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An update of the Survey on the Legal Situation for Gays and Lesbians in Europe and guides to the structure of the European Union, the Council of Europe and The Organisation for Security and Cooperation in Europe can be found on this URL:

<http://www.inet.uni-c.dk/~steff/gliil.htm>

ROMANIA

In the past two month the legal situation for lesbians and gay men in Romania has changed twice. The following five articles show the development.

PROPOSAL IN ROMANIAN PARLIAMENT TO EXPAND BAN ON HOMOSEXUALS

By Ion Iacos

BUCHAREST, Romania -- Showing utter contempt for its obligations under European and international law, Romania's Chamber of Deputies voted overwhelmingly on 10 September to continue condemning homosexuals to prison for all consensual same-sex relations, and to establish stiff new prison terms for members of gay associations.

The Chamber approved the measure despite repeated appeals from Amnesty International, other leading nongovernmental and intergovernmental organizations, and hundreds of concerned individuals from around the world, calling on Romania to end its oppressive treatment of gays and to assume its place in the modern world. Romania remains the only member state of the Council of Europe which continues to prosecute consensual same-sex relations. Several other Council members -- including the Netherlands, the United Kingdom, and Denmark -- have expressed strong objections in recent months to Romania's ill-treatment of gays and lesbians.

The anti-gay measures adopted by the Chamber of Deputies are more severe than those enacted by Romania's former communist regime.

These measures were drafted by Romania's new justice minister, Ion Predescu, as an effort to revise Article 200 of the penal code (which specifically criminalises homosexuality) as part of a larger penal code "reform" process. Mr. Predescu's proposal, presented in the midst of a heated presidential and parliamentary electoral campaign, received the support of the ruling Government party (PDSR) and an overwhelming majority of opposition parties.

The text approved by the Chamber of Deputies reads as follows:

- Sexual relations between persons of the same sex are punishable by six months to three years' imprisonment.
- Sexual relations between persons of the same sex, taking place in public, or producing a public scandal, are punishable by one to five years imprisonment.

- 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.
- 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.
- 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.
- Enticing or seducing a person to practise same sex acts, as well as propaganda, associations or any other forms of proselytizing with the same aim are punishable by one to five years' imprisonment.

THE PENAL CODE REFORM PROCESS IS NOT YET COMPLETED!! In February, the Romanian Senate approved a version of Article 200 that is similar, but not identical, to that passed by the Chamber. Once the Chamber of Deputies completes action on the entire penal code -- probably next week -- a mediation Committee comprised of representatives of the two chambers must meet to work out differences between their versions of Article 200. Local human rights monitors fear that the Senate will ultimately adopt the version drafted by the Chamber of Deputies, given the tremendous political pressure to finish action on the penal code before general elections in November.

While the Romanian Constitution allows the President of Romania or members of Parliament to refer draft laws to the Constitutional Court for review, the Chamber of Deputies has already declared its determination to overturn any Constitutional Court decision challenging the constitutionality of the Chamber's anti-gay measures. Members of Parliament may overturn Constitutional Court decisions with a 2/3 vote of both chambers.

BACKGROUND INFORMATION

Amnesty International considers individuals imprisoned solely because of their practice of consensual homosexual acts between adults in private to be prisoners of conscience. Article 200, paragraph 1, of the Romanian Penal Code adopted in 1968, was reviewed by the Constitutional Court of Romania in 1994. The court ruling allowed for the prosecution of only those acts which were "committed in public or produced public scandal". However, the ruling did not provide guidelines for applying these standards, nor did it

define "public scandal". Therefore the enforcement of the law continued to lead to imprisonment of adults solely for engaging in consensual homosexual relations in private.

In October 1993, Romania was accepted as a member of the Council of Europe on condition that it brought several aspects of domestic law and practice into line with the European Convention for the Protection of Human Rights and Fundamental Freedoms. One of the conditions stipulated that the Penal Code should be amended so that homosexual acts in private between consenting adults were no longer penalized.

According to information published by the Ministry of Justice in October 1995, 14 men were imprisoned under Article 200, paragraph 1, in 1993 and 1994. In 1995, Amnesty International called on the Romanian authorities to release five men who had been detained under this law and who were considered to be prisoners of conscience. All five were released later in 1995. Amnesty International has received reports that some of those detained under Article 200 have been subjected to ill-treatment.

RESOLUTION IN EUROPEAN PARLIAMENT ON ROMANIA

By Hein Verkerk

This is the draft resolution that was debated thursday 19 september 1996 in European Parliament Strassburg. The Romanian government tried to stop this debate and resolution by sending a letter to the Chairpersons of the political group, arguing that the legislative process is not ended yet.

EUROPEAN PARLIAMENT
18 September 1996
JOINT MOTION FOR A RESOLUTION

pursuant to Rule 47 of the Rules of Procedure

by Mrs d'Ancona and Mr David, on behalf of the PSE Group
Mr Vinci, Mr Pettinari, Mr Paillier, Mr Gutierrez Diaz and Mr Svensson, on behalf of the GUE/NGL Group
Mr Ripa di Meana, Mrs Roth and Mr Müller, on behalf of the V Group
Mr Dupuis and Mr Dell'Alba, on behalf of the ARE Group

replacing the motions by

Mr Vinci and others, on behalf of the GUE/NGL Group (B4-1057/96)

Mr Ripa di Meana, on behalf of the V Group (B4-1063/96)

