

# Campaign: Freedom of Movement



Illustration: Christian Högl



**The European Region of the International Lesbian and Gay Association**

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**Editorial**

This issue of the *ILGA-Europe Newsletter* contains a number of articles updating our readers on the developments in a series of our campaigns.

The free movement of EU citizens debate remains a high priority, and we urge all our members to get involved – see pages 4-5 for details.

The Convention on the Future of Europe is at a critical stage in its consultation with civil society. ILGA-Europe’s submission was presented to the Convention at the end of June (page 6).

In the campaign for recognition of LGBT refugees (page 3) we are calling on member organisations to put pressure on national governments to complement the work at European level.

Sharing best practices and increasing knowledge and understanding are vital features of our work. The TAIEX seminar (read more on pages 7-9) held in Brussels in July showed the benefits of bringing together LGBT activists and government representatives from the candidate countries.

The forthcoming ILGA-Europe annual conference in Lisbon will be another opportunity to meet and exchange views and experiences. The conference will take place from 23 to 27 October. Read more on page 24 and at: [www.ilga-europe.org/conference](http://www.ilga-europe.org/conference).

This issue also features a special report on current developments in Russia and a couple of conference reports and news items. Enjoy the reading and the rest of the summer!

THE EDITORIAL TEAM

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Urgent action needed at national level

# Campaign for recognition of LGBT refugees

In the May *Newsletter* we announced the launch of an ILGA-Europe campaign to try to secure EU-wide recognition of LGBT refugees. The campaign is a response to a draft directive, whose purpose is to achieve a common definition of refugee status.<sup>1</sup> It has three principal objectives:

- To ensure that persecution on the grounds of sexual orientation is recognised in the directive
- To work for a specific reference to persecution on the grounds of gender identity
- To work for the extension of the definition of “family member”, so that there is full recognition of LGBT family members in the directive.

For more detailed information, see the *May Newsletter* (p. 6) and



**Jean Lambert will table ILGA-Europe’s amendments in the EP**

our position paper, which is published in English, French and Spanish at the ILGA-Europe web-site at [www.ilga-europe.org](http://www.ilga-europe.org).

Since May there have been four developments:

The EU national co-ordination network has received guidelines for lobbying national governments in support of our proposals; we have held meetings with officials at the European Commission, and with the Danish EU Presidency in Copenhagen; and the rapporteur for the European Parliament, Jean Lambert of the

## It is absolutely essential that member organisations conduct a thorough and effective campaign to persuade national governments to support our proposals

Greens (UK), has confirmed that she will table our amendments in the Parliament.

Through the meetings with the Presidency and the Commission, three things have become clear:

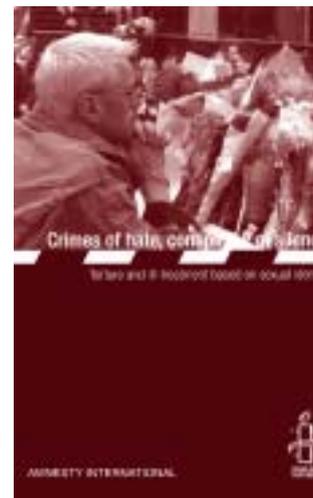
It is absolutely essential that member organisations conduct a thorough and effective campaign to persuade national governments to support our proposals on the inclusion of sexual orientation and gender identity in the draft directive. At least one government, Italy, is likely to be hostile, its Parliament having only recently voted to exclude sexual orientation from their own asylum legislation. Others may also be hostile. Moreover, while ILGA-Europe will continue to campaign in the European Parliament, the decision will be taken entirely by the national governments, since the EP has only a consultative role. There is little support for our proposals concerning the recognition of LGBT families. Although we are unlikely to succeed with these proposals, we believe it important to continue lobbying in support of them, in

order to bring home to governments the suffering faced by LGBT refugees who are unable to be reunited with their family. The Danish Presidency is keen to agree the substance of the directive during its six-month term (i. e. by the end of December 2002). The Council of Ministers is currently scheduled to com-

plete its work on the directive on 28 November 2002. So action is urgent.

As noted above, the main lobbying at national level is being carried out by the member organisations involved in the EU co-ordination network. If members who are not involved with this co-ordination network wish to get involved, they should contact Mette Vadstrup, [mette@ilga-europe.org](mailto:mette@ilga-europe.org).

The debate in the European Parliament is now scheduled to take



**amnesty international** recently published a report about torture and ill-treatment based on sexual identity

place in September, with the Committee debate on 12 September, and the debate in the full Parliament on 23 September. ILGA-Europe will be lobbying MEPs intensively in the run up to these votes.

NIGEL WARNER

## Anti-discrimination law and the European Union

Mark Bell has published a monograph on “Anti-discrimination law and the European Union”. This book examines the transformation of EU anti-discrimination law, from its traditional focus on sex and nationality discrimination, to the wider anti-discrimination law since the addition of Article 13 to the EC Treaty in 1999. There is a specific analysis of EU law and policy on discrimination on grounds of race and sexual orientation, and the situation of these forms of discrimination in the national laws of each of the 15 member states.



The book is published by Oxford University Press and can be ordered there or at <http://www.oup.co.uk/isbn/0-19-924450-2>

<sup>1</sup> The full title is: *Proposal for a Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 Protocol, or as persons who otherwise need international protection – COM (2001) 510.*

European Union

# New developments in the campaign on free movement

ILGA-Europe's campaign on the free movement of EU citizens is moving on. The campaign described in previous *Newsletters*<sup>1</sup> addresses issues of great importance to Europe's LGBT community. It is a response to a draft directive which fails to take adequate account of LGBT needs. In practice the free movement of families within the EU is restricted to families where partners are married. ILGA-Europe is campaigning for free movement for all families including those who choose a different lifestyle than marriage.

The Commission's proposal is currently being debated in both the Council and the European Parliament and is subject to co-decision procedure which provides the Parliament with co-legislative competence and considerable power to influence the content of the directive.

On 22 May 2002 ILGA-Europe representatives met with representatives of the Danish EU Presidency in Copenhagen. They were supportive of ILGA-Europe's proposals because they would allow Danish registered partners and their families to maintain their civil status and rights acquired according to Danish law when moving to another EU country. The Presidency was also supportive of extending the right to free movement to unmarried partners in a stable relationship.

On 18 June the "LIBE" Committee<sup>2</sup> of the European Parliament debated for the first time the initial working document drafted by rapporteur Ana Palacio

(PPE/E). In the working document she has identified several issues the Parliament needs to address. One of them is the definition of the notion "family members" who should benefit from the right to free movement. Should unmarried partners in a stable relationship also be considered, for the purposes of free movement, as family members, and should this also apply to same-sex partners? In the Commission proposal the definition of family members is limited to the "spouse" and – if the host member state treats unmarried couples as equivalent to married couples – to the "unmarried partner".

In the debate in the LIBE Committee, Palacio introduced the working document and spoke in favour of the well known legal principle of "mutual recognition", leaving member states to mutually recognise each other's national legislation. This approach of mutual recognition, therefore, would only be beneficial for same-sex couples/families where the partners are in a registered partnership. They could exercise their right to free movement and enjoy their registered partnership rights throughout the EU, even in member states without national same-sex partnership legislation.

Other MEPs spoke in favour of extending the right of free move-

ment to unmarried partners in a stable relationship. This would allow EU citizens from all member states to enjoy their right of free movement if they want to move to another member state

together with their same-sex partner. The deliberations of the proposal in the Council and the Parliament's first reading of the draft directive are likely to progress in

The Transnational Radical Party led by its Italian co-president Marco Cappato has launched an on-line petition calling upon the European institutions and the governments of the member states to fully respect the free-

## ILGA-Europe campaign proposals

**The principle of free circulation is one of the founding principles of the European Union, and the free movement of persons is the cornerstone of EU citizenship. EU nationals can move and reside freely within the territory of the Union for a number of purposes, in particular employment. A person who has moved from one member state to another to take up employment has the right to be joined by his/her family. But this right is limited because it only recognises families in which partners are married.**

**The current Commission proposal would extend the right to free movement only to unmarried partners and their families if they move to a member state that "treats unmarried couples equivalent to married couples" in its national legislation.**

**ILGA-Europe is proposing amendments to the Commission draft directive that would ensure that family members are not risking separation when one partner needs to move within the Union. The ILGA-Europe proposals cover families involving same-sex married couples, registered partners, unmarried and unregistered couples, and aim at securing free movement for all families including those who choose a different lifestyle than marriage.**

**For full details of ILGA-Europe's amendments download our position paper at [www.ilga-europe.org](http://www.ilga-europe.org).**

September and October. There might be a slight delay in the Parliament due to the fact that Palacio had left the Parliament in July to become Spain's Foreign Affairs Minister. A new rappor-

teur will be appointed soon. The change of rapporteur may also lead to a change in the support for the principle of mutual recognition.

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## In the Commission proposal the definition of family members is, in practice, limited to families where partners are unmarried

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dom of movement for all persons in the EU and to eliminate all discriminations against same-sex couples. This petition is launched at a crucial moment in the free movement debate.

METTE VADSTRUP

<sup>1</sup> # 3/01, p. 8, # 1/02, p. 2, and # 2/02, p. 5.

<sup>2</sup> Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

Free movement of same-sex couples

# On-line petition launched

The Transnational Radical Party (TRP) is an NGO with “1<sup>st</sup> category” consultative status at the United Nations. TRP’s aim is to promote freedom and democracy in the world through non-violent means. Radicals have always been engaged in the defense of GLBT rights since the 1960s – in Italy, in Europe and in the world.

TRP members – among which are MPs, MEPs, artists, professors, citizens of different political orientations – have promoted the elimination of discrimination based on sexual orientation and notably the reform of family law in order to introduce registered partnership for everybody and access to marriage for same-sex couples. Radicals have been particularly active in Italy: The first Italian gay organisation, *FUORI!*, was a member of the RP, and its members participated in the 1976 general elections on the Radical Party’s lists. In the 1980s, the RP drafted and pushed for a law for the legal recognition of gender reassignment. In May 2002, a Radical draft law on access to marriage for same-sex couples and for legal recognition of registered partnerships (adoption rights included) was tabled in the Italian Parliament with the support of a coalition of MPs of all parties.

Since the RP decided to become a transnational organisation in 1988, activities started in other countries. Radical activists were arrested in Russia in the 1980s for demonstrating against the criminalisation of homosexual acts. One of the most recent initiatives undertaken by the TRP was the collection of 134 signatures of MEPs to a petition in the Egyptian “Queen Boat” case. Furthermore, the TRP has repeatedly raised the issue of GLBT rights at the UN, notably by allowing ILGA representatives

## Letter-appeal

*to European institutions and to the governments of the Member States on the full respect of freedom of movement of persons in the European Union and to eliminate all discriminations against same-sex couples*

*One of the freedoms on which the EU is based is the freedom of movement, working, residence and establishment anywhere on the territory of the EU, without any discrimination, with the same rights and duties of other citizens: we all are citizens of a certain State, but also European citizens. These rights are enshrined in the Treaties of the Union, and now also in the Charter of Fundamental Rights.*

*The EU is now examining an important proposal for a directive concerning “the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States”. This directive is aimed at fully implementing the Treaties and the provisions concerning the European citizenship, guaranteeing new rights and eliminating unjustified discriminations and obstacles to free movement of persons.*

*Until now same-sex couples, married or living in a durable relationship, that have seen their relationship recognised by a Member State that provides for such an opportunity, do not enjoy the same rights and duties when they move to another State of the EU.*

*For this reason we appeal to you, to ask you to eliminate such discrimination and guarantee the full, free movement of everybody, without unjustified discriminations, on the territory of the European Union.*

**You can sign the on-line letter-appeal at:**  
[http://servizi.radicalparty.org/gay\\_europa](http://servizi.radicalparty.org/gay_europa)

to speak, on behalf of TRP, in front of national government representatives, so to overcome the UN’s scandalous refusal to grant consultative status to ILGA.

