



**Just Married  
in Finland:  
Tiia & Tellervo**

Photo: Mikko Malinen



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

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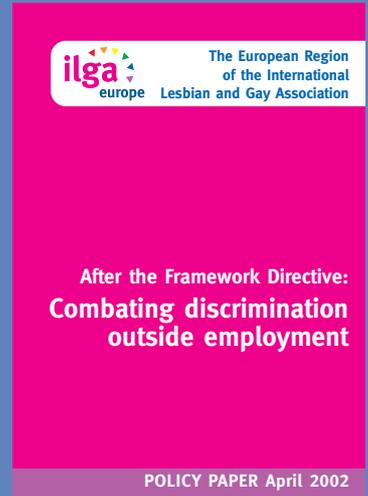
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After the Framework Directive:  
Combating discrimination outside employment

**Policy Paper published**

In November 2000, the Council of the European Union adopted the Framework Directive on Equal Treatment in Employment and Occupation. This Directive, which enters into force on 2 December 2003, forbids discrimination in employment on grounds of religion or belief, age, disability



or sexual orientation. It is a first, important step for the European Union in combating the entrenched social and legal discrimination that lesbian, gay, bisexual and transgender (LGBT) people face across the Member States.

This paper examines the next steps for the European Union in combating discrimination. In particular, it argues that there is a clear need for the Union to move quickly to complement the measures introduced in the area of employment with further legislation designed to prohibit discrimination in other spheres of life, such as healthcare, education and housing.

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## Executive Director to start working on 1 June

The person for the post of ILGA-Europe's Executive Director has been selected. It is **Ailsa Spindler** from Scotland. She will start her work in our Brussels office on 1 June 2002.

Responding to her appointment as Executive Director of ILGA-Europe, Ailsa said, "I am delighted to be offered the chance to take on this exciting challenge. The next few years will be a cru-

Ailsa graduated with a B.Sc. in Rural Environment Studies from London University in 1977. After several years in marketing in the commercial sector, she moved to the voluntary sector in 1985, initially in environmental work. Since then, Ailsa has developed skills and experience in general management, strategic and financial planning, lobbying and public relations.



**Executive Director Ailsa Spindler**

As a volunteer, Ailsa has worked on the Scottish LGBT Parliamentary forum, and been Vice-Chair and a Board member of "Beyond Barriers", a major project aimed at developing equality in Scottish society. She also worked as a committee member on a study of the health needs of transsexuals in Scotland.

cial time in the development of a fair and equal society in Europe. The work of ILGA-Europe, to ensure that lesbian, gay, bisexual and transgender people are treated equally, will involve a committed team of staff and volunteers. I am honoured to be part of that team."

### Policy and Research Officer

ILGA-Europe is in the process of recruiting a fourth staff member, to take up the position of Policy and Research Officer. She/he will research and draft policy documents in ILGA-Europe's key areas of activity, monitor developments in relevant EU policies and initiate proposals for appropriate responses, develop an information resource centre on discrimination and human rights violations, and best practice to counter discrimination, and prepare reports on these and other issues.

Full details of the job, and a job application pack, will be published at the ILGA-Europe web-site towards the end of May, with the deadline for replies by the end of the third week in June 2002.

## Editorial

### Third EU funding period started

On 1 May 2002, the third contract period for ILGA-Europe's core funding by the European Commission commenced. This is again under the Community action programme to combat discrimination (2001-2006). ILGA-Europe had submitted an application with a detailed activity programme and budget. After formal approval by the programme committee, composed of representatives from all member states, the contract was signed in April. The Commission will finance 90 % of our running costs for twelve months up to the amount of € 498,000. While it is agreed that in principle ILGA-Europe, as well as all the other European networks receiving core funding under the anti-discrimination action programme, will get financial support at least for the next two years, the contract will have to be renewed in one year's time after submission of another detailed activity programme and budget for the period 1 May 2003 to 30 April 2004.

While this is very good news, it will be a great challenge for ILGA-Europe to raise the 10 % of its co-funding. Although at a first glance, 10 % appears to be a very modest percentage, this 10 % will be a very sizable amount, and not easy to raise, as the total budget is such a large sum. It may sound paradoxical, but we are – despite and, indeed, because of this large subsidy from the Commission – in much more urgent need for money than ever. We, therefore, would like to repeat our appeal for donations and financial support already launched at this place in the last *Newsletter*.

