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APPROVED FINNISH LEGISLATION ON SAME-SEX PARTNERSHIPS

By Rainer Hitunen, SETA

Registered Partnership Act, as accepted in Finnish parliament (28th September 2001, with votes 99-84). The law is expected to come into force in the beginning of March 2002 but the exact date has not been confirmed.

Chapter 1 Partnership registration (paragraphs 1-6)

- Partnership registration is open to two persons of the same sex, both of whom have to be 18 years old. There is no requirement for specific sexual orientation.
- The legal objections to marriage such as being related by blood also apply to partnership registration.
- The partnership shall be serviced by an authority entitled to civil marriages.

Chapter 2 Dissolution of a registered partnership (paragraph 7)

- Dissolution of a registered partnership is to happen according to the provisions in the Marriage Act.

Chapter 3 Legal effects of partnership registration (paragraphs 8-9)

- The legal consequences of the registered partnership are the same as with marriage unless otherwise stated (8§).
- All provisions concerning married couples or spouses apply to registered partners unless otherwise stated (8§).
- The Act on Fatherhood and other provisions based only on the fact that spouses are of the specific sex do not apply to registered partners (9 §).
- The provisions enabling spouses to adopt in the Adoption Act do not apply to registered partners (9§), neither do the provisions of Names Act which enables married couples to take joint family name.

Chapter 4 Paragraphs referring to international private law (paragraphs 10-15)

- Conditions of registration of partnership: at least one of the partners is a Finnish citizen and resident in Finland or both parties have resided in Finland during the preceding two years.
- Other nationality of a country where registered partnership is provided can be designated as a qualifying nationality for the purposes of registering a partnership in Finland.
- Registered partnership between members of the same sex is valid in Finland if it is valid in the country where the registration took place.

Chapter 5 Other provisions (paragraph 16)

- Coming into force provisions.

(PARENTHOOD LEGISLATION CURRENTLY IN FINLAND

The Act on Child Custody allows the custody of a child to be given to also other person(s) than parents. This can be done by court order if it is in the best interest of the child. Finnish courts to have given joint custody of a child to same sex couples even though one of the cohabitant is not a parent of the child. There is no legislation regulating access to assisted reproduction. Clinics give treatment also to lesbian couples or single women who have no partner.)

LATVIA: EUROPEAN COMMISSION PRAISES NEW LATVIAN LABOUR LAW BUT POINTS OUT DEFICIENCY IN ANTI-DSICRIMINATION PROVISION

By Juris Ludvigs Lavrikovs

On 20 June 2001, a new Labour Law was adopted by the Latvian Parliament and signed by the Latvian President. The Law comes into force on 1 June 2002.

A draft Labour Law was prepared by the Ministry of Justice in 1999, its anti-discrimination provision being based on Article 13 of the Amsterdam Treaty and the then draft EU Directive on Equal Treatment, which specifically prohibited discrimination *inter alia* on grounds of sexual orientation in employment. Article 7 (Anti-discrimination) of the draft Latvian Labour Law also included sexual orientation as a one of the grounds on which discrimination was to be prohibited in employment.

However, after the first reading in the Latvian Parliament, when the draft Labour Law was sent to various parliamentary commissions, the Human Rights and Public Affairs Commission deleted sexual orientation from the draft.

Before the third and final reading in the Parliament, Article 7 did not even have an open end that would allow it to be interpreted as covering sexual orientation. Only after lobby efforts by the Latvian National Human Rights Office was an open end to Article 7 introduced.

Article 7 (Anti-discrimination) of the new Labour Law reads as follows:

"Principles of equal rights

- (1) Every person shall have equal rights to employment, to an equitable, safe work environment that is not harmful to health, and to fair payment for work.

(2) The rights referred to in paragraph 1 of this article shall be guaranteed without any direct or indirect discrimination in regard to race, skin colour, sex, age, disability, religious, political or other conviction, ethnic or social background, or material, family or other status."

