



accept



accepting
diversity

**The 22nd European Conference of ILGA
(International Lesbian and Gay Association)**

“ACCEPTing Diversity”

Bucharest, October 4-8 2000

Hosted by ACCEPT (Bucharest Acceptance Group)

In Co-operation with Heinrich Böll Foundation.

Co-sponsored by Astraea Foundation

Report drawn by ACCEPT

- available on the internet at www.ilga-europe.org -

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A. Conference Timetable

	Wednesday 4 th	Thursday 5 th	Friday 6 th	Saturday 7 th	Sunday 8 th
8.00 – 9.30		Breakfast	Breakfast	Breakfast	Breakfast

9.30 – 11.00	Opening press conference (10.30 - 12.30)	PLENARY Welcome speeches	‘EU Other’ 1 (Employment Directive, DAP, Charter) Activism at National Level 2 (Operating an LGBT rights organisation in difficult environment)	PLENARY PANEL DISCUSSION Recent experience with registered partnership	PLENARY
11.00 – 11.30		Coffee	Coffee	Coffee	Coffee
11.30 – 13.00	ILGA-Europe Board Meeting (12.30 to 17.00)	PLENARY Annual Report Accounts Other internal ILGA matters. SAD/Schorer presentation on support for and working with LGBT organisations in Eastern Europe	‘EU Other’ 2 (EU policies on Asylum/Immigration and LGBT people) Activism at National Level 3 (Solidarity with south east european countries)	EU KEYNOTE PANEL DISCUSSION (EU policies on sexual orientation discrimination, Member State reactions, implications for accession countries and what ILGA Europe and lesbian/gay national NGOs can do)	PLENARY
13.00 – 15.00		Lunch	Lunch	Lunch	
15.00 – 16.30		Council of Europe 1 (Recent developments, future plans) Activism at National Level 1 Lesbian organising in Eastern Europe	EU Enlargement 1 (Process/criteria) ILGA Europe 1 (Work Programme – internal items, etc)	Activism at National Level 4 (Asylum/Immigration) ILGA Europe 2 (Core Funding)	
16.30 – 17.00		Tea	Tea	Tea	

17.00 – 18.30	Introductory talk on ILGA Europe and the European Institutions (18.00 – 19.00) Women's caucus 1 (19.00 - 20.00) Chairing pool selection (20.00 – 20.30) Drinks in the Parc Hotel (21.00)	City Tour 17.00 - + COC/ACCEPT reception in Continental Hotel, downtown Bucharest (including dinner with 'Sweedish Buffe')	EU Enlargement 2 (Using EU human rights criteria to counter discrimination) Transgender Issues	Council of Europe 2 (Taking a case under the ECHR) 'EU Other' 3 (Working with other NGO's)
18.30– 19.30			Caucus time Schorer Foundation – follow up to presentation in plenary	Caucus time Women's caucus 2 Core Funding
20.00 – 21.00			Dinner Lesbian night at the ACCEPT headquarters Gay Disco at Casablanca club	Dinner LGBT party in Casablanca club + speeches

B. Conference Programme

PROGRAMME FOR KEYNOTE PANEL DISCUSSIONS AND WORKSHOPS AT THE BUCHAREST CONFERENCE

Where workshop material was of relevance to lesbians, this is indicated by the narrative, or through the letter (L) being placed after the item in question. Material of specific interest to transgendered or bisexual people was included wherever appropriate.

PANEL DISCUSSIONS

PUBLIC KEYNOTE PANEL DISCUSSION on the implementation of EU initiatives at European level, and on EU Enlargement

This addressed the topic of (i) EU institutions and their policies with regard to sexual orientation discrimination, (ii) the reaction of Member States, (iii) the implications for accession countries of these EU policies and of the human rights accession criteria and (iv) what ILGA Europe and lesbian/gay national NGOs can do to make their interests heard at a European level (L).

It was open to members of the general public and the press. It was reported in the media.

Participants: **Joke Swiebel** (MEP, Netherlands, Rapporteur for the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on the General Framework directive); **Giampi Alhadeff** (Secretary-General of SOLIDAR – an independent alliance of social welfare, life-long learning,

development and humanitarian aid NGOs – and President of the European Union Platform of Social NGOs)

Boris Dittrich (MP, Netherlands)

Hein Verkerk of the Green Group in the European parliament

Panel Chair: Monica Macovei, leading Romanian human rights lawyer, vice-president of the Romanian Helsinki Committee and long time supporter of ACCEPT

PLENARY PANEL DISCUSSION – Recent Experiences (Successful And Unsuccessful) With Registered Partnership

A Panel Discussion by spokespersons from the Czech Republic, Latvia, France, Germany and the Netherlands, summarising their recent experience working to introduce registered partnership laws, with particular emphasis on the practical lessons that would help activists in other countries, and any contribution which ILGA-Europe could make. (L)

Speakers: Chair, Boris Dittrich (Member of Parliament, the Netherlands); **Juris Lavrikovs** (co-founder, legal adviser and Board Member of the Homosexuality Information Centre, Latvia); **Nico Beger** (ILGA Europe Board Member, co-delegate to the Council of Europe, Lesbenbereich Bündnis 90/Die Grünen, Germany); **Jan-Paul Pouliquen** (Worker in the European Parliament and ‘father’ of the French PACS, France), **Anke Hintjens** (Belgian gay and lesbian group FWH)

WORKSHOP PROGRAMME

THEME I: EU ENLARGEMENT AND LGBT RIGHTS IN THE ACCESSION COUNTRIES – A PRACTICAL GUIDE TO ACTION

Workshop 1 – The Accession Process, and Accession Criteria relevant to LGBT rights

- Introduction to the European Union and to European Convention on Human Rights
- Overview of the Accession Process – which countries, timescale, the screening process in general (how it works, and where it has got to), and how membership is finally approved (Council of Ministers, European Parliament, and member states)
- The Human Rights Accession Criteria: The Copenhagen Criteria, and Article 6 (1) and Article 6 (2) EU Treaty, and what these mean in practice;
- Important EU instruments (all still under development): the Employment Directive (L), the Charter of Fundamental Rights (L), the Regulation on the free movement of workers (L), and the proposal for a directive on family reunion for third country nationals (L) + more to come? Council of Europe instruments: the European Convention on Human Rights and its case law (L); Declarations by European Parliament (L)

Presenter: Nida Gelazis

For the last three years, Nida Gelazis has developed and managed a number of research projects on the Eastward Enlargement of the EU at the Robert Schuman Centre of the European University Institute. Her LL.M thesis focused on human rights conditionality in the process of EU enlargement to the Baltic States. Formerly, she was the Managing Editor of the East European Constitutional Review.

Workshop 2: The EU accession process: violations of EU human rights principles in the accession countries (by reference to the European Convention and its case law), and action which can be taken

- What counts as a violation, under current Convention case law
- Such violations in accession countries: Summary by country of areas where violations of Convention exist (preliminary findings of IE Accession Countries project, supplemented by additional information in ILGA Europe Council of Europe report and other sources) [will cover, for example, age of consent, other discriminatory aspects of sexual offences law, employment in armed forces, refusal to register organisations (L)]
- How to use accession process to put pressure on governments to change their laws

Presenters: Nigel Warner, ILGA-Europe co-delegate to the Council of Europe, Nida Gelazis, and Tatjana Greif of the Slovenian lesbian organisation SKUC/LL and IE Board Member,

THEME II: OTHER MAINSTREAM EU TOPICS

Workshop 1: Detailed examination of the proposed EU instruments and programmes which are important for LGBT rights (except in area of immigration)

- The Employment Directive (L)
- Discrimination Action Programme (L)
- The Charter of Fundamental Rights (L)

For each, scope and importance of, current state of progress, actions taken so far by ILGA Europe and member organisations, and future actions which ILGA Europe and its EU member organisations can take to ensure they are adopted/made best use of.

Presenters: Kurt Krickler (HOSI-Wien, Austria and IE Board Co-chair); Robert Wintemute (Reader in law, The Law School, King's College, London; author of *Sexual Orientation and Human Rights – The United States Constitution, the European Convention, and the Canadian Charter*)

Workshop 2: Asylum/Immigration rights for lesbians and gay men: the current situation, and the potential for positive developments through the European Union

- Overview of asylum/immigration laws in EU member states and accession countries (L)
- The EU: existing situation, and future possibilities (L). To include: The Commission's proposals for harmonisation of immigration and asylum laws over the next 5 years, its proposed amendment to the Regulation on the free movement of workers, and its proposal for a directive on family reunion for third country nationals;
- An action plan for ILGA-Europe and its members to realise these possibilities

Presenter: Nicola Rogers

Nicola is a lawyer specialising in Immigration and Asylum law with particular expertise on EU law and the European Convention on Human Rights. She is author of a book on the EC Turkey Association Agreement, a member of the (UK) ILPA (immigration law practitioners association) executive committee and European sub-committee. She's recently given expert evidence to the House of Lords Select Committee on European Communities and to the House of Commons Home Affairs Committee on EU law. She will shortly take up the job of Assistant Director of the (London) AIRE Centre, which specialises in giving advice and representation on all aspects of EU and International human rights law.

Workshop 3: – Working with other NGO's

The EU NGO Social Platform, Stepping Stones Seminars, lessons so far, plans for future actions to promote LGBT rights, including any involvement by members

Presenters: Jackie Lewis (ILGA Europe co-chair, and National Lesbian and Gay Committee of UNISON, UK); Kurt Krickler (ILGA Europe co-chair, and HOSI-Wien, Austria)

THEME III – THE COUNCIL OF EUROPE

Workshop 1: Important Developments in the Last Year on LGBT rights + ILGA Europe plans for future

- Draft Protocol No 12 to the European Convention, including Recommendation of the Parliamentary Assembly (L)
- Parliamentary Assembly Recommendations on Asylum and Rights of Bi-National Same-sex couples (L)
- Parliamentary Assembly Recommendations on Discrimination (L)
- Membership Applications: Armenia and Azerbaidjan; Bosnia Herzegovina
- Making best use of the European Convention (including the launch of a Europe-wide network of lawyers specialising in the ECHR) (L)

Presenter: Nigel Warner (ILGA Europe co-delegate to the Council of Europe, UK); Nico Beger (ILGA Europe Board Member and co-delegate to the Council of Europe, Lesbenbereich Bündnis 90/Die Grünen, Germany)

Workshop 2: How to take a case under the European Convention on Human Rights on lgbt issues

How the Convention works; Main Articles relevant to LGBT rights

Summary of case law; Potential subjects for cases, including identification of countries where clear violations; Key practical aspects of taking cases (cases must be good, exhaustion of domestic Remedies, time limits, need for lawyers, etc); types of cases of interest to lesbians; Discussion of any suggestions for cases by people participating in workshop

Few ECHR cases have yet been initiated in Eastern Europe, and it is particularly hoped that this workshop will encourage the use of the ECHR by LGBT activists in Eastern Europe.

Presenter: Dr Robert Wintemute (for biographical details, see above)

THEME IV – ACTIVISM AT THE NATIONAL LEVEL, WITH EMPHASIS ON CENTRAL AND EASTERN EUROPE

Workshop 1 – Lesbian organising in Eastern Europe

The Workshop will look at the particular challenges faced by lesbian organisations in Eastern Europe.

Presenter: Tatjana Greif of the Slovenian lesbian organisation SKUC/LL and IE Board Member

Workshop 2 – Operating an LGBT rights organisation in a difficult environment

This will cover experience of ACCEPT, Romania:

Building an LGBT organisation in a difficult environment; “good practice”, including ACCEPT’s experience of reaching out to its entire constituency, including lesbians and transgendered people; East-West co-operation; East/East co-operation (Bulgaria, Moldova); work within Romania; funding possibilities. A practical workshop, where participants (West and East!) will leave with concrete ideas, addresses of funders, models of plans and lists of potential partners and donors for specific projects.

Speakers: Adrian Coman (ILGA Europe Board Member and ACCEPT, Romania), and Dennis van der Veur (COC – Netherlands)

Workshop 3 – Asylum and Immigration – a national perspective

Dirk Siegfried is a lawyer specialising in asylum and immigration work in Germany. He has been involved in numerous LGBT cases, including asylum cases involving Romanian citizens. This workshop will build on Dirk’s experiences in this field, including the application of the European Convention in asylum cases in Germany.

THEME V – TRANSGENDER ISSUES

Workshop

This workshop will explore the problems and discrimination faced by transgendered people, and consider how to organise at European level.

Presenter: Nico Beger (ILGA Europe Board Member, co-delegate to the Council of Europe, Lesbenbereich Bündnis 90/Die Grünen, Germany)

THEME VI – ILGA EUROPE INTERNAL BUSINESS

Workshop 1 – Work programme for 2000/2001, and other internal matters

Working programme for 2000/20001 – questions on internal matters; Amendment to Standing Orders

Presenter: Jackie Lewis (ILGA Europe co-chair, and National Lesbian and Gay Committee of UNISON, UK)

Workshop 2 – Application for Core funding from EU

- Interim Funding Proposal: Scope, status, urgent need for member organisations to provide co-funding
- Discrimination Action Programme 2001/2006: Scope, status, urgent need for members to provide co-funding
- Development of network of liaison and co-operation partners in each of the 15 Member States

Presenter: Kurt Krickler (HOSI-Wien, Austria and IE Board Co-chair); Nigel Warner (ILGA Europe co-delegate to the Council of Europe, UK)

C. ILGA-Europe Work Programme for 2000/2001

ILGA-EUROPE - WORK PROGRAMME FOR 2000/2001

(As agreed at the 22nd ILGA-Europe Annual Conference, Bucharest, 4-8 October 2000)

A. EUROPEAN UNION

1. ARTICLE 13 ANTI-DISCRIMINATION INITIATIVES

Maximise the benefits of the Article 13 anti-discrimination provisions by:

- Continuing to work for the implementation of the proposed general framework directive for equal treatment in employment and occupation and of the proposed Discrimination Action Programme. Once the latter is approved by EU, inform member organisations of relevant Calls for Proposals.
- Working for the development of a proposal by the Commission for a directive covering discrimination in areas other than employment, (within the limits of the powers of the Community) e.g. education, access to and supply of goods and services, healthcare, housing and social protection (to cover, *inter alia*, sexual orientation discrimination).
- Discussing future proposals for directives or other initiatives at an early stage with the Commission, advising on the best way to meet the needs of LGBT community and to reflect the principles of Article 13.

2. EU CHARTER OF FUNDAMENTAL RIGHTS

- Monitor drafting process to ensure that the anti-discrimination article continues to include “sexual orientation”; if any proposal to delete these words, mount large scale campaign for their retention.
- Continue to participate in the Social Platform/ETUC Charter campaign.

3. ASYLUM AND IMMIGRATION

- Work to ensure the inclusion of persecution on grounds of sexual orientation in any definition of refugee status adopted by the European Union.
- Work to ensure that any common immigration policies developed by the European Union recognise fully the residence rights of same-sex couples and their children.
- Work for implementation of the Commission's proposed amendment to Regulation 1612/68 (free movement of persons).
- Work for implementation of the proposal for a Council directive on the right to family reunification for third country nationals.

4. EU ENLARGEMENT

- Finalise preparation of report on situation of LGBT people in candidate countries. Highlight where discrimination conflicts with principles established under EU Law and the European Convention on Human Rights.
- Provide report to governments, and to Commission officials responsible for accession.
 - Publicise continuing violations of EU human rights standards, *inter alia*, by seeking to persuade the European Parliament to refer to them in its Annual Human Rights Resolution, by persuading the Council to include them in its Annual Human Rights Report, and by making a submission at the Annual EU Human Rights Discussion Forum.
- Monitor developments in individual accession countries: if insufficient progress, seek to apply pressure through friendly national parliaments and European Parliament.
- Lobby Commission to carry out report into homophobia in candidate states, with a view to making statement that combating homophobia forms part of the human rights condition for accession (c.f. 1999 Commission report on “Countering racism, xenophobia and anti-Semitism in the candidate countries”).

5. HUMAN RIGHTS IN MEMBER STATES

- Publicise continuing violations of EU human rights standards, inter alia, by seeking to persuade the European Parliament to refer to them in its Annual Human Rights Resolution, by persuading the Council to include them in its Annual Human Rights Report, and by making a submission at the Annual EU Human Rights Discussion Forum.

6. THE EU AND THIRD COUNTRY HUMAN RIGHTS

Explore practicality of a programme of work designed to promote LGBT rights in countries outside the EU (“third countries”) by:

- Researching and providing information on LGBT human rights violations in third countries to Commission for use in bilateral negotiations.
- Working for inclusion of specific reference to Article 13 discrimination in human rights clauses of bilateral trade and co-operation agreements with third countries.
- Working on implementing EU Human Rights and democratisation strategies in third countries in regard to the rights of LGBT people.

7. OTHER EU PROGRAMMES

- Seek to ensure that new European Social Agenda programme maximises the opportunities for working for LGBT rights.
- Participate in EU sponsored projects on the exchange of best practice, extent of discrimination, and methods used to combat discrimination, in such fields as employment, education, and healthcare.
- Explore the possibilities offered by the new powers covering ‘police and judicial co-operation’ for combating discrimination in the criminal law, and follow up with action, if appropriate.
- Inform member organisations of relevant Calls for Proposals.

8. CIVIL AND SOCIAL DIALOGUES

Promote LGBT rights in the Civil Dialogue by participating in consultations on development of social policy, especially through Platform of Social NGO's.

Encourage employers and unions to promote non-discrimination on all grounds through the social dialogue mechanism, e.g. through a code of practice on implementing the employment discrimination directives.

9. MAINSTREAMING OF LGBT ISSUES

- Monitor developments at the Commission and engage in dialogue with the Commission to ensure that systematic consideration is given by the Commission to ensuring equality for LGBT people in all Community policies, at the point of planning, implementing and evaluation.

B. COUNCIL OF EUROPE

1. The European Convention on Human Rights

Promote the most effective use of the European Convention in support of LGBT rights *inter alia* by:

- encouraging and supporting individuals and organisations to take suitable test cases.
- establishing an international network of experts on the Convention and LGBT issues to give advice to lawyers and individuals taking cases, and to help with the above tasks.

2. The Parliamentary Assembly

- Work with the rapporteurs of the relevant Assembly Committees to ensure they are fully briefed on the position of LGBT people in Bosnia-Herzegovina; seek to have the abolition of the discriminatory laws made a pre-condition of membership.
- Work with the rapporteurs of the Monitoring Committee to ensure that Armenia complies with its obligation to repeal its law that incriminates same-sex acts between men and releases any people still imprisoned under this law.

3. The Committee of Ministers

- Organise campaign by member organisations to persuade the Committee of Ministers to take action on the Recommendations of the Parliamentary Assembly on the Asylum/Migration and Discrimination issues (assuming the latter are voted through in the September session of the Assembly).
- Follow the development of policy and activities by Intergovernmental Committees in all areas relevant to LGBT people and seek to ensure that they take account of LGBT rights.

4. Transgender issues

- Consider what action can be taken by ILGA-Europe at the Council of Europe on transgender issues.

5. General Issues

- Review the powers and role of the new Council of Europe "Commissioner on Human Rights", and explore scope for promoting LGBT rights through this position.
- Review the European Social Charter, and explore scope for promoting LGBT rights through this document.

C. ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE

- Prepare submissions for and participate in relevant meetings of the Office for Democratic Institutions and Human Rights (ODIHR), especially in the implementation meetings of the Human Dimension.
- Prepare submissions for and participate in the OSCE review conferences.
- Establish contacts with the Parliamentary Assembly of the OSCE.

D. PROGRAMME OF ACTIVITIES IN SUPPORT OF LGBT HUMAN RIGHTS ORGANISATIONS IN CENTRAL, EASTERN AND SOUTHERN EUROPE

- Encourage co-operation and mutual support between member organisations within Central and Eastern Europe and between organisations in this area, and in Western Europe.
- Find means of providing support and technical advice to those wishing to establish LGBT human rights organisations in Central, Eastern and Southern Europe, in such areas as lobbying skills, funding, organisational development, combating discrimination and mobilising international pressure in respect of

particular human rights violations.

- Consider developing proposals for joint projects in the LGBT field under the Phare/Tacis/Access programmes.
- Find ways to increase number of member organisations in Central, Eastern and Southern Europe and to facilitate their participation in the work of ILGA-Europe, including subsidising their participation in ILGA Europe events, particularly the Annual Conference.
- Encourage the member organisations within Central and Eastern Europe to:
 - stimulate gender parity and to provide equal representation of lesbian women within mixed organisations;
 - provide equal representation of lesbian women at all decision-making processes within mixed organisations;
 - ensure safe environment for lesbian women within mixed organisations.

E. ACTIONS TO COUNTER HUMAN RIGHTS ABUSES AGAINST LGBT AND HIV+ PEOPLE IN EUROPE

- Monitor human rights abuses based on sexual orientation, gender identity and HIV status in Europe.
- Mobilise international support for the victims by organising support campaigns by ILGA-Europe's members, and by other international NGO's such as Amnesty International, Human Rights Watch, and the International Gay and Lesbian Human Rights Commission.

