

EURO-LETTER

no. 35

September 1995

The Euroletter is published on behalf of ILGA - THE INTERNATIONAL LESBIAN AND GAY ASSOCIATION - by the Eurosecretariat of THE NATIONAL DANISH ORGANISATION FOR GAYS AND LESBIANS (LBL), Teglårdsstræde 13, P.O. Boc 1023, DK-1007 Copenhagen K. Tel. + 45 33 13 19 48 Fax + 45 33 91 03 48, in cooperation with GAY AND LESBIAN INTERNATIONAL LOBBY. Editors: Steffen Jensen, Ken Egelund Thomassen, Peter Bryld and Lisbeth Andersen.

You can receive Euroletter via e-mail and from number 30 onwards the Euroletter is available on the Internet at gopher.seta.fi.

Contributions to the Euroletter are most easily sent either by e-mail to steff@inet.uni-c.dk or by fax to Steffen Jensen at +45 4049 5297 (NB: MEW FAX number).

In this issue:

- *OSCE parliamentarians recognize sexual orientation as an area of non-discrimination*
- *The Scandinavian countries has agreed on mutual recognition of registered partnerships*
- *Czech Officials Support Gay Partnership*
- *Ilga East Bloc Conference a Disaster*
- *Partnership in Holland*
- *Benefits to gay & lesbian spouses in EU*
- *Catholic Church Seeks to Influence Poland's New Constitution*
- *Request to Defeat the Anti-Gay Movement in Italy*
- *Report on the Symposium Homosexuality: A Human Right?*
- *Comparative Survey of the Legal and Societal Situation of Homosexuals in Europe (updated version)*
- *ECAS seminar on the Internal Market and the Consumer*

OSCE parliamentarians recognize sexual orientation as an area of non-discrimination

The newly formed Parliamentary Assembly in the Organisation for Security and Cooperation in Europe (OSCE) has just met in Ottawa, Canada. As a result of the meeting 'The Ottawa Declaration' was passed.

One of the points in the Declaration "Calls on the member States to ensure that all persons belonging to different segments of their population be accorded equal respect and consideration in their constitutions, legislation and administration and that there be no subordination, explicit or implied, on the basis of ethnicity, race, colour, language, religion, sex, sexual orientation, national or social origin or belonging to a minority;"

The sexual orientation part was included by initiative of Danish parliamentarians and it was passed by a vast majority in spite of protests from Bulgarian members of the assembly. The assembly does not - as other OSCE bodies work on the principle of consensus.

It is a huge victory for The International Gay and Lesbian Association, ILGA, who for years has lobbied OSCE bodies to get sexual orientation included in the language of the human dimension part of OSCE.

The Scandinavian countries has agreed on mutual recognition of registered partnerships

In a letter to the Danish National Organisation for Gays and Lesbians the Danish ministry of Justice has reported that a common Nordic commission on marriage has debated the question of mutual recognition of registered partnerships between Denmark, Norway and Sweden.

The conclusion is that partnerships from one of the countries will be recognized in the other countries as well. This means that if for instance a Swedish registered couple moves to Denmark or Norway then their partnership will have the same legal effect here as in Sweden.

Czech Officials Support Gay Partnership

by Rex Wockner

The head of the Czech Republic Parliament, Milan Uhde, and the minister of the interior, Jan Rumi, support extending marriage rights to gays and lesbians under a registered-partnership law, reported the Prague gay magazine SOHO Revue.

"There's no reason why gays can't marry," Rumi said. Uhde said he "carefully considered" the arguments in favour of partnership presented by the gay group SOHO, thinks the arguments are "important" and forwarded the material to two Parliamentary committees.

The partnership bill will be considered this year when Parliament rewrites Czech family law.

Ilga East Bloc Conference a Disaster

by Rex Wockner

The International Lesbian and Gay Association's recent 10th annual conference for former East Bloc nations was a "grandiose scandal," reported the Moscow newspaper Segodnia.

When the 100-plus delegates arrived at the end of May in Kiev, Ukraine, no one was there to meet them. And when they finally found the conference site the next day, one hour out of town, they were evicted.

The organizers, the straight chairman of the Ukrainian Catholic Youth League and his girlfriend, apparently made off with the registration fees, a \$10,000 grant from the World Health Organization, and a donation from the Lifestyles condom company.

Immigration officials detained and interrogated two British delegates, both named Peter Norman, for failure to register with the Department of Visas and Registration of Foreigners. One of the Normans was believed to have signed a letter guaranteeing payment to the conference site, a spa.

ILGA's one employee, Andy Quan, a Canadian who works in ILGA's Brussels office, was horrified at the mess and promised to sue the organizers. He also promised, despite ILGA's financial quagmires, to make efforts to reimburse the stunned delegates.

At the conference's end, the exasperated attendees voted to agree that the conference had never taken place.

Partnership in Holland

By Kees Waaldijk

Legislative process in the Netherlands is famously slow. It normally takes ten years from idea to Statute book. Registered

partnership is firmly on the political agenda since 1991. So a law by 1997 would be quite fast. Anyhow, it now seems that the government will announce in its LETTER to parliament (now expected to be sent in September 1995) that it will introduce a new bill on registered partnership. This BILL could then hardly reach parliament before 1996. It would then take at least one year (and probably two) to have the Bill debated and approved by both houses of parliament. LAW by 1998?

Benefits to gay & lesbian spouses in EU

By Nils Koch, EGALITE

EGALITE (Equality for gays and lesbians in the European Institutions) are happy to inform you on a small victory for the staff of the EU Parliament, thanks to the help of some Parliament members.