The TRP has now launched an on-line letter-appeal to the European institutions and to the governments of the member states demanding full respect of the freedom of movement of all EU citizens and to eliminate all discrimination against same-sex couples. “The TRP believes that the EU, which defines the freedom of movement of its citizens as one of its main freedoms and aims, shall grant same-sex cou-

ples the same rights it grants to different-sex couples”, declared Marco Cappato, MEP and co-president of the TRP. “The fact that a Swedish same-sex married couple with a child is not legally recognised when moving to other EU member states is simply an unjustifiable discrimination, contrary to the spirit of Article 13 of the Treaty of the

EU. The legal principle of mutual recognition of member states’ laws has to be applied here too, as it is now largely applied in other areas such as civil and penal law.”

Since the petition was put on-line – just before the summer break – it gathered 166 signatures. ILGA-Europe, in the meantime, has expressed its support to the initiative. Both NGOs are now jointly asking to sign the on-line petition. TRP will re-launch the letter-appeal and notably collect signatures of MP and MEPs, in order to table the petition and the signatures to the relevant decision-makers (Parliament rapporteur, Commission, Council) in the different stages of the legislative process. Concerning the work in the European Parliament, TRP plans to support ILGA-Europe in its effort to have its amendments to the Commission proposal tabled in the Parliament and to organise press conferences on the issue.

## Sign the petition!

Further action is, however, needed now by all of us – and by all of you: We need to gather as many signatures as possible! So please, circulate the information widely, ask your friends to sign. This will surely help our cause of achieving the legal recognition of same-sex couples in the EU!

OTTAVIO MARZOCCHI  
Member of the Political Board  
of the TRP and Advisor to  
Radical Members of the Euro-  
pean Parliament

## contact info

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**pr.bruxelles@radicalparty.org; www.radicalparty.org.**

Convention on the Future of Europe

# ILGA-Europe launches campaign on the future of Europe

In our last *Newsletter* (p. 7), we reported about our initial activities related to the Convention on the Future of Europe. The Convention will be making wide-ranging recommendations to shape the future of the European Union such as ensuring fundamental rights for all citizens and increasing democracy and transparency in the EU. At the core of this process is the need to re-connect the citizens to the “European project”. The Convention has, therefore, set up an internet forum where civil society can post their positions and proposals as well as announce events and debates on the future of Europe. ILGA-Europe launched its submission to the Convention in June.

## The ILGA-Europe submission

Our submission is based on existing ILGA-Europe policies and outlines a number of recommendations. It is divided into four parts. Firstly, we call for putting fundamental rights at the heart of Europe. ILGA-Europe is joining the large number of NGOs, academics and politicians that call for the EU Charter of Fundamental Rights to be incorporated into the EU Treaties and for the EU to accede to the European Convention on Human Rights. ILGA-Europe also puts forward a number of recommendations for strengthening the Charter and improving the rights of LGBT people such as the protection for and recognition of family diversity and the right of same-sex couples to marry.

Secondly, we call for the integration of the principle of equality. This demand is reflecting the fact that the EU currently has developed an equality hierarchy with different levels of protection for

the various grounds of discrimination. Gender identity and sexual orientation discrimination are receiving a lower level of protection than, for example, discrimination based on racial and

## ILGA-Europe’s submission is based on its existing policies and outlines a number of recommendations

ethnic origin or gender. This hierarchy ignores the overlapping issues of multiple discrimination occurring in many instances. Therefore, a clear commitment in the Treaties to “equal and effective protection against discrimination on any ground” is needed.

In the third section of our submission, we focus on the EU’s role in promoting human rights and democracy in the world. Since 1992 the EU has included a human right clause in all its international agreements with third countries. If the EU is to promote human rights and democratisation in a coherent way, these human rights clauses must be given effect and take primacy over economic and commercial interests. Open discrimination and exclusion of LGBT people and other minorities exist in many third countries. In order to stop human rights abuses it is essential that these human rights clauses are promoted in an open dialogue with these countries.

In the last part of the submission we call for the strengthening of the principle of democracy within the EU. It is necessary to ensure a structured civil dialogue in an enlarged Union. In order to

make constructive contributions to the negotiation of EU legislation and policies, full access to documents and transparent decision-making procedures will be essential. Strengthening the principle of democracy within the EU will require the strengthening of the role of the European Parliament by giving it co-decision powers notably in the areas involving non-discrimination measures.

The full text and a summary of our submission are available at our web-site [www.ilga-europe.org](http://www.ilga-europe.org).

## The Convention and civil society

On 24-25 June 2002, the members of the Convention, who have been meeting once a month since February 2002, met with civil society in the Brussels EP building. The Convention had identified eight topical sectors in which pre-meetings with civil society were arranged in order to allow NGOs and other organisations

involved to co-ordinate speakers addressing the members of the Convention. ILGA-Europe participated in the pre-meetings of three sectors: “social”, “fundamental rights” and “citizens and institutions”. The pre-meetings of the different sectors showed that there is a common consensus on specific issues, even though civil society includes a broad range of interests. These issues include the need for the EU to engage in and be committed to a structured civil dialogue, the demand that fundamental rights must be part of any EU policy, and the need for increased transparency in the work of the EU institutions.

As part of civil society ILGA-Europe was also present at the two-day meeting of the Convention and, together with other NGOs, displayed information material at the information booths set up outside the meeting room. The event offered excellent opportunities to meet with Convention members, MEPs and other organisations.

The European Economic and Social Committee (EESC) arranges, in co-operation with the Convention, regular sessions of information and dialogue on the Convention proceedings. On 27 June the third session took place in the EESC building in Brussels with the participation of Jean-Luc Dehaene, vice-president of the Convention, and António Vitorino, representative of the European Commission in the Presidium of the Convention. One of the topics on the agenda was the role of the EU Charter on Fundamental Rights. ILGA-Europe participated in the meeting and had prepared a special contribution on fundamental rights. Vitorino, who is the chair of the Convention working group on fundamental rights,

## Getting involved in the debate at national level

**ILGA-Europe encourages its members in EU countries to get involved in the Convention process by making contributions to their national Convention members in order to reinforce the voice of the LGBT community in this debate. In order to facilitate this, ILGA-Europe will publish regular updates on its work on the Convention in the next issues of the *Euro-Letter* and also of this *Newsletter* and at the web-site: [www.ilga-europe.org](http://www.ilga-europe.org).**

web info

The Laeken Declaration setting up the Convention – in all EU languages:  
[www.europa.eu.int/futurum/documents/offtext/doc151201\\_en.htm](http://www.europa.eu.int/futurum/documents/offtext/doc151201_en.htm)

The Convention on the Future of Europe:  
[www.european-convention.eu.int](http://www.european-convention.eu.int)

The Forum – open for NGO participation:  
[www.europa.eu.int/futurum/forum\\_convention/index\\_en.html](http://www.europa.eu.int/futurum/forum_convention/index_en.html)

Information on the Youth Convention:  
[www.youthforum.org](http://www.youthforum.org)

Glossary of EU terminology:  
[www.europa.eu.int/scadplus/leg/en/cig/g4000.htm](http://www.europa.eu.int/scadplus/leg/en/cig/g4000.htm)

spoke in favour of incorporating the Charter into the Treaties.

**The Civil Society Contact Group**

As a member of the Social Platform, ILGA-Europe is also part of the so-called Civil Society

Contact Group. This group brings together representatives of four NGO “families” – the social, development, human rights and environmental sectors, as well as the European Trade Union Confederation (ETUC). This Contact Group unites a strong civil society voice in the debate on the

future of Europe, and it organises regular informal meetings to update and inform NGO members interested in following the work of the Convention.

The Contact Group has produced a toolkit designed to inform individuals and civil society organisations about how to follow and influence this debate on the future of Europe. The toolkit provides practical information on how the Convention works and lists contact details of all the members of the Convention, as well as information on the work already undertaken by European civil society organisations. The toolkit can be downloaded in French and in English from the ILGA-Europe web-site.

The Contact Group has been very active in promoting and pushing for a civil dialogue with the Convention and its members.

The two-day meeting in June, therefore, should be seen as only being the beginning of a dialogue. This approach is even more important now as the Convention concludes the so-called listening phase and moves on to sittings in working groups to develop policies and recommendations in areas such as fundamental rights, home and justice affairs and citizens and institutions.

The civil society dialogue with members of the Convention will continue until the end of 2002. After that the Convention will produce a series of documents with recommendations to the Intergovernmental Conference (IGC) to start in 2004.

MV

TAIEX seminar

# Implementing employment directives in candidate countries

As reported in our May *Newsletter* (p. 7), the TAIEX office of DG Enlargement in the European Commission had accepted a proposal of ILGA-Europe to arrange a seminar for government officials and NGO representatives from the 13 accession countries to provide training on the implementation of the Framework Directive against discrimination in employment (Directive 2000/78/EC) and the Gender Employment Directive (Directive 1976/207/EEC recently revised, see p. 13) in relation to sexual orientation and gender identity discrimination.

This seminar took place on 10-11 July 2002 in Brussels and was jointly organised by the TAIEX office and ILGA-Europe. Its agenda included presentations by speakers from the Commission

giving detailed overviews of the directives and external experts highlighting the particular areas of concern in relation to sexual orientation and gender identity discrimination as well as practical experiences on the implementation process in some of the member states.

The two-day seminar was attended by 30 NGO participants representing lesbian, gay, bisexual, and transgender organisations from all the candidate countries and representatives from the central administrations of 11 candidate countries (Bulgaria, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and Turkey).

Paolo Gozzi from the TAIEX Office opened the seminar welcoming all participants and

introduced the TAIEX office and its activities. He emphasised that there is a significant shift in the nomenclature from “accession country” to “candidate country” as the future members have so much advanced in the enlargement process that they are now considered candidates. This, of course, would also mean that all Community legislation must now be fully transposed into the national legislation of these countries. Barbara Nolan, Head of the Anti-discrimination Unit of DG Employment and Social Affairs, stressed that the EU is

which the two Article 13 directives had been adopted.

Anthony Lockett, DG Employment and Social Affairs, gave an overview of the introduction and development of the anti-discrimination work at EU level. He emphasised that the Copenhagen political criteria setting the conditions for EU enlargement includes a correct implementation of the Community legislation including the two Article 13 directives. He then outlined the different strands of the Community Action Programme to combat

## There is a significant shift in the nomenclature from “accession country” to “candidate country”

much more than an economic club and illustrated her statement by referring to the speed with

bat discrimination (2001-2006). Agreements with some candidate countries to participate in this

action programme have already been finalised and even signed. The action programme, therefore, will be open for participation for Bulgaria, Romania, Hungary and Cyprus in 2002 and for Slovakia and possibly Turkey in 2003.

### Implementation of the Framework Directive

Mark Bell, lecturer at law, Leicester University, presented an analysis of the Employment Directive with particular focus on sexual orientation discrimination. He explained the scope of the directive giving examples of what direct and indirect discrimination would imply as well as the definition of harassment and the directive's inclusion of "instruction to discriminate". Moreover, the analysis included an overview of the exemptions in relation to religious employment and the remedies and enforcement mechanisms such as the role of NGOs, the shift in the burden of proof and the periodic review.

One of the issues raised by some of the participants related to the meaning of the concept of transposing EU law into national law and whether there was a need to specifically include sexual orientation in the wording of national laws. Judging from the reports on the progress with regard to the implementation of the Framework Directive there seem to be various solutions and approaches in the candidate countries. While countries such as Lithuania and the Czech Republic have included explicit reference to sexual orientation in their new labour codes, others, such as Malta and Cyprus, do not expressly mention sexual orientation in their draft proposals. In the case of Malta it will be a general ban on discrimination, and sexual orientation is considered to fall under the scope of application. In the case of Cyprus sexual orientation is seen to fall under the scope of "unfair dismissal". Slovenia and Latvia have adopted new labour codes. In Latvia there is no explicit mentioning of sexual orientation as a

### info on TAIEX

**TAIEX is a Commission Office supported by a PHARE multi-country programme and is part of the Directorate-General Enlargement of the European Commission. TAIEX was set up in January 1996 to provide the associated countries of Central and Eastern Europe with technical assistance on approximation of legislation. TAIEX's mandate does currently cover the entire Community legislation, which amounts to more than 80.000 pages of legal texts. TAIEX offers a range of technical assistance services drawing on the expertise of officials from EU Member States, the Commission services and all other relevant public and semi-public bodies at European level and in the member states such as associations of economic operators.**



**For more information on the TAIEX services see <http://cadmos.carlbro.be>**

**The seminar documents and the seminar report can also be downloaded from the ILGA-Europe web-site**

discrimination ground, but it is to fall under "other factors" as the law enforces a general ban on discrimination. Slovenia has included sexual orientation discrimination in the scope of the law but it is not expressly included as a prohibited ground for dismissal from work.

