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Editors: Steffen Jensen, Ken Thomassen, Peter Bryld, Lisbeth Andersen and Soeren Baatrup.

Contact to Euro-Letter:

<mailto:steff@inet.uni2.dk>

<http://www.steffenjensen.dk/>

Fax: +45 4049 5297 Tel: +45 3324 6435 Mobile: +45 2033 0840

Mail: c/o Steffen Jensen, Gl. Kongevej 31, 4.th, DK-1610 Copenhagen V, Denmark

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THE NEW PORTUGUESE LAW ON SAME-SEX UNIONS

By Miguel Freitas

March 15 will surely be remembered as an historical date for the (emerging) gay rights movement in Portugal. On that date, the Portuguese Parliament (the «*Assembleia da República*») passed a bill that will extend to homosexual couples the same rights enjoyed by heterosexual couples living in a *de facto* union (whose partners, i. e., are not joined by marriage). The *Assembleia da República* also passed a bill granting some of those rights to people living in a «common economy» («*economia comum*»), which applies regardless of the partners' sex. In so doing, Portuguese lawmakers at long last recognised homosexuals a legal (and social) status that they totally lacked until now.

These historical (and to a certain extent surprising) votes come at the end of a political debate that started back in 1997, when a member of parliament, Sérgio de Sousa Pinto, elected under the banner of the ruling Socialist Party, suggested for the first time the possibility of recognising same-sex unions and granting them adequate legal protection when the *Assembleia da República* debated two bills (one introduced by the Green Party and the other by the Communist Party, both left-wing parties) on the «protection of people living in *de facto* unions» (bills 338/VII and 384/VII), and two other bills (introduced by the right-wing Popular and Social-Democratic parties) on the «protection of the family» (bills 290/VII and 295/VII).

Sérgio de Sousa Pinto, then the leader of the Socialist Youth («*Juventude Socialista*»), surprised everyone by announcing that he planned to introduce a bill that would recognise same-sex unions and grant them the same rights accorded to heterosexual couples living in a *de facto* union. However, due to the heavy political storm that such announcement caused, even among the ranks of the socialist MP's, such bill was never introduced. The debate quieted down when both bills on *de facto* unions (and those on the protection of the family) were rejected, on June 26, 1997.

Two years later, in 1999, Parliament once again debated the legal status of *de facto* unions when it discussed two bills (one introduced by the Green Party and the other by the Socialist Party) dealing with that subject matter (bills 414/VII and 527/VII). This time, however, a consensus was reached and a law on *de facto* unions was passed July 1st, 1999 (Act No. 135/99, that was signed into law by the President of the Republic and published on the official gazette, the «*Diário da República*», of August 28), granting heterosexual couples living in a *de facto* union for more than two years (art. 1) marital rights in such areas as adoption, vacations, taxes, pensions, housing contracts and rental leases (art. 3-6).

Immediately, gay rights organisations voiced their disappointment, denouncing the new law as discriminatory.

After the general elections that were held the same year, all of the left-wing parties in Parliament insisted on discussing the recognition of same-sex unions. Three bills were then introduced to such effect by the Green Party (bill 6/VIII), by a new political formation that took seat in Parliament for the first time, *Bloco de Esquerda* (literally, «Left Block», bill 45/VIII), and by the Communist Party (bill 115/VIII). Only the bill introduced by the *Bloco de Esquerda* allowed the registration of homosexual unions. The other two bills merely extended to homosexual couples the same rights that were already recognised to heterosexual *de facto* unions.

The Socialist Party for its part decided to introduce a bill on the protection of couples living in «common economy», regardless of the sex of its partners (bill 105/VIII). By so doing, the socialists hoped to grant legal status to homosexual couples and at the same time to avoid the social and political controversy surrounding such initiative. It was a misleading move that proved also to be a political mistake. When Parliament considered the four bills (in a debate that curiously took place February 14, St. Valentine's Day), all the opposition parties criticised the socialists: the other left-wing parties for lack of courage and the right wing parties for trying to grant legal recognition to homosexual unions without stating so explicitly and for therefore eroding the social status of the family. Since the Socialist Party controls only half of the seats in Parliament and refused to support any of the other bills under discussion, and the opposition parties showed no signs of wanting to vote favourably the bill that had been introduced by the socialists, everyone expected the four bills to be rejected altogether.