F. HIV/AIDS PREVENTION

- co-operate closely with the Gay European Network for HIV Prevention and support the establishing of its programme, and to encourage ILGA-Europe members to co-operate in AIDS prevention projects with this Network, including when seeking funding from the EU and other institutions.
- co-operate with other international NGO's working in AIDS prevention, e. g., the European Council of AIDS Service Organisations (EUROCASO) and the Global Network of People Living with HIV/AIDS (GNP+).
- Invite ILGA-Europe members who are involved in AIDS prevention networks to be visible as ILGA-Europe members.

G. TRANSGENDER ISSUES

- Lobby towards the inclusion of gender identity in all European anti-discrimination articles and insist, wherever possible, that discrimination on grounds of gender identity and gender appearance be covered by the existing provisions on gender discrimination.
- Work, together with its member organisations, towards ensuring that national states provide the legal possibilities for transgender people to transition, including re-issuing passports and birth certificates. All laws (rights and duties) accorded to men and women should be applicable to transgender people in their new gender identity (marriage, adoption, parenthood, etc.) The national states should provide public health care for transgender people that aids them in the transition process.
- Express the belief that the requirement to proof irreversible infertility before being allowed to complete legal transitioning into a new gender is against human rights and work towards the abolishment of these laws on European and national levels.
- Ensure that the revised policy statement properly reflects the mentioned issues.
- Work towards increased transgender membership in ILGA and transgender participation in conferences

(where possible scholarships could be granted).

- Consult with transgender organisations and individuals where appropriate in carrying out these tasks.

H. DEVELOPMENT OF ILGA-EUROPE

1. Core Funding

- Develop proposal for core funding under the EU Discrimination Action Programme 2001 – 2006, including co-finance for the element of funding requirement not covered by the EU.

2. Documentation and Research

- Develop and maintain a country-by-country inventory of discriminatory laws and practices ; monitor developments and keep up-to-date; provide information as appropriate.

3. Visibility and Communications

- Produce a leaflet introducing ILGA-Europe, and including details of how to join.
- Re-develop ILGA-Europe web site to make more accessible and user friendly.
- Develop ILGA-Europe newsletter to publicise ILGA-Europe activities and provide means of networking and sharing information between members.
- Develop database of e-mail addresses for all members.

4. Future Development

- Produce a report for discussion in the lead up to and at next year's Conference on the future development of ILGA-Europe.

D. Speeches delivered by

- a) **Mr. Florin Buhuceanu on behalf of ACCEPT**
- b) **Ms. Sigrid Lukoschus on behalf of Heinrich Böll Foundation**
- c) **Mr. Valerian Stan on behalf of the Romanian Helsinki Committee**

a) Mr. Florin Buhuceanu on behalf of ACCEPT. Speech for the Press Conference – October 4, 2000

To begin with, I would like to suggest that we all try to think back to over two decades ago, when the Danish capital hosted an international meeting gathering well-known opponents of the Soviet communism, named the Sakharov Court after the prominent scientist and human rights activist. Eugen Ionesco – the famous Romanian playwright, well known for his anti-totalitarian as well as provocative attitude – was one of the guests. In order to test the participants' propensity for democracy he threw the participants into confusion by asking them what was the situation of homosexuals in the USSR. The answer was unanimous, straightforward and brutal: homosexuals are outlaws, criminals.

I did not invoke this incident to remind you that ACCEPT was nominated for the Sakharov price of the European Union one year ago. Eugen Ionesco's test is still actual today, after 10 years of democracy in Romania. If you apply it, you'll learn that unfortunately Romania stands out as the only member state of the Council of Europe which denies to its homosexual citizens their constitutional rights: freedom of expression,

of association, fair and equal legal treatment. By postponing indefinitely the repeal of Article 200 Penal Code, the Romanian Senate places our country, once again, among the states whose domestic and international commitments are not credible.

The European Conference of ILGA can be seen as an exercise of correct information, which raises the awareness to the situation and rights sexual minorities enjoy in the member states of the European Union and in accession countries. The fact that this conference takes place in Bucharest has a special significance: it demonstrates the constant concern of this international organisation for the way Romania commits itself to respect the rights of minorities, democratic requirements and the reform of the legal framework. Your participation as journalists is important and effective in this sense, which encourages me to invite you to take part in the session scheduled for Saturday, October 7, which will address EU policies on human rights and the rights of sexual minorities in EU member states and accession countries.

b) Ms. Sigrid Lukoschus on behalf of Heinrich Böll Foundation

Statement for Press Conference

For the conference "Accepting Diversity"

Bucharest, Wednesday, 4 October 2000

Heinrich Böll Foundation

Western Europe/North America Department

Given by Sigrid Lukoschus

The Heinrich Böll Foundation's Involvement in Lesbian/Gay Politics

The Heinrich Böll Foundation is affiliated with the German Green Party and has its headquarters in Berlin, Germany. The Böll Foundation is a legally independent political foundation that works in the spirit of intellectual openness. The Foundation's primary objective is to support civic education both within Germany and abroad.

The Heinrich Böll Foundation's educational activities have a political basis and an ethical outlook. These activities also strive to promote various forms of cultural expression. Through its international co-operation with a large number of project partners – currently about 130 projects in 56 countries – the Foundation aims to strengthen civil societal activism on a global level.

The support of international efforts to achieve lesbian and gay human rights is a fundamental principle of the Heinrich Böll Foundation's work. The Böll Foundation's promotion of lesbian/gay human rights is fundamentally, irreversibly linked to its principled support for universal human rights, gender democracy, and humane processes of globalisation.

The Böll Foundation's support for and participation in this conference, entitled "Accepting Diversity," seeks to promote international networking efforts among diverse groups including NGO's, political parties, parliamentarians, lesbian/gay organisations, and individual activists. These networking efforts will help all of these groups and individuals, in all European countries, to ensure human rights for all lesbian and gay citizens. In addition to these networking efforts, the Heinrich Böll Foundation hopes that this conference will achieve the following goals:

- First, to spread information and knowledge with regard to the current state of lesbian/gay human rights in Europe
- Second, to disseminate knowledge and experiences regarding the significance of EU law and EU

enlargement for the achievement of lesbian/gay human rights

- Third, to develop concrete political strategies for achieving lesbian/gay human rights at a European level, including the enactment of anti-discrimination laws
- And, last but not least, to strengthen the development of lesbian/gay organisations and movements throughout Central, Eastern, and South-eastern Europe.

To conclude, I would like to simply like to state our firm conviction that this conference in Bucharest will provide an important contribution to the international debate on diversity and to the development of concrete strategies for promoting lesbian/gay human rights, especially within the framework of the European Union and the intensifying, important processes of European enlargement and integration.

c) Mr. Valerian Stan on behalf of the Romanian Helsinki Committee

Ladies and gentlemen,
Dear friends,

I am happy to deliver unto you this message of friendship and solidarity from the Romanian Helsinki Committee.

Romania is a contradictory country which clearly stands apart in the matter of its attitude towards sexual minorities – and not only that.

A few weeks ago, a mainstream TV channel hosted a debate between opponents and supporters of abolishing discrimination based on sexual orientation criteria.

The show was set up that way that viewers voted on the issue and the final score significantly favoured those who had pleaded for granting their fellow people freedom instead of limiting it.

The score came out as a surprise for many, especially since it seemed fairly certain that the majority of the viewers consisted of people with an allegedly representative perspective on this issue within the public opinion, let alone the fact that this very issue is an area of stronger prejudice and less acceptance to the idea of diversity.

These people are frequently told that, wherever the state has given up on any form of control on the privacy and intimacy of the individual, homosexuals and drug abusers are constantly in the open and have become aggressive. Actually, not long ago, the head of an important parliament political group testified that he had seen all of that in The Netherlands.

Two days ago, as a conclusion to the Sydney Olympics coverage, a prestigious intellectual group's weekly stated that "the games were "abused twice" – first, I quote, by the anti-doping struggle, and secondly by a trifle stupid thing: the gay parade: men sporting make up, fancy hairdo's , skirts and high heels, the ball of our eye, champions at sexual parallel bars. When asked, almost all Romanian politicians will prove verbose in public against homosexuals – since they think this will bring political profit. Yet, ten years ago, most of them voted the current version of the Romanian constitution which guarantees, in a very clear way, the liberty of the individual to manage their own life, to have their private, intimate and family life protected. Actually, recently, some of them passed, in the government, an ordinance which will be applied beginning next month and which is meant to sanction any kind of discrimination, explicitly including discrimination based on sexual orientation.

To have the paradox all the way, however, one of the ministers who approved of the ordinance – prominent

law expert and master of philosophy of fundamental rights and liberties – later spoke in public about his conviction according to which homosexuals should not be dealt with within the criminal law but within a moral, religious and medical perspective. The same politicians who had pleaded for and voted Romania becoming part of the Council of Europe might still mentally oppose the repeal of the infamous article 200 from the Penal Code in the coming elections. This places the country they represent in a least honourable spot, the one of not compelling with its own commitments to the international treaties it had signed: The statute of the Council of Europe, the European Convention of Human Rights, Resolution 1123, of 1997 issued by the Parliamentary Assembly of the Council of Europe, etc.

The Romanian Helsinki Committee has taken numerous steps throughout the years, starting 1993, so that the Romanian penal law should decriminalise same sex relations and association of people of the same sex, and very recently, steps to write and promulgate the government ordinance for the prevention and punishment of all forms of discrimination. After the Chamber of Deputies, this June, had voted the repeal of article 200, the Helsinki Committee addressed the Senate once more, requesting a vote that would truly follow up on the deputies' vote. At the end of last month, the chairmanship of the Senate told our organisation that the 'Standing Bureau of the Senate analysed your letter concerning the necessity to bring some Penal Code provisions in line with the resolution 1123 of 1997 of the Council of Europe and decided to inform all Senators about your appeal'

The Romanian Helsinki Committee has and will always express solidarity with the efforts taken by ACCEPT so that people in Romania will no longer be punished and looked down upon just because they are different from others in one majority or another. Our solidarity with our friends in ACCEPT makes us proud. Our solidarity with you, who are all present here, makes us proud and confident that together we will break through, in the name of accepting diversity, of respect for the other and, ultimately, for the principles of the civilised world.

Thank you for your attention.

E. Conference Press Release

PRESS RELEASE BY ILGA-EUROPE

ILGA-EUROPE CALLS ON ROMANIAN SENATE TO REPEAL LAWS CRIMINALISING SAME-SEX RELATIONS

ILGA-Europe's annual conference, meeting in Bucharest from 4-8 October, has called on the Romanian Senate to repeal Article 200 of the Romanian Criminal Code, which incriminates same-sex relations. In an open letter to the President of the Senate, the conference reminded the President of Romania's repeated failure to honour its international obligations with regard to the repeal of Article 200. The most recent such commitment was a statement by the leader of the Romanian delegation to the Parliamentary Assembly of the Council of Europe in June 2000 that the Article 200 would be repealed by September 2000.

The letter goes on to point out that as recently as last week the European Parliament again addressed this question. While welcoming the attempts of the Romanian Government to abolish repressive legislation regarding sexual minorities it stressed to Romanian legislators that, in the context of accession to the European Union, basic human rights would at no point be open to negotiation.

ILGA-Europe advised the President of the Senate that it will monitor developments closely and will ensure that both the European Union and the Council of Europe are informed should Article 200 not be repealed

during the current parliamentary session.

The 22nd ILGA European conference was attended by around 100 participants from 27 countries. The conference was honoured by the participation of Joke Swiebel, MEP, Boris Dittrich, Dutch MP, and Giampiero Alhadeff, president of the Brussels-based Platform of European Social NGO's. The conference addressed the implications of the European Union's policies to fight discrimination on the grounds of sexual orientation both for the Member States and the accession countries and developed strategies for ensuring that governments implement these policies.

The conference organisers were pleased to note that week-long demonstrations called by right-wing and religious organisations failed to materialise. This was seen as evidence that public opinion in Romania is increasingly accepting of human rights of lesbian, gay, bisexual and transgendered persons.

The delegates voted to accept the invitation of the Dutch national lesbian and gay organisation COC to hold next year's conference in Rotterdam. The annual conference in 2002 will be hosted by OPUS GAY in Lisbon.

The Executive board of ILGA Europe
Bucharest, October 8, 2000
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F. Copy of Letter to the President of the Romanian Senate

Open Letter to the President of the Romanian Senate, Mr. Mircea Ionescu Quintus

Repeal Article from the Romanian Penal Code

We are writing at the request of the Annual Conference of ILGA-Europe, which took place in Bucharest from 4th – 8th October 2000. ILGA Europe is the European Region of the International Lesbian and Gay Association, and has some 150 member organisations from throughout Europe. It has consultative status with the Council of Europe.

During the June 2000 session of the Parliamentary Assembly of the Council of Europe the leader of the Romanian delegation announced that the Romanian Chamber of Deputies had voted to repeal article 200. He gave an assurance that the Senate would have completed the repeal of article 200 by the time of the next session of the Assembly in September.

We are very concerned to note that this assurance has not been met. This is a pattern of failure to meet international commitments in respect of the repeal of article 200 which goes back over many years and which is very damaging to Romania's human rights reputation.

Indeed only last week the European Parliament again addressed this question. In its report on the accession of Romania, it welcomed the attempts of the Romanian Government to abolish oppressive legislation regarding sexual minorities, but stressed to Romanian legislators that basic human rights would at no point be open to

negotiation.

ILGA-Europe requests the members of the Romanian Senate to proceed with the repeal of Article 200 as a matter of urgency.

ILGA-Europe will monitor developments closely, and will ensure that relevant parties at both the European Union and the Council of Europe are advised, should Article 200 not be repealed during the current parliamentary session.

Executive Board of ILGA-Europe

Bucharest, October 8, 2000

G. Opening Plenary. Minutes of First Session.

Minutes

Plenary Session: Opening Session

Chair: T. Greif (ILGA-Europe Board) & A. Coman (ACCEPT) Date: 5/10/2000

Minute Taker: Pierre Noël

1. Tatjana Greif welcomed the participants to the Annual Conference of ILGA-Europe and underlined the particular relevance of the event in the Romanian context.
2. Florin Buhuceanu (President of ACCEPT) welcomed the participants on behalf of ACCEPT, the host organisation. He underlined that the European Regional Conference, which was an annual activity for ILGA-Europe, meant a lot in a country where the rights of sexual minorities were not complied with despite protection guaranteed in the Constitution for the freedom of expression and the right of association, and where the current Penal Code still discriminated against sexual minorities. The presence of ILGA-Europe in Bucharest was a token of solidarity with all Romanian citizens belonging to sexual minorities and a reaffirmation of its constant concern for the fundamental issue of human rights. Florin reiterated the invitation made to the Romanian President, Emil Constantinescu, that he accept the patronage of the Conference and demonstrate leadership in being the President of ALL Romanians.
3. Kursad Kahramanoglu, Co-Secretary General of ILGA, along with Phumi Mtetwa, of South-Africa, who sent her greetings and wishes of success to the Conference, told the participants about ILGA: it was the only global lesbian, gay, bisexual and transgender (lgbt), in existence for now 23 years, with more than 500 members and organised in six regions, of which ILGA-Europe was one. A lot of the work that ILGA did consisted in lobbying at the level of the European Union, the Council of Europe and the United Nations, and in supporting affiliate organisations like ACCEPT. This is why it was so important that ILGA have conferences in countries like Romania. Many people would think that Europe was this wonderful place, but they forgot that in some parts of the continent, lgbt people were often ill-treated. If Romania wanted to be part of Europe in the 21st century, it could not afford to discriminate lgbt people. It should be noted however that a country like the UK did not have yet an anti-discrimination law and that a country like The Netherlands may have a longer tradition of

equality, but it had to promote equality in the rest of Europe. ILGA had something to say to everybody! Moreover, being a gay man, one could not be content with fighting for the emancipation of gay men. Lesbians, gays, bisexuals and transgender people had to work together. Beyond that, lgbt people had to fight for a world where ALL kinds of human rights violations would disappear. The phrase "zero tolerance" normally used in other contexts could apply here.

In trade union activities, which was Kursad's background, "an injury to one is an injury to all". This applied across the various discrimination grounds and across the various geographical countries and regions of the world. Kursad expressed confidence that the next time he would come to Romania, it would be a better place to live for lgbt people.

4. Sigrid Lukoschus spoke on behalf of the Heinrich-Böhl Foundation and introduced her colleagues who would also attend the Conference: Kurt Klotzle, Michael Walther and Julia Scherf.

The HB Foundation was a "political" foundation, which meant in the German context that it was linked to a political party (in this case, the Green Party). Its task was to contribute to civic education and its main fields of interest were ecology, democracy, solidarity and non violence. For this purpose, it provided encouragement and support to individuals and groups throughout the world sharing the same objectives. That was the reason why it got involved in the ACCEPTing Diversity Conference.

Adrian Coman thanked the Foundation for its sponsorship, which had it made possible to fund more scholarships for participants from Central and Eastern Europe.

5. Valerian Stan, Vice-President of the Romanian Helsinki Committee (RHC), delivered a message of friendship and solidarity to the Conference.

He described the contradictions in the attitude shown by Romania towards sexual minorities. There was still a lot of hostility from politicians, media and public opinion. After the Sidney games, a prestigious Romanian weekly had even written that the Olympic Games had been killed twice: by the anti-doping measures and by the gay parade. As for politicians, most would be vocal in public against homosexuals, because they thought it would bring them political profit. However, the Romanian Constitution clearly guaranteed protection of privacy. More recently, an ordinance had been adopted which prohibited any discrimination, including discrimination based on sexual orientation, while infamous article 200 had still to be repealed.

As a result of this situation, Romania appeared in an unfavourable light since it did not comply with its own commitments under international treaties, such as the European Convention on Human Rights, and with Resolution 1123 of the Parliamentary Assembly of the Council of Europe.

The Romanian Helsinki Committee had taken numerous steps since 1993 to obtain that same sex relations and association of people of the same sex be decriminalised in the Penal Code, and had campaigned for the adoption of the ordinance prohibiting all forms of discrimination. After the Chamber of Deputies had voted in June for the repeal of article 200, the RHC had addressed the Senate once more, requesting a vote that would truly follow up on the vote of the deputies.

Adrian Coman said the solidarity shown by the RHC testified to some change in Romanian society and thanked the RHC, as well as various bodies that supported ACCEPT: the Open Society Institute (OSI) in Budapest, the Population Services International (US), COC Netherlands and the Dutch Embassy to Bucharest.

6. Greetings to the Conference were received from the following people, who all expressed regret for not being able to attend:

- Steffen Jensen and Alberto Volpato, both members of the Executive Board of ILGA-Europe;
- Claudia Roth, former member of the European Parliament (MEP), currently German MP (for the Green Party) and Chairman of the Human Rights Committee at the Bundestag;

- Volker Beck, German MP (for the Green Party);
- Matthias Eorsi, Hungarian MP;
- Csaba Tabajdi, Hungarian MEP;
- Michael Cashman, founder of the UK organisation Stonewall and UK MEP;
- Arie Oostlander, Dutch MEP;
- Ieke Van Der Burg, Dutch MEP.

Thanks were addressed to the diplomatic missions in Bucharest that showed interest for the Conference, i.e. missions of Germany and the United States. The US embassy was represented at the opening session.

7. The Conference appointed the three following participants as members of the Chairing Pool: Anke Hintjens, Andriy Kravchuk and Erwin Kunnen. Carola Towle and Ineke Huyser were appointed as reserve. The three members of the Chairing Pool appointed by the Executive Board were Isabelle Cruette, Alina Nistor and Nigel Warner.

Appointment of election officers: Ernst Strohmayer and Natasa Velikonja were appointed.

H. Opening Plenary. Minutes of Second Session.

Notes

Plenary Session: Second Session

Chairpersons: Isabelle CRUETTE and Erwin KUNNEN

Date: Thurs. 6 Oct. 2000

Minute Taker: Cathal KELLY

1 Board Report

NOTED: Kurt KRICKLER presented sections A, B, C, and D of the *Activity Report of the ILGA-Europe Executive Board 1999/2000 (24 October 1999 – 3 October 2000)*. He noted that the following points were in addition to those in the written report that had been circulated before the Conference.

Section D2:

The European Parliament voted on the draft Employment Directive on 4 October 2000 and the Council is due to vote on it on 17 October 2000.

Section D6:

The European Union's draft Charter of Fundamental Rights is now due to be finalised by the end of the year.

Section D7:

The European Parliament's *Equal Rights for Gays and Lesbians Intergroup* has not been re-established.

Section D7:

ILGA-Europe lobbied Members of the European Parliament on the report on the accession countries.

NOTED: Nico BEGER presented sections E and F of the *Activity Report*. She noted that the reports of the Parliamentary Assembly of the Council of Europe referred to in the *Activity Report* were supplied to delegates. She asked the conference to note the valuable contribution of Dr. Robert WINTEMUTE in ILGA-Europe's work in the preparation of these reports.

NOTED: Jackie LEWIS presented sections H, I, J, and K of the *Activity Report*. She noted that the following points were in addition to those in the written report that had been circulated before the Conference.

Section H2:

Recent developments would seem to indicate that the proposal to the US court is unlikely to be accepted.

Section K:

It had not been possible to list the names of every individual who had assisted the Board in its work in the last year, but the Board wished to take advantage of the opportunity to acknowledge the valuable contributions made by many people.

2 Retiring Board Members

NOTED: Nico BEGER “introduced” retiring Board members Alberto VOLPATO and Steffen JENSEN *in absentia*. She outlined their valuable work for ILGA-Europe.

