

# EURO-LETTER

No. 96

March 2002

This EuroLetter is available in pdf-format at [http://www.steff.suite.dk/eurolet/eur\\_96.pdf](http://www.steff.suite.dk/eurolet/eur_96.pdf)

Portuguese translations are available at <http://www.steff.suite.dk/eurolet.htm>

German translations are available at <http://mitglied.lycos.de/Iglf/ilga-europa/euro-letter/index.htm>

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

Editors: Steffen Jensen, Ken Thomassen, Peter Bryld, Lisbeth Andersen and Soeren Baatrup.

Contact to Euro-Letter:

[steff@inet.uni2.dk](mailto:steff@inet.uni2.dk)

<http://www.steffenjensen.dk/>

Tel: +45 3324 6435 Mobile: +45 2033 0840

Mail: c/o Steffen Jensen, Gl. Kongevej 31, 4.th, DK-1610 Copenhagen V, Denmark

You can receive Euro-Letter by e-mail by sending an empty message to [euroletter-subscribe@egroups.com](mailto:euroletter-subscribe@egroups.com), and from no 30 onwards the Euro-Letters are available on the Internet at <http://www.steff.suite.dk/eurolet.htm> and at <http://www.france.qrd.org/assocs/ilga/euroletter.html>

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

Documents relating to ILGA -Europe can be found at ILGA -Europe's homepage

<http://www.ilga-europe.org/>

## IN THIS ISSUE

- **EUROPEAN PARLIAMENT IS LOOKING FOR REPORTS AND RECOMMENDATIONS ON THE SITUATION OF FUNDAMENTAL RIGHTS IN THE EU**
- **EUROPEAN COURT OF HUMAN RIGHTS, BY 4 VOTES TO 3, PERMITS FRANCE TO BAN ADOPTIONS BY LESBIAN AND GAY INDIVIDUALS**
- **GAY PARTNERSHIPS LEGALISED IN FINLAND**
- **HEARING ON DISCRIMINATION OF LESBIAN AND GAY YOUTH IN THE EU CANDIDATE COUNTRIES**
- **POLISH GOVERNMENT PRESENTS PARTNERSHIP BILL**
- **France: PACS LAW AMENDED**
- **HUMAN RIGHTS WATCH WORLD REPORT 2002**
- **EUROPEAN COURT OF HUMAN RIGHTS APPLIES URGENCY PROCEDURE ON AUSTRIA**
- **PROPOSAL TO ALLOW ADOPTION FOR SAME-SEX COUPLES**

## **EUROPEAN PARLIAMENT IS LOOKING FOR REPORTS AND RECOMMENDATIONS ON THE SITUATION OF FUNDAMENTAL RIGHTS IN THE EU**

MEP Joke Swiebel (NL), is appointed as this years European Parliament rapporteur for the annual report concerning the situation of fundamental rights within the European Union.

The report will be based on an analysis of the various rights in the EU Charter on Fundamental Rights, including sexual orientation discrimination.

ILGA-Europe has been in contact with the rapporteur, who at the moment is preparing a draft report, which will be debated and adopted in the Committee on Citizen's Freedoms and Rights, Justice and Home Affairs in the European Parliament during April and May. The final adoption of the annual report in the plenary of the European Parliament is at the moment scheduled for July.

Last week Joke Swiebel addressed the Human Rights Contact Group- a group of NGOs working in different human rights areas – explaining the framework and her ideas for the development of the report. She also asked for NGO contributions such as submissions of reports or documents (French or English) for the year 2001, which contains observations or recommendations on the fundamental rights enshrined in the EU Charter.

On July 5, 2001 the European Parliament adopted and adopted its annual report and resolution on the respect of fundamental rights in the European Union (A5-0223/2001) for the year 2000. Last years resolution included a sub-chapter on "Discrimination on the basis of sexual orientation" and one on "Non-marital relationship", in which the European Parliament adopted six recommendations to the Member States (paragraphs 79-84 of the Resolution). For the full wording of last years resolution see <http://www2.europarl.eu.int/omk/OM-Eu-roparl?PROG=REPORT&L=EN&PUBREF=-//EP//TEXT+REPORT+A5-2001-0223+0+NOT+SGML+V0//EN>.

It has not been finally decided whether the report will include reports and recommendation on Accession countries, which was the case last year. ILGA -Europe encourages member organizations in both EU Member States and

Accession Countries to submit reports and summary of reports including recommendations to the rapporteur. It is a welcomed opportunity to put focus on sexual orientation and gender identity discrimination throughout Europe.

Documents should be sent in as soon as possible, as the report will be drafted by April 1. Documents to be sent to: Sandrine Morozoff, ATR 7K62, rue d'Ardennes 2, B-1047 Bruxelles, Belgium, [smorozoff@europarl.eu.int](mailto:smorozoff@europarl.eu.int).

Please send a copy of your reports to ILGA -Europe as well: ILGA -Europe, Ave. de Tervueren 94, B-1040 Brussels, Belgium, [info@ilga-europe.org](mailto:info@ilga-europe.org).

## **EUROPEAN COURT OF HUMAN RIGHTS, BY 4 VOTES TO 3, PERMITS FRANCE TO BAN ADOPTIONS BY LESBIAN AND GAY INDIVIDUALS**

*By Robert Wintemute, School of Law, King's College, University of London*

On 26 February, in *Fretté v. France* (Application No. 36515/97), the European Court of Human Rights held, by 4 votes to 3, that sexual orientation discrimination in adoption by unmarried individuals does not violate Article 14 (non-discrimination) of the European Convention on Human Rights, combined with Article 8 (respect for private life). The judgment is available (currently in French only) at <http://www.echr.coe.int/hudoc> (Access HUDOC, tick French at top, Title = Fretté). A press release in English is available at <http://www.echr.coe.int/Eng/PressReleases.htm>.

