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

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

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AFTER THE FRAMEWORK DIRECTIVE: COMBATTING DISCRIMINATION OUTSIDE EMPLOYMENT

An ILGA-EUROPE policy paper

ILGA-Europe has launched a policy paper with a proposal for a directive combating discrimination on the ground of sexual orientation.

The paper is available on line at this web address: http://www.ilga-europe.org/m3/european_union/2002-3.pdf

Conclusions and Recommendations

This paper has set out the reasons why it is necessary for the European Union to adopt a further anti-discrimination Directive, as well as identifying the key areas to which this Directive should apply. The experience of working towards the Framework Directive indicates that securing consensus on the need for more EU anti-discrimination legislation will take time and persuasion. At one level, there is an obligation here on national and European LGBT and human rights organisations to take the initiative in campaigning for stronger anti-discrimination laws. However, there are also areas where the various EU institutions, in particular the Commission and the Parliament, could provide constructive support for LGBT groups in achieving this objective.

First, whilst LGBT groups and individuals are quite aware of the reality of everyday discrimination in areas such as housing, healthcare, education and goods and services, there is a genuine need for further research in order to build up a clearer picture of the specific problems experienced in these fields. Projects in these areas, including empirical research initiatives, should be supported through the Article 13 Action Programme and other EU funding programmes. An excellent example of the types of projects that could be developed is the EU-funded GLEE Project on 'Educational Initiatives to Combat Homophobia and Heterosexism'.¹ Moreover, given that the negotiation of any future anti-discrimination Directive is likely to coincide with the enlargement of the European Union, it is essential that funding be provided to support the participation of all applicant states in such projects.

Second, plans for a specific Directive on Disability Discrimination have been linked with the Commission's proposal for 2003 to be the Eu-

ropean Year of People with Disabilities.² Similarly, 1997, European Year Against Racism, proved a catalyst for the insertion of Article 13 in the EC Treaty and the establishment of the Vienna Monitoring Centre on Racism and Xenophobia. Given the inclusive and horizontal approach implied by Article 13 EC to combating discrimination, we believe that a *European Year for Equality* would be a highly constructive initiative at this stage. This would be an opportunity to promote equality on all grounds, and in all areas of life, as well as raising awareness that discrimination is not only found within the workplace. Again, it would be essential that this initiative extended to all the applicant states.

Finally, ILGA-Europe notes that whereas discrimination on grounds of sex, racial or ethnic origin, disability and age have all been the subject of individual communications and reports from the Commission, no specific policy documents exist in relation to discrimination on grounds of sexual orientation or gender identity. A comprehensive evaluation of the Commission's activities and policy objectives in these areas could provide greater visibility and clarity for EU anti-discrimination policy in respect of LGBT people.

Recommendations

- The European Union must move quickly to adopt legislation prohibiting discrimination on the grounds of sexual orientation and gender identity where this occurs outside employment.
- The legislation should apply to all areas falling within the powers of the European Union, including, as a minimum, social protection, social security, healthcare, social advantages, education, access to and the supply of goods and services, housing, immigration and asylum.
- The legislation should oblige Member States to establish equal treatment bodies with a duty to assist individual victims of discrimination on the grounds of sexual orientation and gender identity. The equal treatment bodies should have the power to investigate and pursue suspected cases of discrimination.
- The legislation should provide independent legal standing for organisations with a legitimate interest in the

¹ See further <http://glee.oulu.fi/index.html>

² COM (2001) 271.

- promotion of equality to challenge discrimination.
- Any body exercising a public function, whether at the national or EU level, should be under a duty to promote equality, irrespective of sexual orientation or gender identity, at every stage of policy formulation, implementation and evaluation.
- EU funding should be provided to support further research into the nature and extent of discrimination faced by LGBT persons in areas outside employment.
- The Commission should propose a 'European Year for Equality'.
- The Commission should present a Communication on the role of the European Union in combating discrimination on grounds of sexual orientation and gender identity.

ENLARGEMENT CHIEF RAPPED FOR 'UNDERSTATING' BIAS AGAINST GAYS

By David Cronin, European Voice

GÜNTER Verheugen, the EU enlargement commissioner, has come under fire for allegedly understating the extent of discrimination against homosexuals in some applicant states.

