differentiate sex crimes based on whether the perpetrators are homosexual or heterosexual persons.
 - 1.2.** The Criminal Code should not contain special texts that refer only to homosexuals. For example, it should not contain a separate text about homosexual prostitution.
 - 1.3.** The punishments for the same crimes, committed by homosexual and heterosexual persons, should not be different.
- 2.** Future changes in the Criminal Code, regarding illegal homosexual activities should seek a clearer language, in conformance with the requirements for law of the European Court of Human Rights in Strasbourg.

3. The age of legally relevant consent for participation in sexual acts should be made equal for homosexual and heterosexual acts.

4. Outdated moral texts that are not enforced and insulting language should be repealed.

5. Training courses are necessary for police officers and investigators, to teach them about crimes motivated by homophobia. Police officers must be required to register cases of violence motivated by homophobia and to take measures to protect the victims.

6. Sexual orientation must be recognized as an independent motive, legally equivalent to race, religion, and the other categories, in the hate crime provisions.

7. Legislation should recognize domestic partnership and ensure protection for the rights of the partners.

8. The anti-discrimination law, presently drafted, and future law on equal opportunities should include prohibition of discrimination on the basis of sexual orientation and provide legal remedies to discriminated homosexuals.

In the beginning of November a delegation from the European Parliament visited Bulgaria in connection with the 2001 Regular Report on Bulgaria's Progress Towards Accession to EU. In their talks with the Government Mr. Michael Cashman and the other MEPs raised the issue of discrimination against homosexuals in Bulgaria. For the first time the European Commission Report of 13 November 2001 regarding the integration of Bulgaria, makes references to the situation of homosexuals in Bulgaria. The Commission criticizes Bulgaria for its "law which currently discriminates against homosexuals".

HATE CRIME BILL IN SWEDEN

Press release from the Swedish Ministry of Justice

In a bill presented to the Riksdag (the Swedish Parliament) today the Government proposes that agitation against homosexuals as a group be made a criminal offence.

This is to be effected by extending the penal provision for agitation against a national or ethnic group to include threats or expressions of contempt alluding to sexual orientation.

Sexual orientation means homosexual, bisexual or heterosexual orientation.

The bill also includes a proposal for a special stiffer scale of punishment for serious cases of agitation against a national or ethnic group; imprisonment for at least six months and at most four years. The stiff scale of punishment will, for example, be applicable to cases of extensive dissemination of abusive racist material. It will also be applicable to such hate speech alluding to homosexuals.

The Government further proposes that protection of witnesses be strengthened by tightening the penalty for interference in a judicial matter. It is proposed *inter alia* that the scale of punishment for gross offences be raised from imprisonment for at least one year and at most six years to imprisonment for at least two years and at most eight years and that the maximum penalty for average offences be raised from two to four years' imprisonment. The proposal means that the scale of penalties for threatening witnesses will be the same as that applicable today to the offence of perjury.

As far as agitation against a national or ethnic group is concerned, it is proposed the amendments, including the amendments regarding hate speech against homosexuals, enter into force on 1 January 2003. Other amendments are to enter into force on 1 July 2002.

BELGIUM COUNCIL BASES OBJECTION TO SAME-SEX MARRIAGE ON A REPORT FROM 1803

FWH Press Release, 30 November 2001

The Council of State bases its objection to same-sex marriage on a report from 1803.

The Federation of GLB groups in Dutch-speaking Belgium (FWH) is astonished by the Council of State's Opinion.

This Opinion [if confirmed] shows how out of touch the Council of State is with contemporary social attitudes.

The Council of State appears to be unaware that marriage today is above all a public declaration of love, not a commitment to procreation. Its Opinion states : "A homosexual couple is objectively different from a heterosexual one, because of their inherent nature. Specifically, only heterosexual couples are naturally able to produce babies. They need more stabil-

ity and have a different social utility from homosexual couples."

Nevertheless, in Belgium the law on kinship has been completely independent of the marital status of those concerned since 1987. According to M. Heyvaert, the Professor of family law at Antwerp University : Where marriage has lost its significance for legal kinship, then the different treatment can only be interpreted as reflecting a different attitude to sexuality, and more specifically a discriminatory attitude with regard to sexual relations between adults of the same sex. Such discrimination is no longer permissible."

The Council of State also refers to the European Convention on Human Rights (ECHR), notably to the provision [Art. 12] "Men and women of marriagable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

There is thus nothing in the ECHR that prevents the national legislation from making provision also for marriage between persons of the same sex.