Mr Dupuis and Mr Pradier, on behalf of the ARE Group (B4-1081/96)

on stiffer penalties for homosexuals in Romania

The European Parliament,

- having regard to the Universal Declaration of Human Rights,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- having regard to its previous resolution on Romania,

A. shocked at the decision of the Romanian Chamber of Deputies to introduce stiffer penalties for any homosexual relations between consenting adults in the context of a revision of the Romanian Penal Code,

B. whereas homosexuality is now subject in Romania to prison sentences of between six months and three years and the proposal to amend Article 200 of the Penal Code would make acts of homosexuality punishable by up to five years' imprisonment,

C. whereas the Parliamentary Assembly of the Council of Europe, among others, has called on Romania to decriminalize same-sex relationships,

D. whereas the law will only come into force if a compromise text is approved by both Chambers and signed by the President of the Republic of Romania,

1. Expresses its profound indignation at these decisions by the Romanian Parliament and condemns any attempt to criminalize sexual relations between adults of the same sex;

2. Calls on the President of Romania to use all his powers to prevent the entry into force of the proposed amendments to the Penal Code;

3. Recalls the importance it attaches to respect for human rights and calls on the Government of Romania to adhere to its undertakings to the Council of Europe to repeal all laws repressing homosexuality;

4. Calls on the Commission, the Council and the Member States, each within their respective spheres of responsibility, to exert pressure to prevent discriminatory provisions from being adopted;

5. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe

and the President, Government and Parliament of Romania.

ROMANIA ALTERS ANTI-GAY LEGISLATION

By Rex Wockner

Following an outcry from European officials, Romania's Chamber of Deputies Sept. 25 deleted a section of an already-passed bill that would have punished private gay sex between adults with up to three years in prison.

But they retained a section that will punish gay sex that causes "public scandal" with up to five years in prison and another section that bans gay "propaganda, associations or ... proselytizing" under threat of five years in jail.

The remaining proposals advance to the Senate then to President Iliescu for his signature. An old Communist-era law currently bans all gay sex in Romania.

RIGHT-WING ROMANIANS RANT

ILGA press release

While the Romanian government retreated from its recent proposal to make homosexuality illegal, the new legislation is still problematic. The new penal code outlaws lesbian and gay associations, as well as the sex which causes "public scandal". Government officials or police could easily use such as unclear prohibition to harass lesbians and gay men. Continued worldwide protest is expected, and ILGA will try to keep you informed of new developments.

In the meantime, comments made during the debate on the penal code were reported on in the 4 October issue of Transition from the Open Media Research Institute (OMRI). Three deputies from the opposition National Peasant Party Christian Democratic made it clear that Romanian lesbians and gay men have no possibilities to appeal to elected officials for support.

The deputies proposed that special control teams be set up to inspect homes for signs of homosexual behaviour. One of the deputies, Emil Popescu, said that "incest is preferable to homosexuality," because it "gives breeding a chance." Another deputy from the same party, Joria Pascu, claimed incorrectly that homosexual relations are unknown in the "animal world" with the exception of ducks, "which are known to be the most stupid among birds."

While no protest so far has been announced by duck-loving organizations, ILGA member, ACCEPT, in Bucharest, are working out their next strategies and

statements in the fight for the right to love for lesbian, gay, and bisexual romanians.

ITALY AND AUSTRIA CALL FOR SWEEPING EU RIGHTS CLAUSE

LUXEMBOURG, Oct 1 (Reuter) - Italy and Austria called on Tuesday for a sweeping human rights clause to be incorporated in the European Union treaty and for the bloc to be given the power to penalise member countries that do not comply.

The two countries also called for the EU as a body to sign up to the European Convention on Human Rights and for EU to respect other international constitutional instruments.

At a joint news conference, Italian Foreign Minister Lamberto Dini and Austrian Vice Chancellor Wolfgang Schuessel said their proposal was designed to underline to citizens the benefits of being part of the Union.

"We fell that Europe must become a comprehensive and understandable process to the citizen," Schuessel said.

The proposal -- which will be presented to the EU's inter-governmental conference (IGC) that is negotiating a new treaty -- would prohibit discrimination across the bloc on a broad range of grounds.

"The Union shall ensure that no discrimination on grounds particularly of race, colour, nationality, sex, language, religion, political or other opinion, ... disability, (or) sexual preference," a proposed treaty text said.

It also formally pledged the Union to combatting "racism, anti-Semitism, xenophobia, intolerance, (and) sexism...."

In what is likely to be among the most controversial aspects of the proposal, the two countries said any EU member that persistently breached any of these rights should, after due process, have certain benefits within the Union suspended.

"If a member state infringes...rights, then there must be penalties," Schuessel said.

The two countries said it was also important that the EU sign up to the Convention on Human Rights and that all EU laws should be completely accessible to the bloc's citizens.

The European Court of Justice has ruled that the EU currently lacks the standing to accede as a body to the human rights convention.

Let the Lobbying Begin:

ILGA DEMANDING LESBIAN AND GAY RIGHTS IN THE EU

By Andy Quan, ILGA Coordinator.

- lobbying underway in Ireland
- Austrian support causes confusion
- IGC seminar planned in Amsterdam
- EGALITE and ILGA campaign for signatures

Lobbying is underway for the inclusion of an anti-discrimination clause that includes sexual preference in the new revision of the Maastricht treaty. The Irish government, who currently holds the EU presidency, is in support of such a clause, and ILGA member GLEN (the Gay and Lesbian Equality Network) of Ireland is working to ensure that this support is vocal and effective.