AGREED: Nico BEGER was mandated by the Conference to send greetings and expressions of gratitude to both Alberto VOLPATO and Steffen JENSEN during the course of the Conference.

3 Board Report, Accounts, Budget, and Auditor for 2001

NOTED: Kurt KRICKLER presented Section G of the *Activity Report* and the audited accounts for 1999, the audited project account, the unaudited accounts showing developments in the finances to the end of July 2000, the proposed budget for 2001.

Audited accounts:

Kurt KRICKLER noted [that] the amount shown in the accounts for travel significantly understated the real amounts spent on travel as other amounts were paid for by the “home” organisations of some board members and by the Platform of European Social NGO's.

AGREED: The audited accounts were approved.

Proposed budget 2000:

Kurt KRICKLER noted that, since the proposed budget had been mailed to the delegates, ILGA-Europe had been informed by the European Commission that ILGA-Europe had been selected as a European NGO, that was to receive core funding. He noted that this means ILGA-Europe will need to raise Euro 60 000.

Election of Auditor:

AGREED: The following motion was proposed by Kurt KRICKLER and approved without opposition: “As ILGA-Europe is to receive core funding from the European Commission, it will be necessary to hire an auditing firm in Brussels. Therefore, the Board is mandated to hire a firm for this purpose”.

4 Elections and Election Officers

AGREED: That Nataša VELIKONJA and Ernst STROHMEYER be appointed election officers for the Conference.

NOTED: Erwin KUNNEN, co-chairperson of the Plenary Session, reported that the following were elected to the ILGA-Europe Board as they were the only validly nominated candidates who had agreed to stand for election by the close of nominations.

- Women's seats: Nico BEGER, Isabelle CRUETTE, Tatjana GREIF, and Jackie LEWIS;
- Men's seats: Adrian COMAN, Kurt KRICKLER, and Nigel WARNER.

NOTED: He reported that the following were elected to the ILGA (World) Board, as they were the only validly nominated candidates who had agreed to stand for election by the close of nominations.

- Woman's seat: Jackie LEWIS;
- Man's seat: Pierre NOËL.

NOTED: That the following vacancies exist for election of the Conference and nominations were invited.

- One man's seat on the Board of ILGA-Europe;
- Reserve women's and men's seats on the Board of ILGA-Europe;
- Reserve women and men's seats on the Board of ILGA (World).

Nomination forms will be distributed and must be submitted to Ernst STROHMEYER by 13:00 on Saturday 7th October 2000.

5 Conference Venues for 2001 and 2002

NOTED: Erwin KUNNEN, co-chairperson of the plenary session, asked organisations wishing to host the ILGA-Europe Conferences in 2001 and 2002 to contact members of the chairing pool. It is believed that there will be bids for the 2001 Conference to be held in Lisbon and Rotterdam. The decision on the venues of 2001 and 2002 will be taken on Sunday at the Plenary Session.

6 Conference Programme and Presentation of Proposals

NOTED: Jackie LEWIS outlined documents that had been supplied to participants. Nigel WARNER outlined the types of workshops that are to take place at the Conference.

NOTED: Nigel WARNER reported that the Board will consult ACCEPT about the possibility of bringing a motion before the final plenary, mandating ILGA-Europe to write to the Romanian Government, objecting to the failure of Romania to repeal Article 200 of the Penal Code, in accordance with Romania's commitment to the Council of Europe.

I. Closing Plenary. Minutes of First Session

Minutes

Plenary Session: Final Plenary - First Session, 8 October 2000

Chairwoman/man: C. Towle & E. Kunnen

Minute Taker: Raymond Brown

1 MINUTE OF THE OPENING PLENARY

Approved.

2 MINUTE OF SECOND PLENARY

Approved.

3 PROPOSED WORK PROGRAMME

Approved.

4 TRADE UNION CAUCUS RECOMMENDATION

a) The caucus endorsed the proposals made at the ILGA World conference which re-affirmed ILGA's commitment to trade union work.

b) To note that a preparatory conference is proposed to be held in 2001 in advance of the second Trade Unions & Homosexuality conference to be held in Sydney, Australia in 2002.

5 ACTIVITY REPORT 1999/2000

Accepted.

6 WORK PROGRAMME

Endorsed (noting the workshop recommendations).

7 STANDING ORDERS

Proposal Agreed.

8 ILGA EUROPE 1 WORKSHOP

Proposal Agreed.

9 BUDGET

Approved.

10 VENUE OF NEXT CONFERENCE

Applications were received from Rotterdam, The Netherlands and Lisbon, Portugal. Both host organisations gave an informative presentation. They had mutually agreed beforehand that Rotterdam would host the conference in 2001 and Lisbon in 2002.

The host organisation from Rotterdam agreed to make written representations to officials in Lisbon. Before the next conference they will contact all ILGA members in The Netherlands and would be working with other NGO's who are involved in lesbian and gay rights.

The theme of the next conference will be [related to] partnerships since the new law will be enforced in The Netherlands by the time of the next conference.

11 ELECTIONS

ILGA Europe:

Male Seat - One Nomination - Alessio de Giorgi - ELECTED.

Reserve Seat - One Nomination – Juris Lavrikovs

Women's Reserve Seat - Two Nominations - Alina Nistor and Anke Hintjens - Alina Nistor - ELECTED.

ILGA World:

Male Reserve Seat - One Nomination - Yves De Matteis - ELECTED.

Women's Reserve Seat - Two Nominations - Alina Nistor and Anke Hintjens - Alina Nistor - ELECTED.

12 NEW ILGA-EUROPE BOARD

Jackie Lewis, Kurt Krickler, Tatjana Greif, Adrian Coman, Nico Beger, Isabelle Cruette, Nigel Warner and Alessio de Giorgi.

13 ANY OTHER COMPETENT BUSINESS

a) The Conference endorsed a letter from ILGA Europe to the Romanian Parliament with regard to the repeal of Article 200 of the Penal Code.

b) The Conference accepted the principle of ILGA Europe writing to the German Government relating to partnership laws once the Board had received the text of the letter.

14 CLOSING REMARKS

A vote of thanks was delivered to all conference organisers, participants, sponsors and facilitators.

J. Closing Plenary. Minutes of Second Session

Minutes

Plenary Session: Final Plenary - Second Session, 8 October 2000

Chairwoman/man: Alina Nistor, Nigel Warner

Minute Taker: Cathal Kelly

1 Outcome of election

NOTED: Ernst STROHMEYER reported. Thirty-six votes had been cast. Two were spoiled, leaving 34 valid votes, which showed that Alina NISTOR, ACCEPT (Romania), had received 21 votes and Anke Hintjens, Federatie Werkgroepen Homoseksualiteit (Belgium), had received 13 votes. Alina was therefore elected first reserve member and Anke Hintjens second reserve member.

2 New Board

NOTED: The membership of the new board was formally announced:

Jackie LEWIS

Kurt KRICKLER

Tatjana GREIF

Adrian COMAN

Nico BEGER

Isabelle CRUETTE

Nigel WARNER

Alessio DE GIORGI

The first female and male reserves are Alina Nistor and Juris Lavrikovs.

3 Letter to Romanian Senate

NOTED: Nigel WARNER read the text of a proposed letter from the conference to the President of the Romanian Senate, which the Board had drafted. The letter expressed concern at the Senate's failure to approve the proposed change to Article 200 of the Romanian Penal Code, and noted that Romania was in breach of the commitment it had made to change this law when it joined the Council of Europe.

AGREED: It was agreed by acclaim that the letter should be sent.

4 Letter to the German Government

NOTED: Nico BEGER read the main points of a letter to the German government on the proposed

partnership law in Germany.

AGREED: It was agreed that the letter should be sent.

5 Change of Board

The outgoing Board took over the chair of the session from the members of the chairing pool.

NOTED: Jackie LEWIS and Kurt KRICKLER expressed thanks on behalf of all conference participants to the following:

- workshop presenters and experts
- panellists in the keynote and panel discussion
- interpreters at the panel discussions and whispered interpreters throughout the duration of the conference, notably in Russian
- workshop facilitators and minute and note takers
- election officers
- voting card issuers
- the Heinrich Böll Foundation and the Astraea Foundation
- Kurt Klotzle and Sigrid Lukoschus of the Heinrich Böll Foundation for the contributions.

NOTED: Speaking from the body of the hall, Alexander MODINOS thanked the conference organisers.

NOTED: Adrian COMAN on behalf of ACCEPT thanked Ernst STROHMEYER and Jason WRIGHT for their work in helping ACCEPT organise the conference. He thanked USA Peace Corps volunteers, Astraea, the Heinrich Böll Foundation, Population Services International, and the Open Society Institute which had contributed to the conference through funding and support for scholarships.

NOTED: Alina NISTOR and Florin BUHUNEANU presented the conference flag to Ineke HUYSER and Onno HOES of COC, the Netherlands, who will host the 23rd European Conference of ILGA Europe, in Rotterdam.

NOTED: The new Board moved to the top table and were presented to the Conference.

The conference closed with a song.

PANEL DISCUSSIONS

K. EU Keynote Panel Discussion – Minutes

Minutes

EU Keynote Panel discussion

Chairperson: Monica MACOVEI, Romanian Helsinki Committee
Oct. 2000

Date: Sat. 7

Minute Taker: Cathal KELLY

Panellists:

Giampiero ALHADEFF, President, Platform of European Social NGO's and Secretary General of SOLIDAR;

Boris DITTRICH, Member of Parliament for The Netherlands Democraten 66 (Social Liberal) Party;

Joke SWIEBEL, Member of the European Parliament for the Labour Party of The Netherlands;

Hein VERKERK, Senior advisor to the Green Party in the European Parliament and Secretary of the European Parliament Intergroup on Equality for Lesbians and Gay Men

1 Heinrich Böll Foundation

Monica MACOVEI introduced Julia SCHERF of the Heinrich Böll Foundation, who outlined the work of the Foundation.

Julia SCHREF explained that the Foundation has three main areas of activity in which lesbians and gay rights play a central role: gender democracy, international human rights and globalisation.

3 Message from Polish Parliamentarians

Julia SCHERF reported that Joanna SOSNOWSKA and Piotr GADZINOWSKI, members of the Parliament of Poland had written to the conference expressing regrets for their non-attendance. They have submitted a written contribution for the panel discussion, which has been circulated to all delegates.

3 Representative from the Romanian Parliament

Monica MACOVEI welcomed to the conference Laurentiu GHEORGHIU, of the Human Rights Committee within the Romanian Chamber of Deputies. She noted he was the only official from Romania to attend the conference. He was applauded by the conference. Mr. GHEORGHIU thanked the conference for its welcome to him.

4 Panel discussion

Monica MACOVEI introduced the panellists to the delegates.

Hein VERKERK conveyed apologies from Mercedes ECHERER, Member of the European Parliament for the Green Party of Austria. Childcare arrangements had prevented her from travelling.

Giampiero ALHADEFF reported that yesterday he had attended a series of meetings with trade unions, politicians, and NGO's in Bucharest. The 'hot news' in all of his meetings had been the presence of ILGA-Europe in Bucharest and that Romanian society recognised the significance of the conference for lesbian and gay people in Romania and for ACCEPT.

Giampiero ALHADEFF said the introduction of Article 13 in the EC Treaty was only the beginning of the work to end discrimination in Europe, and we will push back the boundaries of bigotry if we work together with organisations representing people with disabilities, ethnic minorities, migrants, older people, and so on.

Joke SWIEBEL outlined the two major political features of Article 13 in the work for equality for gay people in the EU. It established that gay and lesbian rights are not something special but are an integral part of the discourse on human rights. At a practical level it does not forbid discrimination, but gives the Council the power to do this. The huge majority across the political spectrum in the European Parliament in the vote of the directives shows that there is huge political support for equality.

Hein VERKERK pointed out that the reason the Commission had introduced the Action Programme was to

underline the fact that the EU is more than an economic project. The debate on Article 13 during the Amsterdam Treaty negotiations was at the core of making the EU a human project. The Action Programme was added to the package to tackle the political atmosphere that allowed the Article 13 directives to have different levels of protection. There should be no hierarchy in discrimination.

ILGA members must work with other organisations in making proposals. Finnish, Italian, and Irish lgbt organisations and ILGA-Europe have already done this in the preparatory action programme.

This is the first EU action programme that NGO's from applicant countries can take part in. During the debate, the Parliament had stressed this fact and the Commissioner DIAMANTOPOLOU had also stressed this fact.

Giampiero ALHADEFF said there had been frustration that the directive on non-discrimination in areas other than employment had covered only one ground – race. Getting an anti-discrimination law on all of the other grounds is now work in progress.

He spoke about the Draft Charter of Fundamental Rights. When it was first proposed in 1998, the Platform, SOLIDAR, and the European Trade Union Congress thought it would longer to get to the stage it is now at. Some people have expressed concern because it will not be legally binding, but it is clear from legal advice received by the UK government that it will be of huge influence.

Joke SWIEBEL said that on enlargement of the EU there are two strategies to be used together to get progress on equality. First is the issue of human rights. Enlargement is dependent on applicant countries meeting the Copenhagen criteria. The debate in the European Parliament this week had noted that the situation in Romania was not satisfactory. However there are reports on other accession countries that said nothing. Much work needs to be done by both MEPs and by ILGA and its members. The second strategy is to use the “*acquis communautaire*” of the EU – the body of laws and the rulings in the Court of Justice – that *must* be implemented in each applicant country when it becomes a member state.

Monica MACOVEI said that in Romania there is public debate about Article 200. The Orthodox Church is acting primitively. It is not acting for human rights and freedoms. Some parliamentarians say when Article 200 is raised that there are more important things to discuss, such as corruption and privatisation. We need to find a way to insist that human rights come first.

Boris DITTRICH said it is important that members of national parliaments work with MEPs. NGO's should make contributions on these issues. If there is no discussions, members of parliaments in the 15 countries will not pay as much attention as they should.

He also said that in the Netherlands there had been strong criticism because the draft directives did not go far enough. Lobbying national members of parliament is important because it can make national laws implementing the directives stronger than the first drafts.

Giampiero ALHADEFF said it is important to note that the enlargement process is an exciting adventure. It is important for the peace, stability, and for the wealth of Europe. It is important not to scare the applicant countries. In the UK 13 years ago, when he was a teacher, gay teachers just could not come out. Now there are a number of openly gay members of the UK government. This illustrates that when we as activists come out we have nothing to fear.

Alexandros MODINOS asked how this message is passed to a little country like Cyprus where

homosexuality is taboo. Members of Parliament all walked out when the law reform was being debated rather than stay to take part in the debate on this subject. Other NGO's have privately supported the law reform, but they won't say so publicly.

Boris DITTRICH said the most important thing to do is to remind politicians that if they want Cyprus to join the EU, then the country must have certain standards.

Joke SWIEBEL said Cyprus gives a practical example of how the "naming and shaming" works. Civil servants and diplomats from applicant countries know their countries are being named and shamed. Some years ago she received a phone call from a Cypriot about a paragraph in a report for the European Parliament that she had written. It was critical of Cyprus, which had made some changes to its law but had not really reformed it at that time. The situation was the reverse of what normally happens: usually the MEPs are the ones who contact and lobby diplomats from applicant countries. In this case, the diplomat was the person lobbying the MEP. This shows that the reports are noted in applicant countries.

Hein VERKERK added one element. The EU is not a grey or black uniform entity. It is about diversity. Many people in the EU still must discover this. We can make clear to bigots – in Cyprus and in the EU, like Ian Paisley in the European Parliament – that we stand against them. The EU can succeed only if we show we are diverse.

Kurt KRICKLER asked about naming and shaming countries that are already member states of the EU. The EU must also bring its own house in order and failed to do this earlier this year in the case of Austria. Today there are more people in prison in Austria for being gay than there are in all of the accession countries put together. The "Three wise men" could have done something about this, but they didn't.

Joke SWIEBEL agreed with Kurt KRICKLER. However, it is never too late for a country to put its house in order. With existing EU legislation there is no way of discussing human rights problems like those in Austria. Article 7 of the Treaty allows the EU to deal with serious breakdown in law and order – revolution in the streets, for example. The Intergovernmental Conference is due to discuss proposals on ways of allowing the EU to deal with less serious breaches than the complete breakdown of law and order.

Giampiero ALHADEFF SAID THE Action Programme is important here, as it allows NGO's to do work in raising awareness. Much prejudice is based in ignorance. We need to see mainstreaming on all grounds like we have seen on gender anti-discrimination.

Jan Willem DE JONG asked if anything can be done about the UN. ILGA is recognised as an NGO by the EU and by the Council of Europe, but not by the UN.

Hein VERKERK said Kofi ANNAN had visited the European Parliament earlier this week. One of the items discussed was how the European Parliament and the EU can change their relationship with the UN. The problem is not the UN but the USA and Senator Jesse HELMS.

Monica MACOVEI said the Romania Helsinki Committee defends the human rights of all people. She wanted to speak about the press coverage of the conference. Some journalists should realise that in a democratic society they cannot be true journalists if they act as anti-gay lobbyists. If the media wants to be respected as a watchdog in a democratic society, it must work from principles. Romanians do not want to hear the personal opinions of the journalists taking the place of news.

L. Registered Partnership Panel – Latvia: Partnership Law (by Juris Lavrikovs), Germany: Registered Partnership (by Nico Beger)

Discussion on recent experience with registered partnership.

The panellists were introduced by Ineke Huijser and Andriy Kravchuk from the chairing pool:

Panel moderator: Boris Dittrich, Member of Parliament in the Netherlands.

Anke Hintjens, Belgian gay and lesbian group FWH

Nico Beger, member of the German Green Party

Juris Lavrikovs, President of the Latvian gay and lesbian group

Jan Paul Pouliquen, Worker in the European Parliament and ‘father’ of the French PACS

The panellists gave a speech on the situation of or the process and strategy towards partnership laws.

Dutch situation, by Boris Dittrich.

Since 1997 the registered partnership law is in effect. A registration in city hall with almost the same rights as married couples. In the years before couples were already registering on a list in the municipalities, which had a big effect on the speed of the introduction of partnership laws, but which didn't have any legal consequences. In summer 2000 the Dutch parliament has adopted the bill to open civil marriage for same sex couples, granting gay and lesbian couples the same rights as heterosexual married couples. The law will pass the second chamber, and will be in effect from January 1st 2001.

Latvian process, by Juris Lavrikovs.

In 1998 the Human Rights Office asked to make a survey on the European situation and the Latvian legal situation for gays and lesbians. The main result was there was unequal treatment and quite wide spread discrimination. A proposal was made for a partnership law and an anti-discrimination proposal. In 1999 the proposal was sent to parliament who did not know how to deal with it. After extensive consultation the bill was not been put to parliament. It will not stop here. there has been a lot of progress made in the way up to now. A new proposal will be put forward through the Human Rights Office.

Useful strategies have been: using high profiled people to openly support the case, provide information and do research for parliamentarians who will not get their information themselves, show discrete examples of discrimination to the media (like problems with rent) not only the issue of partnerships.

German process, by Nico Beger.

In 1985 same sex acts were still punishable in Germany under paragraph 175, the only law strengthened during the Nazi-regime that has not been altered. These last years a lot of couples have gone to city hall to get ‘listed’ as an symbolic gesture to show the need for a partnership law (as in the Netherlands).

In 1998 the new Socialist/Green Party coalition took partnership law on in their program. After some diverting steps by the Justice minister, the parliament still wanted changes to the proposal. Although there is significant opposition, hopes are that mid 2001 the first registrations will be signed.

There are a few possible hindrances; the proposal might be challenged until the constitutional court (but will probably be won), the Bundesrat (senate) is still very conservative, the Minister of Internal Affairs, important for the proposal, is not very supportive of the plan.

The Belgian strategy, by Anke Hintjens.

The ultimate goal is opening of civil marriage, and all the law to be the same for hetero- and homosexuals. If you choose the partnership laws, you still have not all the rights as heterosexuals. Last year the battle for cohabitation rights was lost, now tactics have been changed.

Now nearly the same tactics as in NL and Germany are tried, first have symbolic 'marriages' in city halls and lots of media attention to these events.

In discussions the group of parents of gay and lesbian children have been of great support. They were considered as a serious partner in media discussions. There have been several court cases been brought forward which have been won (by the good side), which helped to enhance the support from society. Also in Belgium the new government does not consists of Christian-Democrats anymore, and have taken up the issue of opening civil marriage in their work program.

French process for the PACS, by Jan Paul Pouliquen.

Around 1980 activists in the French gay movement were already thinking on the issues. In 1990 Jan Paul was asked to form a working group to come up with a proposal for legislation for non-married couples. Because the problems that occurred did not have anything to do with the people's sexual orientation, but with the fact that they were not married. This broadened the scope of the PACS to every possible couple, homosexual, heterosexual, family relationships, or 'solidarity couples'.

Since 1982 France no longer has a law incriminating homosexuality. It was a big struggle to get the PACS passed. Not only was there a lot of resistance (listen carefully, I'm going to say this only once) from outside, but also within the gay and lesbian community there was no consensus on the issue. After long debates in Parliament, the law was adopted in 1999, and in November the first PACS were signed.

In the following (very short) discussion the issue of class and differences in access for poorer people was brought up. It must be considered before the laws will be in effect, like for example in Canada, changing the tax laws for lesbians proved to be disadvantaging lesbians with low income.