The Administration distributed a note to the staff on Wednesday July 5 giving some social benefits to non-married partners. For the first time these partners (including gays and lesbians) are

- entitled to take a language course
- entitled to an annual pass for admission to the Parliaments buildings and restaurants.

The applicants must fill in a "Declaration of domestic partnership" (nearly a marriage declaration) to obtain these benefits. It may sound as a very small victory, but for those who are familiar with the staff policy of the European Institutions, this is a big step, and it might open the door for further equal rights.

Unfortunately this only covers the staff of the European Parliament and not the other institutions such as Commission, Council etc. The group EGALITE will in September

ask for a meeting with the Commission on the problems on equal rights for all staff and in all fields. (We are only entitled to discuss the staff regulations in the Institutions, but of course we also work for general recognition of these rights for all citizens in the EU).

Catholic Church Seeks to Influence Poland's New Constitution

As it has been reported earlier in the Euro-Letter Poland is in the process of drafting a new constitution. In an article in The New York Times it is stated that the Catholic church is trying to influence the drafting.

In the discussions over the constitution, the church got its way on wording describing the relationship between church and state. Now it says it wants constitutional provisions that protect the rights of the unborn and that make clear that homosexuals have no right to teach in public schools.

Tadeusz Pieronek, general secretary of the Polish Bishops Conference, who represents the moderate wing of the church, said draft wording that was intended to protect the rights of homosexuals was unsatisfactory to the church. "Does it mean we will legalize lesbian and gay marriages and then we will have to allow them to take important posts and bring up children?" the bishop asked.

Request to Defeat the Anti-Gay Movement in Italy

By Franco Grillini, President of ARCIGAY-ARCILESBICA Italy and Marco Tonti, President of ARCIGAY-ARCILESBICA for Rimini-Riccione-Pesaro

After the European Parliament Resolution in favour of the homosexual rights, here, in

Italy, the situation is as a civil war. A new movement is "born": the "Defence committee for the natural and christian order family" that has gathered about 70000 signatures AGAINST this European Parliament Resolution.

ARCIGAY-ARCILESBICA (the Italian gay and lesbian association) has not wasted time, and at the 1st of July even ARCIGAY-ARCILESBICA has got 70000 signatures in support of this E.P. Resolution. But this is not sufficient!

It's interesting to note that in Italy there's a growth of attitudes and ideals opposed and harmful to freedom. Here some piece of Mr. Luigi Coda Nunziante's letter (Mr. Coda Nunziante is the president of the so-called "Defence committee for the natural and christian order family"):

"Obviously you agree with me, regarding that homosexuality must not be protected, nor promoted by our laws' State. This debauchery, opposite to God Law, is repugnant for your conscience, and you reject on instinct, the deep moral disorder typical of the homosexuality."

"In the A-3-0028/94 Resolution, approved the 8th of february 1994, the supreme occidental political authority has wanted to promote that abominable vice, considering it as a positive worth, and inviting the European Union members to protect it by law."

"... it is not sufficient to be hostile towards homosexuality, it's necessary to fight for to prevent that homosexuality could be established in our society."

"For which impudent right, whit which incredible defiance and blasphemous will, this Parliament pretend to impose to our catholic Italy its impiety?"

"This minority doesn't limit itself to practice privately this vice opposite to Nature; they dare to claim the right to spread among people, impudently exalting these practices as 'lifestyle', as worthy as normal life and normal sexuality, and celebrating parties dedicated to "Gay Pride"."

"At this level, homosexuality is not seen nor lived as disorder to hide, as shameful vice: is a positive value to show and to ostentate, and meritorious of legalization as "civil right"."

"Our sons, our nephews will have, if they continue to live in this society deeply corrupt, a twisted idea of reality, and they could risk to consider homosexuality as a normal way to live, as a choice as good as others."

"In Italy are establishing many "Defence committee for the natural and christian order family" (The Coordination seat is in Rome, Via dei Delfini 16, ZIP 00186) with the purpose to get a great signatures' collection in order to support our petition for Italy and Europe governments.

In this petition we DEMAND from these Authorities:

- A) To stop publicity and legalization of the so-called "Homosexual families";
- B) To protect our families with correct laws that respect natural and christian principles on which is founded our European civilization."

"With your help, and with God's help, we will continue to carry on this campaign, till the day in which the pressure we are doing onto political authorities will have full success, deleting at last and forever this abominable Resolution, and change it with a new, and true law, more involved with the real and right italian and european family's interests."

Recently it has been approved by Verona's municipality (yes, the "Romeo and Juliet"'s town) a document not only against gays and lesbians' civil rights, but even against those situations not strictly catholic. An exponent of "Lega Nord", Romano Bertozzo, has even said that "Gays should be made as the capons".

Local ARCIGAY-ARCILESBICA deputation has been compelled to go out from the townhall while they were trying to demonstrate their disapproval towards this motion.

Another declaration comes from "Forza Italia"'s deputy for European Parliament Roberto Mezzaroma, that says "I can't accept that my son, that now is ten years old, in the future could decide to marry Tarzan". Even the same guy says that, after the election made in Italy, in the E.P. "there are new kind of persons firmly decided to obstruct the approval of NOT ENOUGH VIRILE ideas".

Now the text of the ARCIGAY-ARCILESBICA petition:

FOR THE CIVIL RIGHTS

We want to live in a more civil and free country. For the people's sake.

There are in Italy millions of gays and lesbians. Most of them are yet obliged to hide their feelings, to migrate in bigger cities, or are quite persecuted in work and family.