Recently, Italian Foreign Minister Lamberto Dini and Austrian Vice Chancellor Wolfgang Schuessel spoke on behalf of their governments in indicating support for such a clause. According to a Reuters report, they also asked for the European Union to be given the power to penalise member countries that do not comply, and for the EU as a body to sign up to the European Convention on Human Rights and for EU to respect other international constitutional instruments. Their supported human rights clause specifically mentions sexual orientation, and the two countries go so far as to say that any EU member that persistently breaches any of these rights should, after due process, have certain benefits within the Union suspended.

In Austria's case, this is ironic since they have various anti-gay and discriminatory legislation still on their books, such as an unequal age of consent, (18 for gay men, 14 for lesbians and heterosexuals) and two articles which prohibit "propaganda" for homosexuality, and to "found, recruit or be a member in a gay and lesbian organization." Long-time ILGA activist, Kurt Krickler of Vienna said "This comes as a big surprise for us because Austria has the severest anti-homosexual legislation in the whole of Europe and Schuessel is the leader of the Christian Democratic Party which has been strongly opposing the repeal of these laws for the last 10 years.

Who knows? Maybe the Austrian government prefers outside pressure to convince the Austrian public of the need for reform."

Meanwhile, the Dutch national group, COC-NVIH, is preparing to host a meeting and seminar on the Intergovernmental conference December 7, 1996, in Amsterdam, as part of COC's 50th Anniversary activities. Members from the European Parliament will be attending including the two past winners of the EGALITE award (for public figures who have advanced lesbian and gay rights in Europe) - Peter Pex and Claudia Roth. Fellow MEP Nel Van Dijk will be chairing the meeting.

Finally, ILGA in conjunction with EGALITE has gathered a list of 67 European groups who have signed a statement demanding of an anti-discrimination clause including sexual orientation. The list of signatories and a copy of the statement appears at the end of this report. EGALITE is a group of over 300 gay men and lesbians working in and around the European Institutions. Recent success includes the extension of limited benefits to same-sex partners of Commission employees. ILGA is an international federation of 450 groups and individuals from 80 countries. ILGA spoke at a public hearing for the IGC. Last year, ILGA managed a 211,000 ECU EU-funded project in Eastern Europe.

The purpose of the Intergovernmental Conference is to rehaul the Maastricht Treaty by making it more democratic and effective and bringing it closer to the ordinary citizen. The inclusion of anti-discrimination clause that includes sexual orientation would be an incredible global victory for lesbian, gay, bisexual and transgender people. The European Parliament's 1994 Resolution on the Equality of Rights for Homosexuals and Lesbians in the Community was used by activists from Bermuda to Latvia to lobby their governments on lesbian and gay rights. A clear recognition of lesbian and gay human rights by one of the world's major political and economic power blocs would have symbolic and practical implications. The next developments for the Intergovernmental conference will be the Dublin European Council II meeting, 13 and 14 of December. In June 1997, the Amsterdam European Council is expected to be the end of the conference.

IGC STATEMENT FROM LESBIANS AND GAYS

"The European gay and lesbian organizations that have signed this statement demand that the follow-up treaty to the Maastricht Treaty on European Union include an anti-discrimination clause covering sexual orientation.

Such a clause has been recommended by the European Parliament and is included in the Reflection Group Report that the December 1995 Madrid summit saw as a proper basis for discussion for a new treaty.

We consider an anti-discrimination clause to be a precondition for further steps to establish equal treatment of all European Union citizens."

EUROPEAN PARLIAMENT REPEATS ITS COMMITMENT TO LESBIAN AND GAY RIGHTS

ILGA press release

On September 15, the European Parliament adopted a resolution on human rights in the European Union that includes a call to banish discrimination on the basis of sexual orientation. The resolution includes the following statement: "In accordance with the terms of the February 8 1994 Resolution on the Equality of Rights for Homosexuals and Lesbians in the Community, the Parliament asks that all discrimination and/or inequality of treatment must be abolished concerning homosexuals, especially referring to differences that persist on the age of consent for homosexuals, and discrimination concerning the right to work, and in penal, civil, contractual, social and economic law." (freely translated)

Resolution A4-0223/96 is an eight page resolution covering issues as diverse as prisoners, torture, respect of the family, and more. The resolution on homosexuality refers to the motion of the commune of Verone of 14 July 1995 (which condemned the European Parliament's earlier resolution) and replies to some other petitions from Germany, Spain and Italy.

NEW EUROPEAN WEB SITE: Grand Place

By Alan Reekie

Largely by accident, I have discovered a new official European Union Web site which has been set up to provide a convenient source of information on European NGOs and their activities with particular connection to the current Intergovernmental Conference (IGC). So far it has not been publicised effectively, but that could change. It occurs to me to suggest that you mention it in the Euroletter, especially if ILGA European Region can organise a contribution to appear there, eg drawing attention to the EuroParliament and Reflection Group's calls for a broad non-discrimination Article explicitly banning discrimination on grounds of sexual orientation.

The URL is: <http://www.eurplace.org> (e-mail can be sent to eurit@eurit.it)

DEATH PENALTY FOR HOMOSEXUALITY IN CHECHNIA?

ILGA press release

According to the Chechen and Russian media, Chechen separatists are proposing a new Penal code which includes an anti-sodomy law with punishment from five years in prison to the death penalty. The Triangle Centre, a Moscow-based Gay, Lesbian and Bisexual organization, and member of ILGA, reports that since coming to power, the Chechen separatists are looking at basing the new penal code on Muslim norms.