Philippe Fretté applied for a preliminary determination of eligibility to adopt a child (an "agrément" or "preliminary approval") in 1991. This involved a home-study by social workers and interviews with a psychiatrist and a psychologist. He disclosed that he was gay at the first interview and was urged not to proceed with his application. The reports were largely favourable, concluding: "A child would probably be happy with him. Do his circumstances, unmarried homosexual man, permit us to place a child with him?" (All translations are by the undersigned and are unofficial.) In 1993, his application was initially refused because of the absence of a "maternal representation" in his household, and his lack of concrete plans regarding the disruption that would be caused by the arrival of a child. The

final reason was his “choices of life” or “lifestyle”. His appeal to the Paris Administrative Tribunal was successful in 1995, but the judgment was reversed in 1996 by the *Conseil d’État* or Council of State (France’s highest administrative court), which referred to his “conditions of life”.

A seven-judge Chamber of the European Court of Human Rights split 3-1-3. Judges Bratza (United Kingdom), Fuhrmann (Austria), and Tulkens (Belgium) wrote a strong dissent, holding: (i) that Article 14 applies to sexual orientation discrimination in relation to adoption, because it sufficiently affects an individual’s “private life”; and (ii) that the difference in treatment based on sexual orientation does not have an objective and reasonable justification and is therefore “discrimination”, violating Article 14 (together with Article 8). Judge Kuris (Lithuania) agreed on the first issue (making the judgment 4-3 that Article 14 does apply to sexual orientation discrimination in adoption), but not on the second. He held that the difference in treatment has an objective and reasonable justification, is not therefore “discrimination”, and does not violate Articles 14 and 8. Judges Costa (France), Jungwiert (Czech Republic), and Traja (Albania) effectively abstained on the main issue in the case (the justifiability of the difference in treatment), by holding: (i) that Article 14 does not apply to any kind of discrimination in relation to adoption, because no other Convention right is sufficiently affected; and (ii) that it was therefore unnecessary to decide whether the difference in treatment was justifiable. However, their analysis led to the same result as that of Judge Kuris, which created a majority of four for a finding of “no violation”. Because there were two different but intersecting majorities on the two issues, the single, unsigned, majority opinion the Court always produces would appear to reflect the reasoning of four judges on issue (i) (applicability of Article 14), and the reasoning of only one judge on issue (ii) (justifiability of the difference in treatment based on sexual orientation). Unusually, the partially concurring opinion of Judge Costa (joined by Judges Jungwiert and Traja) unequivocally rejects the reasoning of the majority opinion for which they are deemed to have voted.

The majority opinion began by examining whether the facts of the case fell “within the ambit” of Article 8 (respect for private life). This is an essential condition before a claim of discrimination can be made under Article 14, which does not prohibit discrimination by pub-

lic authorities generally but only in the enjoyment of other Convention rights. Protocol No. 12 to the Convention would create a “free-standing” prohibition of discrimination by public authorities in any area, comparable to the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, Section 15 of the Canadian Charter, and Article 26 of the International Covenant on Civil and Political Rights. It was opened for signature on 4 November 2000 (27 of 43 Council of Europe countries, excluding France, have signed), and will come into force when ten of these countries ratify (only Georgia has done so), but will only apply to ratifying countries.

The majority (Judges Kuris, Bratza, Fuhrmann and Tulkens at this stage) held that the Convention does not guarantee a right to adopt a child (at least not for an individual, as only married couples have the right to “found a family” under Article 12), that the Article 8 right to respect for “family life” does not protect “the mere desire to found a family”, and that the rejection of his application did not interfere with Mr. Fretté’s Article 8 right to respect for his “private life”. However, Article 14 of the Convention applies, combined with Article 8, because the right of any unmarried individual, man or woman, to apply to adopt a child (under Article 343-1 of the French Civil Code), “which falls within the ambit of Article 8 . . . , has been interfered with on the decisive ground of his sexual orientation”. The majority did not specify whether the right to apply to adopt falls within the “family life” or “private life” branch of Article 8. The undersigned presented the case for the applicant on October 2, 2001, and argued that Article 14 applies because: (a) all sexual orientation discrimination affects and therefore falls “within the ambit” of “private life”; or (b) adoption falls “within the ambit” of “family life”. The majority rejected the French Government’s argument that the difference of treatment was not based on Mr. Fretté’s sexual orientation, but on his “choices of life”: “It must be observed that, implicitly but certainly, this criterion referred in a decisive manner to his homosexuality.” Any other circumstances considered were secondary.

The reasoning of the majority (effectively Judge Kuris at this point) then turned to the question of whether there was an objective and reasonable justification for the difference in treatment, absent which there would be “discrimination” violating Article 14 (combined with Article 8). The challenged refusal of the “preliminary approval” to adopt pursued a “legitimate aim”, protection of the health and

rights of children to be adopted. But in deciding whether or not the refusal was proportionate to this aim, and the breadth of the “margin of appreciation” (degree of judicial deference) granted to national governments, “one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States”. The majority (Judge Kuris) found no such common ground. “Even if the majority of Contracting States do not explicitly provide for the exclusion of homosexuals from adoption when it is open to unmarried individuals [only France and Sweden did so and Sweden is about to repeal its judicially-created ban], one would search in vain in the legal and social orders of the Contracting States for uniform principles on these social questions about which profound divergences of opinion can reasonably exist in a democratic State. ... When the delicate questions raised in this case touch on fields where there is hardly any commonality of views between the member States of the Council of Europe and where ... the law appears to be passing through a transition phase, a wide margin of appreciation must be left to the authorities in each State .... Adoption is about ‘giving a family to a child and not a child to a family’ ... [T]he scientific community – and more specifically specialists on children, psychiatrists and psychologists – are divided on the ultimate consequences of placing a child with one or more homosexual parents, especially taking into account the limited number of scientific studies conducted on this question to date. To this must be added the profound divergences of national and international public opinion, without considering the insufficiency of the number of adoptable children in relation to the demand. [The French Government had told the Court, in response to questions from Judge Costa that, in 1999, there were 11,500 applications to adopt, 2000 wards of the State waiting adoption, and 4000 children adopted through inter-country adoption.] ... [T]he national authorities, especially the Council of State ..., could legitimately and reasonably consider that the right to be able to adopt ... found its limit in the interest of the children likely to be adopted, notwithstanding the legitimate aspirations of the applicant and without questioning his personal choices. Taking into account the wide margin of appreciation to be left here to States and the need to protect the superior interests of children so as to achieve the desired balance, the refusal of the ‘preliminary approval’ did not infringe the principle of proportionality.”

