

EURO-LETTER

No. 109

October 2003

This EuroLetter is available in pdf-format at http://www.steff.suite.dk/eurolet/eur_109.pdf

Portuguese translations are available at <http://www.steff.suite.dk/eurolet.htm>

German translations are available at <http://www.lglf.de/ilga-europa/euro-letter/index.htm>

Italian translations are available at <http://www.trab.it/euroletter>

French translations are available at <http://www.france.qrd.org/assocs/ie-paris2005/euroletter/>

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by The International Branch of The Danish National Association for Gays and Lesbians with support from the European Community - The European Union against Discrimination.

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

Contact to Euro-Letter: steff@inet.uni2.dk - <http://www.steffenjensen.dk/>

You can receive Euro-Letter by e-mail by sending an empty message to euroletter-subscribe@yahoogroups.com, and from no 30 onwards the Euro-Letters are available on the Internet at <http://www.steff.suite.dk/eurolet.htm> and at <http://www.france.qrd.org/assocs/ilga/euroletter.html>

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage <http://www.ilga-europe.org/>

In this issue

- **EUROPEAN PARLIAMENT SPEAKS OUT FOR RIGHTS TO SAME-SEX MARRIAGE AND**
- **EU COUNCIL POSITION ON FREE MOVEMENT DIRECTIVE A SIGNIFICANT BLOW TO RECOGNITION OF SAME-SEX PARTNERSHIPS IN EUROPE**
- **ADOPTION AND CONDEMNS THE VATICAN'S MEDDLING IN POLITICS**
- **EUROPEANS SUPPORT GAY MARRIAGE**
- **ILGA-EUROPE QUESTIONS THE ROLE OF THE VATICAN**
- **BULGARIA BANS DISCRIMINATION**
- **SECTION 28 IN UK DEAD**
- **A LEGAL STATUS FOR COMMITTED SAME-SEX COUPLES IN SCOTLAND**
- **UPDATE ON THE IMPLEMENTATION OF THE TWO EU ANTI-DISCRIMINATION DIRECTIVES IN AUSTRIA**

EUROPEAN PARLIAMENT SPEAKS OUT FOR RIGHTS TO SAME-SEX MARRIAGE AND ADOPTION AND CONDEMNS THE VATICAN'S MEDDLING IN POLITICS

ILGA-Europe press release 5 September 2003

The European Parliament – for the first time in its history – speaks out for same-sex marriage and adoption rights for homosexuals. In its report on *Fundamental Rights in the EU in 2002*, European Parliamentarians call on the member states to “abolish all forms of discrimination – whether legislative or *de facto* – which are still suffered by homosexuals, in particular as regards the rights to marry and adopt children”. Moreover, the report makes explicit mention of the current limitations of free movement rights and urges member states to take the necessary steps to extend these rights to all definitions of “family”.

The report sparked off a heated controversy as many conservative MEPs challenged the inclusion of sexual orientation discrimination in a report on fundamental rights in the EU. In the end, the vote was a success for human rights: 221 in favour compared with 195 against and 23 abstentions.

On the same day, the European Parliament issued another resolution, focussing on human rights in the world. In direct response to the Vatican's rant against “immoral unions” between same-sex partners, the European Parliament expressed its disapproval of this interference of the Catholic Church in political life.

“It is a great symbolic success to see the rights of homosexuals so firmly anchored in the EU's human rights policy”, says ILGA-Europe co-chair Kurt Krickler. “What is more, by condemning the Church's attempts to meddle with politics and curb gays and lesbians from achieving legal equality, the Parliament sends out an important message. What we need now is for those words to be followed by action.”

Background Information:

The report on fundamental rights in the EU is a yearly overview on the problems and improvements on human rights in the EU Member States. The report on human rights in the world is another annual report focussing on the global situation and the EU's human rights policy in general. The official titles are:

European Parliament resolution on the situation as regards fundamental rights in the European Union (2002) – (2002/2013(INI)).

European Parliament resolution on human rights in the world in 2002 and European Union's human rights policy (2002/2011(INI))

EU COUNCIL POSITION ON FREE MOVEMENT DIRECTIVE A SIGNIFICANT BLOW TO RECOGNITION OF SAME-SEX PARTNERSHIPS IN EUROPE

ILGA-Europe press release 26 September 2003

On 22 September 2003, the EU Council of Ministers reached a political agreement on the revised proposal for a new directive on the right of citizens and their family members to move and reside freely within the EU (COM (2001) 257). The political compromise reached with regard to the definition of family members is disappointingly cautious and conservative.

