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IN THIS ISSUE

- **EU FUNDED GAY/LESBIAN PROJECTS**
- **IDEAS ON HOW TO FOLLOW UP ON THE ANTI-DISCRIMINATION CLAUSE IN THE NEW EU TREATY**
- **ILGA-EUROPE JOINS THE PINK TRIANGLE COALITION**
- **AUSTRIA: ANTI-DISCRIMINATION LAW ENFORCED**
- **CYPRUS ARCHBISHOP BLASTS EURO-COURT ON GAY SEX**
- **CYPRUS PARLIAMENT DELAYS GAY DEBATE TILL AFTER EASTER**
- **DUTCH PARLIAMENT REPEATS CALLS FOR SAME-SEX MARRIAGE AND ADOPTION - BUT STILL NO LEGISLATION**
- **GERMAN LAWS & REGULATIONS**
- **UK: GAY SEX AT 16 TO BE LEGAL BY SUMMER**
- **ACCEPT'S PROPOSED NEW LEGISLATION (ROMANIA)**

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

<http://inet.uni2.dk/~steff/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at

<http://inet.uni2.dk/~steff/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at

<http://inet.uni2.dk/~steff/partner.htm>

Consolidated versions of the basic treaties of the European Union including amendments from the Amsterdam Treaty can be found at this web-site: <http://ue.eu.int/Amsterdam/en/traiteco/en1.htm>

EU FUNDED GAY/LESBIAN PROJECTS

By Steffen Jensen

ILGA-Europe is trying to establish an overview over all EU funded projects with a lesbian and or gay perspective - or other EU funded projects carried out by lesbian/gay organisations.

So, if you know of any such project, please do contact ILGA-Europe's board either at e-mail address: ieboard@seta.fi or by mail to the editor of EuroLetter (see adress above).

IDEAS ON HOW TO FOLLOW UP ON THE ANTI-DISCRIMINATION CLAUSE IN THE NEW EU TREATY

By Steffen Jensen

According to article 13 (originally article 6a) in the proposed new treaty of the European Union, the Commission can take initiatives to combat discrimination based on - inter alia - sexual orientation within the areas of competencies of the Community.

ILGA-Europe's board will follow closely the implementation of this article and will also itself present the Commission with ideas on how to do so.

If you have any ideas, please do contact ILGA-Europe's board either at e-mail address: ieboard@seta.fi or by mail to the editor of EuroLetter (see adress above).

ILGA-EUROPE JOINS THE PINK TRIANGLE COALITION

By Kurt Krickler

At a two-day meeting held in Berlin, 21-22 February 1998, the "Pink Triangle Coalition - An International Coalition for Co-ordinating Affairs Related to the Nazi Persecution of Gay Men and Lesbians" was informally established by representatives of the International Gay and Lesbian Human Rights Commission (IGLHRC), the World Congress of Gay and Lesbian Jewish Organisations (WCGLJO), ILGA-Europe, Pink Cross (Switzerland), and Homosexuelle Initiative (HOSI) Wien (Austria). Several German scientists and researchers also attended the meeting but no representative from "Schwulenverband in Deutschland", the national German gay organisation, which will also be invited to join the Coalition, as will be the International Organisation of Lesbian/Gay Children of Survivors. There are no plans for the time being, however, to make the Coalition into a formal organisation.

The main purpose of the Coalition is to represent the gay and lesbian interests and concerns vis-à-vis the two recently established funds, e.g., the "Swiss Fund for Needy Victims of the Holocaust/Shoah" and the "International Fund for Needy Victims of Nazi Persecution" set up in the context of the London Conference on Nazi Gold in December 1997 by the British Government and the Federal Reserve Bank of New York. While the Swiss Fund is fed by monies (275 million CHF) provided by the Swiss Government and Swiss banks (not to confuse with the funds in "ownerless accounts" in Swiss banks), the International Fund will be fed by money given by donor countries which can also have a say how to use their donations.

ILGA-Europe member Pink Cross is represented in the respective body of the Swiss Fund, established in February 1997. Pink Cross is also dealing with applications from gay men (and hopefully lesbians) because individual claims cannot be made directly to the Fund but only through one of the organisations representing victim groups. Until today, five gay men persecuted by the Nazis have filed applications to the Swiss Fund via Pink Cross. All five have been granted financial assistance, e.g., 2,000 CHF each, which is not really a huge sum.