The Council of State's Opinion also contains the following quotation from the Report of the Gillet Tribunal, dated 23 ventose an XI (1803): "If procreation is not an essential element of marriage, it almost always occurs thereafter, and the institution of marriage provides the strongest and most appropriate framework for the education of children."

The Opinion thus fails to take into account that marriage is primarily a public declaration of a loving relationship, that many children are born outside the marriage relationship and that the families founded by some same-sex couples include children. It argues from no fundamental juridical principles, but clearly reflects an ideological bias. This Opinion indicates the Council of State has gone well beyond its mandate.

Consequently, the FWH urges the Minister of Justice and his parliamentary colleagues to disregard this Opinion [as they are legally entitled to do].

European Court of Human Rights
**AGE-OF-CONSENT CASES DECLARED
ADMISSIBLE**

By *Rechtskommitté Lambda*

On 22nd November 2001 the First Section of the European Court on Human Rights has declared admissible the first three of the Austrian age-of-consent cases (L. & V. vs. Austria; S.L. vs. Austria). It did so not only under Art. 14 in conjunction with Art. 8 but also under Art. 8 taken alone.

In S.L. vs. Austria the Court held that the fact that the 17 year old applicant is not himself criminally liable does not impair his status as a victim under Art. 34. The contribution of the law "to general stigmatisation of homosexuality, the ensuing reluctance of male adolescents to disclose their sexual orientation, particularly in the rural area where he is living, and the inhibitions imposed on their sexual behaviour", given his attraction to men older than himself the inability to "enter into any sexual relationship corresponding to his disposition without exposing his partner to the risk of criminal prosecution" and without exposing "himself to the risk of being involved in criminal investigations and of having to testify as a witness on the most intimate aspects of his private life ... constitutes an interference with the right to respect for one's private life (see the Smith and Grady v. United Kingdom judgement, nos. 33985/96 and 33986/96, § 71, ECHR, 1999-VI)".

The decision in L. & V. vs. Austria has been taken unanimously, the decision in S.L. vs. Austria by a majority.

The Court indicated that for the future procedure it would not require any further information or submissions, that it considers it is not necessary to hold a hearing in the case and it invited the applicants to put forward their claims for just satisfaction.

Background of the cases

S.L. vs. Austria (45330/99)

S.L. is a young gay man of (at the time of application) 17 years who complains that Art. 209 CC violated his rights to respect for private life (Art. 8 ECHR) and to non-discrimination (Art. 14 ECHR).

The applicant submitted that at about age eleven or twelve he began to be aware of his sexual orientation. While other boys were attracted by women, he realised that he was emotionally and sexually attracted by men, whereby his attraction was directed towards adult men, not boys of his age. At the age of fifteen he was sure of being homosexual. He

lives in a rural area where homosexuality is still a taboo. He suffers from the fact that he cannot live his homosexuality openly and - until he reached the age of eighteen - could not enter into any fulfilling sexual relationship with an adult partner for fear of exposing that person to criminal prosecution under section 209 of the Criminal Code, of being himself obliged to testify as a witness on the most intimate aspects of his private life and of being stigmatised by society should his sexual orientation become known.

The applicant complains under Art. 8 of the Convention, taken alone and in conjunction with Art. 14, about section 209 of the Criminal Code, penalising homosexual acts between adult men and consenting adolescents between fourteen and eighteen years of age. The applicant points out in particular that in Austria, as in the majority of European countries, heterosexual and lesbian relations between adults and consenting adolescents over fourteen years of age are not *punishable*. While not necessary for protecting male adolescents in general, section 209 of the Criminal Code hampers homosexual adolescents like him in their development by attaching a social stigma to their relations with adult men and to their sexual orientation in general.

L & V vs. Austria (39392/98, 39829/98)

a. The facts

Both applicants are Austrian nationals born in 1967 and 1968 respectively.

G.L. has been convicted by the Vienna Regional Criminal Court under Art. 209 CC of homosexual acts with adolescents and sentenced to one year imprisonment. During the trial the applicant was questioned in particular in respect of a calendar, which had been seized at his home, and in which he had made diary-like entries about his sexual encounters, usually noting the first name of his partner, his approximate age, the kind of sexual acts performed as well as his sensations and feelings. This diary has been read out in court. No witnesses were heard. On this basis the Court found it established that, between 1989 and 1994, the applicant had, in Austria and in a number of other countries, had homosexual contacts either by way of oral sex or masturbation with numerous persons between fourteen and eighteen years of age, whose identity could not be established. On 5th November 1996 the Supreme Court, upon the applicant's plea of nullity, quashed the judgment as far as