Robert Wintemute stated that you should get anti-discrimination law first and than go for a partnership law. Otherwise you might end up hearing, when you tell your boss that you married, 'Good for you, but you're fired.'

WORKSHOPS

M. EU Enlargement 1 – The Effects of the EU Conditionality on Human Rights – Nida Gelazis

Introduction

The protection of human rights and respect for national minorities appears at the top of the list of the European Union's (EU) accession criteria. While this reflects the EU's long-standing commitment to promoting human rights outside its borders, it is no easy task to legally determine the standard of human rights the EU will require applicant countries to meet prior to accession. EU accession demands that applicant countries exhibit the values shared by the member states.

Yet, the promotion and protection of human rights does not figure among the objectives listed in Article 2 of the Treaty on European Union (TEU).^[1] Although the European Court of Justice (ECJ) has been the leading institution for determining what EU rights are, it has restricted its decisions to cases in which EU laws raise human rights issues and has avoided imposing a European human rights standard on member states' actions.^[2]

Despite the lack of a clear human rights agenda, more than any other international organisation, the EU has made a clear impact on raising the standard of human rights in the Baltic States. This paper will address the EU accession process and, in particular, the disparity between the lack of an EU human rights agenda and the relatively high human rights conditions placed on the applicant countries. Furthermore, certain EU accession requirements reflect a higher standard of human rights protection than currently

practised by certain member states. It will be shown that despite this disparity, the Baltic States have made clear attempts to meet these criteria in a relatively short period of time. In conclusion, I will posit that by raising human rights accession criteria, the EU is attempting to build the foundation for increased political unity and the possibility of adopting an EU charter for human rights, which will raise the standard of human rights throughout Europe.

Human rights conditionality in EU enlargement

While conditionality is not a new international tool for influencing state behaviour, relative to other developing countries, this tool has strong potential for success in the Baltic States for at least two reasons. First, the Baltic States, like other post-communist countries, are in dire need of international finances to support reform - both political and economic. Second, the Baltic States have consistently asserted their "Western credentials" and the desire to return to Europe. This desire is prompted by the even greater desire to "leave" the East, that is, Russia's sphere of influence. Thus, even if there are significant cultural differences between the Baltic States and Western Europe, there is a strong incentive for these differences to be bridged in an effort to increase security.

Despite the Baltic States' relative willingness to go along with conditionality, the effectiveness of this tool is also dependent on donor states' and international institutions' treatment of conditionality. Peter Burnell has developed three questions for donors to ask themselves before offering aid for political changes:

First, are they [the donors] convinced the target groups in the aid-receiving world know and understand what the donors want, and why they want it? Second, do those groups display full confidence in the donors' qualifications to suggest such advice, and if not, would they be justified in developing such a confidence? Third, are there features of the operation of political conditionality which, in the reasonable estimation of friends, could actually impede the promotion of good government and democracy, and make these pursuits more vulnerable to the indifference and hostility of their detractors and enemies?^[3]

Burnell asserts that the strength and effectiveness of the conditionality tool depends on how it is used. In terms of the Baltic States, the relative strengths of international institutions to credibly employ the conditionality tool becomes quite clear. First, it would seem that those institutions in which the Baltic States are already members have less to offer in terms of conditionality. Indeed, the conditions placed on these countries by the United Nations (UN), the Council of Europe (CE) and the Organisation for Security and Co-operation in Europe (OSCE) have largely been met upon entry into the fold. Monitoring and helping to enforce treaty obligations would be their main vehicle for promoting change, although since the states under scrutiny are also equal voting partners, the rights-violating state has a greater advantage in arguing its case than effected groups within the state.^[4] Nevertheless, behind-the-scenes deals seem to be struck between institutions and violator-states through funding by third parties (either other member states or other international organisations), which seem to effectively place "helpful pressure" on problem countries.^[5]

At this point, the EU holds the most leverage in terms of placing human rights conditionality on the Baltic States, in view of their applications to join. In principle, the rules simple: apply the *acquis* and association agreements, and EU admission will be granted - failure to comply will delay admission and suspend aid. Previous EU enlargements also required acceding countries to make political and economic adjustments. But the conditions placed on the post-communist countries are higher than ever for two reasons. The rapid expansion of the EU's competence since the end of the Cold War and the social and economic devastation due to the soviet legacy in Eastern Europe have both contributed to widening the gap between East and Western Europe.

The three basic requirements for membership determined at the European Council meeting in Copenhagen are:

Y the applicant state must have achieved stability of institutions guaranteeing democracy, the rule of law,

human rights and respect for and protection of minorities;

ÿ the applicant state must have a functioning market economy with the capacity to cope with competitive pressures and market forces within the Community;

ÿ the applicant state must be able to take on the obligations of membership, including adherence to the aims of economic and political union.”^[6]

These seemingly straightforward criteria translate to over 80,000 pages of legislation that will need to be adopted prior to accession.^[7] The vast body of legislation derived from the *acquis communautaire* are presented as ‘objective criteria’ to be used to evaluate the ten post-communist applicant countries. The EU created these objective criteria in order to increase the transparency of the enlargement process and thus respond to allegations that it has shown favouritism to certain countries.^[8] Nevertheless, each of these countries face different challenges and are at different stages of their political and economic transitions. Thus, the complexity of the task potentially weakens the conditionality tool since the number of criteria is great, monitoring their implementation by the Commission is difficult and the return on the investment (accession to the EU) seems distant.

To address this weakness, the EU’s Agenda 2000 initiated a new strategy which reinforced the conditionality tool. First, those countries that had already progressed further in terms of political and economic development were grouped as “front-runners” in the enlargement process. The Czech Republic, Estonia, Hungary, Poland, and Slovenia were thus rewarded for their strides towards democratisation and market reform. This was a sizeable carrot to those included in the first wave and a prominent stick to those that were left out, which created incentives for slackers to speed up reforms. Next, through the Accession Partnerships, the EU created a separate strategy for each country, complete with short- and medium-term goals. Each step taken towards reaching these goals is accompanied by promises of financial assistance through PHARE and “catch-up” facilities, directly targeting specific reform measures, such as fighting corruption, rebuilding infrastructure, and promoting foreign investment. This was a significant step in assigning different weights to the huge body of criteria and adapting an enlargement strategy compatible with each country’s unique strengths and weaknesses.

So that there would be no question of its policy, the Council adopted Art. 4 of Regulation 622/98^[9] on March 16, 1998 which gives the Commission the power to suspend financial assistance if it deems that the country in question is not progressing quickly enough, or actually back-pedals in its progress towards adopting the *acquis*. Regulation 622/98 thus legally and institutionally enshrined the conditionality tool in the enlargement process.

Progress in keeping up with the short- and medium-term goals of the Accession Partnerships is documented in the Regular Reports by the Commission. Unlike the Agenda 2000 Opinions and the Accession Partnerships, the Reports are extremely detail-oriented summaries of the progress in meeting the accession criteria in each country, reflecting the problems met by reformers in each of the countries, as well as their achievements. As will be discussed below, the Reports allow the EU to make adjustments in its policies to each country depending on the rate of its progress in specific areas. Although the time-span between the adoption of the Agenda 2000 Opinions and the Regular Reports was scarcely more than one year, progress in the acceding countries has been clear, as was the EU’s shift in focus on certain rights. Thus, it seems probable that the EU’s standards and expectations will increase the better applicant countries perform.

Human rights in the European Union

Including requirements for human rights protection in the Association Agreements for EU accession is a practical tool for smooth integration of the post-communist democracies into the Union. Western Europe’s commitment to both free market principles and open, democratic societies necessitates that newcomers share and promote not only economic ideals, but also democratic ones - of which human rights protection are an integral part.

Despite their obvious significance, human rights remain a contentious issue within the EU, since each member state remains committed to its own unique constitutional and ideological tradition. The inclusion of human rights in the Treaty of the European Union (TEU) after the Maastricht and Amsterdam Intergovernmental Conferences represents a small triumph for the member states in overcoming their significant political differences in this field. The absence of rights in prior treaties was not a result of their indifference to human rights,^[10] but was due to their inability to decide which rights should be incorporated as guiding principles of the Union and at what standard and how they should be applied. In fact, Art. 13 of the TEU actually reflects the dissonance on human rights among the member states. It 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’ (emphasis added). The EU’s irresolute stance is symptomatic of its reticence to accept the responsibility of promoting human rights within its own borders.

The inability of the EU to create a Human Rights Agenda is another consequence of this dissonance. Article 6 of the TEU states the EU is ‘founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.’ The final part of that Article states that the ‘Union shall provide itself with the means necessary to attain its objectives and carry through its policies.’ Nevertheless, it has not yet introduced new mechanisms for carrying out its commitment to promoting rights.^[11]

The ECJ has been an important forum for the EU human rights debate. Human rights conflicts have touched on other important EU principles, such as supremacy, direct effect, and subsidiarity. Regularly, cases come before the Court that raise important human rights issues, but the ECJ has not been completely consistent in its approach to these questions. Instead, it’s decisions reflect a ‘push and pull’ process in which the Court is ‘at times [willing] to embrace the invitations of those actors [to review member state action under Community fundamental rights standards] and at other times, explicitly or implicitly has rejected them.’^[12] The oscillation of the Court stems from the ongoing power balance between the EU institutions, on the one hand, and between the EU and its member states, on the other. Thus the Court has joined that game as well, carefully balancing between protecting and increasing its sphere of competence, while carefully manoeuvring around delicate relationships with the national courts of the member states. An important observation has been made reflecting the Court’s interpretation of its competence concerning rights:

‘In its jurisprudence, the Court has articulated three critical constitutional principles which inform this field. The first affirms that ‘...respect for human rights is a condition of the lawfulness of Community acts.’ The second affirms that it is the positive duty of the institutions ‘...to ensure the observance of fundamental rights’. In other words, they are obligated not simply to refrain from violating them, but to ensure that they are observed within the respective constitutional roles played by each institution. Finally, the human rights jurisdiction of the Community extends only ‘...in the field of Community law.’^[13]

The groundwork for and active review of human rights in the EU and its member states has thus been laid down, though the ECJ has taken a strong human rights stance in only a few cases.^[14] For now, the role of enforcing and protecting human rights primarily falls on the shoulders of the member states, which only serves to reinforce the need to include human rights in the pre-accession criteria for EU membership.

Which rights are Necessary for EU Accession?

Determining what rights are essential for the creation of a common market and at which standard these rights must be protected has been a contentious issue with which the EU’s institutions have been grappling. At the same time, while the conditionality tool was seen as quite strong in the EU enlargement process, human

rights constitute only a subsection of the Political Criteria for EU accession. To complicate matters, the *acquis* are in the process of expanding: which means that the conditions for accession are in the process of changing as well.^[15] Moreover, the basic Copenhagen conditions are largely declarative^[16], allowing flexibility of interpretation and do not indicate at what standards these criteria will be judged. The tools used to measure progress and the standards applied in meeting the political and human rights criteria for accession are therefore highly subjective.^[17] In addition to any changes in criteria or evaluation standards that might come from the Commission, the European Parliament (EP) has taken decisions independently that may further expand the accession criteria.^[18] Although the EP's role in determining accession criteria is limited, it does vote on the accession of new member states, and therefore any decision it takes are plausible additions to the already numerous accession criteria.^[19] Therefore, evaluating which rights have been included in conditionality requirements for aspiring members, what standards are required, how human rights protection is measured, and how the EU will 'punish' those countries that do not comply with those conditions is somewhat problematic.

Putting these complicating factors aside, the TEU offers clues about the Commission's direction in terms of what rights are important to the EU. First, Article 6.2 of the TEU clearly states that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) shall be respected by the Union and ratification of the ECHR is part of the *acquis*. The Agenda 2000 cites this article as well, which indicates its importance as a tool for evaluating the protection of human rights in acceding countries.^[20] Nevertheless, the ECHR has been deemed by the ECJ as "insufficiently precise" to clearly address European rights and demand that they be implemented at a sufficiently high standard.^[21] This has been interpreted to mean that the ECJ considers the ECHR to set only a minimum standard for rights protection, and that the EU must provide a higher standard of protection to its citizens.^[22] The ECJ has often quoted the end of Art. 6.2 which stipulates that in addition to the ECHR the EU must respect rights "as they result from the constitutional traditions common to the Member States," which also implies a higher standard than that provided for in the ECHR. Thus, looking at the conventions to which applicant countries are a party is a necessary but insufficient indicator of their readiness to accede to the EU.

From the Agenda 2000 Opinions, Accession Partnerships, and Regular Reports, I have determined that the EU has focused on three types of rights. My groupings do not necessarily overlap with traditional classifications of rights, and would probably be clumsy if they were used in another context. Nevertheless, I use them here in order to shed light on the EU's motivations for including certain rights over others in its human rights policy in the candidate countries. The first group includes rights which are necessary to ensure democratic rule and open societies. These democracy guarantees include: access to justice, right to life, freedom against arbitrary arrest, right to privacy, freedom of association, freedom of expression, and freedom of assembly. These rights and freedoms form the basic requirements for democracy: the right to organise politically and participate in the political process without repercussions. If these rights and freedoms are in place and function properly, then there are no impediments for the society to create and protect a shared system of values. For the EU, this category of rights is essential first of all for its symbolic significance: democracy is a *European* value and is indeed one of the unifying factors of the alliance. But the second reason for including them in the pre-accession criteria is because currently the EU can do little to influence human rights standards in the actions of member states.^[23] Therefore, securing the framework necessary to help develop a national commitment to human rights is essential for any EU member state. This class of rights seem to stem from Art. 177.2 of the TEU, which stipulates that "Community policy in this area [development co-operation] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms." It is also consistent with the requirements for accession in previous enlargements.^[24]

There is little resistance to raising the standards of this group of rights in the applicant countries. After all, it was the absence of such rights which drove the anti-Communist campaigns of the late 1980s.

Nevertheless, protecting these rights is not unproblematic, first of all because of the weak civil society in these countries and second because one of the legacies of the soviet regime is the knee-jerk reaction of strengthening the state in order to regain control over unruly social elements (i.e., organised crime).

The second group of rights required by the EU is counter-majoritarian rights. This group includes: protection and non-discrimination of ethnic minorities, non-citizens, asylum seekers, and children, and freedom of religion. For the most part, the Accession Partnerships' Political Criteria are silent on women's rights and non-discrimination due to race, gender, disability, religion, age, or sexual orientation,^[25] which is a clear EU policy. Yet, the Accession Partnerships clearly specify the demand that applicant countries sign and ratify the Framework Convention for the Protection of National Minorities (FCPNM). The FCPNM seems to be important since attitudes towards minorities and foreigners have important consequences in foreign policy and security. The Common Foreign and Security Policy sections of the Opinions concentrate on revealing the applicant countries' good relations with their neighbours which can be destroyed easily by ill-treatment of that neighbour's é migré groups.^[26] It may also be an indication of how receptive these countries will be to the free movement of workers and capital after accession.^[27]

This group of rights is somewhat more difficult to sell in post-communist societies, judging from the rise of nationalism and ethnic discrimination throughout the region. Although all three constitutions of the Baltic States now have clear provisions that promote and protect the rights of national minorities, these protections have been shown as insufficient due to the limited power of their national institutions. Moreover, the parliamentary system has been the most favoured system of government throughout the region which, in combination with strong nationalism and weak civil society, can be a recipe for majoritarianism.^[28] Particularly in the Baltic States, where independence was fought for by arguing for national self-determination, and where Lithuanians, Latvians, and Estonians were viewed as second-class citizens by the Russian Diaspora, turning the other cheek and adopting liberal policies towards the Russian minority seems unlikely. Moreover, France and Belgium have not signed the Convention, which reflects these countries' ideological position in the general debate between valuing individual rights over group rights. In addition, the Netherlands, Greece and Portugal have failed to ratify this convention.

The final set of rights could be grouped as quality-of-life rights. I chose this title not because I believe these rights to be less important than others, but because the Commission itself decided to put environmental protection and health care under that title instead of placing them in the human rights section.^[29] I have added other rights (from the human rights section of the Opinions) to the quality of life rights because these rights have high price tags: the right to social security and minimum wage, education, humane prison, army, and refugee camp conditions. Also to this group I have included the right to property and the right to strike and form trade unions because they contribute to raising the quality of life in acceding countries to EU standards. These rights are primarily socio-economic rights, and form the building blocks for market economy building and smooth integration into the EU framework. They reflect the Union's overall objectives as they are derived from Art 2 of the TEU. Since most involve hefty government expenditures, it is doubtful that these countries would have developed clear policies in these fields so early in their economic transitions without EU intervention.

The Effect of EU Conditionality in the Baltic States

From the concluding paragraphs of each of the Opinions, it seems as though little needs to be done in each country to fulfil the political criteria (see Table X in the appendix). In Latvia and Estonia, it seems, minor adjustments need to be made to accommodate the Russian-speaking population. The Opinion on Lithuania on the other hand, would have us believe that Lithuania has already fulfilled the political criteria. These conclusions, however, are hardly compatible with the preceding paragraphs which raise many human rights concerns in each of the three categories or rights: democratic guarantees, counter-majoritarian rights, and quality-of-life rights.

The Commission's Opinion in the Agenda 2000 identified 14 human rights problems in Lithuania.

Five of these are problems within the category of democracy guarantees: inadequate legal recourse in the courts due to lengthy legal proceedings, shortage of lawyers, and absence of procedures for making police and other civil servants accountable for their actions; the second stems from the first and deals with the inadequacy of the state's attempts to prosecute alleged Nazi war criminals; existence of the death penalty; inadequate protection against arbitrary arrest; and inadequate right to privacy. In the category of counter-majoritarian rights, four problems were identified: although freedom of religion is guaranteed by law, there is inadequate protection against anti-Semitic acts; protection of children is lacking in terms of legislation against child pornography, child prostitution, and sexual abuse of children; though the rights of minorities are constitutionally guaranteed, special rules originally granted to ethnic minority parties for entering parliament have been scraped; and gender discrimination laws are not adequately implemented. Finally, in terms of quality-of-life rights, the Lithuanian government has unnecessarily complicated the procedures ensuring the right to strike; has not completed the land register which is necessary to assure the right to property; prison conditions are inhumane; the health care system needs serious reforms; and serious reforms are necessary in the area of environmental protection.

The Agenda 2000 Opinion on Latvia's application isolates 15 human rights breaches. Among these, two infringe on democracy guarantees: inadequate legal recourse and need to abolish the death penalty. Counter-majoritarian rights are the most problematic in Latvia. The eight problems identified in this category are: restriction on freedom of religion, inhumane and degrading conditions in asylum seekers' accommodation centres; inadequate protection of children; infringements of the rights of minorities to form collective groups; extremely restrictive right to citizenship; discrimination against non-citizens; ethnic minority discrimination; and non-implementation of gender anti-discrimination laws. Within the category of quality-of-life rights, the five problems focused on by the Commission were: restriction on property rights of non-citizens; inhumane prison and army conditions; and inadequate health care system and environmental protection.

In the case of Estonia, 10 human rights problems were identified in the Agenda 2000 Opinion. Breaches of democracy guarantees were identical to those identified in Latvia. Within the counter-majoritarian rights category, the four identified problems included: the lack of measures to promote the collective rights of ethnic minorities; overly-restrictive citizenship laws; discrimination against non-citizens; and gender anti-discrimination laws are not implemented. Finally, the four problems identified in the quality-of-life category were: restrictions of the right to property; inhumane prison conditions; inadequate health care system; and the need to bolster environmental protection.

While the Agenda 2000 was successful in exploring the unique problems of each of the applicant countries and their specific contexts, the Accession Partnerships seem to indicate a return by the Commission to promoting uniform "objective criteria" in each of the three countries. The Commission's concentration on a small set of rights seems to reflect their greater significance in the EU context relative to the other rights problems presented in the Opinions. The Accession Partnerships required all three countries to improve border management and the conditions of refugee reception facilities; improve the operation of the judicial system, implement migration policy and asylum procedures, fight against organised crime including trafficking of human beings, enforce equal opportunities between women and men, improve public health standards, strengthen environmental protection measures, and continue raising the standard of the right to property. In the Latvian and Estonian cases, measures must also be taken to promote integration of national minorities and facilitate the naturalisation of non-citizen residents. An additional requirement was placed specifically on Estonia to reform its pension program. The Accession Partnerships indicate that the most important rights problems are in the fields of counter-majoritarian and quality-of-life rights, while no mention is made of problems in democracy guarantees. Nevertheless, the Partnerships reveal an interesting development in EU financial assistance in democracy projects which seems to show that there is still work to be done in that field. While had previously channelled a mere 1 percent of the PHARE budget to the Democracy Programme,^[30] the EU will increase PHARE assistance in institution building (which involves the strengthening of democratic institutions, rule of law, etc.) to 30 percent of the PHARE budget.

By contrast, the Regular Reports by the Commission not only continue to mention problems and developments in all three human rights categories, but the standard of evaluation of certain rights has actually been raised. This is best demonstrated in the Lithuanian case: in the Agenda 2000 Opinion, the position of asylum seekers was deemed to be satisfactory, while in the Regular Report, a detailed critique of foreigner registration centre conditions and refugee admission procedures appears. Another example of this is the Opinions' positive evaluation of the freedom of association in both Lithuania and Estonia on the one hand, and the Commission's comment that the NGO sectors in each country are not growing rapidly enough due to the low level of public information. However, if education of the public were to blame, it would hardly be logical to conclude that the public was better-educated in 1997 than in 1998 about associations and NGO's. Both examples show that the EU's standards of evaluation have increased.