In its long line of case law regarding the implementation of directives, the European Court of Justice has been calling for an explicit and specific transposition of directives in order to secure that Community legislation is applied uniformly throughout the member states. Therefore, it seems likely that the Court in a future case on the transposition of the Framework Directive would find it necessary to include sexual orientation in the wording of a national law seeking to implement the Framework Directive. This approach on full transposition of Community law was also supported by comments made by Mr Lockett.

### Implementing the Gender Employment Directive

Dimetri Kontizas, DG Employment and Social Affairs, gave an overview of the development of the Community's gender equality

policy. He presented the recently adopted revision of the 1976 Gender Employment Directive, explaining that it has been the basis for many rulings handed down by the European Court of Justice. He stressed that it was necessary to implement the case law of the Court into a new and revised directive. Monica Fuentes García of the European Court of Justice gave a presentation of the Court's jurisprudence on this directive focusing on case C-13/94, *P v S and Cornwall County Council*. In this case, the Court concluded that discrimination of a transsexual by her employer fell within the scope of the Gender Employment Directive.

Mark Bell then analysed the revised Gender Employment Directive with regard to its implications for gender identity discrimination. He emphasised that the Court's ruling in *P v S* is not very well known but has an impact on the directive's implementation into national legislation as it clearly also covers gender identity discrimination.

### Going beyond employment discrimination

A special session of the seminar was dedicated to discuss the need

for further legislation to combat sexual orientation and gender identity discrimination. Kurt Krickler, co-chair of ILGA-Europe, addressed the hierarchy in the protection from discrimination that currently exists between the grounds listed in Article 13 EC. The Race Directive covers areas outside employment but the Framework Directive covering the other Article 13 grounds is limited to the field of employment. ILGA-Europe has recently published a policy paper, which highlights the areas that need to be addressed in future EU anti-discrimination legislation (see *May Newsletter*, p. 2).

Krickler pointed out that member states and candidate countries do not need to wait for EU legislation in order to introduce legislation giving protection beyond the scope of the employment directive. He mentioned the Irish Equality Act as an example where all grounds of discrimination enjoy an equal level of protection. Such an approach also facilitates the handling of multiple discrimination, i. e. the discrimination faced by a person on several different grounds, for example age, disability and sexual orientation.

According to reports from participants some candidate countries are actually considering the non-hierarchical approach. The Czech Republic has recently set up a working group to prepare a proposal for a single anti-discrimination act, the work will be based on the Irish Equality Act. Bulgaria is currently debating an anti-discrimination draft bill covering all grounds and providing the creation of a committee covering gender, race and other grounds. This bill would transpose both the Race Directive, the Gender Employment Directive and the Framework Directive. Estonia is soon to be drafting an equality act that will include sexual orientation discrimination. The Slovak government has supported an equal treatment act, the parliament, however, has been reluctant to ratify the proposal because it specifically mentions

sexual orientation discrimination. Due to upcoming parliamentary elections it seems unlikely that the anti-discrimination bill will be adopted before the elections.

### The role of the European Parliament

In its annual reports on the candidate countries' progress towards accession, the European Parliament has been monitoring the developments in all the countries. The Parliament will also be voting on the admission of each individual candidate country. The Intergroup on Lesbian and Gay Rights in the European Parliament has been particularly active in promoting and supporting progress and keeping the issue of sexual orientation discrimination on the enlargement agenda.

Joke Swiebel, MEP and chair of the Intergroup (PES/NL), spoke at the closing session. She underlined that in the context of enlargement gay issues are mainly twofold. First, some countries

still have to eliminate discriminatory age of consent provisions from their penal codes. This question clearly belongs to the Copenhagen political criteria that must be met before accession. Secondly, there is the implementation of the Framework Employment Directive. This is part of the *acquis communautaire*. In her view, it is necessary that sexual orientation be mentioned explicitly as a non-discrimination ground in the legislation to be adopted by member states old and new. The idea that a general equality clause would suffice is legally unsound and politically dangerous. Such an approach would give the impression that some forms of discrimination are to be taken more seriously than others. In general, a majority in the European Parliament shares the view that in the end the safeguards against all forms of discrimination should offer the same level of protection and cover the same areas of social life. In this respect, much work remains to be done.

Joke Swiebel also informed that the implementation of the

Framework Directive by the member states will be formally on the EP agenda when the European Commission will report to the Council and Parliament – as foreseen in the directive itself – after December 2005, i. e. in the next parliamentary period (2004-2009). In the short run, the Intergroup has asked Commissioner Günter Verheugen to give an update on LGBT issues in the context of enlargement at the meeting of the Intergroup in Strasbourg in September 2002. The Intergroup will continue to work together with NGOs both at the European and at the national level to mobilise effective political pressure for gay and lesbian equality in the enlarged European Union.

### Conclusion

Much of the value of seminars such as this lies in the exchange of a wide range of information, both formally and informally. The TAIEX seminar gave LGBT organisations and representatives of their national governments an opportunity to make real

progress towards identifying and eliminating discrimination.

ILGA-Europe executive director Ailsa Spindler, who chaired the seminar, said: "I welcome the opportunity for all present to exchange information, including examples of best practice. This was, in many cases, the first time a representative from a country's LGBT community had sat at the same table as a representative of their government. Even in those countries where progress towards meeting the accession criteria is well advanced, meetings such as the TAIEX seminar will improve the dialogue between government and LGBT activists. For those countries where there is much progress still to be made, examples of good practice and 'peer pressure' will help to encourage legislators to make improvements. ILGA-Europe is delighted that, through initiatives such as the TAIEX programme, the Commission is devoting resources to help ensure compliance with the Copenhagen criteria with respect to equal treatment of LGBT citizens."

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## Social exclusion

# An issue for LGBT people

Much of the work to progress LGBT rights has focused on changes to the law to ensure formal equality for LGBT people exists. The fight against social exclusion provides another focus for equality – not least in the European context: how day-to-day policies can be used to improve the situation of those who experience disadvantage.

### The development of EU policy

In 2000 the European Council agreed a strategy and a set of actions to combat poverty and

social exclusion. These priorities were part of a larger package, which includes the work to combat discrimination under Article 13 and work to promote gender equality. The strategy was not stand-alone but arose from a strategic goal of the EU becoming "the most competitive and dynamic knowledge-based economy in the world", capable of sustained economic growth with more and better jobs and greater social cohesion.

The implementation of the strategy will take place through two key activities:

- An "open method" of policy coordination
- An action programme.

The second of these, the social inclusion action programme<sup>1</sup>, is similar to the action programme to combat discrimination under which ILGA-Europe receives core funding and a number of lesbian and gay organisations in EU member states are receiving funding to undertake projects.

The "open method" of co-ordination consists of

- common objectives,
- national action plans, and

- a joint Commission and Council report.

Four common objectives were set for the national plans.<sup>2</sup> (Specific targets were not set. This contrasts, for example, with strict rules that each member state must observe in its budget as part of EMU.) The 4 objectives are:

- to facilitate participation in employment and access by all to the resources, rights, goods and services;
- to prevent the risks of exclusion;
- to help the most vulnerable; and
- to mobilise all relevant bodies.

These objectives were developed in further detail in an annex

<sup>1</sup> See the Commission's web page on the Community Action Programme to Combat Social Exclusion 2002-2006 for more details: [http://www.europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/ex\\_prog\\_en.htm](http://www.europa.eu.int/comm/employment_social/soc-prot/soc-incl/ex_prog_en.htm)

<sup>2</sup> The text setting out the common objectives and the "sub-objectives" for each of the four main objectives is available at [http://www.europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/approb\\_en.pdf](http://www.europa.eu.int/comm/employment_social/soc-prot/soc-incl/approb_en.pdf)

attached to the Presidency Conclusions of the Nice European Council in December 2000.<sup>3</sup>

The first national action plans were submitted in 2001,<sup>4</sup> and it is planned that future national action plans will be submitted every two years after that.

The Commission and Council have published the first Joint Report on Social Inclusion.<sup>5</sup> This report documents and analyses the situation across all member states and identifies key challenges for the future.

In addition, the EU, through the Social Protection Committee (SPC), has begun work on developing common indicators on poverty and social exclusion. The aim of having common indicators is to enable the EU to monitor progress towards the common objectives. The SPC presented a report recommending a set of 18 indicators in October 2001.<sup>6</sup>

### The experience of the first round

Three member states raised LGB issues in their national action plans: Germany, Ireland and Sweden. The Joint Report also mentions sexual orientation. There appears to be no explicit reference to the experience or needs of transgender people in any of the documents.

#### ■ Germany

The inclusion of LGB people in the German national action plan comes under the second of the four objectives: to prevent the risks of exclusion. In particular, Germany has included same-sex couples as coming within the scope of the commitment in the Nice conclusions “to implement action to preserve family solidarity in all its forms”.<sup>7</sup>

The plan notes the coming into force of the partnership law.

A second reference to LGB rights in the German action plan is

### What is social exclusion?

**The Joint Report on Social Inclusion of the Commission and the Council gives the following definition: *Social exclusion and poverty occurs when people are prevented from participating fully in economic, social and civil life and/or when their access to income and other resources (personal, family, social and cultural) is so inadequate as to exclude them from enjoying a standard of living and quality of life that is regarded as acceptable by the society in which they live. In such situations people often are unable to fully access their fundamental rights.***

made in the section that lists examples of good practice. The plan cites the programme of the government of the Land of Schleswig-Holstein. In 1997, the Land government established a regional ministry portfolio and developed an anti-discrimination programme.

#### ■ Sweden

In the Swedish action plan, the reference to LGB people arises in the context of the third objective: to help the most vulnerable. The particular sub-objective from the Nice conclusions is “to move towards the elimination of social exclusion among children and give them every opportunity for social integration”.

The Swedish National Agency for Education has been instructed to investigate the situation as regards racism, sexual harassment, homophobia and gender-related bullying in schools and to report by November 2001.

The Swedish Employment Action Plan is included as an annex to the social inclusion action plan, and there are a number of references in it to the National Action Plan Against Racism, Xenophobia, Homophobia and Discrimination.

#### ■ Ireland

The Irish action plan also quotes the third objective of helping the most vulnerable. However, they cite a different sub-objective: “To

promote the social integration of women and men at risk of facing persistent poverty, for example because they have a disability or belong to a group experiencing particular integration problems”.

The Irish plan refers to the inclusion of sexual orientation in the equality legislation and the decision of the Equality Authority to set up an Advisory Committee on Equality for Lesbians, Gays and Bisexuals (see also page 19).

### The Joint Report

The Joint Report of the Commission and Council draws on the references to sexual orientation contained in the German,

to tackling social exclusion. This comment seems particularly relevant to the references to sexual orientation.

### Future opportunities

Opportunities for progress towards equality for LGBT people are more likely to occur in the national action plans and future joint reports than in the action programme – principally because the Commission is keen to avoid overlaps across a number of programmes under which NGOs can receive funding and seems to unofficially classify LGB issues under the heading “discrimination”.

A core challenge is ensuring that the term “social exclusion” is properly understood and that all aspects of it are included in the fight against exclusion. The appendix to the Greek action plan provides a brief discussion of the difference with some examples to illustrate the point that LGBT organisations could adapt for future use.<sup>8</sup> For example, although the definition used by the Commission and Council includes exclusion from participation in social and civil life, none of the indicators developed by the SPC reflect this aspect of social exclusion.

