



EQUALITY FOR LESBIANS AND GAY MEN

A RELEVANT ISSUE IN THE CIVIL AND SOCIAL DIALOGUE

A report of **ILGA-Europe**,
the European Region of the **International Lesbian
and Gay Association**



supported by the
European Commission



ILGA-EUROPE:

EQUALITY FOR LESBIANS AND GAY MEN

A relevant issue
in the civil and social dialogue

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The Executive Board of ILGA-Europe

Brussels, June 1998

I N T R O D U C T I O N

1. Background of this report

Equal rights and social justice for lesbians and gay men have never been high up on the political agenda of the European Communities. Although the European Parliament has adopted several resolutions calling for steps to be taken to promote equality for lesbians and gay men, the first as early as 1984 and the most comprehensive (*Equal rights for homosexuals and lesbians in the EC – Document A3-0028/94*) in 1994, these have not been acted on by the Commission or the Council.

The Treaty of Amsterdam, once ratified, will remove any doubt as to whether the European Union has the power to introduce anti-discrimination measures which address discrimination on the grounds of sexual orientation. Article 6a of this Treaty, to become Article 13 of the consolidated EC Treaty, states that *“the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”*.

However, such action can only be taken *“within the limits of the powers conferred ... upon the Community”* by the Treaty. Therefore, the key question now is whether the Council (that is, the fifteen Member States) will unanimously agree to adopt substantial measures against such discrimination, including that based on sexual orientation.

As this report shows, while lesbians and gay men continue to face significant discrimination in many areas of their lives, a majority (eight) of the EU Member States now have at least some form of national anti-discrimination provisions which include discrimination based on sexual orientation. There is thus both the need for concrete measures to be taken at a European level and some positive indications of a basis of support for such measures.

The Commission itself has already supported and funded several gay and lesbian related projects under a variety of its programmes. One of the major projects was the publication in 1993 of *Homosexuality: A European Community Issue*, a groundbreaking study of the situation of lesbians and gay men in the then twelve Mem-

ber States.¹ The present report follows up some of the issues of the 1993 study, highlights the developments of the past five years, and includes reports on the three countries that have since joined the Union (Austria, Finland and Sweden).

This report has been produced as part of a project, *Equality for Lesbians and Gay Men: A Relevant Issue in the Civil and Social Dialogue*, supported by a grant of the Commission. The grant has been made under budget-line B3-4101, which supports the promotion of co-operation between non-governmental organisations (NGOs) and the strengthening of the civil dialogue – a policy objective launched by the first European Social Policy Forum in March 1996.

The report is designed as a tool and instrument to inform other NGOs and associations in the social and human rights field about the legal and social situation of lesbians and gay men in the 15 Member States, and provides a basis for discussion with potential allies and partners in the fight against all forms of discrimination. As part of the project, two one-day conferences are being held during 1998 with representatives from a variety of other social and human rights NGOs. These will provide a forum to discuss common interests and strategies in various fields, to exchange information, and to focus lobby efforts.

These discussions will contribute to the development and strengthening of a dialogue between social and human rights NGOs and the lesbian and gay movement on a European level. Traditionally, the latter has always conceived itself as a part of a broader struggle for human rights and equality of all people, against prejudice and discrimination of all kinds, and against the oppression of minorities or specific vulnerable groups at risk of social exclusion. The gay and lesbian movement has always considered homophobia to be a sibling of sexism, racism, xenophobia, anti-Semitism and other discriminatory attitudes. And this is also true for ILGA-Europe as a federation.

ILGA-Europe wants to intensify the co-operation with other NGOs at the European level because it considers joint advocacy and lobbying for common goals to be of special relevance in the European context, a good example of which were the successful efforts to keep all

proposed non-discrimination categories in the final draft of Article 6a of the Amsterdam Treaty. A first step for ILGA-Europe was to seek membership in the Platform of European Social NGOs which was granted in March 1998.

The report is also being presented at a number of other forums during the year 1998, including the European Social Policy Forum in June and the international conference on "Trade Unions, Homosexuality and Work" in July. The project will therefore contribute to the inclusion and integration of issues affecting lesbians and gay men within the civil and social dialogues.

Although the audience of this report with its easily accessible background information on lesbian and gay concerns and issues is, in the first place, other NGOs, the report will also be a lobbying tool towards national governments and EU institutions, because it highlights examples of good practice and positive developments as well as the deficits which still exist in Member States with regard to equality and social justice for lesbians and gays. For example, the report will also be presented in the session of the Equal Rights for Gays and Lesbians Intergroup of the European Parliament in September 1998.

The ILGA-Europe Board also considers that this report presents a clear picture of the reasons why it is necessary for the Commission to take Article 13 seriously and to begin to act on turning it into something of real meaning.

2. ILGA and ILGA-Europe

The International Lesbian and Gay Association, ILGA, was founded in 1978. It is a world-wide federation of national, regional and local organisations and groups dedicated to working for equal rights for lesbians, gay men, bisexuals and/or transgendered people. It is registered as a non-governmental, non-profit international association under Belgian law.

ILGA-World today has more than 300 member organisations in approximately 70 countries on all continents. ILGA is currently undertaking a regionalisation process, at the end of which it will have six regions (broadly corresponding to the defined continents) with independent organisational structures. In December 1996, ILGA-Europe became the first of these regional associations to

be formally established. ILGA-Europe is also registered as a non-profit international association under Belgian law.

During the 20 years of its existence, ILGA has called for and carried out numerous campaigns for law reform in many countries and against individual cases of discrimination, highlighting many cases of human rights violations against gays and lesbians. It has organised countless protest actions and Amnesty International-style letter writing campaigns.

ILGA has also given impetus and support to gay and lesbian groups in, for example, Latin America and South Africa, and played a crucial role in the emergence and development of the first gay and lesbian organisations in the former "East-Bloc".

The issues of HIV and AIDS have been another focus of ILGA and have always been an integral part of ILGA conferences. ILGA worked in close co-operation with the Global Programme on AIDS of the World Health Organization and continues to do so with the successor to this body, UNAIDS, the joint UN agency to fight AIDS.

Major successes of ILGA's lobbying on the international level include the deletion of "homosexuality" from the World Health Organization's International Classification of Diseases, and the decision of Amnesty International to adopt persons imprisoned solely on the grounds of their sexual orientation as prisoners of conscience.

ILGA has undertaken sustained lobbying of many international organisations, such as the Council of Europe, the United Nations, and the Organization for Security and Co-operation in Europe (OSCE). ILGA-Europe now enjoys consultative status with the Council of Europe, and it is also represented at the monthly Strasbourg sessions of the Equal Rights for Gays and Lesbians Intergroup of the European Parliament, founded in October 1997.

In 1997, ILGA-Europe adopted an Action Plan towards the European Union. This Action Plan is aimed at the European Commission. In the past year, ILGA-Europe has introduced the Action Plan to various cabinets and directorates-general and explained its "horizontal" or "mainstreaming" approach to seeking the inclusion of lesbian and gay concerns in all their appropriate activities and programmes. Future budgetlines and funding programmes should, for example, be designed in a way that they can address gay and lesbian projects (for in-

stance in the fields of youth, education, sports, culture, human rights, or scientific research). The Action Plan also insists that the monitoring of continuing human rights violations directed at gays and lesbians should become an integral part of the EU human rights monitoring and reporting on third countries.

ILGA-Europe is also working to develop and strengthen its links with other organisations which are committed to the achievement and respect of human rights. As mentioned above, it has recently become a member of the Platform of European Social NGOs and looks forward to playing an active role in the work of this Platform.

The Executive Board of ILGA-Europe

¹ Kees Waaldijk and Andrew Clapham (editors): *Homosexuality: A European Community Issue – Essays on Lesbian and Gay Rights in European Law and Policy*, Martinus Nijhoff Publishers, Dordrecht 1993.

R E C E N T D E V E L O P M E N T S I N E U L A W A N D P O L I C Y O N S E X U A L O R I E N T A T I O N D I S C R I M I N A T I O N ¹

Sexual orientation discrimination has been discussed with increasing frequency in the various EU institutions since 1984.² In that year, the Social Affairs Committee of the European Parliament adopted a report on discrimination on grounds of sexual orientation in the workplace. This called on the Commission to bring forward legislative proposals to forbid this form of discrimination in Community law.³ The issue arose again in 1989 in the discussion concerning the terms of the European Community Social Charter.⁴ The European Parliament sought to have discrimination on grounds of “sexual preference” included in the anti-discrimination clause in the Charter, but this was ultimately rejected by the Commission and the Member States.⁵ However, the most significant developments in this field have largely taken place since 1994, following the adoption of a keynote report by the European Parliament Committee on Civil Liberties and Internal Affairs.

1. 1994 Roth report

The report on *Equal rights for homosexuals and lesbians in the EC*⁶ is better known as the *Roth report*, after its author, German Green MEP, Claudia Roth. The report detailed the wide variety of discriminations faced by lesbians and gay men in the EU, and was accompanied by a resolution of the Parliament which called on the Commission to submit a draft Recommendation to the Council of Ministers for the abolition of all forms of sexual orientation discrimination.⁷ The breadth of the resolution distinguishes it from other discussions of this issue; the resolution called for an end to discrimination in areas such as partnership law, and adoption law.

The adoption of this resolution by the Parliament provided a remarkable demonstration of high-level symbolic support for the fight against sexual orientation discrimination. Moreover, it strongly contributed to recognition of this issue as one relevant to the European Union. Outside of the institutions, the resolution generated considerable public debate, both for and against the proposals therein. With regard to the substantive policy proposals, the Commission rejected many of the proposals on the grounds of

legal competence.⁸ Underlying this position was the Commission’s assessment that, even where legal competence could be established, the Council of Ministers would not be prepared to accept any proposals for common legal protection against sexual orientation discrimination. Nonetheless, this is not to say that the Roth report failed to have any substantive impact. To the contrary, it did yield a greater commitment from the Commission to combatting sexual orientation discrimination, and it helped pave the way to an amendment of the Treaty to create an explicit legal competence for the Community.

2. Non-discrimination clauses

Whilst the Commission felt unable to act on most of the proposals contained in the Roth report, the then Social Affairs Commissioner, Bruce Millan, did promise to include sexual orientation within general anti-discrimination clauses in future legislation.⁹ The concept of such clauses demands further explanation. The European Court of Justice has, on numerous occasions, declared that a condition of the legality of Community legislation is its conformity to the general principles of Community law.¹⁰ Central to these general principles of law are fundamental human rights, and the principle of non-discrimination.¹¹ Therefore, legislation adopted by the Community institutions, or measures taken by the Member States in the implementation of Community law, may be found by the Court to be invalid, if they are contrary to, *inter alia*, the principle of non-discrimination, or fundamental human rights.

By inserting non-discrimination clauses in legislation, the Commission simply seeks to provide a more express recognition of this principle in the Community legal provisions. Moreover, whilst it has been established through the jurisprudence of the Court that the principle of non-discrimination covers discrimination based on sex¹² or religion¹³, it is not evident whether this extends to disability, age or sexual orientation. The anti-discrimination clauses perform the useful function of making it clear to which groups non-discrimination requirements apply.

The commitment to non-discrimination clauses took some time to be actually put into practice. The principle was restated in the 1995 Communication from the Commission on racism, xenophobia and anti-semitism¹⁴, and it was only following this document that the first such anti-discrimination clause was proposed.¹⁵ The Commission proposed that in the *parental leave directive* a statement be added to the effect that:

“...when Member States adopt the provisions to implement this Directive, they shall prohibit any discrimination based on race, sex, sexual orientation, colour, religion or nationality.” (Article 2(3))¹⁶

The Member States acting in the Council of Ministers regarded this provision as unacceptable and substituted it with a clause in the preamble of the directive stating: *“...whereas the Community Charter on the Fundamental Social Rights of Workers recognises the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinions and creeds...”* (Recital 17; OJ 1996 L 145/4)

A similar pattern of events occurred in relation to the *part-time workers directive*, adopted in December 1997.¹⁷ Again, the Council rejected the non-discrimination clause proposed by the Commission, and replaced it with a statement in the preamble. As with the parental leave directive, sexual orientation was deleted during this process. This practice of replacing anti-discrimination clauses with references to non-discrimination in the preamble to legislation does not provide a satisfactory guarantee of non-discrimination. The preamble of legislation is not legally binding on the Member States, although clearly the general principle of non-discrimination, as guaranteed by the Court of Justice, still operates. However, the deletion of commitments to non-discrimination on grounds of sexual orientation, alongside the absence of any reference to age or disability, raises questions over whether these grounds of discrimination enjoy the same level of protection. Despite initial setbacks, the Commission indicated in its 1998 *action plan on racism*¹⁸ that it intends to continue proposing such clauses, but these will have little chance of success in the absence of a shift of opinion within the Council.

3. Treaty amendment

As indicated earlier, the Commission held the view in 1994 that the existing EC Treaty did not provide the necessary legal competency to allow the proposal of

anti-discrimination legislation in respect of sexual orientation discrimination. Indeed, this was also true of discrimination on the basis of race, religion, age and disability. In response, lesbian and gay representatives, as with other groups campaigning for equality, began lobbying the Member States for an amendment to the Treaty, so as to resolve the competency question. Without going into the details of the lengthy negotiating process¹⁹, the Member States did agree to an amendment in the new Treaty of Amsterdam which expressly provides the Community with the legal power to combat discrimination on grounds of sexual orientation. Article 13 states:

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

A number of points may be made in relation to this provision, which are applicable to all forms of discrimination covered by Article 13. First, the article requires unanimity in the Council of Ministers for the adoption of legislation thereto. This provides a difficult political hurdle for all relevant proposals. Second, the role assigned to the European Parliament is rather weak. The Parliament has only to be consulted on proposals under Article 13; the Council and the Commission are under no legal obligation to take the views of the Parliament into account. Third, the article does not enjoy direct effect. Therefore, the mere presence in the Treaty of Article 13 does not create any legally enforceable rights to non-discrimination. To the contrary, it merely provides the Council with the opportunity to adopt such measures as it sees fit. Thus, the individual victim of discrimination does not enjoy any greater legal protection against discrimination until such time as the Council adopt further legislation in implementation of Article 13. Finally, Article 13 only provides a competence for the Community to combat discrimination *“within the limits of the powers”* conferred by the Treaty. This may be taken to imply that Article 13 will only be used in relation to areas which already fall within the existing competence of the Community. For instance, in relation to discrimination at the workplace, this is clearly an area for which the Community enjoys legal competence.²⁰ However, in relation to discrimination in fields such as adoption or marriage law, or even the criminal law, there is no explicit provision in the EC Treaty providing

the Community with the competence to legislate on such matters. Indeed, even on matters such as discrimination in housing (which is not mentioned *expressly* in the Treaty) there will undoubtedly be arguments over the scope of Article 13.

4. Grant v South West Trains²¹

The problem of sexual orientation discrimination in the workplace, and the lack of legal protection at the EU level, was highlighted in a recent decision of the Court of Justice. Prior to the decision, there had been hopes amongst lesbian and gay rights groups that the Court would find sexual orientation discrimination to be unlawful, under the existing legal provisions on sexual discrimination. The Court's rejection of this submission has refocused attention on the need for new legislative provisions.

The facts of the case are as follows. South West Trains extended travel concessions to certain relatives of employees, including married and unmarried opposite-sex partners, worth around £ 1,000 per annum. However, when, in January 1995, Lisa Grant sought to claim the same travel concession in respect of her unmarried partner, Jill Percy, she was refused. Whereas travel concessions were available in respect of unmarried partners of the opposite sex, they were not extended to unmarried partners of the same sex. Lisa Grant subsequently brought a case against South West Trains, alleging that its refusal to supply the travel concession in respect of her partner was in breach of Article 119 on equal pay between women and men. However, on 17 February 1998, the Court of Justice held that the refusal to supply travel concessions to the same-sex partner of an employee, where such concessions were provided for opposite-sex partners, whether married or unmarried, was not discrimination prohibited under Article 119.

In *Grant*, it was argued that there was sex discrimination because Lisa Grant had been denied the travel concession in respect of her female partner, whereas, had she been a man with a female partner, the concession would have been given. In other words, **but for her sex**, Lisa Grant would have received the travel concession. The UK government, supported by the French government, argued that as a gay man would have been treated equally to a lesbian woman, then there was no sexual discrimination. Surprisingly, the Court accepted this proposition, in contradiction to its reasoning in an

earlier decision.²² The Court agreed that treating male and female homosexuals equally, however negative this treatment may be, was not sexual discrimination. Furthermore, the Court denied that the fundamental right to equality provided any support for same-sex couples. The Court held "*in the present state of law within the Community, stable relationships between two persons of the same sex are not regarded as equivalent to marriages or stable relationships outside marriage between two persons of the opposite sex.*"²³

The Court's reluctance to intervene is perhaps unsurprising though, given the moral and political sensitivity of the case. In addition, the case would have had potentially significant financial consequences for governments and employers throughout the Union. Nevertheless, the case has at least given renewed publicity to the fact that EU law does not provide sufficient protection against sexual orientation discrimination. Furthermore, the Court explicitly stated that Article 13 offered the potential to prohibit discrimination such as that faced by Lisa Grant, thereby placing the onus on the political institutions of the Union to act.

Conclusions

The combination of the introduction of Article 13 and the decision in *Grant* makes it clear that there is now both the opportunity and the necessity for sexual orientation discrimination to be specifically prohibited at EU level. However, limits to the legal competence of the EU remain, and the full scope of Article 13 remains a matter of legal debate. If the existing EU sexual equality legislation is taken as the model for new areas of anti-discrimination law, the primary area of concern is likely to be the prohibition of employment discrimination. The Commission's 1998 action plan on racism promises the submission of a legislative proposal to combat racial discrimination by the end of 1999, based on Article 13.²⁴ It remains to be seen though if the Commission will seek the inclusion of the other grounds of discrimination in Article 13 (religion, disability, age, sexual orientation) in the same legislative instrument.

Mark Bell

- ¹ For reasons of space, this overview will not discuss the protracted debate over the amendment of the Staff Regulations of the European Community to end discrimination on grounds of sexual orientation and to include recognition of same-sex partners.
- ² For a fuller account of the development of EU policy on sexual orientation discrimination, see Mark Bell: *Sexual Orientation and Anti-Discrimination Policy: the European Community* in T. Carver and V. Mottier (editors): *The Politics of Sexuality*, Routledge, London 1998.
- ³ European Parliament (1984): *Report for the Committee on Social Affairs and Employment on Sexual Discrimination at the workplace* [Squarcialupi], EP Doc. 1-1358/83, 13.2.84.
- ⁴ European Commission (1990): *Community Charter on the Fundamental Social Rights of Workers*, in: *Social Europe 1/90*, pp. 46-50.
- ⁵ OJ 1989 C 323/44.
- ⁶ EP Doc. A3-0028/94.
- ⁷ OJ 1994 C 61/40.
- ⁸ *Debates of the European Parliament* No. 3-442/43, 7.2.94.
- ⁹ *Debates of the European Parliament* No. 3-442/44, 7.2.94.
- ¹⁰ For instance, *Opinion 2/94 on Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 28.3.96.
- ¹¹ *Ruckdeschel* [1977] ECR 1753, at pars. 16-17.
- ¹² *Defrenne v SABENA (III)* [1978] ECR 1365, at pars. 26-27.
- ¹³ C-130/75, *Prais v Council* [1976] ECR 1589.
- ¹⁴ European Commission (1995): *Communication from the Commission on racism, xenophobia and anti-semitism and Proposal for a Council Decision designating 1997 European Year against Racism*, COM (95) 653, 13.12.95.
- ¹⁵ This was not though the first occasion on which either an anti-discrimination clause had been employed in Community law (see *Television without Frontiers Directive 89/552* OJ 1989 L 298/23) or that sexual orientation had appeared in a Community legal instrument (see *Recommendation on the dignity of women and men at work*, OJ 1992 L 49/1).
- ¹⁶ European Commission (1996): *Proposal for a Council Directive on the framework agreement on parental leave concluded by UNICE, CEEP, and the ETUC*, COM (96) 26, 31.1.96.
- ¹⁷ Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC; OJ 1998 L 14/9
- ¹⁸ European Commission (1998): *An action plan against racism*, COM (98) 183, 25.3.98
- ¹⁹ See further: M. Bell & L. Waddington: *The 1996 Intergovernmental Conference and the prospects of a non-discrimination Treaty article*, in: *Industrial Law Journal* Vol. 25(4), 1996, pp. 320-336.
- ²⁰ See new Treaty Articles 136 and 137.
- ²¹ C-249/96, *Grant v South West Trains* [1998] IRLR 208.
- ²² C-13/94, *P v S and Cornwall County Council* [1996] ECR I - 2143, concerning discrimination against a person for a reason relating to gender reassignment.
- ²³ Par. 35.
- ²⁴ European Commission (1998): *An action plan against racism*, COM (98) 183, 25.3.98.

EQUALITY FOR LESBIANS AND GAY MEN – A RELEVANT ISSUE ON ALL AGENDAS

It might be stating the obvious, but lesbians and gay men are just as diverse as other people, and are present within all groups in European societies. Some are young, some are old, and some are disabled. Some are Black or from ethnic minority communities. Some are poor, some are homeless. Many have children, and millions of children have gay men or lesbians as parents and/or in their immediate family.

All have been through various forms of schooling, and are recipients of health care in one way or the other. Some are religious, most grew up in cultures marked by religious world views. Some are HIV-positive or living with AIDS. All are recipients of media influence on public opinion. Lesbians and gay men work in all sectors, some are employers, many are in trade unions, some are unemployed. Many live in long-term relationships, some are in love with a non-EU citizen. Some do not live in their country of origin. Many are victims of physical and verbal violence, some are rape survivors.

All have been affected directly or indirectly by some form of social, legal, or economic discrimination on grounds of homosexuality. While some can live entirely openly as gays or lesbians in all social/family/work environments, most cannot be open in at least some social/family/work situations for fear of substantial disadvantages and/or hatred. Homosexuality impacts on all situations of everyday life to a greater or lesser degree. Whatever aspect of the social dialogue is tackled by laws and social change impacts on the situation of gay men and lesbians, one way or another.

Lesbians and gay men are asking for the recognition of their actual lives, for equality and social justice. These are not claims for any special privileges, just for the right to take an accepted place within society as friends, as colleagues, as brothers and sisters, as sons and daughters, as partners, as parents. No more and no less. These claims are not costly, nor out of the ordinary, nor should they cause a lot of social controversy. In recent years, gay men and lesbians have come far in European societies in terms of their social acceptance. Those who speak openly for institutionalised discrimination in Europe are already in the minority. With the establishment of ILGA-

Europe, lesbians and gays have now also reached the point where they can seek to join forces with all others who are concerned with the achievement of true equality and social justice at the European level.

This report thus departs in general terms from Article 22 of the Universal Declaration of Human Rights:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Article 22 attempts to ensure that all spheres of life offer opportunities for self-fulfilment and the possibility to live one’s differences as an integral part of democratic society. The European Parliament included in Article 6 of its Declaration of Fundamental Rights and Freedoms of 12 April 1989 a right to respect and protection for people’s identity – and sexual orientation is a fundamental aspect of human identity. As stated in the Introduction, sexual orientation has been included in Article 13 of the new Treaty of Amsterdam which specifically gives the Union the right to act to combat various forms of discrimination.

At present, as stated in the conclusion to the 1993 EC funded report *Homosexuality: A European Community Issue*: *“...in Europe as elsewhere, lesbians and gay men are subjected in all spheres of social relations, often from an early age, to ridicule, intimidation, discrimination and outright physical assault. They are subjected to this not because of what they do but because of who they are.”* (p. 397)

Further, as the 1994 report of the European Parliament on equal rights for homosexuals and lesbians in the EC (Document A3-0028/94) recognised: *“...The list of the areas in which lesbians and gay men are discriminated against, is long. (...) Discrimination is found in nearly all areas: in the health and education system, but also in the sectors work, housing or education. The report of the Commission highlights the specific problems of*

young lesbians and gays. They are stigmatised, and some see a 'way out' only in suicide." (p. 10)

The lack of recognition of human rights for lesbians and gay men has been restated in the European Parliament reports and resolutions on the observance of human rights in the European Union itself for 1994 (Document A4-0223/96), 1995 (A4-0112/97), and 1996 (A4-0034/98). These related to unequal ages of consent (identified as a violation of the European Convention of Human Rights by the European Human Rights Commission in 1997), non-provision of partnership rights, social, economical, and legal insecurity, equal treatment of EU employees by the European institutions, the treatment of lesbian and gay prisoners, and homophobic violence.

Many debates about equality and social justice for gay men and lesbians have been clouded by discussions about the "moral value" of homosexuality in relation to its "causes". It is not the intention of this report to enter into an argument on this. In the context of this report, it is irrelevant whether homosexuality is "caused" by biological factors, socialisation, or choice: the fact is that there is always a decisive number of people in every society who are sexually and socially attracted to members of their own sex. According to the advocate general of the Court of Justice of the European Communities, Michael B. Elmer, the estimated number in the EU is 35 million (Case C-249/96).

Sexual orientation is one of the many human diversities that simply exist as a matter of fact. This impacts on how the vision of pluralistic and democratic European societies is argued, lobbied, and enforced; it impacts on all programmes that try to integrate difference, ensure human rights for all people, and attack social injustice. The documents already referred to, as well as this current report, clearly show that the reality in the EU, and Europe as a whole, is far from assuring full human rights for gays and lesbians.

Gay men and lesbians have already reached some of their goals towards equality and social justice, but there remains much to be done. The focus should not, however, be solely on existing discrimination and difference of lesbians and gay men as a group by themselves, but on the ways in which different aspects of the social, economical, and political realm interrelate with issues of sexual orientation, and the importance of the inclusion of lesbian/gay issues in the civil and social dialogues and in the agendas of all NGOs.

In this sense, ILGA-Europe sees gay men and lesbians not as a discreet, insular minority, different from the rest of society, but focusses on the many different social positions gay men and lesbians occupy while being part of all walks of society. This can be achieved through an identification of the specific ways gay men and lesbians relate to their social, political and economical environment and an acknowledgement of homosexuality as a factor that potentially hinders their equal participation in some aspects of society, and prevents them from obtaining full social and legal citizenship.

It is important to note that gay men and lesbians are more than victims of discrimination: lesbians and gay men in Europe have been proactive about their lives for many years and have developed large networks for social and political support and work on local, national, and international levels. Further, it needs to be recognised that the costs of anti-homosexual discrimination, violence and social discrimination do not impact only on lesbians, gays and their families – there are, for example, the direct costs to the public purse incurred through the enforcement of discriminatory laws, such as those in Austria and the United Kingdom, the costs to employers of reduced productivity or loss of individual workers, the negative impact on the efficiency of companies as a whole through discrimination and harassment in the workplace, the costs linked to physical attacks on individuals (such as hospital treatment and absence from work) or on lesbian/gay businesses (such as loss of employment and income to the local economy).

This report presents a picture of the complex European reality lesbians and gay men find themselves in. It also presents ILGA-Europe's view that issues of concern to lesbians and gay men have to be on the agenda of all people and organisations concerned with the development of pluralist and democratic societies, in which all human rights are truly for all human beings. The picture is necessarily a broad one, partly because of the limitations of the project, but also because of the lack of quantitative data and research into the situation of lesbians and gays in the EU. There have been few studies of the social and economic situation in Member States, and little in the way of comparative research; there appears to be no numeric data related to lesbians and gay men for the EU as a whole. The 1993 *Homosexuality: A European Community Issue* remains the most comprehensive comparative study.

ILGA-Europe sees its endeavours and efforts to achieve equality for gays, lesbians, bisexuals and transgendered

people, and the respect of their human rights, as necessarily being part of a broader and more comprehensive struggle for, and commitment to, human rights and to equality. It recognises that it shares this broad commitment with many other organisations and social agencies: the aims are integral, and there is much common ground between the issues on ILGA-Europe's agenda and those on the agendas of such organisations. We are not suggesting that all agendas are or should be the same; clearly, different forms of discrimination have different manifestations, and it is therefore essential for all organisations to undertake specialist work around their own areas of specific concern and expertise. However, we recognise the significant value to be gained from dialogue between organisations working in different but related fields, and from working in partnership around areas of common concern.

In the following we are trying to exemplify, in eight areas of concern to many European organisations and NGOs, how an array of different social, political, and economical aspects impact differently on gay men and lesbians than on people with apparent heterosexual orientation: in areas concerning youth, age, children and families, employment, poverty, economy, housing, disability, and racism, migration and asylum. This list is by no means exhaustive; rather, it is intended as a thread along which the building of dialogue and co-operation around areas of common concern could be started.

1. Youth

Young people need to have the space to develop their identities, sexuality and self-esteem in safe and supporting environments. They are particularly vulnerable to social pressure and exclusion and are often not yet strong enough to fight for their rights and the expression of their full personalities.

A recent survey conducted by the *Stonewall* organisation in the United Kingdom² showed that one in three of the 4,000 lesbians, gays and bisexuals surveyed had suffered at least one physical attack in the previous five years, but the figures for young people were even higher. One in two of those aged under 18 had been physically attacked, over 60% had been harassed and 90% verbally abused. 40% of these attacks had taken place in schools. For those aged between 18 and 25, almost four in ten had been physically attacked.

The lack of positive role models for young gays and lesbians in daily life, in the media, and in the social and legal system, produces a lack of knowledge, a lack of support and, in consequence an extra amount of pressure on them in the times when they start to explore their identities. The process of “coming out” that they have to go through is difficult enough in itself, but is made worse – more often than not – by the fact that their families, friends, and teachers are more likely to reject than support them.³

Young lesbians and gay men face significant problems of homelessness; many are thrown out of the family home when they come out, others are driven to leave the family home because they fear a hostile reaction if their families become aware of their homosexuality. Particularly in those countries where there is no protection against discrimination in employment on the grounds of sexual orientation, the general problems which can be faced by young people in obtaining and retaining secure employment are heightened for young lesbians and gay men by the fact that their sexuality alone can be used as a reason for refusing to employ them or for dismissing them. All these pressures lead to a disturbing picture of young lesbians and gay men being at disproportionate risk of suicide and self-harm.⁴

The climate and awareness has already begun to change in many EU countries, in schools, in society, and among parents. Lesbian and gay organisations in Europe are usually strong on their commitment to helping young people who approach them with coming out groups, telephone help-lines, books and material, and an open ear. In addition, the International Lesbian and Gay Youth Organisation (IGLYO), a member of ILGA, organises many events and facilitates networking for young gays, lesbians, and bisexuals in Europe.

However, to ensure that all young people have a right to have their identities and capabilities fostered and to an education that helps them develop into social and responsible adults, there needs to be a broad agreement with many social agents to develop and implement clear positive guidelines in all laws and programmes concerning education and youth. We need to develop regulations and a social climate in which all forms of bullying, including homophobic bullying, is rendered unacceptable in schools and other educational establishments, residential homes and youth centres – a climate in which all young people can learn to feel confident about their sexual identities.

Finally, the needs of young lesbians and gay men are also inextricably linked to the wider agendas of equality, social acceptance and anti-discrimination measures in areas such as employment and housing.

2. Age

It is clear that all older people should have a right to live in dignity, integrated in a social environment, and valued for the contribution they have made and still make to society. Their interests need to be recognised with regard to health, transport, disability, equal opportunity, employment, technology, research and education areas. Older people should also have a right, if they need support services, to live within the community or to move into supported housing or residential care, to access to services which respect and meet their needs.

When the needs and rights of older people are being considered, the particular needs of older lesbians and gay men are often ignored or overlooked. Many older lesbians and gay men do not live openly as lesbian or gay, and can face increasing social isolation. Older lesbians and gay men are at greater risk of harassment and violent attack, and their health care needs are often either unacknowledged or poorly met. Bereavement through the death of an often life-long partner is not usually recognised as the hugely significant loss it is – even when the relationship is known.

The lack of legal recognition of partnerships in many Member States, and the attitudes of other family members, can mean that the surviving partner may face the loss of their home and may not even be entitled to inherit personal belongings. Surviving same-sex partners do not have equivalent legal or social status to widowers/widows and do not have the financial or social standing that this status normally involves. The exclusion of bereaved same-sex partners (or all unmarried partners) from receiving survivor benefits under many pension schemes, for example, often causes significant financial hardship for the surviving partner.

Older lesbians and gays face great difficulties in terms of safe and appropriate housing. Further, supported and residential care accommodation does not usually acknowledge the existence of older lesbian and gay people, let alone seek to reflect their needs; the dependency on care staff's attitudes towards homosexuality often hinders any possible openness about the real needs faced. It

is rarely possible for lesbian and gay couples to access such services as a couple: instead, they are admitted as single people and often separated. In some countries of the EU (for example the Netherlands) gay and lesbian organisations have started housing projects for older lesbians and gays. But the projects are few as yet, and need more public and financial support to reach those who are most in need and often do not have the financial means to buy themselves into existing projects.

The development of such projects reflects a steadily growing awareness in the lesbian and gay communities of the need to promote and address the interests of older lesbians and gays. However, there is a need for lesbian and gay organisations generally to develop good policies and practices on ageing, to develop specific initiatives targeted at older lesbians and gays, and to tackle ageist attitudes amongst lesbians and gay men. There is also a need to develop links and dialogue between lesbian and gay organisations and older people's organisations, as an integral part of effectively promoting the interests of older people who are lesbian or gay.

Only significant changes in laws and social attitudes in relation to homosexuality, however, can assure that older lesbians and gays get the same chances of age in dignity as heterosexuals – which are, after all, already substantially unsatisfactory in general.

3. Children and families

The protection of families in European societies usually aims at a creation of environments in which all members of families, but particularly children and young people, can thrive to their full human capabilities with care, love, and happiness.

Within the European Union millions of children and young people are growing up in lesbian or gay headed households, or with at least one lesbian or gay man as a close family member. It is estimated, for example, that there are over one million homosexual parents in the Federal Republic of Germany alone.⁵ The focus of debate should be the welfare, needs and rights of children, and not on opinions or presumptions about homosexuality. The fact is that a huge number of children live with gay or lesbian parents already – and all children should have the right to have their families equally respected and recognised in law and social policy.

Children and young people who have lesbian or gay parents, however, often face particular difficulties through the legal, social, and economical exclusion of their families in the enforced definition of family. The following five issues are examples of particular concerns in this respect:

Firstly, the education system does not in most cases provide a safe environment in which children of gay and lesbian parents can be open about their families. For the most part, these children have to learn how to live with the direct or indirect message that their families are somehow not “real” families and that their “pretended families” are not as valid as “real” ones. The culture around them offers few positive images or role models, books, TV shows, or pictures in their classroom that depict a family situation similar to theirs. The only pictures many children see present one fixed model of family consisting of a mother, a father, and 1-2 children.

Although extensive research shows that those children usually cope well with the difference of their families and connect normally to their peers,⁶ the lack of positive support produces stress and possible social exclusion.⁷

Second, in most Member States children of gay and lesbian parents have no right to have their actual living situation legally recognised, and even their right to the two parents they already have is not fully assured. They may grow up with a non-biological parent, to whom they are likely bound as closely as to their biological parent, but they have no right to have their relationship with that parent recognised in law, no right to access him/her in hospital, inherit from that parent or take care of them in old age.

At the same time their non-biological parent cannot legally take responsibility for them when the biological parent is absent (towards schools, hospitals, etc.). If the biological parent dies, there is no guarantee that the courts will allow the child to remain with the parent that might have been the primary care giver all of her/his life. There have been numerous reports of a tragic second loss of the non-biological parent after the death of the biological parent due to nasty custody battles with relatives or grandparents or due to severe prejudices on the side of youth and welfare institutions. These do not speak for a true concern for the psychological welfare of the child.

Third, children in lesbian/gay families may face poverty more often than their peers with two heterosexual

parents. In particular, lesbian headed families lack the “male wage” in the family – according to European Commission statistics⁸, women still earn 20% less than men in the EU, and lesbian and gay parents, like other lesbians and gays, face particular dangers of exclusion from employment or dismissal from their jobs due to their sexual orientation.

Fourth, the perpetration of homophobic prejudices – that lesbian and gay parents will somehow “make” their children become homosexual, that all gay men, and often lesbians too, are potential paedophiles and abusers of their own and/or other children – is still, all too often, directed at the children of lesbian and gay parents, sometimes by teachers, sometimes by neighbours, sometimes by a child’s heterosexual parent or other close family member. Such prejudices can be a significant factor in bullying in and outside of schools, and spark persecution of lesbian and gay families. The continuing propagation of the myth that all homosexuals are paedophiles also marginalises the experiences of those children who actually are survivors of homosexual or heterosexual abuse.

And fifth, no Member State of the EU allows adoption or full second-parent adoption for gay and lesbian couples. Some allow single-parent adoption. In the Netherlands and the UK, it is now possible for a non-biological co-parent to acquire parental authority, but this does not give full recognition as a legal parent (cf. the Netherlands and UK sections in this report).

These laws and social policies do not properly protect the rights of children with lesbian or gay parents, millions of whom already prove everyday in Europe that they can provide a loving, caring, and healthy environment. They can be said to simply reflect a deeply rooted investment in manifesting the wish that gay people not exist.⁹ It is perhaps acceptable to tolerate already existing gays and lesbians, but culture and institutions invest considerably into preventing the production of “new gays and lesbians”, even though a substantial amount of research shows that the homosexuality of the parent has no influence on the development of the sexual orientation of their children, apart from the fact that these children grow up with more knowledge about human diversity.¹⁰

There are now lesbian and gay parenting groups and support networks in many Member States, and the Gay and Lesbian Parent Coalition International (GLPCI) facilitates international networking between gay/les-

bian parent groups in the world. These groups provide help for children, young people and their parents, advice to gays and lesbians who want to become parents, and inform the public about issues in relation to lesbian and gay parenting, adoption and fostering.