The ratify of homosexual's rights against prejudice and discrimination is not only to support a minority, but it's a way to test civil and democratic improvement for a country, for Italy and Europe. The 8th february 1994 European Parliament's Resolution for homosexual's people's rights must not stay without future, but must be a base, must be considered as inspirer principle for civil institutions, school and mass media, in order

to fight discriminations and prejudices that nowadays yet are well deeply rooted in all-the-day life, and in most dull mind. Particularly we ask to Italian Parliament to dispute and approve a law in favour of civil unions that permit to all couples, even of the same sex, to be acknowledged by law, as it already happens in Denmark, Norway, Sweden, and other civil countries.

This for to guarantee even to people that has not got married yet, that a free choice of love will be right recognised even on questions as house, heritage, and pension.

We ask help to people all over the world. To grant it to us will charge you at all!: you can send a letter (not e-mail) saying: "I /name, surname, address/ agree with ARCIGAY-ARCILESBICA petition for civil rights, in favour of Strasbourg Resolution for civil unions. /your signature/".

Please send this letter to
ARCIGAY-ARCILESBICA
SEGRETERIA PETIZIONE
PIAZZA DI PORTA SARAGOZZA, 2
40123 BOLOGNA (BO)
ITALY

Report on the Symposium Homosexuality: A Human Right?

BUCHAREST ACCEPTANCE GROUP
under the patronage of
UNESCO-CEPES

held on May 31, 1995
at UNESCO-CEPES, Bucharest, Romania

Rapporteur: Jennifer K. Tanaka

Bucharest Acceptance Group

c/o APADOR-CH
Calea Victoriei 120, Bucharest Romania
fax: + (401) 312 45 28
tel: + (401) 726 46 75
e-mail: ion@apador.sfos.ro

ARTICLE 200 OF THE ROMANIAN PENAL CODE

Sexual intercourse between persons of the same sex is punishable by one to five years' imprisonment. If the act provided for in paragraph 1 is committed under duress, or against a minor, or against a person unable to defend himself or to express his/her will, it is punishable by two to seven years' imprisonment. If the act provided for in paragraph 2 causes serious injury to bodily integrity or to health, the penalty is three to ten years' imprisonment. Proposing or enticing an individual to an act provided for in paragraph 1 is punishable by one to five years' imprisonment.

The Constitutional Court of Romania has ruled that the provisions of paragraph 1 are unconstitutional "to the extent to which they apply to sexual relations between freely consenting adults which were not committed in public or did not produce a public scandal." This decision came into force in January 1995.

I. FOREWORD

The symposium titled "Homosexuality - A Human Right?" was an attempt to open up dialogue on the vital but sensitive issue of gay and lesbian rights in Romania. Currently, Article 200 of the Romanian penal code declares any consenting same sex relations to be a criminal offence. In the last four years there have been a number of drafts put forth by the Romanian Senate and Chamber of Deputies, though, in essence they maintain the criminality of same sex relations.

In April 1995, the Senate adopted a Bill that would modify the Penal Code. Article 200 of this draft reads:

1. Sexual intercourse between persons of the same sex, taking place in public, or producing a public scandal, is punishable by one to five years imprisonment.
2. If the act provided for in paragraph 1 is committed against a minor, it is punishable by two to seven years imprisonment and the denial of rights.
3. If the act provided for in paragraph 1 is committed under duress or against a person unable to defend himself (or herself) or to express his (or her) will, are punishable with three to ten years imprisonment and the denial of rights.
4. If the acts provided for in paragraphs two or three are causing serious injury to bodily integrity or to health, the penalty is five to fifteen years imprisonment and the denial of rights. If it is followed by victim's death or suicide, the penalty is fifteen to twentyfive years imprisonment and the denial of rights.
5. Proposing or enticing a person to take part in sexual relations with a person of the same sex, as well as propaganda or association or any other acts of proselytism with the same purpose, is punishable by one to five years imprisonment.

The original text of the criminal code from the Communist period outlawed any same sex relations. In 1994, the Romanian Constitutional Court ruled this definition unconstitutional. Following this, the term, public scandal, was introduced into the text so that "any consenting same sex relations taking place in public or producing public scandal" will be punished with imprison-

ment from 1 to 5 years. The term public scandal is seen by various human rights workers as dangerous in that there is no definition of a public scandal.

In the past year, various bodies have discussed whether or not Romania should decriminalise homosexuality. These include the Senate, the Chamber of Deputies, the Romanian Orthodox Church and affiliated student groups, as well as gay and lesbian rights organisations, both within Romania and abroad.

The Bucharest Acceptance Group is a non-governmental association made up both of Romanian citizens and expatriates living in Romania. The group was recently created for the defence of the rights of persons with homosexual orientation.

The positive reaction over the formation of such a group has led to affiliated "Bucharest Acceptance Groups" being created in The Netherlands and France.

Having in view that the legislation regarding homosexuality in Romania was currently being discussed in the Parliament, the Bucharest Acceptance Group organised, under the sponsorship of the UNESCO CEPES International Year of Tolerance, a public discussion to address the complex issues of same sex relations in Romania.

The Symposium "Homosexuality: A Human Right?" was a unique attempt to bring opposing points of view together in a single forum. Not just to speak AT each other, but to listen TO each other; to appreciate opposing points of view, and perhaps even find common ground.

The Symposium was originally organised so that eight speakers would present different aspects of homosexuality in Romania. Though two of the scheduled speakers had

not been present, the actual presentations represented different aspects of what may be considered a controversial subject in Romania. Each speaker was given ten minutes for his/her presentation, after which the floor was open for questions.

