

EURO-LETTER

No. 99

July 2002

This EuroLetter is available in pdf-format at http://www.steff.suite.dk/eurolet/eur_99.pdf

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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.

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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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LANDMARK DECISION OF AUSTRIA'S CONSTITUTIONAL COURT

ILGA-Europe media release, 24 June 2002

ILGA-Europe welcomes decision of Austria's Constitutional Court to declare discriminatory age of consent provision unconstitutional

"We warmly welcome the decision of the Constitutional Court of Austria, announced today, to repeal Article 209 of Austria's penal code as unconstitutional", declares ILGA-Europe co-chair Jackie Lewis. Article 209 stipulates a higher age of consent for male-to-male sexual relations at 18, if the older partner is 19 or older, while the general age of consent for all other sexual acts, including lesbian relations, is fixed at 14.

"The two ruling parties, the conservative OeVP and the right extremist Freedom Party of Joerg Haider, have been blocking any reform in the last 20 years, holding a majority in Parliament since 1983. This decision, therefore, is also a blow in the face of these two parties", explains co-chair Kurt Krickler, who is also secretary-general of HOSI Wien, Austria's leading gay and lesbian human rights advocacy organisation which has been at the forefront in the fight against Article 209 all these years. "Both parties have vigorously been defending the law until this very day consciously ignoring six resolutions of the European Parliament, a recommendation of the Council of Europe, and a request of the United Nations Human Rights Committee, all demanding the repeal of Article 209."

"Today's decision is a great victory not only for the Austrian lesbian and gay movement but also for the international movement. Many organisations around the world, including ILGA and many of its members, have been supporting the fight against Article 209 for many years and mounted major protest campaigns against this law in the past", continues Krickler. "This is the occasion to say a big 'thank you' to everybody who supported us in our fight against legal oppression and for equality of LGBT people in Austria."

The fight, however, is not over. Article 209 will only come out of force on 28 February 2003, leaving a delay for the legislator to potentially come up with some substitute legal provisions.

ILGA-Europe will be vigilant that any such new provision will not discriminate against gays and lesbians. Moreover, ILGA-Europe

supports HOSI Wien in its demands for moral rehabilitation of all the victims of the anti-gay and anti-lesbian provisions in Austria in the last century and for their financial compensation.

REVISED EU PROPOSAL ON FAMILY REUNION RIGHTS FOR NON-EU NATIONAL PARTNERS

By Mark Bell, University of Leicester

On 5 May 2002, the European Commission published its second amended proposal for a Council Directive on the Right to Family Reunification. The Directive aims to provide a legal framework on the rights of third country nationals legally-resident in the European Union to be joined by other (third country national) family members. The initial proposal was made in 1999, but differences within the Council have so far blocked agreement. One of the most contentious issues is the definition of the 'family' and specifically the treatment of unmarried partners.

In this revised proposal, the Commission accepts various amendments (previously made to the text in the Council) that have the effect of greatly weakening the rights of unmarried couples to family reunion. Whilst Member States must admit the spouse of a third country national (subject to various requirements concerning adequate income, housing, etc), the admission of unmarried partners is at the discretion of each Member State. If they so choose, Member States can admit an unmarried partner, provided this person is in a 'duly attested stable long-term relationship' or he or she is 'bound to the applicant by a registered partnership'. States shall consider evidence such as the presence of a common child or previous cohabitation.

Given the optional nature of this provision, there will be little improvement on the current situation where the matter is determined by national law. The amended proposal now passes to the European Parliament for consultation, and then back to the Council, which is free to reject any amendments of the Parliament. The Directive will not apply to Ireland, the UK or Denmark.

Commission Amended Proposal: COM (2002) 225. Available at: http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=152741

ILGA-Europe position paper on the Directive:

<http://www.ilga-europe.org> Look under 'Campaigns/Activities', 'European Union' and then 'The European Area of Freedom, Security and Justice'.