The joint dissenting opinion of Judges Bratza,

Fuhrmann and Tulkens expanded on the reasons why Article 14 applies, and then said: “[W]e think that the refusal of the application for a ‘preliminary approval’, based on the sole ground of [the applicant’s] sexual orientation, constitutes a violation of Article 14 of the Convention. ... Unless homosexuality – or race, for example – is considered as constituting in itself a contra-indication, the homosexuality of Mr. Fretté could justify the refusal of a ‘preliminary approval’ only if it was accompanied by behavior that was prejudicial to the raising of a child, which had in no way been established.” Sexual orientation is without doubt covered by Article 14, either as discrimination based on “sex” or “other status”. The express inclusion of sexual orientation in Article 21 (non-discrimination) of the (not yet legally binding) Charter of Fundamental Rights of the European Union, and the recommendation of the Parliamentary Assembly of the Council of Europe that sexual orientation be added to the list of prohibited grounds of discrimination in the Convention, indicate that “today a European consensus is taking shape in this area”. Only “very weighty reasons”, “particularly serious reasons” or “particularly convincing and weighty reasons” can justify a difference in treatment based on sex. Even though the protection of the rights of the child could be a legitimate aim, the Council of State acknowledged that the record disclosed “no specific factor giving rise to fear for the interest of the child”. The legitimate aim had not, therefore, in any way been concretely established. The Council of State’s decision rests on “the opinion that to be raised by homosexual parents would be, ... in every situation, prejudicial for the child. The Council of State did not explain, ... for example by referring to scientific studies on same-sex parenting, which have become more and more numerous in recent years, why and how the interest of the child was opposed in this case to the application for a ‘preliminary approval’ made by the applicant.”

On the question of proportionality, the three dissenting judges acknowledged that States had “a certain margin of appreciation ... in the sensitive field of adoption by homosexual persons”, and that the Court should not “pronounce itself in favour of any model of the family whatsoever”. But the majority opinion had allowed “a total margin of appreciation” to States, which was contrary to the case-law of the Court and “such as to provoke a regression in the protection of fundamental rights”. The Council of State took a “decision of principle, without applying a test of proportionality pre-

cisely or concretely, and without taking into account the situation of the person concerned. The refusal was absolute and pronounced without any explanation other than the choice of life of the applicant, considered in a general way and in the abstract, which became itself an irrebuttable presumption of contra-indication against any proposed adoption, whatever it may be. Such a position prevents a court, radically, from taking concretely into account the interests at stake and finding a way to reach a practical agreement between them. At the moment when every country in the Council of Europe is undertaking resolutely to reject every form of prejudice and discrimination, we regret that we cannot join the opinion of the majority.”

Judge Costa, joined by Judges Jungwiert and Traja, held that Article 14 did not apply and that this kind of claim could only be made once Protocol No. 12 comes into force. They therefore abstained on the question of whether the difference in treatment could be justified. Judge Costa observed that “the majority of the majority [Judge Kuris] ...had to a certain extent based its decision on the principle of precaution. If I had had to decide, I would have been very hesitant. ... There are factors pointing in both directions ... It seems to me that the paradox of this judgment, at bottom, is that it would have been easier legally to base the rejection of the application [to the Court] on the inapplicability of Article 14, rather than to declare Article 14 applicable – and not violated.”

The *Fretté* judgment is the first appellate decision the undersigned has come across, from any jurisdiction, in which an exclusion of lesbian, gay and bisexual individuals or same-sex couples from a form of adoption has been addressed as a constitutional or human rights question, involving prima facie sexual orientation discrimination, as opposed to a question of statutory interpretation. Mr. Fretté has until 26 May 2002 to decide whether to request, under Article 43 of the Convention, that a panel of five judges refer his case to the Grand Chamber of seventeen judges.

(An almost identical version will be published in the [April 2002] *Lesbian/Gay Law Notes* (New York),  
<http://www.qrd.org/www/usa/legal/lgl.n>.)

## **GAY PARTNERSHIPS LEGALISED IN FINLAND**

Homosexual partnerships have become legally binding in Finland.

The new law, however, does not allow gay couples to adopt children or use the same surname.

The legislation says Finns who are at least 18 can register a same-sex union in a civil ceremony comparable to marriage.

It also gives gay couples the same rights as married heterosexual couples when inheriting each other's property and in cases of divorce.

The Finnish Lesbian and Gay Association welcomed the law but said it does not go far enough.

Rainer Hiltunen, the association's secretary-general, said: "It's a milestone in Finnish legislation and has great symbolic significance. But it's a compromise and does not give gay couples exactly the same rights as married couples."

The new law also does not address the rights of children in gay partnerships but a government working group is looking into the issue, Mr Hiltunen said.

He added that dozens of gay couples have already applied to have their relationship registered and several hundred are expected to do so annually.

The Finnish Evangelical Lutheran Church, to which 85 per cent of the 5.2 million population belongs, has opposed giving gay partners the same rights as married couples.

Last month, Archbishop Jukka Paarma said priests can visit and pray with gay couples in their homes but could not offer a blessing. The church also will not publish an official stand on homosexual partnerships, the Archbishop said.

**HEARING ON DISCRIMINATION OF  
LESBIAN AND GAY YOUTH IN THE EU  
CANDIDATE COUNTRIES**  
*IGLYO PRESS RELEASE*

No EU candidate country should be able to join the European Union, if it does not abolish some discriminatory pieces of legislation regarding same-sex orientation beforehand, stressed the participants of an International Hearing on the discrimination and the position of gay and lesbian youth in the EU accession countries, held last Friday in Ljubljana (Slovenia). The Hearing was organised by the International Lesbian Gay Bisexual and Transgender Youth Organisation (IGLYO), the Student Organisation of the University of Ljubljana (SOU) and COC Netherlands, the Dutch Federation of Associations for the Integration of Homosexuality. The event gathered around 25 representatives from over 18 countries to present their position and the discrimination which they face in their daily lives.