Roman Kalinin and Eugenia Debrianskaya, on behalf of Triangle, said yesterday, "We know that many European countries and European and Russian democratic organizations supported the Chechnian separatists in their fight against the Russian army. We did it too. Now, it is obvious that the price of peace will be paid by thousands of lives of non-orthodox Chechnian citizens, our brothers and sisters."

They ask for support in protesting these proposals. Keep on the alert for an ILGA/IGLHRC action alert soon! We'll report as soon as we get more information and addresses for protest!

EUROPEAN GAY/LESBIAN SOCIALIST MEETING

By René Lalement

On the occasion of Europride '97, which will be held in Paris, the French association "Homosexualités et Socialisme" (HES), is planning a meeting of European gay/lesbian socialist groups.

HES is independent from, but related to the Socialist Party (PS). Its aim is to relay the agenda of the French G&L organizations to the PS, and to participate, along with them, in the reflection about homosexuals and society.

If you are a member of such a group, or of a politically-oriented group which could be interested by this meeting, please contact :

HES

BP 414, 75527 Paris cedex 11, France

Tel : 33 + (0)1 46 59 01 00

Web:

<http://fglb.qrd.org:8080/fqrd/assocs/hes/hes.html>

email : smartinet@gaipied.fr, rl@enpc.fr

KOLN 97 INVITATION

ILGA press release

The ILGA World Conference is the important international gathering for lesbian, gay, bisexual and transgender activists. Since the first meeting in Coventry, England in 1978, ILGA's international conferences have been held all over the Europe, in North America and in recent years, in Latin America.

ILGA's last World Conference in Rio in June 1995 bringing together more than 300 delegates from almost 60 nations.

We're expecting a huge conference. After Rio, for the first time, ILGA did not hold a conference during the next calendar year, and the name of the conference changed from Annual Conference to World Conference. Add to that, the fact that the majority of ILGA's members come from Europe (over 50% from Western and Eastern Europe), and that this conference will be in Europe, a closer proximity than Brazil. And that the number of participants increase at every conference. After two years of no ILGA World Conferences, we're hoping for and expecting the largest and most diverse participation ever!

Plan ahead! The conference organizers and ILGA issue this special invitation to all of you:

Dear friends,

Coinciding with its 25th anniversary, the group, Lesbian and Gay Liberation Front (LGLF), Cologne will be organizing the next ILGA World Conference, ten years after it successfully held the 1987 ILGA World Conference. From June 29 to July 5, 1997 ILGA World Conference will take place in Cologne, Germany, the city which is number four of the lesbian and gay capitals of the world.

The conference sites are directly on the river Rhine and are handicapped accesible.

The conference, which has the motto "CHALLENGE & PRIDE", will focus on the following issues:

- human rights and the violation of human rights
- lesbian and gay lobby work in international organisations (UN, Amnesty International, OSCE, Council of Europe, EU)
- the economic dimension of lesbian and gay liberation work
- trade unions
- the worldwide dimension of HIV and AIDS
- media, information and communication technology and their potentials
- lesbian and gay people with disabilities

...and much more

In addition, on June 29 there will be one-day pre-conference with the topic: "Ideology, Religion and Homophobia".

An attractive social program will accompany the conference: an opening gala with many stars, a boat tour on the Rhine, and more. The 'grand finale' will be Germany's biggest Christopher Street Days parade, where more than 500.000 visitors are expected.

Registration forms are available by mid November in the Internet at ilga@macman.org, from Iglf and in the next ILGA Bulletin.

Suggestions for workshops, as well as questions and registrations please send to:

Iglf ILGA 97
Kartauserwall 18
D-50678 Koeln
Tel./Fax: +49-221-93 18 80 16
e-mail: iglf@aol.com or: ilga@macman.org

Information is also available at: <http://www.macman.org/ilga>

For donations and registration fees please use the following bank account:

Kreissparkasse Koeln
BLZ: 370 502 99
Konto-Nr. 20491

LGLF and ILGA are looking forward to seeing you in Cologne!

NO EQUALITY FOR PORTUGUESE GAYS

By Rex Wockner

Portugal's Socialist government has no intention of adding homosexuals to the list of protected minorities in Article 13 of the federal constitution, spokesman MP Nuno Baltazar Mendez told a Sept. 18 forum sponsored by the gay group ILGA-Portugal.

The forum was billed as Portugal's "first national debate on homosexual rights."

Baltazar claimed protecting gays from discrimination would lead to legal gay marriage which, he said, Portugal is not ready to accept.

Meanwhile, the government of Lisbon has given ILGA office space in the city center and Lisbon City Hall has become a sponsor of the city's first Lesbian

and Gay Film Festival, scheduled for September 1997.

VATICAN COUNCIL CONDEMS EUROPEAN `DEMOGRAPHIC WINTER'

By Daniel J. Wakin, Associated Press Writer

VATICAN CITY (AP) - With a scathing attack on the European Union, a Vatican council Friday called for a new campaign of family values to combat the continent's "demographic winter."

The Pontifical Council for the Family partly laid the blame for Europe's falling fertility rates on "the demands of a (consumer) society and higher costs at raising children." It also cited motherhood's "low esteem" stemming from too much emphasis on a woman's activities outside the home.

The council, an advisory body under the authority of Pope John Paul II, took to task the European Union for funding population control programs in developing countries as a form of "neo-colonialism." It said the EU was guilty of introducing "illegitimate" rights to reproductive health, homosexuality and abortion.