offences committed abroad were concerned. The applicant had also complained about the use of his calendar-diary, claiming that such use would only be justified in case of a very serious crime but not to provide proof of an offence under Art. 209 CC which itself lacked any justification. In this respect, the Supreme Court found that the Code of Criminal Procedure did not contain any prohibition on using a calendar as evidence - even if it contained diary-like entries - provided that it had been read out at the trial. A diary fell into the category of documents which had to be read out in accordance with Art. 252 (2) CCP. In any case, as the applicant had not objected to the reading out of the calendar, he could not complain about its use as evidence. On 29 January 1997 the Vienna Regional Criminal Court, in renewed proceedings which had been discontinued as far as the offences committed abroad were concerned, fixed the sentence for the offences committed in Austria at eleven months' imprisonment suspended on probation. On 27 May 1997 the Supreme Court dismissed the applicant's plea of nullity. On 31 July 1997 the Vienna Court of Appeal, upon the first applicant's appeal, reduced the sentence to eight month imprisonment suspended on probation. In 1998 the Austrian Minister of Justice refused to recommend to the President of the Republic the pardoning of the applicant.

A.V. has been convicted by the Vienna Regional Criminal Court on 21 February 1997 under Art. 209 of homosexual acts with adolescents, and one minor count of misappropriation, and sentenced him to six month imprisonment suspended on probation. The Court found it established that on one occasion the applicant had had oral sex with a fifteen year old boy. On 22 May 1997 the Vienna Court of Appeal dismissed the second applicant's appeal on points of law, in which he had complained that Art. 209 CC was discriminatory and violated his right to respect for private life. It also dismissed his appeal against sentence.

b. Austrian law and practice

Any sexual acts with persons under fourteen years of age are punishable under Art. 206 and 207 CC.

Art. 209 CC reads as follows: "A person of the male sex who, after completion of his 19th year, engages in same-sex lewdness with a person, who has completed his 14th but not yet his 18th year shall be sentenced to six months to five years imprisonment."

This provision is aimed at consensual homo-

sexual acts, as any sexual acts of adults with persons of up to 19 years are punishable under Art. 212 CC if the adult abuses a position of authority (parent, employer, teacher, doctor etc.).

Consensual heterosexual or lesbian acts between adults and persons over 14 years of age are not punishable.

Offences under Art. 209 CC are regularly prosecuted, an average of sixty criminal proceedings being opened per year, out of which a third result in a conviction. As regards the penalties applied, a term of imprisonment usually exceeding three months is imposed in 65 to 75% of the cases, out of which 15 to 25% are not suspended on probation.

c. Complaints

The applicants complain under Art. 8 of the Convention, taken alone and in conjunction with Art. 14, about Art. 209 of the Criminal Code, penalising homosexual acts between adult men and consenting adolescents between fourteen and eighteen years of age and their respective convictions. The applicants point out in particular that in Austria, as in the majority of European countries, heterosexual and lesbian relations between adults and consenting adolescents over fourteen years of age are not punishable. They submit that there is nothing to indicate that adolescents need more protection against consensual homosexual relations with adults than against such heterosexual or lesbian relations. While not being necessary for protecting male adolescents in general, section 209 of the Criminal Code hampers homosexual adolescents in their development by attaching a social stigma to their relations with adult men and to their sexual orientation in general.

G.L. also complains under Art. 6 & 8 ECHR that, in the criminal proceedings against him, his diary was used as evidence. He submits that this use amounted to an obligation to incriminate himself. Moreover, it was an interference with the most intimate sphere of his private life, which was not necessary to prosecute, as the offence itself was contrary to the Convention.

UK NON-DISCRIMINATION LAW CONSULTATION IMMINENT

By Sarah Womack (Daily Telegraph, Filed: 10 Dec. 2001)

<http://www.portal.telegraph.co.uk/news/main.j>

<http://www.portal.telegraph.co.uk/news/2001/12/10/ngai10.xml&sSheet=/news/2001/12/10/ixhomef.html>

NEW laws banning discrimination against homosexuals will be outlined this week, risking a new confrontation between Tony Blair and some religious groups.

For the first time, homosexuals rejected for jobs or persecuted in the office because of their sexual orientation will have the right to sue. Partners of homosexuals could win pension rights and other perks previously reserved for heterosexual couples. Churches will be allowed to stipulate behaviour for some religious posts. For example, homosexuals may be hired only if they remain celibate (see www.portal.telegraph.co.uk/news/main.jhtml?xml=/news/2001/08/17/nclerg17.xml).