However, in a last minute political compromise, all left-wing parties (including the Socialist Party) decided to postpone the vote on the bills for one month, thus allowing for them to be discussed in one of Parliament's permanent committees and for new and consensual bills to be drafted. A month later, and to the surprise of many observers, an agreement was reached, and the members of Parliament elected by the Socialist (with the exception of three independent MP's), Communist and Green parties and by the *Bloco de Esquerda* and four Social Democrat MP's, voted favourably a bill that was drafted and agreed to in the Committee for Constitutional Matters, Rights, Freedoms and Remedies («*Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias*») on *de facto* unions, applying equally to straight and same-sex unions. The law on the so-called «common economy» was approved by the socialist (with the exception of the same three independent MP's, that abstained), communist, green and *Bloco de Esquerda* MP's.

Both right-wing parties (the Popular Party and the Social Democrat Party) voted against the two bills.

The bills will now be sent to the President of the Republic, Jorge Sampaio, to be signed into law. Under the Constitution, the President has the power to veto the bills, but he gave no indication that he might be considering doing so and therefore such an outcome is not expected.

The new law on *de facto* unions will replace the current law (Act No. 135/99) but it basically reproduces its wording. Article 1, section 1, will state, however, that the law applies to couples living in a *de facto* union for more than two years *regardless of the partners' sex* -- this being the most substantial change. S. 2 makes it clear that the rights set forth in the bill do not preclude any other rights that are already accorded by law to *de facto* unions. This seems to mean that *all* of the rights that are recognised to straight *de facto* unions will also be recognised to same-sex couples in the future, whether or not they are referred to in the new legislation, since the new law applies equally to both, but some controversy over the interpretation of this provision can be expected.

Article 2 sets forth the legal impediments to *de facto* unions: they can not be formed by persons under 16 years of age, that suffer from a notorious mental illness or were declared legally incompetent due to a mental illness, that are bound by a previous marriage not yet dissolved, that are connected by certain ties of kinship, or that were convicted for the murder (or the attempted murder) of his/her partner's spouse.

Article 3 sets forth the rights recognised to couples living in a *de facto* union:

- *housing arrangements*: if one of the partners dies, the other can continue living in their shared residence; in that case, and if the deceased partner was the owner of the house, the surviving partner will have the right to live there for five years, and to lease or buy the house if it is sold or leased during that period; if the house was leased by the deceased partner, the surviving partner can, under certain conditions, succeed him in the lease (article 3, s. a, and articles 4 and 5);
- *civil servants and work benefits*: partners living in a *de facto* union have the same rights that married civil servants enjoy regarding vacations, absences, leaves, and placements; the same happens to private sector workers regarding vacations, absences and leaves (article 3, ss. b and c);
- *fiscal status*: partners can enjoy the same fiscal status as married couples if they choose to do so (article 3, s. d);

- *welfare benefits*: partners in a *de facto* union have the right to receive a number of welfare pensions if one of them dies (article 3, ss. e, f and g, and article 6).

Article 7 states that straight couples can adopt children in the same conditions as married couples can. The bill introduced by the *Bloco de Esquerda* allowed homosexuals to adopt, but there is no consensus on that matter at this moment and it was deemed wiser to let that proposal drop.

Under article 8, s. 1, a *de facto* union ends in case one of the partners dies, one (or both) of the partners to it so decide or one the partners marry (with the other or with a different person). S. 2 provides for those cases in which the dissolution of the *de facto* union has to be decided by a court of law.

Articles 9 to 11 deal with technical matters (namely the entry into force of the new law and the applicability of its fiscal provisions).