ONLINE LETTER-APPEAL
ON THE FULL RESPECT OF FREEDOM OF MOVEMENT OF PERSONS IN THE EUROPEAN UNION AND THE ELIMINATION OF ALL DISCRIMINATION AGAINST SAME-SEX COUPLES

Marco Cappato, MEP, President of the Transnational Radical Party and ILGA-Europe ask you to sign an online letter-appeal to keep up the pressure for the full respect of freedom of movement of citizens in the European Union and to secure the elimination of all discrimination against same-sex couples.

The principle of free movement is one of the cornerstones of the EU. A key feature of the existing free movement laws is that it gives an EU citizen moving from one member state to another to take up employment the right to be joined by his / her family. This right is currently denied to same-sex partners because it only recognises families in which the partners are married.

The EU is at the moment examining an important proposal on "the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States". The proposal only includes the right to free movement of unmarried partners and their families to the extent that the legislation in the host member state treats unmarried and married couples equivalent.

The current proposal will consequently lead to discriminatory treatment of same-sex registered couples and un-married couples, who are not given the same rights as their fellow EU citizens who are married. The Netherlands, Denmark, Sweden, Finland, Belgium, France, Germany, Portugal and some regions in Spain have laws on civil marriage, registered partnership or recognition of non-married couples. It is therefore necessary to intervene with the European co-legislators - the European Parliament and the Council - in order to ensure that the proposal will be amended to secure the full respect of freedom of movement of all citizens in the European Union and the elimination of any discrimination against same-sex couples.

To end this discrimination of EU citizens, **SIGN UP NOW** to the online appeal on

www.radicalparty.org. The signatures will be presented to the European Parliament rapporteur, Ms. Palacio, and to the EU Presidency of the Council when it will prepare its common position on the proposal.

ILGA-Europe and Transnational Radical Party

EU ENLARGEMENT : EUROPEAN PARLIAMENT KEEPS UP THE PRESSURE ON BULGARIA, HUNGARY AND CYPRUS.

By ILGA-Europe

On June 13 the European Parliament adopted the Brok report on the state of the enlargement negotiations, which is an annual report on the accession countries' progress towards membership of the European Union. The report contains a resolution including calls for specific actions to be undertaken by the accession countries.

Last September the Parliament included in its resolution on accession a call on the governments of Hungary, Cyprus, Bulgaria and Romania to repeal laws discriminating against homosexual men and lesbian women. Romania has since then, with the repeal of Article 200 of the Romanian penal code increased the pressure for the elimination of all laws criminalizing same-sex relationships in Bulgaria, Cyprus and Hungary.

The Brok report was debated and submitted to the plenary by the Parliament's Foreign Affairs Committee. The Committee's report included a recommendation to the governments of Cyprus and Bulgaria but ignored the fact that the Hungarian government continues to violate human rights of lesbian women and gay men. ILGA-Europe worked with Members of the European Parliament to ensure the inclusion of a call on the Hungarian Government to eliminate its discriminatory provisions in the penal code.

The Parliament adopted in its resolution a call for the governments of Cyprus, Hungary and Bulgaria to «eliminate provisions in the penal code which discriminates against homosexual men and lesbian women». All three countries have discriminatory age of consent laws – a form of discrimination, which has been ruled a violation of the European Convention on Human Rights by the European Commission on Human Rights. Each country also has discrimination in other areas of the criminal law.

The European Parliament warned in 1998 that it would not give its consent to the accession of any country that «through its legislation or policies violates human rights of lesbians and gay men».

With the adoption of the Brok report, the European Parliament is sending a strong signal at a crucial moment for the EU enlargement process: The enlargement negotiations are planned to be finalised during the Danish EU presidency in autumn 2002 and will afterwards go through an adoption procedure, where the European Parliament and the national parliaments will be asked to give their consent to each new member state.