The absence of prohibition of discrimination on grounds of sexual orientation in employment contradicts the 2000 EU Council Directive on Equal Treatment. Latvia has an obligation to harmonise its legislation with EU requirements before accession. At the same time an open end to Article 7 leaves the possibility of interpreting Article 7 also to include sexual orientation. It remains to be seen whether it will be so interpreted, following clarification either by an official explanation or by a test case. If such an explanation or test case does not ensue, Latvia will be under an obligation to explicitly prohibit discrimination on grounds of sexual orientation in employment upon joining the European Union.

On 13 November 2001 the European Commission published its 2001 Regular Reports on all candidate countries' progress towards accession. Although the Commission praises Latvia for introducing a new Labour Law that complies with EU standards, it also points out in Chapter 13 'Social policy and employment' of its Report on Latvia (SEC(2001)1749), that 'the fight against exclusion, as laid down in Article 136 of the Treaty establishing the European Community, is part of the objectives of EU social policy. As decided at the Lisbon and Nice European Councils, policies to combat social exclusion combine commonly agreed objectives at EU level, and national action plans. The Gothenburg European Council in June 2001 invited candidate countries to translate the Union's objectives of promoting social inclusion into their national policies. Further efforts are needed to ensure alignment with the *acquis* on anti-discrimination based on Art. 13 of the Treaty.'

This clearly indicates that Latvia, in prohibiting discrimination in employment on such grounds as race, religion, age and disability (as required by Article 13 and the EU Framework Directive) but omitting sexual orientation, is failing to comply fully with EU standards.

SEXUAL AND GENDER MINORITIES AT WORK

By Jukka Lehtonen

On November 15th 2001, the New Equal Project Against Discrimination Based on Sexual Orientation was started in Finland by the University of Helsinki, and Stakes (National Research and Development Centre for Welfare and Health in the Ministry of Social Affairs and Health), and by

SETA (the national lesbian, gay, bisexual and transgender organisation in Finland). The purpose of the project is to develop new methods which help to improve working life practises for lesbian, gay, bisexual and transgender persons. A survey and interviews will be carried out in order to study the situation of sexual and gender minorities at work. There is an anti-discrimination law in Finland which prohibits any discrimination in working life, but as to yet there is no information on the effects of this law. During the project, educational methods and informational material on these issues will be produced, and co-operation networks will be created in order to tackle the problems that lesbians, gays, bisexuals and transgender persons are facing in working life.

The project is funded mainly by the European Social Fund and the Finnish Ministry of Employment. Equal Projects in various European countries try to abolish all sorts of discrimination and inequalities in working life.

The actual project is preceded by a six-month period for planning and information. During this time period, we will also be looking for partners for co-operation in both within and outside of Finland. The actual project will be launched in May 2002 with research, education and development work. The project office is located in the Department of Sociology at the University of Helsinki. The people employed for the project are Mr. Jukka Lehtonen, the Project Director, and Ms. Kati Mustola, researcher.

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AND AFTER NINE MONTH....

LESBIAN PARTNERS IN THE NETHERLANDS GET FULL RESPONSIBILITY FOR CHILDREN

*by Kees Waaldijk (Universiteit Leiden,
<http://ruljis.leidenuniv.nl/user/cwaaldij/www/>)*

When marriage was opened up for same-sex couples on 1 April 2001, one important distinction remained between lesbian and heterosexual marriages. If a child is born in a heterosexual marriage, the child automatically has the husband of the mother as its legal father, and that father and mother automatically share all legal and financial responsibilities over the child. Such joint parental authority plus joint parental maintenance duties do not arise automatically where a child is born in a lesbian marriage (nor where a child is born in a lesbian or heterosexual registered partnership). These

responsibilities could only be obtained by petitioning the court. But this is now going to change on 1 January 2002. Any child born after that date into a lesbian marriage (or into a registered partnership of two women or of a man and a woman) will automatically, from the moment of birth, have two fully responsible adults: its mother and her spouse or registered partner. That spouse or partner will still not be deemed to be the "father" of the child, but will have an equal share in the parental authority over the child and in the maintenance duties towards the child.