"I, too, am homosexual" were the words of solidarity used by **dr. IGOR LUKSIC, dean of the hosting Faculty of Social Sciences of University of Ljubljana**, when he paraphrased J. F. Kennedy's "Ich bin ein Berliner" in his welcome speech to the Hearing.

The **Mayor of Ljubljana, VIKTORIJA POTOČNIK**, greeted the young gay and lesbian activists to the host town, where "diversity and freedom of speech are always welcome".

**ALENKA KOVSCA**, State Secretary at the Slovene Ministry of Labour, Family and Social Affairs, stressed that Slovenia remains a considerably closed and conservative society regarding homosexuals. According to Kovsca, the state is trying to do away with any prejudice, with the ministry currently drafting several acts that will prohibit gay discrimination. Among them is an act on family relations, which is to secure social, health and material protection for homosexuals, granting them the same rights as heterosexuals. The act does not envisage, however, marital unions between homosexuals neither the possibility for them to adopt children.

The first one to address the participants on behalf of the organisers was **TOMO JUVAN**, the president of the Student Organisation of University of Ljubljana. He made a strong appeal to the representatives of the Slovene authority: "Those of you gathered here and even more so those who are absent, we, the students, demand

an honest discussion and action to be taken in order to assure equal rights also for gays and lesbians."

**MIHA LOBNIK**, member of the executive board of International Lesbian, Gay, Bisexual and Transgender Youth and Student Organisation (IGLYO) emphasised that "In the last years, IGLYO has observed a widening gap in the opportunities for LGBT youth in Central and Eastern-Europe with regard to their peers in Western Europe. Therefore IGLYO wants to ensure that LGBT youth issues are being taken into account when human rights issues are discussed in the EU accession process. Young people are the driving force that will establish European tolerance for the equal rights of same-sex oriented people. They should not accept excuses and traditional passive behaviour of state institutions when it comes to equality of gays and lesbians. Discrimination of any social group is the concern of all who believe in and fight for equality." He made a direct appeal to governments of the accession countries to repeal ALL existing discriminatory laws and provide new laws to actively protect lesbian and gay youth from discrimination. He also called upon the European institutions to enforce and enlarge its existing anti-discrimination policy and not to accept any candidate country for accession which doesn't respect the basic human rights of lesbian and gay youth.

The last one to speak on behalf of the organisers was **DENNIS VAN DER VEUR**, representative of COC Netherlands, the National Dutch Federation of Associations for the Integration of Homosexuality. He expressed the hope that, like COC, more LGBT organisations in the West would actively start (or continue) to support LGBT movements in the Accession Countries, for example by challenging their respective governments to allocate expertise, networks and funds to LGBT groups abroad. He also emphasised that the fight for the rights of homosexuals should not stop on the borders of the enlarged European Union and the struggle of LGBT people in countries beyond the accession border also deserves our attention. During the plenary session that followed the opening speeches, **TATJANA GREIF** spoke on behalf of **ILGA-Europe, the European Region of the International Lesbian and Gay Association**. She presented the results achieved so far by ILGA -Europe in the fight for equal rights for gays and lesbians. She also emphasised that addressing the public and raising awareness about sexual orientation discrimination is necessary and legitimate since

most prejudices arise from a lack of knowledge about the subject.

**Joke Swiebel MEP, Dutch Member of the European Parliament and Chair of the Intergroup on Gay and Lesbian Rights of the European Parliament**, clarified the role of the European Parliament in the approval of the accession treaties and presented the initiatives taken at European level to repeal discriminatory laws. According to her, many countries, especially in Eastern Europe, are still violating international resolutions on discrimination. The European Parliament has, however, warned four years ago that it will not ratify accession agreements of the candidate countries that "through its legislation or policies violates the human rights of lesbians and gay men." She assured the participants to the Hearing that the European Union is committed to continue fight against all forms of discrimination on the basis of sexual orientation, stating "Lesbians and gays do not demand special rights, we are not some kind of rare species that needs to be protected. We demand human rights for all." These speeches were followed by reports of representatives of lesbian and gay youth from the EU candidate countries Bulgaria, Czech Republic, Estonia, Latvia, Malta, Poland, Slovakia, Slovenia, Romania, Turkey and the non-accession countries Croatia, Russia, Yugoslavia and Kyrgyzstan. Most of the young representatives reported on the lack of protective legislation and daily discriminatory practices.

#### **Some examples:**

- In most candidate countries there is no special legislation ensuring equal opportunities and preventing discrimination. In some countries there are even laws leading to discrimination;
- In Bulgaria and Cyprus, the age of consent for sexual intercourse is higher for homosexuals than for heterosexuals;
- In Hungary, the law forbids young people under 18 to join any organisation defending lesbian and gay rights;
- The educational system is not providing relevant information on homosexuality, on the contrary it is adding to the process of stigmatisation;
- In many countries, gay and lesbian youth is not protected from different forms of hate speech, many times also reflected in the media;
- To be open about your sexual orientation at school can lead to bullying by your schoolmates, lesbian and gay youth are also often the victim of police harassment and/or public gay-bashing;

- In all candidate countries being honest with one's sexual orientation often leads to intolerance and even physical violence; homosexuality is somehow still considered to be a mental disease; young people, when they become aware of their homosexual orientation undergo psychological crisis because of the hostile social environment.

The young lesbian and gay representatives agreed to continue developing a common strategy for the fight against all forms of sexual orientation discrimination in the future.

A full report about this Hearing will be published. It will contain the speeches, country reports and network proposals for the future work.

IGLYO (International Lesbian, Gay, Bisexual and Transgender Youth and Student Organisation) was created in 1984 as a response to the need for better co-operation among regional, local or national LGBT youth and student organisations. It is an important meeting point and LGBT youth rights advocate in the European region. IGLYO is also a major source of information relevant for local youth groups and organisations.

This Hearing was supported by Open Society Institute and the Student Organisation of the University of Ljubljana.