Whilst the European Parliament would have recognised as family member the spouse irrespective of sex, the Council proposal has removed any explicit mention of married same-sex couples, leaving the meaning of the term open to the debate. Though the text's explicit mention of registered partnership status is an important acknowledgement of the significance of this status, the actual rights conferred to it are minimal. It by no means extends the right to free movement and residence to gay and lesbian EU citizens and their families. Registered partners would only enjoy the right of free movement and residence in those countries that 'treat registered partners equivalent to married couples'. Currently, this would include a maximum of seven of the future twenty-five EU member state, Denmark, Sweden, Finland, the Netherlands and Belgium and possibly Germany and France. What is more, unmarried partners would be excluded from this most fundamental right of EU citizens. The Council proposal does ask member states to 'facilitate' entry and residence of unmarried partners, but the meaning of the wording 'shall facilitate' is blurry and would - again - depend on case-law interpretation.

"Compared to the European Parliament's repeated commitment to the legal recognition of same-sex partners and their families, the EU Council's draft is a watered-down, weak political compromise that essentially offers little real improvement to gay and lesbian EU citizens and their families" says ILGA-Europe executive director Ailsa Spindler.

Background Information:

The directive aims to consolidate, strengthen and clarify existing EU legislation in the area of free movement. It is

subject to co-decision, i.e. the European Parliament and the EU Council of Ministers both have to agree for it to become law. The Parliament delivered its first reading on 11 February 2003. The European Commission subsequently issued an amended proposal on 15 April 2003. The Council will officially adopt its first reading at a forthcoming Council meeting after a technical finalisation of the text. The European Parliament then has three months to respond before the dossier goes back to the Council. If no agreement is reached at that stage, a conciliation committee will be convened.

The official title of the directive is:
Amended Proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

EUROPEANS SUPPORT GAY MARRIAGE

By Rex Wockner

A new EOS Gallup Europe poll has found that 57 percent of residents in the 15 nations of the European Union support same-sex marriage.

At present, only the Netherlands and Belgium have opened up ordinary marriage to same-sex couples. Six other EU nations have domestic-partnership laws that grant many, most or all rights of marriage to registered same-sex couples.

Support was drastically lower in 13 nations that are set to join the EU. Only 23 percent of people in those countries, many of which used to be communist, favor allowing gay couples to marry.

Pollsters also inquired about adoption. Forty-two percent of EU residents and 17 percent of residents of the accession nations support permitting gay couples to adopt children.

The poll found the highest levels of gay support among women, younger people, highly educated people, atheists, leftists and residents of nations that already extend some or all spousal rights to same-sex couples.

Denmark expressed the highest support for same-sex marriage (82%) followed by the Netherlands (80%), Luxembourg (71%), Sweden (70%), Spain (68%), Belgium (67%), Norway (66%), Switzerland (65%), Germany (65%), France (58%), Finland (56%), the Czech Republic (50%), Austria (48%), the United Kingdom (47%), Italy (47%), Ireland (46%), Portugal (43%), Slo-

venia (40%), Hungary (37%), Estonia (35%), Slovakia (30%), Lithuania (26%), Malta (23%), Bulgaria (20%), Latvia (19%), Poland (19%), Romania (17%), Greece (16%), Turkey (16%) and Cyprus (9%).

On the adoption question, the Netherlands came in first (64%) followed by Germany (57%), Spain (57%), Denmark (54%), Luxembourg (49%), Belgium (47%), Switzerland (47%), Sweden (42%), France (39%), Norway (37%), the United Kingdom (35%), the Czech Republic (35%), Ireland (34%), Hungary (34%), Austria (33%), Finland (30%), Slovenia (30%), Estonia (27%), Italy (25%), Portugal (25%), Slovakia (17%), Turkey (16%), Bulgaria (14%), Lithuania (13%), Latvia (11%), Greece (11%), Romania (11%), Malta (10%), Poland (10%) and Cyprus (6%).

Norway and Switzerland, while located in Europe, are not part of the European Union

ILGA-EUROPE QUESTIONS THE ROLE OF THE VATICAN

ILGA-Europe media release - 8 September 2003

At a conference on Racism, Xenophobia, and Discrimination, organised by the Organization for Security and Co-operation in Europe (OSCE) in Vienna, 4-5 September 2003, ILGA-Europe questioned the role the Vatican is allowed to play in international organisations such as the OSCE, where it is one of 55 member states, or the United Nations.

"Not only do we think this is inappropriate because the Vatican has no democratically elected parliament or government, we also consider its recent attacks on lesbians and gays as incitement to hatred, and its call upon law-makers and politicians to oppose legislation in favour of same-sex couples as an assault on human rights, disqualifying the Holy See to be a serious part of such organisations", explains co-chair Kurt Krickler who made the statement on behalf of ILGA-Europe. "It seemed so weird to me, like hypocritical lip-service, almost provocative, listening to the representative of the Vatican talking about fighting discrimination while we know that the Vatican is one of the fiercest opponents to non-discrimination and equal rights for lesbians, gays, bisexuals and transgender people. We strongly doubt that the Vatican, with such attitudes, can make any credible and convincing contributions to the international human rights and anti-discrimination discourse."