It was, however, not so easy to establish a gay/lesbian representation at the "International Fund". Therefore, there have already been contacts between WCGLJO, IGLHRC, ILGA-Europe and Pink Cross in late summer 1997 in order to establish an international coalition, and this "Coalition", which had no name yet at that time, approached the London Conference on Nazi Gold in the beginning of December 1997. WCGLJO and "Coalition" representative Jack Gilbert, however, was refused to attend the London Conference. Therefore, the persecution of gays and lesbians in the Nazi era was completely ignored by the conference. That's why the Coalition has prepared a Paper - titled "Nazi Persecution of Gay Men and Lesbians" - to be included in the Final Report of the London Conference on Nazi Gold. In order to have it included, this Paper had to be submitted by another NGO that attended the meeting. This was done by the European Jewish Congress.

Another issue with the International Fund is to get the Pink Triangle Coalition on the Annex B List of Recognised NGOs for the purposes of the fund as established in London. The purpose is twofold: 1. to support "needy" victims individually, and 2. to support education about the Holocaust/Shoah. Each donor country will designate how they wish their contribution to be distributed but only to the NGOs on this list. The Coalition will now have to convince at least one donor country to request the Coalition to be

added to this Annex B List. And for that, the Coalition must convince this country that it is in a position to distribute monies under those two criteria. To complicate things, Pink Cross is already on this list but, of course, the Coalition is striving to get on the list as such.

In this context, ILGA-Europe is looking for needy victims of the Nazi regime, "needy" meaning that they leave below or just at poverty line in their country. There are great chances that their applications will be accepted at both Funds. Additionally, we invite ILGA-Europe members to come forward with proposals for educational projects on the Holocaust/Shoah (exhibitions, seminars, lectures, commemorative sites, etc.) which could be submitted especially to the International Fund.

More information is available from Kurt Krickler, HOSI Wien, Novaragasse 40, A-1020 Vienna; Tel./Fax: +43-1-5451310; e-mail: hosiwien@via.at

AUSTRIA: ANTI-DISCRIMINATION LAW ENFORCED

by Helmut Graupner, Rechtskomitee LAMBDA, Vienna

While Austria in its Criminal law still discriminates against gay men (Art .209 CC) it absurdly prohibits its police from discriminating against gay men and lesbians. A decree under the Police Act 1993 makes it illegal for members of Austrian police forces in executing their powers to (even) produce the impression of discrimination on the basis of „sexual orientation“ (Art. 5 Decree of Directions 1993).

Last year this anti-discrimination law has been enforced for the first time. In 1995 a police officer as part of a routine drug control searched the car of a gay man and found erotic gay literature. This caused him to ask the man if he would have already intended to contact a physician for his sexual inclinations.

The man outraged about this discrimination with the assistance of Rechtskomitee LAMBDA filed a complaint to the Vienna Independent Administrative Senate which in October 97 declared the remarks illegal.

CYPRUS ARCHBISHOP BLASTS EURO-COURT ON GAY SEX

By Jean Christou, Cyprus Mail 8 April 1998

ARCHBISHOP Chrysostomos yesterday launched a scorching attack on homosexuality and Europe as

Cyprus was given a final stay of execution on changing its antiquated laws prohibiting gay sex.

In Strasbourg, the Council of Europe (CoE) said the government had until next month to comply with a 1993 European Court of Human Rights ruling to decriminalise homosexuality.

Speaking from Strasbourg, Cyprus's permanent representative at the CoE, Thalia Petridou, said if the law was not changed in May there would be repercussions because the government will have run out of excuses for postponing it.

But in Nicosia Archbishop Chrysostomos, leader of the Greek Orthodox Church in Cyprus, laughed in an interview with a CyBC TV journalist as he openly derided homosexuality and the European ruling.

He said only "enemies of our nation" would endorse decriminalisation of homosexual acts.

"If we don't stand firm and tell Europe this does not conform, not only to Christ's religion, but also to the moral standpoint of our nation, eventually they will come and tell us to be homosexuals in order to be accepted into Europe," Chrysostomos said.

"If you go and say it's all right to be a homosexual you will encourage it and the place will be full of homosexuals".

The Archbishop said he not only didn't believe homosexuality to be a human right, but that in his opinion it was a "trampling on human rights".

"It is a violation both of the laws of the Creator God and the laws of nature. God made males and females for the reproduction both of animals and humans. Homosexuality is against the purpose of creation," Chrysostomos said.