The law on people living in «common economy» (which is defined to include those -- not necessarily just two persons -- who live in the same house, aiding each other and sharing their daily life and resources for a period of over two years -- article 2. s. 1 -- if at least one of them is older than 18 -- art. 2, s. 2), applies equally regardless of the sex of the partners; people living in a *de facto* union can invoke such status if they prefer to do so (article 1, s. 3).

The partners of such a «common economy» enjoy the same housing rights (with minor differences in this case), the same rights that married civil servants and workers enjoy regarding vacations, absences, leaves, and placements and the same fiscal rights described for couples living in a *de facto* union (articles 4 to 7).

All things considered, the rights that were now granted to same-sex couples (and to people living in «common economy») are very limited and do not cover all aspects of the daily life of the couple. This is the result of tying the recognition of same-sex unions to the debate surrounding the rights of heterosexual *de facto* unions, which are seen as an *alternative* to marriage in Portugal. The new laws, therefore, do not allow for any kind of registered partnership and are very far away from allowing some form of same-sex marriage. The war on the recognition of same-sex couples, therefore, is far from being won.

However, in a predominantly catholic country, where social, cultural and legal changes usually take their time to happen, the passage of these two bills is a clear proof of the growing visibility of the gay, lesbian, bisexual and transgender community (and of the problems that affect it) and may mark

the beginning of a new era in the history of the gay rights movement in Portugal. Its significance, therefore, should not be overlooked. This battle being over, now is time to move along towards total equality.

SINGLE EQUALITY ACT IN NORTHERN IRELAND

By Mark Bell

A government-initiated consultation process will begin in the coming weeks in Northern Ireland on the creation of a 'Single Equality Act' dealing with many forms of discrimination, and incorporating the Article 13 directives. The First Minister of Northern Ireland, David Trimble, confirmed at a conference in Belfast on Friday that a wide range of options would be considered - including protection for transsexuals from discrimination in areas outside the employment sphere.

Sexual orientation discrimination is not currently unlawful in Northern Ireland, but the Framework Directive will require protection against employment discrimination. Hopefully, the Single Equality Act might provide an opportunity for the ban on sexual orientation to be extended beyond just employment. Northern Ireland's public authorities are already under a duty to promote equality in all their functions, including with regard to sexual orientation.

At the conference, the Northern Irish Coalition on Sexual Orientation gave a presentation emphasising the need for the exceptions provided for in the Framework Directive to be made more rigorous in the forthcoming Single Equality Act.

EU ENLARGEMENT: A GAY PERSPECTIVE

By Dennis van der Veur

A public hearing on the position of lesbian women and gay men in the EU accession countries

The Intergroup on Gay and Lesbian Rights, an informal body of the European Parliament (EP), will organise a public hearing on lesbian and gay rights in the EU Accession countries on Thursday June 28 in the European Parliament in Brussels.

The imminent reason for this hearing lies in the fact that in many of the accession countries the legal and social position of homosexual men and women is still a subject of concern. The European Parliament plays an important role in the final approval of the accession treaties and in the process that will lead to accession. The Intergroup wants to ensure that gay and lesbian rights are taken serious by the key persons in the EP (and in the other EU institutions.) Rapporteurs on EU accession countries, rep-

resentatives of the accession countries (governmental as well as non governmental) and other EU officials are therefore one of the main target groups of this hearing.

The hearing will raise awareness about the abolishment or revision of existing Penal Code articles that discriminate against lesbian and gay people and the implementation of the new instruments based on Article 13 of the Treaty of Amsterdam, i.e. the anti-discrimination directive concerning the workplace and the Action Program.

The hearing will include speeches of Members of European Parliament (MEP's), representatives of the accession countries and a round table discussion in order to measure the extent to which the accession countries meet the Copenhagen criteria and Acquis in terms of gay and lesbian issues. A reception in the EP is also scheduled.

Public and media will be able to attend this meeting.