### The first national action plans were submitted in 2001, and it is planned that future national action plans will be submitted every two years after that

Swedish and Irish action plans. It noted that all member states had submitted national action plans by the deadline of June 2001. However, the short time available for preparing the national action plans meant that many of them reported on actions that had already been decided on rather than setting out a new approach

The Joint Report provides a number of useful references that LGBT organisations can use in lobbying on future national plans and when making a submission to the Commission when it considers the drafting of the next Joint Report. It identifies discrimination as an important factor in social exclusion

<sup>3</sup> The annex is available in three languages at <http://ue.eu.int/Newsroom/related.asp?max=1&bid=75&grp=3026&lang=2>

<sup>4</sup> The texts of all national action plans are available in their original languages at [http://www.europa.eu.int/comm/employment\\_social/news/2001/jun/napsincl2001\\_en.html](http://www.europa.eu.int/comm/employment_social/news/2001/jun/napsincl2001_en.html)

<sup>5</sup> The Joint Report has been published in three parts in each of the working languages of the EU. It is available at [http://www.europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/joint\\_rep\\_en.htm](http://www.europa.eu.int/comm/employment_social/soc-prot/soc-incl/joint_rep_en.htm)

<sup>6</sup> The report on the first set of indicators is available in each of the languages at

[http://www.europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/indicator\\_en.htm](http://www.europa.eu.int/comm/employment_social/soc-prot/soc-incl/indicator_en.htm)

<sup>7</sup> See page 33 of the English version of the German National Action Plan: [http://www.europa.eu.int/comm/employment\\_social/news/2001/jun/napincl2001de\\_en.pdf](http://www.europa.eu.int/comm/employment_social/news/2001/jun/napincl2001de_en.pdf) In the German text, it appears on page 34. This version is available at [http://www.europa.eu.int/comm/employment\\_social/news/2001/jun/napincl2001de\\_de.pdf](http://www.europa.eu.int/comm/employment_social/news/2001/jun/napincl2001de_de.pdf)

<sup>8</sup> See footnote 4 for the address of the web page containing links to all of the national action plans. The Greek plan is available in Greek and English.

and notes that some countries have pointed to sexual orientation as a relevant ground of discrimination (page 24 of the English language version); it notes the lack of data on discrimination (page 24); it points to the need for the provision of education, housing, health and other services to address the needs of those who are at risk of social exclusion and enable them to access their fundamental rights (pages 40-59).

Although most countries did not explicitly name sexual orientation or transgender issues, the Joint Report does say “A few Member States (Netherlands, Finland, Sweden, Belgium, Ireland and Greece) clearly establish a link between equal status and non-discrimination measures and acknowledge that equality of opportunity and legal measures to combat discrimination are now an essential part of EU social policy and a key means to

increase social inclusion.” The nature of the work on social exclusion may also present a challenge to ILGA-Europe and its member organisations. Much of the work ILGA-Europe and its members are doing has been in the area of human rights and law reform: decriminalisation, equal age of consent, recognition of partnership rights, etc. Success is measured with the introduction of “hard” results like new laws or directives. In contrast, much of

the work on social inclusion is in “soft” policy. Engaging with this area of policy work will entail developing a knowledge and understanding of developments and the approaches used in it.

As with almost every area of EU and national policy, the high degree of silence on the relevance of policies for transgender people will need to be tackled.

## European Parliament

# Increased pressure on Hungary, Bulgaria and Cyprus

In September 2001 the European Parliament included in its resolution on accession a call on the governments of Hungary, Cyprus, Bulgaria and Romania to repeal laws discriminating against homosexual men and lesbian women. With Romania repealing its notorious penal code Article 200 three months later, the pressure on the other three countries increased.

On 13 June 2002 the Parliament adopted the Brok report on the state of the enlargement negotiations, which is an annual report on the accession countries’ progress towards membership in the EU. The report contains a resolution including calls for specific actions to be undertaken by the accession countries. It was debated and submitted to the plenary by the Parliament’s Foreign Affairs Committee. The Committee’s report included a recommendation to the governments of Cyprus and Bulgaria to repeal criminal law provisions violating the human rights of lesbian women and gay men but forgot Hungary with similar laws. Therefore, ILGA-Europe worked with Members of the European Parliament to ensure that the resolution was amended

accordingly before being voted by the plenary.

This was successful, and the final resolution called upon the governments of all three countries to “eliminate provisions in the penal code which discriminates against homosexual men and lesbian women”. All three have discriminatory age of consent laws – a form of discrimination that the European Human Rights Commission had ruled to be a violation of the European Convention on Human Rights. Each country also has other discriminatory criminal law provisions.

“The European Parliament reaffirmed its commitment to the importance of an implementation of human rights also for lesbians and gays in the applicant countries”, states Dutch Green MEP Joost Lagendijk who tabled the amendments to the report both this and last year: “We agree with Commissioner Verheugen that these rights are part of the Copenhagen criteria.”

EU Commissioner responsible for Enlargement, Günter Verheugen, has on several occasions stressed that elimination of discrimination based on sexual ori-

entation reflects basic principles of the EU and that new member states are expected to accept these principles. In 1998, the

and will afterwards go through an adoption procedure in which the European Parliament and the national parliaments will be

## Cyprus follows

**On 11 July 2002 the Cyprus parliament decided to give in to the pressure from the European Union and amended its age of consent law to treat homosexual and heterosexual relations equally. In order to remain on course for accession Cyprus reluctantly compromised to raise the age of consent for heterosexuals from 16 to 17 and to lower the age of consent for homosexuals from 18 to 17. Eliminating the discriminatory age of consent is a major achievement. It is however “sad that the changes are brought about in response of EU pressure rather than being motivated because homosexuals’ rights are human rights” commented ILGA-Europe member Alecos Modinos of the Gay Liberation Movement of Cyprus. ILGA-Europe issued a media release on the law reform on 12 July.**

European Parliament already warned that it would not give its consent to the accession of any country that “through its legislation or policies violates human rights of lesbians and gay men”.

With the adoption of the Brok report, the European Parliament is sending a strong signal at a crucial moment for the EU enlargement process. The enlargement negotiations are to be finalised during the Danish EU presidency in autumn 2002

asked to give their consent to the admission of each new member state.

“In this stage of the accession process the pressure of the European Parliament and the Commission proves to be effective as we could see with the developments in Romania and in Cyprus where the laws have been changed,” adds Lagendijk.

European Parliament

# Urgency resolution on Egypt

Some Members of the European Parliament have been particular involved in protesting and monitoring the developments of the prosecution of allegedly gay men in Egypt. We have been continuously reporting on the actions undertaken by MEPs and ILGA-Europe in the so-called *Cairo 52* or *Queen Boat* case. It dates back to May last year when 55 men were arrested in a disco, and 52 of them were charged in a state security court on 18 July 2001 for “obscene behaviour” and “expressing contempt for religion”. On 14 November, 29 of the 52 men on trial were acquitted and the other 23 convicted to between one and five years of hard labour. Despite an immense pressure from international human rights organisations and politicians the Egyptian government announced on 23 June this year a decision to put 50 of the 52 men on a retrial.

As a reaction to the ongoing human rights violation in Egypt in general and to the announcement of the retrial in particular, MEP Michael Cashman (PES/UK) initiated an urgency resolution the Parliament debated and adopted on 4 July. It is the Parliament’s third resolution dealing with human rights violations against homosexuals in Egypt during the past year.

In the urgency resolution the EP calls on the Egyptian authorities to call a halt to all prosecution of citizens on the grounds of homosexuality and to protect their individual freedoms. The Parliament emphasises that according to Article 14, 7 of the International Covenant on Civil and Political Rights no one should be tried or punished again for an offence for which this person has already been finally convicted or acquitted.

After the adoption of the resolution Cashman firmly stated that

“the 50 men should be afforded their fundamental universal human rights, namely: right to a fair trial; right to freedom of thought; right to freedom from torture and cruel or inhuman treatment; right to privacy; right to equality before the law. Everybody is entitled to the protection that these rights provide”. Cashman is now calling on the Commission and the Council to express serious concern to the Egyptian institutions regarding the retrial of the men and to closely follow developments dur-

ing the retrial.

The beginning of a retrial and the Parliament’s resolution of 4 July come at a time where the adopted EU-Egypt Euro-Mediterranean Agreement is open for ratification by the parties. In November 2001 the EP had already adopted a resolution on the occasion of the conclusion of the Association Agreement expressing deep concern of the arrest, detention and trial of the 52 men and calling on Egyptian authorities to continue their efforts to ensure greater respect

for human rights. In its resolution of 4 July, the Parliament underlines the human rights clause in Article 2 of the Association Agreement and stresses that more effort and attention is needed to ensure that human rights are respected.

On 5 July ILGA-Europe issued a media release calling for a shift in the EU’s approach in promoting democracy and human rights in the world. It was pointed out that if the EU is to succeed in having a coherent approach in promot-

## European Parliament resolution on human rights violations in Egypt Human rights: Persecution of homosexuals in Egypt

*The European Parliament,*

• having regard to the Universal Declaration of Human Rights of 1948,  
• having regard to Article 11(1) of the Treaty on European Union and Article 177 of the EC Treaty, which establish the promotion of human rights as an objective of the common foreign and security policy,  
• having regard to Article 2 of the EU-Egypt Euro-Mediterranean Agreement, now open for ratification by the parties,  
• having regard to its previous resolutions on human rights in Egypt, particularly that of 14 June 2001<sup>1</sup>, and to its resolution of 29 November 2001<sup>2</sup> on the conclusion of the aforementioned Agreement, particularly paragraph 6 thereof, which ‘calls upon the authorities to free the 23 men given custodial sentences [on grounds relating to

their homosexuality] as a matter of urgency’,  
• having regard to Egyptian law, which does not penalise homosexuality as a criminal offence,  
A. whereas a new trial will begin on 2 July 2002 for 50 of the 52 men arrested at a Cairo gay night-club on a Nile riverboat last year,  
B. whereas 23 of them were sentenced in November 2001 to jail terms ranging from one to five years on charges of debauchery, two of them, who were accused of being ring-leaders, were convicted of crimes of contempt for religion and given longer sentences and 29 were found not guilty,

1. Calls on the Egyptian authorities to call a halt to all prosecution of citizens on grounds of homosexuality and to protect their individual freedoms;

2. Stresses that freedom of information, speech and association are fundamental aspects of developing and deepening democracy;  
3. Expresses its concern, reiterates that the 52 men should be afforded universal human rights – namely: the right to a fair trial; the right to freedom of thought, conscience and religion; the right to freedom from torture and cruel or inhuman treatment; the right to privacy; the right to equality before the law –, and reaffirms Article 14.7 of the International Covenant on Civil and Political Rights, which states that ‘no one should be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country’;  
4. Underlines the fact that Article 2 of the Association Agreement

includes a clause demanding that human rights and democratic principles be respected, but believes that much more effort and attention is needed to ensure that these are upheld in practice;  
5. Stresses that particular attention must be paid to prohibiting discrimination on grounds of sexual orientation;  
6. Asks the Commission and the Council to express serious concern to the Egyptian authorities regarding the retrial of 52 Egyptian citizens on grounds of their sexual orientation, and to follow closely developments during the retrial set to commence on 2 July;  
7. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the member countries of the UN Human Rights Commission and the Government of Egypt.

<sup>1</sup> OJ C 53 E, 28.2.2002, p. 406.

<sup>2</sup> OJ C 153 E, 27.6.2002, p. 332.

ing human rights, it is time to start implementing the measures set out in the human rights clauses. Since 1992, the EU has included in all its agreements with third countries a clause

defining respect for human rights as an “essential element” in the relationship between the EU and the third country. But so far the Commission and the Council have been reluctant to use these

human rights clauses and have continued to set policies of trade and economic co-operation as higher values. The European Parliament, by adopting this urgency resolution, has shown the will to

emphasise human rights, an approach which ILGA-Europe hopes will be followed by the other EU institutions.

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## European Parliament

# Sexual and reproductive health

On 3 July the Parliament adopted a report and resolution on sexual and reproductive health and rights in the EU and the candidate countries. The resolution is based on an own initiative report from the Women’s Rights and Equal Opportunities Committee, drafted by MEP Anne van Lancker (PES/B). Despite strong opposition against the report and its recommendations it was adopted with 280 votes in favour, 240 against and 28 abstentions.