These efforts are a huge step for lesbian and gay families, but the most urgent measure in this respect, the full legal and social protection of the rights of children actually living in lesbian/gay headed households, has not been taken anywhere in the European Union. Their positions and rights need to gain entry to all family-related agendas, by legalising their lives fully and ensuring that normative family concepts, which reduce the family to only one heterosexual father, mother, child version, are erased at all social and legal levels. Laws and social policies on the family and the care of children need to reflect the diversity of all families and the real needs of children and young people.

4. Employment

The general aims of work in this area may be defined simply: adequately paid work in a healthy and discrimination-free environment for all people living in Europe.

However, few European countries provide any legal protection from discrimination in employment on grounds of sexual orientation, and few have a culture in which “discrimination on the grounds of sexual orientation is unacceptable behaviour” has already entered the voluntary behaviour codes of employers and the general workforce. Employment is also the area in which most gay men and lesbians hide their sexual orientation for fear of discrimination and harassment.

Homosexuality is usually hidden during the employment application process, for fear that the application will be turned down altogether or will not be fairly considered. In most circumstances, lesbian and gay applicants cannot be sure of a non-prejudiced reaction from a prospective employer – and in some Member States, employers can legally even have explicit policies to exclude lesbian and gay people from employment.

Often that means starting a new employment with a silent “lie” – the assumption of heterosexuality together with being “single” means, for example, that someone may be seen as single with no children, while in fact in a long-term relationship with three children. And the si-

lence often continues, encouraged and reinforced through everyday experiences at work – the discussions in the workplace about business matters or current events which assume everyone present is heterosexual, the homophobic “jokes” that go unchallenged by colleagues or managers, the invitations to social events (e.g., the “office party”) or business dinners which invite everyone to bring their husbands and wives along. Being open at work about being lesbian or gay can, in some states, mean the loss of promotion or other opportunities and even dismissal without any form of legal redress.

The lack of recognition of same-sex partnerships means that lesbians and gay men do not receive benefits provided by many employers, as part of the conditions of employment which can be obtained by employees who are married and, in some cases, for unmarried opposite-sex partners. These may include pensions for the surviving partner of employees, health or life insurance, free use of services provided by the company or discounts on goods. The lack of legal and social recognition of partnerships often means that lesbian and gay workers are not entitled to special leave to care for dependants, or bereavement leave, in equivalent circumstances to those in which heterosexual workers have such entitlements. It can also mean particular hardship in certain other employment related circumstances, for example non-eligibility for reduced stand-down periods for benefits after having to leave one’s job for relationship reasons like serious illness of the partner, or moving with one’s partner to another city where (s)he has been sent as part of her/his job.

Discrimination in employment needs to be tackled both through anti-discrimination legislation and through measures to change employment policies and practices. Employers and trade unions clearly have a major role to play in bringing about a climate in which homophobic behaviour on the part of employers or workers are generally considered, and treated, as unacceptable. Clearly, this should form part of developing a company and workplace culture in which all workers are afforded equal treatment, and where discrimination and harassment on any grounds are not tolerated. There is already a degree of recognition that discrimination and harassment adversely affects the efficiency and performance of public and private sector organisations, through a climate which precludes employees individually or collectively from developing to, or operating at, their maximum potential.

Employers who develop comprehensive anti-discriminatory policies and good employment practice are more likely to be able to attract the best applicants for jobs, ensure that individuals are selected and promoted on the basis of their abilities, and ensure that the skills of all members of the workforce are developed and utilised to the full. On the other hand, the operation of discriminatory practices will not only adversely affect performance, recruitment and retention, but also damages corporate image to some degree. From the point of view of workers and trade unions, it may also readily be argued that allowing discrimination against one group of workers makes all workers more vulnerable to unfair treatment.

The international conference “Trade Unions, Homosexuality and Work”, being held in Amsterdam in July 1998, has been organised to look at lesbian and gay rights in particular relation to employment. It will provide a forum for dialogue between lesbian and gay groups, trade unions and other social partners from all over the globe. A significant number of European trade unions have already started to explicitly address lesbian and gay rights as trade union issues, and some now have specific lesbian/gay groups or networks. Recent years have also seen the founding of a considerable number of national and international professional lesbian/gay networks (for example, for journalists, managers, health workers, lawyers, teachers, craftspeople, etc.) who are starting to work for the specific concerns in their professional field.

The conference, and the continuing work being done within and by some trade unions and employers, will aid in developing programmes of action on anti-discrimination in the workplace. However, the achievement of the aim of rendering discrimination on grounds of sexual orientation an unacceptable behaviour in any work environment, will also require legislation, education, and work towards a change of public opinion and awareness.

5. Poverty and economy

All social agents should share a substantial interest in combatting poverty, both in its economic effects (lack of food, health care, housing, etc.) and in its effects of social exclusion from productive society.

Clearly lesbians and gay men in the EU are, with few exceptions, excluded from economic and social benefits in

relation to partnership. Thus, an already existing poverty cannot be elevated via partnership benefits (for example tax reductions for a dependant partner). In fact, the opposite is the case: in some Member States gays and lesbians are obliged to care for their domestic partner if that person is eligible for welfare support, but do not receive the benefits, such as tax reductions, joint insurance, pension plans, education offers, travel passes, etc. that may be available to heterosexual couples in the same situation.

There is a basic inequality of pay resulting from the exclusion of same-sex and unmarried heterosexual partners from pension schemes and benefits. The European Court of Justice determined in February 1998, in the case of Lisa Grant vs South West Trains, that discrimination against lesbian and gay couples in respect of employment benefits is not against European Community law. As already discussed, lesbian or gay families are not recognised as whole families and, thus, often do not receive help as a unit, for example in relation to social housing. Lesbian couples also lack the “male wage” and the male job opportunities.

One could also speak of a loss of employment and promotion opportunities due to discrimination against lesbian and gay workers, or substantial financial loss in relation to the need to migrate to a more lesbian or gay friendly country or place. In short, the slide into poverty is potentially faster than for heterosexuals. Most of the helping provisions directly or indirectly exclude gay and lesbian couples, and there is a substantial economic loss for same-sex couples not living in a country where their relationship is recognised. There is also evidence of price differences for heterosexuals and lesbians and gay men for some goods and services. As Russell Child has explained: *“...some types of consumption are more expensive for consumers who are not part of a traditional heterosexual family unit. This is for example the case in sections of the housing market (...), and also in the market for pensions and other personal insurance cover, where most products are tailored towards the interest of traditional family units.”*¹¹

However, when talking about poverty and economics in relation to homosexuality, one also needs to take into account the costs that anti-gay violence and discrimination incurs for the whole of society: the enormous costs of enforcing anti-homosexual laws, already mentioned above, the loss of revenue from gay/lesbian business that get destroyed through acts of hate, and the loss of tax, innovation, skills, income, etc. from gay and lesbian

workers whose careers are hindered, diverted, or who are lost to their home economy due to the fact that they need to migrate to live their life.

The issues are, in spite of all this, complex because lesbians and gay men are also important consumers in the markets of Europe. There has been much media discussion about the “pink pound” in some Member States, often highlighting that a study in Britain suggested that white gay men are the single most affluent group in the EU. However, the study also suggests¹² that there is no comparable “pink economy” for, among others, lesbians, gay/lesbian youths, Black, disabled or HIV-positive members of the gay/lesbian community. In short for the vast majority. This has been underlined by subsequent research in Ireland, carried out by the Gay and Lesbian Equality Network (GLEN).¹³

The “pink pound” is an economic force that should surely be used rather than wasted, and there are indeed some gay men, and some lesbians, with considerable disposable income. But the picture of the wealthy, independent gay, with lots of money to spend on fashion and leisure, simply does not reflect the reality of the lives of the lesbian and gay communities in Europe.

6. Housing

One aim of democratic societies should surely be to provide access to affordable housing that corresponds to the needs of creating a healthy and safe space to live for all people.

Prejudice and the lack of legal protection against discrimination on the grounds of sexual orientation mean that lesbians and gay men face substantial discrimination when trying to rent or buy accommodation. In the private housing sector sexual orientation often has to be disguised to obtain housing at all, and few Member States provide any form of protection from subsequent eviction or cancellation of the rent contract on grounds of sexual orientation. Social welfare housing is often restricted to married heterosexual couples.

In many Member States, lesbian and gay couples who live in rented accommodation or jointly owned property may face significant problems if they separate or if one partner dies. As few States give any means for the legal recognition of same-sex partnerships, few lesbians and gay men in the EU can rely on any legal right to succes-

sion to the rent contract, or to legal recognition as a family member in relation to inheritance. Lesbians and gay men often therefore face, after the death of their partner, being evicted from the home in which they have lived for many years.

Housing for lesbians and gay men is in most cases also a social issue of acceptance by neighbours. Living openly as a lesbian or gay man, or living together with a same-sex partner, can spark anti-lesbian and anti-gay harassment or violence, to an extent that a private living sphere cannot be maintained. While there have been some positive developments in some Member States in the way that police forces and other statutory agencies respond to violence directed at lesbians and gays in the private and public spheres, going to the police in such circumstances is also always an act of outing, and in some countries it still involves fear of police prosecution rather than help.

There need to be changes in law and social policies to combat such violations in relation to the housing sector, including anti-discrimination legislation and a recognition of gay/lesbian relationships as fully equal to the relationships of heterosexual common-law and married couples.

7. Disabled people

The aim of full equality and human rights for disabled people must include the promotion of full equality and the removal of discrimination in all areas of life – in employment and education, in access to housing, transport and other services, in participation in every aspect of society. This includes recognising disabled people’s sexuality and sexual identity.

Disabled people’s sexuality is often marginalised and even denied, and they can face difficulties in having their relationships properly acknowledged and recognised. Many non-disabled people do not imagine disabled people as having a sexuality at all, let alone that they may be lesbian or gay. Matters pertaining to sexual orientation are, of course, as relevant to disabled people as to non-disabled people, and disabled people are an intrinsic part of gay and lesbian communities.

The challenge is two-fold. Both the disability community and those persons or institutions in any way implicated in the life of a disabled person, and the gay and

lesbian community need to be equally committed to providing equal opportunities for gay and lesbian disabled people.

Disabled people are valuable social and economic contributors to our societies, but experience discrimination and barriers in all areas of everyday life through social and institutional attitudes, policies and practices – from buildings or services designed to cater only for non-disabled people and regulations which directly or indirectly exclude disabled people, to information and meetings which are inaccessible, and the perception that disabled people are not able to lead fulfilling private and professional lives or to speak on their own behalf. All activities, policies and programmes which seek to promote equality for gay men and lesbians need to reflect the fact that it is these attitudes and barriers which exclude and deny equal rights to disabled people, rather than their impairment.

Lesbian and gay organisations inevitably reflect, to an extent, the attitudes towards disability of wider society, and have therefore often failed to recognise the needs of disabled people. However there has been a growing awareness in recent years of the need to ensure that organisations and social and community events are inclusive of disabled lesbians and gay men, and that services and facilities are accessible to disabled people. In practice this can mean providing wheelchair accessible venues or sign language interpretation for social events, that counselling services and awareness raising information about homosexuality and bisexuality is provided in, for instance, sign-language and alternative format for visually impaired people and those with learning disabilities.

These positive developments have, in part, stemmed from and contributed to the formation of a small but growing number of groups and networks of disabled lesbians and gay men. There is a need to support such groups and for lesbian/gay organisations to be able to hold events concerned with experiences of disability to assist in the education of non-disabled lesbians and gays. There is also a need to address the real difficulties that the limited resources of most such organisations, largely dependent on private initiatives, present in terms of fully addressing some access issues.

On the other hand, the experience of disabled lesbians and gay men is that disabled people's organisations and, for instance, social services have often tended to assume that all disabled people are heterosexual or asexual, and

that their needs have been overlooked. One such area often overlooked is the situation of some lesbians and gay men with learning disabilities living in institutionalised care. Again, this is changing, with more disabled people's organisations beginning to recognise and reflect the issues and needs of disabled lesbians and gay men within the work they do and the policies they promote.

The strengthening of links between lesbian and gay organisations and disabled people's organisations, and their contribution to and full participation in the civil and social dialogues, will play an important part in ensuring that initiatives on equality and anti-discrimination also reflect discrimination against disabled lesbians and gay men.

8. Racism, migrants, and asylum

All people living in a country are valuable members of society and should be allowed to develop their full potential for the good of the society they chose to live in, including social and political rights. All residents in an EU Member State should have guaranteed rights to equal treatment, whether or not they are nationals of that state, and should enjoy respect for their cultural traditions. They should also have legal protection against discrimination on the grounds of race, colour, religion, or ethnic origin. Migrants, whether from within or outside the EU, should all be fully integrated socially and economically, while being allowed and supported in maintaining their own cultural association and language. Refugees should be able to seek asylum in the EU and have a fair assessment of their situation in accordance with the principles laid down in international conventions.

ILGA-Europe then, as stated at the beginning of this report, shares the vision of a genuinely democratic and pluralist Europe, which embraces the diversity of all its peoples and which respects the equal dignity of all human beings. It formulates its broad objective as a fight for equal rights, freedom of movement, and the obliteration of racism, anti-Semitism, xenophobia, and all forms of intolerance and discrimination.

The minorities within the EU who are the targets of racism and xenophobia include Black people, migrants, refugees and asylum seekers. Lesbians and gay men within these groups also face discrimination on the grounds of sexual orientation and homophobia. As for all lesbians and gay men, this can sometimes be from

within their own families or communities. For lesbians and gay men who experience forms of racial discrimination, rejection by their families can leave them doubly isolated – lesbian and gay communities are potentially just as racist or xenophobic as other communities, and lesbian and gay organisations often do not appear as welcoming and inclusive to Black lesbians and gays or to those from minority communities.

ILGA-Europe fully recognises that racism and xenophobia, and other forms of intolerance and discrimination, cannot be combatted by legal procedures alone and that there is an educational task within all communities – within which ILGA-Europe, along with other NGOs, has a special responsibility.

There is also an urgent need for persecution on the grounds of sexual orientation to be recognised as grounds for asylum in the EU. Several Member States (Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, the Netherlands, Sweden) already explicitly recognise in their asylum laws that lesbians and gay men constitute “members of a particular social group”, in accordance with the UN Convention on the Status of Refugees, or have granted asylum to lesbians and gay men on “humanitarian grounds”.¹⁴ In this respect, persecution needs to encompass state and legal agencies, as well as severe social ostracism and bodily harm inflicted by family and social environment.

Persecution on grounds of sexual orientation is manifold and just as horrifying and fatal in many countries of this world as persecution on grounds of religion or political belief. Amnesty International has been adopting prisoners persecuted solely on grounds of their homosexuality as prisoners of conscience since 1991, following a decade of consistent lobby work from lesbians and gays in and outside of Amnesty International.

Immigration policies in most Member States clearly discriminate against same-sex couples. These inflict immense suffering on lesbian and gay couples who face separation or deportation of one of the partners who is not an EU citizen (or is an EU citizen and cannot find work in the host EU country). Until recently only Denmark, Sweden, and the Netherlands recognised same-sex relationships, under certain circumstances, in immigration rules. In the last year, the long standing lobby efforts of lesbian and gay groups have succeeded in bringing the issue to parliamentary debate in almost all Member States, with varying success. A few more Member States (Belgium, UK, France, and Germany)

have now instituted or at least promised to institute policies which will make it possible for same-sex partnerships to be recognised for immigration purposes.

All these regulations place considerable restrictions on the recognition of lesbian and gay relationships which usually do not apply to married couples in similar circumstances; they usually include no work permits (and thus total dependency on the partner who is an EU citizen), or extremely restrictive conditions such as many years of already established relationship or living together (which is hard for people who only obtain the occasional visiting visa to the home country of their partner). Further, neither non-EU nor EU lesbian and gay citizens enjoy freedom of movement in the EU, because even if their relationships are legally recognised in their home country, other States have the right to ignore that.

In order to address these forms of discrimination, there needs to be specific provision by each Member State for the recognition of same-sex partnerships in relation to immigration law, and a legal recognition of same-sex partnerships across the EU. For there to be an equivalent freedom of movement, same-sex partners need to be recognised as family members in both national and European law.

It is obvious that legal changes will be part of the solution but efforts should also be directed towards educating and opening gay and lesbian communities themselves for people who experience forms of racial discrimination and for migrants. There is also a need for support for the networks and groups of lesbians and gays who experience racial discrimination, and for links and dialogue between lesbian/gay organisations and those representing Black people, migrants, refugees and asylum seekers.

Conclusion

With this report, ILGA-Europe hopes to provide comprehensive information, to build-up or increase co-operation, and to form stronger alliances with NGOs working in other fields. By presenting this information and our ideas about non-discrimination and equality based on sexual orientation and its interrelations with many other aspects of human diversity, we hope to institutionalise ways of joint work and mutual lobbying support to the benefit of all participants.

But we also hope to draw a picture of the complex situations gay men and lesbians find themselves in the European Union, for all those interested in comprehensive and authentic information. It is evident that lesbians and gay men are at times hindered in their participation on all social, political, economical, and legal levels of society. We have, however, also come far in the last decades, and have made progress towards some of our goals through our campaigning, education, lobbying and other work.

Unfortunately it is, though, still a fair statement that in all 15 Member States of the European Union homophobia – as an extreme expression of contempt, but also fear, of people who are different from the heterosexual “norm” (including bisexual and transgender people) – is an existent force of culture and social life. Its dominance and consequences differ significantly from state to state, culture to culture, but it does raise its ugly head everywhere. Bringing this “monster” of hate, exclusion and oppression to final extinction is a task that concerns many, and should concern all interested in and working for forms of equality, social justice and pluralist societies in Europe. Whatever aspect social NGOs or the social partners are focussed on, gay men and lesbians are among those they work and speak for.

Nico J. Beger and Jackie Lewis

¹ Kees Waaldijk and Andrew Clapham (editors): *Homosexuality: A European Community Issue – Essays on Lesbian and Gay Rights in European Law and Policy*, Martinus Nijhoff Publishers, Dordrecht 1993.

² Angela Mason and Anya Palmer: *Queer bashing: A national survey of hate crimes against lesbians and gay men*, London 1996.

³ Evert van der Veen and Adrienne Dercksen: *The Social Situation in the Member States*, in: Waaldijk/Clapham, supra note 1, here p. 147.

⁴ Lorraine Trenchard and Hugh Warren: *Something to tell you*, The London Gay Teenage Group, 1984; United States Department of Health and Social Services Report by the Task Force on Youth Suicide, 1989.

⁵ Lela Lähnemann: *Lesben und Schwule mit Kindern – Kinder homosexueller Eltern*. Dokumente lesbisch-schwuler Emanzipation des Fachbereichs für gleichgeschlechtliche Lebensweisen, Nr. 16, Berlin 1997, p. 59.

⁶ Ibid., pp. 20-36; Susan Golombok, Ann Spencer and Michael Rutter: *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, Journal of Child Psychology and Psychiatry 24, Oxford 1983.

⁷ Lähnemann, supra note 5, p.14.

⁸ 1996 Report on equal opportunities for women and men in the EU, pp. 40-41.

⁹ Eve Kosofsky Sedgwick: *How to bring your kids up gay*; in: Michael Warner: *Fear of a Queer Planet*, University of Minnesota Press, Minneapolis 1993.

¹⁰ Lähnemann, supra note 5, pp. 20-36; Fiona Tasker and Susan Golombok: *Adults raised as Children in Lesbian Families*, American Journal of Orthopsychiatry 65, April 1995.

¹¹ Russell Child: *The Economic Situation in the Member States*, in: Waaldijk/Clapham, supra note 1, here p. 172.

¹² Ibid., p. 172.

¹³ GLEN/Nexus: *Poverty, Lesbians and Gay Men – The Economic & Social Effects of Discrimination*, published by the Combat Poverty Agency, 1995.

¹⁴ Cf. the various country reports, and: European Legal Network on Asylum (ELENA): *Research paper on sexual orientation as a ground for recognition of refugee status*, London 1997.

R E C O M M E N D A T I O N S

Recommendations on co-operation between NGOs

Having regard to:

– lesbians and gay men being part of all aspects of society and the extensive forms of discrimination which they experience;

– the commitment of social NGOs towards the broad principles of human rights, social justice and equality;

– the need for the inclusion of issues affecting all people affected by discrimination and exclusion within all aspects of the civil and social dialogues;

– the different manifestations of different forms of discrimination, and the value of organisations undertaking specialist work in their fields of specific concern and expertise developing mutual understanding and awareness;

– the value of NGOs working in partnership around areas of common concern and towards common objectives;

it is recommended that there should be dialogue and information exchange between ILGA-Europe and other social and human rights NGOs with a view to:

① sharing experience, developing mutual understanding and awareness and promoting best practice;

② ensuring that all relevant issues are included on all appropriate agendas for lobbying and other work;

③ developing co-operation on areas of common and specific interest, including joint or coordinated lobbying and other work and reciprocal support of each other's lobbying efforts;

④ promoting the inclusion of issues relating to all forms of discrimination within statements and declarations on human rights, within the civil and social dialogues, and in other appropriate areas.

Recommendations at national level

Member States should recognise the extensive forms of legal, social and economic discrimination which affects lesbians and gay men and the need for appropriate measures to combat such discrimination and exclusion and to promote social justice and human rights for all human beings.

In consequence, Member States should:

① adopt anti-discrimination laws including sexual orientation as an area of non-discrimination which relate to

- equal treatment in employment, including recruitment, promotion, dismissal, condi-

tions of employment, pay and employment benefits

- equal access to education and vocational training
- equal treatment in the legal and administrative provisions of the social security system and in the provision of social or welfare benefits
- equal treatment in the provision of goods and services, including housing
- equal treatment in relation to taxes, inheritance and related legal provisions;

2 take steps to ensure equal treatment under the criminal law, including:

- the abolition of legal provisions which criminalise consensual sexual activities between persons of the same sex which would not be an offence between persons of the opposite sex in equivalent circumstances, or which provide for different and discriminatory penalties
- the establishment of the same age of consent for homosexual and heterosexual sexual activities;

3 take steps to provide for the recognition of lesbian and gay relationships and families as equally valid to heterosexual relationships and families within laws and social policies relating to the family, parenting, the care of children, adoption and fostering, and immigration, including:

- the creation of possibilities for two persons of the same sex to obtain the same legal status, rights and responsibilities as a married couple

- the ending of any specific discriminatory restrictions on the rights of lesbians and gay men to be parents or to adopt or foster children

- the introduction of provisions to allow adoption by lesbian and gay couples, to protect the rights of children with lesbian and gay parents and to enable the legal recognition of non-biological co-parents

- the development and promotion of anti-bullying and anti-harassment policies in schools, other education establishments and services to young people;

4 together with lesbian and gay organisations, take measures and initiate campaigns against the increasing acts of violence perpetrated against homosexuals and to ensure prosecution of the perpetrators of such acts of violence;

5 together with lesbian and gay organisations, to take measures and initiate campaigns to combat all forms of social discrimination against homosexuals;

6 take steps to ensure that persecution on the grounds of homosexuality is recognised as a ground for asylum;

7 take steps to ensure that lesbian and gay social and cultural organisations have access to public funding on the same basis as other social and cultural organisations, that applications are judged according to the same criteria as applications from other organisations and that they are not disadvantaged by the fact that they are organisations for lesbians and gay men.

Recommendations at European Union level

The Commission should, on the basis of Article 13 of the consolidated Treaty of the European Communities develop proposals for an action plan on the combatting of discrimination on the grounds of sexual orientation, in consultation and co-operation with the European lesbian and gay movement. The objectives of such a plan should be the equal treatment for all in the Union regardless of their sexual orientation, the mainstreaming of issues relating to lesbian and gay equality, and the ending of all forms of discrimination on the grounds of sexual orientation.

As part of such a plan, the European Commission should:

1 present a draft directive on equal treatment which includes equal treatment for all in the Union regardless of sexual orientation. The proposed directive should, as a minimum, seek to end

- all forms of discrimination in employment and the provision of goods and services and in

all other areas for which the Union is already vested with the appropriate competency and powers

- discrimination in access to education and vocational training

- the storage of data concerning the sexual orientation of an individual without her or his knowledge and consent, and the unauthorised disclosure or improper use of such data;

2 promote the need to effectively address issues which obstruct and inhibit the genuine freedom of movement of lesbians and gay men within the Union, including the undertaking of studies on the extent and effects of barriers (such as discriminatory criminal law provisions, non-status of same-sex couples, non-recognition by Member states of same-sex partnerships legally registered in another Member State, discriminatory restrictions on the right of lesbians and gay men to be parents or to adopt or foster children, exclusion of lesbian/gay headed families from legal definitions of the family), and preparing the ground work for the inclusion of such issues, as necessary, in a future Intergovernmental Conference;

3 propose the inclusion of anti-discrimination clauses in all directives, recommendations, opinions, statements and declarations;

4 promote the mainstreaming of issues relating to sexual orientation and the combatting of discrimination against lesbians and gay men;

5 promote and support the inclusion of these issues, and appropriate participation of lesbian

and gay organisations, within the civil and social dialogues and within policy review and development in all areas, including the review of social protection systems;

6 recognise the need for, and support the undertaking of, research into the extent and effects of legal, social and economic discrimination, including the costs to the Union of such discrimination and the wider effects on efficiency;

7 encourage Member States to take appropriate measures at national level, including those proposed above;

8 review the extent to which the “Nine Point Action Plan” proposed in the 1993 report on “Homosexuality: A European Community Issue” and other relevant recommendations have been implemented, and give positive consideration to ways of progressing outstanding matters;

9 review the extent to which the Resolution of the European Parliament on equal rights for homosexuals and lesbians in the EC (A3-0028/94) has been implemented, and give positive consideration to ways of progressing outstanding matters;

10 give positive consideration to the proposals for Commission-led initiatives towards equality for lesbians and gays in Europe set out in the 1997 ILGA-Europe Action Plan;

11 recognise that ILGA-Europe, as the lesbian and gay lobby at a European level, needs to have access to appropriate resources to be able to voice the needs and concerns of lesbians

and gay men and to participate in and contribute to the development of proposals;

12 support and facilitate the development of mutual understanding, dialogue and information exchange between ILGA-Europe, other social NGOs and the social partners.

C O U N T R Y R E P O R T S

Introduction

The following individual country reports on the situation of lesbians and gay men in the fifteen EU Member States vary both in length and detail with regard to the description of existing forms of discrimination against gays and lesbians.

While, for example, some of the reports, such as the Austrian, German, or United Kingdom reports, describe the consequences of the legal non-recognition of same-sex partnerships in great detail, others confine themselves to state that such recognition of same-sex partnerships does not exist in this country. However, the effects of this non-recognition are similar in most of the countries. Indeed, it would be redundant to list all the negative effects of such non-recognition in all the country reports where relevant.

Therefore, readers of this report are invited to realise that the discrimination and manifold inequalities caused by the absence of equal rights for lesbians and gay men are similar in all countries concerned, and to draw analogous conclusions for those countries the reports about which do not describe these inequalities in great detail but maybe focus on other issues.

ILGA-Europe would like to remark that the opinions expressed in the various country reports are in the first place the opinions of the authors of the various reports – opinions which ILGA-Europe may not always share.

A U S T R I A

1. Legal Situation

a) Criminal law

Austria has a long history of criminalisation and oppression of lesbians and gay men. In 1971, Austria was one of the last countries in Europe to repeal the total ban on homosexuality which also included female homosexuality. The price for this reform which had to be paid to the conservative forces in society and to the traditionally very powerful Roman Catholic Church was the introduction of four anti-homosexual law provisions into the penal code in 1971:

- Article 210 (prohibition of male same-sex prostitution) which was abolished in 1989 in order to allow the health control of male-to-male prostitutes in the framework of AIDS prevention;
- Articles 220 and 221 (ban on positive information about homosexuality and on gay and lesbian associations); their repeal was voted through by Parliament in November 1996 and came into force on 1 March 1997, and
- Article 209, which stipulates a higher age of consent for gay relations (18 years) compared to heterosexual and lesbian relations (14 years) in case one of the partners is of age (= 18 years; this age of liability for breaches of Article 209 was raised to 19 years in 1988; sexual relations between young men are not punishable if both partners are between the age of 14 and 19). Article 209 is the only anti-gay article that still is on the books. Contrary to Articles 220 and 221 which had hardly ever been applied in all the years of their existence, Article 209 is still applied today. Every year, there are on an average 50 investigations and approximately 20 convictions under Article 209 (the table opposite shows the statistics for the last ten years):

Art. 209	Reports filed to the police	criminal proceedings/ judicial inquiries	convictions in court
1996	45	26	16
1995	35	27	17
1994	59	44	23
1993	58	46	19
1992	54	32	14
1991	50	29	14
1990	54	37	31
1989	44	28	31
1988	146	51	38
1987	84	41	32

b) Anti-discrimination

Austria has a very poor record of anti-discrimination provisions in general and none at all to protect gays and lesbians from sexual-orientation-based discrimination. The Federal Constitution theoretically protects all citizens equally and requests that all citizens are treated equally before the law but daily experience and the jurisprudence of the courts show that this does not apply to sexual orientation discrimination.

Austria has no general anti-discrimination law. Some rudimentary provisions are stipulated in the Introductory Act to the Administrative Procedures Code (*Verwaltungsverfahrensgesetze*); they protect against discrimination based on race, colour, national or social origin and religious belief – but not on sexual orientation – in the provision of services or in the admission to places intended to be used by the general public. Therefore, it is for example not illegal if the mayor of a city refuses to rent the city's convention hall to a gay and lesbian organisation, as happened in Dornbirn in 1996.

Only ethnic minorities and religious communities are protected against speech inciting hatred.

In 1993, a Police Security Act (*Sicherheitspolizeigesetz*) regulating the competence of the police force and their lawful ways of acting was introduced. In a decree issued in this context by the Minister of the Interior to stipulate guidelines and instructions for police interventions, the non-discriminatory behaviour prescribed also covers sexual orientation. The decree reads as follows: *In performing their tasks, members of the security forces must refrain from doing anything that could create the impression of bias or could be perceived as discrimination on the grounds of sex, race or colour, national or ethnic origin, religious belief, political conviction or sexual orientation.*

Cases of alleged discrimination by the police force can be brought before the

Independent Administrative Tribunals. There has been at least one case in which such a court has ruled that a policeman discriminated against a gay man by recommending him medical treatment for his homosexuality and thus breached the provisions of this decree. This decree (which does not have the force of law, however) is the only anti-discrimination provision in the Austrian legal system that explicitly mentions “sexual orientation” as a non-discrimination category.

There is one city in Austria, Bludenz, which adopted a non-discrimination “declaration” to ban any discrimination including discrimination on the basis of sexual orientation within the competence of the city. Such a declaration on the communal level is primarily of symbolic character and not at all legally binding.

In February 1998, the Social Democrats and Greens, which hold half of the seats in the Parliament of the city and *Land* (province) of Vienna, proposed an anti-discrimination bill:

[The City/Land of Vienna acknowledges that no person shall be treated, without any material ground, in a privileged or discriminatory way on the grounds of his/her race, ethnic origin, language, sex, social origin or status, disability, sexual identity or orientation or his/her religious, ideological or political conviction.

This bill is scheduled to be adopted in the course of 1998. But again, this is a symbolic declaration which can be matched with the policies of the city at its discretion. There is no legal remedy in case of alleged discrimination. Due to Austria’s constitutional system, a *Bundesland* cannot introduce provisions in its own provincial constitution which would contradict the Federal Constitution.

There is, moreover, no pro-active legal protection against sexual-orientation-based discrimination at the workplace and on the labour market. In this context, discrimination against lesbians and gay men exists in all matters that refer to partners (see below). Concerning appointment, advancement or dismissal, there is no special protection for gays and lesbians but they may be covered by existing general protection. Some of this protection, however, remains to be proven in test cases.

Generally speaking, job applicants must not be asked for their sexual orientation and may refuse to answer such questions. Shop stewards have the right to be involved in the drawing-up of personnel questionnaires and have to make sure that such questions are not included.

If an employee feels discriminated against in a current employment contract, (s)he can have recourse to the general equal treatment principle stipulated by provisions of the various employment acts.

Concerning the sacking of a person because of his/her homosexual orientation, there is no jurisprudence (case law) yet. But legal experts would expect that a court would qualify a dismissal on the grounds of an employee’s sexual orientation as not being in line with the legal provisions on dismissal and, therefore, rule in favour of the employee. Employers, however, would avoid giving such a reason as the motive for dismissing an employee.

Moreover, if a shop steward approves of an employee being dismissed because of his/her homosexuality, the dismissal cannot be challenged in the industrial court.

There is no legal protection against mobbing because of an employee’s sexual orientation. Mobbing in general, however, must obviously be addressed by other strategies.

In 1992, the 1979 Equal Treatment Act was amended. The reform also dealt with sexual harassment. In the explanatory text to the law, it was made clear that this provision would also cover homophobic harassment, for example telling jokes about lesbians and gays intended to insult a gay or lesbian employee. The same was stipulated in the 1992 Equal Treatment Act for the Employees in the Federal Public Service. In their general terms, however, these equal opportunities acts only cover discrimination based on sex/gender and not on sexual orientation.

c) Family and partnership legislation

There is no legal recognition of same-sex partner(ship)s. Gay and lesbian couples are discriminated against both in comparison with married couples and non-married opposite-sex couples (common-law marriage). The latter have already a wide range of legal rights (and duties), although they do not completely enjoy the same rights as spouses yet.

Although the legal texts in which non-married “companions of life” (*Lebensgefährte*) are treated equally with spouses are formulated in the overwhelming majority of cases in a neutral way and could, therefore, also be interpreted as covering same-sex life-partners, jurisprudence has made it clear that they are limited to opposite-sex partners. Therefore, same-sex partners are

excluded from any legal definition of “next of kin” or “significant other” (*Angehörige*) and treated by law as complete aliens to each other.

The most recent example of this discriminatory interpretation by the courts was a ruling by the Supreme Court of Austria in December 1996. It overruled decisions of two lower courts which had ruled that the right of spouses and life-partners to take over the lease for an apartment which was rented by the deceased partner (according to the provisions of the Rental Act) extended to same-sex life-partners. The Supreme Court, however, made it clear that it would be up to the legislator to change the meaning of this act and not to the courts.

The non-recognition of same-sex couples has far-reaching consequences in many legal contexts and areas of daily life. There are estimates, based on the assessment in Sweden when Registered Partnership was debated and introduced there, that there are altogether around 200 laws relevant for partnership and which mention “spouses” or the term “next of kin” in one or the other definition.

Therefore, it is impossible to present an exhaustive list of instances of discrimination against same-sex partners by all kinds of laws, but the following forms of discrimination should be highlighted because they are especially acute and relevant to average same-sex partnerships:

- The inheritance law provisions discriminate in several ways against same-sex partners. If there is no last will, the surviving partner has no right to inherit at all because the legal right of succession is limited to spouses. If there is a last will, the surviving partner will pay the highest inheritance tax (up to 50%) because (s)he will be classified in the group of non-family, e. g., of “aliens” to the deceased person.
- The immigration laws only allow privileged treatment for the married partners of Austrian citizens or of aliens with legal permission to stay in Austria. Same-sex partners of Austrian citizens, especially from non-EEA countries, have practically no chance at the moment to obtain permission to legally stay in Austria. The only chance for these couples to continue their partnership is for the foreign partner to arrange a fictitious marriage with an Austrian or to stay illegally in the country.
- There is no equal treatment under the social security laws, the main discrimination being that a same-sex partner not in employment cannot be co-insured with

the partner’s social insurance (this is perfectly common for opposite-sex partners). Dependant same-sex partners would not receive widow(er) pensions, which are limited to spouses.

- There is also discrimination against same-sex partners in income tax provisions.
- The lack of recognition of same-sex partners as “next of kin” also has consequences in other situations: They have no automatic right to visit partners in hospital or prison, they cannot refuse to testify against their partner in court. Many offences which would not be considered as crimes within marriage or common-law marriage or which would only be prosecuted if the heterosexual partner filed a charge, are treated as criminal offences if committed in a same-sex relationship.

d) Adoption and artificial insemination

Same-sex couples cannot adopt children. Although a lesbian or a gay man could adopt a child as an individual, in practice this would only be possible if the homosexuality of this person was not revealed. It is also impossible to co-adopt the biological children of one’s same-sex partner or to obtain joint custody over the partner’s children. There is one known case in Vienna of a lesbian couple given a baby to foster as foster parents.

In some cases, divorcing partners would use the fact that the ex-wife or ex-husband is homosexual as a weapon in the fight for exclusive custody/parenting rights over the couple’s children. In some cases, this has also been used to restrict the right of the divorced partner to visit and see the children on a regular basis or even to completely deny him/her this right.

The 1992 Reproductive Medicine Act explicitly excludes lesbians (and all single women) from the benefit of artificial insemination or in-vitro fertilisation methods. Those are restricted to married women or women in long-term heterosexual partnerships only.

e) Asylum law

Austria has been one of the first countries to recognise gays and lesbians as potentially belonging to a distinct social group which, in case of persecution, would be one of the five asylum grounds listed in the Geneva Refugee Convention. In the explanatory notes to the 1991

Asylum Act, the legislator clearly stated that persecution based on sexual orientation can constitute a reason to flee and thus a reason to be granted political asylum in Austria.

There have been no (known) cases so far in which asylum was granted to gays and lesbians solely on the grounds of persecution because of their sexuality. However, three gay men (two Iranians and one Romanian) were granted refugee status in the past (the first dating back to 1984). The reasons given in all three positive appeal decisions did not mention the persecution because of homosexuality but this was the only additional reason put forward by those men after their initial applications for asylum had been rejected. Obviously, the authorities did not want to create any precedent.

2. Social situation

There has been a tremendous change both in the attitudes of the population and the media over the last twenty years. Homosexuality was a complete taboo up to the 1970's and only mentioned in the media in the context of crime. Homosexuals had actually been considered as criminals who were only topped by murderers in the hitlist of abominable outcasts of society. There were two relevant factors in these attitudes: the Roman Catholic Church had an all-dominating influence on society, and had always preached that homosexuality was a serious sin. This attitude and belief was reinforced by the fascist and homophobic brainwashing which the population was exposed to during the Nazi era. Even today, people would express their disdain for homosexuals by pointing out that "such people" would have been gassed during the Hitler period.