Campaigners for homosexual rights wanted exemptions limited to jobs with a pastoral function such as vicars. Evangelical groups, however, wanted them to cover anyone working for a religious organisation.

Iain Bainbridge, of the Christian Institute, said: "The janitor might be very important because often he is the first person people meet if they come to a church or school. So we would say a church should be able to have a Christian caretaker if they so wish."

A consultation paper will be published on Thursday by Barbara Roche, the Cabinet Office Equality Minister. MPs have already passed a backbench Bill which would give those who register a homosexual relationship similar inheritance and pension rights as those enjoyed by married couples. But this will not become law unless adopted by the Government.

LIECHENSTEIN TO GET GAY EQUALITY

By www.uk.gay.com

The principality of Liechtenstein is drafting legislation which would give same sex couples legal equality.

A bill has been drawn up which is waiting approval by the country's parliament. If it is stamped it will give gay and lesbian couples the same rights as married heterosexual married couples, including tax, inheritance and health benefits.

Same-sex couples, however, will not be given the right to adopt children if the new legislation is passed.

“RAINBOW-FAMILIES” – RELEASE OF A BROCHURE CONCERNING SAME-SEX PARENTS

In a press-release from the Berlin Senate administration for school, youth, sport, work, social affairs and women, the two members of the Berlin senate Mrs. Schoettler and Mr Boeger refer to a 112 pages report on families where the parent are either homo -, bi-, or transsexual and state:

“The way children grow up nowadays has changed a lot. In Berlin, 55% of the children lives together with their married, heterosexual parents – and the remaining 45% of the children live in other, different kinds of families, which f.i. could be single parents, not-married females, step-parents etc.“ With this booklet the two MES want to help the homosexual parents to be equal with other kinds of parentships – more information will lead to less discrimination of gays and lesbians – and their children.

And they continue: In Berlin you will find about 20.000 – and in whole Germany about 1 million same-sex parents. A lot of them got their children through their former heterosexual life – but a lot, however, get their children through insemination or as foster-children.

The booklet consists, among other thing, of discussions about ethical questions and democratic family structures. These discussions are a result of inquiries and interviews of the so-called “Rainbow-families”. But the most important part of this item is the welfare of the children – in one of the chapters the children themselves get the microphone.

At last the possibilities in the new “Lebenspartnerschaftsgesetz” are described. You can get the booklet “Rainbow-families – when the parents are homo, bi or transsexual” at “Senatsverwaltung Schule, Jugend, und Sport, Fachbereich für gleichgeschlechtliche Lebensweisen, Beuthstrasse 6 – 8, 10117 Berlin.

E-mail: gleichgeschlechtliche@sensjs.verwaltung.de

Internet: www.Sensjs.berlin.de/gleichgeschlechtliche

DUTCH MARRIAGE STATISTICS

By AP from AOL News December 12, 2001

AMSTERDAM, Netherlands (AP) - Dutch civil servants wed nearly 2,000 same-sex couples in the first six months after gay marriage was legalized this year, a government agency said Wednesday.

The gay marriage law that took effect on April 1 made the Netherlands the first country to grant gay couples the same rights as heterosexual couples, including the right to adopt children.

The Central Bureau of Statistics said 2,100 men and 1,700 women had married someone of the same sex by Sept. 30.

Gay marriages comprised 3.6 percent of all new marriages. In April, this figure was more than 6 percent as gays rushed to take advantage of the new law, but it gradually stabilized at around 3 percent.

Sixteen percent of the people who married someone of the same sex had earlier been in a heterosexual marriage. Most were divorced, and a few were widows or widowers.

<http://www.cbs.nl/en/services/press-releases/2001/pb01e279.pdf>

ILGA-EUROPE WEB-SITE IS RELAUNCHED

The web-site of ILGA -Europe has undergone a complete redesign and restructuring and has now been relaunched at www.ilga-europe.org. It features a variety of up-to-date information, a large archive section and download options (PDFs) including all publications and documents ILGA -Europe has produced in the last five years. Major past and current activities of ILGA -Europe are documented here, and all relevant information about our work is available for people interested. The huge amount of information is logically structured in various sections around specific areas of work. A site-wide full text search engine will help people find the information they are looking for.

The site also contains a section with links to LGBT organisations in European countries and to other web-sites of relevance. To complete this section, LGBT groups around Europe, in particular ILGA members, are kindly invited to put a link to ILGA -Europe's web-site at their

homepage and to request being linked at ours
in case they are not listed there yet.

Visit us and have a look at www.ilga-europe.org.