Dutch Socialist MEP Joke Swiebel argues the European Commission's progress reports on enlargement for 2001 were not sufficiently detailed on gay rights. Laws in Hungary, Bulgaria and Cyprus all apply a differing minimum "age of consent" for homosexual and heterosexual acts. "But only the Bulgarian report explicitly refers to this as a discriminatory provision and calls for its removal," she said.

Her comments are contained in a new gay-rights study published by the Budapest-based EU Accession Monitoring Programme.

Last September Verheugen told MEPs the Commission would press for respect for human rights, including those concerning sexual orientation, during the enlargement process. He also stated that all of the accession states, bar Turkey, were fulfilling the so-called Copenhagen criteria, which lay down the political conditions for EU membership.

Swiebel, however, cited the failure of some of those states to alter laws that treat homosexuals unfairly.

Hungary's Háttér Support Society for Gays and

Lesbians contends that the enlargement process "should prove an important catalyst" for scrapping anti-gay laws and practices. Eighteen is listed as the permissible age for "unnatural sodomy" in the Hungarian Penal Code, whereas male-female sex is allowed at 14. And homosexuality is dubbed a "disturbance of the personality" in rules covering who may join the defence forces.

Petra Jeney, a law lecturer at Budapest's Central European University, described rulings by the European Court of Justice (ECJ) on gay rights as "pointedly conservative". In 1998, for example, the court found against British railway worker Lisa Grant, who had challenged her employer, South West Trains, for refusing travel concessions to her lesbian partner. Those perks had been offered to both married and unmarried partners of her heterosexual colleagues.

But Jeney said two more recent developments give homosexuals "cause for hope". The Amsterdam Treaty has given the EU the legal basis to act against anti-gay bias. And a 2000 EU law on equal treatment on employment is the Union's first directive which explicitly bans discrimination based on sexual orientation.

"As yet, the ECJ has not ruled on cases involving gay or lesbians resulting from this most recent directive," added Jeney. "But it is at least empowered to rule favourably should such cases arise and to prise open the door to fuller equality in the future."

TOWARDS EQUALITY AND DIVERSITY Implementing the Employment and Race Directives

<http://www.dti.gov.uk/er/equality/>

The UK took an active part in the negotiation of the EC Employment and Race Directives, and welcomes the outcome. Together, the Directives provide a common framework of protection against unfair discrimination across Europe.

Their implementation in Great Britain will involve introducing new legislation to outlaw discrimination on grounds of age, sexual orientation and religion in employment and training. The Government also proposes to implement some changes to the Disability Discrimination and Race Relations Acts.

Towards Equality and Diversity contains the Government's proposals for taking forward this

work. It consults on general issues which include the definition of indirect discrimination, tackling harassment, and effective ways of providing advice, guidance and support both to business and individuals. Your responses to these issues, and on specific points on race, sexual orientation, religion, disability and age, will help us frame workable legislation and prepare supporting guidance which meets your needs.

The consultation closes at the end of March 2002.

Consultation document

<http://www.dti.gov.uk/er/equality/consult.pdf>

<http://www.dti.gov.uk/er/equality/rtf.htm>

Short guide to the proposals

<http://www.dti.gov.uk/er/equality/short.pdf>

Extended summary

<http://www.dti.gov.uk/er/equality/extended.pdf>

POLISH BILL ON PARTNERSHIP

By Ewa Wojtowicz

There is a proposal of the bill regulating the situation of unmarried couples by Joanna Sosnowska from SLD (left-wing coalition party). It would suppose to take into account also homosexual couples. However, both with respect to hetero and homo, it was received with lot of controversy, especially from the right-wing opposition.

According to Rzeczpospolita (Polish daily), the proposal will be subject to parliamentary debate only after the referendum for the EU accession and this is the position of the leader of the parliamentary club of SLD (unquestioned by Sosnowska).

The proposal assumes to give some rights to unmarried couples such as common settlement of the personal income taxes, inheritance rights, allowances in case of death of a partner, etc. Does not include adoptions. The proposal assumes also sort of "legalisation" of the relationship on the basis of a mutual statement of will of both partners and "unlegalisation" (sort of "divorce") by one partner.