The improvement over the last 25 to 30 years is due to society's awakening in the 1970's, after Bruno Kreisky had taken over government and led Socialist governments until 1983. This awakening caught hold of all areas of society and aired a society that had fossilised in the rigidity of traditions and conventions. This development was accompanied by the repression of the influence of the Catholic Church and its political arm, the conservative Christian Democratic Party (*ÖVP*). Since this party had returned to government (as the junior partner in a coalition with the Social Democratic Party) in 1986, this positive progress has been slowed down and finally come to a complete standstill again. The *ÖVP* has been vetoing and blocking any improvement for

gays and lesbians in the past twelve years. It is the clear ideological programme of this party to keep gays and lesbians in the position of second class citizens and to do everything to prevent them from obtaining full equal rights.

The last 20 years have also been characterised by the emergence and growth of a lesbian and gay liberation and emancipation movement. Today, there is a climate in Austria that allows every gay man and every lesbian to come out provided she or he is equipped with a basic portion of courage and the will to accept some discrimination and adjust his/her life to those circumstances rather than to live a life hidden in the closet. Young gays and lesbians have fewer and fewer problems when coming out. But lesbians and gays are still afraid to take this step.

There is a growing gay and lesbian community and scene in Vienna and other major cities which provides all kinds of services including free counselling for young lesbians and gays or those who have coming-out problems. More and more commercial businesses serving the lesbian and gay community are springing up.

Public opinion has also changed, there is greater tolerance and acceptance of alternative lifestyles in general. Most media cover gay and lesbian issues in an objective and friendly way, hostile coverage is rather an exception. Speech inciting hatred, except from statements of representatives of the Roman Catholic Church, is not a big problem, nor is violence against gays and lesbians although cases of "queer bashing" occur from time to time.

Today, the general public seems to be more progressive than politicians believe. Especially, the *ÖVP* and the right-wing Freedom Party seem to heavily miscalculate the extent of consent in the population to their anti-homosexual crusade.

The majority of the population does not approve of discrimination against lesbians and gays any more, although there is still no majority to support gay and lesbian marriage.

This is also proven in opinion polls: According to a 1991 study on values among youth, only 29% of young people consider homosexuality as something forbidden under any circumstances (compared to 44% among adult interviewees). Moreover, the vast majority of young people consider homosexuality as a completely private

matter in which nobody else should interfere. A third of the interviewed youth stated that they did not wish to have homosexuals as neighbours (37% of the adult group interviewed). In a list of unwanted neighbours, homosexuals came, in both groups, fifth behind alcoholics, drug users, left- and right-wing extremists.

According to a 1991 opinion poll among Vienna teenagers, 78% agreed that for some people homosexuality is as important and normal as love between man and woman is for others. In the same year, a national opinion poll showed that 27% of Austrians still are in favour of reintroducing a total ban on homosexual behaviour. However, only few teenagers (6%) share this view.

In 1993, 51% of the 1,013 persons interviewed in an opinion poll declared themselves not in favour of lesbian and gay marriage, 28% were in favour, the rest had no definite opinion. In the age group below 30, 38% were in favour of same-sex marriage.

In a 1996 *Gallup* opinion poll (sample: 430), only 23% shared the official attitude of the Roman Catholic Church that homosexuality was a sin, 56% were opposed to this position.

sorgegesetz) restricted compensation to persons persecuted on political, religious or racial grounds.

In the case of nazi victims persecuted for reasons of their homosexuality, even the time spent imprisoned in concentration camps was not included in the count of the insurance contribution time which serves as the basis for calculating the amount of the monthly retirement pension. In this respect they were treated worse than their torturers: When establishing the pensions of former SS guards, the months they spent serving in concentration camps were taken into account as insurance contribution time.

In 1995, Parliament founded the *National Fund for Victims of National Socialism* intended to support those “forgotten” victims of the nazi era that have not received any compensation under other compensation regimes and who are in material need. In the federal law establishing this fund, “sexual orientation” is explicitly mentioned as one category of persecution which would entitle persons to receive compensation from this fund. So far two persons persecuted for their sexual orientation have received financial support from the fund.

Kurt Krickler

3. Other aspects

In Austria, there is compulsory military service for all male citizens. Homosexuality is no longer a reason for being exempted from serving in the army unless a medical certificate is presented which states that serving in the army would cause heavy psychological problems for this person. Many gays, however, prefer to do the alternative “civil” service instead without revealing their homosexuality. While gay conscripts are welcome for the compulsory service, openly gay people have no chance of embarking on a professional career in the army.

Another dark chapter in the history of Austrian gay men and lesbians is the treatment of those who survived the concentration camps in the seven years of Austria’s *Anschluß* to the Third Reich (1938-1945). Considered as being “common” criminals, since homosexuality was forbidden both before and after the *Anschluß* (see above), “pink triangle” prisoners have never been recognised as victims of nazi terror and, therefore, were always excluded from any compensation after the war. The Federal Nazi Victim Compensation Act (*Opferfür-*

B E L G I U M

1. Legal situation

a) Criminal law

There are no specific laws in Belgium regarding gay men or lesbians. Only one law has ever explicitly applied to them: Article 372 (2) of the penal code. It prohibited sexual relations between people of the same gender under 18, whereas for people of opposite sex, the minimum age was 16. After years of lobbying by the movement, this law was repealed in 1985.

b) Anti-discrimination

In Belgium there is no provision explicitly outlawing discrimination against individuals on grounds of sexual orientation. Numerous proposals have been submitted, but never voted through. The last attempt was quashed after a campaign waged by the right wing and extreme right (*Vlaams Blok*), and the leaders of the Catholic Church.

c) Family and partnership legislation

There is no law yet in force that would give any legal status to couples of the same sex. A bill regarding registered partnership for couples of the same gender has been submitted to Parliament for discussion. Under the bill, all aspects of marriage with the exception of parenthood would apply. At the moment there is no consensus within the governing majority to approve and vote through this bill.

However, on 19 March 1998, the Federal Parliament adopted a law on *cohabitation légale* (domestic partnership) but no date has yet been specified for entry into force. The law provides for two persons (of both same and opposite sex) to make a statement of cohabitation to the municipal authorities. This legal institution covers certain areas only (such as the right to take over the lease for an apartment from a deceased partner who was the tenant) and excludes others, such as adoption or inheritance rights.¹

Even before this law existed, as many as 15 municipalities provided the option of a symbolic registration of same-sex couples.

Artificial insemination is not forbidden for lesbians. The fertility centres determine if they want to admit lesbians or not, and there are enough that do.

Adoption is only possible for married people or a single person. There is thus no definite discrimination against gay men or lesbians in the law. They can adopt children singly. Only a few adoption agencies, however, accept gay and lesbian couples as suitable adoptive parents. In most cases the official institutions hamper the recognition of the adoption (police, juvenile courts, etc.).

A lesbian housewife lost custody of her children in divorce proceedings. Although the social services' investigation was not in favour of the father (sentenced to probation for violence), he was still awarded custody because the judge ruled that the disposition of the mother (her homosexuality) "calls into question her ability to bring up growing children in a society with obviously different values regarding the family". The case is currently before the Supreme Court, which can only rule that there were procedural mistakes in the case or that Belgian law was not complied with in the actual verdict.

Certain cases are known where the visiting rights of a father were revoked when he went to live with his boyfriend. On the other hand, a court recently granted visiting rights to a "social" mother (not the biological mother) after a relationship broke up. The "social parenthood" of the lesbian involved was therefore recognised.

Residence for foreign partners used to be an insurmountable problem. It was partially solved by the Minister for Internal Affairs, who issued a circular on 30 September 1997² to all the country's individual municipalities, stipulating how cohabiting partners of the same or opposite gender (i. e., in a common-law marriage) could obtain a residence permit for a foreign partner. The couple must supply proof of their relationship, and the partner already legally resident must sign a financial undertaking (assuming all responsibility for the partner) and have an income of at least 35,000 BEF per month.³

This legislation is still too recent to be able to supply an evaluation of its application. What is certain is that it is moving in the right direction.

The new arrangements have provided a possible solution, but they are vulnerable to interpretation in the light of the current repressive immigration policy (interpretation is likely to be very strict). As long as there is no overall legislation that gives gay men and lesbians the same rights as married couples, discrimination is still possible in this area. Heterosexuals who marry obtain a residence permit quite easily for their partner without having to comply with any of these specific conditions.

Where the law differentiates between married and unmarried partners, discrimination against same-sex couples still exists as long as there is no legal marital status for couples of the same sex. This is the case, for instance, for social security, taxes, pensions, inheritance and parenthood.

To complicate things, some of these competences, such as fixing the inheritance tax rates, reside with the regional governments/Parliaments. In 1997, the inheritance tax provisions of Flanders were amended to reduce the tax rate for same-sex partners inheriting from their deceased partner. They are no longer considered as non-family, which have to pay the highest tax rates, but as domestic partners if they have cohabited for at least three years. Their tax rate, however, is still higher than for spouses.

d) Asylum law

Persecution on the grounds of homosexuality is recognised in Belgium as a reason for political asylum. Proof of being homosexual in a country where homosexuality is forbidden, however, is not reason enough. One has to prove that one has been a victim of homophobic violence or repression. In the context of a repressive immigration policy, a lot of these political asylum cases are being rejected.

2. Social situation

A survey to ascertain Flemish attitudes towards homosexuality was conducted in 1997. 14 percent of those questioned were of the opinion that homosexuality was a deviation from the norm that should not be allowed. A majority of Flemings were in favour of equal rights for gay and lesbian couples relative to married couples. With regard to adoption and the right to have children, one in three Flemings still favoured equal rights. The

survey indicates a distinct connection between age and tolerance. The older the person, the less likely acceptance of homosexuality is. The presence of gay men or lesbians in one's family or social circle also influences tolerance in a positive way. One can therefore speak of a wide social tolerance that has not yet been translated into a gay- and lesbian-friendly policy.

At federal level there is no minister competent to institute a policy regarding homosexuality. In Flanders, there is a Minister for Equal Opportunities who deals with the situations of women, immigrants, disabled people, gays and lesbians. However, she has no power of her own and can only question other ministers on their policies. The gay, lesbian and bisexual movement has for years been calling on the Federal Minister of Welfare to declare himself competent to deal with matters affecting lesbians and gays, but so far in vain.

Homosexuality as a subject is not covered in the high school curriculum. The reason for this is basically that sexuality is not itself included. There is also no specific welfare policy targeted at gays, lesbians and bisexuals.

The media sometimes pay attention to the world of gay men and lesbians, largely thanks to years of critical questioning by the movement.

Five cases of violence against gay people were reported to the Flemish federation of gay and lesbian groups *FWH (Federatie werkgroepen homoseksualiteit)* in 1997. This is just the tip of the iceberg. Men frequenting cruising areas commonly fall victim to physical homophobic violence. They never report these events, as they are mostly in the closet.

Acceptance of homosexuality has increased tremendously in the past couple of years. Substantial opposition arises from the racist and homophobic *Vlaams Blok* party, which, in the name of the traditional family, does not want to grant any rights to gay men and lesbians. Religious institutions often denounce homosexuality and are of the opinion that it is a deviation that should not be condemned, but at the same time not practised either. It is all right to be, but not all right to do.

Both the Flemish and the Walloon gay and lesbian movement has made very important contributions to improving the situation. There are approximately 70 local or subject-based groups in Flanders. 60 of them work together within the network of the *FWH*. This collaboration has increased visibility and impact. The

yearly *Roze Zaterdag/Samedis roses* (Pink Saturdays) are supplemented by local lobbying directed at congresses of different political parties, institutions that practise discrimination and by direct lobbying of the appropriate politicians. Concrete success in terms of legislation and institutional acknowledgement of the lesbian, gay and bisexual movement is still to be achieved.

Anke Hintjens

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- ¹ For details see: Marie-Ange Cornet: *Cohabitation légale: un peu mièvre ou mieux que rien?*, in: *Tels Quels* # 164 (April 1998), and: Jean-Pierre Leroy: *La Cohabitation Légale – une coquille vide*, in: *Regard* # 68 (April/May 1998).
 - ² Published in the *Moniteur belge/Belgisch staatsblad*, the Official Journal of Belgium, on 14 November 1997.
 - ³ Cf. Pierre Noël: *Belgium: New guidelines from the Ministry for Internal Affairs about domestic partnership*, in: *Euro-Letter* # 57 (February 1998), and Alan Reekie: *The Belgian Circular on same-sex partnership and immigration*, in: *Euro-Letter* # 58 (March 1998).

D E N M A R K

1. Legal situation

a) Penal code development

From 1683 to 1866, male homosexual acts were punishable by death¹, which was also the case before 1683. However, no Dane was ever executed for homosexuality²; in all known cases the death sentence was commuted to imprisonment.³ From 1866, the standard penalty was changed to imprisonment.⁴ The ban on male homosexuality was repealed as part of a major penal code reform in 1930.⁵ The penal code did still distinguish between homosexual and heterosexual relations, for example with regard to prostitution, age of consent, rape, etc. The age of consent was 18 for homosexual relations (21 in the case of seduction) and 15 for heterosexual relations (18 in the case of seduction).⁶

In 1961 there was a setback in the form of a law criminalising the “paying party” in male prostitution if the person receiving payment was under 21.⁷ After much public attention and pressure from the gay community, the law was repealed in 1965.⁸ The main reason for repealing the article was that it constituted discrimination against homosexual acts.

In 1967, total equality between heterosexuals and homosexuals in the penal code was established with regard to provisions on prostitution and seduction.⁹

In 1976, the same age of consent (15 years) was introduced for both heterosexual and homosexual relations.¹⁰ Finally, in 1981, the same penalty was introduced for sex crimes involving two persons of the same sex as for sex crimes involving persons of the opposite sex.¹¹ This marked the end of discriminatory rules regarding homosexuality or homosexuals in the penal code – or anywhere else in the legislation.

In 1981 homosexuality was removed from the health authorities’ list of diseases, and in 1984 the Parliament decided to set up a commission to investigate homosexuals’ position in Danish society.¹² The commission published a preliminary report on homosexuals and inheritance tax in 1986¹³ leading to a law reducing inheritance tax for gay/lesbian couples¹⁴ to the same amount paid by married couples. The commission’s final report was published in 1988.¹⁵

b) Anti-discrimination legislation

Denmark has three anti-discrimination laws concerning sexual orientation.

The anti-discrimination provision in the penal code was changed in 1987¹⁶ after the above-mentioned commission had recommended the inclusion of sexual orientation, so that it now reads:

*Persons who publicly or deliberately disseminate statements or other reports by which any group of people are threatened, ridiculed or degraded on account of their racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation, are liable to fines, short-term detention or imprisonment for up to two years.*¹⁷

With the same law¹⁸, the provision forbidding discrimination on grounds of race, etc.¹⁹ was changed also to include sexual orientation, so that it now reads:

Any person who within commercial or other activity declines to treat an individual on the same basis as others on ground of racial origin, skin colour, national or ethnic origin, beliefs or sexual orientation, shall be punishable by fines, short-term detention or imprisonment for up to six month.

These two laws do not, however, cover the private labour market, and it was not until 1996 that Denmark introduced a law on anti-discrimination in the private labour market.²⁰

The law includes sexual orientation as an area of non-discrimination in the private labour market. It defines “discrimination” as any direct or indirect form of discrimination based on race, colour, religion, political belief, sexual orientation, national, social or ethnic origin. The law forbids an employer to discriminate against an employee – or a person seeking employment – on hiring, firing, replacement, promotion, salary or other work conditions. Furthermore, it forbids discrimination with regard to access to education and training and in-service-training.

The law is not valid for companies whose explicit purpose is to promote a specific political or religious goal.

In the remarks to the bill, the inclusion of sexual orientation is motivated by the fact that sexual orientation is included in the rest of the Danish anti-discrimination provisions. The law came into force on 1 July 1996.

c) Partnership legislation

The majority of the above-mentioned commission set up by the Parliament did not propose regulations for homosexual couples, but a proposal on a registered partnership similar to marriage from a minority of the commission²¹ was taken to Parliament by a group of parties with a parliamentary majority – in opposition to the then government.

The history of the partnership bill and a description of the political and social environment in Denmark leading up to the world's first law on homosexual couples is given in an article by two of the leading figures in the process, Bent Hansen and Henning Jørgensen.²²

So, in 1989, Denmark introduced a law on registered partnership for two persons of the same sex.²³

The law enables two persons of the same sex to register their partnership and gives them (with some exceptions) the same rights and responsibilities as a heterosexual married couple. The exceptions are:

- a registered couple cannot adopt children
- church weddings are impossible, and
- one of the partners in a registered partnership must be a Danish citizen and live in Denmark.

Apart from these exceptions, the conditions are exactly the same as for heterosexual marriage. The wedding is the same as for civil marriage and the divorce regulations are the same, too.

The law is not valid outside Denmark, so the condition that one of the partners must live in Denmark is obviously relevant. The condition regarding citizenship was not in the original bill, but was introduced during parliamentary debate at the initiative of the right-wing Progress Party.

The Danish government recently announced, in a communication with the National Danish Organisation for Gays and Lesbians (*LBL*), that it will put forward an amendment to the partnership law in autumn 1998 to change the provision on citizenship to stipulate citizen-

ship either of Denmark or of a country having similar legislation.

Furthermore, the Minister of Justice has promised to consider to propose that the provision is changed from “citizenship and residence in Denmark” to “citizenship or residence in Denmark”.

The Danish gay/lesbian movement is now working to change the law so that gay men and lesbians living in a registered partnership will be able to adopt children – at least the children of their partner.

In June 1997, a committee set up by Denmark's bishops released a report recommending that gay and lesbian partnerships should be able to obtain some kind of church blessing.²⁴

The committee has proposed three different options:

- a blessing similar to that given to heterosexual couples who want their civil marriage blessed
- another kind of blessing taking into account that the couple is gay/lesbian
- an intercessory prayer for the couple.

The bishops' reaction to the report was not, as had been expected, to opt for the introduction of some kind of blessing for gay and lesbian couples, but only to enable priests to carry out an intercessory prayer for the couple – the format of which is subject to approval by the bishops in each case.

In June 1997, Parliament banned assisted insemination for lesbians.²⁵

The bill was originally proposed in a form including no constraints regarding who could be treated. During the bill's second reading in Parliament, a change requiring marriage or marriage-like partnership between man and woman in order to obtain assisted insemination was passed.

The National Danish Organisation for Gays and Lesbians mounted a huge lobbying campaign in Parliament, and at the third and final reading three amendments were put forward. One sought to remove the article introduced, whereas another sought to restrict its applicability to insemination involving conception outside the body. This would have made it possible to provide artificial insemination to lesbians. A third amendment sought to make available treatment to lesbians if the

identity of the male donor was known. None of the three proposals was carried.

Thus, from 1 October 1997, assisted insemination in a medical environment has been denied to lesbians, both in public hospitals and in private clinics. Several doctors have already said publicly that they will not ask questions about the private life of women seeking their assistance for insemination. The law does not, however, regulate non-clinical treatment, so artificial insemination in private is not criminalised.

This was the first time since 1961 that the Danish Parliament had voted against the interests of lesbians and gay men. In autumn 1997, a bill to lift the ban was introduced in Parliament; the bill is supported by the government, but it is doubtful whether it will pass.

Greenland and the Faroe Islands are independent parts of Denmark, and the local Parliaments make their own laws or adopt Danish laws. The partnership law is also valid in Greenland²⁶ but not in the Faroe Islands.

d) Asylum legislation

“Sexual orientation” is not directly mentioned in the asylum legislation. Denmark follows the rules and regulations outlined in the 1951 Geneva Convention regarding refugees with the addition that asylum in Denmark also can be granted to persons fleeing their countries on “similar grounds”. It has never been fully established whether “similar grounds” can include sexual orientation, as decisions of the Refugee Commission (*Flygtningenævnet*) cannot be appealed to an ordinary court of law.

A number of gays and lesbians have been granted refugee status in Denmark, but the persecution because of their homosexuality has never been stated as the main reason for these decisions, some other reason/excuse has always been found.

e) Relations to EU treaties and regulations

One of the basic elements in the foundation of the European Union is the free movement of people, and according to the Union treaties²⁷ discrimination based on nationality is prohibited (where the treaty is applicable). The citizenship clause in the Nordic partnership laws is in contradiction with these fundamental provisions in

the European Union treaties.²⁸ A gay or lesbian couple from another EU country living in Denmark cannot obtain the same rights as if one of the partners were Danish – and that is discrimination based on nationality.

Conversely, a Danish registered couple cannot move to another EU member state and obtain the same rights as a married couple – as it has in Denmark. Even though you are able to bring a spouse with you if you, as an EU citizen, move to another EU country to work, your same-sex spouse is not, in general, permitted to stay in the country. Only one positive exception to this is known: A Danish lesbian who got a job in the Netherlands was allowed to bring her partner with her.

If even formally registered spouses cannot move into a country, other same-sex partners, of course, cannot either. This is a major obstacle to the free movement of lesbian and gay people.

The possibility (described above) of a change in the law on registered partnership to make partnership open to all residents of Denmark will only partly solve the problem, as the partnership will still not be recognised outside Denmark – or other countries having similar legislation.

However, with the introduction of a Dutch partnership law²⁹ – and the inclusion of an anti-discrimination clause in the Treaty of Amsterdam – the path to mutual recognition of gay/lesbian marriage within the EU is opening up.

2. Social situation

Denmark is a liberal “welfare” state based on a consensus culture in which church and religious antagonisms do not play an important role. Since the sixties, a political structure with many political parties and great opportunities for interest groups to gain political influence has developed.

The National Danish Organisation for Gays and Lesbians has benefited from this political atmosphere mainly because it could speak with one voice as a national organisation representing basically all lesbians and gay men (even though only a very limited number of Danish gays and lesbians are actually members of the organisation).

A few days after Parliament had passed the law on registered partnership in 1989, an opinion poll showed that

64% of the population did not disagree with the legislation, and this is a good example of the general attitude towards lesbians and gay men in Danish society: general acceptance, at least in the big cities.

In public service it is easy to be openly gay or lesbian, but it is believed that some private employers do still discriminate against homosexuals – even though this is difficult to document, as the victims of discrimination are not usually out and are thus not willing to pursue the matter.

In January 1998, Queen Margrethe II. invited Torben Lund, former Minister of Health and openly gay member of Parliament (Social Democratic Party), to attend a royal banquet accompanied by his male lover. They accepted the invitation which caused huge – but very positive – media coverage.

Homosexuality is still not dealt with adequately in education. Homosexuality is not presented as an equal alternative to the heterosexual lifestyle; this is probably due to the fact that many gay/lesbian teachers are still in the closet. But nevertheless young gays and lesbians – at least in the big cities – seem to be much more open than the older generation was in its youth.

Media coverage of gay/lesbian issues is normally very positive and supporting. There are occasional episodes of “queer bashing” especially in gay cruising areas, but it is not a major problem.

Steffen Jensen

¹ *Danske Lov* from 1683 (DL 6-13-15).

² Wilhelm von Rosen: *Månens Kulør*, Copenhagen 1993. Only two persons have ever been executed in Denmark for homosexual acts; a Scottish officer and a Scottish “boy” were burned in 1628.

³ Ibid.

⁴ Penal code of 1866, Article 177.

⁵ Act 126 of 15 April 1930, Article 225.

⁶ Ibid.

⁷ Act 163 of 31 May 1961, Article 225,4.

⁸ Act 212 of 4 June 1965.

⁹ Act 248 of 9 June 1967 by which Article 230 criminalising prostitutes and Article 225,3 on seduction in homosexual relationships

were repealed.

¹⁰ Act 195 of 28 April 1976 repealing Article 225,2.

¹¹ Act 256 of 27 May 1981.

¹² Decision by the Folketing of 24 May 1984.

¹³ *Homoseksuelle og Arveafgift*, Betænkning nr. 1065, Copenhagen 1986.

¹⁴ Act 339 of 4 June 1986.

¹⁵ *Homosexuelles Vilkår*, Betænkning nr. 1127, Copenhagen 1988.

¹⁶ Act 357 of 3 June 1987, put into force on 1 July 1987.

¹⁷ Penal code Art. 266 b.

¹⁸ See note 16.

¹⁹ Act 289 on forbidding discrimination on grounds of race, etc. of 9 June 1971, today Act 626 of 29 September 1987.

²⁰ Act 459 of 12 June 1996 forbidding discrimination on the labour market.

²¹ See note 15.

²² Bent Hansen and Henning Jørgensen: *The Danish Partnership Law: Political Decision Making in Denmark and the National Danish Organisation for Gays and Lesbians*, in: Aart Hendriks, Rob Tielman, Evert van der Veen (editors): *The Third [ILGA] Pink Book – A Global View of Lesbian and Gay Liberation and Oppression*, Prometheus Books, Buffalo/New York 1993.

²³ Act 372 of 7 June 1989, in force as of 1 October 1989.

²⁴ *Registreret Partnerskab, Samliv og Velsignelse*, Århus 1997 – also available on the Internet at <http://www.folkekirken.dk/udvalg/partnerskab> – including summaries in other languages.

²⁵ Act 460 of 10 June 1997.

²⁶ Royal Executive Order 320 of 26 April 1996.

²⁷ Article 7 in the Treaty of Rome, Article 6 in the Treaty of Maastricht.

²⁸ Kees Waaldijk and Andrew Clapham (editors): *Homosexuality: A European Community Issue – Essays on Lesbian and Gay Rights in European Law and Policy*, Martinus Nijhoff Publishers, Dordrecht 1993.

²⁹ Passed by the Dutch Parliament in July 1997, cf. country report on the Netherlands, page 73.

F I N L A N D

1. Legal situation

a) Criminal law

The current penal code (Chapter 20, Section 5, dating from 1971) sets higher ages of consent for homosexual relations (18/21 years, compared to 16/18 for heterosexuals). It also bans measures which encourage homosexuality (Chapter 20, Section 9.2, also dating from 1971):

Chapter 20: Sexual Offences [15 January 1971/16]

Section 5: *(1) A person who abuses a position of responsibility by having sexual intercourse or engaging in indecent behaviour comparable to sexual intercourse with a person who is older than sixteen but younger than eighteen and who is in the offender's care or under the offender's authority or supervision in a school, institution or otherwise, shall be deemed to have engaged in illegal sexual intercourse, which offence shall be punishable by up to three years' imprisonment. The same provision applies if the young person in question is in any other comparable dependent relationship with regard to the offender.*

(2) If a person aged eighteen or over commits an act of indecency, comparable to sexual intercourse, with a member of the same sex who is no younger than sixteen but no older than eighteen or, in the circumstances referred to above at (1), with a member of the same sex who is no younger than sixteen but no older than twenty-one, the offender shall be subject to the penalty provided for at (1).

Section 9:*(1) Any person publicly committing an act which violates sexual morality, thereby causing offence, shall be guilty of public violation of sexual morality, which offence shall be punishable by up to six months' imprisonment or a fine.*

(2) Any person who publicly encourages sexual relations between persons of the same sex shall be sentenced for incitement to homosexuality as provided for at (1).

b) Anti-discrimination

The Constitution includes "sexual orientation" as a non-discrimination category. The Constitution (17.7.1919/94 as amended by Law 17.7.1995/969) was changed in 1995.

Section 5: *All persons shall be equal before the law. No-one shall, without acceptable grounds, be afforded a different status on account of sex, age, origin, language, religion, conviction, opinion, state of health, disability or any other reason related to the person.*

"Sexual orientation" is mentioned in the text accompanying the government bill as an example of "other reason related to the person". It is also emphasised that not all instances of prohibition of discrimination are mentioned in the Constitution itself and the list is not to be deemed exhaustive. No-one has denied that "sexual orientation" is included in this non-discrimination category.

There are several anti-discrimination laws which also protect gays and lesbians in the Finnish penal code (19.12.1889/39 as amended by Law 21.4.1995/578):

Chapter 11: War Crimes and Offences against Humanity [21 April 1995/578]

Section 8: Ethnic Agitation [21 April 1995/578]: *A person who spreads statements or other notices among the public where a certain race or national, ethnic or religious group or a comparable group is threatened, slandered or insulted shall be sentenced for ethnic agitation to a fine or to up to two years' imprisonment.*

Section 9: Discrimination [21 April 1995/578]: *Any person who, without a good reason, in exercising their trade or profession, serving the general public, exercising official authority or other public function, or arranging public events or meetings:*

- 1) refuses someone service in accordance with the general practice;*
- 2) refuses someone entry to the event or meeting or ejects them; or*
- 3) places someone in an unequal or an essentially inferior position*

on grounds of race, national or ethnic origin, colour, language, gender, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as industrial discrimination, for discrimination to a fine or to up to six months' imprisonment.

Chapter 47: Labour Offences [21 April 1995/578]
Section 3: Work discrimination [21 April 1995/578]:
Any employer or representative acting for an employer who, without good reason, discriminates against a job-seeker when advertising a vacancy or recruiting staff or against an employee

- 1) *on grounds of race, national or ethnic origin, colour, language, gender, age, relations, sexual preference or state of health; or*
- 2) *on grounds of religion, political opinion, political or industrial activity or a comparable circumstance,*

shall be sentenced for work discrimination to a fine or up to six months' imprisonment.

c) Family and partnership legislation

Finland currently has no legislation on registered partnerships. Nor is there any one law containing an authoritative definition of common-law marriage; the description varies from one piece of legislation to the next. In some laws, common-law marriage is defined as a “man and woman living in marriage-like relationship” while other laws define common-law marriage as “persons living in marriage-like relationship”.

Same-sex couples have been treated as common-law couples when the wording of the law allows it. There is no procedure or custom other than marriage whereby a partnership (be it heterosexual or homosexual) can be registered.

There is no law concerning artificial insemination. Lesbian couples have been able to use non-governmental artificial insemination services. The Committee studying the issue has proposed a law which would make it illegal to assist single women and homosexual couples to have children. The proposal has met with considerable opposition and there is hope that the government will introduce legislation to give single women access to artificial insemination services. This would allow lesbians to continue using artificial insemination services.

Adoption is possible for single persons or married couples. There is a lack of information on whether single lesbians have been accepted as adoptive mothers.

There are no known cases of any decisions denying parents parenting rights because of their homosexuality.

As confirmed by the Ministry of Justice, the law on custody and visiting rights enables a person who is not a legal parent to gain joint custody of a child with a parent. The Ministry confirmed that this allows also homosexual couples to gain joint custody of a child.

The immigration office has informed that they do not distinguish between heterosexual and homosexual common-law couples. Residence permits have been granted on the basis of a homosexual relationship. However, common-law couples need to prove they have lived together for at least one year in order to qualify for a residence permit. Naturally, this causes problems for many couples.

Social security law generally does not distinguish between marriage and common-law marriage. Homosexual common-law marriages are included to some extent (see above). Pension and inheritance rights do not apply to homosexual partners or heterosexual common-law partners unless the couple has a common child.

For insurance purposes a homosexual partnership counts as a common-law marriage provided the couple has signed into a mutual-support contract.

d) Asylum law

Finland recognises persecution based on sexual orientation as a legitimate reason for claiming asylum .

In decision No. KHO 1993 A 26, the Administrative High Court granted a Finnish residence permit to a Russian national partly because of the situation of homosexuals in Russia and partly because of his common-law relationship with a Finnish man. In the same decision, the court referred to Article 8 of the European Convention on Human Rights (right to private and family life).

2. Impending law reforms

a) Reform of the penal code

The Finnish penal code dates back to 1889. It has undergone a thorough three-stage review since 1988. The second stage included anti-discrimination legislation (prohibiting discrimination on grounds of sexual orientation), which came into force in 1995. The third stage is currently under discussion in Parliament, and will include sexual offences.

The review of the part of the penal code dealing with sexual offences started when the Expert Committee published its proposal in 1993 (*Sexual Offences*, Ministry of Justice 8/1993). As the basis of the proposal, the Committee defines protecting the right of self-determination: *“When judged from the position of right of sexual self-determination, the fact of sexual orientation conveyed by the offensive act, or the sex of the violator or the offended party, bears no significance. The legal provisions should be neutral in this respect. Also, the right of sexual self-determination is not affected by the fact of whether the parties are married or whether they cohabit otherwise.”* (p. 4)

The wording of the proposed law follows these lines, and the law itself does not refer to sexual orientation at all. In this respect, the Committee finds the current law unsuccessful in many ways: *“Also on principle, it is questionable whether one can separate the punishability of acts conveying various kinds of sexual orientation the way the current law does. It is not justified to set a certain sexual orientation as a precondition for the right of sexual self-determination, nor is it justified to limit the legal provisions protecting the right of sexual self-determination to apply solely to acts conveying a particular sexual orientation. The various forms of sexual orientation are based on interaction of several factors, and it is not justified or even possible to try to affect sexual orientation by means of penal legislation. In addition, coercive means may lead a person to not adopt the sexual identity according to his/her orientation which, in turn, hinders the development of personality.”* (p. 8)

“The special ages of consent in our current penal legislation (Section 5, Paragraph 2) concerning sexual relations between members of the same sex, and the exhortation prohibition (Section 9, Par. 2) have for their part maintained discrimination of the homosexual minority although sexual relations between persons of the same sex have been decriminalised. Discrimination

and fears connected with it are known to have caused problems with mental health, among others.” (p. 9)

The Government passed the proposal (HE 6/1997 vp.) to change the Penal Code (including the portions relating to sexual offences) to the Parliament in 1997. The proposal follows the above wording of the Expert Committee. At the moment, the proposal is in the Parliament and is scheduled to be voted upon in June 1998. Equal age of consent is proposed to be 15 years.

b) Introduction of Registered Partnership legislation

During 1996, Finland saw an enthusiastic discussion about the legislation that would make it possible for two persons of the same sex to contract a recognised partnership similar to other Nordic countries. A private bill for such a law was presented to the Parliament at the end of May 1996. After the Parliament had discussed the bill, it was submitted to the Parliament’s Legal Affairs Committee.

On 26 September 1997, the Finnish Parliament passed the Law Committee’s concluding report and proposals. The Committee decided not to approve the private bill, but instead to make government responsible for remedying the existing inequality in legislation concerning gay/lesbian couples. The Ministry of Justice appointed a committee to draft legislation on the subject. The national lesbian and gay association *Seksuaalinen Tasavertaisuus (SETA)* is represented on the committee, which is due to complete its work by the end of 1998.

3. Social situation

Homosexuality (both male and female) was criminalised between 1889 and 1971. Since 1971 there have been visible changes. Finland is a homogeneous country and there is no great tension between different groups in society. The general attitudes towards gays and lesbians are accepting – to certain extent.

Generally the same rule applies in Finland that applies in most countries in this part of the world: bigger cities tend to be more gay/lesbian-friendly places – because there is visibility. Discrimination now tends to take subtle forms. Being a homosexual is not news, and it is generally accepted.

The greatest factor affecting people's attitudes is age. This is especially visible when looking at the acceptance of homosexual couples. A poll conducted in May 1996 generally showed wide acceptance of homosexual couples. 67% of Finns were in favour of partnership legislation, 44% would be ready to make it possible for gays and lesbians to marry. The percentage of young people (15-24 years) in favour of partnership legislation was 81%, and the percentage in favour of marriage 65%.

However, liberal thinking (= being gay/lesbian/bisexual is okay) is often also blind to discrimination, i. e., displays denial. For instance, gay/lesbian couples' being left without adoption rights in the proposed legislation is not seen as discrimination. In short, awareness of the issues connected with discrimination is often pretty poor. Most of the open discrimination and violence is directed at gay men, because of their greater visibility.

There have been instances in some cities of straight restaurants being "selective" – to prevent their clientele from becoming predominantly gay/lesbian. The advent of the new penal code has brought a new dimension to the battle against this kind of discrimination. However, many people are not willing to mount a legal challenge against the discrimination they face.

Homosexuality is one of the topics covered in sex education in schools, but it is sometimes described as "deviation" in school and medical education. In recent years the quality of teaching in this respect has improved substantially. Volunteers from *SETA*'s branches around the country visit schools, young people's homes, etc. to provide education on homosexuality and transgender issues. Although homosexuality is not necessarily discussed in the class, young people are generally able to obtain information from libraries and newspaper articles. Most parents accept their children's homosexuality without major crisis. Violence or rejection is rare, and Finland, being a welfare society, does not have child prostitution or street children.

The Finnish Church, to which over 90% of Finns belong, is also pluralistic. However, it has spoken out against same-sex partnerships. This reflects the Church attitude towards gays and lesbians in general. Homosexuals can be priests, but only if they do not openly live together with their partners.

Finland has a tradition of backing active roles and equality in society for women. This tradition has helped gays and especially lesbians to demand equal rights in society.

Men and women are and have been working together in sexual minority organisations (such as *SETA*) too. In recent years, transsexuals and transvestites have become more visible in society and also within *SETA*. *SETA* is currently an umbrella organisation for lesbians, gays, bisexuals, transsexuals and transvestites, and there is no major friction between these groups within the organisation.

4. Good practice

Success in including sexual orientation in the penal code's anti-discrimination clause was achieved through *SETA*'s lengthy lobbying of politicians and officials drawing up the law. The last phase of preparation was conducted without major public discussion. Public demands for anti-discrimination legislation date back years or even decades. There was no significant opposition to explicitly mentioning "sexual orientation" in the "prohibited discrimination list" when the reform was discussed in Parliament. This means however that the public is not very aware of this facet of the current legislation.

Although partnership legislation is still in preparation, public discussion has been useful because it has spotlighted the fact that there is still discrimination against gays and lesbians. It has been the experience that such discussion always reveals how thoroughly lesbians and gays are accepted or not accepted. The debate seems to be ongoing, but since acceptance has increased, new issues have come to the fore, so that the topic now is "the right to register partnerships" instead of "legalising homosexuality". The discussion of "parenting rights" or "accepting lesbians as bishops" is probably a little way off yet.