The discussion was moderated by Father Christopher Newlands of the Anglican Church in Bucharest and Sofia, and the six speakers had been:

- Ms. Carin Berg: Director of the European UNESCO Centre for Higher Education-CEPES, Bucharest; from Sweden and in Romania since 1988;
- Counsellor Octavian Cojocaru: representative of the Ministry of Justice;
- Mr. André Krouwel: Lecturer of Political Science at the Free University of Amsterdam and representative of the Dacia Foundation (Bucharest Acceptance Group - The Netherlands);
- Father Dumitru Radu: Professor of Theology at the University of Bucharest and representative of the Romanian Orthodox Church;
- Mr. Scott Long: Former Fulbright Professor in Romania for two years, teaching American literature; conducted numerous interviews of prisoners in Romania sentenced under Article 200; and East Central European representative of the International Gay and Lesbian Human Rights Commission, San Francisco;
- Deputy Nicu Vintila: Representative of the Romanian Parliament, Chamber of Deputies Juridical Commission.

II. OPENING REMARKS AND PRESENTATIONS OF THE SPEAKER

Moderator - Father Christopher Newlands

In his opening remarks, Father Christopher Newlands welcomed the participants and

stressed that this was an important occasion where we meet for the first time to exchange views as part of a dialogue on the subject of homosexuality in Romania. As many different groups representing the Romanian government and society, as well as groups from abroad, were present, he pointed out that it is clear that we would have different opinions, but he hoped that each would listen patiently and try our utmost to understand what each other's opinions are.

He also expressed his gratitude to the Bucharest Acceptance Group for organising this discussion and to UNESCO for hosting the Symposium.

Ms. Carin Berg - Director of UNESCO-CEPES, Bucharest

Ms. Berg opened with a brief explanation of the UNESCO initiative incorporating the 1995 International Year of Tolerance. She spoke of different themes of tolerance and specified that "intolerance in a society is the sum of the intolerance of its individual members," and we need to think about intolerance and our own behaviour.

In our everyday life, one may see behaviours that in their essence are intolerant. So-called "harmless jokes" about a neighbouring country, ethnic group or people with different lifestyles is not so innocent; it creates a climate and allows for more violent expressions of intolerance like attacks against individuals, claims for repressive education against certain groups and even armed conflict.

She also pointed out that certain behaviours, such as domestic violence, are to be condemned because they are harmful to members of society. "Harm inflicted on other people" is a rational ground for disapproval.

While a free, open and democratic society means that you have the right to approve or disapprove of various phenomena, it also means that you have responsibilities and disapproval should be expressed in a "democratic dialogue." She stressed that it is with this background that we are meeting here today; not to make propaganda, but to inform, to communicate, to act in a democratic way.

The attitude towards homosexuals, as it is expressed in Romania today, is an attitude of intolerance, and intolerance in any expression is the one thing we must not tolerate. Also, it is our duty as citizens of a democratic society to be informed, to read and to have dialogue.

In closing, Ms. Berg stated that the issue of this symposium challenges us as individuals, and underlined that tolerance is an individual responsibility, it is part of the strategy for creating, in all parts of the society, a climate of tolerance and understanding, as cornerstones of peace.

Counsellor Octavian Cojocaru - representative of the Ministry of Justice

Mr. Cojocaru began by stating that Romania is attached to the ideals of democracy, in which human rights are guaranteed. In drawing our attention to the Universal Declaration of Human Rights, Counsellor Cojocaru stated that homosexuals do have rights in Romania, but that he believed the new text of the draft and its context is not understood. He commented that the institutions, the church and certainly the vast majority of citizens who respect the society are looking with anxiety at the decriminalisation of homosexuality.

Human nature, he continued, is "inclined to the romantic," and the "beauty of the Roma-

nian woman" allows us to be biblical and evoke God, who told Adam and Eve to go and spread the kin around the world. It is a matter of Christian morality and the laws of the Bible.

He mentioned that an essential provision of the recent Senate draft of Article 200 is that there are only two conditions which criminalize same sex relations: if it is perpetrated in public and if it creates a public scandal. In every other condition, he continued, each does what he pleases, if they do not jeopardise the other and the human morality. This, he believes, does not infringe upon the Declaration on Human Rights.

In closing, he stated that the new law (draft) harmonises the new freedoms of the individual, only to the extent that it is believed that homosexuality is a human right.

Mr. André Krouwel: Representative of the Dacia Foundation- The Netherlands, which includes a program for BAG Netherlands; lecturer at the Free University of Amsterdam, department of Political Science.

After expressing his appreciation to BAG-Romania for organising the Symposium, Mr. Krouwel commented that he was stunned by the statement of Counsellor Cojocaru because he never thought of love as something "natural" or "unnatural;" you either love somebody or you don't. He also warned that public scandal is dangerous because people can be offended very easily.

Mr. Krouwel then gave a brief explanation of the gay and lesbian movement in the Western European context. While most people define this as "liberal," homosexuals up to the first half of the 20th century were persecuted, jailed and even killed by political and religious institutions. However, he continued, studies then showed that homo-

sexuality is not a disease or social aberration, resulting in the decriminalisation after W.W.II, in most Western countries. This was followed by the period of sexual liberation in the 1960s-1970s, and now homosexuality is not seen as something private, but something we can express in the public sphere.

Democracy, he believes, is not something put down in legal documents like the Constitution, but means that different social groups are represented at the political level and where people can express their views and lifestyles. Likewise they can be acknowledged as an important social group contributing to society.

Mr. Krouwel concluded in saying that within the European gay community and political parties, there are many people whom are worried about the situation in Romania. The Dacia Foundation and other BAG groups will monitor Human Rights here in Romania, particularly those of gays and lesbians, and are pressing their parliamentarians for a change in the penal code of Romania.