ILGA-EUROPE CAMPAIGN ON THE CONVENTION OF THE FUTURE OF EUROPE

In December 2001 the European Council adopted the Laeken Declaration, which established the Convention on the Future of Europe and drew up a list of some 80 questions to be addressed. The Convention will be making wide-ranging recommendations to shape the future of Europe such as ensuring fundamental rights for all citizens and increasing democracy and openness in the EU (for more information on the Convention see the Convention website <http://european-convention.eu.int/default.asp?lang=EN>).

At the core of the process of reshaping Europe is the need to re-connect the citizens to the European project. The Convention has therefore set up an internet forum (<http://european-convention.eu.int/Static.asp?lang=EN&Content=Forum>) where civil society can post their positions and proposals as well as announce events and debates on the Future of Europe. ILGA-Europe launched its submission to the Convention in June. The summary of the ILGA-Europe submission is included below and the complete submission can be found at www.ilga-europe.org

The Convention and civil society
On June 24 –25 the members of the Convention, who have been meeting once a month since February 2002, met with civil society. The Convention had identified 8 topical sectors in which pre-meetings with civil society were arranged, in order for the NGOs and organisation involved to coordinate speakers for addressing the members of the Convention.

ILGA-Europe participated in the pre-meetings of three sectors: ‘social’, ‘fundamental rights’ and ‘citizens and institutions’. The pre-meetings of the different sectors proved that even if civil society includes a broad range of interests, there is a common consensus on issues, such as: a need for the EU to engage in and commit to a structured civil dialogue, that fundamental rights should be part of any EU policy, and that there should be an increase in the transparency of work of the EU institutions.

The Civil Society Contact Group

ILGA-Europe is, as a member of the Social Platform, part of a broader co-operation the so-called Civil Society Contact Group. This group brings together representatives of four NGO “families” the social, development, human rights and environmental sectors, as well as the European Trade Union Confederation (ETUC). The Contact Group unites a strong civil society voice in the debate on the Future of Europe, and it organises a series of informal meetings to update and inform NGO members who are interested in following the work on the Convention.

Getting involved in the debate on the Future of Europe.

The Civil Society Contact Group has produced a toolkit, which is designed to inform individuals and civil society organisations about how to follow and influence the debate on the Future of Europe. The toolkit provides practical information on how the Convention works and lists contact details of all the members of the Convention, as well as information on the work already undertaken by European civil society organisations. The toolkit can be downloaded in French and in English from the ILGA-Europe website.

The civil society dialogue with members of the Convention will be ongoing until the end of 2002. ILGA-Europe would like to encourage members to get involved by sending the submission or summary to their national Convention members. For regular updates on the work of the Convention see the ILGA-Europe website, newsletter and Euroletter.

Executive summary of ILGA-Europe submission to the Convention on the Future of Europe Brussels, 18 June 2002 (revised version)

ILGA-Europe, the European Region of the International Lesbian and Gay Association, is a European NGO for national and local lesbian,

gay, bisexual and transgender (LGBT) organisations across Europe. ILGA-Europe works for human rights and against sexual orientation and gender identity discrimination at European level. One of ILGA-Europe's main objectives is to work towards an equal and inclusive Europe which respects fundamental rights as the basis of democracy and secures that everyone can live in equality and free from any kind of discrimination.

Millions of people in Europe still experience discrimination on the grounds of their sexual orientation or gender identity.¹ The unequal treatment of homosexual and heterosexual relations in criminal law has been found to be a breach of the European Convention on Human Rights, yet the penal codes of some Member States and accession countries still discriminate against lesbians and gay men, LGBT persons are still denied the fundamental right to found a family and to marry in some Member States and all accession countries. The non-recognition of same-sex couples legally recognised in their state of origin by other Member States is an unacceptable obstacle for LGBT persons in exercising their right to free movement within the Union, one of the most basic and principle rights of EU citizens.