Quoting the Bible, he said the Kingdom of Heaven would not be inherited by "whores nor idolators" and added that St Paul clearly referred to homosexuality as a curse.

"The Church considers decriminalisation (of homosexual acts) to be against what is holy and against human dignity... and this while we are waging a tough war for our national and religious survival," Chrysostomos said.

Gay rights activist Alecos Modinos, who won the 1993 case against Cyprus at the European Court, told the Cyprus Mail last night the Archbishop should think before he speaks.

"He's still stuck on the Adam and Eve business," Modinos said. "Of course, it's not for us to dispute what he believes but he is in a position of authority and he must be more careful and act more wisely before expressing his opinion."

Modinos said he was glad Cyprus was given another stay of execution and that no disciplinary action had been taken in Strasbourg yesterday. "We were lucky to get another month," he said. "But there will be no more chances and they (the government) know it."

The bill has still to face the uphill battle of being approved by the House Legal Affairs Committee, which for years has balked at the task in the face of public and Church opposition.

Attorney-general Alecos Markides has repeatedly told deputies that Cyprus has no choice but to comply with the European Court's ruling.

He warned that the island's failure to do so would have repercussions on pending cases by Greek Cypriot refugees against Turkey.
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CYPRUS PARLIAMENT DELAYS GAY DEBATE TILL AFTER EASTER

By Jean Christou, Cyprus Mail 9 April 1998

PARLIAMENTARY debate on decriminalising homosexuality will not begin until after Easter despite a May deadline from Europe, House President Spyros Kyprianou said yesterday.

Kyprianou said the first step would be a meeting of party leaders to make their positions clear to members who would be seeing through the changes at the House Legal Affairs Committee.

But reports yesterday said the Church which launched a scathing attack on Europe over the issue on Tuesday had sent letters to all deputies calling on them to vote against the changes.

The Council of Europe (CoE) has given Cyprus a last chance to comply with a 1993 European Court of Human Rights decision to decriminalise the island's gay laws.

Cyprus has only until next month to comply or face serious repercussions, which could include expulsion from the CoE.

Deputies have procrastinated over the issue for years in the face of public and Church opposition. Previous attempts to approve the bill were met by

demonstrations outside the House and threats that parties would lose votes.

Further demonstrations are likely when the bill does come up for discussion after Easter.

The Holy Synod's letter to deputies is understood to call on them to resist the bill "as a matter of honour".

"The Church condemns homosexuality as a sinful act because it is contrary to the spirit of Scripture and of natural law," the letter is quoted as saying.

It is also believed to express "sorrow" for those "who have been dragged into the sad position of homosexuality", and calls on them to repent.

On Tuesday, Archbishop Chrysostomos said: "If we don't stand firm and tell Europe this does not correspond, not only with Christ's religion, but also the moral standpoint of our nation, eventually they will come and tell us to be homosexuals in order to be accepted into Europe."

Attorney-general Alecos Markides has told deputies that Cyprus has no choice but to comply with the European decision.

He has warned that failure to do so will have repercussions on outstanding cases in Europe brought by Greek Cypriot refugees against Turkey.
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DUTCH PARLIAMENT REPEATS CALLS FOR SAME-SEX MARRIAGE AND ADOPTION - BUT STILL NO LEGISLATION

By Kees Waaldijk

On 16 April 1998, the Lower Chamber of the Dutch Parliament for the second time passed resolutions demanding legislation opening up marriage and adoption to same-sex couples (the first time was on 16 April 1996). The adoption-resolution is in agreement with the Government's position (on 6 February 1998 it announced that it is preparing a legislative proposal). The marriage-resolution, however, disagrees with the Government, which on 6 February 1998 stated that it would not prepare such legislation. Both resolutions call for a proposal to be submitted to Parliament before January 1999 (which in Dutch circumstances implies extreme haste, and which just might make it possible to have the first same-sex marriages in 2000).