### Executive director hired

The increased EU funding has a very immediate effect: an increase in staff. ILGA-Europe's new executive director, Ailsa Spindler, will start to work in our Brussels office on 1 June. We are introducing her in the left column of this page. Our administration officer, Olivier Collet, will start to work full-time, instead of half-time, as of 20 May. Moreover, it is planned to hire a policy and research officer to start working in autumn. The recruitment procedure will soon start. If you are interested in applying for the job, watch out for the advertising to be published soon (see also the box on this page).

### Wedding bliss in Finland

And we have not only personnel but also personal news to report: ILGA-Europe board member Tiia Aarnipuu registered the relationship with her partner Tellervo only a few days after the new Finnish Registered Partnership Act (cf. *ILGA-Europe Newsletter* # 3/01, p. 17) had come in force on 1 March 2002. The couple, portrayed on the front page of this *Newsletter*, has three children. The oldest was proud to hold the bridal bouquet while the mothers exchanged rings in the wedding ceremony. Congratulations and best wishes from the rest of

THE EXECUTIVE BOARD

PS: DHL shilly-shallied again with the delivery of the last issue of our *Newsletter*. It took up to three weeks to reach the recipients! We apologise for that. As a consequence, we have decided not to use DHL anymore. We hope TNT will perform better.

Council of Europe

# Interview with Peter Schieder

On 21 January 2002, Peter Schieder, Social-Democrat member of the Austrian Parliament, was elected president of the Parliamentary Assembly of the Council of Europe. In a press release issued on this occasion, Schieder was reported to have put equal rights for lesbians and gays as a main topic on his agenda. Reason enough for ILGA-Europe to convey congratulations to Peter Schieder and to ask for an interview which was given to co-chair Kurt Krickler at a meeting in Vienna in April. Peter Schieder also expressed his wish to visit our office in Brussels soon and agreed to take on the honorary patronage for our next annual conference in Lisbon.

*Question: On the occasion of your election as president of the Parliamentary Assembly of the Council of Europe you mentioned working for the equal rights of lesbians and gays as one of your focuses in your new function. What concrete possibilities are there in the Council of Europe to do so?*

*Answer:* The Council of Europe has various possibilities. Firstly, the Assembly can adopt recommendations directed at the Committee of Ministers. Although these do not have a legally binding effect, the governments of the member states have to give their opinion. Thus, the two recent recommendations of the Assembly on the situation of gays and lesbians in the member states<sup>1</sup> have led to a unanimous and positive reply of the Committee of Ministers.<sup>2</sup>

Secondly, we do make equality of lesbians and gays – and, of course, in the Council of Europe we include transgender people here – an issue when admitting new member states. The pressure on new members has actually increased. Previously, we used to wait to accept a country until it

fulfilled all the criteria for admission. Today, we are more inclined to admit a country at an earlier stage, but oblige it to meet certain conditions within a certain period of time. And these would include equal rights for lesbians and gays. We just have accepted a country that has no problems in this respect: Bosnia and Herzegovina. The next country to be considered will be Serbia and Montenegro. On this country, I do not have any reports yet, and I do not know yet whether this question is relevant. The next on the list after this is Monaco. I assume this matter is not relevant for this country but it will certainly also be examined. And then there remains Belarus, but with this country examinations have not even begun yet.

A third point, of course, is to give moral support to the European Court of Human Rights when it delivers decisions in this area and to ensure that the member states concerned implement them.

Fourthly, we can support the concrete activities of the Council of Europe in the field of education. Here, I can do quite a lot as president of the Assembly in terms of awareness raising, for example taking on the honorary patronage of relevant events, pronouncing invitations, etc.

*We would like to come back with additional questions on each of these opportunities. Regarding the recommendations, the Assembly has already made recommendations on the most essential issues. Here it is more a question of their implementation by the member states. Is the Assembly planning to monitor this and admonish member states that do not honour their obligations?*

After a certain period of time, an overview is usually established after each recommendation or reply from the Committee of

Ministers as to who has reacted how and done what. So, there will be a follow-up here.

*With regard to your second point: Serbia has a discriminatory age of consent. Don't you think it is a problem for the Council of Europe to insist that Serbia repeal this provision when, at the same time, existing member states such as Austria do have practically the same provision?*

Indeed, it is a general problem that Western Europe wants to act as a mentor with regard to human rights and politics vis-à-vis the new democracies and to tell them: you have to behave in such and such a way, but does not set a good example itself. This is the case not only in the field of LGBT rights, but also in other areas, such as ethnic minorities. There is a certain credibility problem here, no doubt. But we have to continue to put conditions on accession countries.

*Do you think that your election to this new post will increase the pressure on the Austrian government to repeal the discriminatory age of consent provision?*

It does hurt, and I always feel very sorry, when I have to say as president of the Assembly that indeed my own country still has to do its homework in order to get its human rights record straight. But I doubt very much that my new role will make a difference to the attitudes of the ruling parties and the government in Austria.