"In the face of widespread indifference to reality, Europe's demographic crisis has been compared to the Titanic, when those on board continued to order more champagne as the ship steadily sank," the council said.

The council's stance reflected long-standing Vatican policy, most vigorously pushed by the Holy See at the 1994 U.N. population conference in Cairo. The document released Friday followed a meeting in Rome last week on the family and demography in Europe.

The council took note of Europe's falling number of marriages, growing number of children born outside of wedlock, more cohabitation and higher divorce rates and postponed child-bearing.

"The ideological factors behind Europe's 'demographic winter' must never be forgotten," the council said.

"Europe is currently dominated by well-placed minority groups opposed to the family. The individualistic model of the person can frequently be linked to the anti-life mentality and anti-life propaganda," it said.

The council also blamed the widespread use of contraception and "a sterile sexuality ... promoted by the mass media and through promiscuity, pornography and homosexuality."

It concluded that the Europe's rebirth "depends largely on a rediscovery of the family," and called for tax reform, better housing, family subsidies and maternity allowances as practical steps.

OSCE LISBON SUMMIT

By Kurt Krickler

The OSCE Lisbon Summit will be the "conclusion" of the Vienna Review Conference which started recently. The Document prepared here will be signed at the Summit in Lisbon by all OSCE heads of state/government; for this purpose, the whole OSCE circus will move from Vienna to Portugal at the end of this month.

There is no need for ILGA to go to Lisbon for this occasion because there is not really much to do there as an NGO, the Document will be prepared here in Vienna, "sexual orientation" is not a topic yet. I started to talk with some delegations about this (Norway, Austria) but my first priority was to prepare an oral statement which I delivered in Working Group 1 on behalf of ILGA (see below). I hope an ILGA representative (John Clark, Tom Lavell or me again) will be able to give another statement on Friday (8 Nov.) referring to the general agenda item "Tolerance and Non-discrimination".

ORAL STATEMENT to the OSCE REVIEW CONFERENCE, Vienna, November 1996

delivered by the International Lesbian and Gay Association (ILGA) [Kurt Krickler] in WORKING GROUP 1(c)

Review of the Implementation of OSCE Commitments in the Human Dimension

AGENDA ITEM I:

Human Rights and Fundamental Freedoms, including
A) freedom of thought, conscience, religion or belief
B) freedom of expression
C) freedom of association and peaceful assembly
(5 November 1996)

Mr. Chairman, distinguished delegates,

Thank you for giving me the opportunity to speak today on behalf of the "International Lesbian and Gay Association" (ILGA), which is a world-wide federation of more than 300 organisations fighting for the human rights of lesbian women and gay men.

In the context of today's agenda item, the International Lesbian and Gay Association must state that the rights and freedoms of expression, association and

peaceful assembly of lesbians and gay men are not fully respected in all OSCE participating States. Here in Austria, the host country of this meeting, it is still a criminal offense to spread positive information on homosexuality or to found, recruit, or be a member in a lesbian and gay organisation if this organisation causes "public scandal" which is a very elastic and problematic notion. These provisions are a clear unjustified restriction of the fundamental freedom of expression, association and peaceful assembly and therefore a clear human rights violation. These provisions in the Austrian penal code provide for sentences of up to six months imprisonment. These criminal laws are a permanent intimidation of gays and lesbians in Austria. The law against "advertising homosexuality" is also a severe impediment to effective AIDS prevention for gay men. On several occasions, AIDS prevention material imported from Germany has been confiscated in Austria because this material was considered to "advertise homosexuality".

Moreover, this ban on positive information and on lesbian and gay organisations in Austria was just recently used as a justification by the mayor of a big city in Austria to refuse to rent out the city's convention hall for an all-Austrian gay and lesbian conference. This conference, which eventually took place last weekend, had to rent meeting facilities in a private hotel.

This Review Conference should also be alarmed about the fact that one of the government parties has introduced a Bill in Austrian Parliament to even tighten up these provisions. This Bill will be voted upon on 27 November 1996. We, therefore, appeal to all OSCE participating States, and especially to the other member states of the European Union, to exert pressure on the Austrian Government and Parliament not to sharpen these laws but, instead, to completely repeal them. This would be in line with Recommendations and Resolutions of both the Council of Europe and the European Parliament which, on 17 September 1996, has confirmed in Resolution A4-0223/96 its earlier Resolution of 8 February 1994 (which, by the way, is included in ILGA's Written Presentation to this Review Conference) demanding that all discrimination against homosexual women and men be abolished and all inequality of treatment of gays and lesbians be eliminated.

Unfortunately, Austria is not the only OSCE country that violates the freedom of expression and association of gays and lesbians. We have to mention that Liechtenstein has the same articles in its penal code, directly taken from the Austrian one. Romania, on the occasion of repealing the total ban on homosexuality this Fall, has also introduced new anti-homosexual legislation in its penal code which also constitutes a

severe and heavy human rights violation. The new Romanian legislation prohibits "propaganda, organizing, associating and any other forms of proselytism" in the context of homosexuality and provides for up to 5 years imprisonment for this offence. "Proselytism" should here only be used with quotation marks because today we have enough scientific proof that homosexuality cannot be subject for proselytism. Modern science has obviously not yet made its appearance in Romanian Parliament.