In terms of strategies for legislative change, the Finnish gay and lesbian movement has never thought it acceptable or even advisable to set its aims too low. In the debate on same-sex partnerships it has tried to, and managed to, move the focus to the situation of gays and lesbians with children and their legal right of both parents (of the same sex). The movement has tried to concentrate upon topics which are slightly ahead of the current debate. This reasoning accounts for the fact that, although the Finnish Parliament has introduced a legislative proposal regarding equal ages of consent, the movement has not put a great deal of effort into stimulating discussion on the issue because it believes that this reform will be progressing well even without the movement's input.

Rainer Hiltunen

F R A N C E

1. Legal situation

a) Criminal law

The French Revolution dropped ancient sodomy laws in the criminal code of 1791; the Napoleonic Code of 1810, which influenced many European countries, made no reference to sodomy or same-sex relations.

This situation remained unchanged until World War II when the Vichy Government, under the motto *Travail, Famille, Patrie* (“work, family, country”), wanted to eliminate Jews, communists, freemasons, gypsies and homosexuals. In 1942 male homosexuality was criminalised, basically by introducing a discriminatory age of consent at 21 (at that time, the age of consent for heterosexual acts was 13). The unequal age of consent, however, continued to exist after the end of the Vichy regime. It remained 21 until 1978, was then lowered to 18 and in 1981 finally equalised with the age of consent for heterosexual relations which had been increased to 15 years in 1945. In 1960, during the era of de Gaulle, a law was passed which classified homosexuality as a social plague along with alcoholism.

It was, therefore, not until the Socialist government came to power in 1981 that there was complete decriminalisation (this took place in 1982). The age of consent is today 15 for everybody, but consent is considered not to be present between a minor (under 18) and a person in a position of authority (Article 227-25,27 of the penal code).

b) Anti-discrimination

In 1982, a new housing law repealed the old requirement that tenants must live as *bons pères de famille* (“responsible heads of household”). In 1983 (Law no. 83-634, 13 July 1983), the law requiring civil servants to have “bonnes mœurs” (upright morals) was also repealed.

Lastly, any discrimination on the basis of sexual orientation in employment or service, public or private, has been prohibited since 1985 (Art. 225-1,2 of the penal code). Nobody may be barred from recruitment or dismissed on grounds of his or her sexual orientation; a recruitment procedure may not use such information

(*Code du travail*, Articles L. 122-45, L. 121-6). An emergency procedure, for use in instances of infringement of individual liberties at the workplace, was created in 1992 (*Code du travail*, Art. L. 422-1-1).

Verbal hatred – an example

Protesting against the homophobic writings of former bishop Elchinger in the *Dernières Nouvelles d'Alsace* (“to accept homosexuality is to regress towards an animal state”), activists disrupted a mass in Strasbourg cathedral. They were arrested by the church police, prosecuted by the public attorney and fined according to a local law dating from 1871, still written in German, by the Court of Appeal in Colmar in January 1998. On the other hand, neither the bishop, nor the judge who said ex officio that “the Catholic Church has a right to condemn homosexuality, it has the very duty to do it” were prosecuted for incitement to verbal hatred.

There is currently no law protecting gays and lesbians as a group from verbal hatred on grounds of their sexual orientation. Only natural and legal persons are protected by an anti-defamation law. By contrast, verbal hatred on grounds of racial or ethnic origin, nationality or religion is forbidden by law (Art. R-624-3,4,7 of the penal code).

c) Family and Partnership legislation

Common-law partners

Non-married couples (cohabitants, or common-law partners), qualified as *concubins*, have been granted some benefits, more on socio-economic than legal grounds.

However, in 1989, the *Cour de Cassation* ruled that this qualification may only be applied to people living in a “marital” way, i. e., to people who could marry but did not, which excludes homosexual couples. Since then, this legal precedent has not been reversed. At a lower judicial level, in 1996, the Belfort Tribunal granted financial damages to a woman who had lost her female companion of 20 years in a car accident, arguing that a legal bond between the two women was not required.

Some 300 towns issue a symbolic cohabitation certificate for same-sex couples. This has no legal value, but can be useful in everyday life (the certificate has existed since 1995).

Marriage

Although the civil code does not specify explicitly that civil marriage can only be pronounced between a man and a woman, it does so implicitly (Article 75), and jurists consider quite unanimously that the present law does not cover same-sex couples. As a result, same-sex couples are barred from getting married.

As the Church is only allowed to marry couples after civil marriage, there may not be a religious marriage of same-sex partners; instead, some Protestant denominations perform blessings of same-sex couples.

Civil/social union contract

The first registered partnership bill dates back to 1990. Two years later, the *Contrat d'union civile (CUC)* became the focus of a new bill signed by eight deputies; rewritten and named *Contrat d'union sociale (CUS)*, broadly supported by the gay and lesbian and AIDS organisations, it is now for the first time on the agenda of the ruling coalition which emerged from the June 1997 elections. It may be renamed *Pacte civil de solidarité*.

Open to any pair of people who are not siblings or lineal descendants and who are not bound by any other partnership contract or marriage, this contract would be concluded at the townhall and dissolved by the death of one of the parties, by a joint statement of the parties at the townhall, or by a court decision in case of dissent; the parties commit to mutual material and moral support. The contract would grant some benefits: social security, employment, taxation, inheritance, pension rights, housing. It should not specify anything about adoption or custody.

Parenthood

A *Télu-BSP* poll showed that about 7% of gay men and 11% of lesbians actually have children, mostly from a previous heterosexual relationship. After a divorce or separation, gay men and lesbians face real discrimina-

tion in maintaining custody and visiting rights for their children.

Both married couples and (since 1966) single people are eligible for full adoption (*Code civil*, Articles 343, 343-1, 345-1). The first step is to apply for an agreement of the local administration ("DDASS"). There have been cases of the application of a single man or woman being rejected on the exclusive grounds of his or her homosexuality; there have also been cases of approval being given to homosexuals who did not declare their sexual orientation; there is no known case of approval being given to open homosexuals. Unmarried couples (even heterosexual partners) cannot adopt (*Code civil*, Article 346).

Since the Bioethics Act of 1994 (L.94-653, 29 July 1994), artificial insemination has been available only to married couples or (heterosexual) *concubins* (*Code civil*, Article 311-20). The same law forbids any private agreement allowing a woman to bear a child for another woman (*Code civil*, Article 16-7).

d) Asylum and immigration

After World War II, a text protecting people from persecution due to their membership of a social group was adopted (1945 ordinance). The social groups in question were intended to be gypsies, Jews, etc., but homosexuals were never included. However, France has never recognised "social groups" because citizenship is a universal value and the only group existing in Law is the national community.

Therefore, when asylum is granted to somebody persecuted due to his or her membership of a social group, France always considers this to be political asylum. This situation explains why homosexuals persecuted only on grounds of their sexual orientation have never been granted asylum in France. The only known cases concerned homosexuals who were active members in an organisation (including a lesbian & gay group).

Binational couples enjoy admission benefits only if they are married. This implies that homosexual relationships cannot lead to any kind of immigration rights.

This situation is now changing because the Socialist Jospin Government has decided to change the rules for asylum as well as for immigration. A new kind of asylum, "territorial asylum", is being created. This variety

of asylum includes a right to “family and private life”. According to recent talks between the Ministry of the Interior and the gay socialist group *Homosexualités et Socialisme (HES)*, the government wants to include homosexual relationships in the right to “family and private life”, and to consider that people persecuted on the grounds of their sexual orientation have a right to territorial asylum.

The *Contrat d'union sociale (CUS)*, due to be voted on in 1998, will give a legal basis to these declarations of goodwill.

2. Social situation

France, as a Latin, Catholic country, has a male heterosexual-centered society. Except in some gay neighbourhoods, public evidence of homosexuality, still a taboo, attracts social disapproval, but usually no violent reactions. Attitudes are evolving: for 67% of people, homosexuality is now an acceptable lifestyle and most people agree that lesbian and gay couples are given some benefits. Nevertheless, 63 % are still shocked when they see two boys or two girls kissing in the street. This pervasive homophobia is encouraged by complete illiteracy in matters of sexual orientation: gay/lesbian-positive education is still rejected as proselytism by conservative people. In addition, lesbians have long been battling a society that is backward on women's issues.

However, the French are known for their strong individualism, which implies a separation of private and public lives, backed by the law (*Code civil*, Article 9). As a consequence, there is no media harassment of public figures for their love affairs, be they straight or not, and it is relatively easy to be gay or lesbian on condition you keep silent about your sexual orientation. This individuality is a facet of the apparent tolerance which can be found in France and explains why coming out explicitly is so uncommon. It was only in January 1998 that a member of Parliament long known to be gay came out on national radio.

On the other hand, the idea that homosexuals might form a definite minority whose specific rights should be protected is hardly conceivable: one nation, one people, the thinking goes. A practice like the United States *Equal Opportunities Act* to defend such minorities would be termed discriminatory by most French people, including those targeted by such a law.

Organisations

Gay and lesbian organisations have to compensate for the lack of suitable social policies. Most of their activities focus on support and counselling, entertainment, or defending rights and combatting any expression of homophobia. Usually non-communitarian (i. e., seeking social recognition of lesbians and gay men as citizens, not as members of a specific community), they work together in many towns, fighting against all kinds of discrimination through social, political or cultural action.

There is no national organisation assuming the role of representative for homosexuals in France. The very concept of a gay and lesbian community is not fully recognised. Instead, there are specialist organisations: *Gemini* (federation of youth organisations), the coordinating office for French *Pride* event organisers, the coordinating office for lesbian organisations, *David & Jonathan* (Christian federation), etc.

The first *Gay Pride* march occurred in 1977. The lesbian and gay *Pride* events, now yearly scheduled in June, and well-known to the general public, follow both the French tradition of political demonstrations and the international partying style. For several years, they have been given a political theme: “international solidarity” (1995), “the social union contract” (1996), “a full European citizenship” (1997), “human rights” (1998). Since 1992, each year's march has doubled the number of participants of the previous year's. France is now the European country with the largest number of *Pride* events (twelve); these events benefit most lesbian and gay organisations, giving them wide visibility and a springboard for further action, chiefly to promote positive information regarding homosexuality and to fight discrimination and social exclusion. In addition to these events, lesbian and gay film and other cultural festivals are organised in several cities.

There are nine or so gay and lesbian centres, and several help-lines, including *Écoute Gaie*, the line operated by *SOS Homophobie*, and *Ligne Azur* (for young people).

Homophobic violence and attitudes are monitored by *SOS Homophobie*, a national organisation whose goals are to collect information regarding discrimination on grounds of sexual orientation, to broadcast this information, and to use appropriate action to prevent discrimination.

On the political side, several parties now have a related lesbian and gay group, either structurally (Greens, Communist Party), or independently (*HES, RGL*).

The first lesbian and gay youth groups were created in the early eighties. Since 1992, their development has increased and a major change has occurred: there are now a lot of lesbian/gay/bisexual youth groups outside Paris. For historical reasons, this development paralleled the creation and development of groups of parents and friends of lesbians and gays (these French equivalent to the American *P-Flag* groups are called *Contact*). There are now about twenty youth groups in France, under the umbrella of the *Gemini* federation, and there are five *Contact* groups for parents.

The next campaigns of gay youth groups in France include a rewriting of curricula in schools (sexuality is still presented as a biological phenomenon, the complexity and variety of human sexualities is excluded from schools), and the development of “counselling centres” (information centres on sexuality, health and legal rights).

Media

Generally, except in a very few far-right-wing papers, there is no verbal hatred expressed against homosexuals. Daily papers and news magazines give a broad coverage of the lesbian and gay pride events in June, and often have columns for homosexual issues in the political, social or cultural pages. Recently, some tabloids, which are usually silent on these issues, have begun to speak fairly freely of the private lives of a few openly gay actors or singers, which is a novelty.

Members of lesbian and gay organisations contribute to homosexual visibility as they are now often invited to appear on TV instead of the various “experts” previously called to talk about “homosexuality, this painful problem” (title of a famous radio programme in 1971 which saw the first public appearance of lesbian and gay activists).

There is also a gay and lesbian press, with several titles sold through the regular distribution network, and local free magazines. Lesbians and gays are also present on the Internet, through non-profit organisations, media groups and businesses; the Internet has become a tool of choice for the organising of collective action and the collection of information.

Lifestyles

Lifestyles are very diverse: long-term relationships, celibacy, multiple sexual partners and marriages of convenience, all non-exclusive.

Actually, marriage has long been used by gays and lesbians: either as a “stamp of conformity”, or to give them the ability to become parents, either biologically, or, for some, through the paternity presumption in favour of the mother’s husband. In so doing, they have sacrificed their homosexual feelings to social norms or to their desire to become parents.

Nowadays, a significant minority of gay men and lesbians is demanding that marriage be open to same-sex couples, purely as an application of the equality principle of the French Republic.

Strongly desired by a growing number of homosexuals, parenthood can take the form of adoption, artificial insemination or the co-parenting of children born to one partner through earlier heterosexual relationships. Although these opportunities are limited by the French law, some try to circumvent it, for instance going to Belgium in order to get an artificial insemination.

3. Good practice

Gay and lesbian organisations have been calling for studies and campaigns regarding homosexuality in families, schools and places of work. They also want the government to support sociological studies on youth suicide among gays and lesbians. Recently, the *MAG (Mouvement d’affirmation des jeunes gais et lesbiennes)* managed to get the Ministry for Youth Affairs to produce a preliminary study on suicide among young lesbians and gays.

Social recognition is also political recognition. Gay and lesbian groups fighting for gay and lesbian rights try to be recognised as representatives by politicians and other figures of influence in society.

In 1996, these groups lobbied the mayors of many towns to register homosexual couples; the result was that more than 300 do so today. This was a success for those who had proposed the social union contract (*CUS*). The long-standing campaign for the recognition of homosexual couples through the adoption of this contract is, as mentioned before, about to reach its goal in 1998.

Recent years have seen increasing cooperation with trade unions, human rights organisations, student unions and political parties. This has produced a positive effect within some of these organisations (trade unions, for instance) in terms of the attention devoted to lesbian and gay issues. Gay and non-gay organisations often appear together when campaigning for human rights and against social exclusion, whatever its origins.

Unfortunately, when organisations are successful in getting their projects funded by public agencies at national level, it is always through the public health budget, for AIDS prevention, and not through other cultural or social budgets. However, some municipalities other than Paris (Strasbourg and Nantes, for example) are beginning to support local organisations on the sole grounds of their social role.

The *Lesbian & Gay Pride Association* is regularly received at ministers' private office level, often introducing other organisations on such occasions. Although these contacts produce more in the way of general acceptance of homosexuality than specific results, they do have some use.

However, recognition of lesbian and gay organisations by institutions is still very rare. There is one notable exception: *MAG*, the Paris lesbian and gay youth group (which founded the *Fédération Gemini* and the first *Contact* group), applied for a seal issued by the Ministry for Youth and Sports for four years. In November 1997, it obtained a promise from the Minister herself that it would be granted this seal, and was appointed a member of the National Youth Council; in the same way, other lesbian and gay youth groups are now members of local youth councils.

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GERMANY

1. General remarks

In terms of dealing with lesbian and gay rights, Germany is an underdeveloped country. For the federal conservative coalition government (Christian Democrats and Liberals), in power for the last fifteen years, gay and lesbian rights are an unknown concept. Gays and lesbians, and their interests, demands and wishes are systematically ignored by the government. Attempts by the parliamentary opposition to counter this have been equally systematically torpedoed by the conservative majority. No less systematic is the attempt to cash in on gays and lesbians, for example via an amendment to the Social Security Act. It would not be going too far to say that the Kohl Government's policy towards gays and lesbians boils down to preserving their low legal status while asking them to pay for it.

Attempts by the opposition parties in the *Bundestag* (Social Democrats, Greens and former Communists) to improve the legal situation of gays and lesbians or to legally recognise gay and lesbian partnerships have so far been thwarted by the conservative majority. However a general election is due in September 1998, and many gays and lesbians are placing their hopes in a change of government as the only way to redress the country's relative backwardness in all legal areas relevant to gays and lesbians.

This frustrating inertia in national politics is in stark contrast to the political reform which *has* taken place in recent years at municipal and regional level, particularly in the *Länder* (provinces or states; sing.: *Land*) with Social Democrat/Green coalition governments. The Social Democrats are in government in 13 of the 16 *Länder*, the minister presidents of ten *Länder* are Social Democrats. They are thus able to actively influence federal legislation in the *Bundesrat*, the Parliament's chamber in which the *Länder* are represented (for details see item 4 below).

2. Legal situation

Homosexuality is no longer criminalised (Article 175 of the penal code was finally repealed in 1994), and the age of consent is now the same for gay, lesbian and straight sex (14 years).

However, there is no anti-discrimination legislation at the federal level and no legal recognition of same-sex partnerships and lesbian and gay headed families.

The right of asylum, which was once a beacon for the rest of Europe, was practically abolished in 1993 by means of a constitutional amendment (approved, incidentally, also with the votes of the Social Democrats). Only in exceptional cases is asylum granted to gays or lesbians who are at risk in their home country because of their homosexuality.

3. Social situation

a) Public opinion

The lack of progress at the federal level also runs counter to social reality. For example, the pollsters *FORSA* published an opinion poll in July 1996 in which 48% of the 1,005 people surveyed were in favour of the right of marriage for homosexual partners, with 42% against. The equivalent figures in 1994 had been 33% for and 57% against. At the end of July 1996, *Emnid* published the results of another poll. This revealed a majority of the population in favour of same-sex marriage and a two-thirds majority in favour of anti-discrimination legislation.

However, the goal of establishing marriage and partnership rights which is being broadly pursued (particularly by gay men) is not shared by the entire lesbian and gay community. Inspired by feminism, many lesbians see marriage as an instrument of patriarchal power and oppression and as an obsolete model for relationships. A proportion of the male gay community sympathises with these views, not least because of the increasing number of heterosexuals who reject the traditional marriage and couple model.

b) Gay and lesbian infrastructure

Despite political stagnation and non-reform, a strong gay and lesbian infrastructure has developed and grown over the last years. It includes the *AIDS-Hilfe* organisations which can be found throughout the country, even

in small towns, numerous groups and associations, various national organisations, such as the *Schwulenverband in Deutschland (SVD)*, *Homosexualität und Kirche (HuK)*, *Deutsche AIDS-Hilfe (DAH)* and the *Lesbenring*, and, last but not least, a huge variety of publications. There are 25 regional and national monthly gay publications with a circulation of at least 5,000. In addition, there are a number of gay and lesbian radio stations, dozens of gay-friendly city magazines, and there are plans to set up a public gay/lesbian television channel as well as a national “pink” private channel. The mainstream press in general deals with gay and lesbian issues in a professional and balanced fashion, but occasionally its reporting is still less than positive, and even discriminatory.

In spite of the increasing presence of gay or lesbian figures on television and the trend towards acceptance of homosexuality as normal, it can at times only be concluded that this is more token representation or sensationalism than anything else. Homosexuality is generally depicted as a problem.

c) Violence against gays and lesbians

Insults, blackmail, sexual coercion, bodily harm, humiliation and discrimination are symptomatic of the intolerance, lack of acceptance and lack of respect which exist towards people whose way of loving and living differs from that of the broad mass of society. They are also evidence of the openness to violence of a group of people who often believe they are acting the way the general public would want. The prejudice which continues to exist against gays and lesbians also makes the perpetrators of such acts believe that their victims are the best target for making fast and easy money and for working off their pent-up aggression.

Some major cities now have a hotline which gay and lesbian victims of violence can use (the number is the same throughout the country: 19228). Trained staff take care of victims, advise them and accompany them to the police. Many cities also have staff who deal specifically with the victims of anti-gay violence. The police are putting more and more resources into education and prevention. In Cologne alone, 71 cases of anti-gay violence directly or indirectly involving 127 gay men were reported to this hotline in 1996. As with many forms of crime, this is only the tip of the iceberg. It can be assumed that there are victims of sexual and verbal abuse or grievous bodily harm who are too scared to seek ad-

vice or assistance or report incidents to the police. Most victims who have brought charges have deemed the conduct of the police to be “professional”. Only four considered the police to be guilty of discrimination by trivialising the crime committed.

Emergency help-lines also exist for women and lesbians, although not on a nation-wide scale. These services have generally been set up in medium-sized and large towns/cities at the initiative of individual groups, and there is a great shortage of them in rural areas. There are no projects at the national level to provide information and links between the various services and wider care for women. There are practically no statistically relevant figures for these lesbian services. There seems to be a view that violence against lesbians cannot be separated from general violence against women. Research into specific anti-lesbian violence is therefore urgently needed.

d) Migrants

The situation of gay and lesbian migrants requires urgent attention when it comes to financing legal projects and research, including projects and research by gay and lesbian organisations. The social and economic isolation of migrants and the everyday racism they face often mean that they have a particularly strong attachment to their own racial and cultural group. Coming-out often means the loss of this vital support. It is often said that the Turks in Germany are “more Turkish” than in Turkey itself and, consequently, more bound by Islamic and (Coptic) Christian ideas regarding homosexuality and gender roles (particularly the dependence and subordination of women). Many migrants therefore find it harder to organise visibly than do native Germans, and there are generally few migrants involved in German gay and lesbian associations. The latter are therefore hardly in a position to address the specific situation of migrants. Many of the manifestations of legal, social and economic discrimination which gays and lesbians face apply, just as much, but usually more acute, to migrants (e. g., residence rights, social welfare, job discrimination, etc.). Awareness of their specific situation is not particularly well developed within the gay and lesbian community, and co-operation with migrant groups or organisations supporting the rights of migrants is often not easy.

e) Binational couples

Germany is *de facto* a country of immigration, although this is vehemently denied by the governing coalition. The lack of rights for and discrimination against same-sex couples made up of more than one nationality are particularly striking. In 1995, the Federal Ministry of Justice lamented this situation and stated to the *SVD* that it might be justifiable, in the event of same-sex cohabitation which apparently could be continued only in Germany, to grant a residence permit on the basis of Section 30(1) of the Aliens Act. This provision allows a residence permit to be granted “for pressing humanitarian reasons”. The Ministry thus recognised that the constitutional right to choose a partner of the same sex also implies that a foreign same-sex partners should have the right to remain in Germany.

Immigration associations such as *Agisra* have also indicated that women living under totalitarian regimes have virtually no chance of escape. The economic and social dependence on a male partner generally prevents this from happening. It is therefore no surprise that only a fraction of asylum applications come from women living alone. This patriarchal view is reflected in German asylum practice and makes it even harder and rarer for lesbian couples to continue or form a binational relationship.

Two remarkable rulings, however, were handed down in 1996 by the Federal Administrative Court in Berlin and the Higher Administrative Court in Münster. These would appear to improve the chances of binational same-sex couples to obtain a residence permit for the foreign partner. The Federal court ruled that the immigration authorities have a certain amount of discretion when it comes to granting residence permits. The Münster court, which has sole jurisdiction in Germany in appeals regarding visa matters, ruled that the European Convention on Human Rights implied a right for the foreign partner of a binational same-sex couple in a lasting relationship to be granted a residence permit. In concrete terms, this decision obliged the authorities to grant a visa to a Romanian citizen so that he could cohabit with his German same-sex partner. The German Foreign Ministry appealed against this ruling but then allowed the time-limit for the written submission of the appeal to expire so that the ruling became legally valid.

Most of the interior ministers of the *Länder* initially opposed the implementation of the new interpretation of the law and instructed their immigration authorities not to make use of these “new” discretionary powers. They

refused to establish rules for their own *Land* without coordinating with the other *Länder*. However, a number of couples have managed to obtain residence permits for the foreign partner by invoking the ruling of the Münster court. Of course, others have been less successful. The situation varies from region to region.

Moreover, there was and still is considerable pressure from the arch-conservative Federal Minister of the Interior, Manfred Kanther, and the Foreign Ministry against implementing the 1996 court decisions. The federal government is seeking to renegotiate the 1996 ruling. In addition, Foreign Minister Klaus Kinkel instructed all German consulates in August 1997 to refer any visa applications aimed at setting up a same-sex partnership to Bonn instead of taking decisions locally. Lawyers report that such applications sent to Bonn have either been refused or are still awaiting a decision. At the end of 1997, the *SVD* demanded that Kinkel intervene in three visa cases concerning binational same-sex couples. The immigration offices had approved the visas while the Foreign Ministry had rejected them. Two of these cases are now before the courts.

4. Opportunities and limits of federalism

As mentioned before, the governments and Parliaments of the *Länder* can try to compensate for the negative impact of federal politics in lesbian and gay matters by establishing their own policies. The *Länder* may even recognise same-sex couples in the legislation of the respective *Land*.

In the 1997 provincial elections, the Social Democrats (*SPD*) lost their absolute majority in the Hamburg Senate and were forced to enter into a coalition with the Green Party (*GAL*). The agreement establishing the coalition contains a number of extensive legal improvements for gays and lesbians. These include the launch of an initiative to introduce registered partnership at federal level, same-sex partner rights to hospital and official information, communal tenancy rights for same-sex partners on the same terms as are applied to married couples. In addition, the immigration authorities were required to consider applications from individuals in binational partnerships favourably and in accordance with the above-mentioned 1996 court judgements, and to grant residence permits accordingly. After having established a partnership contract at a notary public, a same-sex couple can also register its partnership at the registry office, though without any positive or negative legal

consequences, as these are not within the powers of the *Land* of Hamburg. Same-sex relationships are to be discussed in schools, and an education campaign is to be launched to combat violence against gays and lesbians.

This agreement saw Hamburg join Saxony-Anhalt and North Rhine-Westphalia as pioneers on gay and lesbian issues. Previously, when the Social Democrats were alone in power in Hamburg, it had (like Lower Saxony) pursued a rather half-hearted gay rights policy. For years, Lower Saxony fiddled around with its *Bundesrat* initiative to establish registered partnership legislation, with the result that it finally presented a proposal demanding a special legal institution for same-sex couples with distinctly less rights than marriage. Although this was a matter of proposing federal legislation, Lower Saxony never involved the national gay/lesbian organisations in the debate of the proposal. These organisations rejected the initiative as inappropriate, but the Lower Saxon Government carried on regardless. The gay organisations ultimately considered its draft law on registered partnerships to be devoid of substance. It offered no solution to the specific legal problems of gays and lesbians, contained nothing on the right of residence for foreign partners or the right to refuse to testify in court against one's partner. Partners in same-sex relationships were not offered the same status as "next of kin", nor were there any provisions on employment, social insurance and assistance, pensions, taxation, etc.

The *Länder* also have other opportunities to promote and implement equal rights for gays and lesbians. They may render financial support to gay/lesbian organisations fighting against discrimination and homophobic violence or campaigning in favour of safe sex. Some *Länder* have also set up gay and lesbian units within their administration, usually as part of their ministries for social affairs. This has already occurred in Berlin, Brandenburg, Lower Saxony, Schleswig-Holstein and North Rhine-Westphalia. However, the main demand of gays and lesbians has been the adoption of anti-discrimination legislation at *Land* level. Sexual orientation discrimination is already outlawed by the constitutions of Berlin, Brandenburg, and Thuringia. For example, the Berlin Constitution, which was approved by 75% of the electorate in a referendum in 1995, states that: *Nobody may be disadvantaged or privileged on the grounds of his (her) sexual identity. All long-term relationships involving cohabitation may not be subject to discrimination.*

The pioneer in anti-discrimination policy, however, has been Saxony-Anhalt. In November 1997, its Parliament

adopted a law to combat the disadvantageous position of lesbians and gay men. It was therefore the first *Land* to have a comprehensive anti-discrimination law for lesbians and gays. The Christian Democrats voted against it on the basis of the "primacy of marriage and the family". Many of the basic points and formulations of this law match the 1995 proposals of the *SVD*. However, the amendment of the *Land's* Constitution, which had figured in the original draft, was dropped due to the opposition by the Christian Democrats. Saxony-Anhalt's Parliament also decided to launch a programme of measures against anti-gay violence, to promote awareness of lesbian and gay issues in schools, and to open up the way into the control boards of the public and private media for the representatives of gays and lesbians. The *Land's* government was requested to "create the appropriate staffing conditions to implement these political projects" by setting up a unit for gay and lesbian concerns. Whether that progress will endure is doubtful, as the extreme right-wing *DVU* party gained 13% of the vote in the provincial election this March, and will most likely join the *CDU* to focus on backtracking on the positive steps taken.

The formation, in 1995, of a Social Democrat/Green coalition in North Rhine-Westphalia, Germany's most populous *Land*, also led to an agreement committing the two parties to actively combat discrimination against gays and lesbians. The first reading of a draft law to amend the existing Police Act took place in 1996. Included in this document was a provision banning the police from discriminating against a person on the grounds of his/her sex, origin, colour, nationality, language, sexual identity, social class or position, religious, ideological or political belief, or disability. However, when the police trade unions protested against the bill, the Social Democrats announced that they would not support this provision any longer.

However, as a result of co-operation between the two parties, a gay and lesbian affairs unit was established within the Ministry for Employment, Health and Social Affairs. Since this unit was set up, much more money has been available to the gay/lesbian network within the *Land*. Most of this has gone to various gay/lesbian projects, in particular to AIDS prevention work. However, lesbian projects have not been funded quite so generously. Gay men seem much more at home within the administration. Lesbian women are not aware of or have not yet exploited the opportunities available to them.

5. More examples of discrimination

a) Parenting and children's rights

Germany grants no protection for children in gay and lesbian headed families in terms of their right to have their existing and caring non-biological parent legally recognised.

Although the court cases in which custody has been withdrawn from gays and lesbians on the grounds of their sexuality are becoming fewer, they still exist, and there is no protection for the right of gay men and lesbians to parent children. This includes the right to adoption and artificial insemination. Some *Länder* have in recent years allowed lesbians and gay men to foster children, particularly children with severe physical, mental, or social disabilities, and single-parent adoption is in principle possible, but depends on the welfare staff's opinion of homosexuality and parenting, if the applicant does not want to hide her/his sexual orientation. Social prejudice and the everlasting assumption that gay men in particular are child molesters are strong when it comes to issues surrounding homosexuality and parenting.

In 1997 the Senate of Berlin published a study¹ on gay and lesbian parenting (examining the legal implications and research into the development of children in lesbian and gay headed families). Over one million families exist in a legal vacuum that discriminates against lesbian and gay parents, but particularly also makes life unnecessarily difficult for the children in these families. Even the federal government's official family report stated in 1995 that lesbians and gay men as parents make a contribution to the further development of human capabilities in society as a whole, as well as that of the children in these families.

The Federal Constitution gives privileged protection to marriage and the family, but through combining heterosexually defined marriage and family, only one form of family is protected. The concept of family in the legal and social arena needs to be urgently re-thought to accommodate an everyday reality in which many different kinds of family have emerged and exist.

b) Social welfare

Gays and lesbians are exposed to many forms of discrimination in many areas of life. Mention has already been made of the stubborn attempts by the federal govern-

ment to cut the benefits of individuals in same-sex partnerships. The intention was to make recipients of benefits prove that they were not supported by the person with whom they are cohabiting. At present, the onus is on the authorities to prove that a recipient is in a relationship equivalent to marriage and not merely living under the same roof as another person in order to take advantage of that person's income for the calculation of benefits (certainly without granting the other person tax reductions for the support given to their partner, something heterosexual couples are entitled to do). Protests against this change have succeeded, and the federal government has been forced to back down.

c) Private insurance

In July 1996, the *SVD* protested against the massive discrimination against gay and lesbian couples by the private *Allianz* insurance group. In its motor-vehicle policies, *Allianz* grants unmarried heterosexual couples a 10% discount on liability insurance and a 5% discount on collision-damage insurance. These discounts are not granted to homosexual couples. *Allianz* claims "not to be interested in the homosexual target group". Its press officer described this discrimination as being a business policy decision of the company.

d) Armed forces

The Ministry of Defence continues to claim that it is entitled to discriminate against homosexuals in the armed forces. In its view, homosexuality disqualifies soldiers from becoming officers or instructors. If it becomes known that a soldier is gay, his promotion is generally blocked. The acceptability of this discrimination has been confirmed on numerous occasions by the Armed Forces Section of the Federal Administrative Court.

e) Employment

In general, there is no employment protection for lesbians and gays in relation to anti-discrimination or promotion opportunities. The main trade unions, however, have established support and have to some extent taken on the issues of employment in relation to sexual orientation. Here two examples of relevant discrimination:

"... Changing one's residence to that of another person in order to establish cohabitation not based on mar-

riage is not in itself a reason for terminating an employment relationship. Such action is based on personal needs and wishes which are ignored by the legal system. Only marriage and changing one's residence to that of one's spouse may be considered such a reason, because the protection of marriage and the family is enshrined in the Constitution..." In 1997, the Cologne employment office used this reasoning to reject an appeal from a man against a three-month deferment of unemployment benefit. The man had quitted his job in Cologne in order to go and live with his same-sex partner in Darmstadt. This decision has been appealed again. The man receives legal aid to fight this case from the German Federation of Trade Unions (*DGB*).

According to the *DGB*, the legal situation is unclear. The legal adviser at its Cologne branch places personal and family interests above professional interests as justifiable grounds for terminating an employment relationship. Any deferment of unemployment benefit is "discrimination *par excellence*" against such cohabitation, and in particular against homosexual cohabitation. A positive legal outcome is expected in this case. The *DGB* press office in Düsseldorf is more pessimistic. It refers to contradictory case law. In similar cases involving heterosexual couples, most courts have tended to approve a deferment of unemployment benefit, unless circumstances such as the need to raise children, the occupation of jointly owned property or financial problems in paying rent have been involved. In other cases, courts have considered long-term relationships to be worthy of protection and have rejected any deferment of unemployment benefit.

In 1998, after a year-long appeals procedure passing through various courts, a federal employee, Werner Janik, referred his case to the Federal Constitutional Court in Karlsruhe on the grounds of discrimination against homosexual cohabitation. Janik wishes to have a clause in the civil-service pay arrangements, under which a marriage allowance is paid only to married employees, deleted. He is being granted legal assistance by the *ÖTV* trade union.

f) Discrimination by the Church

The following example epitomises the discrimination against gays and lesbians practised by the Roman Catholic Church in Germany. In the spring of 1997, the Archbishop of Fulda, Johannes Dyba, accused an Augsburg professor of theology, Hans-Peter Heinz, of de-

faming the priesthood by claiming that 20% of all priests are gay. Dyba is renowned for his homophobia. In his manic witch-hunt against gays and lesbians (although he rarely mentions women at all), he uses a contemptuous form of language. In the January 1998 edition of the *Bonifatiusbote*, a Catholic newsletter, he denied gays the right to belong to the priesthood.

Even worse than the discrimination against priests is the fact that gay and lesbian employees of the church risk dismissal if they are outed. Almost 80% of all social agencies involving healthcare, childcare and the care of older and disabled people are run one way or the other by the churches, mainly the Roman Catholic Church. The proportion of female, and indeed lesbian, employees in these sectors is particularly high. It is therefore essential for lesbians in these professions to conceal their sexuality or otherwise face the fact that they have hardly any chance of finding employment within their field of training.

g) Nazi history

The fact that gay men were systematically persecuted and killed in prisons and concentration camps was long denied or hushed up, and only the extensive lobbying and work by gays and lesbians has brought some of that history out into the open. In some few locations, there are now monuments in commemoration of the gay and lesbian victims of National Socialism.

Nevertheless, there has never been any official recognition of the fact that the Federal Republic of Germany continued to harshly persecute gays even after the war (until the total ban was repealed in 1969), and that many gay survivors of the concentration camps went to prison on grounds of their homosexuality again after the war.

Klaus Jetz, Nico J. Beger and Uta Chlubek.

¹ Lela Lähnemann: *Lesben und Schwule mit Kindern – Kinder homosexueller Eltern*. Dokumente lesbisch-schwuler Emanzipation des Fachbereichs für gleichgeschlechtliche Lebensweisen, Nr. 16, Berlin 1997.

G R E E C E

1. Legal situation

a) Criminal law

There is one legal provision that specifically discriminates against male homosexuals: Article 347 of the penal code which provides for a higher age of consent of 17 for “seducing” a male person if the partner is an adult (i. e., over 18) and which penalises the abuse of a relationship of dependence of an employee without any age limit (there is no corresponding heterosexual offence):

(1) Acts of lewdness against nature between males which involve the abuse of a relationship of dependence created by employment, or which are committed by an adult seducing a person below the age of 17, or which are committed with the intention of profiteering, are punishable by at least 3 months' imprisonment.

(2) The same sentence is applied to anyone practising acts of lewdness of the kind referred to in Paragraph 1 as a profession.

The general age of consent for heterosexuals, lesbians and obviously also for gay men if no “seduction” is involved is 15. The prohibition of male-to-male prostitution, as stipulated in paragraph 2, is not a matter of discrimination based on sexual orientation, but basically gender-specific discrimination: male prostitution is illegal.

b) Anti-discrimination

“Sexual orientation” as a non-discrimination category is not included in either the Constitution or the penal code.

c) Family and partnership legislation

There is no legal recognition of same-sex couples.

There do not appear to be any provisions specifically denying lesbians access to artificial insemination.

Both single people and married couples can adopt. It is, therefore, theoretically possible for a single lesbian or

gay man to adopt a child. However, the “suitability” of prospective single parents is checked by a court and, in practice, anyone who turns out to be gay would almost certainly not be approved.

“Unorthodox” sexual orientation counts as a factor in deciding who is awarded custody of children after a divorce. Evidence of such unorthodox orientation is often keenly sought out by the other party if there are any suspicions. Lesbian and gay people usually keep such problems out of the public gaze. For example, the local (governmental) committee against xenophobia and racism has received no complaints from gay people since it was formed.

d) Asylum law

Greece recognises sexual-orientation-based persecution as grounds for asylum (Geneva Convention), but there have been no such cases so far.

2. Social situation

a) General attitudes

Modern Greece is still a Mediterranean country with strong oriental influences. This means that homoeroticism has always been present. So has machismo. Until half a decade ago, it was acceptable that a male could have sex with any other male and still retain his maleness. Virtually every man in Greece who has a sex-life worth talking about has had at least one same-sex affair. Men (always engaging in active behaviour) could even brag in their circle of friends about their sex affairs with “faggots”. Homoeroticism has always been present in the villages, with teenage boys having sex with each other.