Parliamentary resolutions in the Netherlands are not binding on Government, and certainly do not create

law. Furthermore, the resolutions were passed on the last day of the present Parliament. On 6 May 1998 there will be general elections. After that, coalition talks will need to be held, and even if the present liberal/social-democratic coalition is continued, it is far from certain that marriage legislation will form part of the new Government's programme (after all, the leaders of the main parties are on record as being opposed to same-sex marriage). If the christian-democrats get to make a coalition with liberals or social-democrats, a governmental proposal to open up marriage would be even more unlikely. In all events, lesbian and gay couples will have to make do in the coming years with "registered partnership" in stead of full marriage, and with "joint authority" or "joint custody" over their children in stead of full adoption (these three new legal institutions came into force on 1 January 1998, for details see my piece of 8 February 1998 at <http://www.xs4all.nl/~nvihcoc/marriage.html>).

In 1996 the marriage-resolution gained a majority of 81 against 60 votes. In 1998 it gained a majority of 81 against 56 votes. The adoption-resolution, however, increased its majority from 83 against 58 in 1996 to 95 against 42 in 1998.

GERMAN LAWS & REGULATIONS

By Colin de la Motte-Sherman

The Office for Same-Sex Life-Styles in Berlin - which is part of the Senatsverwaltung für Schule, Jugend und Sport - after sending out questionnaires to the relevant authorities in other provinces has produced a document entitled

Multikulturelle Gesellschaft und Lebensvielfalt (Multicultural Society and Life-styles) about "Antidiskriminierungsregelungen und Initiativen zur Gleichstellung von Minderheiten in den Bundesländern". [Anti discrimination regulations and laws on the equality of minorities in the federal provinces.] It also deals with matters at national level.

FURTHER, about eight pages (of 40) directly describe the current situation for gays and lesbians in the provinces and intentions for the future.

The summary includes:

"5.1.4: Right of residence for foreign partners in same-sex long-term partnerships

In the federal provinces of Hamburg, Hessen and North-Rhine-Westphalia the conditions are being created and criteria developed, which would permit foreigners, who live in a long-term bi-national same-sex partnership, under certain conditions can be

given the right of residence. Thus the reality that there are bi-national couples and various court decisions which make the conduct of such a partnership in Germany possible, would be taken into account.

The Bundesverwaltungsgericht (Federal Court of Administration) in its judgement of 27.2.1996 laid down that within the framework of discretionary decisions according to the Ausländergesetz (Law on Foreign Citizens), it should be taken into account, that respect for the private life is included in the areas protected by the (German, C.M-S) Constitution and the European Convention on Human Rights."

This leaves long-term bi-national couples in other provinces without much hope except to find a "willing woman" and get married - which is only possible for couples "mixed" couples - in order to be able to stay in Germany.

(The translation is unofficial.)

UK: GAY SEX AT 16 TO BE LEGAL BY SUMMER

By Andrew Pierce, The Times, April 16, 1998

HOMOSEXUAL sex for 16-year-olds should be legalised by the summer after a decision to give MPs a free vote on the issue next month.

The Labour backbencher Ann Keen is to table an amendment to the Crime and Disorder Bill to bring the age of consent in line with heterosexuals and, with the huge number of new Labour MPs, the measure is bound to have a big majority.

The amendment is being tabled with the approval of Jack Straw and Tony Blair, but it threatens to put the Government on a collision course with the Church and the House of Lords. Some peers are particularly concerned that the move could leave young men open to exploitation.

All three party leaders will back the change, but it will isolate William Hague within the Tory high command. Mr Hague will be one of only a handful of Shadow Cabinet members voting to change the age of consent to 16 and a group of Tory MPs may table a rival amendment to take it back to 21.

Julian Brazier, the Tory MP for Canterbury who is president of the Conservative Family Campaign, will lead the Opposition on the back benches. He said: "We will lose the vote but can win the argument. A lot of us do not accept the argument for homosexual and heterosexual equality. Boys are less mature than

girls. Young people are becoming more and more vulnerable to predatory males. We will oppose this because of the sexualisation and exploitation of young people."

Opponents of the change within the Government include Ann Taylor, Leader of the Commons, and David Blunkett, the Education Secretary, who argue that the issue would be best dealt with by a specific vote with legislation in the next Queen's Speech. That would have delayed the change for at least a year.

Both Mrs Taylor and Mr Blunkett voted against setting the age of consent at 16 when the issue was debated in 1994. Then there were violent scenes outside the Commons as MPs reduced the age of consent from 21 to 18 but decided by 27 votes not to legalise homosexual sex for 16-year-olds.

That decision was held last year to be discriminatory by the European Human Rights Commission, which said the age of consent should be the same for both homosexuals and heterosexuals.