Unfortunately, we have also to report a severe incidence of violating freedom of expression and association that occurred in Bulgaria last July when the police raided the office of "Flamingo", a gay group in Sofia which publishes a gay magazine and runs a book and video shop there. The brutal police attack against this group also involved the confiscation of files, correspondence, merchandise, computers and other technical equipment. According to the reports we receive from Bulgaria, there is a systematic harassment of gays and lesbians going on in this country.

Before I conclude, I want to focus on one aspect which we consider very important in the discussion about freedom of expression and religion and which are the tensions and conflicts involved with these two freedoms. We think there must be limitations to the freedom of expression and religion. Individuals, religious or other groups who express hate speeches or even call for violence against certain groups, who reinforce prejudice and hatred against certain minorities should be restricted in their anti-democratic action by anti-discrimination provisions protecting vulnerable groups from such verbal violence. Such limitations must also be valid for the dominating religions in one country. Again, I have to give an example from the host country: A few weeks ago, the Catholic Church in one of the Austrian provinces issued an incredibly discriminating "Document" against homosexuality which reminded people of the medieval pogroms against Jews or the witchhunt of the Inquisition.

Hate speeches which violate the human dignity of individuals or groups are a clear abuse of the freedom of expression. Any attempt to misuse freedom of religion to sow hate against certain groups must also be strictly rejected. Such irresponsible abuse cannot be tolerated in a society which respects human rights and fundamental freedoms.

Thank you, Mr. Chairman.

WRITTEN PRESENTATION to the OSCE REVIEW CONFERENCE, Vienna, November 1996
submitted by the INTERNATIONAL LESBIAN AND GAY ASSOCIATION (ILGA)

By Kurt Krickler

Discrimination on the Basis of Sexual Orientation is a Violation of Human Rights

In past years, non-discrimination on the basis of sexual orientation as a human rights obligation has received increasing attention at the international level and has been acknowledged as a relevant issue at several international and regional human rights platforms and bodies. It has been discussed, for example, both at the 2nd United Nations World Conference on Human Rights which took place here in Vienna three years ago, and at the 4th United Nations World Conference on Women in Beijing last year.

Acknowledging non-discrimination based on sexual orientation as a human rights issue

The pioneer in this respect was the Parliamentary Assembly of the Council of Europe which adopted - as early as in 1981 - Recommendation 924 condemning all legal and social discrimination against homosexuals.

On three occasions, the European Court of Human Rights ruled the prohibition of homosexuality among consenting adults to be a violation of the European Convention on Human Rights. Since 1993, the Council of Europe has made it a precondition for the admission of a new member to change any such legislation. Moldova, Albania, and Russia, for example, decriminalized homosexuality before being admitted to the Council, Romania and Macedonia committed themselves to repeal their total ban on homosexuality in due time after their admission to the Council of Europe - an obligation which Romania, by the way, has failed to honour even three years after agreeing to it.

In 1994, the United Nations Human Rights Committee ruled (in *Toonen vs. Australia*) that the rights of lesbians and gay men to privacy and equality were guaranteed by the provisions of the International Covenant on Civil and Political Rights (ICCPR). The Committee ruled that criminal laws prohibiting homosexuality among consenting adults violate Article 17 of the ICCPR. Additionally, the UN Human Rights Committee noted in its decision that "the reference to 'sex' in articles 2 (1) and 26 [of the ICCPR] is to be taken as including sexual orientation". For us in the lesbian and gay rights movement, this is the most important decision to date in international human rights law.

Another recent landmark achievement was the adoption of the "Resolution on equal rights for homosexuals and lesbians in the EC" by the European Parliament in February 1994. In this Resolution, the EP calls on all Member States to repeal all anti-homosexual law provisions and to end any discrimination on the basis of sexual orientation, and calls on the Commission of the EU to present a draft Recommendation on equal rights for lesbians and homosexuals which should, as a minimum, seek to end, among other things such as the discrimination by criminal law provisions, "the barring of lesbian and homosexual couples from marriage or from an equivalent legal framework, and any restriction on the right of lesbians and homosexuals to be parents or to adopt or foster children."

In the framework of the deliberations of the Intergovernmental Conference, the EU member states are at present negotiating the inclusion of a non-discrimination clause in a new EU Treaty which would also list "sexual orientation" as a non-discrimination category.

Achievements on the national level

In the last few years, we have also witnessed considerable progress and remarkable improvements in the recognition of the human rights of lesbians and gay men in a series of OSCE member states.

National anti-discrimination legislation explicitly including "sexual orientation" was recently adopted in Finland, Spain and Iceland which brings the number of OSCE member states with such legislation to eleven (including also Norway, France, Denmark, Sweden, Ireland, the Netherlands, Slovenia, and Canada). This year, the Canadian Human Rights Act was amended in order that "sexual orientation" be added as a non-discrimination category. The new Finnish Constitution also covers this category. Proposals to include "sexual orientation" as a non-discrimination category in the new constitutions are also being debated in Poland and Germany.

This year, Iceland joined Denmark, Norway, Greenland, and Sweden in enacting "registered partnership" laws recognizing same-sex relationships. Similar laws have been proposed and are being debated in Finland, Spain, the Netherlands, Luxembourg, Switzerland, Belgium, Germany, Italy, France and other OSCE countries. In May 1996, the Hungarian Parliament voted to open common-law marriage to same-sex couples.