*Regarding your third point, the Court. Additional Protocol no. 12 to the European Convention on Human Rights has been open for signature since November 2000. It*



**Peter Schieder was born in Vienna in 1941. He became a Member of Parliament in 1970. From 1973 to 1984 he was a city councillor/member of the Government of the *Land* of Vienna. In 1984, he returned to the Federal Parliament, and since 1994 he has been the chairperson of its Foreign Affairs committee. He was a member of the Parliamentary Assembly of the Council of Europe from 1971 to 1974 and since 1987. In the Assembly, he was chair of the Socialist Group from 1995 until his election as president in January 2002.**

*would provide a general “free-standing” prohibition on discrimination and thus make good a significant weakness in the Convention as it now stands. A majority of countries has already signed this Protocol but only one, Georgia, has ratified it so far.*

Yes, unfortunately the member states act very guardedly in this matter. This will be one of the items we will discuss in the Assembly's forthcoming April session in Strasbourg. We will have to consider what means we could use to persuade the member states to speed up the ratification process.

*We thank you very much for the interview.*

<sup>1</sup> Recommendation 1470, adopted on 30 June 2000, and Recommendation 1474, adopted on 26 September 2000.

<sup>2</sup> Doc. 9217 of 21 September 2001 – Reply from the Committee of Ministers adopted at the 765<sup>th</sup> meeting of the Ministers' Deputies (19 September 2001); see *ILGA-Europe Newsletter* # 3/01, p. 13.

European Union

# Free movement of EU citizens campaign moves into top gear

ILGA-Europe's campaign on the free movement of EU citizens is moving into a critical phase. It addresses issues of great importance to Europe's LGBT community. The campaign is a response to a draft directive aiming to revise and update EU law,<sup>1</sup> which unfortunately fails to take adequate account of LGBT needs.

Free movement within the European Union is a cornerstone of EU citizenship. Its purpose is to ensure that EU citizens can move freely between member states for a number of purposes, particularly employment. A key feature of the existing free movement law is that it gives an EU citizen moving from one member state to another to take up employment the right to be joined by his/her family. But this right is denied to same-sex partners (and to some families where one partner is transgendered) because it only recognises families in which the partners are married.

In practice EU citizens are able to move relatively easily as individuals, so why does it matter that an individual should also be able to move as the partner of someone moving to take up employment? There are two basic reasons:

■ If a partnership is recognised by the free movement law, a partner who is not working will be in a stronger legal position with regard to obtaining residence permits and benefits attached to such permits; in addition, family members of an EU worker have the right to education on equal terms with citizens of the member state.

■ In the case of bi-national partnerships where one partner is from outside the EU, there is currently no right for the "third country" partner to move with her/his EU citizen partner.

## The Commission's proposals and ILGA-Europe's counter-proposals

Unfortunately, the draft directive proposed by the European Commission goes only part of the way to addressing these problems. As explained in previous issues of our *Newsletter*,<sup>2</sup> it would extend the right of free movement to unmarried partners and their families, but only if "the legislation of the host Member State treats unmarried couples as equivalent to married couples." This is unsatisfactory: first, it is unclear how far this would apply in those countries where there is some form of recognition of same-sex partnerships, since it is not clear which of these laws (if any) qualify as being "equivalent" to marriage. Secondly, freedom of movement would not exist for those countries where there is no recognition of same-sex partnerships. Thirdly, such rights would not cover those couples (whether same-sex or opposite-sex) that do not wish to enter into marriage or registered partnership.

ILGA-Europe is proposing amendments to the draft directive that would ensure that family members were not at risk of separation where one partner needs to move within the Union. These proposals would cover families involving same-sex married couples, registered partners, or unmarried/unregistered couples. For full details see our position paper at the ILGA-Europe web-site.

## The campaign

The directive is subject to co-decision by the European Parliament. This means that the Parliament has considerable power to influence the content of the directive. On the other hand, all

the member states must agree the directive. Very considerable pressure will be needed if our proposals are to have a chance of being adopted. Accordingly, ILGA-Europe and its member organisations are campaigning both in Brussels and at national level.

On 19 March ILGA-Europe representatives Mette Vadstrup, Mark Bell and the author of this article met the European Parliament's rapporteur for the directive, Ms Ana Palacio (PPE/Spain). She was opposed to ILGA-Europe's approach, since she does not believe that it is appropriate to harmonise "the legal concept of family member ... in the context of this directive." She felt that the appropriate way to address the issue was through the legal principle of mutual recognition. If she succeeds with this approach, same-sex couples that are, for example, in a registered partnership or marriage in their own country will enjoy free movement rights to member states which do not recognise same-sex partners. However, partners moving from a member state where there is no such recognition would not enjoy these rights. And it seems unlikely that her proposal would benefit partners who are neither married nor registered.