Before drafting the report the

Committee held a public hearing on sexual and reproductive rights and reproductive health in the European Union and the candidate countries. This hearing took place in the EP in Brussels on 26 February 2002. Given the fact that many sexual and reproductive health services and rights are restricted to married couples, ILGA-Europe worked together with MEPs to have a recommendation included which would take the increasing number of people into consideration who choose a different lifestyle than

marriage. This co-operation resulted in recommendation 24 of the adopted resolution: “calling on the governments of the Member States and the Candidate Countries to provide access to sexual and reproductive health services without any discrimination on the grounds of sexual orientation, gender identity or marital status”.

The report is a follow-up on the UN International Conference on Population and Development (ICPD) and the ICPD Platform

and Action. The report launches an appeal to the member states and the accession countries to review the implementation of the ICPD Platform and Action and the safeguarding of international human rights instruments.

Commissioner David Byrne, responsible for Health, Environment and Consumer Protection, said afterwards that sexual and reproductive health is a health determinant and therefore part of the EU’s Health Strategy.

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## European Union

# New protection against workplace discrimination

In 1996, the European Court of Justice delivered a historic judgment in the case *P v S and Cornwall County Council*. It decided that the dismissal of a woman as a consequence of her decision to undergo gender reassignment was unlawful sex discrimination contrary to the 1976 Equal Treatment Directive (207/76). Although more than five years have passed since this judgment, few member states have amended their gender equality laws to provide explicitly for the protection of transgender people against discrimination. However, an opportunity for progress in this area is presented by the adoption by the European Parliament and Council in June 2002 of a package of amendments to the Equal Treatment Directive.

The decision to revise this directive was a consequence of the directives adopted in 2000 under Article 13 EC. These provided higher standards of protection against discrimination and it was necessary to make similar changes to EU gender equality laws. Following the Court’s decision in the *P* case, the new measures will also protect individuals facing discrimination related to gender reassignment. There are three aspects of particular significance in the revised directive.

First, there is a clear ban on harassment “related to the sex of a person”. Employers are encouraged to take preventative steps to combat harassment at work. This should also include unwanted conduct (verbal or physical)

linked to gender reassignment. Second, organisations working to promote equal treatment are entitled to bring cases “on behalf or in support of” a victim of discrimination, with his or her agreement. This means NGOs working on behalf of transgender persons could assist them in challenging discrimination in employment. Finally, member states must create bodies for the promotion of equal treatment, which shall provide “independent assistance to victims of discrimination”. This could include legal advice or even assistance with the financial costs of bringing a case.

The directive should be published in the EU Official Journal in September 2002, and national authorities will have three years from

that date in which to bring their laws into line with the standards in the new directive. It is crucial that the implementation process is carefully monitored to ensure express reference to the protection of transgender people in national laws. ILGA-Europe will be producing a guide to the new directive and the key issues to lobby for with national governments. This directive only concerns employment discrimination. The EU Commission will now propose a further directive on gender discrimination in other areas, such as education and healthcare. ILGA-Europe is actively campaigning to ensure this includes protection against discrimination based on gender identity.

In our series introducing European NGOs ILGA-Europe is working together with at European level, we are presenting in this issue AGE, the European Older People's Platform. In previous issues we have introduced the Social Platform (November 2001), SOLIDAR (February 2002) and the European Network Against Racism (May 2002).

## Contact details

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NGO co-operation at EU level

# AGE – European Older People's Platform

AGE, the European Older People's Platform, is a not-for-profit network of organisations and individuals which aims at promoting good policy and practice on ageing in the interests of older people in the European Union. AGE represents all areas of ageing policy and older people's interests. It draws its legitimacy from the fact that older people

## Old Europe

Statistics reveal the importance of society ageing in Europe. The table shows persons 60 years and over as a percentage of the total population up to 2050 (Source: Eurostat)

Country	2000	2020	2050
Austria	20,4	28	40
Belgium	22,1	30	38
Denmark	19,9	28	36
Finland	19,8	30	36
France	20,7	29	38
Germany	22,9	30	41
Greece	23,2	29	41
Ireland	15,8	24	39
Italy	24,0	32	44
Luxembourg	19,6	28	36
Netherlands	18,5	29	37
Portugal	20,9	26	38
Spain	21,8	28	44
Sweden	20,2	29	36
UK	20,9	27	37
EU 15	21,8	29	40

are directly represented in AGE (in accordance with the Platform's statutes, 51% of the organisations represented at the General Assembly must be organisations of older people, as opposed to organisations for older people). AGE therefore voices and defends the interests of older and retired people in the

European Union and raises awareness of the issues that truly concern them.

AGE saw the light in January 2001 after a two-year consultation process between the different existing European networks of older people's associations. The division of representation and scattered efforts had weakened the voice of older people and fuelled the arguments to intensify co-operation and better co-ordinate activities among the different networks. This took shape with the creation of a common platform open to all European, national or regional older people's organisations. The European Commission recognised the importance of such representation at European level and agreed to fund AGE under the anti-discrimination programme. Like the other European organisations funded under this budget line, one of AGE's main activities is to monitor the transposition and the implementation of the anti-discrimination directives in the 15 EU member states. Other cornerstones of AGE's work are integration, participation, inclusion, access, choice, well being, independence, equal opportunities, life course approach and inter-generational solidarity.

The main underlying principle of AGE's work is the recognition of older and retired people as a resource. The ageing of society is often seen in negative terms, i. e. in terms of challenges posed to the age structure of the labour force, the sustainability of social protection schemes and the

financing and organisation of (health care) services. However, this negative image does not do justice to the enormous cultural and professional resource represented by older and retired people. Their vast contribution to society, often in a voluntary capacity, is too often overlooked and needs to be recognised. A change of attitudes is needed if the European society is to become a society for all ages, as well as a change in policies. As its president Steen Langebæk notes: "The ageing of the European population does not have to create a crisis. It is a gradual process, so it is still possible to plan for change. However the EU governments must have the political courage and foresight to act now. If they do, both older and younger people and Europe stand to win – if they do not, everyone stands to lose."

Age discrimination is directly addressed in Article 13 EC and serves as a basis for AGE activities in social and employment policies. Although committed to follow all issues of interest for older people, AGE adopted four main priorities in addition to the anti-discrimination policies: the newly adopted European co-operation on pension and social protection, on social exclusion and the European initiatives on life-long learning.

At international level, 2002 has been an active year for AGE with the negotiations and the adoption of the UN Strategy on Ageing in Madrid in April 2002, and the coming adoption of the fol-

low-up to this Strategy at European level. The Regional Implementation Strategy to be adopted in Berlin reaffirms that societies share common values, including those pertaining to human rights, fundamental freedoms and the fight against all forms of discrimination. So far, the policy directions laid out in the Commitments are in many ways fairly positive. They start from mainstreaming ageing in all policy fields and ensuring full integration and participation of older persons in society. The draft states governments' commitment to eliminate all forms of discrimination and to combat all forms of neglect, abuse and violence. On the other hand there are few firm commitments that would imply governments providing extra resources.

AGE collaborates with ILGA-Europe through the Platform of European Social NGOs and has established good working relations notably in the areas of anti-discrimination. Along with ILGA-Europe and other NGOs, AGE works towards a Europe where all citizens are equal. "Through collaborative projects, we are able to speak with a stronger voice than we could if we worked alone", says Anne Sophie Parent, AGE's new director. "In many areas of policy we share common aims and concerns, and I anticipate further opportunities for close co-operation with ILGA-Europe."

CATHERINE DAURELE  
 Officer, AGE – European Older People's Platform

## Homosexuality in Russia

# Current legal trends

Criminal prosecution of homosexual acts was repealed in Russia in 1993 after the initial wave of democracy and liberty that swept the country upon the collapse of the former Soviet Union. Prior to 1993, consensual homosexual relations could result in imprisonment of one to five years. During the Soviet era, criminal prosecution of homosexuals lasted almost sixty years. The total ban was finally repealed primarily due to pressure from the Council of Europe. Although sexual relations between two women were never banned by the criminal code, lesbians suffered great humiliating and personality destroying ordeals in psychiatric clinics. In 1999, the Russian Ministry of Health removed homosexuality from the classification of mental and behavioural disorders. As a result, the present Russian Federation does not officially consider gays and lesbians as criminals or mentally ill. Such positive changes in the state approach however still have not lead to positive developments in Russian legislation. Discrimination on the grounds of sexual orientation (or gender identity) is not directly banned by any current law, and same-sex couples are still denied any family rights and not protected under any legislation.

Today only one legal act of the Russian Federation directly discriminates against homosexuals. It is the 14 September 2001 Order of the Health Minister establishing "Procedures for medical observations of the donors of blood and its components". According to this document persons with AIDS, HIV and those belonging to so-called "risk groups" (homosexuals, drug-users, prostitutes) are banned from donating blood. During my talks with a high ranking official from one of Moscow's centres of blood transfusion I realised that the ban on homosexuals to donate blood

cannot be enforced in practice due to the current Russian circumstances: Homosexuality is a latent characteristic that is not obvious in most cases, and people would usually not reveal it in such situations. The blood, however, is always screened for HIV. According to officials of the blood transfusion centres the non-acceptance of homosexuals as donors rests as a vestige of Soviet times. In the spring of 2002, State Duma deputies, indeed, attempted to revive other vestiges of the totalitarian epoch.

Presently, we can observe three tendencies in the field of penal legislation that also affect gays and lesbians:

- attempts to re-criminalise homosexual behaviour as a means of political campaigning on the threshold of parliamentary elections in December 2003 and elections at other levels;
- plans to amend the criminal code regarding sexual offences in general and to tighten the provisions against sexual exploitation of minors in particular;
- attempts to legally recognise sexual minorities' rights by making discrimination on the grounds of sexual orientation an offence.

## Re-criminalisation attempts

The first trend has materialised in a bill to amend the criminal code as to re-criminalise homosexuality, or more precisely: consensual anal intercourse between men in private above the age of consent. According to the explanatory notes of the bill, other forms of homosexual acts (as well as female homosexuality) are not intended to be made illegal. Later, a bill to also criminalise sexual acts between women was proposed by Liberal Democrat deputy A. Mitrofanov in order to make men and women equal before the law.



photo: Kurt Krieffler

**Pierre Noël, ILGA-Europe's representative to the ILGA-World Board (left), and Russian gay and lesbian activists – Ignat Fialkovsky, Sergey Popov, Marina Balakina and Nadezhda Nartova – were speaking at a press conference in St. Petersburg on 8 June. Local LGBT groups participated in a three-day forum on social solidarity.**

However, it should be noted that the latter bill has never been officially introduced and discussed in parliament.

The authors of the bill to outlaw homosexual relations between men emphasised that such a measure should be introduced to "strengthen public morality and the health of citizens. Its adoption will help to fight venereal diseases and AIDS, the involvement of minors in prostitution, and the distribution of pornog-

raphy." The authors also declared that their bill is supported by the public including religious organisations. The bill was introduced to the Parliament's Lower House by the members of *Narodny deputat* ("People's Deputy") headed by G. Raikov, who use any opportunity to emphasise their pro-presidential position.

It is worth mentioning that one of the authors of the bill is D. Rogozin, chairman of the Russian parliamentary delegation to

## Russian books

Nicolas Alekseyev is the author of the first book in Russia dedicated to the legal aspects of homosexuality. Its title translates as "The Legal Status of Sexual Minorities: Russia in the Light of International Organisations' Practice and the Legislation of Other Countries". It was released by Beck publishing house in Moscow in early 2002.

His new book titled "Gay Marriage: A 21<sup>st</sup> Century Puzzle. Family Status of Same-Sex Couples in International, National and Local Law" has just been released in Russia by Beck publishing house.

To order copies of the books, e-mail the author at [nicolas\\_alekseyev@hotmail.com](mailto:nicolas_alekseyev@hotmail.com) or call Beck publishing house in Moscow (phone 007-095-786-6981).