Father Dumitru Radu: Professor at the Faculty of Theology. University of Bucharest and representative of the Romanian Orthodox Church. In opening, Mr. Dumitru thanked the sponsors for organising his presence at this debate over a problem that he believes is not a "right," but a plague. As a priest, as a moral theologian, he continued, he cannot agree with those present for which show homosexuality is a Human Right. Even if we are required to agree with this "sexual deviance," the Orthodox Church will never agree with this "violation of nature."

He continued in saying that even if the Romanian Parliament legalised same sex relations, it is not natural and it is none of our business. It is a violation of nature, and it will turn against those who practice it. This, he said, is how we can explain the plagues

around the world. "If you cannot consider the Bible for your own reason, for sound reason, you are doomed."

The Romanian Orthodox Church, he explained, thinks that homosexuality is a sin. They understand sinners and hope to convert them, but cannot leave sins unpunished. This is a sin against God because human beings were created for family life, and such actions against nature and society come back to haunt people. Further, homosexuals should not be allowed to teach people that one's own body is his/her own business, for we know God does not forgive sinners. God is waiting for sinners to come back to him, to sanction and to punish.

Father Radu specified that some may say homosexuals will not harm society, but they can influence and attract youth, and this will result in a sick youth. "As you see," he continued, "we have many sick youths already. In cases of this sexual deviance, the spiritual aspect of the human is lower to the biological aspect; senses are lost and major elements to the human being are lost."

He closed by saying that he is completely against this sexual deviance, against this sin. The Church must educate people in the sense to bring sinners back to their nature. Tolerance is not unlimited.

Mr. Scott Long: Former Fullbright Professor in Romania for two years, teaching American literature; conducted numerous interviews of prisoners in Romania sentenced under Article 200; and East Central European representative of the International Gay and Lesbian Human Rights Commission, San Francisco.

In relating the principles of protecting youth and families, as mentioned by Father Radu, Mr. Long told the audience of two incidents which he has researched:

one involving a group of youth from Sibiu suspected of being homosexuals. The youths were bullied into confessions, placed in jail and charged with homosexuality and all of their families were publicly exposed and forced to pay bail.

The second involves selective administration of justice, where a man, believed to be a homosexual, was beaten, raped and robbed by two men. In complaining, he was told "you are homosexual, you must have wanted it," and in the end he was imprisoned for consensual homosexual acts.

Mr. Long stated that homosexuality has become an issue of debate in Romania, and many common terms heard today are symbolic of the perceptions of Romania's relationship with Europe: inside - outside; authentic - cosmopolitan... These, he said, tend to be false; homosexuality is a Romanian phenomenon; there are many homosexuals in Romania and only oppression, fear and the law has prevented them from coming on this panel today and speaking for themselves.

In commenting on the statements of Romanian Orthodox Church, he said that while he respects these it is part of a modern democracy to separate law from religious morality. Also, the "embracing ambition" of the Ministry of Justice to set forth an enforcement of not only the criminal code, but the laws of biology and even the law of God, seems both impractical for the actual agencies of law enforcement and ultimately destructive for the creation of civil society.

He pointed out that Bulgaria, with a strong Orthodox Church, decriminalised same sex relations almost 30 years ago, Russia in 1993 and Serbia last summer. The effect of the law in Romania and, it seems the intent of the law, is in fact to deny gays and lesbians the right to organise, the right to assemble,

the right to communicate with each other and society at large, and the right to be seen. Mr. Long specified that a democracy simply cannot do this.

He concluded by saying, "Who can contribute to Romanian society and democracy in this hour of construction? The intent of this law appears to create limits on who can contribute, can participate and this seems to be wrong, to be dangerous, and from the perspective of Romania's future, to be self-destructive."

Deputy Nicu Vintila: Juridical Commission of the Chamber of Deputies

In opening, Deputy Vintila stressed that his statement represents his own personal point of view; different from the Chamber of Deputies, and there is currently no draft bill before it. However, last year when the draft bill was debated and rejected, it was debated very seriously.

He stressed the different pressures placed on Parliament and how it is difficult to know the "truth." He explained how they had received many letters and visits representing Romanian society, and most were referring to maintaining the criminalisation of same sex relations. On the other hand, international bodies such as the European Organisation of Lesbians and other wrote letters and brought delegates, asking us to accept this "biological form." Thirdly, there is the Romanian Orthodox Church, and in each state, the Church is rather important; they have a say when it comes to morals and legal statutes. Deputy Vintila then showed a letter, signed by the Church and various Metropolitan, asking the Parliament not to decriminalise same sex relations.

Maybe the article should be improved, he commented, but in this point in time this is pretty much acceptable for the Rumanians.

Many have come to ask us to decriminalise same sex relations, but it was his opinion that the society cannot accept same sex relations, and this article allows for enough latitude.

III. QUESTIONS AND ANSWERS

There were a number of questions and issues raised from the floor. Lawyer Anca Paduraru asked Counsellor Cojocaru if, under the regulation of "public scandal," the current draft of Article 200 is not a double criminality or law with respect to Article 321 - "outrage of order..., deeds or gestures, words and acts which affect good mores..., or produce public scandal...", which are punishable with imprisonment for 3 months to 2 years. Ms. Paduraru also pointed out that this is a much smaller penalty than that for Article 200. Moreover, the present Penal Code incriminates heterosexual rape and sexual relations between adults and minors. Further, Mr. Long asked why can't there be a single law?