But the most important revelation of the Regular Reports is the dramatic progress made by the applicant countries in responding to the criticisms of the Agenda 2000 Opinions. Perhaps the most impressive performance was given by Latvia. First, although it was not an explicit requirement by the EU, the Latvian Parliament adopted a constitutional amendment which incorporated a bill of rights in the Satversme (Constitution). Previously, the 'Rights and Duties of Citizens' existed as a regular law, with no method to check whether other legislation or state actions comply with it. Next, in spite of its controversial nature, the Parliament managed to adopt a new citizenship law which was subsequently upheld in a national referendum. As a result, the 'window system' (which differentiated by age those who could apply for citizenship every year) was abandoned and the naturalisation process was opened to all resident non-citizens. Also, modifications to the citizenship law were made to enable children born in Latvia to stateless parents to be granted citizenship and the procedures for naturalisation for people over the age of 65 were simplified. Moreover, the Latvian government responded to the Opinion's criticism of its discriminatory policies towards non-nationals by eliminating restrictions preventing non-citizens from working as fire-fighters, airline staff, pharmacists, and veterinary pharmacists and unemployment benefits will now be available to non-citizens without their having to present certificates that they know the Latvian language. Progress has also been demonstrated in other fields by new laws on asylum seekers and refugees, the start of prison reconstruction and modernisation projects, as well as ongoing implementation of environmental protection measures.

Lithuania has also demonstrated some progress in the weak areas identified in the Agenda 2000 Opinion. In response to the call for improvements of the judicial system, several administrative changes were instituted, the preventative detention law was replaced with a more liberal 'Law on Crime Prevention' which also includes clear guidelines regarding search and seizure which offer greater protection of the right to privacy, and another new law was introduced to increase the accountability of law enforcement and judicial officers. A law on the protection of children's rights was adopted - which is in line with the UN Convention on the Rights of the Child - and an Ombudsman for the protection of Children's rights was established. Another Ombudsman was established to oversee implementation of the gender anti-discrimination law.

Some improvements have been initiated in Estonia, although progress reports are coupled with further criticisms and improvement requirements, indicating a heightened standard of evaluation most likely due to Estonia's greater proximity to accession than the other two Baltic States. In March, 1998 the death penalty was abolished and Protocol 6 of the ECHR was ratified. Ongoing progress in the restructuring of the police and judiciary was recorded as well. But in the field of counter-majoritarian rights, little progress was demonstrated and it will remain to be seen if the EU will take any measures to punish Estonia's non-compliance at future stages of evaluation. For now, Estonia will still receive the same PHARE funding to promote human rights improvements as Lithuania and Latvia.

Despite the EU's many problems with creating a comprehensive human rights agenda, it has been able to create and effectively promote a human rights policy in the Baltic States through conditionality in three areas: democracy guarantees, counter-majoritarian measures, and quality-of-life rights. Even in the course of one year, the three Baltic States have shown dramatic efforts to respond to the specific criticisms and concerns elaborated in the Agenda 2000 Opinions. Moreover, it is important to note that since the

Agenda 2000, all three countries have signed and ratified the FCPNM. Perhaps the “stick” of being excluded from the first round of accession negotiations has prompted Lithuania and especially Latvia to push through reforms more quickly than Estonia. Nevertheless, all three countries have been issued a sizeable “carrot” to promote further development of human rights protections in the form of extensive PHARE aid devoted to human rights development programs.

The oscillation between the EU’s positive evaluation of the political and human rights criteria on the one hand, and its increasing standards for rights protection in the Baltic states seems to reflect the need for diplomacy when promoting human rights outside EU borders. This need stems from the weakness of the EU to influence - let alone harmonise - the standards of rights protection in its member states. Thus, by stating that Lithuania, for example, has fulfilled the political criteria, the EU covers itself from accusations of imposing a double standard. Nevertheless, critiques and requirements for improvements in the field of human rights continue and the standards of evaluation have actually risen with time and progress. Though highly speculative and difficult to prove, it is worth considering other effects of this policy. By demanding a high standard of protection and collectivisation of minority rights, might the EU also be provoking change in the UK, Belgium and France, where individual rights have priority?^[31] A better example is the demand that Latvia and Estonia simplify the procedures for granting citizenship to children born in the territory to non-citizen residents. Is it just coincidence that Germany recently adopted similar procedures as well? If there is a link, then the success of the enlargement project will be two-fold: not only will rights be promoted in the applicant countries in the East, but it might well influence member state behaviour as well.

If the EU is serious about its requirements to incorporate the stateless residents in Estonia and Latvia into their societies as citizens, there would be little to hold them back from signing the European Convention on Nationality, since the ‘toughest’ new standards included in that agreement are in line with their policies on granting long-time residents rights almost equal to those of citizens. This may in time compel countries with large resident-alien communities such as Germany to do the same. Moreover, if, for instance resident-alien communities residing in EU member states acquire limited political rights, such as the Russian community’s rights to vote in local elections in Narva, this may in turn lead to rethinking the concept of EU citizens and expanding EU citizenship to long-time residents - that is third country nationals, or at least granting them equal free-movement rights as enjoyed by EU citizens^[32].

The great success of the EU enlargement process in promoting change in the Baltic States’ policies, not only towards the Russian minority but also in terms of other human rights, stems from an effective use of conditionality. With the promise of accession, the Baltic States sought to remedy the condition of statelessness in their territories and abandoned discriminatory policies. Despite the fact that certain EU member states have not signed it, all three Baltic States have ratified the FCPNM. The fact that applicant countries are complying with relatively high human rights criteria prior to accession will surely raise the standard of human rights protection in the EU and create a foundation for the EU to step-up political integration and the adoption of a human rights agenda.

N. Enlargement 2 – Summary Workshop Paper – Nigel Warner

How to use the accession process to put forward LGBT rights in the accession countries

1. Introduction

The accession process provides a very powerful tool for persuading governments to tackle discrimination, as the current debate in Romania over the repeal of Article 200 demonstrates. The government of Romania was pushed into this by the Commission, which noted in its 1999 accession report on Romania that “the Romanian penal code has still to be brought in line with European standards on issues such as homosexuality”. But this is the only reference to sexual orientation discrimination in the accession reports so far.

2. The example of the Roma

The Roma have made systematic use of the accession negotiations. The Commission's 1999 accession reports for Hungary, Romania, the Czech Republic, Slovakia and Bulgaria all make extensive, often very critical, comments. They also comment on progress made since the previous report.

The human rights criteria give just as much protection to discrimination on grounds of sexual orientation as they do on grounds of race. LGBT organisations throughout the accession countries, working with ILGA Europe, must use this unique opportunity to push their governments to fight sexual orientation discrimination.

3. LGBT national organisations in accession countries need urgently to prepare report for Commission. Examples of discrimination, actions needed to provide more detailed information for report, and recommendations to include in any report are:

A. Government violations

1. Sexual Offences Law

Age of consent (Bulgaria, Cyprus, Estonia, Hungary, Lithuania, (Romania))

Other Discriminatory Provisions:

§ Bulgaria: Article 157 (4) CC makes same-sex sexual acts 'in a scandalous way or in a way to lure somebody else into the way of perversion' illegal (up to 2 years in prison). (Recent cases).

§ Cyprus bans "indecent behaviour or invitation or provocation or advertisement aimed at performing unnatural acts between males" where such actions are directed at those under 18.

§ Romania: Article 200 (unless repealed)

§ Several countries use discriminatory/homophobic terminology in their penal codes: Bulgaria ('the way of perversion'), Hungary ('unnatural perversity')

2. State Employment

a. Turkey bans lesbians and gays from military service.

b. Hungary: Ministry of Defence/Ministry of Health lists homosexuality among the "disturbances of personality,"

ACTION NEEDED: The above violations are all self-evident and serious. Activists should:

§ Identify any other examples

§ Obtain additional supporting information where useful (e.g. statistics of prosecutions, sentences, dismissals)

REPORT RECOMMENDATION: Abolition of discriminatory law/practice, immediate release of those imprisoned, compensation, withdrawal of offensive official documents.

B Violations by individuals in public and private spheres

1. Violent attacks

ACTION NEEDED: Concrete examples of violence and of police inactivity

Examples needed, giving as much detail as possible: where, when, what happened, etc. if possible in the victim's own words. Names can be withheld.

Collect examples through surveys/questionnaires, press reports, appeals in LGBT media and newsletters

REPORT RECOMMENDATION: examples: educational materials in schools to cover sexual minorities; police training to tackle homophobia; policing to provide specific protection for LGBT people; police/LGBT liaison committees; hate crimes legislation; code of conduct on hate language for media.

2. Employment

ACTION NEEDED: Concrete examples of individual cases of discrimination and harassment

§ Examples needed, giving as much detail as possible: where, when, what happened, etc. if possible in the victim's own words. Names can be withheld.

§ Collect examples through surveys/questionnaires, press reports, appeals in LGBT media and newsletters

REPORT RECOMMENDATION: anti-discrimination legislation; training programmes, codes of practice, disciplinary measures in the military, and other government services; professional bodies, trades unions and employers to adopt non-discrimination policies and procedures which deal with harassment and victimisation;

3. Other areas to look at

§ Discrimination in supply of goods and services

§ Education

§ Homophobic bullying in schools

4. Other information to provide

Homophobic statements by major political figures

ACTION NEEDED: Include in report, as a way of putting pressure on these politicians to stop extreme expressions of homophobia

Negative opinion poll results

Provide evidence of scale of problem

4. Process for achieving maximum effect

§ First year, produce report of human rights issues for each accession country – detailed cases + recommendations for action (national LGBT organisation with ILGA Europe help)

§ submit to Commission and accession country government within the review timetables of the accession process (national LGBT organisation)

§ lobby for the main findings to be included in the Parliament's annual human rights resolution (ILGA Europe)

§ publicise at the Council's annual Human Rights Forum (ILGA Europe)

§ Each year afterwards, for remainder of accession process: follow-up report, detailing additional discrimination and government action (or lack of action) (National LGBT organisation with ILGA Europe help)

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O. EU Other 1 (Employment Directive, Discrimination Action Programme, Charter of Fundamental Rights). The Employment Directive/Charter of Fundamental Rights – Robert Wintemute. Minutes of workshop.

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6 October 2000

I. EMPLOYMENT DIRECTIVE

A. Why the Employment Directive Is Needed

- 1957 - European Community Treaty, <http://europa.eu.int/eur-lex/en/treaties/index.html>, Article 141 (former Article 119, amended and renumbered in 1997 by Treaty of Amsterdam) - "equal pay for male and female workers"
- 1976 - Equal Treatment Directive, No. 76/207/EEC (9 Feb. 1976), http://europa.eu.int/eur-lex/en/lif/dat/1976/en_376L0207.html - "no discrimination ... on grounds of sex either directly or indirectly" in access to all jobs, access to vocational training, and working conditions (including conditions governing dismissal)
- 1996 - *P. v. S. and Cornwall County Council*, Case C-13/94, [1996] European Court Reports I-2143 - the Equal Treatment Directive prohibits "dismissal of a transsexual for a reason related to a gender reassignment"
- 1998 - *Grant v. Southwest Trains*, Case C-249/96, [1998] European Court Reports I-621, <http://europa.eu.int/cj/en/jurisp/index.htm>: discrimination against same-sex partners in relation to employment benefits (pay) is not sex discrimination contrary to Article 141, and "Community law as it stands at present does not cover discrimination based on sexual orientation"

B. The New EC Anti-Discrimination Competence

- 1997 - European Community Treaty, <http://europa.eu.int/eur-lex/en/treaties/index.html>, Article 13 (inserted by Treaty of Amsterdam, in force since 1 May 1999):

"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**."

C. The New Race Directive

- 2000 - Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal, Series L, No. 180, p. 22 (19 July 2000); Article 3 (Scope):

- (a) access to employment
- (b) access to vocational training
- (c) working conditions, including dismissals and pay
- (d) membership of organisations of workers or employers
- (e) social protection, including social security and healthcare
- (f) social advantages
- (g) education
- (h) access to goods and services available to the public, including housing

D. The Commission's Proposed Employment Directive

- Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation, Document COM (1999) 565 (25 Nov. 1999), http://europa.eu.int/eur-lex/en/com/dat/1999/en_599PC0565.html (includes Explanatory Memorandum), Official Journal, Series C, No. 177, p. 42 (27 June 2000)

1. Main Provisions of Directive

(References to "racial or ethnic origin" will be removed.)

Article 1 - Purpose

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of racial or ethnic origin, religion or belief, disability, age or **sexual orientation**.

Article 2 - Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination whatsoever between persons on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one person is treated less favourably than another is, has been or would be treated.

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice

is liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

3. Harassment of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.

Article 3 - Material scope

This Directive shall apply to:

- (a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of and involvement in an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Article 4 - Genuine occupational qualifications

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine occupational qualification.

2. Member States may provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the field of religion or belief with respect to education, information and the expression of opinions, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based on a relevant characteristic related to religion or belief shall not constitute discrimination where, by reason of the nature of these activities, the characteristic constitutes a genuine occupational qualification.

Article 6 - Positive action

This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.

Article 7 - Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

Article 8 - Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.
2. Member States shall ensure that associations, organisations or other legal entities may pursue any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant with his or her approval.

Article 13 - Compliance

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are declared null and void or are amended.

Article 14 - Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. ...

Article 15 - Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 [probably three years from date of publication in Official Journal, so late 2003 at the earliest]. ...

2. Controversial Issues

(a) Benefits for Employees of Same-Sex Partners

Explanatory Memorandum (explanation of Article 1) (draft of 25 Oct. 1999, posted to web site by mistake and then withdrawn): "The discriminatory grounds referred to in paragraph 1 coincide with those laid down by Article 13 of the Treaty, with the exception of the ground of sex."

Explanatory Memorandum (explanation of Article 1) (final proposal of 25 Nov. 1999): "The discriminatory grounds referred to in paragraph 1 coincide with those laid down by Article 13 of the Treaty, with the exception of the ground of sex. With regard to sexual orientation, a clear dividing line should be drawn between sexual orientation, which is covered by this proposal, and sexual behaviour, which is not. Furthermore, it should be underlined that this proposal does not affect marital status and therefore it does not impinge upon entitlements to benefits for married couples."

(b) Exception for Religious Institutions

Draft of 25 Oct. 1999: text of Article 4 essentially the same as the 25 Nov. 1999 version of Article 4(1); there was no Article 4(2)

Explanatory Memorandum (explanation of Article 4) (draft of 25 Oct. 1999): "Article 4 allows justified differences of treatment when a relevant characteristic constitutes a genuine occupational qualification for the job. The term 'genuine occupational qualification' should be construed narrowly to cover only those occupational requirements which are strictly necessary for the performance of the activities concerned. For instance, it would be justified for an institution established for religious purposes to impose occupational requirements which are necessary for the fulfilment of the duties attached to the relevant post."

Explanatory Memorandum (explanation of Article 4) (final proposal of 25 Nov. 1999): "Article 4 allows justified differences of treatment when a characteristic constitutes a genuine occupational qualification for

the job. The justification in these cases relates to the nature of the job concerned or the context in which it is carried out. It is evident that in organisations which promote certain religious values, certain jobs or occupations need to be performed by employees who share the relevant religious opinion. Article 4(2) allows these organisations to require occupational qualifications which are necessary for the fulfilment of the duties attached to the relevant post."

II. CHARTER OF FUNDAMENTAL RIGHTS

- Draft Charter of Fundamental Rights of the European Union, draft of 28 Sept. 2000, Document CHARTE 4487/00, <http://db.consilium.eu.int/df/default.asp?lang=en>, "Show All Documents", "NOTE Subject : Draft Charter of Fundamental Rights of the European Union, 28/09/00, Pr sidium"

Article 7 - Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 9 - Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 20 - Equality before the law

Everyone is equal before the law.

Article 21 - Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or **sexual orientation** shall be prohibited. ...

Article 23 - Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 51 - Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52 - Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. ...

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more

extensive protection.

Article 53 - Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Minutes

Workshop EU OTHER 1

Chairpersons/presenters: Robert Wintemute, Kurt Krickler Date: 6/10/00

Minute Taker: Kurt Krickler

Three topics were discussed in line with the workshop outline.

First, Robert Wintemute presented the employment directive based on Article 13, giving also a short historical overview with regard to anti-discrimination and equality policy within the EC/EU. He presented the details of the proposed employment directive as presented by the Commission in November 1999 (see also his paper distributed in advance of the workshop). The various aspects were discussed. Various background documents were given as reference, including the After Amsterdam Guide of ILGA-Europe and its August 2000 position paper on the Commission proposals.

Information was given about the fact that the European Parliament had voted the Report of MEP Thomas Mann on the employment directive on 5 October, the day before. It was also mentioned that the Working Group of the Council negotiating the draft directive is finalising its work since the directive is due to be adopted by the Council of Social Affairs ministers on 17 October.

It was stressed that the employment directive will have a great impact on the 15 Member States and all accession countries which will have to implement the directive in national law, the Member States within three years after publication of the directive in the Official Journal of the EU, the candidate countries before accession.

The provisions of the employment directive, however, will only be the minimum to be implemented by the Member States. Therefore, there is much room for lobbying at the national level for more comprehensive protection from discrimination. ILGA-Europe members therefore should use this unique opportunity to achieve anti-discrimination legislation at national level going beyond the directive. So, the work is not over for the movement after the adoption of the directive.

Second, Kurt Krickler shortly introduced the Action Programme, the other element of the Commission proposals to implement Article 13 covering sexual orientation. The Programme is planned for the years 2001-2006, and will have a budget of almost 100 million Euro. The programme is designed to support rather large scale projects, including scientific studies, analysis, gaining of statistical data, media campaigns etc. Other features of the Programme design include trans-national co-operation, a mix of partners from various

backgrounds (e. g. NGO's, university/research institutes, statutory organisations) and addressing more than one of the grounds referred to in Article 13. Like the employment directive, the Action Programme is due to be adopted on 17 October by the Social Affairs Ministers Council. With regard to the position of ILGA-Europe on the details of the Programme, the participants were again referred to IE's position paper. It was stressed that it will be important for member organisations to co-operate with other movements, networks and partners in order to be part of projects funded under this Programme. It was also pointed out that g&l organisations must lobby for the inclusion of sexual orientation even in projects where there is no active participation of g&l organisations. It was also mentioned that core funding for ILGA-Europe would be possible under one of the action strands of the Programme.

Third, Robert Wintemute presented the final draft of the Charter of Fundamental Rights of the European Union which has been published by the Convention, the drafting body, earlier this week. The Charter is due to be solemnly proclaimed at the European Council Summit in Nice on 8-9 December. However, it is quite likely that the Charter will not become immediately legally binding. Article 21 formulates a prohibition of discrimination on various grounds including sexual orientation. Even if the Charter will not be legally binding, it will be an important achievement which the European Court of Justice cannot ignore. It was also pointed out that the scope of the Charter is limited to the EU institutions and the Member States when applying EU law, e. g. will not cover family or criminal law, two areas where discrimination against lesbians and gays is most common.

The workshop did not make any specific recommendations to the plenary or amendments to the work programme for 2000/2001.

P. EU Other 2 – Asylum and Immigration, by Nicola Rogers

Asylum and immigration rights for lesbian and gay men: the current situation and the potential for positive developments through the European Union

Workshop summary presented by Nicola Rogers, Barrister, United Kingdom

A. IMMIGRATION – IN THE EUROPEAN UNION

1. THE PRESENT REGIME

a. Free movement of workers and their families within the European Union is presently covered by EC Regulation 1612/68.

The family members of a worker are defined in Article 10 of EC Regulation 1612/68. They have not been interpreted as including non-married partners or same sex couples (Reed v the Netherlands, C-59/85, [1986] ECR 1283)

However Article 7(2) states that EU workers shall enjoy the same social and tax advantages as national workers. In **Reed v the Netherlands** this was interpreted as including the possibility for a migrant worker of obtaining permission for his unmarried partner to reside with him, where that partner is not a national of the host Member State.

Thus where in State A, State's A citizens are entitled to be joined by their same sex non-EU national partners,

a worker from State B moving to State A should also be entitled to be joined by his or her same sex non-EU national partner. However where no such entitlement exists in State A, then the State B national would not be entitled as a matter of Community law to bring his same sex non- EU national partner.

b. Movement of persons between Central and Eastern European Countries and the EU Member States is presently covered by the Association Agreements between those countries and the EU

In general there is no provision for the freedom of movement of persons from CEEC's to the EU Member States although there are rights of established for self employed persons and companies contained in the Association Agreements.

Who the self-employed person is entitled to bring with him or her, is not made clear in the Association Agreements. There is no reference to family members although it is widely thought that the same entitlement as that covered by Article 10 of EC Regulation 1612/68 must apply.

c. Variations in the Immigration Laws of Member States of the EU and Central and Eastern European Countries

There is wide variation between Member States on the rights given to same sex couples particularly in the area of immigration.

In the Netherlands, Spain, Sweden, Norway and Denmark rights given to same sex couples have been similar given to heterosexual couples. However the story is not the same across the EU.

However there have been some changes in this regard. For example the United Kingdom last year introduced a concession for unmarried partners (including same sex partners) who have been co-habiting for 2 years, meaning that a non-EU national person would be able to enter and remain in the UK with his UK settled partner.