For more information, please contact:

Kris Vanhemelryck, IGLYO, e-mail:

[iglyo@wxs.nl](mailto:iglyo@wxs.nl), tel: +386 31 279 47

Miha Lobnik, IGLYO, e-mail: [iglyo@wxs.nl](mailto:iglyo@wxs.nl), tel: +386 41 508 450

Pictures from the Hearing and relevant documents are available at the IGLYO website at [www.iglyo.org](http://www.iglyo.org)

#### **POLISH GOVERNMENT PRESENTS PARTNERSHIP BILL**

*By Rex Wockner*

The Polish government unveiled gay partnership legislation Feb. 14.

"We must adapt our law to the... European Union, where it is illegal to discriminate against people of different sexual orientations," said MP Joanna Sosnowska, the bill's author.

Gay activist Marcin Lakomski called the pro-

posal a "first step in the right direction."  
But veteran gay activist Slawek Starosta said he doubts the bill will make it through parliament.

A spokesman for the nation's Catholic hierarchy called the measure "an attack against ... marriage and the family."

Poland is 90 percent Roman Catholic and hopes to join the 15-member European Union in 2003.

Meanwhile, Warsaw has seen an explosion of commercial gay life in recent months, with five new clubs opening - Utopia, 69, Kokon Klub, Queen Club and Miami Cafe Club. There are also two older establishments - Paradise and Fantom.

### **France: PACS LAW AMENDED**

*From <http://fr.gay.com>*

On Wednesday 30 January 2002, the French National Assembly adopted two amendments to the law it had originally approved on 13 October 1999 creating registered partnerships under the name of 'Pact of Civil Solidarity' (PaCS), with effect from 15 Nov. 1999. One amendment ensures that wherever an individual whose status is recorded in the official Register of Population requests the corresponding extract from it, that extract includes details of any PaCS by which (s)he is bound; the other provides for publication of statistical information about the PaCS that have been registered, including the age and sex of the partners. Both amendments, which have been introduced in the context of the revision of the French law on privacy, were advocated in the Report on the application of the law on Registered Partnerships prepared a few months ago by two Members of the National Assembly, Patrick Bloche and Jean-Pierre Michel. The aim of the first-mentioned amendment is to make it easier for persons wishing to register a PaCS to prove that they are not already bound by one.

At the end of 2001, just under 100 thousand persons had become registered partners in the 25.5 months since the PaCS legislation came into effect. The greatest number of partnerships was registered in inner Paris (8413), followed by Rennes (3556), Aix en Provence (3529) and Versailles (3180). The smallest numbers have been recorded in Basse-Terre (72), Bastia (108), Fort-de-France (115) and St-Denis de la Réunion (213).

### **HUMAN RIGHTS WATCH WORLD REPORT 2002**

The Human Rights Watch World Report 2002 (<http://www.hrw.org/wr2k2/download.html>) has a chapter on LGBT rights, available at <http://www.hrw.org/wr2k2/pdf/lgbt.pdf> (there is also a html version here: <http://www.hrw.org/wr2k2/lgbt.html>).

The chapter reads:

#### **LESBIAN, GAY, BISEXUAL, AND TRANSGENDER RIGHTS**

Although the visibility of lesbian, gay, bisexual, and transgender people throughout the world continued to rise in 2001, their increased visibility was accompanied by attacks based on sexual orientation and gender identity. Human rights activists who sought to use the human rights framework to call to account states that participated in these rights abuses or condoned them also came under attack. In virtually every country in the world people suffered from de jure and de facto discrimination based on their actual or perceived sexual orientation. In some countries, sexual minorities lived with the very real threat of being deprived of their right to life and security of person. A small number of countries continued to impose the death penalty for private sexual acts between consenting adults. In several others, sexual minorities were targeted for extrajudicial executions.

In many countries, police or other members of the security forces actively participated in the persecution of lesbians, gay, bisexual, and transgender people, including their arbitrary detention and torture. 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 gathered to promote, not attack, human rights.

For example, in New York in June at the U.N. General Assembly Special Session on HIV/AIDS, delegates attempted to ban non-governmental representative Karyn Kaplan from the International Gay and Lesbian Human Rights Commission (IGLHRC) from speaking at an official roundtable. Delegates from Sudan, Syria, Pakistan, Libya, Malaysia, Egypt, Iran, Saudi Arabia, and Morocco criticized in their verbal statements any recognition of sexual minorities. Although the U.N. Gen-



eral Assembly eventually voted in a closed plenary session to allow Kaplan to speak at the roundtable, the final document did not include any explicit reference to lesbian, gay, bisexual, and transgender people despite the fact that sexual minorities were at increased risk of HIV infection in many countries.

The rights of sexual minorities also came under attack at the U.N. Commission on Human Rights where delegates objected to the inclusion of cases of extrajudicial executions of sexual minorities in the report of the U.N. special rapporteur on extrajudicial, summary, and arbitrary executions. Delegates argued that the special rapporteur overstepped her mandate by addressing these crimes. The resolution renewing her mandate was stripped of language explicitly recognizing that sexual minorities were vulnerable to extrajudicial executions. Other intergovernmental bodies played a strong role in upholding the rights of lesbian, gay, bisexual, and transgender people. Under article 13 of the Treaty of Amsterdam, which entered into force in 1999, the European Union could adopt measures to combat discrimination based on sexual orientation, among other grounds. In addition, the Charter of Fundamental Rights of the European Union, adopted in December 2000, included sexual orientation among the prohibited grounds of discrimination. However, the European Union's governing bodies could only act to implement these provisions within their area of competence, which generally excluded criminal law, family law, and education. In a directive that entered into force in December 2000, the European Council called upon member states to take steps within three years to ban sexual orientation discrimination in employment.

The European Union was also required to assess the respect for human rights, including the principle of equality, in the twelve countries with which it had opened negotiations for accession to membership. The twelve countries were Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Romania, Poland, Slovakia, and Slovenia. (In addition, Turkey was a candidate for membership in the European Union but was not currently in negotiations.) Five of the thirteen countries that had applied for membership—Bulgaria, Cyprus, Estonia, Hungary, and Lithuania—maintained discriminatory provisions in their criminal laws, according to the European branch of the International Lesbian and Gay Association.