With the recent independent television boom, TV programmes previously unheard of in Greece made their appearance: reality shows, hidden cameras, turned backs, blacked-out faces talking about their sex lives. One could no longer pretend that one did not know what “gay” meant. Same-sex desire has gradually switched from a behaviour to a personality. As a result,

the explosive homoerotic feeling in the air quickly vanished, for “real men” could no longer pretend they were not, at least to a certain degree, “gay”. On the other hand, people have gradually become accustomed to homosexuality. Inundated with TV shows, glossy magazines and newspaper reports, the public came to accept homosexuals in certain public roles.

Greece seems to be witnessing a second wave of “positive” attitudes in the press today. Even traditionally hardcore right-wing newspapers have been talking about gays in “positive” terms. The real difference between a truly gay-friendly newspaper and a truly conservative one is the role they assign to gay people. The right-wing ones mention gays in the context of human rights and the right to self-determination. They also talk about the homosexual in the movies, and in lifestyle and gossip columns. They are adamantly against unorthodox gays, however.

The “gay-friendly” papers can make the distinction between what is news and what is gossip. There have been articles in favour of gay marriage, presenting gay pride, reports about gays in the Balkans, people who have had gender reassignment surgery, articles on gay bars (in parallel with any other kind of bar). Same-sex desire appears as a matter of course in many articles.

In general, the attitude is warm and friendly. This does not mean there is not a backlash of anti-gay sentiment in certain sections of the TV and press, but they are a graphic minority, for a number of reasons. Still, the press has not developed the kind of relations it has in other Western countries, and accounts tend to be naive, superficial and on the predictable side.

Greece’s second largest newspaper, *Eleftherotypia*, published in its Sunday magazine supplement a 7-page account on “Gays in the Balkans” and Greece itself. The report was written by the paper’s most controversial journalists and caused a lot of (positive and negative) reaction. There had not been an openly positive account of gays in the media for ages. The report also gave useful addresses and contact lists for gay organisations in Greece. It was the result of persistent lobbying and information from the gay and lesbian movement. Perhaps the most controversial thing of all was that the movement was credited for all the information and assistance in a big box, right at the beginning of the story. People in other countries may well be used to reading texts from gay activists in mainstream newspapers, but “Gays in the Balkans” was a sacrilegious “first” in Greece.

b) Employment

Internal orders and sets of rules in the public sector, such as post offices, courts, schools, utilities, telecommunications, the police, etc., require “decent” behaviour. Homosexual orientation does not usually fall within the loose definition of “decency”. Being tolerated in such a job or function depends on the individual’s superiors. It is generally wiser to stay in the closet. For example: a gay man working in the central post office in Thessaloniki was suspended from his job because he was living with another man. The details of the man are unknown and the issue was publicised in a weekly newspaper that happened to have its offices right next to the post office.

A policeman was relieved of his duties after it was revealed that he was frequenting popular cruising places in Athens. The policeman had been in a relationship with another man and had tried to cover up for him when he was accused of committing a crime. The appeal court ruled in favour of the policeman, but the Minister of Justice personally intervened and the eventual ruling of the Supreme Court went against the man.

Adopting the active or passive role in sexual intercourse is significant. It is generally agreed that the “active” partner in gay sex is no less a man than any other. For example, an internal administration notice in one of the large public companies ordered that the Hepatitis B vaccine should be financially provided for, among other categories, “active homosexual men”.

A young gay man went to teach in the public school of a village. When it was revealed he was gay, the villagers threatened to take him to court. He produced a report from respected doctors providing proof that he had not had passive anal sex in the recent past.

The courts recognise gender reassignment surgery results, and people can change their identity and legally adopt a name attached to the gender to which they belong after reassignment. However, post-operative male-to-female transgender persons who work as prostitutes do not seem to be recognised as females. In a case brought to court by such a person, who had allegedly had problems with a male client (an eventuality that the law provides for, offering protection to the prostitute), the prostitute lost because the court decided that a man cannot become a woman, no matter how feminine he/she is (including having gender reassignment surgery).

Leaving aside “sensitive” professions (teachers, policemen, judges), employers generally seem to have no real problem hiring gay people as employees. Of course, they have to keep a low profile and must not be too open about their sexual orientation.

c) Education

Education makes it clear that the two biological genders have distinct roles in life – this is especially true in subjects such as “Home Economics”, which in many aspects is a course to heterosexuality, and “Religion”, which teaches the not-so-tolerant truth of the Orthodox Christian Church to the students. Homosexuality is still a curable disease in the academic books. Searching for entries on “homosexuality”, “pederasty” and “sodomasochism” in the encyclopedias yield funny results. According to one encyclopedia, sadomasochism is hereditary and you can tell an S-and-M devotee by his facial characteristics. Pederasty is quickly dealt with, with scant references to ancient Greece. In fact, the definitive 20-tome and universally used *History of the Hellenic Nation* devotes one paragraph to pederasty, saying it was not that sexual after all.

d) Anti-gay and anti-lesbian violence

Greece has its share of all these anti-gay behaviours. There is no really organised strong fascist/neo-nazi movement, certainly not one that plants bombs and carries out assaults.

e) Gay/lesbian infrastructure

Greece is not a bad place for a gay person to be. The scene is not that organised or varied, the gay organisations are not out there to catch you if you fall, but the general attitude is not as bad as many would like it to be. There have been a few positive developments in recent times.

For example, a gay group managed to gather together representatives of the youth sections of the political parties and get their support for the well-known European Parliament Resolution on equal rights for homosexuals and lesbians in the EC. All of them supported gay and lesbian rights in general. Some went as far as to support gay marriage. Others said they did not have time to think much about it. The important point is that they all

stressed that their support did not mean that their party shared their views. It is worth mentioning that less than ten gay people – in a city of over 1,000,000 – attended this public “debate”.

c) Youth

However liberal the attitude of the media, the bottom line is that no-one is happy to see a son or daughter come out as gay or lesbian. Young people resort to gay bars and (maybe to a lesser extent now) to cruising areas. There is no organised youth support network. Everything is handled through casual personal contact with members of the existing gay organisations and young people seeking assistance.

3. Lesbians

Lesbians do get mentioned in the “examples” sections. The social situation for gay men and women is not that different: they are all oppressed.

In theory, Greece’s macho and patriarchal society still believes in the inferiority of women. Stemming from this inferiority comes the “indifference” to the sexual orientation of the female – it can be “fixed” if the right man comes along. So one might think lesbians are quite accepted in society – after all, it is customary for girls in Greece to hold hands in public, kiss or hug each other.

The reality is that an out lesbian faces the same (or even greater) problems as a gay man. The indifference (or tolerance) towards her quickly changes to hatred as soon as the straight party realises this is not a woman’s whim or some kind of joke.

Take for example the play *Lesbian blues*, which was being performed in Athens at the time this report was written. A group of lesbians approached a woman director a couple of years ago and asked her to help them translate an idea of theirs into action: the first play by and for Greek lesbians. Surprisingly, the women started being harassed by their families, they received threats and were even the target of a bomb hoax. The press chose to ignore the play. How does that compare to the “lesbian chic” covers of the glossy magazines?

I R E L A N D

1. Legal situation

a) Criminal law

Until 1993 male homosexual acts were criminalised by two statutes inherited from the British colonial era, the Offences against the Person Act of 1861 (which covered anal intercourse) and the Criminal Law Amendment Act of 1885 (which covered “gross indecency”: in effect, all other sexual acts between men). Up to the mid-1970’s, prosecutions under these laws were not uncommon, there being an estimated 600 cases between 1962 and 1974, of which 75% involved offenders over the maximum age of consent in any European jurisdiction. However, from the mid-1970’s, a combination of determined legal defence in individual cases and political campaigning led to a virtual end to charges for consensual activity between adults under the criminal law. In 1977 David Norris (later to be elected to the Irish Senate) commenced proceedings in the Irish High Court on the basis that the anti-gay laws were unconstitutional. His case was rejected in both this Court, and in the Supreme Court, but was eventually supported by the European Court of Human Rights in 1988.¹

Lesbianism was never mentioned in the criminal legislation, although this does not mean that lesbians were free from discrimination.

The decade since the Norris ruling has seen profound changes in the criminal law, with homosexuality and heterosexuality put onto an almost equal footing²:

The Criminal Law (Sexual Offences) Act 1993 abolished the old discriminatory offences of buggery and gross indecency and put in place an age of consent of 17 for male homosexual relations. The age limit for lesbian relations and for heterosexual relations (except for vaginal and anal intercourse), however, is set at 15³. By setting these unequal age limits, the government ignored the recommendations of its Law Reform Commission.⁴

The Criminal Law (Rape) (Amendment) Act 1990 provided for gender neutral definitions of “sexual assault”. Rape was defined as a sexual assault that includes inter alia “*penetration (however slight) of the anus or mouth by the penis or penetration (however slight) of the vagina by any object held or manipulated by another person*”.

There are no special criminal laws affecting the Defence Forces, and indeed, the military authorities have introduced a non-discriminatory code of personal conduct.

b) Anti-discrimination and anti-incitement legislation

The last decade has also seen the introduction of important, if piecemeal, anti-discrimination and anti-incitement provisions. However two major initiatives currently part of the Government’s plans, the Employment Equality Bill and the Equal Status Bill will, if enacted, put in place a comprehensive and powerful legal framework to combat discrimination.

Existing legislation which already includes supportive provisions is as follows:

The Prohibition of Incitement to Hatred Act (1989) creates a number of offences which outlaw the stirring up of hatred against groups of persons on the grounds of certain characteristics including sexual orientation. It is an offence to publish or distribute material or use words or behave if such “*are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred*”. There is a similar provision in the Video Recordings Act.

The Unfair Dismissals (Amendment) Act 1993 provides that a dismissal on the grounds of an employee’s sexual orientation will automatically be deemed unfair.

The Health Insurance Act (1994) provides that premiums payable under health insurance contracts shall not be varied by reference to the age, sex or sexual orientation or the suffering or prospective suffering of a person from a chronic disease, illness or other medical condition of particular kind.

The above-mentioned Employment Equality Bill and the Equal Status Bill, which would have fundamentally improved the economic and social circumstances for gay people and all groups vulnerable to discrimination, were passed by the *Dáil* and *Seanad* in 1997 with the support of all political parties. The Bills were not signed into law because the Supreme Court found some sections, dealing with disability and enforcement matters, to be un-

constitutional on grounds of, inter alia, conflict with the rights of private property. The Government is committed to re-introducing the two Bills with the modifications required by the Supreme Court in 1998.

A revised Employment Equality Bill (1997) has been published. The Bill will outlaw discrimination in employment on nine distinct grounds – sex, marital status, family status, sexual orientation, religion, age disability, race and membership of the Travelling community. It will outlaw both direct and indirect discrimination and will provide for the promotion of equality between employed persons on all of the nine grounds. All aspects of discrimination in employment are covered, including equal pay for work of equal value, access to employment, vocational training, conditions of employment, work experience, promotion and dismissal.

In addition harassment will be made unlawful (Section 32). This is defined as any act or conduct which is offensive, humiliating or intimidating on a discriminatory ground including acts of physical intimacy, spoken words, gestures, or the production, display or circulation of written material or pictures.

Section 37 makes some exclusions from the non-gender provisions of the Bill including discrimination by religious, educational and medical institutions, run for religious purposes, where they provide more favourable treatment to an employee or prospective employee which is reasonable in order to maintain the religious ethos of the institution or take action necessary to prevent an employee undermining that ethos. There has been strong opposition to this religious exemption from trade unions, especially teachers' unions and from the Irish Council for Civil Liberties and the Gay and Lesbian Equality Network (GLEN). It should be noted that the Bill will not affect existing legal rights under the Unfair Dismissals Act 1993 (see above).

The terms of the Bill apply to employers in both the public and private sectors and to vocational training bodies and others.

The Bill will establish a new infrastructure to promote and enforce equality, providing a statutory office of Director of Equality Investigations to hear claims for redress in the event of discrimination. An Equality Authority will be established to promote equality on each of the nine grounds and to make available advice and to support the drive towards equal opportunities.

At the time of writing, the revised Equal Status Bill, which will outlaw discrimination in non-employment areas, has not yet been published. However sexual orientation will be included as a protected ground.

Finally, the Constitution has recently been reviewed. Article 40.1 provides for equality of citizenship and this principle has been developed by the courts in various constitutional cases. The 1996 Report of the Government's Constitution Review Group recommended that a new anti-discrimination section be added and that the categories specified should include sexual orientation. However at the time of writing there are no concrete plans for the implementation of these recommendations.

c) Family and partnership legislation

There is no law which provides for the registration of lesbian/gay marriages or partnerships. The Constitution Review Group (see above) recommended that recognition be given to families not based on marriage, while the Commission on the Family (also government appointed) has made similar recommendations.

However two laws make provision (albeit implicitly) for lesbian and gay relationships:

Section 2(1)(a)(iv) of the Domestic Violence Act (1996) states that an applicant for a Safety Order under the Act can be a person who is of full age and resides with the respondent in a relationship "*the basis of which is not primarily contractual*" (i. e., the person is not, for example, a paid housekeeper). Sub-section (1)(b) sets out factors to which the court must have regard in determining whether or not a relationship falls into this category including the length of time those persons have been residing together.

The Powers of Attorney Act provides for a legal instrument which enables you to choose a person to deal with your property and financial affairs and take personal care decisions on your behalf if you should become mentally incapable. The Act implicitly includes lesbian and gay relationships, in that a person can appoint anyone to be their attorney including a lesbian or gay partner or friend.

The law on adoption discriminates against lesbians and gay men as well as all unmarried persons. You can only adopt a child if you are legally married, widowed or ju-

cially separated people. The regional health boards are responsible for fostering of children and, in theory at least, lesbians and gay men would be eligible to foster children. Where the custody of a child is disputed, final decision is made by the courts, and there is at least one case where the judge gave custody to a lesbian mother and not the heterosexual father.

There is no legislation or codes prohibiting artificial insemination for lesbians.

d) Asylum law

Under Section 2 of the Refugee Act (1996) a refugee is defined, inter alia, as a person who has a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Membership of a "particular group" is defined in the Act as including a group based on sexual orientation.

2. Social situation

General attitudes towards lesbians and gay men in Ireland are changing significantly and in a positive way. The debates in Parliament on gay law reform and on the equality legislation have been overwhelmingly supportive, as has the media coverage. Government agencies and commissions increasingly respond to the recommendations of gay organisations. However there is still prejudice and discrimination, encouraged by the negative policies of the leadership of the Roman Catholic Church.

a) Positive developments

Government

The progress on the legislative front has been matched in the last few years by increasing recognition of the rights and needs of lesbians and gay men by Government departments, with significant initiatives in many areas of public policy and services. Examples are as follows:

The Peace or Belfast Agreement between the British and Irish Governments and the political parties in Northern Ireland contains very strong commitments to equality,

parity of esteem for the diversity of identities and traditions, the protection and vindication of the human rights of all. Both Governments are committed to introducing human rights and equality legislation and agencies. The legislation in the republic will include sexual orientation and at least some of the measures to be introduced in the North will explicitly include sexual orientation. Also the strong culture of equality and respect for diversity which the Peace Agreement is trying to engender provides a very positive context for progress for lesbian and gay people.

During its Presidency of the European Council in 1996, the Irish Government was responsible for the first draft of the Amsterdam Treaty which included an anti-discrimination clause covering sexual orientation. The Irish Government also pressed strongly for a social exclusion clause in the Treaty and both of these initiatives provide a positive policy framework for EU programmes to combat discrimination and social exclusion in relation to the gay and lesbian community.

The government appointed Combat Poverty Agency funded and published a wide ranging study on discrimination and disadvantage in the gay/lesbian community. The study⁵ was carried out by GLEN and Nexus Research and made a comprehensive series of recommendations.

The National Economic and Social Forum (NESF), in its report *Partnership 2000: Development of the Equality Provisions*⁶ (November 1997), recommended the establishment of a Commission or Task Force on the status of lesbians and gay men. The report's authors concluded: "We are of the view that the extent and nature of discrimination and exclusions on the basis of sexual orientation in this country and the implications for policy, are not widely known or understood and require comprehensive consideration at this time." The NESF was established by the Government to develop economic and social policy initiatives. Its membership is made up of representatives from Government, Parliament, trade unions, employers and farmers, and those representing groups traditionally excluded (e. g., women, youth, community sectors).

As early as 1988 the public service employers adopted an anti-discrimination code which stated that discrimination on the basis of medical condition or sexual orientation "will not be tolerated".

The Department of Health and Children has produced a number of policy documents stressing issues of equity,

strengthening community action, prioritising vulnerable groups and promoting safer sexual practices. A Plan for Women's Health 1997 to 1999 includes a recommendation that "Health boards will be asked to ensure that health professionals are informed about lesbian health issues and that staff respect the sexual orientation of lesbian women". The Department funded a study on *HIV Prevention Strategies and the Gay Community* in 1996⁷ and followed this with a project, *Gay HIV Strategies*, to facilitate new programmes, resources and linkages for HIV prevention work for gay men.

The Department of Social, Community and Family Affairs 1997 Green Paper on the community and voluntary sector, *Supporting Voluntary Activity*, recognised the role of organisations representing the lesbian and gay communities and stated that networks concerned with gay and lesbian issues could be eligible for funding under the category of national anti-poverty networks.

The Department of Education's Expert Advisory Group on Relationships and Sexuality Education recommended in 1994 that sexual orientation should be included in the post-primary senior cycle, and that HIV and AIDS education should be included much earlier, in the senior stage of the primary level.

The Government Ombudsman's Guide to Standards of Best Practice for Public Servants includes sexual orientation in an anti-bias clause.

The New Opportunities for Women Programme of the European Union has provided significant funding for the *Lesbian Education and Awareness (LEA)* project.

The Area Development Management (ADM), a government organisation set up under the European Union Structural Funds programme with the objective of combatting disadvantage, has developed anti-discrimination guidelines which include sexual orientation.⁸ One of the Local Area Partnerships funded by ADM is itself funding a pilot project to build the capacity of the gay community to engage in developmental work.

The Government has put in place a National Anti-Poverty Strategy, and in its 1997 report *Sharing in Progress* it recognised that "while homosexuality in itself does not necessarily place one at risk of poverty, the impact, experience and perception of discrimination may limit the full participation of gay men and lesbians in society, and may in some cases place them at risk of poverty". Included in the principles which underpin the

Strategy are "ensuring equal access and encouraging participation for all; and guaranteeing the rights of minorities especially through anti-discrimination measures".

As part of a partnership process with the gay community to develop a more effective HIV prevention programme, the Eastern Health Board (EHB) is to fund a series of pilot projects proposed and implemented by gay community organisations. It is hoped that other health boards will follow this example.

Non-governmental institutions

There has been similar support from many non-governmental organisations:

In 1982 the Irish Congress of Trade Unions (ICTU) passed a historic pro-gay rights resolution guaranteeing support for decriminalisation and equality of job opportunity. In 1987 the ICTU launched a radical and action-orientated policy document, *Lesbian and Gay Rights in the Workplace: Guidelines for Negotiators*. This was uncompromising in its demand for equality, its rejection of "heterosexism" and its recommendations for positive action by trades unions. Individual unions such as IMPACT, the public sector union, MSF and others have detailed lesbian and gay policies and equality structures.

Various social groups have been very supportive including the Irish Council for Civil Liberties, the National Women's Council of Ireland, the Union of Students in Ireland and others.

In national negotiations with Government, trade unions and employers, the Community Platform strongly supported the proposal to establish a Task Force on Discrimination against Lesbians and Gay Men (see above) and called for the expansion of the Community Development Programme with a particular focus on communities of interest such as the gay and lesbian community. The Community Platform is made up of national networks within the community sector which are engaged in combatting poverty and social exclusion and promoting equality and justice. GLEN is a member of the Community Platform. The Community Development Programme is run by the Department of Social Welfare and it provides core funding for resource centres to develop the capacity of local communities to work together to tackle poverty and social exclusion.

The lesbian and gay community

The developments outlined above have been paralleled by a major expansion in the range and geographical distribution of services provided by the lesbian and gay community. *Gay Community News*, a community run monthly magazine, is an example and a reflection of this energy. There is a particular vibrancy in the cultural area with a number of well-known lesbian/gay writers such as Emma Donoghue, Mary Darcy, and Frank Ronan.⁹ There is also a growing commercial recreation/entertainment sector which provides a worthwhile service mostly focussed on Dublin.

b) But there is still discrimination and oppression

Despite the progress which has been outlined above, for many lesbians and gay men the situation is still unacceptable. Many feel that they must hide their sexuality from family, friends and co-workers. There are unacceptable levels of violence and harassment. Most would not feel secure expressing same-sex affection in public. Many government and private services ignore the needs of lesbian and gay clients. Many regional health authorities have not responded effectively to the HIV/AIDS crisis affecting gay men. And there is strong opposition to progress for homosexuals in some quarters, with the many health and social welfare agencies controlled by the Roman Catholic Church a particular barrier to progress, despite the more constructive approach of many individual Catholics.

The problems experienced by lesbians and gay men are documented in the above-mentioned study *Poverty, Lesbians and Gay Men – The Economic and Social Effects of Discrimination* prepared for the government's Combat Poverty Agency (see note 5). The study concluded that there are significant cumulative and interlocking processes of discrimination operating in key economic and social areas which increase the risk of poverty for lesbians and gay men and further disadvantage those already living in poverty. It documented graphically the experiences of individual lesbians and gays:

Almost one-third of respondents were effectively homeless at some stage of their lives. Over half of those surveyed experienced problems at school because of their sexual orientation and 13 respondents left school earlier than anticipated as a result.

More than a third of those who had been on training courses experienced bullying because of being gay. Almost half of respondents experienced harassment at the workplace. Many respondents' job opportunities were severely narrowed because they avoided work for which they were qualified (21%) or categories of work (39%) through fear of discrimination. A quarter of respondents had been punched, beaten, hit or kicked because they were assumed to be gay. Half of those who reported such incidents of violence stated that they occurred in their locality.

The study also documented more encouraging features. For example, almost all of those respondents who had come out to family members reported that it had improved their lives considerably.

A key recommendation of the report was the establishment of a Task Force composed of representatives from government departments, the gay community, and others to initiate action on the advantages identified in the report. This recommendation was subsequently supported by the National Economic and Social Forum (see above).

The provision of youth services is an area where there have been considerable problems, and indeed, until recently mainstream youth services did not respond to the needs of young lesbians and gay men. In fact, lesbian and gay youth issues were often a source of conflict between mainstream organisations and gay youth.

With limited outside support and sometimes in the face of strong opposition, the lesbian and gay community and lesbian and gay youth themselves have tried to respond to the needs of young gay people. However, gay community services available for young people are under-resourced and confined to the major centres. With more and more young people coming out and at a younger age, these services will be increasingly under pressure. However, there are some indications that the mainstream youth services are about to support initiatives to respond to the needs of lesbian and gay youth.

3. Good practice

It is clear from what has been said above that – despite the continuing problems – the position of lesbians and gays in Ireland has been transformed in recent years. There are many reasons for this relatively sudden

change of fortune and these include the increasing liberalisation and confidence of Irish society and strong economic growth.¹⁰ The campaigning of the lesbian and gay community has also been critical. Aspects of this campaigning which are worth highlighting are as follows:

The building of coalitions with other sectors working for social change: for example, the Gay and Lesbian Equality Network established the Equality Campaign which was composed of organisations representing people with disabilities, women, and Travellers, and which lobbied successfully for equality legislation.

A commitment to challenging poverty, disadvantage and social exclusion as it affects lesbians and gay men and many others in Irish society. The Poverty Report prepared by GLEN and Nexus Research discussed earlier is an example.

A commitment to lesbian and gay community development and empowerment. This includes learning from the experience of related community sectors, for example women, Travellers and people with disabilities.

Our insistence that state and other mainstream agencies work in partnership with lesbian and gay community groups in developing responses to issues affecting our communities.

The development of a social consensus to support our demands: This was based both on a rejection of the once prevalent stereotype of Ireland as a reactionary and priest-ridden country and an appeal to the more positive Irish traditions arising from the struggles against oppression and colonialism.

Kieran Rose

in consultation with Chris Robson and Eoin Collins

Lesbians: 15 for all kinds of sexual relations (Section 14 Criminal Law Amendment Act 1935);

Heterosexuals: 17 only vaginal intercourse (of men) with girls and for all anal intercourse; 15 for vaginal intercourse (of women) with boys and for all other kinds of sexual contact, i. e., oral sex, mutual masturbation, petting, etc. (Sections 1, 2 & 14 Criminal Law Amendment Act 1935; Section 62 Offences Against the Person Act 1861; Section 3 Criminal Law [Sexual Offences] Act 1993).

- ⁴ The Law Reform Commission of Ireland recommended in its *Report on Child Sexual Abuse* (1990) to introduce an equal age of consent of 15, with the only exception of (active) vaginal and anal penetration (unless the minor is the active penetrating part), for which it recommended an age limit of 17.
- ⁵ *Poverty, Lesbians and Gay Men – The Economic & Social Effects of Discrimination* (GLEN/Nexus, 1995), published by the Combat Poverty Agency.
- ⁶ *Partnership 2000: Development of the Equality Provisions*, November 1997, National Economic and Social Forum, pp. 39-40. This is the first in a series of six monthly opinions which the Forum has been asked to prepare under the arrangements which have been put in place to benchmark and monitor the Partnership 2000 Agreement. Partnership 2000 is an agreement between the Government and the social partners on pay, taxation and other economic and social policies.
- ⁷ *HIV Prevention Strategies and the Gay Community* (GLEN/Nexus, 1996).
- ⁸ Kieran Rose: *Parallel Universes: The Lesbian & Gay Communities & Local Development*, in: *Local Development in Ireland*, published by the Community Workers Cooperative in 1998, discusses the potential of EU funded local development programmes to combat social exclusion.
- ⁹ *Lesbian & Gay Visions of Ireland* edited by Ide O'Carroll and Eoin Collins (Cassell, 1995) contains a range of articles on cultural and political issues.
- ¹⁰ A critical (but supportive) view of the campaigns of the Gay and Lesbian Equality Network is found in an article by Richard Dunphy, *Sexual identities, national identities: the politics of gay law reform in the Republic of Ireland*, in: *Contemporary Politics*, Volume 3, Number 3, 1997. It should be said that GLEN, while welcoming this serious assessment of its campaigns, would strongly disagree with some of the analysis. See also Kieran Rose (1994) above and Chris Robson: *Anatomy of a Campaign*, in: O'Carroll and Collins (1995) above.

¹ See David Norris: *The Development of the Gay Movement in Ireland: A Personal and Political Memoir*, in: Aart Hendriks, Rob Tielman, Evert van der Veen (editors): *The Third [ILGA] Pink Book – A Global View of Lesbian and Gay Liberation and Oppression*, Prometheus Books, Buffalo/New York 1993.

² For an overview see Kieran Rose: *Diverse Communities: The Evolution of Lesbian and Gay Politics in Ireland*, Cork University Press, 1994.

³ The age limits are as follows:
Gays: 17 for all kinds of sexual relations (Sections 3 & 4 Criminal Law [Sexual Offences] Act 1993);

I T A L Y

1. Legal situation

a) Criminal law

The penal code contains no anti-lesbian or anti-gay provisions. The age of consent for heterosexual and homosexual acts is 14.

b) Anti-discrimination

The Constitution does not cover “sexual orientation” as a non-discrimination category. The penal code contains no laws which protect gays and lesbians as a group, but does include other elements like gender, race, religion. Because of the debate in Italian society about a general revision of the Constitution, the country’s gay and lesbian movement is beginning a campaign to include “sexual orientation”. The political parties of the left, who are the traditional allies of the gay and lesbian movement, are not keen on constitutional change and have simply tried to deflect attention away from the Constitution and onto the anti-discrimination provisions of the penal code.

Attitudes towards defamation are changing. There are many convictions for defamation of homosexuals, and recently a judge rejected homosexuality as a category that can damage an individual’s reputation, declaring that calling a heterosexual “homosexual” cannot, in a modern and non-discriminatory society, be an act of defamation, but simply a lie.

In the workplace, all gay men and lesbians who have been fired on grounds of sexual orientation have won their cases, because private non-criminal acts cannot be considered grounds for dismissal. Obviously, homophobic firms continue to fire homosexuals, but they put forward other reasons.

c) Family and partnership legislation

Same-sex couples are not recognised by the law. Many members of Parliament have presented many proposals in this connection. The first was put forward in December 1993 by Cioni (*PDS*), Taradash (*Partito Radicale*) and Vendola (*Rifondazione Comunista*). The second,

presented in the Tenth and Eleventh Legislatures, was a bill entitled “Provision on Civil Unions” (Vendola, Cioni, Manconi (Green Party)). The supporters mainly belonged to leftist and progressive parties, with the exception of Scopelliti (*Forza Italia*) and Vittorio Sgarbi (“Other” group in the Parliament). In the Thirteenth legislature, a proposal for “civil union” was presented in three bills: two in the Chamber of Deputies (backed by Vendola and Gloria Buffo, *PDS*), and one in the Senate (backed by Manconi).

All these bills propose official registration of domestic partnerships, and give the (straight or gay/lesbian) partners all the rights associated with the “traditional family”. There are no provisions on alimony if the civil union ends, but in Buffo’s and Manconi’s proposals there are guidelines to protect the economically weaker partner. Buffo’s proposals include the right to adoption. In Vendola’s proposal, a civil union cannot be judged an obstacle to adoption (but single people cannot currently adopt in Italy). In Manconi’s proposal, adoption is not tackled at all.

None of these bills has ever been discussed in the Parliament, and they are unlikely to be discussed in the future.

Some local authorities have tried to introduce local civil union registers (though these are to all intents and purposes symbolic), but the *CORECO* (Regional Supervision Committee) has always overruled these attempts, saying that they conflict with national law, which does not recognise civil unions. Recently, some local authorities (including Pisa and Bologna) set up registers for official cohabitation that were not overruled because the cohabiting partnerships being registered could not be considered “civil unions”.

In Italy, only married couples can adopt, so gay and lesbian couples or single people are automatically excluded. The institution of custody (*affido familiare*) can be granted to single people if a judge so rules. In some cases homosexuality has not been judged an obstacle to being granted custody.

At present, there is no general ruling on artificial insemination. In 1994, the Professional Order of Doctors produced an internal regulation stating that single women and lesbians would be excluded from medically as-

sisted artificial insemination. Many bills regarding artificial insemination have been put to Parliament. They were drafted by a parliamentary commission that proposes to limit access to medically assisted artificial insemination to married women or to unmarried women who live in a stable heterosexual relationship. The proposals have been upheld by the leaderships of all the Italian political parties with the exception of *Rifondazione Comunista*. The lesbian and feminist movements are contesting this law, but have been ignored by the mass media.

Italian legislation contains no provisions on same-sex partners and housing, social security, partner pensions or taxation.

Some local authorities and Regions (e. g. Tuscany, Emilia-Romagna) have produced local by-laws, in their limited area of influence, in which the definition of “family” is wider and does not reflect a single model. The Commune of Verona, however, approved a motion that rejects the Resolution of the European Parliament (1994)¹ to give gays/lesbians the same rights as straight people. This motion gave birth to a pro-gay rights movement that managed to organise a 5,000 people strong public demonstration.

d) Asylum law

Italian legislation does not recognise persecution on grounds of “sexual orientation” as grounds for asylum. The first known attempt to present “sexual orientation” in this manner occurred in 1994 in Florence and involved the local gay and lesbian association *Arcigay Arcilesbica Firenze*. The foreigner requesting asylum on these grounds was a Tunisian citizen who was ultimately forced by health problems to return to Tunisia and was thus unable to pursue his application. In any event, the first official response had been rejection.

2. Social situation

Considering Italy as a unit is a problem because of the enormous differences that exist among the Regions, big cities, smaller towns, and rural areas.

Gay men and lesbians face incredibly different situations in Emilia-Romagna, Sardinia, Tuscany and Veneto, for example.

Gay and lesbian life in Northern towns mirrors that in other parts of Europe, while the Southern countryside perhaps has more in common with the Mediterranean countries of non-European culture. In general terms, it can be said that Italy is a country composed of many small and provincial realities, where generally anybody can feel the heavy influence of Catholic culture, the traditional family and the traditional models of virility and femininity.

From an essay by Giovanni Dall’Orto:

Two main factors characterise Italian gay life today: its situation combines the two main paradigms of homosexual culture – the Central and Northern European type, which predominates in Northern Italy, and the Mediterranean type, which rules the South – and its acceptance of a kind of social pact, typical of Latin and Catholic countries, between the homosexual community and the state.

The first factor means that homosexual lifestyles in Italy are not homogeneous. In the North, the foreign observer, even though he cannot fail to register the difference between Italian gay culture and his own, will still recognise the links with Northern European gay life. Southern Italy, especially in rural areas, follows a completely different model of “Mediterranean homosexuality”. Straddling two different cultures, Italian homosexual life lacks homogeneity, embracing as it does lifestyles which are profoundly different and even contradictory.

The second characteristic element is the “social pact” in which the political authorities have tacitly conceded the existence of a homosexual minority since the nineteenth century, when sodomy was decriminalised thanks to Napoleonic reforms. In exchange for the renunciation of homosexual militancy and advocacy of the right to be different, the state has agreed to respect the abrogation of all specifically anti-homosexual laws. This concession does not mean that homosexual conduct is exempt from stigma, but simply that the task of social control in the realm of sexual repression has been left to the Roman Catholic Church. Consequently the state authorities need only intervene when the informal system of social control is not felt to be adequate. This occurred during the fascist period when scores of homosexuals were sent into exile on small islands for periods ranging from some months to several years.

Despite this policy, there is no known case of any homosexual deported as such to concentration (extermination) camps nor of anyone reportedly executed for homosexuality.

These contradictory factors explain how it was possible that from 1800 to 1950 Italy was a wonderland for foreign gays, who saw in the country a paradise where everything was allowed, while at the same time it remained a country in which homosexuals, with rare exceptions, were reluctant to seek affirmation of their own identity, or to proclaim it through fiction and essays.²

For generations Italian gay people declined to speak up on a vital question, understanding that repression would be deployed only in response to an attempt to create an “alternative lifestyle” in competition with that of the heterosexual family. In exchange they have benefited from a climate in which, although homosexuality officially did not exist and it was forbidden to mention it even in condemnation, scandals were systematically hushed up, the authorities dispensed with any “witch hunts”, and the common people refused to make an issue of it.

Italy has never had an Oscar Wilde scandal. Moreover, the Mediterranean culture of homosexuality has long permitted a certain phase of homosexual experimentation by young heterosexual men in order to safeguard the virginity of single girls. Italian homosexuals took advantage of this situation – until the arrival of the “sexual revolution” which, by facilitating premarital sexual relations, progressively reduced the viability of this erotic ploy.

Residues of this legacy of compromise persist even today in Italian politics – on the one hand in the considerable integration that the gay community has achieved with society in general (no Italian cities have gay ghettos, the ghetto being a reaction to a society that leaves no other space to the minority than the ghetto itself), on the other hand in the absence (so far) of phenomena such as the anti-gay crusades. Consequences of this tradition are the lesser strength of the Italian gay movement in comparison with the Anglo-Saxon countries, and the reluctance of homosexual intellectuals to come out. There are no laws to defy, no clearly definable immediate objectives, so that the average gay Italian man can hardly grasp the need for an affirmation that, in this context, is more a political choice than a lifestyle choice. This last factor explains the high degree of politicisation of the Italian gay movement. (End of quote of essay)

Education

In Italian universities it is impossible to find anything similar to the “Gay and Lesbian Studies” of American universities. The homosexual element in the arts of Italy, so historically obvious, is often censored in the schools, while universities generally lack specific studies. There is some lesbian teaching in the humanities run courses on “Women’s Studies” with some emphasis on lesbian themes, but these experiments are a product for the elite, far from the mainstream.

Mass media

Following the first appearances of homosexuality in the national mass media during the seventies, gay and lesbian visibility has greatly improved since 1984-1985 because of the growth of the gay and lesbian movement. The out homosexuals in the media were generally members of gay and lesbian political groups because of the strong social bias against gay men and lesbians. Improving the situation of such individuals made more and more people visible in the media. During the nineties the media have been presenting more “ordinary” gay men and lesbians who are not generally part of the movement and who are often used to create a sensational view of homosexuality. Gay men and lesbians are increasingly present in positive roles in the Italian cinema mirroring the international Hollywood trend.

Violence

Violence against gay men in cruising places is very frequent, but the victims usually choose to remain silent and do not report the crime for fear of public scandal. In some areas, where fascism as a culture and as a strong and readily-accepted political force is stronger (Verona, Rome), members of the gay and lesbian movement have been assaulted by gangs of hooligans. Violence against lesbians is more common within their own families. Rome, with its flourishing hustlers’ scene, has the highest percentage of murdered gay men, generally older, closeted individuals killed by male prostitutes.

The military

Military service is compulsory in Italy, but conscripts can be excused for health or psychological reasons. “Sexual perversion” is included among the possible rea-

sons for being excused from serving. In the past, the definition included any form of homosexuality, but in recent years army doctors and psychologists have commonly only admitted ego-dystonic homosexuality as “sexual perversion”. There is no written code reflecting this change of attitude. The Army takes a very independent line in selection, and the situation can be very different in different military districts: in some, any homosexual would be excused military service, in others, self-confessed homosexuals would be accepted into the military. Until now, the Army and *Arcigay*, the main gay association in Italy, have operated a common pact: gay youths who consider themselves unable to sustain the macho or erotic tension of the barracks present a statement from the *Arcigay National Association* in which the president declares that they were members of the Association (and so they had to be homosexual, because in popular opinion only gay men could be members of a political association for gay liberation), in addition to a statement from a psychologist declaring that the individual had some problems with his homosexuality. Some gay groups have judged this pact homophobic and have decided to fight against the practice. The truth is that Italian army is very homophobic (and simultaneously a place of homosexual experimentation) and that openly gay men can lead a very hard life, as can happen in prisons and colleges.