Most Central and Eastern European Countries have been very slow to recognise any rights for homosexual couples, let alone immigration rights. However this has not been an issue high on the pre-accession agenda of the EU. In its 1999 Accession Report on Romania, the Commission simply noted that laws relating to homosexuals were not in line with those in the Member States of the European Union and needed reform.

2. THE FUTURE REGIME

a. Proposals to amend EC Regulation 1612/68

Over the years there have been Commission proposals to amend the provisions in Regulation 1612/68 to widen the concept of the "family" for the purposes of Article 10 as well as infer rights on EU nationals who are not workers. However these proposals have in the past been blocked by Council. There is currently a proposal to amend Article 10 to include non-married partners to be able to join EU workers in Member States:

Article 1a: "within the scope of this Regulation all discrimination on grounds of sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation shall be prohibited"

b. Commission's Proposal on Family Reunification

Following the Amsterdam Treaty under Title IV of EC Treaty and more recently the Tampere Conclusions, there is a general aim and mandate for the EU to harmonise immigration and asylum policies. Furthermore Article 13 of the EC Treaty provides generally for non-discrimination.

It is in this light that the Commission has drafted a proposal on family reunification which has the purpose of providing scope for family reunification for third country nationals living in the EU and EU nationals who are not necessarily workers or exercising any other treaty rights.

Article 5 states that the family members eligible for reunification are *‘the applicant’s spouse, or an unmarried partner [who may be of the same sex] living in a durable relationship with the applicant, if the legislation of the relevant Member State treats the situation of unmarried couples in the same way as the situation of married couples’*

The obvious problem is that the extension to non-married couples is discretionary on the Member State and dependant on national legislation. The second problem is that this clause is unlikely to survive as Council objects to its inclusion. There is substantial opposition to the entire proposed directive by Member States.

c. Draft EU Charter on Fundamental Rights

Article 7 of the draft charter protects the right to respect for private and family life

Article 9 of the draft charter protects the right to marry and found a family but only in accordance with national laws

Article 20 is a general equality provision

Article 21 prohibits discrimination on grounds of sex, race etc and sexual orientation

The problems are

- a) that the proposal at the moment is that these rights are merely declaratory and would not be legally enforceable
- b) emphasis in Article 9 is still on national provisions
- c) the European Court of Human Rights has not recognised same sex couples as having a “family life” and the Court of Justice has been influence by this in the past (see **Grant v South West Trains Ltd**, C-249/96, 17 February 1998)

2. ASYLUM IN THE EUROPEAN UNION

1. THE PRESENT REGIME

At present the asylum determination process is defined by national law. All Members States of the EU are signatories to the 1951 Convention on the Status of Refugees and the European Convention on Human Rights.

In theory because all Member States are signatories of both, asylum determination should be uniform across the EU. However because there is no international supervisor of the 1951 Refugee Convention or

International Court with competence over the 1951 Refugee Convention Member States are free to interpret their obligations as they wish. This leads to lack of uniform application of that Convention.

The 1951 Refugee Convention does not give specific protection to persons who fear persecution on grounds of sexual orientation. Countries such as New Zealand and Canada have recognised persons who fear persecution on grounds of sexual orientation as refugees. However EU Member States have been less keen to do so. In the United Kingdom for instance following a recent Court of Appeal decision homosexuals who are subject to persecution can be protected by the 1951 Convention but of course this is subject to the authorities accepting that homosexuals are in fact persecuted in the given country of origin.

2. THE FUTURE

Again post Amsterdam Treaty under Title IV of the EC Treaty there is now a general aim of harmonising asylum procedures and policies across the EU.

The Commission has yet to put forward its current proposal on harmonisation of asylum although it is likely to be sooner rather than later. However it is unlikely that the proposed directive would have anything like the detail to include protection from persecution on grounds of sexual orientation specifically. The proposal is likely to focus on asylum determination procedures.

C. EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE COUNCIL OF EUROPE

Recent judgements of the European Court of Human Rights are to be welcomed in that the Court has condemned incrimination of acts between private persons, it has condemned discrimination between homosexuals and heterosexuals with regard to the age of consent and it has condemned discrimination against homosexuals in the armed forces.

However a lot it still has not recognised that a same sex couple enjoy a *family life* within the meaning of Article 8 of the Convention (see for instance **Kerhoven v the Netherlands** (1992, Application no. 15666/89) and it has been very reluctant to provide protection to homosexual couples who would be split up by draconian immigration laws.

Is it not the time to challenge this again? For as long as the European Court of Human Rights does not accept that same sex couples enjoy a family life, the EU will continue to allow a difference in treatment for same sex couples as will Member States.

Basis for doing so:

- a) the Court has always stated that the European Convention on Human Rights is a living instrument and should be interpreted in light of current social norms in the Council of Europe countries
- b) the Parliamentary Assembly of the Council of Europe in Recommendation 1474 (2000) has condemned discrimination on the grounds of sexual orientation
- c) Protocol 12 which is up for signature by Contracting States prohibits discrimination on the grounds of sex

d) Some Judges in the European Court of Human Rights (e.g. Judge Schermers in **X, Y and Z v the United Kingdom**, 1995, Application no. 21830/93) have been openly supportive of the notion that cohabiting same sex couples enjoy a family life.

e) The European Court of Human Rights changed in its constitution following Protocol 11 in November 1998.

Nicola Rogers

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Q. Council of Europe 1. Workshop Summary by Nigel Warner

This workshop will review developments at the Council of Europe during the last year – specifically, the Parliamentary Assembly's Recommendations on the Situation of Lesbians and Gays in Europe, and on Asylum and Immigration; the accession of Armenia and Azerbaidjan; the draft protocol 12 to the European Convention; and recent cases at the European Court. These subjects are all described in the Annual Report, and are not therefore dealt with further in this paper. The workshop will then briefly look at a proposal for the development of a network of European Convention legal experts with a specific interest in sexual orientation discrimination. Details of this proposal follow.

A STRATEGY FOR MAKING BEST USE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND OTHER COUNCIL OF EUROPE PROCESSES

1. The European Convention on Human Rights now appears to offer exceptional possibilities for promoting LGBT rights in Europe.

- With the expansion of the Council of Europe over the last decade, the Court's judgements affect developments in 41 (and shortly 43) countries, with a combined population of nearly 800 million people.
- After more than 15 years in which it proved impossible to make progress with Convention cases, four recent cases covering the age of consent (1997), the armed forces (1999) custody (1999) and privacy (2000) have hugely extended the range of the Convention's lgbt jurisprudence, and point to the possibility of further advances.
- The process of accession to the European Union adds to the influence of European Court judgements: A pre-condition for accession is establishing respect for fundamental rights, including the protection of minorities. Article 6(2) EU defines fundamental rights (*inter alia*), as those guaranteed by the European Convention.

There are two main mechanisms, which, if developed together, offer the best possibilities for maximising the use of the European Convention:

- Europe-wide networking by experts on the Convention
- The use of ILGA Europe's Europe wide network of member organisations as a means of educating LGBT activists in the possibilities of the Convention

In addition, a link up between a network of legal experts, and ILGA Europe, would enable best use to be made of ILGA Europe's consultative status with the Council of Europe in shaping that organisation's development of policy in such areas as sexual offences law, anti-discrimination law, and family law.

2. Europe wide networking amongst experts on the Convention

Some things which could be facilitated by such networking are as follows:

Existing cases:

- Exchange of information on cases which are pending; maintain log of such cases, and current status
- Sharing of knowledge in support of a specific case: argumentation, access to experts and research, case law (whether that of the Convention, or of other national and international jurisprudence)
- Amicus curiae submissions

Future cases:

- Development of strategy with regard to the issues on which to take test cases
- Review of discriminatory laws in European countries, to identify those which make obvious targets for ECHR cases, whether by replicating a successful case, or as test case. Encourage national LGBT organisation to take cases where opportunity identified.
- Development of standard argumentation and supporting case law for use in easily replicating successful cases in other countries;
- In case of discriminatory laws, identification of types of case where "victim" need not have suffered direct harm (cf. Norris, Modinos, Sutherland) (to get round problem, particularly in Central and Eastern Europe, where the particular individuals who have suffered harm are too frightened to take a case)
- Develop list of lawyers in different countries, particularly in Central, Eastern and Southern Europe, interested in taking cases

Education:

- Helping with preparation of material to use in seminars for LGBT activists on taking cases
- Participating in such seminars as lecturers

Dissemination of information:

- Ensuring that lawyers operating in the field of LGBT rights outside Europe are aware of positive developments at Strasbourg

3. Education of member organisations

3.a ILGA Europe's member organisations represent a major opportunity for finding good cases to take. However, they need support in understanding possibilities and what is involved. The Convention is likely to become an important weapon for fighting for LGBT rights in Central and Eastern

Europe.

3.b Some thoughts about implementing education

- Annual one-day seminar before start of each ILGA Europe conference (sources of finances to support?)
- Other seminars on ad hoc basis at Europe wide LGBT events
- Make information on taking cases (and standard case material developed under 2. above) easily available, e.g. at ILGA web site

4. Making best use of ILGA Europe's consultative status at the Council of Europe

The Council of Europe is continually addressing issues of significance to the LGBT community. These range from (relatively rare) events of major importance (such as the current developments around the broadening of the anti-discrimination provisions of the Convention, or the debate in the Parliamentary Assembly in June 2000 on discrimination against lesbians and gays) to expert studies and conferences on family law and partnership law. A link-up between ILGA Europe and an expert legal network would substantially enhance the possibility of making constructive inputs to these developments, to the long-term benefit of Europe's LGBT communities.

Any Convention legal expert wishing to be involved should contact:

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R. Council of Europe 2 – Taking a Case under the European Convention on Human Rights – Paper by Robert Wintemute

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School of Law, King's College, University of London

7 October 2000

Substance of Convention Rights

- information about the European Convention on Human Rights and the European Court of Human Rights, <http://www.echr.coe.int>

- all judgements and admissibility decisions of the European Court of Human Rights are available at <http://www.echr.coe.int/hudoc>, as are some reports and admissibility decisions of the former European Commission of Human Rights

- type the applicant's name after "Title" and the member state's name after "Respondent", or type in the application number, and tick "Reports" or "Admissibility Decisions" at the top if looking for one of these rather than a judgement of the Court (it is safer to tick both English and French at the top; some decisions are published only in one language)

A. Violations of Established "General Human Rights"

- all cases cited in Part I.A. are judgements of the Court, unless otherwise indicated

Article 2 – Right to Life

- soon no death penalty, except in time of war, because 40 of 41 Council of Europe Member States (all except Turkey) have signed Protocol No. 6 (a few have not yet ratified)
- deliberate killings by police, security services, armed forces
- negligent killings by police, security services, armed forces where the use of force was justifiable but the force used was more than what was “absolutely necessary” (includes negligence with regard to advance planning of the use of force)
- failure of police, security services, armed forces to investigate a killing, whether by one of their members or by a private individual
- failure of police, security services, armed forces to prevent the killing of one private individual by another private individual (*Osman v. United Kingdom*)
- deportation of asylum-seeker to a country (anywhere in the world) where they might be killed without a trial, by state officials or private individuals (*Chahal v. U.K.*); European Court of Human Rights could extend to deportation to face death penalty using Protocol No. 6

Article 3 – Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

- torture, physical abuse (including beatings), humiliation, severe mental distress (“Article 3 Treatment”) while in police custody (*Ribitsch v. Austria*, *Selmouni v. France*)
- failure of police to protect one private individual against Article 3 Treatment by another private individual
- deportation of asylum-seeker to a country (anywhere in the world) where they might suffer Article 3 Treatment (*Soering v. U.K.*, “death row phenomenon” in U.S.A.)
- deportation of person with advanced AIDS and receiving medical treatment from the state to a country (anywhere in the world) where they would receive inadequate medical treatment and lack any family support (*D. v. U.K.*)

Article 5 – Right to Liberty and Security

- arrest and detention by police generally only permitted “for the purpose of bringing [the suspect] before the competent legal authority on reasonable suspicion of having committed an offence”
- after arrest, the suspect must be informed promptly of the reasons for the arrest and the charge, must be brought promptly before a judge (within at least four days, *Brogan v. U.K.*), and must be released pending trial or tried within a reasonable time

Article 6 – Right to a Fair Trial

- right to “a fair and public hearing within a reasonable time by an independent and impartial tribunal”, in criminal and civil cases
- right to be presumed innocent and to remain silent (*Murray v. U.K.*) in criminal cases
- see also Article 6(3)

Article 7 – No Punishment without Law

- no criminal offence or penalty can be applied retroactively; it must have existed at the time of the act or omission in question

Article 8 – Right to Respect for Private and Family Life (General Aspects)

- if the police enter an individual’s home, or open the individual’s mail (paper and electronic) or listen to the individual’s private conversations (telephone or other), it must be authorised by law and justifiable as “necessary in a democratic society” (*Khan v. U.K.*); generally, there must be a reasonable suspicion that the individual has committed a crime

- same protection applies to the office, correspondence and conversations of a non-governmental organisation (*Niemietz v. Germany*)
- disclosure of information about an individual's private life could violate Article 8 (*B. v. France*)

Articles 10 and 11 – Freedom of Expression, Assembly and Association

- state interference (or failure by the state to protect against private interference) with lesbian, gay, bisexual and transgendered books, magazines, newspapers, films, videos, meetings, marches, parades and demonstrations, or the establishment and operation of LGBT associations, could violate Articles 10 and 11

Scherer v. Switzerland (No. 17116/90) (14 Jan. 1993) (Commission report) (applicant's conviction of publishing obscene material for showing a video in a gay sex shop violated Article 10); (30 March 1994) (Court judgement) (struck out of the Court's list because the applicant had died)

Reiss v. Austria (No. 23953/94) (6 Sept. 1995) (Commission admissibility decision – inadmissible) (applicant's conviction under Pornography Act for showing film in gay bar did not violate Article 8; Article 10 not argued)

Hauer v. Austria (No. 18116/91) (13 Oct. 1993) (Commission admissibility decision – inadmissible) (removal by police of LGBT organisation's banner at solemn ceremony did not violate Article 10)

Gay News Ltd. v. U.K. (No. 8710/79) (1982), 28 D.R. (see below) 77 (Commission admissibility decision – inadmissible) (conviction of blasphemous libel for publishing a poem about a Roman soldier's fantasy about sexual acts with Jesus Christ did not violate Article 10)

[each Protocol to the Convention below is optional; you must check whether your government has signed and ratified the particular Protocol]

Protocol 1, Article 1 – Protection of Property

- right to "peaceful enjoyment of ...possessions"
- generally prohibits state seizure of property without compensation

Protocol 1, Article 2 – Right to Education

- exclusion from a state school could violate this right

Protocol 7

- Article 1 – procedural safeguards relating to the expulsion of aliens
- Article 2 – right of appeal in criminal matters
- Article 4 – right not to be tried or punished twice for the same offence

B. Violations of Established 'LGBT Human Rights'

1. Criminal Law

(a) Total Bans on Same-Sex Sexual Activity Violate Article 8 (private life)

Dudgeon v. United Kingdom (22 Oct. 1981), Series A, No. 45 (Court judgement)

Norris v. Ireland (1988), Series A, No. 142 (Court judgement)

Modinos v. Cyprus (1993), Series A, No. 259 (Court judgement)

(b) Ages of Consent to Male-Female, Male-Male and Female-Female Sexual Activity Must Be Equal under Articles 8 (private life) and 14 (non-discrimination)

Sutherland v. U.K. (1 July 1997) (Commission report)

(c) Non-Sado-Masochistic Group Sexual Activity in Private Cannot Be Prohibited under Article 8 (private life)

A.D.T. v. U.K. (31 July 2000) (Court judgement)

Laskey v. U.K. (1997) (Court judgement)

(d) Other Discrimination against (Private, Non-Commercial) Same-Sex Sexual Activity by the Criminal Law - probably violates Article 8 (private life), on its own or with Article 14 (non-discrimination) (but see Part I.D. below)

2. Legal Recognition of Gender Reassignment

B. v. France (25 March 1992), Series A, No. 232-C (Court judgement) (Articles 8, 12, 14) (France required to change legal sex on birth certificate)

Sheffield & Horsham v. U.K. (30 July 1998) (Court judgement) (Articles 8, 12, 14) (U.K. not required to change legal sex on birth certificate)

3. Dismissals from Employment

Lustig-Prean & Beckett v. U.K. (27 Sept. 1999, violation, 25 July 2000, compensation) (Court judgements) (Article 8) (armed forces)

Smith & Grady v. U.K. (27 Sept. 1999, violation, 25 July 2000, compensation) (Court judgements) (Article 8) (armed forces)

B. v. France (see above) (dismissal of transsexual employee?)

4. Custody Claims by Lesbian and Gay Biological Parents

Salgueiro da Silva Mouta v. Portugal (21 Dec. 1999) (Court judgement) (Articles 8, 14)

5. Other Discrimination by a Public Authority against LGBT Individuals

- probably violates Article 8 (private life), on its own or with Article 14 (non-discrimination) (but see Part I.D. below)

C. Violations of Potential ‘LGBT Human Rights’ (Areas with No Precedents or Negative Precedents)

1. Discrimination by Private Parties against LGBT Individuals

- can argue that the state has a positive obligation under Articles 8 (private life) and 14 (non-discrimination) to pass legislation prohibiting sexual orientation discrimination in the private sector; argument accepted by the Supreme Court of Canada in *Vriend v. Alberta*, [1998] 1 Supreme Court Reports 493, <http://www.droit.umontreal.ca/doc/csc-scc/en/index.htm>

2. Rights of LGBT Partners under Articles 8 (private and family life), 12 (right to marry and found a family) and 14 (non-discrimination)

European Court of Human Rights

Sheffield & Horsham v. U.K. (see above) (right of transsexual person to marry)

Saucedo Gómez v. Spain (No. 37784/97) (26 Jan. 1999) (Court admissibility decision – inadmissible)

(discrimination against unmarried male-female partners)

Quintana Zapata v. Spain (No. 34615/97) (4 March 1998) (Commission admissibility decision – inadmissible) (discrimination against unmarried male-female partners)

Strank v. U.K., application filed with Court in 2000 by Liberty in London (survivor's pension for same-sex partner of public sector employee; only married different-sex partners are eligible)

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European Commission of Human Rights (in each case, Commission admissibility decision – inadmissible)

X & Y v. U.K (No. 9369/81) (3 May 1983), 32 Decisions and Reports of the European Commission of Human Rights (D.R.) 220, 5 European Human Rights Reports (E.H.R.R.) 601 (immigration claim by same-sex partner)

W.J. & D.P. v. U.K. (No. 12513/86) (11 Sept. 1986), 11 E.H.R.R. 49 (immigration)

C. & L.M. v. U.K. (No. 14753/89) (9 Oct. 1989) (immigration)

B. v. U.K. (No. 16106/90) (10 Feb. 1990), 64 D.R. 278 (immigration)

S. v. U.K. (No. 11716/85) (14 May 1986), 47 D.R. 274 (housing – succession by surviving same-sex partner to tenancy of their home)

Rössli v. Germany (No. 28318/95) (15 May 1996), 85 D.R. 149 (housing)

3. Rights of Non-Biological LGBT Parents and Prospective Parents under Articles 8, 12 and 14

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European Court of Human Rights

X, Y & Z v. U.K. (22 April 1997) (Court judgement) (transsexual father)

Fretté v. France (No. 36515/97), communicated to the French Government in March 1999, Court admissibility decision expected soon (adoption by gay man as an individual)

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European Commission of Human Rights (in each case, Commission admissibility decision – inadmissible)

Kerkhoven v. Netherlands (No. 15666/89) (19 May 1992) (parental authority for lesbian mother's female partner)

M. v. Netherlands (No. 16944/90) (8 Feb. 1993), 74 D.R. 120 (claim by sperm donor for access to child by donor insemination of two lesbian mothers)

D. Cases Falling outside the Convention (Where Protocol No. 12 Is Needed)

F. v. Switzerland (No. 11680/85) (10 March 1988), 55 D.R. 178 (Commission admissibility decision – inadmissible) (ban on same-sex but not different-sex prostitution)

Protocol No. 12, <http://www.dhdirhr.coe.fr/Prot12>, open for signature by Council of Europe Member States on 4 Nov. 2000 in Rome (the 50th anniversary of the signing of the Convention in Rome); can be used if Article 14 does not apply and your government has signed and ratified Protocol No. 12

E. Texts of the Parliamentary Assembly of the Council of Europe to Cite in All Cases

Opinion No. 216 (2000), <http://stars.coe.fr/ta/ta00/eopi216.htm> (26 Jan. 2000) ('the ground 'sexual orientation' should be added'), based on the Report of the Committee on Legal Affairs and Human Rights, Document 8614, <http://stars.coe.fr/doc/doc00/edoc8614.htm> (14 Jan. 2000)

Recommendation 1470 (2000) on the ‘Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe’, <http://stars.coe.fr/ta/ta00/erec1470.htm> (30 June 2000)

Recommendation 1474 (2000) on the ‘Situation of lesbians and gays in Council of Europe member states’, <http://stars.coe.fr/ta/ta00/erec1474.htm> (26 Sept. 2000)