In July, the Romanian government adopted a decree decriminalizing gay relationships between consenting adults, effectively nullifying a law that allowed sentences of up to five years imprisonment for homosexual relationships “occurring in public or which provoke a public scandal.”

After a European Parliament intergroup on gay and lesbian rights held a hearing in June 2001, E.U. Enlargement Commissioner Guenter Verheugen confirmed that “full attention” would be given in the accession review process to issues related to discrimination based on sexual orientation. The European Parliament, which must approve applications for membership in the European Union, stated in 1998 that it would not give its consent to the accession of a country that violated the rights of lesbians and gay men.

### **PERSECUTION**

Lesbian, gay, bisexual, and transgender people were vilified by officials of several countries. They were denied equal enjoyment and protection before the law in a significant number of countries. They were arrested and tried, sometimes under national security laws, for private consensual acts. In Namibia, President Samuel Nujoma continued to vilify gay men and lesbians, stating, “The Republic of Namibia does not allow homosexuality, lesbianism here. Police are ordered to arrest you, and deport you, and imprison you too.” The nationally televised speech came just two weeks after the Namibian Supreme Court overturned a lower court ruling recognizing the right of one member of a same sex couple to confer permanent residency on the other. Soon after the speech, the Rainbow Project, a non-governmental human rights organization working with sexual minorities, started receiving reports of harassment and beatings by the Special Field Forces, a security unit reporting directly to the president. Nujoma later clarified his statement, “Traditional leaders, governors, see to it that there are no criminals, gays and lesbians in your villages and regions. We . . . have not fought for an independent Namibia that gives rights to botsotsos [criminals], gays and lesbians to do their bad things here.”

In November, Malaysian Prime Minister Mahathir Mohamad also verbally attacked gays, announcing that he would expel any gay British government minister if he came to Malaysia with a partner. Mahathir explained in an interview with BBC radio, “the British people accept homosexual ministers. But if they ever

come here bringing their boyfriend along, we will throw them out. We will not accept them.”

In February, confusion reigned about the fate of two women who were reportedly sentenced to death for “unnatural behavior” in the city of Boosaaso in the self-declared autonomous region of Puntland, northeast Somalia. The news of the sentence was first published in a local weekly and was subsequently picked up by the national and international press in Mogadishu. When the reports of the case generated significant international attention on Puntland, the authorities denied the reports and instead accused journalists of inventing the story to discredit the government. The authorities also accused the editor of the weekly paper of making false assertions and published statements. Lost amid all the debate about the politics of the government’s relationship with the press was any clarification regarding the two women named in the report.

Lesbian, gay, bisexual, and transgender people faced arrest for consensual sexual activities and many of those arrested reported being tortured by the police. In Egypt, a sixteen-year-old boy was convicted of “debauchery” on September 18 for allegedly engaging in sexual relations with men. The boy received a sentence of three years’ imprisonment with labor followed by three years of probation. His sentence was on appeal at this writing. The youth said that police extracted a confession from him after subjecting him to painful beating on the soles of the feet. He did not have access to a lawyer during his interrogation, and he was not allowed to contact his family during the first two weeks of his detention. Press and spectators were allowed to attend and report on the September and October hearings, and the boy’s name, photo, and accounts of the charges and sentence have appeared in Egypt’s semi-official press. The boy was one of fifty-three people detained and charged with similar offenses after a crackdown in May against men presumed to be gay. The others, all adults, were arrested and subjected to violations of standard arrest procedures according to their defense attorneys. There were reports that the men were beaten and subjected to forensic examinations in order to ascertain if they had engaged in anal sex.

They were prosecuted before an Emergency State Security Court, which reached a verdict on November 14. Twenty-three were sentenced to between one and five years of hard labor; twenty-nine were acquitted. Because the trial took place before an Emergency State Se-

curity Court, those convicted could not appeal their sentences. Despite urgent appeals from the U.N. special rapporteurs on the independence of judges and lawyers, and torture and the Working Group on Arbitrary Detention, the Egyptian authorities not only went through with the prosecutions of the men, but a day after the sentencing in the first case, police arrested and charged four more men on the same grounds. They too were reportedly tortured. As Egypt did not expressly outlaw homosexual acts, the charges included “habitual practice of debauchery” and “contempt of religion.”

In March, two men in Lebanon were convicted by a military court of defaming the Vice Squad (Police des Moeurs) and fined U.S. \$200. In July, on appeal to the Military Court of Cassation, the conviction of one of the men was overturned. The case began in April 2000 when two plainclothes police officers from the Vice Squad entered the office of Destinations, an internet service provider (IPS), seeking the identities of the person who had financed and installed a website with gay related content, including the need for legal reform within Lebanon. Ziad Mugarby, the manager of the IPS refused to cooperate with the warrantless search. He was subsequently ordered to appear the next day for questioning. After repeated threats and interrogations, Mugarby turned to Multi-Initiative on Rights, Search, Assist and Defend (MIRSAD), a human rights nongovernmental organization in Lebanon for support. In July, director of MIRSAD Kamal el Batal was also questioned by the police. The two men were subsequently tried in a military court for defamation based on their publicizing the circumstances of the case. Batal’s conviction was overturned.

On July 7, police raided the offices of the Bha-rosa Trust and the Naz Foundation International in Lucknow, organizations that worked on HIV/AIDS prevention, arresting several staff members. Although subsequently released on bail, the staff members were charged under article 377 of the Indian Penal Code, a provision that prohibited “carnal intercourse against the order of nature.” Article 377 had been used repeatedly to justify discrimination and police brutality against gay, lesbian, and bisexual individuals.

Members of sexual minorities also faced detention in psychiatric hospitals in several countries. In April, the National Human Rights Commission of India missed a significant opportunity to address this violation when it announced that it did “not want to take cogni-

zance” of a case brought before the commission objecting to involuntary aversion therapy and other forms of psychiatric abuse aimed at “converting” homosexuals. The commission explained its decision by stating, “sexual minority rights did not fall under the purview of human rights.”

More than a year after the murder of transgender activist Dayana (Jose Luis Nieves), transgender people living in Venezuela continued to face unrelenting police harassment. The Commander of Police in the state of Carabobo announced, “homosexuals and prostitutes are to be ruled by the police code. They cannot move freely in the streets.” Activists reported that this attitude by the police had led to an atmosphere of fear and intimidation within the transgender community.