## Main features of the proposed bill to amend the criminal code regarding sexual offences

■ Increasing the penalty for forced sexual relations, regardless of sexual orientation;  
 ■ Increasing the age of consent both for homosexual and for heterosexual relations from 14 to 16 years, and the maximum penalty for this offence from 4 to 5 years imprisonment. In case of additional negative circumstances the maximum

penalty can go as high as 10 years imprisonment. Only a person who has reached the age of 18 can be prosecuted. Thus, sexual relations between persons below the age of 18 cannot be prosecuted;  
 ■ Increasing the penalty for adults committing debauchery with a person under the age of 16;

■ Increasing the penalty for involving minors into prostitution from 5 to 6 years imprisonment;  
 ■ Introduction of a new provision prohibiting the distribution of pornographic material to a minor; penalty of up to 6 years imprisonment;  
 ■ Prohibiting the organising of prostitution or providing assistance,

including premises; penalty of up to 5 years imprisonment;  
 ■ Prohibiting the production, storage or distribution (including cross-border movement) of pornographic material portraying minors; penalty of up to 5 years imprisonment (up to 8 years in "special circumstances").

the Parliamentary Assembly of the Council of Europe. Subsequently he disassociated himself from the initiative though he did not conceal the fact that he would have not been against criminal prosecution of homosexuals. Asked in various interviews and press conferences, the authors of the bill were unable to prove how this provision could achieve the intended objectives.

The most influential Russian politicians did not comment on the initiative. The reaction of many Russian public figures and statesmen was very negative. Vice-speaker of the Duma, L. Sliska of the pro-Putin faction *Edinstvo* ("Unity") said: "When I saw this legislative initiative it seemed to me that it was connected with 1<sup>st</sup> of April. In our criminal code we have provisions prohibiting non-consensual and forced sexual activity. This is sufficient." The leader of the deputy group *Regiony Rossii* ("Regions of Russia"), O. Morozov, noted that "everyone will laugh at us, I think even African countries ... I do not see any sense in the reintroduction of the criminal punishment for homosexuality which existed in Soviet times."

The reaction of the Russian ombudsman for human rights was negative, too, but at the same time he supported the

raise in the age of consent from 14 to 16 years. The deputy chairman of *Souz Pravyh Sil* ("Union of Right Forces"), A. Barannikov, called attention to the fact that one of the conditions of Russia's entry to the Council of Europe was to repeal the ban on homosexual relations between consenting adults.

The reaction of the Russian media to the initiatives was also very negative. Most of the papers considered the bill as an attempt by the party (which has a rating close to zero) to get political dividends before the elections playing on the minds of the low educated electorate. Most of the media considered the bill a good reason for irony. However, they did not plea for any positive legal changes in the status of sexual minorities either.

At present the bill is in the Legal Committee of the Duma, and most commentators think that it will not even reach its first reading. But even if this happens, it is considered unlikely that it would pass in the current circumstances. It clearly is in contradiction with the Constitution and the country's international obligations including those under the European Convention on Human Rights as interpreted by the European Court of Human Rights. It goes against the presidential policy for fur-

ther rapprochement with Western countries and will never be signed by President V. Putin. However, the initiative played a significant role in attracting public and media attention for the situation of gays and lesbians in Russia.

### Protection from sexual exploitation

The other trend mentioned above – to amend the criminal code regarding sexual offences in

general and to tighten the provisions against sexual exploitation of minors in particular – is reflected by a bill that was presented to the State Duma in the spring of 2002 by a group of deputies headed by the chairman of the Committee for Women, Family and Youth Affairs, T. Goryacheva. The bill provides for the increase of the age of consent for both homosexual and heterosexual relations from 14 to 16 years, and of the maximum penalty for offences against this provision from four to five years imprisonment (this age of consent would only apply if a partner is of age, i. e. above 18). The bill also provides for the tightening up of various other provisions, such as on prostitution, and for the introduction of new provisions, such as on the production, distribution and possession of pornographic material involving minors (for the details see separate box above).

This bill provoked very negative reactions from some leaders of the Russian gay community. The main concern is not the law itself but the fear of its discriminatory application. This fear is fuelled by the fact that at the

## Immediate reaction

**When on the morning of Tuesday, 23 April 2002, the news about the bill to re-criminalise homosexuality in Russia reached the ILGA-Europe office, we reacted literally within minutes. We sent an e-mail to Peter Schieder, president of the Parliamentary Assembly of the Council in Europe, passing on the media release of the LGBT group "HS" in St. Petersburg in which they had disseminated the bad news. The Assembly happened to meet in Strasbourg the very same week for its spring session, and on that very Tuesday, its responsible committee was holding a hearing on Russia's honouring of its human rights obligations under the European Convention. This was indeed a useful coincidence, and ILGA-Europe asked Schieder to also talk with those Russian members of the Assembly who had tabled the bill in the Duma and who were likely to attend the Assembly's session in Strasbourg. We pointed out that the criminalisation of homosexuality indeed would be a violation of the Convention.**

**Peter Schieder reacted immediately, confirming that our message had arrived in time, that he had passed it on to the relevant committees, and that he would try to convince Mr Rogozin in a personal conversation that this bill was not in line with the human rights commitments Russia has entered with its admission to the Council of Europe.**

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same time, a bill was introduced to allow marriage from the age of 14 in case of special circumstances (pregnancy, birth of a child). The proposed new provision concerning the age of consent would not apply to married persons.

The term “minor” defines a person under the age of 18. In many cases it is not possible to guess whether a person is 18 or below that age just by looking at photos or videos. This could turn out to be problematic in the case of the provision prohibiting the possession or storage of pornographic material portraying minors. In practice this could easily lead to an arbitrary application of the law

against innocent people. It cannot be disregarded that many of these provisions could potentially lead to arbitrary and false legal prosecutions.

On 27 June 2002 the bill was passed by the Duma in its first reading by 414 votes with 3 abstentions. No deputies voted against the bill. Its becoming law is now merely a matter of time. It will probably happen during this autumn’s parliamentary session.

#### **Ban on discrimination**

The third trend is about positive rights for LGBT people and has only just started. But this is

already a big step for Russia. A bill prepared by deputy A. Vulf intends to make it a criminal offence to discriminate against people on the grounds of their sexual orientation. There are no doubts that it will not be passed by the Duma in its present state, but in any case it has put a start to the long road for equality between homosexuals and heterosexuals in Russia.

In conclusion, it can be said that the initiative to reintroduce a total ban on homosexuality will finally fail but play a positive role. The media demonstrated its ability to protect sexual minorities, and society turned out to be not as homophobic as originally thought. The bill has caused dis-

cussions on homosexuality at the highest state level. This has never happened before in Russian history. In general, the processes taking place in today’s Russia can be characterised as a new vital step toward gay and lesbian rights and their embodiment in public awareness without which no changes in legislation are possible.

NICOLAS ALEKSEYEV

## World conference

# Marriage, partnerships and parenting in the 21<sup>st</sup> century

“Marriage, partnerships and parenting in the 21<sup>st</sup> century: The current international situation and new perspectives for gay, lesbian, bisexual and transgendered people and their families – a comparative approach” – this was the full title of a conference organised in Turin on 5-8 June 2002 by the International Lesbian and Gay Law Association (ILGLaw), the Center for Research and Comparative Legal Studies on Sexual Orientation and Gender Identity (CERSGOSIG) and InformaGay. It was held under the patronage of Peter Schieder, President of the Parliamentary Assembly of the Council of Europe, EU Commissioner Anna Diamantopoulou, Regione Piemonte, Provincia di Torino, Città di Torino, the Departments of Legal Sciences and Social Sciences of the University of Turin, the Interdepartmental Centre for Research and Studies on Women (CIRSD) of the University of Turin and with the support of CGIL, one of the main trade unions in Italy.



#### **The world conference**

At its inaugural meeting in Amsterdam in 2000 ILGLaw had decided to organise a world legal conference as a follow-up of the highly successful 1999 London conference organised by Robert Wintemute and to fuel

further contents to the juridical debate. The idea then developed into a joint conference with CERSGOSIG, including its project partners who agreed with interest and enthusiasm as this would be a possibility to extend the debates of their own final project conference to other

areas and involve a high number of experts. Furthermore the event provided the opportunity to present the results of the activities of the CERSGOSIG project and to expand the network of legal experts.

About 80 speakers as well as convenors and 40 delegates, essentially experts from all the different areas of the legal profession (academics, lawyers and judges), and activists participated. The four-day conference included discussions on the current situation of and the perspectives for same-sex and transgendered families, in particular of same-sex and transgendered marriage and partnerships, adoption and parenthood of gays, lesbians, bisexuals and transgender persons. Participants came from all continents and used this unique occasion to add new contributions and perspectives to the legal debate as well as to develop personal and professional contacts and to

exchange information and ideas. The conference was structured in plenary (forums) and parallel sessions with a regional round-up, keynote speeches and a presentation of the CERSGOSIG project.

The three forums were moderated discussions. The political forum – “Strategies for legislative change” – was a debate between politicians, activists and trade union representatives from several jurisdictions about achieving equality through statutory law reform at national and international level. The debate was convened by Douglas Elliott of ILGLaw and Stefano Fabeni of CERSGOSIG/ InformaGay, among the participants were members of the Dutch, Italian and European Parliaments, including Joke Swiebel, as well as Maria Gigliola Toniollo, CGIL, and Riccardo Gottardi, ILGA-Europe.

The academic forum – “Equal benefits or equal rights – is marriage just for heterosexuals? Some rights, separate rights or the same rights to marry and found a family: potentials and limitations in law and society” – focused on the right to marry for same-sex couples and on social and legal consequences of opening up marriage for them. The debate was joined by experts whose fields of research cover law, sociology, history and religion.

The judicial forum – “The role of judges in implementing national and international human rights” – was convened by the Hon. Justice Edwin Cameron of the High Court of South Africa and discussed the role national and international courts (can) play in recognising

and guaranteeing the rights of homosexuals and transsexuals in the areas addressed by the conference. Justice Wilhelmina Thomassen of the European Court of Human Rights, Justice Lilian Hofmeister of the Austrian Constitutional Court, Hans Ytterberg, Swedish Ombudsman against sexual orientation dis-

**About 80 speakers as well as convenors and 40 delegates, essentially experts from all the different areas of the legal profession, and activists participated**

crimination, Thierry Pitois-Etienne, French family law judge at the *Tribunal de grand instance* of Beauvais, took part to the debate.

The twelve parallel sessions, structured as moderated panels and convened by distinguished academics and lawyers, focused on various specific topics which were introduced by speakers from a comparative law perspective with regard to both the national, European and international level. The sessions addressed a variety of partnership rights in various situations and their impact on family law.

The regional roundup consisted of presentations by lawyers on recent developments in equality for lesbian, gay, bisexual and transgendered people in different parts of the world. The keynote speeches were delivered by Luigi Manconi, Italian politician and president of the association for civil liberties “A buon diritto”, E. J. Graff, American writer and journalist, Kevin Bourassa and Joe Varnell, plaintiffs in the successful case before the Superior Court of Ontario on the legal recognition of same-sex marriage, and Justice Edwin Cameron.

**The CERSGOSIG project**

The conference included a presentation of the CERSGOSIG project and its results. The project (setting up CERSGOSIG, the Center for Research and Legal Comparative Studies on Sexual Orientation and Gender Identity) was conceived by the author

of this article and submitted by the Italian association InformaGay. It has received support from the European Commission’s Directorate-General Employment and Social Affairs and the Provincia di Torino’s Council for Social Solidarity and Youth Policy. The 19 project

work of legal experts. The data bank contains material divided into five sections: 1) legal literature, 2) legislation 3) case law 4) decisions of ombudsmen, agencies, commissions and other decisions not binding to the parties, 5) contracts, codes of conduct, deontological codes, resolutions, opinions. The data is entered with reference to uniform criteria and classified according to a conventional classification code elaborated by the partners of the project.

The centre and the data bank aim at disseminating legal information and promoting legal research and studies in the mentioned fields. A permanent scientific committee formed by experts from all over the world and a network of legal experts will ensure the development of



**CERSGOSIG**

For more information on the CERSGOSIG project or to access the data bank: [www.cersgosig.informagay.it](http://www.cersgosig.informagay.it)

The CERSGOSIG project will also be presented in a workshop at the ILGA-Europe annual conference to take place in Lisbon on 23-27 October 2002.

partners, including universities, institutions and organisations from 10 EU countries, have been represented by distinguished legal experts.