In responding, Cojocaru stressed that these are two different concepts and two different crimes. Deputy Vintila also commented that this should be taken slowly, and that in the West there were stages and we should not be forced to hurry.

APADOR-CH representative Renate Weber stressed that when referring to decriminalisation, we first must erase intolerance. Although understanding the position of the Romanian Orthodox Church, Ms. Weber specified that Romania is a lay state and attention should be directed toward the Constitution and the legislative parliament; the law making bodies not the Church. Also there is the issue of non-discrimination based on sex; in Article 200, only men are victims, but what about women?

Razvan Scortza from the BBC asked if homosexuals in Romania, according to the new draft, would be able to speak out, if only to fight discrimination and intolerance?

Mr. Cojocaru commented that homosexuals can speak in public if they are not proselytising or making propaganda. Our function, he added, is to see how we can tolerate each other, but we are not able to let things go unpunished if they produce a scandal.

Mr. Long specified that one cannot tolerate people if they are not there. "To say I tolerate you as long as you are not near me, don't express yourself, are not seen..., is not tolerance. Public scandal," he added, "prevents people meeting and tolerating each other face to face."

Questions were raised concerning the actual Symposium and its legality if the current draft were law. Would this meeting qualify as "association" and even "proselytising?" asked Dr Eric Gilder, U.S. lecturer in Romania. He proposed that if the concern is over propaganda, why not strike association out of the phrase "association and propaganda," and, likewise, if the issue is the public, why not strike public scandal and merely say "perpetrated in public."

Deputy Vintila again expressed the difficult position of the parliament, but added that he agreed paragraph 5 is too tough and does not belong in the criminal code. Counsellor Cojocaru also said that he did take note of the apprehensions over paragraph 5 and would speak with his colleague Ms. Iliescu and decide to what extent these could be changed.

In closing, Moderator Christopher Newlands stated that it is clear that not all questions have been answered, thus this type of forum is important to express questions representing all of these groups. Likewise, that is of

great concern that a just solution be found; a solution respecting Human Rights, freedom to us all, morality and the freedom to choose God or not.

Comparative Survey of the Legal and Societal Situation of Homosexuals in Europe (updated version)

By Alexandra Duda

I. Negative Facts

1) A total ban on homosexual relations exists in

Belarus
Bosnia-Herzegovina
Cyprus
Macedonia
Romania

2) Countries with different age of consent for hetero- and homosexual relations

	repeal of ban	Age of consent hetero- homo- sexuals	
Austria	1971	14	18
Bulgaria	1968	14	18
Croatia	1977	14	18
Finland	1971	16	18
Hungary	1961	14	18
Liechtenstein	1989	14	18
United Kingdom	1967	16	18
(Northern Ireland)	1982	17	18

Remark: The Faroe Islands also apply a discriminatory higher age of consent.

3) Special provisions

In Austria (§ 220), Finland (Art. 20:9.2), and Liechtenstein (§ 220) "promoting" or "encouraging" homosexuality is forbidden. All modern studies show that this is indeed not possible. These laws encroach on the individuals' right to freedom of speech.

In Austria (§ 221) and Liechtenstein, lesbian and gay organizations are prohibited (Freedom of assembly).

4) Some forms of discrimination (non-exhaustive list)

Anti-homosexual legislation and especially its criminalization implies society's misperception: homosexuality is considered a mental or genetic disease; incidents of "treatment" with drugs and electroshock are commonplace in many countries.

After divorce, gay men and lesbians face severe difficulties in maintaining custody rights for their children or realizing their visiting rights. The denial of their rights is even more likely if they live together with a same sex partner.

In some countries, proposals are being discussed to forbid lesbians receiving artificial insemination (Norway, Italy, France, UK). E.g. in Austria, non-married women and thus all lesbians are excluded from such an option by law.

Same-sex couples are denied adoption rights in all countries, since only married couples are entitled to adopt children. In many countries separated parents are likely to be denied custody rights because of their homosexuality.

Laws on "public indecency" and "obscenity" are used against gay men and lesbians showing affection in public (hugging, kissing) e.g. in Bulgaria, UK, Spain, Italy. In numerous

countries provisions on "public morale" are applied against publications of gay/lesbian organisations thereby infringing their right to freedom of speech (and press). Organisations are regularly banned and activists harassed with condonment or even involvement of local authorities.

Not least because of many forms of "legal" discrimination homosexuals are exposed to an increasing amount of violence from fascist groups and prejudiced individuals. "Legally sanctioned stigmatization" often prevents victims from reporting attacks.

In Greece homosexual prostitution is banned by the Criminal Law while there is no such ban on heterosexual prostitution. The law applies only to male homosexuals.

Homosexuals are either generally excluded from access to "sensitive sectors" (e.g. diplomatic service, science, military) or are dismissed in case their sexual orientation becomes known. Many open homosexuals face a hostile climate at work as well as restrictions on promotion and career development.

II. Positive Facts

1) Case Law

In 1981 in *DUDGEON vs. United Kingdom* the European Court for Human Rights in Strasbourg decided that a ban on homosexual activities contradicts with stipulations in the European Convention on Human Rights by violating the right to privacy (Article 8). The UK government had to comply by abolishing the ban.

In October 1988 the European Court for Human Rights upheld its position in the case *NORRIS vs. Ireland* and urged the Republic to repeal the respective law. Interestingly, the plaintiff's defendant was Mrs Mary Robinson, then practising lawyer and today

President of the Irish Republic. The Committee of Ministers of the Council of Europe as the monitoring body on follow-ups of the Court's decisions repeatedly urged the government to abolish the ban. It was not before June 24, 1993 that the Irish parliament decided to comply.