More information on this hearing can be obtained at this email-address:

hearingintergroup@planet.nl

Through this e-mail address, press and other interested persons can contact Joke Swiebel or Hein Verkerk of the Intergroup for detailed information and Dennis van der Veur for practical and program information.

PROJECT FINANCING OPPORTUNITY FOR WEST EUROPEAN LGBT ORGANISATIONS UNDER EUROPEAN COMMISSION'S "ACTION PROGRAMME TO COMBAT DISCRIMINATION"

By Nigel Warner

Towards the end of last year the European Union adopted several measures to fight discrimination, including the "Community Action Programme to combat discrimination". This provides EUR100 million to fund anti-discrimination projects and activities between 2001 and 2006.

This money is to be spent on a number of activities, including helping organisations such as NGOs to fight discrimination. In particular, money is available to fund so-called "transnational exchange projects", where an anti-discrimination organisation's capacity to fight discrimination is developed by transnational exchanges of information and best practice.

The European Commission is now inviting organisations to apply for grants for transnational exchange projects, through the issue of a "Call for

proposals". The deadline for applications is 25 May 2001.

THE EUROPEAN COMMUNITY'S PROGRAMME TO COMBAT DISCRIMINATION PROVIDES A UNIQUE OPPORTUNITY FOR LGBT ORGANISATIONS TO FIGHT DISCRIMINATION IN PARTNERSHIP WITH ORGANISATIONS IN OTHER MEMBER STATES,

Either

THROUGH ADDRESSING MULTIPLE DISCRIMINATION (e.g. discrimination against black lgbt people, disabled lgbt people, etc)

Or

THROUGH WORKING IN PARTNERSHIP WITH NGOS FIGHTING AGE, DISABILITY, RACE OR RELIGIOUS DISCRIMINATION

Or

THROUGH ADDRESSING AN ASPECT OF DISCRIMINATION WHICH IS UNIQUE TO SEXUAL ORIENTATION DISCRIMINATION, AND REQUIRES SPECIFIC ATTENTION

Please look at the attached briefing to get more information on whether your organisation should apply for a project under this Call for Proposals. If you plan to do so, please advise ILGA Europe at nwarner@gn.apc.org. ILGA Europe will itself be considering whether to participate in a project.

EU CALL FOR PROPOSALS AGAINST DISCRIMINATION HAS BEEN LAUNCHED

By Cathal Kelly

The calls for "phase I" proposals for the Community Action Programme to combat discrimination 2001-2006 have been published. The closing date for applications is 25 May 2001. The budget available is euro 50 000 per project

Organisation in the following states can apply

- The EU member states, Austria, Belgium, Denmark, France, Finland, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom,
- The EFTA states Norway, Iceland, Liechtenstein
- The following EU accession states: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, Slovenia, Turkey.

Phase I is about the development of partnerships, defining objectives and formulating a work programme. Only the projects that receive funds in phase I may apply for funding in phase II.

Site with calls for tender

http://europa.eu.int/comm/employment_social/fund_amri/prog/calls_en.htm

VP/2001/12 - Call for proposals for preparatory work to establish transnational actions for the exchange of information and good practice.

Guidelines - available in PDF format in English at http://europa.eu.int/comm/employment_social/fund_amri/prog/glines2_en.pdf

Application form, Part III - available in PDF format in English at

http://europa.eu.int/comm/employment_social/fund_amri/prog/form2_en.pdf

(The form - Parts I and II - can only be obtained by sending an e-mail request to the following address: empl-antidiscrimination@cec.eu.int)

Guide to the form - available in PDF format in English at

http://europa.eu.int/comm/employment_social/fund_amri/prog/guide2_en.pdf

Versions of some of these three documents are also available in French and German.