ILGA-Europe calls upon the Convention to pursue the following objectives:

Fundamental rights at the heart of Europe

- to incorporate the Charter of Fundamental Rights into the provisions of the founding Treaties
- to strengthen the Charter's provisions, including specific reference to:
 - non-discrimination on the grounds of gender identity
 - the right of LGBT persons to found a family
 - the protection for and the recognition of family diversity
 - the right of same-sex couples to marry
- to accede to the European Convention

¹ EU law regards discrimination against transgender persons as a form of sex discrimination. This principle was established by the Court of Justice in the 1996 case of *P v S and Cornwall County Council*, where it was held that the dismissal of an individual following gender reassignment was unlawful discrimination on the grounds of her sex. (Case C-13/94, *P v S and Cornwall County Council* [1996] ECR I-2143). "Gender identity discrimination" is the term now generally used to describe discrimination against transgender persons.

on Human Rights, including Protocol 12

- to accede to the Revised European Social Charter

Integration of the principle of equality

- to commit the Union to integrate the principle of equality for all, in so doing removing the current hierarchy of protection for different grounds of discrimination and ensuring equal treatment of homosexuals and heterosexuals in the criminal code
- to strengthen Article 13, in particular by ensuring it applies to the full scope of EU law and includes express reference to discrimination based on gender identity

The EU's role in promoting human rights and democracy in the world

- to ensure that the EU's commitment to the realisation of human rights and democracy through out the world is put at the core of the EU's Common Foreign and Security Policy
- to ensure that the human right clauses are transformed into an efficient and enforceable instrument

Strengthening the principle of democracy in the EU

- to insert a legal base for consultation of civil society in the Treaties
- to ensure greater transparency within the work of EU institutions
- to extend the co-decision procedure and to ensure full parliamentary control of EU policies and actions

EUROPEAN PARLIAMENT CALLS ON EGYPTIAN AUTHORITIES TO STOP PROSECUTION ON GROUNDS OF HOMOSEXUALITY

ILGA-Europe media release, Brussels, 5 July 2002

Yesterday the European Parliament debated and adopted, as one of its urgencies, a resolution on human rights violations in Egypt, titled: Human rights: persecution of homosexuals in Egypt. It is the Parliament's third Resolution on human rights in Egypt during the past year. The resolution is a reaction to the ongoing human rights violation in Egypt and particularly to the decision on opening a new trial for 50 of the 52 men arrested at a Cairo gay night-club last year.

The Parliament calls on the Egyptian authorities to call a halt to all prosecution of citizens on the grounds of homosexuality and to protect their individual freedoms, and stresses that particular attention must be paid to prohibiting discrimination on the grounds of sexual orientation.

The beginning of a retrial and the Parliament's resolution of yesterday come at a time where the adopted EU-Egypt Euro Mediterranean Agreement is open for ratification by the parties. The Parliament adopted in November 2001 a resolution on the conclusion of the Association Agreement expressing deep concern on the arrest, detention and trial of the 52 men on grounds relating to their homosexuality and calling on Egyptian authorities to continue their efforts to ensure greater respect for human rights.

"The Association Agreement contains a human rights clause, but the European Commission and Council have so far been reluctant to make use of such clause" explains ILGA-Europe Co-Chair Kurt Krickler and continues "if the EU proclamation on having a coherent approach in promoting human rights in the world is to be taken seriously, it is time to put words into action and start using the measures set out in the human rights clauses".

"The EU does not commit to its own human rights principles. If the EU continues to set policies of trade and economic co-operation as higher values, it sends the signal that the Egyptian authorities and authorities like them can get away with ongoing and serious human rights violations" adds Ailsa Spindler, Executive Director of ILGA-Europe. "There is more than the case of the Cairo 52 at stake - it is time for the EU to start implementing its human rights policy. By adopting this resolution, the European Parliament has shown the will to emphasize human rights, an approach we recommend to be taken by the other EU institutions".