In spite of that ruling, the change is likely to meet strong resistance. The Bishop of Norwich, the Right Rev Peter Nott, is expected to speak against the amendment in the Lords. He said: "I am entirely behind the Archbishop of Canterbury. The bishops' statement is clear: there are two norms. One is marriage and one is celibacy. The church has been consistent on that."

Asked whether the Lords would defy a large Commons majority, the bishop replied: "Knowing the way the House of Lords works people will vote according to their conscience."

Nicholas Coote, the assistant general secretary of the Roman Catholic bishops of England and Wales, also deprecated the move. He said: "The Roman Catholic Church has a clear position: homosexual acts are morally wrong. If we lower the age of consent, we open boys and girls to the possibility of exploitation. If there must be an equal age of consent it should be raised to 18 not lowered to 16. But I fear opinion has moved the other way."

The Earl of Onslow, a Tory backbench peer, said that he would oppose any reduction in the age of consent. While he was relaxed at the thought of homosexual sex between two 16-year-old boys, he was concerned at the possibility of youngsters being taken advantage of by older homosexuals. "I think that 18 was a perfectly satisfactory compromise," he said. "I see no need to change it."

ACCEPT's PROPOSED NEW LEGISLATION (ROMANIA)

Draft bill for the modification of the Penal Code provisions relating to sex life.

ACCEPT has submitted to the Ministry of Justice a draft Bill for the abolition of Art. 200 of the Penal Code and for the modification of the other articles of the chapter "Sex-related criminal offences" so that the punishment for rape, sexual relations with minors and sexual molestation no longer depends on the sexual orientation of the offender.

The idea of submitting such a draft bill belongs to Manuela Stefanescu, member of ACCEPT and co-president of APADOR-CH. Scott Long, member of ACCEPT and Advocacy Co-ordinator of IGLHRC, with his well-known enthusiasm and knowledge has drafted the initial text of this Bill. The work was completed by Monica Macovei - lawyer and author of several draft Bills - who supported this draft Bill at the ACCEPT press Conference on 6th March 1998, asking the Romanian and overseas organisations to show the Romanian authorities that abolishing Art. 200 means something more than a 'favour' shown to Romanians who dare to love in a different way.

We thank everybody for the enthusiasm and dedication they have shown by working for this draft Bill.

A. Rationale

By means of Resolution 1123 of 24 April 1997, the Parliamentary Assembly of the Council of Europe decided a) to cease monitoring the way Romania respects the obligations it has committed itself to upon becoming a fully-fledged member of the Council of Europe; b) to resume monitoring if within one year after the adoption of the Resolution the Romanian State does not fulfil the conditions explicitly mentioned in this document.

Point 9 of the Resolution refers to the modification of Art. 200 of the Penal Code, while the Jansson Report, on the basis of which the Resolution was adopted, provides explicitly for the complete repeal of this text.

The present draft Bill meets the requirements of the Parliamentary Assembly and sets out to adapt the penal law both to reality and the European norms in the field. Acceptance of diversity is an essential feature of a democratic society. The European Human Rights Court has consistently applied this principle since the case of Dudgeon against Northern Ireland, in 1981, constantly developing its case-law towards decriminalisation of same-sex relations as a requirement of modern society.

In applying the constitutional principle of non-discrimination on account of sex, not only does the draft Bill propose decriminalisation of same-sex relations between consenting adults, but also the adoption of unique penal provisions for situations where sexual relations are situated outside the law (coercion or minor age) irrespective of the partners' sex. In this context, the draft Bill provides a definition of sexual relations in order to eliminate misinterpretations and to include all possible situations, thus preventing the penal law from being used in an abusive manner.

The authors have also tried to comply with the need to respect constitutional rights to freedom of expression and association as well as the principle of non-discrimination, requirements that have led to repealing the infringement of these rights in connection with same-sex relations.

In order to protect minors, irrespective of their sex, the draft Bill suggests modifications of the penal law in the sense of raising the age-limit for victims of any kind of sexual abuse and of broadening the range of situations in which minors are considered to be sexually assaulted, expanding thus the scope of criminal liability in this field.

The draft Bill provides a complete reformulation of Title II, Chapter III: "Sex-related offences" of the Penal Code, unifying and co-ordinating the legal texts.

To conclude, this draft Bill attempts to cover from the perspective of penal law a broad range of sexual relations and to bring Romanian legislation up to date with European standards and the requirements of a civilised modern society where individual rights are genuinely observed.