Procedure for Enforcing Convention Rights

1. Who Can Submit an Application?

- Article 34 – ‘any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by [a Council of Europe member state] of the rights set forth in the Convention or the protocols thereto’
- an LGBT individual can be a ‘victim’ of a discriminatory criminal or other law if they reasonably fear that it could be applied to them, even if it has not yet been applied to them (e.g., a criminal prosecution is not necessary, see *Norris*, *Modinos* and *Sutherland* above)
- *A.V. v. Bulgaria* (No. 41488/98) (25 April 1999) (Court admissibility decision – admissible) (where a woman whose unmarried male partner of over 12 years was killed while in police custody, she was a ‘victim’ and could submit an application under Article 34 alleging a violation of Article 2)

2. Admissibility Criteria (Article 35)

- all domestic remedies must have been exhausted
- the application must be submitted within 6 months of the final domestic decision
- the application cannot be anonymous (the applicant can ask the Court to keep their identity confidential)
- the application must be a new case that has not been examined by the Court or another international tribunal (e.g., the United Nations Human Rights Committee)
- the application must concern a right found in the Convention and Protocols
- the application must not be ‘manifestly ill-founded’ (at least arguable, although many arguable LGBT cases in the past have been dismissed as manifestly ill-founded)

3. Procedure from Initial Letter to Compliance with Final Judgement

- once the letter is received, the Court will decide whether to register the application and assign it a number
- if the application is registered, a Committee of three judges will decide whether to declare the application inadmissible or communicate it to the respondent government
- if the application is communicated, the government will respond and the applicant will have a chance to respond to the government’s response (the applicant always has the last word)
- if the Committee unanimously agrees that the application is inadmissible, they will declare it inadmissible, which ends the case (at least 90% of registered applications are declared inadmissible) (Article 28); if one judge dissents, the application is referred to a Chamber of seven judges (Article 29)
- if the Chamber declares the application admissible, it will examine the case (Article 38) and there will generally be additional written arguments and an oral hearing in Strasbourg before the Chamber’s judgement on the merits; a friendly settlement is possible at this stage (Article 39)
- in important cases, the Chamber may refer the case to a Grand Chamber of 17 judges (Article 30)
- within 3 months of the judgement of the Chamber, any party to the case may request that the case be referred to the Grand Chamber (Articles 43-44); if no party does so, or the Grand Chamber rejects the

request, the Chamber's judgement becomes a final judgement (all Grand Chamber judgements are final judgements)

- if the Court finds a violation of the Convention, it may award "just satisfaction to the injured party" (i.e., financial compensation for financial and emotional damage, and part of the cost of legal proceedings in the domestic courts and in Strasbourg; the Court has no power to quash any decision of a domestic court, and does not give the respondent government specific instructions on exactly how it must remedy the violation, leaving it a certain amount of discretion in many cases) (Article 41)
- the Court's judgement is binding on the respondent government and is transmitted to the Committee of Ministers of the Council of Europe, which supervises its execution (Article 46); if the respondent government does not eventually comply with the judgement to the satisfaction of the Committee of Ministers (this usually involves changing the challenged law or practice, to prevent future violations, paying any compensation awarded to the applicant, and sometimes reopening criminal or other legal proceedings), the member state concerned could be expelled from the Council of Europe (see the Statute of the Council of Europe, Article 8) (see *Loizidou v. Turkey*, Court judgement; Turkey is refusing to pay compensation in relation to property in Northern Cyprus owned by a Greek Cypriot woman)

4. How to Start a Case?

(a) Assess the Strength of the Case on the Facts and the Law

- the facts should be sympathetic, suggesting a clear injustice against an innocent individual who has done no harm to others (unless the applicant's conduct is completely irrelevant, e.g., torture or the right to a fair trial)
- the applicant must be committed to see the case through to the end in Strasbourg; because of the time necessary to exhaust domestic remedies, and the Court's large and growing backlog of cases, this could take as long as 10 years!
- ILGA-Europe's advice should be sought regarding the strength of the case, especially if the case involves "Potential 'LGBT Rights'" discussed above in Part I.C.; this kind of "test case" could set a good or bad precedent for 41 Council of Europe member states; as a non-governmental organisation with expertise on sexual orientation discrimination, ILGA-Europe might be able to ask the Court for permission to submit written comments on the legal issue in the case (this is a "third-party intervention" under Article 36 of the Convention and Rule 61 of the Rules of Court)

(b) Make Sure that the Applicant Is Represented by a Lawyer

- an applicant who represents herself or himself could set a bad precedent; it's like trying to perform surgery on yourself!

(c) Send a Letter to the Court within Six Months of the Final Domestic Decision

- follow the Court's instructions at <http://www.echr.coe.int/eng/general.htm> (a copy is attached to this document)
- see the Rules of Court at <http://www.echr.coe.int> ("Basic Texts") for additional details on procedures before the Court

III. Further Reading

Robert Wintemute, *Sexual Orientation and Human Rights: The United States Constitution, the European Convention, and the Canadian Charter* (Oxford University Press, 1995, hardback edition, 1997, paperback edition)

Robert Wintemute, "Strasbourg to the Rescue? Lesbian and Gay Partners and Parents Under the European Convention" in Robert Wintemute & Mads Andenæs, editors, *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law* (Oxford, Hart Publishing, forthcoming in March 2001)

S. Activism at National Level 1. Lesbian Organising in Eastern Europe. Workshop Summary by Tatjana Greif

The post-socialist Eastern Europe's attitude towards homosexuality is predominantly negative with high level of stigmatisation, negative public opinion and very low level of tolerance. The formation of independent-national states in so-called "transition" process brought to the surface the phenomenon of nationalism, which is by definition exclusive and oppressive toward different kinds of social minorities. Nationalism places women in the strict context of family and reproductive sexuality; lesbian women don't fit into such socially preferred and tolerated model and even subvert it. Lesbians in Eastern European societies are among most socially marginalised categories of citizens, facing considerably greater non-recognition as gay men. What particular challenges do they face in organising and structuring their activities? What is the response of media, public opinion, church and authorities to female homosexuality? Is it possible to think about institutionalisation and professionalisation of political and other activism of lesbian women?

Presenter: Tatjana Greif / SKUC-LL & ILGA-Europe

T. Activism at National Level 2. Operating an LGBT rights organisation in a difficult environment

Workshop paper by Adrian Coman and Dennis van der Veur

In this workshop Adrian Coman, executive director of ACCEPT and Dennis van der Veur of COC Netherlands will elaborate on their experiences with setting up a lgbt advocacy organisation in Romania. This experience is offered to the participants as a mirror to reflect on the possibilities for other Central/Eastern European lgbt organisations to implement East-West co-operation projects as well as East-East co-operation. The workshop will start with a short intervention, in which the two moderators will discuss the COC/ACCEPT model, key qualifications of a 'good project', funding possibilities and political lobbying, etc. Secondly, the participants will fill in a questionnaire and/or SWOT analysis in order to identify needs of giving or getting support, possible dangers and opportunities for their own organisation. This workshop is practical and concrete and will give participants from (South)East and (North)West (!) ideas for possible models of co-operation, donors and future co-operation. It is advised to bring your ideas for projects, co-operation and support!

Minutes

Workshop: Operating an LGBT rights organisation in a difficult environment

Chairmen: Dennis van der Veur and Adrian Coman

Date: 6 Oct 2000

Minute Taker: Michele Marie Bonnarens

Participants: about 20

ACCEPT discussed its experience and stressed several points.

Operating an LGBT rights organisation in a difficult environment

In this workshop Adrian Coman, executive director of ACCEPT, and Dennis van der Veur of COC Netherlands elaborated on their experiences with setting up a lgbt advocacy organisation in Romania. This experience was offered to the participants as a mirror to reflect on the possibilities of other Central/Eastern European lgbt organisations to implement East-West co-operation projects, as well as East-East co-operation. The workshop started with a short introduction, in which the two moderators discussed the COC/ACCEPT model.

The following points were stressed:

- An initial planning stage with lots of talking (for Accept this lasted two years) where the contributions from everyone became clear.
- The importance of writing evaluations, which can often be a means of forcing a group to adapt.
- The fund finding missions that went on during the first project, with an eye to the post-period project. This resulted in sustainability.

Several tips were offered:

- Always take a fundraising plan with you when you travel so you can know what to ask for, should you have contact with funding sources.
- Keep goals realistic, with respect to the given situation in your country.
- Fighting with each other is normal in the beginning (and an emotional rather than formal approach in such a situation can lead to a resolution more quickly).

Key factors for a successful project were:

- Smart project proposal and structure:
 - Specific
 - Measurable
 - Activities
 - Results
 - Timetable
- Open communication
- Lobby your proposal and activities throughout the project – if you are convinced, you can convince others
- Involve a target group
- Income generating activities
- East West city links could be a funding source
- Find out foreign policy and Balkan policy of your country – embassies can often supply small amounts of money. There is also political support when an embassy gives money, which provides protection and respect.
- Create your momentum – plan things that fit together, get people who decide about your project involved.

U. Activism at National Level 3. Asylum and Immigration. A National Perspective. Workshop summary by Dirk Siegfried

The aim of my report is to show the influence of supranational law (1951 Refugee Convention and European Convention on Human Rights) on national law and to show how national authorities and courts try to

minimise this influence. To this end I will examine the situation in Germany in the three following fields: asylum, HIV and bi-national same-sex couples. This might be useful in finding specific demands concerning how supranational law should develop.

I. Current situation

1. Asylum

At first sight everything seems to be ok.: In 1988 the Federal Administrative Court in Berlin (9 C 278.86 - BVerwGE 79, 143) decided that persecution caused by homosexuality entitles to refugee status according to Art. 16 of the German constitution, though homosexuality is not mentioned in Art. 1A(2) of the 1951 Refugee Convention. Meanwhile it is accepted, that persecution caused by homosexuality could also warrant refugee status under the 1951 Refugee Convention.

In fact - there are so many restrictions included in the 1988 decision, that it is extremely difficult to obtain refugee status under the German constitution as well as under the 1951 Refugee Convention:

- The applicant has to convince the authorities of the irreversibility of his or her homosexual orientation. According to a second decision of the Federal Administrative Court in 1989 (9 C 25.89 - InfAuslR 1990, 104) are bisexuals included, if they aren't able to live without homosexual activities. (This is in contrast to cases of persecution on other grounds, i.e. religion or political activities, where nobody has to irreversibility of the religious or political conviction.) Moreover, it is difficult to foresee the requirements of the concrete authority or court in this point. Sometimes they rely on the assurance of the applicant, sometimes – more often in the cases of lesbians - they ask for medical or psychological expert opinions. In a singular case in 1998 Administrative Court in Regensburg (RN 11 K 97.31221) denied the application of a gay Palestinian, because the expert stated, that he would be able to masturbate instead of having same-sex contacts - referring to the fact, that he did so during a long-time imprisonment.

- There is no clear definition of persecution on the ground of homosexuality. In it's 1988 judgement the Federal Administrative Court decided, that imprisonment because of voluntary homosexuality among adults would not meet the (undefined) standard - obviously referring to the fact, that we had the same situation in Germany until 1969. In the concrete 1988 case the court granted refugee status to the Iranian applicant, because he might have faced the death penalty. If the applicant's home country threatens him or her „only“ with imprisonment, it's nearly unpredictable, which additional conditions would need to be fulfilled to obtain refugee status. In 1993 Administrative Court in Stuttgart (A 3 K 11553/93) granted it to a gay Romanian. In his case policemen had spread the rumour in his neighbourhood and at his job, that he was tested HIV-positive, which in fact wasn't true.

In a 1998 decision (2 367 455 - 154) the Federal Refugee Office accepted the application of a lesbian Romanian who had been imprisoned under extremely harsh conditions for a long period of time under Art. 200 of the Romanian Penal Code. The application was accepted under Art. 16 of German Constitution as well as under 1951 Refugee Convention.

In 1999 the Administrative Court in Munich (M 24 K 95.51706) granted asylum and refugee status under 1951 Refugee Convention to a gay Romanian, who helped to inform international organisations about the situation of gays in Romania. The court was convinced, that he was threatened to an extraordinary degree.

Different from these cases there are a lot of cases, where courts according to the 1988 judgement rejected

applications, because the applicants were „only“in danger of being imprisoned.

- Asylum under German Convention and refugee status under 1951 Refugee Convention is only granted, if the persecution is by the state, not, if it is by the family or the society or ,for example, organised crime. So in 1997 Administrative Court in another German town, Sigmaringen, (A 4 K 11148/95) denied refugee status under 1951 Refugee Convention of a Ukrainian applicant who was blackmailed by the Ukrainian mafia because of his homosexuality.

Neither asylum or refugee status is granted in civil war situations, where none of the combating parties govern the whole country. This regularly leads to applications for refugee status being turned down in these cases, for example in the cases of Afghans, - even if homosexuality is punishable by death according to both warring factions. This German interpretation contradicts the jurisdiction in most other states who signed the 1951 Refugee Convention. Therefore in 1999 the British Supreme Court (FC 3/1999/6323/4 – InfAuslR 2000, 240) doubted whether Germany was fulfilling it's obligation under the Convention. Probably in reaction to this British judgement the German Federal Constitutional Court in August 2000 (2 BvR 260/98) decided that asylum could also be granted to refugees from civil war countries. It instructed the Federal Administrative Court to rethink its jurisdiction to Afghanistan, which so far has not happened.

There is no doubt, that European Convention on Human Rights doesn't grant refugee status. Anyway, there are some decisions granting at least protection against deportation on the grounds of possible persecution for reasons of sexual orientation in the home country.

In 1994 the Administrative Court in Würzburg (W 8 K 93.33609 - NVwZ-RR 1995, 355) granted protection against deportation under Art. 8 of the European Convention on Human Rights - which is less than asylum or refugee status - to a gay Romanian because he could be prosecuted under Art. 200 of Romanian Penal Code.

In deviation from this judgement the Administrative Court in Braunschweig in 1996 (3 A 3272/95) allowed the deportation of a gay man to Tadjikistan, because the imprisonment of gays in Muslim dominated Tadjikistan - in opposition to the Christian Romania - was found to be part of the protection of morals and public order, which had to be accepted under Art. 8 of the European Convention on Human Rights.

The Würzburg decision seems to remain isolated. Most courts in Germany would follow the Higher Administrative Court in Bremen, which decided in a 1999 judgement (1 A 33/99.A - NVwZ-Beilage I 10/1999, 101), that Article 8 of the European Convention on Human Rights does not grant protection against deportation back to the home country. They have decided this on the „logic“that violation of private life, in that particular case imprisonment, would only be a result of the deportation to the home country. Moreover, it allowed the deportation of the gay Ethiopian applicant on the grounds that the proscription of homosexuality in the Ethiopian society even under Article 8 of the Convention would allow the Ethiopian state to imprison gays.

2. Bi-national same-sex couples

In 1996 the Federal Administrative Court in Berlin (1 C 41/93 - BVerwGE 100, 287) decided that immigration authorities could grant residence rights to foreign partners of same-sex couples. According to this judgement the authorities are obliged to weigh the public and the private interest and to justify the decision. In making their decision they have to take into account as one element among others Article 8 of the European Convention on Human Rights. In the 1996 judgement the court left open, if it would follow the 1983 decision of the European Commission of Human Rights (9369/81 - D.R. 32, 220). There, the Commission found an interference of the deportation of one of a homosexual couple with the right to respect

for private life in Article 8 of the European Convention on Human Rights, if it were established that the couple cannot live elsewhere and that the link with the deporting State is a material element of the relationship.

According to this decision later in 1996 the Higher Administrative Court in Münster (17 A 1093/95 - InfAuslR 1997, 198) - followed by the Higher Administrative Court in Kassel in 1997 (7 TZ 1535/97 - InfAuslR 1998, 50) - decided that the Romanian partner of a German-Romanian same-sex relationship had a right to stay in Germany under Article 8 of the Convention, because it was unreasonable to expect the couple to live together in Romania in view of Art. 200 of the Romanian Penal Code.

In the meantime, in several judgements the Federal Administrative Court in Berlin – most recently in September 2000 (1 C 14.00) - decided in opposition to the decision of the European Commission of Human Rights that Article 8 of the Convention does not entitle the foreign partner of a same-sex couple to a residence permit.

Therefore a very unsatisfactory situation arises: Because of the broad discretion given to authorities there are huge regional differences. In parts of Northern Germany it is much easier to obtain a residence permit than in the parts of the South. In Bavaria it is next to impossible. Different from married couples the partners have to prove, that there is sufficient income for both of them and that health insurance for the foreign partner is provided. This makes nearly impossible to obtain, for example a visa for HIV-positive partners (in a legal way). On top of that, the foreign partner, even if he has a residence, is not allowed to work for the first six years.

3. HIV

In 1997 the European Court of Human Rights (146/1996/767/964 – NJW 1998, 161) ruled that the deportation of the applicant suffering from AIDS into his home country (St. Kitts) by the United Kingdom would create an interference with his right under Article 3 of the European Convention on Human Rights if the medical situation in this country would lead to a considerable loss of life quality and life duration. In open dissent to this judgement the German Federal Administrative Court denied in a 1998 decision (9 C 13/97 – NVwZ 1998, 973) an interference with Art. 3 of the Convention. The court ruled that Art. 3 protects only against purposeful acts caused by the authorities of the home country. Therefore protection against deportation into countries without sufficient medical care could be granted only under national German law, not under Art. 3 of the Convention. As a result, protection against deportation in the AIDS cases is granted only in situations of extreme danger for the life of the applicant. Otherwise – if deportation would not immediately life threatening – there is no interference with German law, if a large part of the population is infected with HIV, even if there is a concrete considerable danger for the applicant. Therefore in 1999 the Administrative Court in Augsburg (Au 7 K 98.30453/Au 7 K 98.31120 – NVwZ-Beilage I 1/2000, 7) allowed the deportation to Togo because the applicant would not be facing imminent death following deportation and because of the high percentage of HIV-infected population of Togo.

There might be an improvement of the situation because of a recent (March 2000) decision of the European Court of Human Rights (43844/98 – T.I. ./ United Kingdom – InfAuslR 2000, 321). The Court allowed the deportation of the Sri Lankan applicant to Germany after the German Federal Government promised a satisfactory protection against deportation to Sri Lanka in Germany even under the aspects of Art. 3 of the European Convention of Human Rights. It is expected that this will improve the degree of respect to the jurisdiction of the European Court of Human Rights in Germany.

II. Conclusions

- The obligation of the jurisdiction of the European Court of Human Rights has to be increased. Supranational law has to be as strict and clear as possible.
- European law has to ensure the recognition of the same rights for lesbian and gay couples as they are granted to married couples in the field of immigration, including the right to take up employment.
- European law must also ensure that refugee status is granted in cases of threatening persecution on grounds of homosexuality, including imprisonment and persecution by family or society.
- European law has to give reliable protection against deportation, if a necessary and adequate treatment of HIV/AIDS in the destination country is not to be expected.

Dirk Siegfried

V. Transgendered issues. Workshop summary by Nico Beger, ILGA-Europe board member

Abstract

Both ILGA world and ILGA-Europe include transgender people in their mandate. ILGA believes that the issues of concern for transgender people have a lot in common with the concerns of gay men, lesbians, and bisexuals and it is, therefore, useful to combine tasks, work and membership. While ILGA-Europe executive board has launched several specific lobby campaigns and always mentions transgender people and gender identity in its documents, the mandate has not been fulfilled to our own satisfaction so far. One reason is the lack of member organisations concerned with transgender issues, another is the fact that the strategies and lines of political work on gender identity are still in their infancy. This workshop shall present a starting point of advancing our skills in this respect. This means that the issues of concern to transgender people have to be clarified and existing prejudices among gay men, lesbians, and bisexuals – if and where they exist – have to be reduced among our own ILGA membership. Consequently, this will hopefully lead to the development of ideas on political action and to a formulated work task for the ILGA-Europe executive board. The workshop will, thus, be divided into two parts: firstly, an explorational part on transgender issues and, secondly, a developmental part on future political work in this area. I would, thus, invite all those interested in being active in this area (in their home countries or Europe wide) in the future to participate alongside all those who have questions, worries and concerns about this area. I hope to be able to clarify issues from a personal as well as an ILGA-Europe executive board perspective starting from the following preliminary definition of transgender: The term transgender is used as an umbrella term that includes both pre- and post-surgical reassignment transsexual people. It also includes transsexual people who choose not or who, for some other reason, are unable to undergo genital reconstruction. It further includes all persons whose perceived gender or anatomic sex may conflict with their gender expression, such as masculine-appearing women and feminine-appearing men. The legal category of relevance corresponding to sexual orientation is gender identity.

Outline

1. sort out knowledge collect info necessities, read out Christine Burns statement and add to it with own view (15 min.)
2. Introduce issues via game cards including gender, sexuality, nationality (UK, Germany, Netherlands)

stage of transition, profession.

write rules on the board or on a piece of paper copied to everybody. (15 min.)