Blood donation

The Ministry of Health, through all its local branches (*ASL*), presents a form to all men and women who want to donate their blood or bone marrow, or their vital organs after death. Since the early eighties, men and women who declare themselves to be gay, lesbian, bisexual, etc. have been refused permission to donate fluids or organs because of the danger of AIDS. Gay and lesbian groups have protested many times against this absurd measure, but the ban remains. If a gay man or lesbian does not declare his/her sexual orientation, the donation will be accepted and the usual checks will take place.

Transsexuals

Italian law recognises changes of sex by surgical operation. Post-operative transsexuals can change their name and their official sexual gender in documents like passports and identity cards. They can marry and adopt. Popular traditional attitudes towards post-operative

transsexuals (generally male-to-female transsexuals) is generally more liberal than the popular traditional attitude towards gay men or lesbians. Many pre-operative transsexuals (male-to-female) work as prostitutes, and many Latin American (especially Brazilian) transsexual prostitutes come to work in major Italian cities, especially Rome and Milan. There is no strong transsexual movement in Italy, but many transsexuals (and some Brazilian transsexuals) are active in the associations of the gay and lesbian movement, mainly in Rome. One of the main aims of the transsexual movement is official recognition of a change of gender without the need for a surgical operation, but this proposal is not too popular.

The gay and lesbian movement

The gay and lesbian movement was born in 1972, with a public demonstration against a Sexology Congress at which some experts wanted to discuss homosexuality as a disease. Two years later, the first gay disco (the *Tabasco* in Florence) was opened, and it was followed by many other clubs, especially in Northern Italy. At the end of the seventies the tensions of every day life for gays and lesbians became political tensions: the gay movement took energy from the students' movement, and the lesbian movement was a strong part of the feminist movement. A cultural elaboration started within the lesbian separatist groups and with the theoretical productions of Mario Mieli. In 1982, the first gay group established itself within *ARCI* (a leftist cultural association), making it the first *ARCIGAY* group. It began in Palermo, Sicily, after the shocking suicide of two gay boys whose situation had become unbearable. This was the first time that heterosexual society had to respond to the social discrimination and oppression suffered by gay men and lesbians in Italy.

The occupation of the Cassero of Bologna (an ancient tower-gate, a heritage site of the Municipality of Bologna) was the start of a political movement in which the oppression of gay men and lesbians was part of the general political context. At the same time, the lesbian separatist movement occupied the former Monastery of the Buon Pastore in Rome to promote a general analysis starting from the woman's point of view.

From 1984, the elation of the Cassero experience (with its political ramifications) and the emergence of *ARCI* joined together and started to present a pragmatic answer to the enormous social and psychological oppression experienced by Italian gay men and lesbians.

In 1985 *ARCIGAY* became a national association, and many *ARCIGAY* centres opened up throughout Italy. These centres were obliged to respond to the many and varied difficulties, uneasiness and general discomfort of the majority of homosexual men and women in small towns, in the country, in the islands and elsewhere. Meanwhile the AIDS crisis exploded.

At the end of the eighties some lesbians had started to attend *ARCIGAY* centres, even though they were mainly male-oriented. These lesbians were generally from outlying areas where the separatist movement had not been able to open a women's centre. The appearance across the entire nation of places where lesbians could meet other lesbians and the new focus on specific lesbian problems resulted in the birth of autonomous groups, both separatist and non-separatist. A typical example is *Towanda!* in Milan, now also present in *Arcilesbica*.

Since 1994, with the rise of the Right in Italy and with repeated attacks on basic liberties and basic self-determination, a need has emerged to show the political inspiration of a movement which has developed many different branches, often very narrow in focus: health centres, activities with people living with HIV/AIDS, commercial clubs and saunas, magazines like *Babilonia* and *Adam* (not very political and quite distant from the liberation movement), Internet pages unconnected with non-virtual activities, self-help groups, sociological surveys run by professionals who are not part of the movement; members of the movement specialising in visibility in the mass media; others working within the trade unions to promote gay and lesbian rights; many gays and lesbians collaborating directly with political parties, leftist or not, books about gay identity, lesbian identity and the queer world.

In the last two or three years, the renewal of rightist attacks, mainly in the North-East, against the self-determination of all individuals, especially women, gays and lesbians, has brought about a re-emergence of political commitment, reminiscent of the seventies. In some cases, like the *ALZIAMO LA TESTA* ("Let's Raise Our Heads") Campaign in Verona in 1995, the gay and lesbian movement has been the core of a movement against the fundamentalist violence that threatens the world.

Some sections of the gay and lesbian movement have started to work with the *Centri Sociali*, occupied areas where political and revolutionary/antagonist activities take place, where the seventies' movement has lived on, despite the de-politicisation of the eighties.

The difficulty in finding common ground for all this diverse community is seen as one of the major causes of the fragmentation of the gay and lesbian movement in Italy today.

Elena Biagini
Graziella Bertozzo
Marco Ravaoli

¹ *Resolution on equal rights for homosexuals and lesbians in the EC*, Document A3-0028/94, cf. p. 10 in this report.

² One factor to explain this might be that Italy (except from Turkey) was the only European country that already decriminalised homosexual relations in the 19th century (in 1812 in the Kingdom of Both Sicilies; later in the Italian province of Naples; in 1889 in the rest of Italy), introducing completely identical provisions for heterosexual and homosexual relations, and that has never since reintroduced any kind of discriminatory anti-homosexual penal code provision (such as higher age limits, stricter provisions for prostitution, sexual acts in public, etc.) as all the other countries have done which decriminalised during the 19th century.

L U X E M B O U R G

1. Legal situation

a) Criminal law

As a result of the French occupation in 1794, the medieval sodomy laws were also repealed in Luxembourg. The Luxembourg penal code has traditionally been modelled after the Belgian penal code. The Luxembourg penal code of 1879, which is still in force today, is an almost identical copy of the Belgian penal code of 1867. The Belgian penal code, in turn, had been based on French law, the French *Code Napoléon* of 1810 was even in force in Belgium until 1867.

For almost two hundred years, Luxembourg did without any special provision for gays and lesbians. But in 1971 it introduced a higher age of consent for homosexual (both gay and lesbian) acts of 18 years (the general age of consent had been 14 years since 1854). Again, Luxembourg followed the Belgian example – Belgium had introduced a discriminatory age of consent provision for same-sex relations in 1965. Luxembourg abolished this anti-homosexual provision (Article 372bis) again in 1992 (seven years after Belgium had repealed the equivalent law provision in 1985¹) but, at the same time, increased the general age of consent for all sexual orientations to 16 years (which Belgium had already done in 1912).

Since 1992, there has been no discrimination of lesbians and gays under the penal code.

b) Anti-discrimination legislation

In 1997, on the occasion of the European Year against Racism, the Parliament adopted various amendments to the penal code which resulted in comprehensive anti-discrimination legislation.² The long list of non-discrimination categories in Article 454 of the penal code also contains “sexual orientation”.

The following kinds of discrimination based on one of these categories, directed at physical and legal persons, groups or communities of persons, are illegal according to Article 455 and punished with prison terms between eight days and two years or fines between 10,001 and 1,000,000 Luxembourg Francs: to refuse the provision

of goods and services, to publicly announce to deliver goods and services under certain restrictions relevant to Article 454, and to impede the normal performance of any economical activity.

Article 455 also covers discrimination in the labour market. It is illegal to discriminate against a person on the grounds listed in Article 454 with regard to recruitment, promotion and dismissal of employees. Additionally, it is forbidden to restrict an offer of employment in a way relevant to Article 454.

Article 456 provides for punishments, which are a third higher than those provided in Articles 444 and 455, for discrimination committed by civil servants in performance of their functions or persons, charged with a public mission, in performance of this mission.

Article 457 of the penal code regulates hatred crimes. It provides the same punishments as Article 455 for any public form of incitement to the crimes prohibited by Article 455 or to hate and violence against individuals or groups characterised by one of the attributes protected by Article 454.

c) Partnership legislation

There is no legal recognition of same-sex partnerships yet. In March 1996, however, a Socialist member of Parliament, Lydie Err (*LSAP*), introduced a bill in Parliament providing for establishing “Registered Partnership” for same-sex couples. The Green Party (*Déi Gréng*) considered this bill not to be far-reaching enough. They opted for opening up marriage for same-sex couples and, thus, for complete equality between opposite-sex and same-sex couples. In May 1996, Green MP, Renée Wagener, presented an appropriate bill to the Chamber of Deputies. No vote has yet taken place on these two bills.

3. Social situation³

The social situation of lesbians and gays does not differ from that in the adjacent countries. One special feature of Luxembourg is the fact that there is no big urban or

metropolitan agglomeration. Luxembourg is a small country where all people know each other; the anonymity provided by large cities does not exist. Therefore, social control is stronger.

Another specific feature of Luxembourg is the fact that Luxembourg has traditionally been bilingual and has a large migration population, two circumstances which have promoted understanding, tolerance, acceptance and respect of other lifestyles in general.

The media coverage is divided, especially on controversial issues such as the legal recognition of same-sex partnerships which also caused very negative reactions from conservative newspapers. One of them described the Green proposal to open up marriage for lesbian and gay couples as “a slap in the face of the eldest human institution and the germ cell of society”.

There is also an organised gay and lesbian movement, and a branch of *ÉGALITÉ (Equality for Gays and Lesbians in the European Institutions)*, the organisation of gay and lesbian employees of the EU institutions.

Kurt Krickler

based on information received from Claude Kohnen

¹ See country report on Belgium, page 35.

² *Loi du 19 juillet 1997 complétant le code pénal en modifiant l'incrimination du racisme et en portant incrimination du révisionnisme et d'autres agissements fondés sur des discriminations illégales*, published in the *Mémorial*, the Official Journal of the Grand-Duchy of Luxembourg, on 7 August 1997.

³ ILGA-Europe was not able to find a native Luxembourg person to write the country report on Luxembourg. Therefore, this section is quite short.

T H E N E T H E R L A N D S

1. Social situation

The last few years have brought rapid developments in the way Dutch society relates to lesbian and gay issues. The government's plans to provide civil marriage opportunities for lesbian and gay couples and the possibility (or lack thereof) of adopting children have generated much public debate. Although public opinion is not all in favour of specific rights for lesbians and gays, these issues have become matters for discussion.

Public opinion believes that discrimination is a thing of the past and that gay and lesbian liberation is a reality. One result was that the University of Utrecht's important Lesbian and Gay Studies Department was forced to shut in January 1998. Although much has been achieved and public acceptance is within reach, the fact is that the lesbian and gay community in the Netherlands has lost a lot of its fighting spirit. Membership of the national lesbian and gay association *NVIH-COC* seems to be declining and a gay and lesbian cultural magazine had to close down because of lack of funds.

Having Amsterdam as the venue for the *Gay Games* has spawned a number of lesbian/gay sports organisations and tournaments. All of these organisations are mixed. Examples are *Gay Swim Amsterdam* (a member of the official Dutch swimming federation; has about 100 members) and *Tijgertje* (lesbian/gay general sporting organisation; about 500 members). The city of Amsterdam and the central government are providing two million Dutch guilders of sponsorship for the Gay Games, and the Mayor of Amsterdam will even be taking part in the golf tournament.

Older lesbians and gays

There are not many organisations or places to go to for older lesbians and gays. Research commissioned by the Amsterdam city council and the Health Ministry has revealed that older lesbians in particular live an isolated life. Most have a low income and there are few activities organised especially for them. These women belong to a generation in which it was not possible to be openly lesbian. Women were not supposed to have a sexuality, let alone a lesbian sexuality.

The initiative was taken in Amsterdam in 1996 to set up a home for older lesbians and gays. A local government grant funded the building of seven apartments connected to a home for older people. The customers were mainly gay men.

Lesbians and gays from ethnic minorities

Dutch society has become multi-cultural. In recent years, lesbians and gays from migrant families have grown in number, as have the organisations serving them. A new foundation called *Yoesuf* aims to promote tolerance between Muslims and homosexuals.

2. Legal situation

a) Criminal law

There are no remaining anti-lesbian or anti-gay provisions in Dutch Criminal law. Until 1971, lesbian and gay sex between an adult and a minor (meaning under 21) was an offence. Today, the legal age of consent is 16 years for lesbians, gays and straights.

The existing special criminal law provisions concerning lesbians and gays provide for the protection of homosexuals from discrimination (see below).

b) Anti-discrimination

Although homosexuality is not explicitly mentioned in the Dutch Constitution, lesbians and gays are protected by the non-discrimination article of the Constitution (Article 1 DC). In 1983, the Dutch Constitution was amended to state that all forms of discrimination were prohibited. Although neither the term "sexual preference" nor any synonym were explicitly mentioned as grounds for protection against discrimination, discrimination against homosexuals is forbidden by the Constitution owing to parliamentary documents¹ and legal precedent which place sexual orientation under the protection of the first article of the Constitution.

In 1992, criminal protection against discrimination on grounds of homosexuality came into force. Existing articles on racial discrimination had the terms "homo-

sexual and heterosexual orientation” added. As a result, mistreatment, inciting discrimination and violence targeted at an individual because of his or her homosexuality became an offence. The same applies to publicly expressed discriminatory remarks and participating in or encouraging discrimination (Articles 137c, d, e and f of the Penal Code). Also banned is discrimination against gays and lesbians by a person in the performance of his/her public function, profession or business (Article 429quater of the Penal Code).

The General Equal Treatment Act came into force in September 1994, after a battle of more than 15 years by the lesbian and gay movement. It prohibits discrimination on grounds of an individual’s religion, belief, political conviction, race, sex, heterosexual or homosexual orientation or civil status in the fields of labour, housing, medical care and access to goods and services.

One clause in this act led to a controversy: the escape clause for religious institutions, such as private denominational schools. Thus, a Christian school is allowed to make demands of its staff in the light of its principles. However, no distinction may be made on the basis of homosexual orientation alone. An example: In a recent case before the Equal Treatment Commission, the lesbian study group *Sappho* and the gay study group *Saint Sebastian* claimed that the Catholic Theological University of Utrecht had excluded them because they deal with homosexual theology. The university’s reason for the policy was fear that papal recognition would be withheld. The Equal Treatment Commission found that the University had violated Article 7 of the General Equal Treatment Act, which prohibits schools from discriminating on the grounds of homosexual orientation.

c) Children

The number of lesbians having children has increased enormously. Whereas 15 years ago there seemed to be a taboo attached to even talking about a wish to have children, in the last few years the gay and lesbian community has organised several “parenthood meetings” in which lesbian and gay parents and lesbians and gays wanting to be parents have met to share their ideas about raising children.

The rise in the number of lesbian and gay parents can be partly explained by the fact that opportunities for artificial insemination and known-donor insemination have become more widely known. Despite legal prohibitions,

there are still denominational hospitals that deny lesbians artificial insemination. Although some hospitals refuse insemination to lesbians or single parents, there are enough hospitals that do offer the possibility.

d) Family and partnership legislation

Since 1 January 1998, lesbian or gay parents have been able to share custody with their same sex partners. Before then, shared parental authority was impossible for same-sex couples. Under the Law of Succession, the child under shared parental authority is seen as a legal child of the co-parent, giving him or her maintenance obligations for the child, and legal authority. The parents can also ask to change the name of the child.

To achieve this, the legal mother or father and his or her partner have to ask a judge to grant shared parental authority. This Act has already been criticised by the lesbian and gay movement and the women’s movement, as it still does not allow the co-mother or co-father to be a full legal parent. This will be an obstacle to the child as well as for the social (not fully legal) parent with regard to inheritance rights and the right to shared nationality.

Since 1 April 1998, adoption has been open only to straight couples and single people. This means that lesbian or gay couples still cannot adopt children, even their own. At present the female partner of a mother can not acquire legal parenthood over a child that they are raising together. This means that the child cannot be direct heir to the social mother, nor can the child acquire the social mother’s nationality. A child raised in a lesbian or gay family will not have a second legal parent or a second legal family.

Since 1 January 1998, same-sex couples have been able to legally register their partnership (under the Partner Registration Act). Registered Partner(ship) is a new civil status equal to spouse/marriage. Contrary to popular belief, lesbian and gay couples are not legally allowed to marry in the Netherlands. Some churches will however marry homosexual couples.

The Partner Registration Act encompasses all the rights and duties of marriage, with one striking exception: parenthood. Consequently, registered couples are not able to adopt children, or obtain joint parental authority over their own children.

Who can register a partnership in the Netherlands? Straight couples, plus lesbian and gay couples, are allowed to register their partnerships. However, only Dutch citizens and individuals with the legal right to stay in the Netherlands are allowed to register. These criteria do not exist for marriage.

The legal consequences of partnership registration are similar to marriage. This means, for example, that the registered partners have a duty to maintain each other and the duty to live together. After “divorce” one of the partners can ask for alimony. Partnership differs from legal marriage in that registered partners can dissolve their partnership by agreement, without going to court.

In August 1996, at the request of a majority in Parliament, the government set up a state commission to investigate the legal implications of allowing civil marriage for same-sex couples. In October 1997 the commission presented its report “Opening civil marriage to same-sex couples”. Among other things, the commission was in favour of making it possible for lesbian and gay couples to adopt, and a solid majority (5 out of 8 members) recommended civil marriage provisions for lesbian and gay couples.

On 6 February 1998, the government gave its verdict on the report. It backed the granting of adoption rights for lesbian and gay couples, with adoption being confined to Dutch children. Lesbian and gay couples would always have to apply to a judge in adoption cases, as straight couples and single people currently have to. This step forward is a recognition of lesbians and gays who raise children of their own and will give these children a second legal parent.

The government also plans to legislate to have shared parental authority begin automatically at the birth of a child within a registered partnership. Currently, parents have to ask a court to grant shared parental authority (see above). The steps backed by the government will take at least four years or more to translate into action, because Parliament must agree on the proposals.

e) Asylum law

Under Dutch law homosexuals can be recognised as refugees on “urgent humanitarian” grounds.

* Dutch Lower Chamber 1975-1976, 13872, no 4. Schedules of Explanatory Memorandum, p. 87. The revised Dutch Constitution came into force in 1983. It does not explicitly mention homosexuality, but does state: “...discrimination based on (...) sex or on any grounds whatsoever shall not be permitted”.

P O R T U G A L

1. Legal situation

a) Criminal law¹

In 1995 Portugal introduced a new penal code (*Decreto-Lei no. 48/95, 15.03.1995*). Although officially referred to as a revision of the 1982 penal code, it has been so extensively altered as to amount to a new code.

In 1945 Portugal decriminalised homosexuality for the second time in its history (the first time was in 1852, but the total ban was reintroduced in 1912) and set an equal age limit of 16. The penal code of 1982 took over this equal minimum age of consent for heterosexual acts (Articles 203 and 206) and homosexual acts (Articles 206, 207). However, the penalties laid down for the “seduction” of 14 and 15 year old adolescents differed: for homosexual “seduction” (*desencaminhar*) the penalty was up to 3 years (Art. 207), whereas for “seduction” into (heterosexual) vaginal intercourse (*tiver cópula... abusando da... inexperiência ou mediante promessa séria de casamento*) the penalty was up to 2 years (Art. 203), and for “seduction” into all other forms of heterosexual contact it was up to 1 year (Art. 206). But when no “seduction” was involved, the penalty laid down for heterosexual and homosexual acts with 14 and 15 year old adolescents was the same, up to 1 year (Art. 206), as were the penalties for sexual conduct with minors under 14 (Art. 201, 202, 205).

The reform of 1995 lowered the heterosexual age of consent to 14 (Art. 172 of the penal code) but kept a special offence of homosexual relations with 14 and 15 year old adolescents (Art. 175: up to 2 years jail). Heterosexual relations with 14 and 15 year old adolescents, however, are only a criminal offence if the minor is “seduced” (*abusando da sua inexperiência*) vaginal (not anal, oral or other) intercourse (Art. 174: up to 2 years jail). Thus, the Portuguese penal code mentions the term “homosexual” once – in its Article 175.

b) Anti-discrimination

Sexual orientation is not included in the Constitution as a criterion for protection from discrimination. There are no anti-discrimination laws in the penal code covering gays and lesbians.

Extensive lobbying was conducted in 1996 during the revision of the Constitution in favour of the inclusion of “sexual orientation” in its Article 13 which lists the non-discrimination categories and points out groups within society specially prone to discrimination, i. e., sex, race, religion, etc. The Portuguese lesbian and gay association *ILGA-Portugal* even presented a formal proposal to Parliament. The Green Party made a similar proposal. Both were rejected by the Socialist and Social Democrat majority. The next opportunity for revision of the Constitution will be in six years time.

Besides lobbying over national issues, *ILGA-Portugal* was active in urging the Portuguese government to vote in favour of Article 6 of the Amsterdam Treaty. These efforts were more fruitful. Portugal voted in favour of this Article.

c) Family and partnership legislation

At the present time, Portuguese law does not recognise same-sex partners. There are however plans to introduce a partnership bill into Parliament which will also include gay and lesbian couples (without adoption rights).

As far as parenting is concerned, there is one case known in which the family court granted an openly homosexual father (and his partner) custody of his daughter following the divorce of her parents. This decision was later reversed by the Supreme Court, which argued that the child “should be brought up in a traditional Portuguese family”. As far as it is known, the parent in question has appealed this decision to the European Commission of Human Rights and has started a petition to the Portuguese Parliament in order to address this and other issues relating to discrimination based on sexual orientation.

The current housing law does not distinguish between homosexual and heterosexual couples. Hence, it would equally apply to opposite-sex and same-sex couples. In case of the death of the tenant, the lease is not automatically inherited by the bereaved partner but (s)he has preferential right to keep the lease.

It was announced in June 1997 that the youth section of the Portuguese Socialist Party was preparing a part-

nership bill that would include same-sex couples (see Appendix for the full text). At a time when the Communist and Green parties presented Parliament with similar bills (not contemplating same-sex couples), hope grew that the approval of a partnership bill would be within months. However, since then other “sensitive” issues like the new abortion law have captured media attention. It seems that the Socialist group now deems it too soon to move on to another “hot” issue. Although a commitment to proceed with the partnership law was clearly demonstrated, it is not known when this will happen, although 1999 is a possibility.

ILGA-Portugal has learned that the Socialist Party has drawn up a revised text for the partnership bill, but has not been able to gain access to it. We understand that one reason for the revision is that the original Article 7 conflicted with provisions of the Schengen Agreement covering the entry and legal status of non-EU citizens.

d) Asylum law

Sexual orientation is not specifically recognised. There are no known cases of persons being granted or denied refugee status on the basis of sexual orientation.

Portuguese law does however state that any person facing a life-threatening situation, a death sentence or life-imprisonment in another country, may not be deported. For such people, as long as they can prove the existence of this life-threatening situation, asylum is granted automatically. Again, it is not known whether this law has been put to the test in the case of sexual orientation.

2. Social situation

The general attitude towards homosexuality does not differ from that in other Western European countries. Gays and lesbians are generally accepted as a fact in society, although there are cases of declared homophobia.

Violent (both verbal and physical) homophobia is extremely rare (2 reported cases in the past 10 years). The Roman Catholic Church exerts a stronger influence in the northern part of the country, where conservative views are more widely shared and where homosexuality is more closeted. There are telephone counselling lines and a community centre in Lisbon to support the gay and lesbian communities.

Still, one can reasonably assume that most, if not all, members of the gay, lesbian and transgender communities prefer the Lisbon metropolitan area (2.5 million inhabitants) to other urban areas due to the cosmopolitan openness there. Rural areas are understandably more conservative and less open to issues regarding sexual orientation. It is symptomatic that the only place in Portugal where these communities are organised is Lisbon. Even in Oporto (1.5 million inhabitants) the gay, lesbian and transgendered communities have no resources or local organisations.

Politically, gay and lesbian issues are new, and few politicians have the courage to take them up. However, Lisbon's Mayor is the exception, having supported the community with social projects like the community centre. He is widely respected and recently was re-elected to office for another four years.

1997 will go down in Portuguese history as the year of the gay and lesbian awakening. During the year several major events irreversibly changed the Portuguese lesbian and gay community and gave it a degree of visibility not previously achieved.

On 4 May 1997, roughly 400 people marched down Lisbon's Liberty Avenue remembering those lost to AIDS in the “First AIDS Candlelight Memorial March”.

Later, on 28 June 1997, in Lisbon again, Portugal's first Pride Festival was held successfully attracting an attendance of close to 3,000 people.

In August, the first AIDS awareness and prevention leaflets targeting the gay and lesbian community in Portugal were published by *ILGA-Portugal* with the financial aid of the Health Ministry.

In September 1997, Lisbon's first Gay and Lesbian Film Festival attracted large crowds to cinemas, selling out almost all the screenings in the 15-day festival. The festival was staged in three different cinemas across the city and was under the patronage of the Mayor of Lisbon. Approximately 5,000 people attended the event.

Finally, in November, the first gay and lesbian community centre opened in Portugal with the logistic and financial aid of the city authorities. The facility offers a range of social services like counselling and cultural activities such as theatre.

In 1998, *ILGA-Portugal* witnessed the birth of a new sister organisation: *Opus Gay*. This new organisation, also based in Lisbon, aims at gay men only and concentrates its efforts on social support.

Gonçalo Diniz

Appendix

The draft text of the Portuguese Socialist Party Partnership Bill

Article 1

(Aim)

This diploma equalises the rights of members of a family living together with those of married couples, in civil, fiscal, social and labour matters, maintaining however the specificities of either situation.

Article 2

(Application)

The present diploma applies to those who, having attained majority or being emancipated, notoriously live in a situation similar to married couples for at least two years.

What is stated in the preceding item does not apply to those who still maintain marriage links or those subjected to marriage impediments specified in the Civil Code.

Article 3

(Extension of rights in civil matters)

Partners living together receive the same benefits of protection that married couples receive, and rights such as:

transmission of lease rights

adoption

subsistence

right of residence

the 85th Article of the Urban Lease Regime will be changed as follows:

Article 85

(Transmission of lease rights)

1. Lease contract will not end on the death of the first tenant. Not even with the death of the person in the following situation: spouse not judicially separated or person living in union with the first tenant for at least two years, when the tenant is not married or judicially separated. (...)

Article 4

(Adoption)

Heterosexual couples living together for a minimum of four years and being at least 25 years old may adopt, according to Article 1979 of the Civil Code, if they are not married or judicially separated.

Couples living together may also adopt each other's children.

Article 5

(Rights related to the end of the union of unmarried couples living together)

Members of a union in this situation will be subject to the same provisions as married couples as regards subsistence and according to the items stated in the Civil Code.

In the situation mentioned above, the court may give the lease to either member of the union, as required by the best interests of their children, even where the family residence belongs to the other partner.

Article 6

(Rights related to the end of the union due to the death of one of the partners)

If one of the members of this union dies, and he is the owner of the family residence, the other member has the right to keep it if there is nothing against this in a Will.

The right of residence ends when the surviving member remarries or begins a new relationship.

Article 7

(Legislation related to foreigners and the right of asylum)

As regards legislation about entry, exit or expulsion of foreigners from the national territory and the rights to asylum, members of a union have the same rights as a spouse when notoriously living together for at least two years.

Article 8

(The same fiscal rights)

Registered union of unmarried couples living together, as stated in Article 1 of this document, will benefit, so far as taxes are concerned, from the same rights as established for married couples.

Article 9

(The same social rights)

In social security matters, registered unions of unmarried partners living together will benefit in the same way married couples do.

Article 10

(The same rights in working matters)

As for holidays and absences from work, registered unions of unmarried couples living together have the same rights as married couples.

Article 11

(Register)

Due to what is expressed in Articles 11 through 13 of this diploma, the above-mentioned unions have to be registered at the Regional Social Security Centre covering the area of residence of the members of the union.

The above mentioned registration requires that the existence of the union be certified under oath.

Members of the union may cancel the registration any time, declaring this intention together or individually.

It is not possible to apply for a new registration, without cancelling a previous one.

Article 12

(Estate of Property)

Unmarried couples living together shall be deemed to have separate estates. However, other options are possible if the members of the union declare their intention in a contract.

Article 13

(Regulation)

The Government will approve, 90 days after the publication of the present diploma, the necessary legislation to provide for its execution.

Article 14

(Coming in force)

The present diploma comes in force with the approval of the budget for the economic year of 1998.

* This section was taken from: Helmut Graupner: *Portugal de-equalised age of consent in 1995*, in: *Euro-Letter* # 55 (November 1997), p. 7.

SPAIN

1. Legal situation

a) Criminal Law

The criminal law contains no discriminatory provisions affecting the lesbian and gay population. The age of consent is currently 12 years. A consensus has recently been reached in Parliament and it will most certainly be changed to 13. There is no distinction drawn here between homosexual and heterosexual acts.

b) Anti-discrimination

The Constitution (Art. 14) does not cover sexual orientation as a ground for non-discrimination. The provision dates from 1978, and the question did not even arise at the time it was drawn up. It should however be noted that the non-discrimination article's wording is extremely comprehensive. Basically, the situations protected from discrimination and mentioned explicitly are age, sex, religion, creed and political ideology. Nevertheless, the article adds "or whatever other social or personal circumstance". This has proved to be very helpful when pleading discrimination cases, as the courts have usually deemed sexual orientation to fit within the latter definition.

The penal code gives only a very limited amount of protection in cases of sexual orientation discrimination. When a citizen is discriminated against by a civil servant (be it a federal government employee, a town council employee or other), the employee is considered to have committed a serious rather than a minor offence. The other situations covered are discrimination on grounds of ethnic origin (anti-Semitism is also explicitly mentioned), sex and age.

c) Family and partnership legislation

The Constitution says that "men and women have the right to marry". It does not, however, specify who should marry whom, that is, whether matrimony is solely an opposite-sex issue or whether way should be left open for same-sex marriages. Still, the position of virtually all judges (and most likely all Supreme Court and Constitutional Court judges) leaves little room for hope that this could provide a way to attain same-sex marriage.

No partnership law is in force at the federal level; some laws cover lesbians and gays and same-sex partnerships, but with a very limited focus (see below). The matter of discussion in Spain has mainly been granting some kind of legal status for unmarried couples, therefore including heterosexual and same-sex partnerships.

In 1994, the Spanish Lower House voted through a proposal asking the government to produce such legislation. The civil service produced some legislative drafts, but early elections were called and the efforts were aborted. In 1997, a small party usually supporting the conservative government now in office submitted a bill which passed despite the opposition of the ruling party. The text was nothing more than a proposal, and the actual significance of the vote was that the Parliament would take the text into consideration for further amendments.

The reaction of the ruling party was to submit its own partnership bill in November 1997. This was an ill-prepared draft whose main aim was to hamper the parliamentary procedures surrounding the bill submitted a few months previously. The ruling party succeeded, and the original partnership bill is now stalled in Parliament.

In 1993-95, several local and regional governments instituted their own partnership registration procedures. Their effect is mainly symbolic (see below) but still represents a huge step forward in the social perception of the issue. Virtually all major Spanish cities and regions have their own partnership registration offices.

At the federal level, only the Urban Lease Law covers same-sex couples. Should a person sign a contract to rent a flat (or other residence) individually, then live with his/her partner, the partner is considered to enjoy the same rights as a legal spouse. This is particularly important in case of the death of the legal tenant, and the partner cannot then be ordered to vacate the property.

The most important consideration is proving that a relationship exists, mainly by means of an entry on the city council or regional register, something which is now possible in most (but not all) major cities. Other forms of evidence, such as bank statements, statements from relatives and neighbours, etc., have also been useful enough to the same ends. In court cases pressing for le-

gal rights deriving from cohabitation, judges usually rule in favour of the pleading party where the Urban Lease Law is involved, but not where pensions, adoptions or other matters are involved.

However, the Parliament of Catalonia recently passed a law which can be considered broadly similar to the Dutch partnership law. The Catalan law considers couples of adult individuals (mainly targeting same-sex couples, though heterosexual couples are also included) of either sex who are not related to each other.

Artificial insemination is in most cases accessible to women and is covered by Social Security. No questions regarding sexual orientation can be asked, and this means that no restrictions apply to lesbians.

Adoption is only possible for married couples or single individuals. Again, no questions regarding sexual orientation can be asked of the prospective adoptive parent. Thus, this has become a sort of “back door” for lesbian and gay couples to adopt. Nevertheless, there still are two major problems in this connection:

Firstly, the waiting lists are now so long (Spanish fertility rates rank among the lowest in the world) that single people have virtually no chance of adopting, and secondly the other member of the partnership has no right whatsoever regarding the fostering and custody of the child. It should be noted that if the legal parent dies, the child is not automatically returned to care; a judge has to rule in every case where the child should stay and with whom. Nevertheless, it is not known whether such a case has yet been won.

Some parenting rights cases have been won in court; heterosexual parents suing for custody of a child or children on the grounds of the sexuality of a gay/lesbian former spouse now involved in same-sex relationship have been dismissed by the courts.

No joint-custody cases for same-sex couples have been won in court to the author’s knowledge.

No provisions have been made regarding immigration laws and same-sex couples.

Spain’s regional governments are now responsible for housing policies and other regulations. Those which have provided for partnership registration acknowledge partnerships to be as valid as marriage in terms of housing policy, and the two parties of the partnership will thus be treated as one family unit; the same can be said

of housing policies run by city councils with partnership registration facilities.

No provisions have been made regarding taxation, inheritance laws or other legislation. Nevertheless, Spain’s Social Security grants medical care (among many other instances) to any adult person living with another adult person who has cover. There are cases of same-sex partnerships in which an unemployed individual has access to medical care through his/her partner’s social security benefits.

d) Asylum law

There are no provisions regarding sexual orientation as grounds for asylum.

2. Social situation

In general, in spite of sporadic reports of homophobic attitudes, Spanish society is a very tolerant one; according to some major sociologists, maybe the most tolerant in Europe. Paradoxically, these tolerant views seem to vary little by social status or geographical area, academic background, nor between rural and urban environments. The only noticeable development is a certain increase in tolerance within older age groups. No valid explanation has been found for this positive phenomenon.

As explained above, opinion polls have found Spanish society to be very tolerant, and there is no difference with youth. It is reported that teachers are usually very welcoming when approached by lesbian and gay groups to discuss homosexuality and other similar issues in class with their pupils. The same attitude is usually to be expected from city councils’ youth services. Homosexuality nevertheless does not figure as an issue in the school curriculum.

Media coverage is usually very positive. The most conservative-minded press usually ignores lesbian and gay news but would not openly attack homosexuality as such. In general terms, the perception society gets from the media regarding gay and lesbian matters is not a major concern for the lesbian and gay movement as it is felt that the coverage is sound enough, though alas still lacking in quantity.

César Lestón

S W E D E N ¹

1. Legal situation

a) Criminal law

Sweden has got no anti-gay or anti-lesbian provisions in its penal code. The legal age of consent has been 15 years for gay men, lesbians, and heterosexuals since 1978.

b) Anti-discrimination

The Swedish Constitution does not ban discrimination on grounds of “sexual orientation”, and the rights of gay men and lesbians concerning adoption and citizenship for partners are restricted (see under Registered Partnership).

There is, however, a provision in the penal code that protects against sexual-orientation-based discrimination. This provision does not cover incitement to hatred against lesbians and gay men as a group, but only as individuals. The law applies only if the discrimination is directed at individual gay men or lesbians. It is not illegal to discriminate against homosexual associations or organisations. The Report on the Societal Situation of Gay Men and Lesbians² suggested in 1984 that incitement to hatred directed against homosexuals should be prohibited by the press law (pp. 69-72). It also proposed that homosexuals as a group should be protected against discrimination by chapter 16 paragraph 8 of the penal code, which currently applies to ethnic and other, similar groups. The government did not include this in its proposal No. 1986/87:124, which dealt with discrimination against gay men and lesbians.

Both defamation and insulting of individuals are punishable offences. To defame persons is to speak ill of them to another person; to insult them is to say it to their face. Only extreme expressions, severe defamation or accusations are prohibited. Minor malicious remarks or common words of abuse do not come within the scope of the law. In 1987 discrimination against gay men and lesbians was included in the section of the penal code (chapter 16 paragraph 9) which deals with discrimination on grounds of race, etc. Businesses (individuals and companies) are committing an offence if they fail to provide their normal level of service to someone because of his/her homosexuality; this constitutes discrimination.

The penalty for illegal discrimination is fine or up to one year's imprisonment. The law also applies to the following categories of staff: employees of businesses, civil servants, organisers of public events and staff at such events.

The aim of the law is to guarantee that gay men and lesbians have access to all public areas and be treated in the same way as heterosexuals. It includes public services and places such as trains, ferries, restaurants, cafés, theatres, parks, and churches. The provision applies to every person or company running a commercial business or enterprise, such as building firms, hotels, warehouses, craftsmen, lawyers, or doctors. It also applies to private accommodation agencies, though not to individual letters. All kinds of public services are also bound by the law, such as health services, social services and the courts.

Discrimination against homosexuals is not illegal in the labour market. Only discrimination on the grounds of sex or ethnic background is illegal in this area. Women and ethnic minorities also have specific ombudspersons to deal with cases of discrimination. Employees in the public sector should be appointed exclusively on objective criteria, such as merit and competence. Employment in the public sector is regulated by the Constitution, which should ensure that sexual orientation does not influence a person's chances of employment. Private employers can in principle employ whoever they want. However, certain restrictions exist concerning discrimination on the grounds of gender and ethnic background. Gay men and lesbians are currently not protected against discrimination in the private sector. Trade unions have certain weapons they can use to fight discrimination in this area, though. As mentioned elsewhere in this report, a commission has recently suggested that gay men and lesbian should be protected against discrimination on the labour market in the same way as women and ethnic minorities.