While the representative of the Holy See defended the Vatican's doctrine on homosexuality in his reaction, no

other government delegation commented on ILGA-Europe's intervention. The European NGO's statement also addressed the case of Uzbek human rights activist Ruslan Sharipov who was sentenced, on 13 August 2003, to a five-and-a-half year prison term on accusations – most likely fabricated - of homosexual acts and sexual contacts with minors.

ILGA-Europe urged the Uzbek authorities to conduct a prompt and impartial investigation into the allegations that Sharipov was forced to confess to the charges and to allow a fair re-trial that meets international standards.

ILGA-Europe also called upon Uzbekistan and Turkmenistan, the only two OSCE member states that still prohibit homosexuality, to repeal the relevant criminal code provisions.

BULGARIA BANS DISCRIMINATION

By Rex Wockner

Bulgaria's parliament banned discrimination based on sexual orientation and a number of other factors Sept. 16.

A nine-member commission will hear discrimination cases, require the accused to prove the discrimination did not occur, and mete out penalties when appropriate.

All nations planning to join the European Union are required to protect gays and lesbians from discrimination.

SECTION 28 IN UK DEAD

By Rex Wockner

The anti-gay British law Section 28 will be officially dead on Nov. 18 when recent legislation passed by the House of Lords and the House of Commons takes effect.

Enacted by the Tory government in 1988, the section states: "A local authority shall not (a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality; (b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship."

The section was repealed locally in Scotland three years ago.

A LEGAL STATUS FOR COMMITTED SAME-SEX COUPLES IN SCOTLAND

It is proposed that same-sex couples be able to register their partnership in Scotland in order to access a comprehensive package of rights and responsibilities in both reserved and devolved areas. To ensure this package of rights and responsibilities takes account of the reserved and devolved elements of this new status, we believe that the Scottish Parliament should be invited to agree that Scottish provisions are included in any future UK Civil Partnership Registration Bill.

The consultation paper : index URL:

<http://www.scotland.gov.uk/consultations/justice/cprs-00.asp>

provides fuller details of the background to civil partnership registration and the reasoning underpinning the preference for a UK legislative approach.

UPDATE ON THE IMPLEMENTATION OF THE TWO EU ANTI-DISCRIMINATION DIRECTIVES IN AUSTRIA

By Kurt Krickler

Austria is one of the countries that will not meet the deadlines for implementation. On 15 July, only four days before the first deadline expired, the government submitted draft legislation to go through a hearing procedure ending on 8 September. All in all, the draft legislation basically only provides for the minimum required under the EU directives. The wording in many instances is identical with that of the directives. In some details, the draft is not even covering the EU requirements (f. ex. Sanctions provided are not really "deterrent"). In only one aspect, the bill goes beyond what's prescribed by the EU, i.e. the institutions tasked to promote non-discrimination and equal treatment only foreseen in the Race Directive (Art. 13) will also have to deal with non-discrimination on the other grounds. Another positive thing is that the exceptions only cover religious grounds - the problematic last paragraph of Article 4 in the Directive (that would allow religious employers to discriminate on the grounds of sexual orientation) has not been copied.

The draft law provides for a total re-make of the existing legislation on equal opportunities and equal treatment of women and men in the labour market and will also implement the amended gender directive 2002/73/EC which is to be transposed by October 2005.

The bill met with unanimous rejection from the NGOs

who criticise the hierarchy this approach would create in the protection from discrimination. Civil society has for years demanded a complete and comprehensive anti-discrimination law. A network of Austrian NGOs that has worked together on this issue already in the past meet three times during summer to formulate and agree on a joint submission in the hearing phase. This submission dealing with the most relevant common concerns, was finally signed, among others, by two major migrant organisations, an anti-racist network, a renowned human rights institute, the Austrian section of amnesty international and HOSI Wien. Some of these NGOs, including HOSI Wien, also presented their own submissions with detailed criticism of the bill.

Since this bill is covering the private labour market only, the government also had presented a bill to amend the existing equal opportunities and equal treatment legislation for civil service at Federal level accordingly. This second bill has basically the same approach. HOSI Wien again presented a submission to the government. As Austria is a federal state, all nine "länder" will also have to enact their own legislation to cover their civil servants/employees. But they obviously wait for the implementation at Federal level as they have not even started this legislative process!

Experience shows that this right-wing government will ignore all criticism of NGOs. Therefore, it is expected that the government will just go ahead as planned with their bills also in this case. If they reconsider their approach, the implementation would be further delayed (which of course would be better, if the final outcome would be improved). The legislation is planned to come in to force on 1 January 2004.

More information in German is available at:
www.hosiwien.at