2 types of scenes played as many times and with as many people as possible: (20 min)

- Social interaction (pay in shop with your credit card, get a video shop membership card, try to participate in a lesbian or a gay only event, sign a contract of employment),
- try to marry somebody

3. Results, questions concerns (20 min)

4. What has happened on the European level so far (resolution, talk about a few court cases at Strasbourg and in Luxembourg) and what has ILGA-Europe done, what are the political lines already established (10 min)

5. Collect ideas for networking and work programme for the board. (20 min)

W. ILGA-Europe 1 – Workshop minutes

Notes

Workshop: ILGA-Europe 1

Facilitator: Jackie Lewis (IE Executive Board)

Date: 6/10/00 (3pm)

Minute Taker: Pierre Noël

Participants: 15

Conference documents:

- Standing Orders
- Proposal of amendment to the SO from Algemene Onderwijsbond, Netherlands (dated 12 July 2000)
- Summary of general policy statements
- Proposed Work Programme for 2000/2001

1. Summary of general policy statements

Jackie Lewis introduced the proposed work programme for 2000/2001 and the summary of general policy statements. In previous years, the Annual Conference had adopted work programmes that had grown ever bigger. The Executive Board had taken the initiative to extract from former policy documents (e.g. work programmes and ILGA-Europe publications) a consolidated version of general policy statements that were meant to remain valid from year to year, without prejudice to necessary updates, and to present separately a proposal for a work programme to be adopted by the Conference for the coming year. Both documents are to be made public, including on ILGA-Europe's website.

The workshop noted that the policy statement was a very useful tool, inter alia when one had to present ILGA-Europe's positions to the outside world. It recommended that the Conference endorse the approach adopted by the Executive Board when drafting these two documents.

However, it commented that sections D and F would need to be reviewed in a few years in the light of two developments (enlargement and increasing powers & functions of EU).

2. Work Programme

The workshop was to consider those areas of the work programme that were not addressed in other workshops.

Section A. European Union. All issues contained in this section were covered by other workshops and the workshop had no comment or amendment.

Section B. Council of Europe. All issues contained in this section were covered by other workshops and the workshop had no comment or amendment.

Section C. OSCE. The workshop commented that given the particular role OSCE plays in Bosnia-and-Herzegovina, the issue of human rights monitoring by this organisation was not to be forgotten. Kurt Krickler said that the issue had been raised in OSCE meetings and would be raised again by the Board at the Human Dimension Implementation meeting to be held in Warsaw at the end of October.

Section D. Programme of activities in support of lgbt human rights organisations in Central, Eastern and Southern Europe. The workshop felt that this was covered in various workshops of the Conference and had no comment or amendment.

Section E. Actions to counter human rights abuses against lgbt and HIV+ people in Europe. This section aimed at reinforcing the work that ILGA-Europe does in terms of collecting documentation and interacting with IE members and other international organisations. The issue was addressed in other workshops called Working with other NGO's. The workshop had no particular comments or amendments to make.

Section F. HIV/AIDS prevention. This had been introduced in the work programme at the 1999 Annual Conference in Pisa, but the Board had very limited capacity at this moment in this field. The workshop had no comment or amendment.

Section G. Development of ILGA-Europe. This was linked to sections D and F of the policy statement, respectively "Fund raising and establishing an ILGA-Europe office" and "Diversity and development". Section G represented in a short way an extremely important area of work for the next years.

- Core funding issues would be tackled the next day at the ILGA-Europe 2 workshop.
- Documentation and research. There was a comment on the need for internal documents of ILGA-Europe to be available to members. It was noted that a) it is part of the policy statement, b) relevant documents are available on the website and c) the issue had also to be seen in the context of the discussion on core funding.
- The workshop also noted that the action programme launched by the European Commission under Article 13 of TEC could provide an opportunity of doing fresh research.
- Visibility and communication. The wish was expressed in the workshop that material be prepared and made available to help people to make ILGA known more widely (e.g. Power Point presentations, that could be available through the Web). Professional skills of people known to ILGA could be used and a list of contact persons could also be established. A participant volunteered to help.

The workshop noted that the issue was related to core funding (funds available to promote ILGA-Europe and promotion of ILGA-Europe needed in order to fund raise; possible recruitment of an information and communication officer).

- There was another comment from the workshop to the fact that ILGA-Europe should also listen. In this regard, the workshop agreed to recommend to the Conference to add the following sub heading under Section G with one bullet:
 - Future development
 - Produce a report for discussion in the lead up to and at next year's Conference on the future development of ILGA-Europe.

The workshop also felt that, in its report to the next Annual Conference, the Board should report on communication with members.

- The workshop expressed the wish that numbering and lettering be used in the work programme and the policy statement be in a manner that makes the documents more user-friendly.

The workshop recommended to the Conference that it endorse the overall direction of the proposed Work Programme for 2000/2001 and its main areas of activity, with the amendment above and without prejudice of other amendments that may be recommended by other relevant workshops.

3. Standing Orders

Erwin Kunnen introduced the proposed amendment. Given the lack of time, the workshop agreed to suggest that the issue is dealt with at the ILGA-Europe 2 workshop and that the facilitator would liaise with the proposer and the Chairing Pool.

X. ILGA-Europe 2. Core Funding. Workshop Outline by Nigel Warner. Minutes

A. Background

1997 Treaty of Amsterdam -- Article 13 empowered the EU to take action against discrimination on grounds of sex, racial origin, age, disability, sexual orientation etc

Commission obliged to make proposals for combating discrimination. Proposals included:

- ◆ Employment Directive - would ban discrimination in employment
- ◆ Discrimination Action Programme - money to fight discrimination in 2001/2006.

Involvement of an EU wide NGO network representing each Article 13 discrimination group seen as essential by Commission; need to provide core funding accepted; ILGA Europe recognised as network to deal with sexual orientation.

B. Commission's Funding proposals

1. Interim one-year grant: one-year funding to enable networks to be established in 2000.

2. Five-year grant: under Discrimination Action Programme, core funding available for each of Article 13 networks, covering 2001/2006: For "relevant European-level NGO's with experience of fighting discrimination and acting as advocates of people exposed to discrimination in order to promote the development of an integrated and co-ordinated approach to the fight against discrimination".

ILGA Europe has applied for grant under 1 above, and plans to apply for grant under 2.

BUT: Grants will only cover part of costs - 80% in 1 above, "generally below 90%" in Discrimination Action Programme grant. Assumption is that in practice this will mean 80%, leaving 20% "co-financing" by ILGA Europe.

C. Minimum cost of Brussels office: Euro 300,000.

SO: ILGA EUROPE HAS TO RAISE AT LEAST 65, 000 EURO EVERY YEAR FOR SIX YEARS (including financing)! But ILGA Europe's current income is negligible.

D. IS IT WORTH IT?

Four major factors:

- ◆ Article 13 and Charter (if adopted) provide very strong leverage to insist on equality in all areas of EU activity, and to push for further strong anti-discrimination measures (e.g. for legislation in areas other than employment)
- ◆ EU constantly evolving - trend towards greater harmonisation in a number of areas (e.g. asylum and immigration) presents new opportunities
- ◆ EU Enlargement means that:
 - § Gains achieved above apply not just to 15 countries, but eventually to 28.
 - § Provides strong leverage to fight discrimination in accession countries
- ◆ Legislation is not the end: ongoing work needed to obtain EU support for detailed implementation

BUT: The EU is a very complex institution. We need people working in Brussels all the time, with great expertise, and excellent contacts with the Commission and Parliament if we are not to miss out on the opportunities.

This cannot be achieved through our current resources -- a small handful of volunteers, working in their spare time, and scattered across Europe.

E. WHAT WOULD WE GET FOR 300,000 EURO?

Executive director

High profile leader, expert lobbyist, with good understanding of EU, capable of influencing Parliament, Commission, and Council, and mobilising support of national LGBT organisations across Europe

Information officer

Analyst and researcher, maintaining Europe wide information on discrimination and best practice for countering discrimination, helping with submissions, maintaining communications with member organisations and advising them of EU funding possibilities.

Admin officer

Administration and accounting: keeping control of finances, helping with fund-raising, membership administration, help with preparation of conference

+ Money For:

Annual Conference, Annual strategy meeting involving key figures in European movement, Board Meetings, Reports and submissions, Publicity material, Expert advice

F. HOW ILGA EUROPE'S MEMBERS CAN HELP RAISE THE EURO 60,000

Some ideas:

1. **Provide "seed money"** to enable ILGA Europe to make presentations to possible funders in different countries.

2. **Commit to contributing a fixed sum of money each year** for the next 3 - 6 years.

For example, if half of member organisations in Western Europe contributed Euro 300 per annum, and half of individual members contributed an average of Euro 100, this would raise 25% of the money needed.

Regular small donations can be very helpful indeed.

3. Help ILGA Europe to fund-raise in your country:

- a. Identify foundations, government departments, businesses and individuals who are worth approaching.
- b. Discuss with them whether it is worth ILGA Europe making a submission, and under what terms of reference.
- c. ILGA Europe will prepare the submission and a presentation pack -- help by translating (if necessary) into your language
- d. Support ILGA Europe by participating in any meetings with possible funders in your country.

CONTACT: Nigel Warner – 00 44 207 278 1496; nwarner@gn.apc.org

Notes

Workshop: ILGA-Europe 2

Facilitator: Nigel Warner

Date: 7/10/00 (3 p.m.)

Minute Taker: Pierre Noël

Participants: 19

1. Standing Orders

Algemene Onderwijsbond had proposed an amendment to section 4 (Chairing Pool) of the SO, which had remained pending from ILGA-Europe 1 workshop.

The workshop **agreed to recommend that the Conference approve the amendment** with the understanding that the good practice of having the host organisation to appoint its representative on the chairing pool in advance of the Conference would be pursued and that this representative would not necessarily be one of the two people appointed by the Board.

2. Core funding

Nigel Warner gave an overview of the current core-funding perspectives for ILGA-Europe. In the aftermath of Article 13 TEC, the European Commission had given its principle agreement for a one-year grant. There were good perspectives to obtain under the new Action Programme funding over five years after that. However, ILGA-Europe had to provide 20% of the budget granted, and in-kind contributions were not accepted in the case of core funding.

The cost of running an office in Brussels (with a small secretariat) was estimated at Euro 300,000, which meant that ILGA-Europe had to raise Euro 65,000 per year for 6 years. However, this budget was still very modest compared with other European NGO's and ILGA-Europe should rather aim high than low, given the probable amount of work that would follow the opening of a regular office.

Another caveat was that money granted by the EU was for work related to the EU. ILGA-Europe however was also active outside the EU, and was very committed to its work *inter alia* in Eastern Europe.

It was noted that, generally speaking, core funding from institutions was very rare. It was also noted that even national groups had financial difficulties because official funding had dried up in most countries. Ideas put forward for fund raising included:

- individual donors, to be identified in different countries;
- membership fees, with possibly a multiple tier system;
- foundations (like political foundations in Germany) and governments (the Austrian government had contributed to the Equality Report and the Article 13 guidebook);
- project funding on the basis of items in the work programme could be combined to become for all practical purposes core funding;
- increasing membership towards associate members (trade unions, political parties);
- asking "rich" organisations to contribute more;
- recruit a professional fundraiser;
- check possible office premises in Brussels in the perspective of the opening there of a "Pink House" funded by the Flemish Government;
- gay businesses (dot.com companies);
- rich individuals

In the context of funding, an idea that had come up previously in the context of the ILGA-Europe 1 workshop, and for which some had volunteered, re-emerged: good presentation material would help to publicise ILGA-Europe and collect funds. The web-site could be improved to better market the name of ILGA-Europe.

Several participants volunteered to assist in this area of work. Names and e-mail addresses were taken.

Y. Caucuses. Notes of Trade Union Caucus

Notes Of Trade Union Caucus - Saturday 8 October

The Caucus noted that the 1999 ILGA-World Conference unanimously reaffirmed ILGA's commitment to trade union work as an integral part of our struggle, both at conferences and between conferences, and instructed the World Board to continue and develop this work, in liaison with the ILGA Trade Union Information Pool. This work should include:

- a) collecting and sharing information on work within our unions as gains in one union can often be used to further gains in a sister union;
- b) publicising trade union work in the ILGA Bulletin and ILGA's work in our union publications;
- c) urging affiliates to use formal links between their unions and other unions to place our rights on the bargaining agenda;
- d) requesting that each regional Conference, as well as future World Conferences, timetable sessions considering the pursuit of LGBT rights through trade unions and trade unions confederations and invite appropriate trade union bodies to participate;
- e) consolidating ILGA's developing relationship with trade union bodies such as Public Services International and Educational International;
- f) ILGA being active in the campaign to place our issues on the agenda of all international labour federations and that of the International Labour Organisation.

The Caucus agreed to ask this Conference to call on the ILGA Europe Board to support the World Board, though its World Board representatives in progressing this work in the lead up to the ILGA next World Conference.

The Caucus also noted the progress in the organising of the second World Conference on Trade Unions,

Homosexuality and Work, to take place in Sidney in October 2002.

It was agreed to build towards and be active in the preparatory conference to be held in the Netherlands in the autumn of 2001 and to ask the ILGA Board to encourage the widest possible participation in the preparatory conference.

Z. Goodbye Song

(Music: Village People, "YMCA")

ACCEPT

Now you can calm down

I say

Next host – now you have the crown

I say

All queers – we have shocked this old town

'Cose we're strong in pride and glad we're

I-L-G-A

It's fun to be in the

I-L-G-A-a

Accept diversity

'Cose we're lgbt

Campaigning in unity

(Repeat)

Participants' list

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[1] See Manfred Nowak, 'Human Rights 'Conditionality' in Relation to Entry to, and Full Participation in the EU' in *The EU and Human Rights*, Philip Alston, Mara R. Bustelo, and James Heenan, eds. (Oxford: Oxford University Press, 1999).

[2] See Darcy S. Binder, 'The European Court of Justice and the Protection of Fundamental Rights in the European Community: New Developments and Future Possibilities in Expanding Fundamental Rights Review to Member State Action' Harvard Jean Monnet Working Paper 4/95, p.71.

[3] See Peter Burnell 'Good Government and Democratization: A Sideways Look at Aid and Political Conditionality' *Democratization* Vol. 1, No. 3 (Autumn 1994) p. 503. Although Burnell deals with democratic conditionality, I assume that human rights conditionality falls within the general goal for good

government and democratization.

[4] Take for example the carefully worded diplomacy of the UNDP regarding the state language policies in Latvia and Estonia: “Another challenge in some countries of the region is to ensure that “the restored state” and “restored citizenship” based on ethnicity do not lead to ethno-nationalism. Although there has been an understandable reaction to the previous era, which was characterized by an “over-integrationist” tendency, there are dangers associated with “ethnic democracy” that have emerged in countries such as Estonia and Latvia. The fear, which may not be justified, is that the character of democracy is inclined to ethnic favoritism.” op. cit. “The New Yalta” p. 27. I believe that any reasonable observer of the stringent citizenship requirements (based on knowledge of the national language) and the restrictive language laws (which demand that workers pass language exams before they receive jobs or licenses) beyond a doubt shows that these regimes practice ‘ethnic favoritism.’ The question might be posed instead regarding whether or not these practices amount to blatant discrimination.

[5] It is telling that many NGOs operating in the region as well as new human rights institutions receive funding not only from international organizations, but also from “partner” countries. In the specific case of the OSCE’s High Commissioner on National Minorities, Stefan Vassilev recounts: “It was noted earlier that the mandate of the HCNM does not provide any real “sticks”. This is true, as far as direct means of pressure or imposition are concerned. In practice, however, the HCNM has “indirect” or “hidden” means. Indeed, there are many efforts in Central and Eastern Europe to obtain international financial and economic aid, as well as membership in the European Union, the North Atlantic Treaty Organization and the Western European Union... In addition, the HCNM has the political support of the OSCE and its Chairman-in-office, as well as general and specific support of the OSCE key Member States.” See Stefan Vassilev “The OSCE High Commissioner on National Minorities: a Non-Traditional Approach to Conflict Prevention” op. cit. *The New Yalta*, p. 144. Or consider “each party has to gain from the final deal more than it would lose... Very often, this requires extra effort by the HCNM to organize a package of “accompanying measures” (sweeteners) to the main agreement, which make it attractive to both sides. The character of these measures varies significantly from situation to situation and may involve tangible as well as intangible elements (starting with an official appraisal at the international level and ending with facilitation of direct financial or economic assistance, through, for example, donor conferences or specific internationally funded projects). Ibid. p. 143.

[6] The fourth condition addresses the EU, not the candidate countries: “4) the EU must be able to absorb new members and maintain the momentum of integration.” European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, SN 180/93, p. 13.

[7] See Horst Gunter Krenzler “Preparing for the Acquis Communautaire” Michelle Everson, rapporteur, Florence, EUI, RSC Policy Paper 98/6, p.6.

[8] Ibid. p. 9.

[9] “Article 4: Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular when the commitments contained in the Europe Agreement are not respected and/or progress towards fulfillment of the Copenhagen criteria is insufficient, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps with regard to any pre-accession assistance granted to an applicant State.” Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships, Official Journal NO. L 085 , 20/03/1998 P. 0001 - 0002, also at http://europa.eu.int/eur-lex/en/lif/dat/en_398R0622.html.

[10] See Madeleine Colvin and Peter Noorlander “Human Rights and Accountability after the Treaty of Amsterdam” *EHRLR*, Issue 2 (1998) pp. 191-203.

[11] Philip Alston and J.H.H. Weiler, “The European Union and Human Rights: Final Project Report on an Agenda for the Year 2000” in *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000: Agenda of the Comité des Sages and Final Project Report* (Florence: Academy of European

Law, EUI, 1998) p. 26.

[12] supra note 1, ‘The European Court’, p. 9.

[13] supra note 7, ‘Leading by Example’, p. 47.

[14] supra note 1, ‘The European Court’

[15] supra note 3. ‘Preparing for the Acquis’, p. 7.

[16] Ibid, p. 9.

[17] See Horst Gunter Krenzler ‘The EU and Central-East Europe: The Implications of Enlargement in Stages’ RSC Policy Paper 97/2, Florence, European University Institute.

[18] One example is the EP’s ‘Ré solution sur les droits des homosexuels et des lesbiennes dans l’Union européenne’ B4-0824 et 0852/98, which includes: ‘2) demand à tous les pays candidats d’abroger leurs dispositions législatives violant les droits de l’homme des homosexuels et des lesbiennes, en particulier celles qui prévoient des différences d’âge pour les rapports homosexuels; 3) invite la Commission à tenir compte du respect des droits de l’homme des homosexuels et des lesbiennes lors des négociations relatives à l’adhésion des pays candidats.’

[19] It is difficult to measure the importance of the EP’s additional ‘conditions’ in the negotiations between candidate countries and the Commission. Nevertheless, at least in Lithuania, the EP’s resolution on the rights of homosexuals has been co-opted by ngo’s and the media, and has thus entered the public debates on the criteria for EU enlargement. See ‘Lietuvos gejai: bilietas i Europos Sajunga’ (Lithuania’s gays: the ticket to the EU) in *Veidas* No. 41 (October 8-14, 1998) p.22.

[20] See, for example, ‘Agenda 2000: Commission opinion on Estonia’s application for membership of the European Union’ European Commission Bulletin of the European Union Supplement 11/97, p. 15.

[21] See Case 44/79, Liselotte Hauer v. Land Rheinland Pfalz, 1979 E.C.R. 3727, (1980) 3 C.M.L.R 42 (1979).

[22] supra note 1, ‘The European Court’ p. 6-7.

[23] Ibid.

[24] The ‘Declaration for Democracy: stipulated that ‘respect for an maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities.’ Copenhagen European Council, 7-8 April 1978, *EC Bulletin* no. 3, 1978.

[25] This reflects the dissonance surrounding Art. 13 of the TEU discussed above. Moreover, although excluded from the human rights section, gender discrimination and equal opportunity is briefly mentioned in the Opinions under section 3.5 Economic and Social Cohesion: Employment and Social Affairs.

[26] The link between human rights and security is documented point 5 of the Human Rights Agenda adopted by the Comité des Sages. supra note 7 ‘Leading by Example’ p. 4.

[27] This argument is seemingly weakened by the fact that, whatever its difficulties in protecting individual rights, the ECJ consistently has been able to protect the rights of EU citizens living and working outside their home countries. Nevertheless, it is still in the EU’s interests that new member states are friendly to non-nationals, at the very least because it will make the EU’s and ECJs work easier.

[28] See Jon Elster, ‘Majoritarian Rule and Individual Rights’ in *On Human Rights: The Oxford Amnesty Lectures 1993*, Stephen Shute and Susan Hurley, eds. (New York: Basic Books, 1993) pp. 175-216.

[29] Although the EU may not see these as human rights issues, many East European countries have included the right to a clean environment and right to adequate health care in their constitutions. For example in the Lithuanian Constitution, Art. 53 and 54 enshrine the right to healthcare and a clean environment. Furthermore, the fact that these rights have been constitutionalized does not necessarily mean that they would be implemented even without EU pressure. Such rights are seen by many East European leaders as ‘aspirational’ and governments often postpone addressing such rights in favor of concentrating on economic

reform.

[30] Susan Senior Nello and Karen E. Smith, ‘The Consequences of Eastern Enlargement of the European Union in Stages’ *EUI Working Papers* RSC No. 97/51 (Florence: Robert Schuman Centre, 1997) p.12

[31] *Ibid.* p.20.

[32] For a review of the rights of third-country nationals under EU law, see Alvaro Castro Oliveira ‘The Position of Resident Third-Country Nationals: is it Too Early to Grant Them Union Citizenship?’ in *European Citizenship: An Institutional Challenge*, Massimo La Torre, ed. (The Hague: Kluwer Law International, 1998) pp. 185-199.