B. Title II Criminal offences against individuals

Chapter III - Sex-related offences

Art. 197 "Rape"

Paragraph 1 shall be modified to read as follows: "Sexual relations with a person unable to defend him/herself, to express his/her will or by coercion shall be punished by imprisonment for between 3 and 10 years.

Par. 2 remains as follows: "Punishment shall be imprisonment for between 5 and 15 years if:

- the act was perpetrated by two or more persons acting together;
- the victim was placed under the perpetrator's care, or

- the victim's health or physical integrity was seriously harmed."

Par. 3 shall be modified to read as follows:

"The punishment shall be imprisonment for between 10 and 20 years where the victim was under 15 years old. Where the act resulted in the victim's death or suicide, the punishment shall be imprisonment for between 15 and 25 years."

Par. 4 remains as follows:

"Investigations into the offence under par. 1 shall start only upon the complaint of the alleged victim."

Par. 5 shall be replaced by the following:

"Sexual relations shall be defined under the penal law as the insertion of a penis into a vagina, anal or oral cavity, as well as the insertion of any foreign object into the vagina or anal cavity."

Article 198: The title shall be amended from "sexual relations with a minor girl" to "sexual relations with minor persons"

Par. 1 shall be modified to read as follows:

"Sexual relations with a person under 15 shall be punished by imprisonment for between 1 and 5 years."

Par. 2 shall be modified to read as follows:

"The same punishment shall apply to sexual relations with persons aged between 15 and 18 where perpetrated by the tutor or guardian, or by a person who takes care of or is in charge of the alleged victim, the personal doctor, teacher or trainer, by availing himself of this position."

Par. 3 shall be modified to read as follows:

"When the acts defined by Pars. 1 and 2 have the consequences specified in Art. 197 par. 2 letter c), then the punishment shall be imprisonment for between 3 and 12 years."

Par. 4 remains unchanged and reads as follows:

"If the act resulted in the victim's death, the punishment shall be imprisonment for between 7 and 15 years."

Article 200 - Same-sex relations - shall be entirely repealed.

Article 201 - Acts of sexual perversity - shall be entirely repealed.

Article 202 shall be re-titled from "Sexual corruption" to "sexual molestation". The text of the single Paragraph shall be modified to read as follows:

"Any person who sexually touches a child under 15 or exposes himself to such a child in an offensive manner or induces the child to undertake or participate in an act with sexual implications, other than by committing any of the offences defined in the preceding Articles of this Chapter, shall be punished by imprisonment for between one month and two years or by a fine."

Article 203 - Incest - shall remain unchanged

Article 204 - Attempts - shall be modified to read as follows: "Attempts to commit the crimes defined under Articles 197, 198, 202 and 203 shall be punished." [sic]

C - Explanations and technical notes

Article 197 - "Rape" -

Paragraph 1 introduces the phrase 'sexual relations' to cover all sexual acts irrespective of the participants' sex. The current penal provisions use three different phrases (sexual intercourse, sexual relation and acts of sexual perversity) to distinguish between "normal" and "abnormal" acts, both with regard to the type of sexual acts and the participants. We eliminate this distinction because it does not agree with reality and it runs counter to the principle of non-discrimination on account of sex.

The phrase "sexual relations" is defined in Par. 5 and used consistently throughout Chapter III.

Par. 2 is not modified

Par. 3 contains a single modification: the victim's age-limit is raised from 14 to 15 years. The 14-year age-limit is one of the lowest in Europe. Thus children of both sexes enjoy increased protection. At present, even family law sets 15 years as the minimum "age of consent" for girls (with special licence, departing from the age-limit of 16). This proves that sexual relations under 15 years old are considered harmful for health, causing more serious damages; de lege ferenda, the minimum age for consent should be the same for men and women, but this matter exceeds the aims of the present draft Bill. However, it is obvious that the 14-year-old limit does not concur with medical conceptions regarding the physiological capacity to have sexual intercourse; consequently the aggravated form of rape should be related to an age superior to fourteen.

Paragraph 4 is not modified

Paragraph 5 is completely repealed. The current proviso according to which the perpetrator who marries the victim will not be punished gives the

impression that rape is a crime against honour (which can be nullified by marriage), rather than a crime of violence. In fact, the repeal of this provision is welcomed by women victims of rape, who have been subject to pressure to get married without their full consent. Such marriages are usually doomed to failure, because they are founded on a violent act instead of mutual understanding. The provision currently allows persons to commit violent acts with impunity and does nothing to help the victims. Other European States do not have similar legal texts.