The CERSGOSIG project includes the setting up and maintenance of a data bank organised as a bibliographical resource of publications related to sexual orientation and gender identity. The material and sources are provided by a net-

the centre’s activities and the expansion and updating of the data bank.

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**your source of information on European LGBT issues:**

**[www.ilga-europe.org](http://www.ilga-europe.org)**

Sharing the learning

# LGBT anti-discrimination legislation and campaigning

The Coalition on Sexual Orientation in Northern Ireland (CoSO) acted as host and also in partnership with the National Lesbian and Gay Federation in the Republic of Ireland, to hold a seminar in Belfast on 7-8 June 2002. It was expected that around 50 people would attend, consisting of full-time equality & anti-discrimination law and public policy officers, legal advisors, academics and activists, however the final participation was 63.

The aims and objectives of the conference were to bring together LGBT organisations and others within these countries, whose work focuses on public policy and anti-discriminatory legislation. To discuss advances and shortfalls in the equality agenda and also to share in best practice, by sharing knowledge and expertise about current and future developments in law and policy affecting LGBT people

across the region. A second objective was to aid LGBT organisations across these jurisdictions in forming or developing networks and support through exchange of information and partnership.

The seminar allowed delegates to learn more about some of the advances being made within Ireland as a whole in relation to lesbian and gay equality primarily within public services and public service provision in Northern Ireland but also in most spheres of life in the Republic of Ireland.

Through the discussions and sharing with others it was clear that Northern Ireland and the Republic of Ireland are both far advanced. Therefore the links and networks created and built upon during the seminar affords Northern and Southern Ireland the opportunity to share their knowledge about issues and problems faced by the introduc-



More than 60 participants took part in the CoSO seminar

tion of equality legislation and also best practice.

Delegates at the conference felt that there was a real need for a seminar such as this to have happened, but also that the idea for this needs to be taken further. In this regard the conference did what it set out to do, which was for people to come along from the differing countries and share and learn, with and about every-

thing that is happening around them. A report to be produced from the conference by the “seminar steering group” will highlight the differences but also illuminate the issues which can be worked on jointly across the nations.

CoSO’s hope for the future is that the momentum from the seminar is taken forward and hopefully developed further. In this regard CoSO hopes that the seminar becomes an annual event, with the host rotating around the five participating countries. Stonewall in Wales have nominated themselves to become the next host of the “sharing and learning” seminar, most delegates appeared to be supportive of this idea.

The event was extremely timely as the Westminster Government announced that they were consulting LGBT and other groups and non-governmental organisations on developing a “Single Equality Body” for the UK.

However this initial joint meeting allows us to identify areas of good practice bringing the whole LGBT debate forward but only goes as far as a short step on a long walk.

## Landmark report

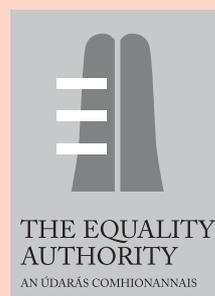
Ireland’s Employment Equality Act 1998 and Equal Status Act 2000 enables the Equality Authority (EA) to also promote equality for the gay, lesbian and bisexual community in terms of their experience, situation and identity. On 22 May 2002, the EA launched a landmark report entitled “Implementing Equality for Lesbians, Gays and Bisexuals”. It was assisted in the preparation of this report by an advisory committee involving gay and lesbian organisations, the social partners and represen-

tatives of government departments. The recommendations made by the EA provide an agenda for action in addressing gay, lesbian and bisexual disadvantage in such areas as education, training, employment, services, health, support networks and community development. The report also formulates key strategies to address this disadvantage. The extent of discrimination and exclusion experienced by the gay, lesbian and bisexual community is clearly estab-

lished in this report and effects all these areas.

The report has also identified the way forward via three key elements for change to eliminate discrimination and promote equality for gay, lesbian and bisexuals: mainstreaming, participation, and training. It also proposes actions and approaches for all sectors of society to bring about the positive inclusion of LGBT people.

On 26 June 2002, the Equality Authority published its Annual Report for 2001. In



2001, the EA had to deal with 33 new cases of discrimination on the grounds of sexual orientation and 7 from previous periods. The full text of the reports is available at [www.equality.ie](http://www.equality.ie) (follow the links to publications and leave the search field blank).

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# news clips

## Strasbourg: Landmark ruling

On 11 July 2002 the European Court of Human Rights unanimously found the United Kingdom in breach of Articles 8 and 12 of the European Convention on Human Rights in the case *Christine Goodwin v. the United Kingdom*. Goodwin, a transsexual woman having undergone gender re-assignment, is legally still recognised as a man and therefore has to pay national insurance contributions until the age of 65. Had her gender identity been recognised, she could, like women in general, stop paying national insurance contributions and would be entitled to receive a state pension when she turned 60.

This case is one of several cases against the UK where authorities continue to refuse to legally recognise the gender re-assignment of transsexuals by maintaining the birth certificate as an unamendable document. Whilst the Strasbourg Court previously found that such decisions fell within the discretion of state competence, it now considers that “society might reasonably be expected to tolerate certain inconveniences to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost”. The Court concludes that the fair balance inherent in the Convention, which previously had been favouring the UK now tilted decisively in favour of the applicant, and found the UK had failed to respect Goodwin’s right to private life as set out in Article 8 of the Convention.

Another consequence of the lack of legal recognition of transsexuals’ re-assigned gender is that they are not able to marry a person of the gender opposite to their re-assigned gender. The Court found that there could not be found any justification for barring a transsexual from enjoying the fundamental right to marry and found the UK in breach of Convention Article 12.

“The European Court of Human Rights has cemented an important milestone in the recognition and respect of individual’s gender identity, an issue that too often is ignored in the debate of gender equality”, commented Ailsa Spindler, executive director of ILGA-

Europe, in a media release issued on 12 July. “We are working against gender identity discrimination and welcome the Court’s decision. It is important to ensure the fundamental rights of every person regardless of his or her gender identity and sexual orientation”, added co-chair Kurt Krickler.

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## Turkey: Campaign against stigmatisation

The *KAOS GL* magazine has been published regularly since September 1994 by the *KAOS GL* group. *KAOS GL* was an underground magazine until November 1999 when it received a warning from the Security Department Press Office. Soon after that *KAOS GL* registered as a legal publication and has been published as such since December 1999.

ations” at the Prime Minister’s Office. Özbas and Erol showed up in court but no final decision was taken because the court could not get hold of the printer. A striking point with this court case is that the prosecutor decided the magazine to be harmful to minors after *KAOS GL* was registered as a legal magazine. This decision puts the magazine into the same category as pornographic publications although it is shaped by gay and lesbian people’s feelings and thoughts in a cultural, social and political context. Consequently this means that the magazine cannot be sold to persons below 18, and bookstores can sell it in covered envelopes only.

The decision was published in the Official Gazette, and *KAOS GL* was notified about it. Certainly, the *KAOS GL* group members do not accept this hypothetical correlation between homosexuality and “moral development of minors”. One reason for gays and lesbians at *KAOS GL* to come together years ago was to tell the public that homosexuality is not only sexuality, and sexuality does not equal pornography. Although Turkish laws do not regard homosexuality as a crime or an illness, a government institution obviously can put pressure, at its own initiative, on associations and publications dealing with homosexuality.



Turkey's gays and lesbians are gradually coming out of the closet

But the trouble just began at that point. The Office of the Press Prosecutor filed charges against Ali Özbas and Ali Erol who were accepted as the responsible people for *KAOS GL*. The office also filed a charge against the printer of the magazine and accused *KAOS GL* of not sending copies of the magazine to the Press Prosecutor’s Office and to the “Committee to Protect Minors from Harmful Publi-

*KAOS GL* group has been playing a significant role in Turkey’s gay and lesbian movement with its magazine. Most *KAOS GL* members became visible in public in the last two years, taking a great risk with this step. They also transformed the magazine’s office into a gay and lesbian cultural centre. Many student members come out at the university campuses with their gay and lesbian identities. Group

members participated in big demonstrations such as May Day under the *KAOS GL* banner and rainbow flags. TV and newspapers covered all these activities in a positive way. Many academics took part in panels and seminars in the cultural centre. Several university students benefited from the centre when writing their thesis on a variety of topics ranging from AIDS to gay and lesbian visibility.

Now the group is planning to start its "Free *KAOS GL*" campaign in order to challenge the decision of the above-mentioned committee and to positively influence public opinion. Two aspects will be addressed: firstly, the general wide spread assumption, which is reinforced by the attitude of the authorities, that homosexuality equals pornography, and secondly the committee's particular decision stigmatising *KAOS GL* as "obscene".

Turkey's gays and lesbians are gradually coming out of the closet. But the magazine, which only expresses the very same people's feelings and thoughts, is sold in covered envelopes! The coming months will show if this contradiction can successfully be eliminated by this campaign.

ALI EROL

## Sweden: Parliament okay adoption

On 5 June 2002, the Swedish parliament adopted a government proposal to allow same-sex-couples in a registered partnership to adopt children. The decision concerns both the possibility to adopt the partner's child(ren) and international adoption. The parliament also decided to allow registered partners to be appointed as guardians of a child. The law will take effect early next year.

During the debate in parliament, MPs of all parties except the Christian Democrats spoke in support of the proposal. When it came to voting all MPs of the Christian Democrats and most MPs of the Conservative Party voted against the proposal. When it came to voting on international adoption 183 MPs said "yes" and 115 "no".

The issue of lesbian couples' access to medically assisted insemination was postponed. The explanation for that given by the government is that the rules have to be investigated more thoroughly. The parliament, therefore, instructed the government to investigate the issue swiftly and make a proposal to the parliament.

*RFSL*, the Swedish Federation for Lesbian and Gay Rights, commented that the government

must take the issue of lesbian couples' access to artificial insemination seriously. Children conceived through insemination in lesbian couples must be granted the same judicial rights and the same right to know their origin as other children. *RFSL* expect the issue to be solved before the end of 2002.

STIG-ÅKE PETERSSON

## Croatia: Successful first Gay Pride

On Saturday, 29 June the first Gay Parade in Croatia's history was organised in the capital city of Zagreb. The festival had already started on 24 June with a six-day Pride Week full of seminars, forums, exhibitions, parties and cultural activities. The media showed great interest in the events. About ten foreign and domestic journalists covered the parade, and during the week there were daily reports in all major newspapers and magazines as well as on TV and radio. On 29 June, Zagreb was "boiling" with excitement.

Organising a Gay Pride in Zagreb was not easy. The city is known for hosting several right-wing organisations. The organisers, *Iskorak* (Coming out) and *Kontra* and two other

## web info

[www.gay.hr](http://www.gay.hr) is the official web-site of *Iskorak*, the national Croatian GLBT organisation. It contains information about the organisation ([www.iskorak.org](http://www.iskorak.org)), a webzine, profiles, forums, chat, news etc. An English version will soon be launched!

<http://pride.gay.hr> is the URL of the official Pride site with reports, pictures and other interesting information about the Gay Pride 2002 in Zagreb.

threats and co-operated with the police to prevent acts of violence such as those occurred in Belgrade last year, when gay pride participants were brutally beaten up and the parade was broken up.

On 29 June, LGBT people gathered at the Zrinjevac Park in central Zagreb from where the parade started, walked in a circle through the central parts of Zagreb and returned to the park, where prominent individuals held speeches. The police had, for precautionary measures, raised a fence around the Pride area. The parade started peacefully, but soon met a group of protesters. When the march, accompanied by 250 policemen and guardians of a private company, passed the Flower's



Croatia's first Gay Parade was protected by the police due to preceding anonymous threats

NGOs, prepared the somehow sceptical public in advance through statements given to the media. Several newspapers interviewed citizens in Zagreb, asking for their opinion about the up-coming parade. Many were positive, but some thought there was no need for arranging such an event as in their view there was no homophobia in Croatia at all. The organisers had also received anonymous

Square, it was met by applauding supporters. The right-wing protesters answered by throwing eggs, watermelons, stones and even a bottle. Toward the end of the parade, a tear gas canister was thrown at the marchers, but missed its target, and the wind dispersed the fumes.