TOLERATING HOMOSEXUALITY IS NOT ENOUGH

The Assembly's President Peter Schieder 27 June held a joint press conference with Stefano Fabeni, Director of the [Center for Research and Legal Comparative Studies on Sexual Orientation and Gender Identity](#), and Helmut Graupner, a Vice-President for Europe of the [International Lesbian and Gay Law Association](#).

Peter Schieder recalled the pledge, given in his inaugural speech in January, to make the fight against discrimination of gays and lesbians in Council of Europe member states one of the priorities of his presidency. It is not enough to tolerate homosexuality, gay and lesbian relationships must be accepted and treated without any discrimination.

In two recommendations, [1470](#) and [1474](#) adopted in September 2000, the Assemblage critically evaluated the situation concerning gays and lesbians in Council of Europe member states and made proposals with regard to their rights in respect of asylum and immigration. The Assembly will continue to provide active support to gays and lesbians, who must, unlike other minorities, rely almost exclusively on themselves in the defence of their interests and the protection of their rights.

ILGA-EUROPE RECEIVES EU FUNDING

ILGA-Europe has received 498,000 euros in funding from the European Commission's Community Action Program to combat discrimination.

ILGA-Europe's total budget for this project is 553,333 euros which will be reimbursed at 90 percent. But ILGA-Europe has to raise the 55,000 euros difference, which will be a big challenge.

It may sound paradoxical, but ILGA-Europe is - despite and because of this large subsidy from the Commission - in much more urgent need for money than ever.

NEW BOOK ON LEGAL REGULATION OF SAME-SEX FAMILY UNIONS IN DIFFERENT COUNTRIES BEING RELEASED IN RUSSIA

By BECK Publishing House (Moscow, Russian Federation)

Nicolas Alekseev's exciting new book "Gay Marriage: A XXIst Century Puzzle. Family Status of Same-Sex Couples in International, National and Local Law" (ISBN 5-85639-335-X) has been cleared for release this July.

For Russian readers, this is the first time these issues of legal regulation of social phenomenon of "same-sex family unions" have been exposed to public scrutiny. The author analyses different models of such regulation: mar-

riage in the Netherlands; registered partnership in Denmark, Sweden, Norway, Iceland and Finland; life partnership in Germany; socio-economic partnership in France; co-habitation in Sweden, the Netherlands, Hungary, France; regional, local and corporation partnerships. The author probes existing laws concerning recognition of same-sex unions in different countries as well as various family rights that are allocated to gays and lesbians. Special chapters are devoted to the issues of immigration for reunification with the same-sex partner in countries which give such right; adoption of children by same-sex couples as well as access of lesbians to artificial insemination. The author reinforces the legal material with the latest statistical data on the number of registered unions in different countries and explains the results of public opinion polls on the issue. At least thirty countries have been considered by the author. The issues of same-sex couples' family rights in international law, in the Council of Europe, European Union and the United Nations in particular, are also given widespread consideration in the book. Mr. Alekseev gives full consideration to details when he discusses contemporary family status of gay and lesbian couples in Russia as well as the prospects for improvement in the immediate future.

This timely book is being released during a moment of turbulent discussions by a number of Russian parliamentarians seeking to reintroduce criminal prosecution of homosexual relations in that country. The author outlines the developments in democratic countries of the world on these issues.

The book contains a well timed Foreword written by the deputy of the British House of Commons Jane Griffiths, author of a pending bill concerning the recognition of same-sex couples in British law.

Although written and printed in Russian, the Introduction, Contents and Foreword are in English. Anyone wishing to order copies of the book from either outside or inside the Russian Federation may contact the BECK booksellers in Moscow (tel. 007-095-786-6981). Additionally, buyers may order the book by e-mail by sending a message to sales@beck-vostok.de. The author may be contacted at nicolas_alexeyev@hotmail.com. It is also possible to order copies through the virtual bookstore of the Russian national gay site on the Internet at www.gay.ru. The estimated range of the cost of the book is between 10 and 11 Euro.