Another transgender activist, Diane Sacayan in Argentina, who had publicly denounced police harassment and abuse of transvestites, was arrested in the city of Don Bosco in February and charged with robbery. As of this writing, she was still in detention and had not had the evidence against her presented at a preliminary hearing. Sacayan reported being tortured by the police and alleged that she was arrested not for robbery but for refusing to pay a bribe to the local police. Stigmatization of transgender people made them particularly vulnerable to abuse by the authorities. Transvestites in Argentina were arrested under a law prohibiting the wearing of the clothes of the opposite sex, a prima facie violation of freedom of expression.

The persecution of transgender people in Argentina led to a historic meeting of activists with U.N. Special Rapporteur on Freedom of Expression Dr. Abid Hussain. The meeting followed the issuing of a joint statement by six U.N. experts urging lesbian, gay, bisexual, and transgender activists to send them information regarding human rights violations based on sexual orientation or gender identity.

#### **DISCRIMINATION**

Although lesbian, gay, bisexual, and transgender people continued to experience de jure and de facto discrimination in virtually every country in the world, several significant changes occurred in 2001. Netherlands became the first state to allow same sex couples to marry. Just three years after implementing a domestic partnership law, the legislature, by a significant majority, passed a law to end discrimination in marriage. The law went into effect on April 1. The law required that at least

one partner be a Dutch citizen or resident, as required for heterosexual couples who marry.

In another groundbreaking decision, Colombia’s Supreme Court issued a decision on October granting conjugal visits to a lesbian in prison and her partner. The decision in the Montoya case not only ended the practice of gender and sexual orientation based discrimination regarding conjugal visits for prisoners. The ruling could also resolve the ongoing case of Marta Alvarez, who faced similar discrimination and brought the first sexual orientation-related case ever presented to the Inter-American Commission on Human Rights. The case was heard by the commission in October 1999. After the hearing, the parties entered into settlement negotiations. The law, prior to this decision, granted conjugal visits to heterosexual male inmates but limited conjugal visits to the spouses of heterosexual female inmates. The government admitted that its practice was discriminatory but argued that the restrictions on conjugal visits promoted security, discipline, and morality in the prisons. The government also argued that Latin American cultures did not tolerate homosexuality. In September, Judge Kathleen Satchwell, a judge in South Africa, won the right for her female partner to enjoy the same benefits as those previously reserved for “spouses” of married heterosexual judges. Although South Africa continued to take the lead on human rights protections for gays and lesbians, Minister of Justice Penuell Maduna fought the Satchwell case to the bitter end, revealing deep-seated reservations about the constitution’s equality clause. Also in September, a South African Court ruled that gay and lesbian couples could adopt children. The judgment was appealed to the Constitutional Court.

The issue of bias remained a serious concern for sexual minorities worldwide. A report released in February by the Judicial Council of California, revealed that anti-gay bias was a major problem in the court system statewide in California. Over half of all gay men and lesbians interviewed regarding their court experiences reported hearing anti-gay comments or experiencing anti-gay actions when sexual orientation became an issue. Nearly a third of all court employees believed that it was unsafe for them to be openly identified as gay or lesbian in the workplace. This bias remained even though California was one of the United States’ most progressive states regarding lesbian and gay equality.

In Finland, a new law allowed gays and lesbians to register as couples and obtain some of the same benefits previously reserved for married couples or relatives, such as the right to inherit property and to visit if one partner was hospitalized. However, unlike in South Africa, gay and lesbian couples were still banned from adopting children or taking a common surname.

Seven years after the military's "Don't Ask, Don't Tell" policy was codified as law and implemented, the United States military's own surveys and investigations found that training on how to implement the law was deficient and that anti-gay harassment remained pervasive in the military. Many military personnel who faced verbal or physical harassment and feared for their safety made statements acknowledging they were gay, knowing that it would mean the end of their careers, but also aware that if they complained officially about anti-gay harassment they would probably themselves face an intrusive inquiry and discharge. They also knew that harassers were rarely punished. Although the "Don't Ask, Don't Tell" policy was ostensibly intended to allow gay, lesbian, and bisexual service members to remain in the military, discharges increased significantly after the policy's adoption. From 1994 to 2000, more than 6,500 servicemembers were discharged under the policy, with a record number of 1,231 separations during 2000. Women were discharged at a disproportionately high rate, while the policy provided an additional means for men to harass women service members by threatening to "out" those who refused their advances or threatened to report them, thus ending their careers.

The U.S. was increasingly out of step internationally in maintaining restrictions on homosexuals serving in the military. Most of its NATO and other allies either allowed homosexuals to serve openly or had no policy on the issue. In September 1999, the European Court of Human Rights rejected a United Kingdom ban on homosexuals serving in the military; the justification for that ban had been similar to that used to defend the U.S. military's "Don't Ask, Don't Tell" policy. Each day was a test of survival for many lesbian, gay, bisexual, and transgender students in U.S. public schools. Our 2001 report, based on interviews in rural and urban areas of seven U.S. states, documented rampant discrimination against those who failed to conform to rigid rules of how boys and girls should behave. We found that harassment often began at an early stage and escalated rapidly in middle and high

school. Teachers, administrators, and counselors not only neglected to defend students from harassment but in some cases participated in discriminatory behavior themselves.

As a result, many lesbian, gay, bisexual, and transgender students remained closeted, unable to express a fundamental aspect of their identity. Students who were more vocal about their sexual orientation or gender identity were targeted for physical and psychological violence. Girls in general and lesbians in particular were especially vulnerable to the compounded effects of sexism and homophobia, which they frequently suffered in silence, ignored by school authorities. The physical and psychological toll of unaddressed verbal and physical abuse was often profoundly debilitating, affecting students' schoolwork and their mental well-being; some students dropped out of school, sank into depression, or even attempted suicide.