The question of notice or sacking is regulated for all parts of the labour market by law. A person can be sacked only on the basis of objective facts. No-one can be sacked solely on the grounds of race, ethnic background, gender, or homosexuality. Transfers must also be warranted on objective grounds. Employers are, in principle, not allowed to treat an employee differently

on the grounds of sexual orientation. And trade unions are obliged to support employees facing discrimination at work. Employers are required to take steps to resolve any such problems that do occur.

c) Family and partnership legislation

The law recognises same-sex couples, both as domestic partners (cohabitants) and registered partners. A domestic partnership may be a staging post on the way to a registered partnership or it may be a permanent lifestyle.

If a relationship enters a more permanent phase, it is automatically regulated by *Lagen om gemensamma hem*³ (the law regarding joint homes, or cohabitation for unmarried/unregistered couples, common-law marriage). The legislation concerning cohabitation is on most points similar for heterosexual and homosexual or bisexual couples. It differs on some points regarding heterosexual couples' children from previous relationships or common children.

For a domestic partnership to be established, as opposed to a registered partnership, a couple has simply to have cohabited for a sufficiently long period and to regard themselves as a couple. It does not require any special registration or ceremony. Same-sex domestic partners were brought within the scope of the existing domestic partnership law for heterosexuals in 1988.

For a domestic partnership, the two unmarried and unregistered people must live together on a consensual basis, each partner must be legally responsible in their own right, and sexual intercourse between the two must be legal. The law does not apply if one of the partners is less than 15 years old, as sexual intercourse is not legal then. In fact the requirement that each partner be legally responsible means that both have to be legally adult, i. e., they must both be over 18. Partners below the age of 18 need their guardian's permission.

The law also imposes some other conditions: an emotional relationship must have been sustained over a sufficiently long period; the couple must have a joint domicile home, joint household, and joint economy. At the very least, there must be some kind of financial and practical co-operation in the household; the household should be of a nature where sexual intercourse is generally expected.

Domestic partners who do not want the law of cohabi-

tation to apply to their relationship have to write an agreement signed by both partners.

In summary the law provides for: certain restrictions on the free use of joint resources during the period of cohabitation; the right to ask for partition of joint property when the period of cohabitation ends; the right to half of the residence and household goods acquired for shared use, when the period of cohabitation ends; in certain cases the right to take over the shared residence.

It does not include the right to take each other's name, automatic inheritance, joint taxation or maintenance obligations.

Domestic partners who do not want to register their partnership can make a "domestic partnership agreement". This agreement does not, however, give the same rights and obligations as a registered partnership. A domestic partnership agreement may be significant if a cohabitation comes to an end or if one of the partners dies. A domestic partnership is dissolved by separation or death.

Registered Partnership

The law concerning registered partnership (1994:1117) came into force on 1 January 1995. The law was prepared by a parliamentary committee led by MP Barbro Westerholm.

A same-sex couple can become registered partners. The registration ceremony can be compared to a wedding, but is a purely civil ceremony. Some individual clergymen and priests offer blessings to registered partners, but no general religious ceremony for registered partners has yet been agreed on. Legally speaking a partnership involves most of the rules that apply to marriage. For instance, registered partners are required to care for each other, are entitled to half the property held by the other partner and enjoy inheritance rights and rights concerning family name. They are treated as a couple for tax, national insurance and legal purposes. Some of the rules offer increased freedom and strength to live in a relationship, whereas others impose responsibility and mutual respect. There are, however, some distinct differences between marriages and registered partnerships:

- there is no wedding – partnerships are registered at a civil ceremony

- registered partners cannot adopt or share joint custody of children
- they may not be artificially inseminated in a health service setting
- registered partnerships are not recognised by authorities in foreign countries.

Registered partnerships are restricted to same-sex couples. However, the law does not explicitly require that the partners cohabit (i. e., that they are registered at the same address), have a sexual relationship, or have a certain sexual orientation. The impediments to registering a partnership are in essence the same as the impediments to marrying: both partners must be over 18, they must not be close relatives, they must not be already married or a registered partner, and they must have some connection to Sweden.

The condition concerning the connection to Sweden is exclusive to registered partnerships. No similar provision applies to heterosexual marriages. In practice it means that at least one of the partners has to be a Swedish citizen living in Sweden.

The partnership law does cover Swedish citizens living abroad. The second partner can be a non-Swedish citizen and does not have to be in Sweden.

A district court judge or a person appointed by the county administration is qualified to be a registrar. Both partners have to be present at the ceremony, which has to take place in the presence of two witnesses. The ceremony is similar to a civil marriage. The partners can choose between a long and a short ceremony. After the ceremony, the registrar gives the couple a registration certificate and enters the partnership in the official register of marriages and registered partnerships. Partnerships registered in Denmark and Norway are valid in Sweden. It is thought that Swedish registered partnerships will eventually be recognised by the Danish and Norwegian authorities.

Registered partnerships end automatically if one of the partners dies. They can also be dissolved by judicial decree. The rules governing registered partnership lawsuits are similar to those governing marriages. The partners should contact a lawyer to discuss the detailed arrangements concerning the dissolution of the registered partnership. Applications for dissolution must be handled by a lawyer. The application may be filed by

one or both of the partners. It should be submitted to the local district court, which will then decide whether to grant the dissolution immediately or after a six-month trial period. In most cases where both partners agree and no children below the age of 16 are involved, the partners are granted immediate dissolution of the partnership.

The major areas influenced by the registration of partnership are: surname, maintenance obligation, partnership settlement, etc., right to half of the property held by the other partner, and partition of joint property, inheritance.

In theory people are taxed as individuals and everyone is in principle responsible for her/his own property, debts, etc., although one can be required to pay maintenance for a certain period of time. A registered partner qualifies for parent subsidy for care of a sick child, and has the right to subsidy for care of a sick partner for a limited period of time. If one of the partners dies in a registered or domestic partnership, the surviving partner has the right to a pension for a limited period of time (generally 12 months) after the death. If a registered partner dies as the consequence of an accident at her/his job, the surviving partner is entitled to a life annuity.

Custody, guardianship, and children

Custody involves caring for the child's physical and mental needs, whereas guardianship mainly refers to the child's financial affairs. The person who looks after the child on a day-to-day basis has "actual custody". "Legal" and "actual" custody may be shared by more than one person. Registered partners cannot have joint custody of children, and cannot jointly be appointed guardians of children. There is, however, nothing to prevent one of the partners from being a guardian as an individual. In cases of divorce the court has to look at the child's interests when deciding which of the parents should have the custody of the child. The question of custody is investigated by the social welfare authorities, which consider different aspects of the parents' suitability. In one custody case, the Supreme Court decided that the fact that a mother was a lesbian did not mean she was unfit as a custodian. It was made clear that her sexual orientation should not influence the custody investigation in a negative way.

There are a number of different procedures for cases in which a parent who has been awarded custody follow-

ing a separation subsequently dies. If the parent had joint custody of the child, the surviving parent is automatically given custody. If the deceased parent was part of a domestic partnership, the court may award custody of the child to the surviving parent or to the heterosexual or homosexual domestic partner. If the deceased parent had sole custody of the child, both the surviving biological parent and the domestic partner can apply for custody. The district court must choose between them. Custody will usually be awarded to the biological parent unless the other applicant is judged to offer the child a better standard of care.

Child benefits are relevant to registered partners as children belonging to one of the partners are considered step-children of the other partner. Parent subsidies are paid for 450 days until the child is eight years old. These rights may be claimed by a step-parent in the biological parent's stead. Temporary parent subsidies are paid when a parent needs time off from work to take care of a sick child, visit the child's school, etc. Subsidies can also be paid to step-parents. Under the law, parents are entitled to parental leave until the child is 18 months old. They are also entitled to work three-quarter time for a limited period. Here too, a step-parent may claim these entitlements instead of the biological parent.

Registered partners are not allowed to adopt children. Only married couples can adopt jointly. A married partner can also adopt the partner's children. Single people can adopt with the permission of the court, provided they are over 25 years of age. Insemination and other forms of artificial fertilisation are allowed only if the woman is married or living in a heterosexual domestic partnership. Single women and women living in a lesbian relationship do not have this right. Registered partners are explicitly excluded from the right to artificial fertilisation. Insemination is governed by the law only if it is carried out by a hospital. The law does not interfere with private insemination. Consequently, this is currently the only option for gay men and lesbians who want to become parents.

d) Asylum law⁴

Under the Aliens Act, Swedish residence permits can be granted on a number of different grounds. These are: asylum as defined by the Geneva Convention, humanitarian grounds, family connections, or labour market reasons. Homosexuals are mentioned explicitly in the Aliens Act, which governs Swedish refugee policy.

However, they are not classed as refugees within the meaning of the Geneva Convention, but are placed in a separate category of "other persons requiring protection". The law, which came into force 1 January 1997, refers to persons who, "*as a consequence of their gender or homosexuality, have a well-founded fear of persecution*".

With regard to family connections, registered partners and same-sex domestic partners are treated in the same way as heterosexual spouses and domestic partners. Cases in which labour market reasons are invoked are rare, particularly amongst applicants who are not citizens of a Nordic country or an EU Member State. Foreigners who intend to emigrate to Sweden for family or labour market reasons should submit their application and wait until their permit is granted before entering the country. Only in exceptional cases are permits granted to people who have already entered Sweden. Legal aid is available to persons under threat of dismissal or deportation.

In 1972 the Swedish Immigration Board decided to adopt the same rules for same-sex partners as for heterosexual domestic partners, in cases where applicants referred to family connection as a reason for emigrating to Sweden. The first actual residence permit to be granted under this decision came in the mid-1970's. In 1996 and 1997 there were some thirty applications from gay men and lesbians for asylum on humanitarian reasons in each year. Most of the applicants were Iranian citizens. 90 percent of the applicants were male.

In the cases approved by the Aliens Appeals Board, the Board has taken into consideration that during their stay in Sweden some applicants have met a partner who has a permanent residence permit or is a Swedish citizen. In such cases, the Board has made it clear that the stated reasons for the granting of asylum were not in themselves sufficient to warrant the granting of residence permits. Since gay men and lesbians were explicitly included in the Swedish refugee legislation, no case has come to the attention of *RFSL*, the Swedish Federation for Lesbian and Gay Rights, where a residence permit has been granted solely on the grounds of a "well-founded fear of persecution" resulting from the applicant's homosexuality. According to *RFSL's* asylum co-ordinator, the authorities' interpretation of the term "well-founded fear of persecution" is extremely restrictive. It is applied mainly in cases where applicants can produce court documents which prove that they are under legal investigation as a result of their homosexuality. This re-

strictive interpretation is seen as a major problem by *RFSL*, as it does not reflect the reality many applicants have experienced in their home countries. *RFSL* argues that gay and lesbian refugees should be treated according to the Geneva Convention.

e) Recent political initiatives

The following summary of motions tabled in the 1997-98 session of the Parliament provides an overview of the amount of political interest in gay and lesbian issues. A total of 34 motions were concerned with various aspects of gay rights. Some of the motions addressed several different aspects. The substantial number of motions dealing with hate crimes, discrimination and same-sex families suggest that reforms in these areas might be on the way within the next few years. A committee has already suggested that gay men and lesbians should be protected against discrimination on the labour market. And an investigation into children in same-sex families and step-adoption of a partner's biological children was suggested by the Committee for Legal Affairs in March 1998.

2. Social situation

a) General attitudes in society towards homosexuality

To reflect the general attitudes towards gay men and lesbians in contemporary Sweden, two major studies, published in 1984 and 1997, can be consulted.

1984

The first study was published in 1984 as a part of the Report on the Position of Gay Men and Lesbians in Society. It is an extensive sociological study of the situation for homosexuals, the first major study in its field at that time. Here some excerpts:⁵

We have conducted surveys into the relationship between homosexuals and society at large. The surveys have been aimed at both the general public and homosexuals. The results of the survey of the general public, i. e., the heterosexual majority, are as follows.

Response from heterosexuals

One person out of ten claims to know a homosexual. Approximately 60% of respondents claimed never to have met one. The prejudices that homosexuals have a particularly strong sexual drive and are particularly attracted towards children are not especially widespread. On the other hand, around one half believe that there are homosexuals who possess specific external characteristics, in general those of the opposite sex. Many people associate the word homosexuality with sexual acts, but not the act of falling in love or being in love or solidarity. In response to a direct question as to whether homosexuals fall in love in more or less the same way as heterosexuals, more than half reply that they do not know. Over half answer "no" to the question whether they consider that two people of the same sex should be allowed to get married to one another, while around one fifth think they should be allowed to.

On the other hand, just under half reply "yes" to the question whether homosexuals living together should be able to obtain loans in order to set up a home. Those who claim to find homosexuality repulsive and those who do not are divided into two approximately equally large groups. At the same time, it seems common to make a sharp distinction between homosexuality in itself and homosexuals.

Homosexuality is viewed as a regrettable or tragic fate, and those affected by it are viewed with pity. 19% of respondents claim not to want a homosexual among their friends. 3% say they would demonstrate their disapproval if they found themselves with a homosexual workmate.

Response from gay men and lesbians

In the survey of homosexuals, unlike that of the general public, a representative sample proved elusive. The objective was to elucidate the situation of homosexuals in greater detail, primarily from three aspects. The first relates to homosexuals' way of viewing their own homosexuality. For the majority, the earliest homosexual feelings they could recall occurred during puberty, while there were others who did not feel anything they could recall until they had reached adulthood. Initially, these feelings are often interpreted as a need for friendship, for example, rather than a longing for love and sexuality. If these feelings occur more clearly and are felt as sexual attraction, falling in love, etc., they are intuitively interpreted as wrong or forbidden, even if one is not aware of homosexuality as a concept.

In general, homosexuals tended to go through a phase of assuming they were like others, i. e. heterosexual, but had difficulty falling in love, finding the right partner, or achieving a satisfactory partnership. From the point in time at which they recall having had their first homosexual feelings, an average of seven years elapses before they begin to consider themselves homosexual. For almost 10% of the sample, the gap lasted more than fifteen years, and even after that, many still saw their homosexuality as a negative characteristic of their own personality, whose impact on their way of life they wished to limit. Around half say they wished at some time they were heterosexual after they had begun to see themselves as homosexual.

The second area dealt with in the survey was homosexuals' relationships with each other. Homosexuals may encounter considerable difficulties meeting each other as the few contact networks that do exist do not tend to foster the establishment of long-term relationships. Half the respondents in the survey live in a homosexual pair relationship, and of the others the vast majority wish to live in a permanent relationship.

The third part of the survey dealt with homosexuals' relationships with heterosexuals and hence with discrimination.

The survey shows that homosexuals are very afraid of revealing their homosexuality to others, and do not reject the heterosexual label attributed to them by default. Instead, they build their lives in a way that enables them to conceal their homosexual feelings and relations. As a consequence of this they restrict their relationships with heterosexuals, and keep them at a distance.

Those who tell others they are gay generally do so only to carefully selected people, which minimises the risk of a hostile reaction. The most violent reactions often come from their nearest and dearest, i. e. parents and spouses. Many have encountered a positive response and interest, but initial reactions in particular tend to be hesitant, uncertain and embarrassed.

30% of those who tried to rent a flat together with somebody of the same sex had been refused.

1997

The second study is included in the Report of the Ministry of Labour on the ban of sexual orientation dis-

crimination on the labour market.⁶ The report suggests a new law that forbids discrimination in working life on the basis of sexual orientation. The study included three different target groups: the general public, gay and lesbian employees, and organisations for employers and employees.

The general public

The study directed at the general public was carried out by the Statistical Central Bureau (SCB) in the second half of 1997. 3,029 employees responded to a questionnaire concerning discrimination on the labour market on grounds of sexual orientation and attitudes towards homosexuals and bisexuals at work.

Knowledge of discrimination

One of the aims of the study was to gauge the amount of sexual orientation discrimination the general public was aware of on the labour market. The questionnaire included questions concerning ten types of discrimination, including dismissal, transference to another job, differences in terms of employment, harassment by employees, employers or trade unions, and discrimination for other reasons. It turned out that less than one percent of participants knew of gay or lesbian co-workers who had been discriminated against on the grounds of their homosexuality. Harassment by co-workers, employers or foremen is the type of harassment most often cited, but respondents also reported discrimination in the form of lack of promotion, transference to other jobs, bans on certain jobs. In most cases the discrimination had taken place in a public-sector working environment dominated by one sex. More men than women had been discriminated against according to this study.

Attitudes towards gay men, lesbians, and bisexuals

The second aim of the study was to investigate attitudes towards gay men, lesbians, and bisexuals at work. The following is a summary of the findings. A substantial majority (over 70%) stated that it made no difference if a co-worker was gay, lesbian, or bisexual. Four percent said it definitely did make a difference, while nine percent said it "might" make a difference. Men below the age of 34 had the most negative attitudes towards gays. 7.1% stated that it definitely made a difference if a co-worker was gay. Men older than 55 years were a little less negative towards gay co-workers (5.8%). Among women, the trend was reversed.

Younger women were more open-minded, and older women less accepting. Even older women are, however, less negative compared to older men. 3.7% percent of older women stated that it would definitely make a difference if a co-worker was gay or lesbian. Young men were most negative and young women most positive. Older participants had opinions in between these two groups. Older men were generally less open-minded than older women.

Over seven percent of the participants were convinced that gay men, lesbians, and bisexuals were unfit for certain jobs. About 15 percent thought they might be unfit for certain jobs. 63 percent were of the opinion that sexual orientation does not make a person unfit for certain jobs. About five percent of participants were convinced that gay men, lesbians, and bisexuals should be barred from certain jobs, nine percent answered that they should perhaps be prohibited from certain jobs. And over 73% percent rejected such a ban altogether.

Between one and two percent were of the opinion that employers who found out an employee was gay or lesbian should have the right to give notice to that employee. Over four percent answered “yes, maybe” but more than 88 percent answered “no” to that question. Generally men were more in favour compared to women of an employers’ free right to give notice.

Gay, lesbian and bisexual employees

A questionnaire was sent to 1,437 members of gay and lesbian organisations. The organisations were three local branches of *RFSL* and the association *Lesbisk Nu! – LN* (Lesbian Now!). *RFSL*’s membership is predominantly male while *LN*’s is exclusively female. This part of the study does not claim to give an exact picture of the discrimination experienced by homosexuals at work. As only 45% responded to the questionnaire, and “organised” gay men and lesbians might not be representative of the gay and lesbian community as a whole. In addition to the questions from the *SCB* study some questions were included to investigate how open or closed the respondents were regarding their sexual orientation. A total number of 650 persons responded to the questionnaire. 468 men (72%) and 182 women (28%). Six percent described themselves as bisexuals.

Discrimination

234 (36%) of the 650 participants stated that they had been discriminated against at work. 173 were men and

61 women. 93 people said they had been discriminated against in one of the ways mentioned in the questionnaire. 141 that they had been discriminated against in a number of different ways. 177 people (27% of those who responded, and 75% of those who stated that they had been discriminated against in one way or another) reported that they had experienced harassment from co-workers, superiors, employers, or unionists. Many from this group had also experienced other forms of discrimination. 51 had experienced only harassment. 28 percent had been subjected to other forms of discrimination. Harassment by co-workers was the most usual complaint (158 persons), followed by harassment by employers (83 persons) and then being turned down for a job as a result of sexual orientation (76 persons). The study shows that people are often discriminated against in a number of different ways. It is not unusual for harassment by co-workers to develop into problems with the employer and other difficulties, which may eventually force the individual concerned to leave her/his job. The following forms of discrimination were mentioned: harassment by co-workers (158 cases), harassment by employers (83 cases), denied employment (76 cases), no promotion (49 cases), forced to end employment (42 cases), poorer employment conditions (40 cases), transferred to another job (35 cases), no prolongation of temporary employment (31 cases), harassment by union representatives (16 cases), prohibited from doing certain tasks (15 cases).

416 persons (64%) said that they had not been discriminated against at work. It should, however, be added that most persons belonging to this category had not told their co-workers or employers about their homosexuality/bisexuality. Several felt that the general attitude at their working place was anti-gay, and that their situation might have been different if their sexual orientation had been made public.

Only in a few cases did employees who had been discriminated against contact their trade unions. In some cases they were supported by their union. Generally, the employee did not consider her/his problem a trade union issue, as discrimination at work on grounds of sexual orientation is not illegal. Some were also afraid to be considered troublemakers, or that the co-workers’ attitudes might worsen.

Attitudes: openness or silence

Some of the questions of the questionnaire focussed on the participants’ openness towards employers and co-

workers concerning their sexual orientation. About half the participants (50%) said their employers knew about their homosexuality or bisexuality. Two thirds (66%) had sometimes hidden their orientation out of fear of possible negative reactions, for example when looking for a new job. A small number (11 persons) reported having changed job often as a result of problems due to their sexual orientation. 33% of participants stated that all of their co-workers knew of their sexual orientation. 40% stated that a few co-workers knew, whereas 14% said no-one at work knew of their sexual orientation. Most (72.5%) of the participants had co-workers who found it okay that a co-worker was gay, lesbian, or bisexual. Very few (13 persons) had co-workers who were openly anti-gay. A clear majority (58%) of the participants stated that conditions on the labour market had improved over the last ten years. Openness and tolerance had increased. Only three percent stated that the conditions had deteriorated, mainly as a result of HIV/AIDS and a harsher climate on the labour market.

80 percent of the participants thought that legislation concerning discrimination on grounds of sexual orientation would improve the situation for gays and lesbians on the labour market, whereas 13% thought that legislation would make no difference.

b) Youth⁷

Coming out as a teenager or as a young person is still often a difficult process, especially if you do not live in one of the major cities. According to Swedish counsellors of gay and lesbian youth one of the most important element in young people's coming out is meeting other young people in the same situation. Unfortunately, this is only an option for young people living in the three major cities of Stockholm, Malmö and Göteborg. In other parts of the country most local *RFSL* branches will be able to offer support for young people as they come out, but the scope of specific youth activities is mostly much more limited.

In Stockholm *RFSL* offers several services to young gay men, lesbians, and bisexuals:

- A hot-line which receives about 4,000 telephone calls a year. A thousand of these calls involve counselling services.
- Starting groups: A group of young people supervised by an experienced counsellor meet several times to discuss issues concerning being young and gay or les-

bian. The aim of the meetings is to help young people create a network of gay and lesbian friends, and to pass on information that will help them with coming out.

- Weekend camps with different themes.
- Special groups for young pre-university students, etc.

In Stockholm *BHUS*, an association for bisexual and homosexual youth, has its own premises. In other parts of the country youth groups have special events and arrangements at the premises of the local *RFSL* branch. Organisations for HIV-positive gay men also have special groups and offer telephone counselling services for young people living with HIV.

c) Education⁸

Information about homosexuality has become more easily obtainable over the last ten years. Members of local *RFSL* branches are often invited to talk to classes about being gay, lesbian, or bisexual. At the same time information concerning sexual minorities very much depends on the personal involvement or interest of individual teachers or headmasters. In 1995 the National Institute for Public Health (*Folkhälsoinstitutet*) produced an education package called *Homosexualitet* which contains a textbook for pupils and a manual for teachers. The institute also produced a video called *Jag, Johan* (I, John).

The report looks at a number of education programmes at Swedish universities. The overall conclusion is that education concerning gay men and lesbians is still rather limited. Programmes related to the following areas were investigated: teaching, nursing, medical training, social work, psychology, psycho-therapy, social psychology, staff managing, drug addiction care, theology, journalism, library service, police training, law, sociology, history.

Gay and lesbian studies is still a marginal subject at Swedish universities, compared to the situation abroad. Research is being done into the various aspects of homosexuality, albeit sporadically. Many students are interested in studies concerning homosexuality or sexual minorities. But they face many problems: lack of curriculums and adequate teachers, lack of research funding, fear of discrimination from departments or co-researchers.

The situation will probably improve over the next few years though, as a result of the interest shown in gay and lesbian studies at several Swedish universities.

d) Media Coverage

According to the report *Öppenhet och motstånd. Om homosexualitet i massmedia 1990-1994*⁹, media coverage in the early 1990s focussed on three major issues:

- registered partnership. The coverage reflects the political and public debate which began in 1990 when a proposal for registered partnerships was presented. The parliament passed the law on 7 June 1994, and it came into force on 1 January 1995.
- gay and lesbian parentage
- gay and lesbian celebrities.

Another issue which has received much attention from the media since 1994 is anti-gay violence. The author of *Öppenhet och motstånd* concludes that the media have shown considerable interest in issues relating to homosexuality and gay men and lesbians. The diversity of the gay community has been reflected in the coverage.

Lesbians have often been neglected in articles purporting to be about gay men and lesbians. However, in articles about individual homosexuals, lesbians and gay men are represented equally. Some articles reflect suspicion and fear of gay men's sexuality. Related to that fear is in some cases the idea that sexual abuse of minors is more prevalent amongst gay men than heterosexual men. Accusations of paedophilia and vague arguments concerning promiscuity as a social problem have been used to argue that society should impose stricter control on gay men's sexuality.

A great number of letters published in the press are defamatory or incite hatred against homosexuals as a group. According to the author of the report, the mass media appear to tolerate this type of letter more readily than expressions of hatred for ethnic and religious minorities or other vulnerable groups in society.

e) Violence

Hate crimes and incitement to hatred towards gay men and lesbians have been a major issue in Sweden during the last few years. Several people have been murdered, and others have been violently attacked. There have been repeated attacks on property in various parts of the country. In a number of cases, the perpetrators have been identified as neo-nazi supporters. *RFSL* has demanded that gay men and lesbians should have the same legal protection against defamation and incitement

to hatred as ethnic minorities. Though this demand has won the support of a substantial number of politicians, it has not yet gained enough support to be passed into law. A recent study¹⁰ showed that 23% of the 600 or so gay and lesbian respondents had been the victim of hate crimes. 40 percent of the sample reported that they were often afraid of hate crimes on the grounds of their sexual orientation.

3. Good practice

According to *RFSL* the following points have been important to achieve political support for gay and lesbian rights in Sweden:

- *RFSL* is free from connections to any specific political party or religion.
- *RFSL* has been very tangible in its proposals for political reforms. If you can document that current legislation is obviously discriminating against gay men and lesbians, politicians will more likely take interest in your suggestions for reforms. *RFSL* also publishes a monthly newsletter, *Nytt i Sexualpolitiken* (News in Sexual Politics), which is distributed electronically to MPs, authorities and journalists.

Björn Skolander

¹ The main source for this report is Bo Widegren and Hans Ytterberg: *Homosexuellas rättigheter* (The Rights of Gay Men and Lesbians), Folkhälsainstitutet. Stockholm 1995.

The author would also like to thank Martin Andreasson, *RFSL* vice-chairman, for updating him on the legal changes after the report was published in 1995, as well as for other valuable suggestions and sources.

² This Report, *Homosexuella och samhället – Betänkande av utredningen om homosexuellas situation i samhället* (Statens offentliga utredningar 1984:63, Socialdepartementet, Stockholm 1984), is probably one of the most important documents in the modern history of the Swedish gay and lesbian movement. It led to reforms concerning discrimination and domestic partnership in 1987 and 1988, and to registered partnership legislation in 1994. It deals with almost all areas relevant to homosexuals' daily situation, and includes an extensive sociological study to clarify the situation of gays and lesbians. The study was aimed at both the heterosexual majority and homosexuals.

³ SFS 1987:232. The period of time needed to become domestic partners is not specified in the law. It is regulated more by the fact that two persons cohabit, and that they act like a couple in the traditional sense.

- ⁴ Thanks to RFSL's asylum co-ordinator, Stig-Åke Petersson, for details concerning the present situation for gay and lesbian asylum seekers in Sweden.
- ⁵ See supra note 2; here pp. 272-274.
- ⁶ *Förbud mot diskriminering i arbetslivet på grund av sexuell läggning. Betänkande av utredningen mot diskriminering i arbetslivet på grund av sexuell läggning* (SEDA). Statens offentliga utredningar 1997:175. Arbetsmarknadsdepartementet. Stockholm 1997.
- ⁷ Thanks to Jonas Schild Tillberg, *RFSL Stockholm*, for details concerning young gay men, lesbians, and bisexuals.
- ⁸ Details concerning this section on education are based upon the report *Vad hände se'n? Riksdagsbeslut och myndigheters åtgärder för att förbättra homosexuellas situation*. Folkhälsoinstitutet 1997:28. Stockholm 1997 (What happened since? Parliamentary decisions and authorities' measures to improve the situation of gay men and lesbians. Research: Stig-Åke Petersson. Published by the National Institute for Public Health).
- ⁹ Martin Andreasson: *Öppenhet och motstånd. Om homosexualitet i massmedia 1990-1994*. Folkhälsoinstitutet. Stockholm 1996.
- ¹⁰ Eva Tiby and Ingrid Lander: *Hat, hot, våld - utsatta homosexuella kvinnor och män*. En pilotstudie i Stockholm. Folkhälsoinstitutet. Stockholm 1996.

UNITED KINGDOM

In 1997, the European Commission of Human Rights found that the UK's unequal age of consent law for gay sex is a violation of Articles 8 and 14 of the European Convention on Human Rights.¹ The age of consent is one of the many areas of the law in which there is discrimination; some of these discriminatory laws and measures have been introduced within the last ten years. Lesbians and gay men also face widespread social and institutional prejudice and discrimination.

However, the situation is changing. The Labour government elected in May 1997, after 18 years of Conservative government, has committed itself to broad principles of equality and "a fairer Britain". There have been some positive changes in public attitudes towards homosexuality and the level of public support for measures to address inequality. The referendum vote in Scotland in favour of the establishment of a Scottish Parliament with devolved powers on some areas of legislation, combined with the commitment of some of the political parties in Scotland to support equality for lesbians and gay men, has given cause for optimism that there will be positive changes in Scotland. The peace agreement in Northern Ireland includes an "equality clause" which commits public and governmental bodies to promote equality of opportunity in relation to various forms of discrimination, including sexual orientation, and to the establishment of a Human Rights Commission. This will be the first time that an enforcement agency in the UK will have a duty to address discrimination on the grounds of homosexuality.

This report attempts to give an overview of the current legal and social position of lesbians and gay men in the UK in relation to discrimination on the grounds of homosexuality. It does not, therefore, give a comprehensive picture of the day to day lives and experiences of the wide diversity of lesbians and gay men. It also does not fully address the different structure of the law and administrative systems in the various parts of the UK; while the legal position of lesbians and gay men in Scotland and Northern Ireland is broadly similar, the legislation referred to in this report is generally that which applies in England and Wales.

A) Criminal law

1. Sexual relations

The age of consent is currently 18 for gay sex, and 16 for heterosexual sex (17 in Northern Ireland). The law does

not mention lesbians as such, but a young woman under the age of 16 is deemed, in law, to be unable to consent to any sexual act. The age of consent for lesbian sex is therefore 16.²

There will be a vote in Parliament in mid 1998 on the introduction of an equal age of consent following the tabling of an amendment to the Crime and Disorder Bill. It is widely believed that the amendment has the support of a majority of Members of Parliament and that it will therefore result in the equalisation of the age of consent.

However, this will leave in place a legal framework which defines gay sex as basically unlawful, except in certain tightly defined circumstances, while heterosexual sex and lesbian sex are basically lawful, unless in breach of other laws. Even where the law does not directly discriminate on the grounds of sexual orientation, its interpretation and enforcement is discriminatory, particularly against gay men.

The background

Gay sex in itself did not become a criminal offence until 1885. Before that, there had not been any specifically homosexual offences in British law (what the law calls "buggery" had been both a heterosexual and homosexual offence since 1553). But in 1885, a new law made it a criminal offence for a man to commit an act of "gross indecency" with another man, whether in public or in private. The complete prohibitions on gay sex were consolidated in the Sexual Offences Act 1956, which prohibited "buggery" (anal intercourse) and "gross indecency" (any other sexual activity) between men.³ The statute does not define what constitutes "gross indecency" but it is always an offence relating to consensual sexual activity between men.⁴

Sexual activity between men remained a criminal offence until the 1967 Sexual Offences Act provided for a limited exception to this general rule – for two consenting men aged 21 and over, in private, in England and Wales.⁵ Similar exceptions were not introduced until 1980 for Scotland⁶ and 1982 for Northern Ireland⁷, following the judgement of the European Court of Human Rights in the *Dudgeon* case.⁸ Equivalent reforms then followed for three of the Channel Islands in 1983, for Jersey in 1990, and the Isle of Man in 1992.⁹ Consenting gay sex remained unlawful for members of the armed forces and merchant navy until 1994.

The 1967 reform, however, left the offence of gross indecency on the statute book and introduced a special, restric-

tive, definition of privacy which only applies to gay sex. Consensual sex between men remained a crime if it took place outside the privacy of a person's own home, or involved the presence of more than two people, or if one of the men involved was under the age of 21.

In February 1994, following one of the biggest lobbying campaigns ever organised in the UK, the House of Commons rejected the equalisation of the age of consent by just 27 votes. It then passed a proposal to reduce the age at which men can lawfully consent to sexual activity with another man from 21 to 18.

The current position

As a result of the way in which the law and the 1967 reforms are structured, the offence of gross indecency can mean consenting gay sex between men over 18 which is not in accordance with the special definition of "in private", or it can mean consenting gay sex in private where one party is under 18. There is no equivalent heterosexual offence.¹⁰

Young men are themselves guilty of a criminal offence if they have gay sex before the age of 18. This is not the case for young people who have heterosexual intercourse or young women who have lesbian sex before the age of 16 – they are not themselves committing an offence, only the person over 16 is. In its report on the Euan Sutherland case, the European Commission of Human Rights said:

"... as noted by the BMA (British Medical Association), the risk posed by predatory older men would appear to be as serious whether the victim is a man or a woman, and does not justify a differential age of consent. Even if, as claimed in the Parliamentary debate, there may be certain young men ... who may require protection, the Commission is unable to accept that it is a proportionate response to the need for protection to expose to criminal sanctions not only the older man who engages in homosexual acts with a person under the age of 18 but the young man himself who is claimed to be in need of such protection." (par. 64)

In practice, nearly all prosecutions for gross indecency are related to transgressions of the definition of "in private", rather than age of consent offences. And in most of these cases, the only people to witness the activities are the police officers who search for them.¹¹ In 1991, for example, the police mounted an extensive undercover operation in a secluded area of dense woodlands and the men arrested were fined up to £1,000 each.

By contrast, heterosexuals are only occasionally prosecuted for public sex and prosecutions are brought as public order

offences or for "outraging public decency". As such, they are not classed as sexual offences and the penalties are much lighter. Two recent cases also illustrate the disparity in treatment. In the case of a heterosexual foursome, where a man faced a charge of (heterosexual) "buggery" because there were more than two people present¹², it was decided not to prosecute on the grounds that it would not be in the public interest. Seven men in Bolton, however, were prosecuted and convicted of gross indecency for consenting sex in their own homes, on the basis that there were more than two people present. Three of the men were also convicted of consenting sex with the youngest man present, who was aged 17 and a half, and have consequently had to sign the Sex Offenders Register.¹³

Even where a particular sexual act itself would be legal, steps taken to arrange or facilitate it by one of the participants or a third party may be illegal. Such steps (for example, simply introducing one man to another man to whom he was sexually attracted) may constitute "procuring" the act or "soliciting or importuning in a public place for immoral purposes". They may even be considered a "conspiracy to corrupt public morals". These offences either do not apply, or are rarely enforced against, equivalent actions in relation to heterosexual or lesbian sexual activity.¹⁴

The discrimination in the penalties for age of consent offences is also obvious. The maximum penalty for consenting sex with a young man under 18 is five years imprisonment. Prosecutions for lesbian sex with a young woman under 16 can be, and have been, brought as charges of "indecent assault on a girl under 16", for which the maximum penalty is ten years imprisonment. The maximum penalty for unlawful heterosexual intercourse with a girl between the ages of 13 and 15 is two years.

2. Harassment

The Criminal Justice and Public Order Act 1994 created a new criminal offence of intentional harassment, alarm or distress.¹⁵ The wording of the offence is widely drawn and potentially covers harassment on any grounds, including sexual orientation. However, it has to be proved beyond reasonable doubt that the harassment was intentional, and that someone was actually harassed, alarmed or distressed. The offence can be committed in a public or private place (although there is an exception where both parties are in a private residence).

The Protection from Harassment Act 1997, which began as a move to strengthen legal provisions against stalking, also contains a wide definition of harassment. This includes "alarming the person or causing the person distress".

B. Civil law

1. Anti-discrimination legislation

Existing discrimination legislation provides some protection against discrimination in employment and the provision of goods and services on the grounds of race, sex, or disability, and, in Northern Ireland, on the grounds of religion or political affiliation.¹⁶ There is no legislation which affords protection against discrimination on the grounds of sexual orientation.

In Northern Ireland, the Policy Appraisal and Fair Treatment (PAFT) guidelines introduced in January 1994 provide guidance to all public sector bodies on the appraisal of policies to ensure that they do not discriminate on various grounds, including sexual orientation. The PAFT guidelines have considerable symbolic significance, but limited legal standing. They do not in themselves create a statutory duty of non-discrimination, but can be used as significant evidence in legal cases relating to the activities of public bodies. The inclusion of the equality clause in the peace agreement, and the provision for the drawing up of a Bill of Rights for Northern Ireland and the creation of an enforcement body, may lead to the PAFT guidelines, or equivalent, acquiring a new legal status.

The UK does not have a written constitution and currently has no domestic Bill of Rights. The Labour Government pledged in its election manifesto to incorporate the European Convention on Human Rights into UK law, and has introduced the Human Rights Bill to effect this.

2. Section 28

According to Section 28 of the Local Government Act 1988¹⁷, it is illegal for local authorities to “intentionally promote homosexuality”, publish material with the “intention of promoting homosexuality”, or to promote the teaching in schools of “the acceptance of homosexuality as a pretended family relationship”.