Unfortunately these positive advances in national and regional practice are only part of the story. Discrimination against lesbian and gay people continues in all

parts of the world, also in the member states of the OSCE:

- The penal laws of Bosnia-Herzegovina, Macedonia, Romania, most of the non-European former Soviet republics as well as more than 20 states of the United States still prohibit consenting homo-sexual activity;
- The penal codes of Austria, Bulgaria, Croatia, Cyprus, Finland, Hungary, Liechtenstein, Serbia, and the United Kingdom provide for a discriminatory higher age of consent for homosexual acts than for heterosexual acts;
- Austria, Finland, and Liechtenstein violate the fundamental right to freedom of speech and/or freedom of assembly: they prohibit the founding of gay and lesbian organisations and/or any positive information on homosexuality;
- In most states gay men and lesbians face discrimination in civil laws dealing with inheritance, retirement insurance, medical insurance, parenting, housing, and immigration.

"Sexual orientation" in the OSCE process

Also within the work of the OSCE, the issue of non-discrimination based on sexual orientation was discussed on several occasions, such as the Follow-Up Meeting in Helsinki (1992), the Human Dimension Seminars on "Tolerance" (1992), "Free Media" (1993), and "Building Blocks for Civic Society - Freedom of Association and NGOs" (1995), as well as in the Budapest Review Conference (1994) and the joint OSCE/Council of Europe International Seminar on Tolerance in Bucharest in May 1995. This topic was also discussed at the two OSCE Implementation Meetings on Human Dimension Issues in 1993 and 1995, the first one eventually included the following paragraph in its Report which was unanimously adopted in the Final Plenary by all delegations:

"Participants pointed out to groups which were not "national minorities" but which none the less suffered discrimination, including women, homosexuals, migrant workers, and conscientious objectors...

It was pointed out that CSCE commitments in the area of non-discrimination cover homosexuals as well. Suggestions were made that discriminatory State policies against homosexuals, and criminalizing legislation, should be eliminated."

In July 1995, the Parliamentary Assembly of the OSCE, in its 4th (annual) session in Ottawa, adopted a Resolution which calls on 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..."

However, these texts adopted within the OSCE process are not included in binding OSCE documents. In view of the developments on the national and international level as described above, it seems important and adequate to us that the OSCE take an even firmer stand on this issue and pronounce a clear commitment of non-discrimination based on sexual orientation - a statement that is both binding within the OSCE process and at the height of these international developments. OSCE standards should in no way and area trail behind the standards set forth by other international human rights platforms and bodies such as the United Nations and the Council of Europe. It would be disappointing if the OSCE were the only major European and international human rights platform that did not speak out against discrimination based on sexual orientation in a binding document.

The International Lesbian and Gay Association, therefore, calls upon the OSCE and all its member states

- To take up the issue of equality and human rights for gay men and lesbians in this Vienna Review Conference and to include a clause in the Lisbon Summit Document, which this meeting will prepare, to protect homosexual citizens in the OSCE countries from human rights violations.

The following text for such a clause has been proposed by our association on earlier occasions:

"The Member States consider the right of any person to live in accordance with her or his sexual orientation a fundamental human right and will take measures to eliminate and to prevent discrimination against persons based on their sexual orientation.

The expression "sexual orientation" shall mean sexual attraction towards a person of the same sex or the opposite sex, whether this is manifested in a physical or emotional form";

- To speak out against any discrimination on the basis of sexual orientation;
- To recognize the standards of non-discrimination against lesbians and gay men as set forth in Recommendation 924/1981 of the Parliamentary Assembly of the Council of Europe and in the 1994 European Parliament Resolution on equal rights for homosexuals and lesbians in the EC;

- To put these standards into practice and thereby guarantee the respect for the human rights of all their citizens.

Fact Sheet:

NATIONWIDE LEGAL PROTECTION FROM DISCRIMINATION BASED ON SEXUAL ORIENTATION

Prepared by the International Gay and Lesbian Human Rights Commission, August 1996

Where in the world are lesbians, bisexuals, and gay men legally protected from discrimination?

Currently, eleven countries have nationwide legislation which protects sexual minorities from discrimination: Canada, Denmark, Finland, France, The Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, and Sweden

What kinds of protection are offered?

On May 8, 1996 South Africa became the first country in the world to include sexual orientation as a protected category in its constitution. Section Nine "the Equality Clause" of the Bill of Rights in the new constitution reads, in part, "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth." In addition to banning government discrimination the Equality Clause bans private-sector discrimination, specifying "No other person may unfairly discriminate directly or indirectly against anyone on one or more [of the above] grounds."

In 1996 Canada amended the Canadian Human Rights Act so as to include sexual orientation; the law forbids discrimination based on sexual orientation by federally regulated employers, landlords and services. The law applies to the federal government, banks, broadcasters, the telephone and telecommunications industry, railways, airlines, shipping and inter-provincial transportation. Federal constitutional protections are provided by the Canadian Charter of Rights and Freedoms; the Supreme Court has recognized sexual orientation as a ground analogous to those specifically protected in Section 15 of the Charter. Provincial human rights laws provide protection based on sexual orientation in all Canadian provinces with the exception of Alberta, Newfoundland, and Prince Edward Island. However, the Newfoundland Supreme Court has ruled that the human rights of sexual minorities are also protected under the Canadian Charter of Rights and Freedoms.

In November 1995 Spain ratified a new Penal Code which declares the right to express one's sexual orientation a fundamental freedom and bans discrimination in housing, employment, public services, and professional activities based on sexual orientation. The new Penal Code also criminalizes hatred and violence directed against homosexual persons and organizations.