In response to increasing evidence of harassment of lesbian, gay, bisexual, and transgender students in U.S. schools, Senator Paul Wellstone introduced legislation to conduct a federal study of the level of sexual harassment against sexual minority students by peers and school officials. The study would include analysis of the effectiveness of guidelines issued by the Office of Civil Rights at the U.S. Department of Education in 1997 that specifically addressed the safety of gay and lesbian students. As of this writing, the bill was in committee.

Art. 209-Loveletter-Case:  
**EUROPEAN COURT OF HUMAN  
RIGHTS APPLIES URGENCY  
PROCEDURE ON AUSTRIA**

The European Court of Human Rights decided to apply urgency procedure in the infamous Art. 209-Loveletter-Case originating in the conviction of a gay man to incarceration for his love-affair with a 17 year old adolescent (Wilfling vs. Austria, Appl. 6306/02).

Applying Rule 40 of its Rules the Court decided to immediately inform the Austrian government of the application (filed four weeks ago) and its objects. Normally applications are communicated to the respective governments years after the introduction of an application. Moreover the Court gave case priority to the application (Rule 41).

"We are pleased at that decision", says Dr.

Helmut Graupner, spokesperson for “Platform Against Art. 209” and representative of the applicant, “It shows that the Court takes the criminal persecution of gay men in Austria very seriously”.

The interdenominational and supra-partisan Platform Against Article 209 comprises more than 30 organisations that joined in the fight against the discriminatory supplemental minimum age of 18 years for homosexual relationships between men only (in addition to the general age of consent of 14 for heterosexuals, lesbians and gays alike), as set forth in article Art. 209 of the Criminal Code. Nearly all associations of the homosexual movement, but also general organizations are members of the Platform, like AIDS-help-organisations, the Ombudspersons for Children and Adolescents of the States of Vienna and Tyrol, the Austrian National Student Union, the National Association of Probation, the Austrian Society for Sexual Research, and many others more.

More information:

Platform Against Art. 209: +43/1/876 30 61,  
[office@paragraph209.at](mailto:office@paragraph209.at),  
[www.paragraph209.at](http://www.paragraph209.at)

28.02.2002

### **The Loveletter-Case**

The accused and his 17 year old lover came into contact over the internet. They met and fell in love with each other. A love affair as it happens a thousand times each day among heterosexual and lesbian couples without attracting the attention of any state-authority.

As the mother of the young man, who can not accept his homosexuality, found a heart-rending love letter of the juvenile to his partner, she rushed to police and finally the Regional Court of Wiener Neustadt imposed detention on remand. The reason: danger of repetition, due to him one time in the past having committed a real sexual offence. The detention would not be disproportionate, neither to the importance of the case nor to the sanction the man awaits.

### **"Due to the Gravity of the Offence"**

Not only the adolescent himself but also his sister during their interrogation at the police station declared they could not understand why the boy is not allowed to fall in love with whom he wants to and that the law should to be changed immediately. Even the fellow-prisoners of the man and the prison-guards ex-

pressed that they could not understand his incarceration.

The mother however physically abused her son and dragged him to several psychologists, psychotherapists and psychiatrists all of them however denying to treat the boy for his homosexuality. The state-police agency of the state of Lower Austria even went so far as to claim that “due to the gravity of the offence” they had to take over the investigation from the local police authorities.

The 17year old himself has addressed the lesbian and gay movement asking for help for his incarcerated lover.

In the trial of 24<sup>th</sup> August the Regional Court of Wiener Neustadt (Austria) not just inflicted a merciless sentence of 15 months in jail but also degraded the accused by a massively discriminatory reasoning.

Despite the fact that the law offered the Court the opportunity to drop the case on a period of probation or on payment of a certain sum of money it inflicted a jail-sentence of 15 months on the 36 year old man – a prisoner of conscience on the basis of his sexual orientation in the sense of the mandate of amnesty international – of which he even has to serve one month without probation. The prisoner of conscience has not just been brought before the court handcuffed but as a result of this verdict also been brought back to his cell that way, where he had continue to languish.

### **“Such a thing can not be discharged by money”**

But the judge supplemented his sentence even with a massively discriminatory reasoning putting love on a level with sextourism. A fine would not be appropriate because “in Austria such a thing can not be discharged by money. If the accused wishes to do so, he has to go to countries where that is possible”.

The defense pointed to the fact that even the prison guards expressed their annoyance at the man being incarcerated just for his love-affair. Alluding to the homosexuality of the accused the judge replied it would be clear, that “the prison-guards want to get rid of such an inmate very quickly” ...

### **Sanction increased on appeal**

On appeal the Upper Regional Court of Vienna even raised the sentence and inflicted not only one but not less than 5 months of the jail sentence unsuspended referring to an allegedly

grave guilt incurred.

The president of the Republic denied to pardon the man. He even refused to commute the unsuspended part into a suspended jail sentence or into an unsuspended fine.

So the prisoner of conscience in the sense of the mandate of amnesty international has not just been incarcerated for 30 days already but even has to go back to jail to serve four months more. Having been granted a stay of execution for economic reasons he has to begin to serve the sentence on 1<sup>st</sup> of September 2002.

Sweden:

**PROPOSAL TO ALLOW ADOPTION  
FOR SAME-SEX COUPLES**

*Press release by the Swedish Ministry of Justice*

Registered partners will be given the opportunity to be examined as adoptive parents. This is proposed in a Government bill to be submitted to the Riksdag today. The proposal means that two registered partners will be able to jointly adopt a child and that one of the partners may adopt the child of the other. It is also proposed that registered partners and homosexual cohabittees will be able to be designated as specially appointed custodians to exercise joint custody of a child.

The Government will commission the National Board of Health and Welfare to cooperate with other agencies involved in following up the consequences of these amendments to the legislation.

In the bill, the Government states that the possibility should be introduced for assisted fertilisation for lesbian couples at general hospitals. However, a final decision must first be taken on the issue of how legal parenthood for the child should be regulated. Work on preparing this issue is to start immediately.

"The proposal means that only the best interests of the child will determine when an adoption will take place, not the sexual orientation of the parents. We shall continue to examine each adoption application on its own merits. Nobody has automatic rights to adoption, but the proposal gives homosexuals the right to be examined as adoptive parents", says Minister for Justice Thomas Bodström.