The new paragraph 5 defines 'sexual relations' - see the comments regarding par. 1. The proposed text is based on a definition provided by Human Rights Watch - Women's Rights Project.

Article 198 - "Sexual intercourse with a minor"

Title: is changed to "Sexual relations with minor persons" in order to cover potential victims of both sexes.

Paragraphs 1 and 2: the minimum age of consent is raised from 14 to 15 years - see the comments on Article 197 Par. 3. "Sexual intercourse" is replaced by "sexual relations" - see the comments on Article 197 Par. 1.

Paragraph 3: The first part, which duplicates the provision of Article 198, is deleted.

Paragraph 4: remains without modification.

Paragraph 5: is completely repealed. This eliminates the current proviso according to which the perpetrator who marries the victim will not be punished - see the comments on Article 197 par. 5. As an additional legal argument, penal incrimination is aimed at protecting minors' health, which cannot be restored by a marriage between the offender and the victim.

Article 199 - "Enticement"

This Article is completely repealed. Sexual relations with a person under 15 are already made punishable by Article 198 of the Penal Code. With regard to persons between 15 and 18 years old, according to civil law girls are regarded as having the capacity to engage in contractual relations - including marriage - from the age of 16 (15 with special licence). It is therefore evident that young persons are sufficiently mature to determine whether or not to consent freely to sexual relations at that age.

Article 200 - "Same-sex relations"

This Article is completely repealed, as the necessary protection is now provided by the amendments made to the provisions of the other Articles, so that they now apply regardless of the sex of the parties

concerned. This complies with the principle of non-discrimination on grounds of sex.

The act formerly made punishable by Par. 1 is covered adequately by the provisions of Article 321. The phrase "public scandal" has been criticised by the Council of Europe (in the Jansson Report) and by the European Parliament, as well as by all national and international organisations involved in the human rights field (see the Amnesty International and Human Rights Watch reports). Due to the vague wording and hazy contents, this notion has been abused in judicial practice. It is discriminatory, because it does not apply to heterosexual relations, although they produce identical effects. Furthermore, it is unnecessary so long as persons performing sexual acts in public are liable to punishment under other texts of the Penal Code and Law 61/1991. The acts made punishable under pars. 2-4 are already included in the proposed revisions of Article 197 et seq. The present differences on the punishment applicable are discriminatory and unjustified.

Article 201 - "Acts of sexual perversity"

This article is completely repealed - see the comments on Art. 197 par. 1. "Abnormal" sexual acts are included within the definition of "sexual relations" in order to respect the right to private and intimate life, and anybody performing them by coercion, by violence or against minor persons unable to give valid consent are liable to punishment under the preceding articles. The performance of such acts in public is already punishable under the provisions of Article 321 of the Penal Code and under by-laws - see the comments on Article 200 par. 1.

Article 202 - "Sexual corruption"

The title is changed to "Sexual molestation", because this corresponds to its provisions. The single paragraph is modified by introducing the age-limit of 15 for consent - see the previous comments on this age-limit. The scope of the provisions is extended and the nature of the possible offences is defined more explicitly, in order to ensure that it will be enforced correctly. The existing text did not provide adequate protection for young people and the new wording is based on the corresponding provision in the Swedish penal law.

Article 203 - "Incest"

This is retained without modification.

Article 204 - "Attempts"

This is modified to refer to the relevant articles.

D - Recommendations regarding other texts in the Penal Code

Article 325, with the title "Dissemination of obscene materials", is too vague and general; there is a risk that it may be applied abusively and inconsistently because the word "obscene" is not defined. Its enforcement may lead to unjustified violations of freedom of expression. We propose that this article be repealed and that the provision should be transferred to a liability under by-laws.

Article 312, with the title "Outrage against decency and disturbance of the peace", is also vaguely worded and has often been enforced abusively (eg the "University Square" cases). The existing Penal Code provision overlaps with [by-laws]; we propose that this Article should be repealed and that the offence should be clearly defined and enforced exclusively under by-laws.

Sexual harassment does not at present come within the scope of any provisions in Romanian legislation, but it could be the subject of a new Article in Title II, Chapter III of the Penal Code: "Sex-related criminal offences".