This is the result of the law of 4 October 2001 (amending various articles of Book 1 of the Civil Code) which was published in Staatsblad 2001, nr. 468). By virtue of a Royal Decree of 7 November 2001 (Staatsblad 2001, nr. 544) that law will enter into force on 1 January 2002.

Because children are only born into marriages and registered partnership that include at least one woman, a male co-parent who wants to share the legal and financial responsibilities with the father of the child will still need to go to court to ask for joint parental authority and maintenance duties.

A gay or lesbian co-parent who wants to have full parental status to complement these responsibilities, will have to go through the adoption procedure. Adoption by same-sex partners became possible in the Netherlands on 1 April 2001 (see <http://ruljis.leidenuniv.nl/user/cwaaldij/www/>). The first such adoptions are expected to be decided by Dutch courts around January 2002.

For some background to the new piece of legislation, see my chapter 'Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands', in: Robert Wintemute and Mads Andenæs (eds.), *Legal Recognition of Same-Sex Partnership. A Study of National, European and International Law*, Oxford: Hart Publishing 2001, p. 437-464 (see:

<http://www.hart.oxi.net/bookdetails.asp?id=223&bn=d=1>.

FIRST BOOK ON LEGAL STATUS OF SEXUAL MINORITIES IN RUSSIA

By BECK Publishing House (Moscow, Russian Federation)

Nicolas Alekseev's new book "Legal status of sexual minorities: Russia in the light of international organizations' practices and legislation of other countries" (ISBN 5-83639-325-2) will be released in December 2001.

This book is the first publication in Russia covering the issues of the legal status and rights of gays and lesbians. Based upon the most recent data available

it generalizes the information and legal sources against discrimination based on sexual orientation. It further explains sexual minorities' rights around the world as delineated in all spheres of law: constitutional, penal, family, civil etc. It deals with such issues as discrimination and one's rights as to the age of consent, registered partnerships, immigration rights of binational gay couples, granting of asylum on the basis of sexual orientation prosecution, artificial insemination, adoption, inheritance and others. Special chapters of the book are dedicated to the correlation of homosexuality and religion and to the components and influence of the social status of sexual minorities in different countries of the world. All the information on Russia is summarized in two chapters: one on the historical evolution of Russian legislation and the attitudes toward homosexuality from the ancient times and the second dealing with contemporary Russian legislation and its relation to other countries' laws on gay rights. The author gives explicit examples of discrimination based on sexual orientation and suggests legislative measures for further improvement of the status of gays and lesbians in Russian society.

The book is based on legal sources from countries which deal with the issue of gay and lesbian rights in their legislative work on the federal and/or regional level. It covers the progress made in the improvement of the legal status of sexual minorities in Australia, Austria, Belgium, Canada, Czech Republic, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Luxemburg, Namibia, the Netherlands, New Zealand, Norway, Portugal, Russia, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States of America and others. The author takes into consideration the available legal practices, i.e. case law, positions and texts, on gay issues of a number of international organizations such as the Council of Europe, the European Union, the United Nations, the Organization for Security and Cooperation in Europe and others.

The book is written in the Russian language and contains an Introduction, Contents and the information about the author in French. Anyone wishing to order copies of the book from either outside or inside the Russian Federation can contact the BECK booksellers in Moscow (tel. 007-095-973-9062). Also, buyers may order by fax at 007-095-978-1631 or by e-mail to vesk2000@km.ru or vesk@vesk.net. The e-mail of the author is nicolas_alexeiev@hotmail.com. It will also be possible to order it through the virtual bookstore of the Russian national gay site on the Internet at www.gay.ru. The estimated range of the cost of the book is between 5,5 and 6 Euro.