Site for those looking for partners (as of 13:35 BST 03 April 2001, three entries were listed) http://europa.eu.int/comm/employment_social/fund_amri/partner_box/index.cfm?LANG=en

DUTCH GAY MARRIAGE

By Kees Waaldijk

Now it is certain: The laws of 21 December 2000 on the opening up of marriage and adoption for same-sex partners (as published in Staatsblad 2001, nrs. 9 and 10) will indeed enter into force on 1 April 2001. The Royal Decree fixing that date has now been signed, and will be published in Staatsblad 2001, nr. 145 (coming out on 29 March 2001).

This means that in the night of 31 March to 1 April 2001 the first full civil marriages between same-sex partners can be celebrated. At midnight in Amsterdam, Mayor Job Cohen will officiate in a ceremony for four such couples. (Before he became Mayor of Amsterdam in January 2001, Mr Cohen was the State-Secretary of Justice responsible for the legislation on the opening up of marriage.) This event will take place in the Council Chamber of the City Hall. (Originally this event was planned to take place in the historic wedding room of the former

City Hall, but that room proved to small for all the journalists hoping to cover the event.) For press info on that event, see:
http://www.amsterdam.nl/e_news/gaymarriage.html

For further legal info on same-sex marriage, see my website:
<http://ruljjs.leidenuniv.nl/user/cwaaldij/www/>

EUROPEAN PARLIAMENT

Question by Lousewies van der Laan (ELDR) to the Commission

Subject: Protection of homosexuals in Romania

Is the Commission prepared, as a matter of urgency, to draw the attention of Romania's newly elected President Iliescu to the fact that Article 200 of the Penal Code (discrimination against homosexuals) is still in force?

Will the Commission make it clear to the Romanian President that the EU makes Romania's accession to the European Union conditional on the repeal of Article 200 of the Penal Code?

What projects is the EU funding in the candidate countries to counteract prejudice and discrimination against homosexuals?

Answer given by Mr. Verheugen on behalf of the Commission (12 March 2001)

Article 200 of the Romanian Penal Code states that specified homosexual activities shall be punished by imprisonment from between one to seven years. The Commission has raised this issue with the Romanian Government on several occasions and has expressed the opinion that this represents a violation of human rights. In response to these and other representations the government included an amendment to the Penal Code, amongst a broader package of reforms to the legal system, that would effectively decriminalise homosexuality. The amendment was passed by the Romanian Chamber of Deputies during the course of last year but has not yet been passed by the Senate. Under such circumstances the existing legislation remains in force. Following the recent elections, the new government has not yet announced its intentions with regard to these legal reforms.

The issue of non-discrimination is one to which the European Union attaches considerable importance.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation establishes a general principle of prohibition of any direct or indirect discrimination based, inter alia, on

sexual orientation. Council Decision of 27 November 2000 establishing a Community action programme to combat discrimination (2001-2006) (2000/750/EC) puts into practice a strategy for combating all forms of discrimination on different grounds, including sexual orientation. This programme is open to participation by the candidate countries, in accordance with the conditions established in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils.

Together, these measures will constitute a comprehensive basis for action to fight against discrimination on grounds of sexual orientation, providing a minimum level of legal rights, supported by practical action to promote the effective application of those rights on the ground.

In addition, the principle of non-discrimination is explicitly dealt with by Article 21 of the Union Charter of Fundamental Rights proclaimed on 7 December 2000, which states that "any discrimination based on any ground such as sexual orientation [inter alia] shall be prohibited". These principles not only reflect the basic principles of the Union, but also the basic principles that new Member States will be expected to accept upon accession.

Furthermore, the criteria for accession to the European Union, as set out at the 1993 Copenhagen meeting of the European Council, make explicit reference to the need for "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities". The Commission is fully committed to ensuring that this condition for accession is respected and will take up cases of human rights abuses in its regular reports on candidate countries' progress towards accession and in its bilateral relations with them.

With regard to EU financial support, the guidelines for Phare implementation provide for financial and technical assistance to be given to non-governmental organisations with a view to supporting the inclusion and participation of individuals or groups being socially, economically or politically marginalised due to sexual orientation. However, to date, no funding has been allocated to projects in this specific field.