Section 28 singles out lesbian and gay lifestyles for legal disapproval and was introduced in a climate of hostile attacks by Conservative politicians, sections of the media and the moral right on the initiatives being taken by some local authorities during the late 1980’s to implement equal opportunities policies. It places local authorities in the unique position of having to consider whether the law requires them to discriminate against lesbians and gay men or associations.¹⁸

The wording of Section 28 is open to a range of interpretations, and there have not been any court judgements to give judicial interpretation. A common view amongst legal

experts is that, while it may be theoretically possible for a local authority to “promote homosexuality”, it is not something which any local authority appears to have actually done, either before or after Section 28. In effect, it was aimed at policies and practices which did not exist; many of the examples of local authority practices used at the time by supporters of Section 28 to allege that local authorities were conducting a propaganda campaign “to glamorise homosexuality”¹⁹ were either fictitious or gross distortions.

While Section 28 may not actually prohibit any local authority practices, it has had the effect of encouraging widespread self-censorship by local authorities and extreme caution in, for example, giving funding to lesbian and gay organisations, or allowing premises to be used for plays, library exhibitions, meetings and youth groups. It has been used by some authorities as justification for discriminatory decisions, and has created a widespread perception that it prohibits discussion of homosexuality in schools.

Overall, the predominant significance of Section 28 lies not so much in its legal meaning but in what it symbolises – the view that lesbians and gay men are inferior – and its expression of the view of Parliament at that time that homosexuality must not be “promoted” because it is “wrong”, and that lesbian and gay relationships and families are not as valid as heterosexual relationships and families.

3. Employment

Since there is no legal protection against discrimination in employment on the grounds of sexual orientation, employers are free to decide to discriminate against lesbians and gay men. They are entitled to refuse a job application from people simply because they are lesbian or gay, and may even have a policy of not employing lesbians and gay men.

Employers are generally free to determine the terms of employment of their workers, except where certain rights or protection is afforded by case law or statute. Lesbian and gay employees do not have any specific rights in law to equal treatment with other workers, so that employers may, for example, refuse to promote employees because they are lesbian or gay, or refuse to allow them equivalent benefits of employment.

Under employment legislation relating to unfair dismissal, workers who are dismissed by an employer after more than two years employment can bring a complaint of unfair dismissal to an industrial tribunal. The tribunal considers whether the employer’s actions were reasonable in the circumstances of the individual case, with the standard of reasonableness being based on what employers as a body would accept, rather than the tribunal’s own view of what

is reasonable. Workers who are dismissed for reasons related to their sexuality are therefore dependent on the view taken by a particular tribunal as to whether they have been unfairly dismissed.

Either the employee or the employer can appeal against a tribunal decision to an Employment Appeals Tribunal (EAT), the decisions of which create legal precedents. EAT decisions have established as precedents that it can be reasonable for a lesbian or gay man to be dismissed because of public prejudice, the prejudice of other workers in the company or because their job requires them to work with children.²⁰ Although many of the relevant cases date from a number of years ago, there are no recent judgements which supercede them.

Trade unions have increasingly recognised the need to address lesbian and gay equality issues, and some voluntary anti-discrimination policies and practices adopted by a wide range of employers have resulted from trade union initiatives. The Trades Union Congress, the British trade union federation, has held a number of seminars in recent years on lesbian and gay issues, and will hold its first official lesbian and gay conference in July 1998.

4. Housing

As for employment, the absence of any protection in law against discrimination on the grounds of sexual orientation means that providers of services, such as housing, are free to discriminate against lesbians and gay men. Public housing provision is largely restricted to married couples and people with children, with single people mostly being dependent on the private sector. Property owners can – and some do – refuse to rent accommodation to lesbians and gay men, or prevent someone from buying a property because of their sexual orientation. Housing is one of the most common problems facing lesbians and gay men, with young lesbians and gay men being particularly vulnerable to homelessness.

Gay men, and unmarried men who are perceived as possibly being gay, are usually required by insurance companies to take an HIV test before being provided with life insurance cover, and are often required to pay a higher premium on the grounds that they are members of a “high risk group”. Life insurance is required for most kinds of mortgages to purchase property.

Under housing law, married and unmarried heterosexual partners have the right to succeed to a local authority or private sector secure tenancy on the death of the partner who is the tenant. In 1993, the Government rejected an attempt to extend this right to same-sex partners, but issued guid-

ance to local authorities recommending that they allow same-sex partners to succeed to a tenancy. This guidance is not binding; while some local authorities do allow succession rights to same-sex partners, many do not. It does not apply to private sector tenancies.

A significant test case is being pursued through the legal system by a gay man, Martin Fitzpatrick, who was issued with an eviction notice by a private landlord after his partner of 20 years died. The Appeal Court ruled in a 2:1 judgement that he could not succeed to the tenancy, because the law does not recognise same-sex partners, but all three judges called for the law to be changed.

C. Family law and partnerships

1. Lesbian and gay partners

Lesbian and gay couples are not allowed to marry, and there is no provision in law for the recognition by the state of same-sex partnerships. There has been a trend in legislation and social policy towards the recognition, in certain situations, of cohabiting heterosexual couples living “as man and wife”, but this has not, generally, extended to same-sex couples. Lesbian and gay partners face discrimination in many areas of their lives, some of which is also experienced by unmarried heterosexual couples.

These cover many areas of everyday life, from membership of service organisations (such as car breakdown services) to employment benefits, from insurance policies to housing, from membership fees for a variety of organisations (such as leisure clubs) to pensions. The difficulties faced are often most acute or harsh at times such as the serious illness or death of one partner. The following are examples of such discrimination.

Pensions

Nearly all occupational pension schemes provide for a widow's or widower's pension if the pension contributor dies before his or her spouse. Many schemes, however, either do not give survivor pension rights to unmarried partners or allow pension rights to heterosexual common-law partners but exclude same-sex partners. Some schemes also provide for survivors benefits for a dependent child or children, but the children of lesbian and gay parents are often unable to receive them.

The six major public sector schemes, which are statutory schemes regulated by Acts of Parliament, all discriminate against unmarried partners. These schemes (covering the

civil service, local government, the health service, teachers, the police and fire service) only provide survivors benefits to married partners. They also discriminate against the children of lesbian and gay co-parents and unmarried step-parents. Changes in these schemes can only be effected by decision of the Government.

The situation for private occupational schemes, which are set up by employers and administered by trustees, is more varied. Some schemes never provide a survivors pension other than to a widow or widower, but the majority have rules for the definition of “dependants”. In many cases, these exclude same-sex partners by specifying that a dependant’s pension may only be payable to a person of the opposite sex who was living with the scheme member “as man and wife”. In schemes which provide for a pension for a dependent child or children, the exclusion of unmarried heterosexual and/or same-sex partners also means that the children who do not have a biological or legal relationship with the scheme member are excluded.

All private schemes must conform to Inland Revenue rules, which provide that pensions may be paid to widows and widowers as of right but that in other cases, survivors benefits can only be paid where the person is “financially dependent” on the scheme member. Until 1996, the Inland Revenue used a narrow test of financial dependence that effectively excluded most unmarried partners. In May 1996, the Inland Revenue issued a “Practice Note” which set out a revised definition of financial dependency. It clearly stated that survivors benefits could be payable to unmarried partners, including same-sex partners, and made clear that children who are not the biological or adopted children of the scheme member can also qualify as dependants.

There is now therefore no legal barrier to the payment of survivors benefits by private schemes to unmarried partners, or to their children, but there is also no legal obligation on trustees to stop operating discriminatory rules. There is some indication that the proportion of schemes which allow the payment of survivors benefits to same-sex partners has risen since this change.²¹

Employment benefits

Employers who provide fringe benefits to the husband or wife or heterosexual partner of employees may – and often do – refuse to provide the same benefits to same-sex partners. Examples include health insurance, life insurance, discounts on goods produced or sold by the company, and cheap or free use of the employers services. The case brought by Lisa Grant to the European Court of Justice²² related to the refusal by South West Trains to provide the

benefit of free travel to her partner, on the basis that her partner was a woman.

Some employers have equalised such benefits. Examples include six of the train operating companies and London Underground (free travel), British Airways (free flights), and John Lewis department stores (discount on purchases).

Next of kin

People who can be classed as next of kin are defined as being those who are either married to the person or closely related by blood.²³ It is a person’s next of kin who are consulted in relation to hospital treatment (for example, for agreement to treatment if the person is unable to act for her/himself) and who are entitled to make funeral arrangements. If a person dies as a result of an accident that was somebody’s fault, the next of kin are the only ones entitled to sue for compensation.²⁴ It is possible to use powers of attorney to gain some of the legal rights and responsibilities of a next of kin.

Tax and social security

Married couples are entitled to certain special tax arrangements. They benefit from a married couple’s tax allowance in addition to the certain amount of income each year on which individuals do not have to pay income tax. They can transfer property between one partner and the other without paying capital gains tax, and can leave property to each other in their will without the surviving partner being liable for inheritance tax. Unmarried partners do not have these rights.

For the purposes of social security benefits, a couple is defined as two people who are capable of getting married and same-sex couples are therefore treated as individuals. There are actually some advantages in this, as individuals whose same-sex partner is employed may be entitled to benefits in the event of sickness or unemployment that they would not receive if the relationship was recognised. However, it also means, for instance, that while a man whose female partner dies may be entitled to a grant towards funeral costs, a gay man whose partner dies would not. State widow’s or widower’s pensions can only be paid to a surviving spouse.

Inheritance

If a person dies without leaving a will, they die “intestate” and the disposal of their estate is governed by the rules of intestacy.²⁵ This means that the person’s next of kin have claims on the estate, but a same-sex partner does not.

Similarly, certain categories of people have limited rights to challenge the provisions of a will, and the application of the intestacy rules.²⁶ These rights are more extensive for those classed as next of kin than for a bereaved same-sex partner.

Hence, even if a person's will has been made in favour of their same-sex partner, it is possible for its provisions to be challenged by their next of kin. However, if a lesbian or gay man dies intestate or leaving an out of date will, their partner will normally face enormous difficulties in making a legal claim on the estate. This situation results in some lesbians and gay men losing all the goods and property they have shared with their partner, including the home they have bought together.

2. Parenting

While there is still extensive discrimination in law and social policy relating to parenting, the care of children, and the recognition of lesbian and gay families, there have been considerable changes in recent years. More and more lesbians and gay men are openly raising children, in a wide diversity of family and parenting arrangements. The courts no longer automatically regard a mother who is a lesbian as unsuitable to bring up her children, and there are now more realistic possibilities for lesbians and gay men to foster and adopt.

Childcare law and policy have long been based on the guiding principle that the interests of the child come first. Reported cases in the 1970's and early 1980's show that courts interpreted this in lesbian custody cases through focussing on the mother's lesbianism as the main reason why she should not have care of her children. The situation began to change in the mid-1980's, in part due to research which demonstrated that it did not "harm" children to be brought up by lesbian mothers²⁷, and the use of this research by expert witnesses in court. The Children Act 1989 (and the Children Act (Scotland) 1995) established in statute the welfare principle, which requires that the paramount consideration for the court in deciding any question on the upbringing of a child must be what is in the best interests for the welfare of that child. It also introduced a "welfare checklist" to guide courts in how to interpret the best interests of children.

Children of heterosexual relationships

Lesbians and gay men who have children in a heterosexual relationship can, and do, still face discrimination if there is a dispute with their former partner or spouse over the arrangements for their children. In the event of such a dis-

pute, either parent can apply to the court for a residence order²⁸, which is a court order stating with whom the child will live for most or all of the time. That person then has responsibility for the day to day decisions about a child's life.

In considering an application for a residence order, the court must apply the welfare principle and consider evidence on the list of factors set out in the "welfare checklist". These factors include the wishes and feelings of the child, the stability of the child's living situation, and the capability of each parent to meet the needs of the child. Some courts still think that it is relevant to consider a parent's homosexuality when assessing their capability, and lesbian and gay parents are often advised to reach an agreement out of court if possible.

However, the most recent reported judgements involving lesbian mothers indicate that, while the courts still consider that the fact of the mother's lesbianism must be taken into account – particularly if she is in a lesbian relationship – this is only one of many factors and that others such as the child-mother bond and the wishes of the child tend to be the dominant ones in the court's judgement. The results of more recent psychological research have also been accepted by the court.²⁹ Many cases are unreported, and there are no specific figures available, but there is some evidence that lesbian mothers have, in the last few years, generally been successful in obtaining residence orders.

This trend towards a more enlightened approach has not been followed in cases involving gay fathers, where ill founded concerns about HIV and paedophilia are often raised and the attitude of the courts and the legal profession are still openly prejudicial. As a result, gay fathers are still often subject to restrictive conditions on contact with their children – in one case, for example, a gay father was ordered by a court not to take his children to Lesbian and Gay Pride.

Lesbian and gay co-parents

At present, parenting rights only flow from biological status or marriage. In legal terms, a parent is a mother or father related by birth to the child (except in the case of adoption and of the husbands of women who conceive by insemination through a clinic). However, the Children Act has enabled the legal recognition of people other than biological parents who share the care of a child living with them.³⁰

One of the aims of the Act was to give recognition, in the case of a mother who remarried, to the role of a stepfather in sharing parenting, without depriving the biological father of his legal parental status. It introduced the concept of pa-

rental responsibility, which entitles a person to be involved in major decisions about a child's life (such as school or religion) and to make certain decisions independently about the child when he/she is with them (provided that this is not contrary to a court order). Married couples automatically have shared parental responsibility for their biological children, and this continues after divorce. An unmarried biological father can acquire parental responsibility by agreement with the mother or by court order. Other individuals can only acquire parental responsibility by virtue of a residence order being made in her/his favour.

Under the Act, it is possible for a birth parent and co-parent to apply for a joint residence order, i. e., a residence order in both their names. The last few years have seen a growing number of successful applications by lesbian parents for these orders, which give the legal status of equal parental responsibility to the non-biological parent. She is therefore able, in law, to make decisions about, for example, medical treatment for the child. She also retains parental responsibility if the biological mother dies, which means that it is much more difficult for the child to be removed by other biological relatives such as grandparents. However, the acquiring of parental responsibility through a residence order does not confer the status of legal parent. This means, for example, that the child would not have a right of inheritance to the estate of a non-biological co-parent on the death of that parent.

Donor insemination

Donor insemination provided by clinics is regulated by the Human Fertilisation and Embryology Act 1990. Although attempts during parliamentary debates on this Bill to explicitly prevent lesbians and single women having access to donor insemination services were defeated, the Act contains the provision that clinics are not allowed to provide services without taking into account "the welfare of any child who may be born as a result ... including the need of that child for a father."³¹ Effectively, this means that clinics can decide whether or not to provide donor insemination services to lesbians. Some have stopped doing so, but others continue to provide the service.

If a child is conceived by donor insemination through a clinic, the donor has no legal status in the child's life. If the birth mother is married, her husband becomes the legal father. If a single woman conceives in this way, the child has no legal father.

Private donor arrangements are not regulated, and in this case the donor is regarded in law as the child's father with the same status as an unmarried father. It is therefore possible, for example, for the birth mother to make a paren-

tal responsibility agreement with the father if she wishes, but it is also possible for a donor who has not played any role in parenting the child to apply to the courts for parental responsibility status and/or an order requiring the mother to allow him regular contact with the child.

Adoption and fostering

People wishing to apply to adopt or foster children must be assessed and approved as suitable by an adoption and fostering agency, which may either be the adoption and fostering unit of a local authority or an approved voluntary agency. There is nothing in law to prevent lesbians and gay men from applying to adopt or foster, and many have been quietly doing so for years. However, openly lesbian and gay applicants have faced considerable obstacles and discrimination in being approved as suitable.

Attitudes are changing, and it appears that, as recognition of the number of lesbian and gay foster and adoptive parents increases, more agencies are prepared to make a placement with foster or adoptive parents who are lesbian or gay. One of the factors in this is the recognition by some authorities of the need to find suitable foster placements for teenage children who themselves identify as lesbian or gay, and whose relationship with their parents may have broken down because of their parents disapproval of this.

The picture is mixed – some local authorities and agencies now have explicit policies of welcoming applications from lesbians and gay men and considering these on the basis of the caring abilities of the applicants, but many others are reluctant to make placements with lesbian and gay carers because of the media interest and political controversy that has sometimes been generated in such cases. Some agencies and local authorities are still openly hostile and refuse to consider any applications from, or make any placements with, lesbians and gay men.

Fostering is regulated by government guidance issued under the Children Act.³² There is nothing in this guidance to preclude lesbians and gay men from acting as foster parents, but the different rules in Scotland do not allow same-sex couples to jointly foster. Once applicants are assessed and approved by an agency, decisions about placements are made by the agency and do not require court orders. It is likely that there are greater numbers of lesbian and gay foster parents than adoptive parents, perhaps in part due to the temporary status of placements and the fact that it is therefore possible for a child to be removed. The Albert Kennedy Trust, a voluntary organisation which provides services to homeless young lesbians and gay men, is involved in the recruitment of lesbian and gay foster carers and in making placements.

Adoptions are regulated by the Adoption Act 1976, which allows for applications for adoption orders to be made by married couples or by single persons.³³ The law does not allow unmarried couples – whether heterosexual or same-sex – to make joint applications to adopt. In practice, it is possible for unmarried heterosexual and same-sex couples to adopt through one of the couple applying to adopt as a single person. If the application is successful and they do adopt, only one of the couple becomes the legal parent.

A court order is necessary for adoption, which means that the court must approve the arrangements for the child. The court's primary consideration is the welfare of the child, and the judge decides what is in the child's best interest. The consent of the biological parent(s) is usually necessary before an adoption order can be made, although the court has the power in certain circumstances to dispense with that consent.

Recent decisions of the court have set important precedents. In the *W* case, concerning an 11 year old girl placed for adoption with a lesbian and her partner by a local authority, the birth mother refused to consent and objected on the ground that an adoption order in favour of someone in a gay relationship would be contrary to public policy. The court refused to uphold this objection and made the adoption order, in accordance with the wishes of the child.³⁴ The judgement establishes that adoption orders cannot be refused simply because of the objection of the child's birth family to placement with a lesbian or gay man. The decisions to make an adoption order in the *W* case to a lesbian with a partner (in England) and to a gay man with a partner (in Scotland) have also made clear that it is possible for lesbians and gay men to adopt as "single persons", even if they have a partner.

Since the *W* case, the Official Solicitor (who is often appointed by the court to act as the child's guardian in a lesbian or gay adoption case) has stopped the previous practice of insisting that lesbian and gay applicants see a psychiatrist. The Deputy Official Solicitor has stated that "*in future, there is no need to drag experts into Court to give 'psychological opinion' ... lesbianism is no longer a contra-indication.*"³⁵

3. Immigration

In October 1997, the government announced a fundamental change in immigration policy which gave some formal recognition, for the first time, to same-sex partners. Under the new policy, the same-sex partner of a British citizen, European Union national or permanent resident of the UK can, subject to certain conditions, be granted permission to remain in the UK.

The policy, which applies equally to heterosexual partners who are unable to marry, stipulates a four year relationship requirement and states that the couple should have lived together for at least four years. It establishes the principle that same-sex couples should have their relationships recognised, but the four year requirement is more onerous than the two years previously required for unmarried heterosexual partners and would, if strictly applied, exclude many couples with long standing relationships who are unable to meet the requirement to have lived together for four years. However, according to the Stonewall Immigration Group, successful applications have been made where the couple have had a four year relationship but not cohabited for all that time.

Prior to the announcement, a lesbian or gay man had no entitlement to live in the UK with her/his partner but there had been very gradual changes in practice in dealing with applications since 1994. Immigration law and rules are extremely complex and there are certain circumstances where the Home Secretary is able to grant leave to remain on an exceptional basis. In 1995, a number of applicants were successful in being given temporary leave to remain. Before that, there appear to have been no positive decisions made in relation to any applications, except in a small number of cases where the partner with residency rights was seriously ill.

D. Asylum

The UK is party to the 1951 UN Convention Relating to the Status of Refugees, and this is reflected in the Immigration Rules. The UK has yet to recognise explicitly in immigration law that lesbians and gay men constitute "members of a particular social group" as defined by the Convention, and there have been a number of court rulings that lesbians and gay men are not a particular social group that may face persecution.

A number of cases have led to significant developments in the legal position affecting asylum claims based on sexual orientation. In October 1995, a Special Adjudicator upheld an appeal by an Iranian national, ruling that homosexuals in Iran constituted a "particular social group", that there was a reasonable likelihood that such a group would face persecution, and that the applicant had established that he was a member of this group. The Home Office appealed against this ruling to the Immigration Appeal Tribunal, which upheld the appeal by majority decision. The applicant was given leave to appeal to the Court of Appeal and it was hoped that the case would lead to a definitive decision that homosexuals do constitute a particular social group. At the last moment, the Home Office conceded the

case, taking the highly unusual step of granting the applicant indefinite leave to remain and paying all costs. In the absence of a decision by a senior court, lower courts will continue to turn down applicants whose claim for asylum is based on sexual orientation.

Under the Asylum and Immigration Act 1996, the Home Secretary is able to designate certain countries as being ones where there is “in general no serious risk of persecution”, so that claims for asylum from those countries will be presumed to be “without foundation”. The so-called “white list” of such countries includes several in which male homosexuality is prohibited.

Social situation

There is a general trend towards greater social acceptance of lesbians and gay men and public support for lesbian and gay equality. An opinion poll in 1995, for example, showed that 74% agreed that gay men and lesbians should have the same rights under the law as everyone else, compared with 65% in 1991³⁶. There are of course difficulties with opinion polls, not least that responses depend on the questions asked and different polls can show apparently quite contradictory results. For example, in a *Gallup* poll in October 1991, 74% said that they would disapprove if the age of consent for male homosexuals was reduced from 21 to 16, but in a *Harris* poll just six months later, 74% agreed that the age of consent should be the same for everyone.

Other opinion polls also show apparent conflicts between general opposition to discrimination and attitudes towards lesbians and gay men in certain situations – for example, people are more likely to agree that lesbian and gay teachers should not be discriminated against than to agree that it is “acceptable” for a lesbian or gay man to be a teacher.³⁷

Such contradictions are evident in a more general sense. On some streets in cities such as London and Manchester, lesbians and gay men can at times walk arm-in-arm, without fear, from one lesbian and gay friendly cafe, bar or shop to another. At other times, on other streets, in other towns and cities and in rural areas, lesbians and gay men risk hostility and verbal or physical assault for simply being who they are. The Prime Minister, Tony Blair, sent a message of support to the 1997 Pride festival, saying that the government “wants to build a new Britain free from discrimination”. The message was delivered by the first openly gay Cabinet Minister, Chris Smith. The government has pledged to repeal Section 28. But the same government opposed the Lisa Grant case at the European Court of Justice, and continues to fight the cases on the dismissal of people from the Armed Forces for being lesbian or gay.

The problems faced by young lesbians and gay men are inextricably linked to the broad issues of discrimination in law and social policy, and the absence of anti-discrimination legislation, outlined in this report. Surveys have shown that young lesbians and gay men are subjected to homophobic bullying, harassment, verbal abuse and violence on a horrific scale, and that much of this takes place in schools.³⁸ An extensive research project³⁹ on issues relating to homophobic bullying, teaching about sexuality and HIV and AIDS, and the perceived effects of Section 28 within schools, has shown that while 82% of teachers said that they were aware of homophobic bullying in their schools, only 6% of schools had anti-bullying policies which dealt with this. It also showed that many teachers felt unable to deal with lesbian and gay issues because of lack of official guidance, confusion about Section 28, and fear of criticism.

This report can only give an outline of the effects of sexual orientation discrimination. Lesbians and gay men are, of course, as diverse as everybody else and are therefore affected in different ways by the interconnections between discrimination on the basis of homosexuality and other forms of discrimination and prejudice, present amongst lesbians and gay men themselves as they are in wider society. Black lesbians and gay men are, for instance, often subjected to racial harassment in the workplace; such harassment may or may not be linked to their homosexuality as well. Disabled lesbian and gay men face the general attitudes reflected in representations of disabled people as “less than fully human”, unable to speak or act for themselves, together with the perception of disabled people as being somehow asexual. Young Black and disabled lesbians and gays, for example, are often an ignored and invisible group, and are particularly badly served by youth services, schools and lesbian and gay organisations.

There is cause to be optimistic that there will be some significant progress in the relatively near future. The recent developments in Scotland and Northern Ireland are of immense general and particular significance, and any specific anti-discrimination measures which result will inevitably have a wider impact. The Equal Opportunities Commission, the statutory enforcement body for sex discrimination legislation, is currently conducting a review of the legislation, which will lead in due course to the Commission making recommendations to the Government. The consultation document issued by the Commission recommends that the Sex Discrimination Act be extended to include discrimination on the grounds of sexual orientation.

In the year which sees the tenth anniversary of the introduction of the notorious and discredited Section 28, lesbians and gay men are more and more determined that they, their relationships, and their children should be equally respected and equally treated with those of het-

erosexuals. The voices of those who would deny us those fundamental rights are still heard, but they have become more isolated. Attitudes are changing – it is now time for the law to catch up.

Jackie Lewis

¹ European Commission of Human Rights report on Application No. 25186/94, Euan Sutherland against United Kingdom (1 July 1997), par. 67.

² Except in Northern Ireland, where the age of consent for heterosexual and lesbian sex is 17.

³ Sexual Offences Act 1956, Sections 12 and 13.

⁴ The Court of Appeal held in 1976 that where there is coercion or abuse, another charge should be used, such as indecent assault (R v Preece and Howell).

⁵ Sexual Offences Act 1967, Section 1.

⁶ Criminal Justice Act (Scotland) 1980, Section 80.

⁷ Homosexual Offences (Northern Ireland) Order 1982.

⁸ Judgement 22 October 1981, Series A, no. 45.

⁹ Sexual Offences (Bailiwick of Guernsey) Law 1983, Sexual Offences (Jersey) Law 1990, Isle of Man Sexual Offences Act 1992.

¹⁰ An attempt in 1921 to introduce an equivalent offence of “gross indecency” between women was successful in the House of Commons but rejected by the House of Lords where it was argued that introducing it might “bring it to the notice of women who have never heard of it”.

¹¹ Robert Wintemute: *Sexual Orientation Discrimination*, in: Christopher McCrudden and Gerald Chambers (editors): *Individual Rights and the Law in Britain*, Clarendon Press, 1994.

¹² Anal intercourse in private between consenting heterosexuals over 18 was only decriminalised in 1994.

¹³ The Sexual Offences Act 1997 requires people convicted or cautioned for certain sexual offences to register with the police. Although widely promoted as a measure aimed at rapists and child abusers, the list of offences includes gay sex with a man under the age of 18.

¹⁴ Wintemute 1994, cf. note 11.

¹⁵ Section 4A of the Public Order Act 1986, introduced by Section 154 of the Criminal Justice and Public Order Act 1994, and effective from February 1995. The offence carries a maximum punishment of 6 months imprisonment or a fine.

¹⁶ Race Relations Act 1976, Sex Discrimination Act 1975 (as amended in 1986), Disability Discrimination Act 1995, Fair Employment (Northern Ireland) Act 1989.

¹⁷ Section 28 of the Local Government Act 1988 inserted a new Section 2A into the Local Government Act 1986.

¹⁸ Wintemute 1994, cf. note 11.

¹⁹ The Earl of Caithness, government spokesman in the debate on the Bill.

²⁰ Wintemute 1994, cf. note 11; *Sexuality and the State*, National Council for Civil Liberties, 1994.

²¹ The Observer, *Gay lobby winning out on job rights*, 22 February 1998. The article quoted research from the National Association of Pension Funds as showing that 35% of private schemes would pay dependant's benefits to same-sex partners in 1997, compared with 23% in 1996.

²² Case C-249/96, cf. Mark Bell in this publication, pp. 10-13.

²³ Administration of Estates Act 1925 as amended by the Intestates Act 1952. The term “next of kin” does not appear in the legislation but has emerged out of convention. A person's next of kin are defined as her/his spouse, children, parents, brothers and sisters, uncles and aunts.

²⁴ Fatal Accidents Act 1976, Damages (Scotland) Act 1976.

²⁵ Administration of Estates Act 1925.

²⁶ Inheritance (Provision for Family and Dependants) Act 1975, Succession (Scotland) Act 1964.

²⁷ Susan Golombok, Ann Spencer and Michael Rutter: *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, Journal of Child Psychology and Psychiatry 24, Oxford 1983.

²⁸ Children Act 1989, Section 8.

²⁹ Lynne Harne and Rights of Women: *Valued Families: The Lesbian Mothers' Legal Handbook*, Women's Press 1997

³⁰ Children Act 1989, Sections 10 and 12.

³¹ Human Fertilisation and Embryology Act 1990, Section 13.

³² The Children Act 1989: Guidance and Regulations, Vol. 3, 1991.

³³ Adoption Act 1976, Sections 14 and 15; the Adoption (Scotland) Act 1978 contains similar provisions.

³⁴ Re: W (1997) 2SLR406.

³⁵ *Stonewall Bulletin*, February 1998, p. 16.

³⁶ Harris polls, quoted in Stonewall factsheet *Public Opinion of Lesbian and Gay Rights*.

³⁷ Ibid.

³⁸ See, for example, the Stonewall *Queer bashing* survey, cf. note 2, page 24.

³⁹ *Playing it safe*, a report on the findings of a research project undertaken by the Institute of Education for Stonewall and the Terrence Higgins Trust, 1998.

A u t h o r s ' l i s t a n d C V s**Aris BATSIOLAS**

aged 24, student of electrical and computer engineering. Member of *O.P.O.TH. - Homosexuals' Initiative of Thessaloniki*, Greece. Major functions in the group: newspaper *O Pothos*, editor, translator, designer, writer; website design and maintenance, e-mail handling, ILGA contact person.

O.P.O.TH. has existed for almost nine years and also works in AIDS prevention.

Nico J. BEGER

MA in Feminist Studies, University of Canterbury, Christchurch, New Zealand; PhD candidate working on "Queer Theory and European Lesbian and Gay Politics", teaches courses on "Gender and Sexuality" at the European University Viadrina in Frankfurt on Oder. She is a member of ILGA, occasionally helps the ILGA-Europe board in specific projects, and is also the Lower Saxony delegate to the Federal Lesbian Group of the Green Party, as well as being involved with the German Green Party in other areas.

Mark BELL

is a PhD researcher in law at the European University Institute, Florence. Previous publications include research on European Union law on racial discrimination, immigration and asylum policy, and law on sexual orientation discrimination.

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Elena BIAGINI

member of *Azione Gay & Lesbica Firenze*, Florence, Italy.

Uta CHLUBEK

lesbian activist since 1990, active in an anti-racism lesbian/feminist group, one of the editors of *Raus in Köln*, the leading lesbian and gay monthly magazine for Cologne, member of *Iglf Köln* and co-organiser of the 1997 ILGA World Conference; since 1992 member of a lesbian and gay working group dealing with municipal issues; in her professional life she is working in a travel company as supervisor and sales co-ordinator.

Gonçalo Dumas DINIZ

(26), volunteer involved in education and training with *ABRAÇO, Associação de apoio aos doentes de VIH/SIDA*, the national Portuguese AIDS service organisation, training sessions at schools and universities across the country.

Founder and board member of the national gay and lesbian organisation *Associação ILGA-Portugal*, developing work on social and political level.

Member of the Executive Board of ILGA-Europe and member of the *European AIDS Treatment Group (EATG)* since 1997.

Rainer HILTUNEN

is secretary-general of *Seksuaalinen Tasavertaisuus (SETA)*, the Finnish Association for Sexual Equality, and has been working full time for the organisation since 1996. He is a lawyer and did his graduation thesis on same-sex marriage. For this reason, he is a member of the committee preparing legislation on registered partnership which the Finnish Minister of Justice appointed in 1997.

Anke HINTJENS

works full-time for the *Federatie werkgroepen homoseksualiteit (FWH)*, the federation of gay and lesbian organisations in Flanders. She deals with political issues (lobbying, action, discrimination) and acts as spokeswoman.

Steffen JENSEN

is a volunteer on the gay/lesbian political scene and was a member of the executive board of *Landsforeningen for bøsser og lesbiske (LBL)*, the Danish National Association for Gays and Lesbians, for 12 years (1980-92). Since 1987 he has been involved in the International Lesbian and Gay Association (ILGA), especially dealing with ILGA's policies towards the European Union, the Council of Europe and the Human Dimension of the Organization for Security and Co-operation in Europe (OSCE). He is a member of the board of the European Region of ILGA, since 1990 he has been editor of the *Euro-Letter*, a newsletter on gay and lesbian politics in Europe.

Master of Science (Mathematics and Physics), University of Copenhagen 1974. He is head of division in the Danish Ministry of Education.

Klaus JETZ

(35), journalist and literary translator (Spanish – German), living in Cologne, since 1995 working in the press office of the *Schwulenverband in Deutschland (SVD)*, Germany's national gay organisation.

Kurt KRICKLER

born in 1959, language studies in Vienna and Paris, Master of Arts (in translation), University of Vienna 1984.

Co-founder of *Homosexuelle Initiative (HOSI) Wien – 1. Lesben- und Schwulenverband Österreichs* in 1979 and active in various functions since: international secretary 1980-94, board member since 1984, secretary-general since 1994. Active in ILGA since 1981, working in various ILGA projects such as *the Eastern Europe Information Pool (EEIP)* 1982-90, co-chair of the ILGA-Europe Executive Board since 1997.

Active in the fight against AIDS since 1983, co-founder of the *Österreichische AIDS-Hilfe (ÖAH)* in 1985, international coordinator when the ÖAH hosted the secretariat of the *European Council of AIDS Service Organisations (EUROCASO)* until 1991, *EUROCASO* Working Committee member 1991-92.

Co-editor of three books on homosexuality as well as on AIDS and author of various book contributions and numerous newspaper articles on these topics; editor-in-chief of *LAMBDA-Nachrichten*, Austria's leading lesbian and gay magazine.

Sylvain LADENT

born in 1963, teacher, has long been a political and trade union activist; founded the *Comité pour la reconnaissance sociale des homosexuels (CRHS)*, a regional organisation based in Lille, dedicated to the social recognition of gay men and lesbians through equal rights and full citizenship, notably in the field of education, and campaigning for registered partnership.

René LALEMENT

born in 1959, PhD, is professor of computer science at the *École Nationale des Ponts et Chaussées*; he founded *Gais et lesbiennes Branchés*, a non-profit organisation editing the *France Queer Resources Directory* website aiming at a better networking of gay and lesbian organisations in France and in Europe through the Internet and otherwise.

César LESTÓN

is a 34-year-old civil servant. He has been involved with gay issues for five years now, and has campaigned particularly hard for a Spanish Registered Partnership Bill and for an end to sexual orientation discrimination, especially from a legal point of view. The group he volunteers for, *Fundación Triángulo*, has been very active on these and other issues.

Jackie LEWIS

has been a trade union and human rights activist since the early 1980's, she is currently co-chair of the *National Lesbian and Gay Committee* of *UNISON*, the largest trade union in the UK, she is also co-chair of the executive board of ILGA-Europe.

Astrid MATTHIJSEN

is a lawyer working on the legal staff of the Clara Wichmann Institute, the academic institute dealing with women and the law in the Netherlands. She was a member of the Dutch "State Commission on Opening Civil Marriage". She teaches "Homosexuality and the Law" at Utrecht University and "Comparative Human Rights: sexual orientation" at the Washburn University School of Law.

Marco RAVAIOLI

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Mirjam TURKSMA

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born in 1969, PhD, researcher in geographical information systems at the Institut Géographique National. Former president of the *Mouvement d'affirmation des jeunes gais et lesbiennes (MAG)*, co-founder of *Contact* of the *Gemini* federation, he is now head of *Homosexualités et Socialisme (HES)*, the aim of which is to link the agenda of gay and lesbian organisations to the one of the Socialist Party, and to participate, along with them, in the reflection about homosexuals and society.

ILGA-Europe

Inquiries to ILGA-Europe can be directed to the addresses given on page 4.
More information on/from ILGA-Europe is also available at the following websites:

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

The Euro-Letter, a monthly newsletter published on behalf of ILGA-Europe,
can be found as of issue # 30 at

<http://www.france.grd.org/assocs/ilga/euroletter.html>

or:

<http://www.grd.org/grd/www/orgs/ILGA/euroletter>

ILGA-Europe is a non-profit organisation.

Donations are very welcome and can be transferred to ILGA-Europe's bank account in Denmark:

Bank account number: 1199-1-671-0571, BGBank A/S, Girostrøget 1, DK-0800 Høje Tåstrup;
SWIFT code: BIKU DK KK

ILGA-Europe also accepts payments by VISA, Euro/Master and JCB Cards.



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Equality for Lesbians and Gay Men

The situation of lesbians and gays differs quite substantially in the fifteen Member States of the European Union. Some countries, such as Austria and the United Kingdom, still send gay men to jail on the basis of specific discriminatory law provisions which the European Human Rights Commission in Strasbourg concluded to be in violation of the European Human Rights Convention. Other countries, such as Denmark, Sweden, and the Netherlands, have introduced same-sex partnership legislation which grants to same-sex partners almost the same rights and duties as to married couples. Moreover, a majority of EU Member States (eight out of fifteen) has introduced anti-discrimination provisions which also ban discrimination on the basis of sexual orientation in specific areas.

In order to map these diverse situations, ILGA-Europe, the European Region of the International Lesbian and Gay Association, has compiled contributions about the situation of lesbians and gays in the fifteen Member States. These articles draw an exhaustive picture of the manifold forms of social and legal discrimination lesbians and gays are exposed to throughout the EU, but also of the many positive developments in the pursuit of achieving full equality for them. They also highlight examples of good and best practice in this context.

ILGA-Europe has produced this report as part of a project to promote the co-operation between non-governmental organisations and to strengthen the social and civil dialogue. A dialogue in which ILGA-Europe wishes to participate in a very active way at the European level.

This report, therefore, also formulates a series of recommendations to improve the situation of lesbians and gay men in the Union – recommendations directed both to other NGOs, the social partners, the Member States and the European Union which has been given the competence by the Treaty of Amsterdam to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

ILGA-Europe is the European Regional Association of the International Lesbian and Gay Association. ILGA is a worldwide federation of more than 300 groups and organisations in more than 70 countries on all continents fighting for equal rights for lesbian, gay, bisexual and transgendered people.