Since January 1995 Article 141 of the Penal Code of Slovenia has sanctioned anyone who "denies someone his human rights or fundamental freedoms recognized by the international community or set by the Constitution or a law" because of difference "in nationality, race, colour, religion, ethnic background, gender, language spoken, political or other persuasion, sexual orientation, material status, birth, education, social status or any other personal circumstance".

In 1995 the Penal Code in Finland was amended to include sexual orientation among the grounds protected from discrimination in offering public or commercial services or giving access to public meetings. The law also bans agitation against protected groups and prohibits discrimination in hiring and working conditions based upon sexual orientation and other grounds. The Finnish Constitution bans discrimination on the basis of sex, age, origin, language, opinion, health, disability or "other reason characteristic of an individual." Government documents have referred to sexual orientation as a ground protected as an individual characteristic.

Since February 1, 1994, New Zealand has protected sexual minorities from discrimination by including sexual orientation as a protected category in its Human Rights Act (along with sex, marital status, religion, race, ethnicity, age, disability, political opinion, employment status, and family status). Protection is granted in employment, education, access to public places, provision of goods and services, and housing and accommodation.

In 1992 the Netherlands amended Section 429 of its Penal Code to ban discrimination on the basis of "hetero- or homosexual orientation." Article One of the Constitution also prohibits discrimination, and sexual orientation is considered a protected ground under the clause "or any other ground whatsoever." Individuals can seek redress from discrimination through the Equal Treatment Commission based on the grounds of religion, personal convictions and views, political orientation, race, gender, nationality, sexual preference, and marital status. Unequal treatment is illegal in any area related to work, in offering goods and services, and in receiving advice about educational and career opportunities.

In 1987 Denmark added sexual orientation to the anti-discrimination clause of its Penal Code (Article 266, which also prohibits hate speech) and to its Anti-Discrimination Act of 1971. Protections have been provided since that time in public employment, and on July 1, 1996 new legislation extended protections to the private labor market.

In 1987 Sweden passed laws forbidding commercial organizations from discriminating on the grounds of homosexuality, and forbidding hate speech on those grounds. The private labor market is not covered by these protections.

In 1985 France amended its Penal Code to prohibit discrimination based on sexual orientation. The Code of Labor law was amended in 1986 and 1990 to prohibit such discrimination in the work place, including in the civil service and armed forces.

In 1981 Norway amended Paragraph 349a of its Penal Code to prohibit discrimination based on sexual orientation

- in the provision of goods or services and
- in access to public gatherings.

In the same year Paragraph 135a of the Penal Code was amended to prohibit hate speech directed at sexual minorities. The private labor market is not covered by these protections.

Don't other countries extend equal rights protections based on sexual orientation?

Some nations offer protections in employment only. For example, in 1992 the Knesset in Israel approved a law prohibiting employers from discriminating against employees and job applicants because of sexual preference, and in Ireland there are legal protections against dismissal from employment based on sexual orientation (Employment Discrimination Law, 1991), and against hate speech (Prohibition of Incitement to Hatred Act, 1989).

Hong Kong and Poland are currently considering legislation that would protect sexual minorities from discrimination.

Many municipalities and states within nations extend legal protections to sexual minorities. While examples of such local legislation are too numerous to list exhaustively, two prominent countries often mentioned in this regard are Australia and the United States.

- The parliament in Australia is considering federal legislation to prohibit discrimination based on sexuality including heterosexuality, homosexuality and transexuality. Protections against employment discrimination based on sexual orientation are

already provided for under federal law (the Human Rights and Equal Opportunity Commission Act of 1986). The Australian Federal Sexual Privacy Act protects consenting adults from legal censure of sexual acts performed in private, but is currently being challenged in the High Court by the Tasmanian government, joined by the Victorian government. Several states maintain anti-discrimination legislation: New South Wales provides protection based on homosexuality, bisexuality, and transexuality; South Australia, Northern Territory, and Capital Territory base protections on "sexuality"; Queensland and Victoria maintain a protected ground of "lawful sexual activity."

- Nine states within the United States (California, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode Island, Vermont and Wisconsin) have civil rights laws that include sexual orientation. Some other states have executive orders banning discrimination based on sexual orientation. For more information about anti-discrimination laws in the U.S. contact the National Gay and Lesbian Task Force, 2320 Seventeenth Street NW, Washington DC 20009, phone (202) 332-6483, fax (202) 332-0207, e-mail [nglhf@nglhf.com](mailto:ngltf@nglhf.com).

On May 20, 1996 the United States Supreme Court ruled that an amendment to the Colorado state constitution that would have banned anti-discrimination laws based on sexual orientation violated the equal protection clause of the U. S. constitution and hence could not become law. The majority decision in *Romer vs. Evans* reads, in part, "Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance." The court concluded that "Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do." This ruling is a landmark victory for equal rights in the United States, and may provide an important precedent for future anti-discrimination cases in the United States.

What about freedom from discrimination in family life and immigration?

Please request copies of the IGLHRC fact sheets on domestic partnership legislation and on immigration.

Does international human rights law provide protections for sexual minorities?

Please request a copy of the IGLHRC fact sheet on international jurisprudence and policy precedents regarding sexual orientation.

The information contained in this fact sheet is drawn from The Third Pink Book (1993), Index on Censorship, 24(1) Jan/Feb 1995, the ILGA Euroletter and the ILGA Annual Report 1996, and IGLHRC files. Please contact IGLHRC with any new information that can be used to update this fact sheet. IGLHRC, 1360 Mission Street, San Francisco, CA 94103, tel. 415-255-8680, fax 415-255-8662, email: iglhc@iglhc.org.