On April 22, 1993 the European Court for Human Rights upheld its earlier position in the case *MODINOS vs. Cyprus* that a ban on homosexuality interferes with the private life of citizens. Mr Modinos was paid compensation. The law, however, has not been abolished yet.

In March 1994 the Human Rights Committee of the United Nations decided in *Toonen vs Tasmania* that the criminalization of homosexuality not only violates the right to privacy (Art. 17) but also the non-discrimination clauses (Art. 2 and 26) of the International Covenant on Political and Civil Rights interpreting it as discrimination based on sex.

2) European Institutions

The Parliamentary Assembly of the Council of Europe (Recommendation 924/81 and Motion for Recommendation 6348/90) as well as the European Parliament of the EC (Resolution on Sexual Discrimination at the workplace 1984) have urged their member states to entirely equate homosexuals with heterosexuals in all fields of legislation and especially to set up equal ages of consent.

The Council of Europe investigates the human rights situation of gay men and lesbians in countries applying for membership. In February 1993 members of the Parliamentary Assembly adopted the Written Declaration No. 227 stressing the necessity to end the practice of discrimination against homosexuals in former Communist countries.

In September 1993, Romania was admitted as a member to the Council of Europe despite of its anti-homosexual legislation, while the Parliamentary Assembly of the Council requested the government to abolish anti-gay legislation (Opinion # 176) to bring it into line with the ratified European Convention. A reform bill is pending before the Chamber of Deputies.

An Additional Protocol to the European Convention on Human Rights supported by The International Lesbian and Gay Association (ILGA) is pending before the Committee for Human Rights and Legal Affairs for deliberation.

In 1991 the Commission of the European Union extended its code of practice on sexual harassment at the workplace with provisions for the protection of gay men and lesbians.

In April 1993 the European Human Rights Foundation launched the study "Homosexuality: A Community Issue" detailing the consequences of the Single Market in general and the "Free Movement" principle in particular.

In November 1993 the Pilot Study "Lesbian Visibility Project", an ILGA project conducted by LBL Denmark through personal interviews and mainly funded by the EU was finalized. Its aim was to throw light on areas usually not dealt with in homosexual studies. Recommendations and suggestions for further studies were given.

In February 1994 the European Parliament of the EU adopted a Recommendation sponsored by Claudia Roth (MEP Green Party) of the Committee on Civil Liberties and Internal Affairs calling upon the member states to recognize and protect homosexuals and their relations as equal with those of heterosexual people.

EU staff members founded the working group "Egalité" advocating elimination of all aspects in EU staff regulations discriminating against homosexuals (e.g. tax benefits and social security issues in same-sex partnerships). The European Citizen Action Service (ECAS) supports the abolishment of all EU practices which deny homosexuals equal enjoyment of the rights laid down in the Maastricht Treaty (e.g. free movement) as well as non-discrimination language in future charters/agreements.

In 1993, the Secretary General of ILGA addressed the Plenary of the CSCE Implementation Meeting in Warsaw explaining the discrimination homosexuals face worldwide. The Final Document includes these concerns. The Human Dimension has not yet explicitly condemned discrimination against gay men and lesbians in the participating states - an omission that can be interpreted as its acceptance!

3) International Institutions

In September 1991 Amnesty International's World Conference officially decided to recognize people imprisoned because of their sexual orientation as prisoners of conscience.

In December 1991 the World Health Organisation (WHO) deleted homosexuality as an illness in the International Classification of Diseases (chapter V, code 302). Remarkably, this decision did not come into force before January 1993 (ICD-10-version).

As first organisation advocating homosexual equality, the International Lesbian and Gay Association (ILGA) was granted Roster NGO-status at the Council of Economic and Social Affairs (ECOSOC) of the United Nations in March 1993.

4) Positive developments at a national level

Norway (1981), France (1985), Denmark (1987), Sweden (1987), The Netherlands (1992) and Ireland (1989) have enacted regulations prohibiting discrimination against homosexuals.

In 1986 Denmark equated homosexual couples with married ones concerning the right of succession.

In 1989 the Irish Parliament adopted a "Prohibition to Incitement to Hatred Act" covering hate speech against homosexuals.

In May 1989 the Danish Parliament enacted a "law on the registered partnership" of homosexual couples. It stipulates equal rights with one exception: same-sex couples are not allowed to adopt children together.

In 1991 the total ban on homosexual relations was abolished in the Ukraine.

In 1992 a number of Dutch local authorities started accepting the official registration of same-sex partnerships. In October 1993 a bill was introduced in parliament equalizing legal protection for "registered partners" vis-à-vis married couples.

In 1990 and 1992 respectively, Estonia and Latvia abolished laws penalizing homosexuality.

In June 1992 the German "Land" Brandenburg enacted a new Constitution emphasizing recognition of non-marriage partnerships by the state. In 1993 the "Land" Berlin included sexual identity as a non-discrimination criteria in its Constitution.

In Germany same-sex couples who were denied the right to marry have appealed at the Supreme Courts. Judges interpret the

right to marry as an exclusive right for heterosexuals (while family law does not specify gender). In its decision of October 4, 1993 the Constitutional Court upheld this view and ruled the appeal inadmissible, while emphasizing the task for the legislative power to bring about legal protection for same-sex partnerships.

In 1992 the total ban on homosexuality was abolished in Gibraltar and the Isle of Man (both under UK Home Office jurisdiction).

In spring 1993, the Norwegian parliament adopted the same-sex partnership law based on the Danish one.

France, Ireland and The Netherlands have provisions against discrimination of gays and lesbians at the workplace.