The next day the police announced that they had arrested 27 persons before, during and

## EU funding opportunities

On 8 August, the European Commission issued a call for proposals for work to promote human rights in certain countries. This may provide an opportunity for LGBT organisations in the EU to work with sister organisations in these countries. The closing date for applications is 5 November 2002.

The nature of the work the EU will fund is quite specific, and differs for each of the countries. The list of countries is: Algeria, Bosnia-Herzegovina, Burundi, Cambodia, Colombia, DR of Congo, Eritrea, Ethiopia, Fiji, Georgia, Guatemala, Haiti, Indonesia, Israel, Gaza and the West Bank, Ivory Coast, Mexico, Mozambique, Nepal, Nigeria, Pakistan, Russia, Rwanda, Sierra Leone, Sudan, Tunisia, Turkey,

Ukraine, FR Yugoslavia, and Zimbabwe.

Here an example of an extract from the guideline showing the kind of work the Commission is interested in funding for Serbia and Montenegro (formerly the Republic of Yugoslavia). Proposals should be directed towards achieving one or more of the results indicated under each specific objective.

### *Specific objective n° 1: Human rights education and training.*

Results:

- 1.1 Enhanced capacity of public officials at the national and local levels to promote and protect human rights.
- 1.2 Improved capacity of Human Rights organisations at the regional and local levels

(including NGOs dealing with trafficking in human beings) to enhance the protection and promotion of human rights with specific focus on the delivery of legal assistance, advocacy skills and activities, with a view to their increased contribution to national and local policy and decision making in issues related to human rights and democratisation.

### *Specific Objective n° 2: Freedom of expression and independent media.*

Results:

- 2.1 Local community media developed and made more professional (including as regards ethical behaviour).
- 2.2 Enhanced quality and coverage of human rights and democratisation issues in the media.
- 2.3 Promotion of the defence of independent media through use of legal procedures

2.4 Enhanced legal awareness among journalists.

### *Specific objective n° 3: Governance.*

Results:

- 3.1 Improved awareness in civil society of good practice in the area of accountability of public decision making, including at the local level.
- 3.2 Civil society organisations enabled to act as watchdogs in the fight against corruption at all levels.

The announcement for the call is at: [http://www.europa.eu.int/eur-lex/en/dat/2002/c\\_188/c\\_18820020808en00150016.pdf](http://www.europa.eu.int/eur-lex/en/dat/2002/c_188/c_18820020808en00150016.pdf) The documents for the call are available from links on the following page: [http://europa.eu.int/comm/europeaid/projects/eidhr/cfp-general-2002\\_en.htm](http://europa.eu.int/comm/europeaid/projects/eidhr/cfp-general-2002_en.htm)

after the parade. They were identified as teenagers, hooligans and members of right-wing organisations or their sympathisers. Eleven persons were injured before or after the march. At a press conference on 1 July, Sandra Juras, president of the lesbian group *Kontra*, announced that the organisers were collecting information from eyewitnesses and victims to be used to prosecute still unidentified hooligans.

The parade received great support from the political elite and human rights organisations. Several politicians from the ruling centre-left coalition attended the Pride. The Social-Democratic Party as well as the Liberals, the Social-Liberal Party and the Green Party, whose leader Damir Hrsak is openly gay, had sent representatives to the Pride. The Minister of the Interior, Mr Sime Lucin, gave a speech in which he told the marchers to love each other and fight for their rights. He also congratulated the participants for showing such great courage and said he was hoping the next Gay Pride would be organised without the need for police protection.

Croatia's first Gay Parade with its approximately 200-300 participants was a success and a victory of tolerance, respect and equality. There are still strong prejudices against homosexuality in Roman-Catholic Croatia, but public acceptance of alternative lifestyles has grown in recent years. GLBT organisations such as *Iskorak*, *Kontra* and *LORI* are counting more members each day, branches are being opened across the country. *Iskorak*

and *Kontra* are now launching a campaign to give same-sex couples the same legal rights as married couples.

ALEKS GAJSEK

## Austria: Article 209 repealed

In our May Newsletter (p. 17), we reported about the unending story of the fight against the unequal age of consent provision in Austria (Article 209) and the unwillingness and

reluctance of Austria's constitutional court to hand down a ruling in line with the international human rights conventions. Finally, on 24 June 2002 the court declared Article 209 unconstitutional. It took five complaints and 16 years to convince the court that such a discriminatory provision is a breach of human rights, as the European Human Rights Commission had ruled in *Sutherland v. UK* in 1997. Indeed, it is still doubtful whether the judges are really convinced or just yielded to the international pressure. Whatever their motive finally was, the decision is a great victory for the LGBT movement in Austria. The



Activists protested in front of the parliament in Vienna against a new law being introduced to substitute Article 209 that had been repealed by the Constitutional Court only a few days before

photo: Christian Hägl

two ruling parties, the conservative ÖVP and the right extremist Freedom Party of Jörg Haider, had been blocking any political reform in the last 20 years, holding a majority in parliament since 1983. "This decision, therefore, is also a blow in the face of these two parties", explained the author of these lines in ILGA-Europe's media release of 24 June. "Both parties have vigorously been defending the law until this very day consciously ignoring six resolutions of the European Parliament, a recommendation of the Council of Europe, and a request of the United Nations Human Rights Committee, all demanding the repeal of Article 209."

ÖVP and FPÖ, however, turned out to be bad losers. On 10 July, Article 209 was repealed by Parliament, the general age of consent for gay sex thus being harmonised at 14. However, at the same time, new criminal code provisions were voted by the two parties, ostensibly to protect minors from sexual exploitation. These new provisions (Article 207 b, 1-3) do not make any distinction with regard to sex or sexual orientation. It is now a criminal offence to engage in sexual relations with a 14 or 15 year old person by exploiting the "lack of maturity" (and, at the same time, one's own superiority based on the difference of age) or a situation of distress of this person. Moreover, sexual relations with a person under the age of 18 are illegal if a remuneration of any kind is rendered to this person.

People wonder, however, why politicians have not seen the need for such provisions before. The heterosexual age of consent in Austria has been 14 since 1803, and for two centuries heterosexual youth has been completely unprotected against such offences. LGBT activists, therefore, met the new provisions with great scepticism and will closely monitor whether they are only or mainly applied against gays and lesbians.

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## ILGA-Europe: Recent Board activities

On 24-26 May in Barcelona, ILGA-Europe participated in "Equal Rights for Gays and Lesbians: European Forum on the Right to Marriage and Adoption", organised by the Office for Civil Rights of the Barcelona City Council and ILGA-Europe member organisation *Coordinadora Gai-Lesbiana*. ILGA-Europe was represented by co-chair Jackie Lewis and by Robert Wintemute of the School of Law, King's College London. Around 200 participants (mainly from Spain with a few from Portugal) heard lawyers, sociologists, anthro-



ILGA-Europe was represented at the Barcelona conference by co-chair Jackie Lewis and by Robert Wintemute of the School of Law, King's College London

pologists, theologians and journalists from Spain, France, Italy, the Netherlands, and the United Kingdom discuss the issues surrounding equal access to marriage and adoption for LGBT individuals and same-sex couples. In the workshop "Strategies to Follow for European Demands", Lewis drew attention to the limits on the competence of the European Community in relation to marriage and adoption. But she also stressed the important role the European Community can play in relation to equal treatment of same-sex couples in employment and free movement of persons. Wintemute urged the participants to lobby the Spanish government to sign and ratify Protocol No. 12 to the European Convention on Human Rights, which will create a general prohibition of discrimination, broader than the existing Article 14.

ILGA-Europe was also represented in the two conferences this *Newsletter* reports about on p. 17 and p. 19. Board member Riccardo Gottardi gave a speech in Turin. After outlining ILGA-Europe's campaigns and achievements, he stressed the need for NGOs to "be daring" in their demands to obtain full equality since "being cautious" is rather the task of politicians. Jackie Lewis attended the seminar in Belfast.

On 7 June, Riccardo Gottardi attended the conference "Europe is Freedom" which *Arcigay*



*Nazionale*, the National Italian Gay Association, had organised, with the patronage of ILGA-Europe, in Padua just before this year's national Gay Pride March. The conference

focused on the role of the European Union in defending human and civil rights of LGBT people in the Mediterranean countries and in Eastern Europe. Participants included MEP Jean Lambert (Greens/UK) and MEP Marco Cappato (Radical Party/I).

On 21 June, Riccardo Gottardi participated in the conference "Unions of Europe" (from the opening



up of marriage in the Netherlands to civil unions – the options for the legal recognition of same sex couples) which *Arcigay Nazionale* had organised on the eve of the Milan Gay Pride March. He introduced ILGA-Europe's position on the subject, in particular relating to the EU Charter of Fundamental Rights, and the relevant campaigns dealing with the recognition of unmarried partners and of registered (or married) couples and their families in the context of freedom of movement within the EU and for the purpose of refugee status and asylum. Participants included Dutch MP Boris Dittrich, MEP Monica Frassoni (chairperson of the Greens at the EP) and MEP Marco Cappato.

On 25 June, Kurt Krickler participated in a panel discussion organised in the context of Europride 2002 in Cologne. The topic of the discussion was the integration of gay and lesbian migrants.

On 5-7 July, executive director Ailsa Spindler represented ILGA-Europe at the conference *Jornadas Lésbicas*, organised by the Portuguese lesbian group *Clube Safo* in Lisbon.

# ANNUAL CONFERENCE AT LISBON, PORTUGAL

23-27 October 2002



## Lisbon holds promise of productive and enjoyable conference

Plans are well advanced for a productive and enjoyable conference in Lisbon, the theme of which is "Recognising Diversity, Promoting Equality".

The programme, with two plenary panel sessions and some 21 workshops, will address a broad enough range of subjects to ensure that there is plenty to interest all participants.

One of the plenary panel sessions will explore the role of the Council of Europe and the European Union in achieving equality for LGBT people. A distinguished panel will include Peter Schieder, President of the Parliamentary Assembly of the Council of Europe, human rights lawyer Dr Robert Wintemute of King's College London, and a leading Portuguese politician. The second plenary panel session will debate the role of trade unions in implementing the Employment Directive, and will include representatives of trade unions, a Member of the European Parliament, and, we plan, a representative of the European Trade Union Confederation.

The workshops fall into two broad categories: first, those dealing with the implementation

of ILGA-Europe's objectives, particularly in relation to the European Union. The opportunities for promoting LGBT rights in this field are quite exceptional, although the complexity of the European Union can sometimes make it difficult to understand just how much is at stake. The workshops will cut through this complexity. And they will show clearly what has to be done at national and European level if the opportunities presented by such historic events as

- the enlargement of the European Union, the implementation of EU wide anti-discrimination legislation,
  - the implementation of EU wide rules on immigration and asylum, and
  - radical proposals for reshaping the European Union itself,
- are to be converted into genuine progress for LGBT people.

The second broad category of workshops deals with strengthening the capacity of the LGBT movement in Europe. In this section we will look at the situation of LGBT Muslims in Europe, and the ways in which ILGA-Europe and its member organisations can support this section of our community in the face of both Islamophobia and homophobia. We will also be looking at how co-operation between

member organisations in Western Europe and Eastern Europe can serve to develop strong human rights movements in the latter.

Amongst the many other subjects to be addressed, there will be workshops on transgender issues, bisexuality, lesbian organising, fundraising, and two recent cases on lesbian and gay parenting at the European Court of Human Rights. In the latter workshop the protagonists in the two cases will present to describe their experiences in challenging sexual orientation discrimination before Europe's supreme human rights tribunal.

The conference will take place in a modern hotel a couple of metro stops from the centre of Lisbon, one of Europe's most spectacularly beautiful cities. There will be opportunities to visit the centre, including, we plan, a guided tour, a visit to the lesbian and gay quarter, and relaxing dinners in atmospheric restaurants. There will also be a women's disco, and an end of conference party at Lisbon's LGBT community centre.

The conference runs from 23 to 27 October – visit [www.ilga-europe/conference](http://www.ilga-europe/conference) to find out more about the conference and to register.