In April 1993 the Russian Parliament enacted a new Penal Code which no longer includes the prohibition of homosexuality.

Lithuania which became member of the CoE in May 1993 repealed the ban on homosexuality one month after its admission.

In June 1993, the Irish parliament abolished the law prohibiting male homosexuality and simultaneously, set an equal age of consent at 17.

In autumn 1993 the French government adopted a law directing insurance companies to accept joint insurance coverage for non-married couples.

In October 1993, the "Unfair Dismissal Act" in Ireland was extended to include the prohibition of discriminating treatment on grounds of sexual orientation.

In November 1993 the parliament of the German free state Thuringia adopted a new Constitution prohibiting discrimination on

grounds of sexual orientation - pending public approval by a referendum in late 1994.

The Irish Parliament is planning to establish an Equality Commission to monitor all forms of discrimination against homosexuals.

In June 1994, the Swedish parliament adopted a partnership law based on the Danish and Norwegian model.

In August 1994, the total ban on homosexual relations was repealed in Serbia (incl. Kosovo).

In January 1995 homosexuality was decriminalized in Albania.

A bill was introduced in the Cyprus parliament in January 1995 to abolish the ban on homosexuality.

On 15 June 1995 the parliament of Moldova abolished the ban on homosexuality.

III. Conclusion

This survey aims at giving a multifaceted overview of the different stages the recognition of homosexuals has reached in the various European countries ranging from recent decriminalization to granting legal partnership status while also highlighting ongoing persecution, stigmatization and denial of basic human rights.

In representing some 400 member organisations in more than 45 countries worldwide, the ILGA has made it its first priority to work towards abolishment of all legal, social, cultural or economic discrimination against homosexuals.

All human beings irrespective of their sexual orientation must be granted equal enjoyment of human rights! The realization of this goal

will contribute to a peaceful coexistence and mutual understanding in a New Europe.

Sources

Homostudies - University of Maastricht (NL),
HOSI-Wien/LAMBDA-Nachrichten (Austria),
EUROLETTER edited by LBL Denmark
all members of the ILGA
and others

compiled by

Alexandra Duda, IgIf Cologne,
c/o Sch.u.LZ., Kartäuserwall 18
D-50678 Köln, Germany

Last update: August 1995

Please indicate source when quoting text or excerpts.

ECAS Seminar on The Internal Market and the Consumer

The European Action Service is keeping a seminar in Bruxelles in September on The Internal Market and the Consumer. Among the issues to be discussed is free movement of people.

The ILGA working party on the EU has sent the following statement to ECAS and asked it to be handed to the group discussing free movement:

Free movement of people

The idea of a borderless Europe where you can go wherever you want to live and work, is a beautiful one, but in the practical world the free movement is limited by many things: language, culture, money, family relations etc.

And you may add that one of the most moveable groups of people in fact is gay men - so why claim that homosexuals do not have the same possibilities of free movement as other groups?

It is right that gay men moves around a lot. This is probably caused by the fact that many

gay men do not have stable family relations and/or social networks - yet. But I think this is rapidly changing as the social acceptance and visibility of homosexuals are increasing. It is much easier to establish a homosexual family when there is less pressure from the surroundings and when you do not have to hide.

What are the obstacles for lesbians and gay men to our free movement? It is obvious that as long as some member states do discriminate us we cannot move around and enjoy the same rights as other citizens.

For instance, a Danish or Swedish registered couple cannot move to another EU member state and obtain the same rights as a married couple - as they can in Denmark and Sweden. Even though there is a provision of bringing a spouse with you if you as an EU citizen go to another EU country to have a job, your same sex spouse is not in general permitted to stay in the country. We know of one positive exception to this: A Danish lesbian who got a job in the Netherlands, was allowed to bring her partner.

When formally registered spouses cannot be brought, then of course other same sex partners can either. This is a main obstacle for the free movement of gay people.

The concept of family

One of the basic elements of society in all the member states is the family. And the family is traditionally considered as man, woman and children. Any other grouping of people living together are some places seen as a threat against the concept of family and against society itself.

I think, that if we shall obtain full equality and be respected and considered as citizens of the society, we must challenge the concept of family. We must work for a new definition of the family, we must introduce

the homosexual family consisting of man and man or woman and woman with or without children.

It is essential that we not only obtain legal recognition of the homosexual family, but also a social and cultural recognition of our families. I am well aware that this is a hard job - and it will demand much work, openness and visibility.

What can the EU do?

Not even within the EU institutions homosexual families are accepted. A Danish registered couple - of which one is an employee of the EU - has been denied the same salary provisions as married couples.

A first and simple demand to the EU must be that partnerships are recognized not only within the EU institutions but also in other member states. In the Roth resolution from February 1994 the European Parliament has included such a recommendation and now we are waiting for the Commission to back it.

The EU must recognize that about 10 % of its citizens belong to the homosexual minority and act accordingly in order to obtain the same legal, social and cultural standards for us as for all other citizens.

As we have been object to discrimination, neglect and marginalising for many years throughout Europe, there are needs and reasons for special support to the gay and lesbian community.

It is important that lesbian and gay men are visible. And visibility demands personal strength, safe and confident surroundings and empowerment of our selves. We ask the European Community to support our community in order to gain that.

If we want to create a united Europe we must establish the same high standards for all European citizens, we must put an end to discrimination of all kind.

The EU member states must be forced to end all discrimination on the ground of sexual orientation - also in the labour market, to introduce the same age of consent for all people, to recognize homosexual couples on an equal footing with heterosexual couples.

And the EU itself must take a stand on countries - member states and other - that continue to discriminate on the ground of sexual orientation.