On the same day, the three ILGA-Europe representatives also met with Commission official Alan Bruin to discuss this matter. We will also put forward our proposals at a meeting with the Danish Presidency to take place in Copenhagen on 22 May.

The directive is currently scheduled to be debated in the Parliament's Citizens' Freedoms and Rights Committee on 18 June, and in a full plenary session on 1 July. ILGA-Europe will work with supportive MEPs to ensure that its amendments are tabled, and will then lobby extensively to try to ensure that the Parliament supports the amendments.

The Council of Ministers has also begun its review of the directive, but is awaiting the report of the Parliament before starting work on reaching a common position between the member states. ILGA-Europe's EU national co-ordination network (see article on p. 8) is now engaged in lobbying the individual governments to try to persuade them to support ILGA-Europe's proposals. The national member organisations are sending briefing information to their governments, and seeking to hold meetings with government officials.

It is very unlikely that the member states' common position will coincide with that of Parliament. Assuming it does not, the Parliament will consider the position of the member states, and then come up with a revised position of its own. If the member states cannot agree with this, the differences will be resolved through a conciliation committee consisting of members of the Parliament and the member states.

NIGEL WARNER

<sup>1</sup> The full title of the draft directive is: *Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States – COM (2001) 257.*

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

ILGA-Europe launches new campaign

# Recognition of LGBT refugees

As if the free movement campaign were not enough, ILGA-Europe and its member organisations now face a second major lobbying campaign in the field of immigration and asylum, triggered by the publication of a draft directive whose purpose is to achieve a common definition of refugee status.<sup>1</sup> This is one of a series of draft directives whose purpose is to harmonise asylum laws throughout the member states.<sup>2</sup>

ILGA-Europe has three main objectives in its campaign:

■ To ensure that persecution on the grounds of sexual orientation is recognised in the directive. Here we have a very good start: in the draft proposed by the Commission sexual orientation is already given as an example of one of the fundamental characteristics to be used in defining the concept of “social group” (a key parameter in the definition of refugee in the 1951 Geneva Convention). But there is no guarantee that the member states will accept this. So it is vital that

we campaign at all levels for its retention.

■ To work for specific reference to be made to persecution on the grounds of gender identity, reflecting our concern that immigration officials are inclined to ignore persecution on this ground when considering asylum applications.

■ To work for the extension of the definition of “family member” in the directive. At the moment the Commission’s proposal limits recognition of unmarried partners to those member states which “treat unmarried couples in a way comparable to married couples”. Clearly this would mean that in many current member states and accession countries the same-sex partners of refugees and their children were not recognised for asylum purposes. The definition of “family member” which we are proposing is the same as that put forward in connection with the draft directive on free movement of EU citizens (see article on page 5).

For more information on ILGA-Europe’s proposals, please con-

sult our position paper, which is published at the ILGA-Europe web-site.

Unfortunately the European Parliament only has a consultative role with regard to this directive. Moreover the directive is subject to unanimity among the member states. This means that very intensive lobbying will be necessary at all levels to achieve our objectives.

The European Parliament’s review of the draft directive has begun. ILGA-Europe has met with the Parliament’s rapporteur, Jean Lambert (Greens/UK) on 19 March. She was sympathetic to ILGA-Europe’s proposed amendments, and we hope that these will be included in her report. This is scheduled to be debated in the Citizens’ Freedoms and Rights Committee in May, and in a full

plenary session in July. ILGA-Europe will again be mounting extensive campaigns to lobby MEPs in support of our proposals. ILGA-Europe has also contacted a wide number of NGOs working in the refugee field, with a view to obtaining their support. A meeting with Commission officials dealing with this proposal is also planned, and ILGA-Europe will put this issue on the agenda of its forthcoming meeting with representatives of the Danish Presidency.

At the national level, ILGA-Europe has prepared guidelines for its EU national co-ordination network, and following discussions at the network meeting in April (see article on page 8), national member organisations will start a lobbying campaign of their governments soon.

NW

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

<sup>2</sup> See also *ILGA-Europe Newsletter # 3/01*, p. 8.

Update on implementation by member states

# The Employment Directive

In November 2000 the European Union adopted a directive “establishing a general framework for equal treatment in employment and occupation”. This obliges the member states to introduce comprehensive legislation prohibiting discrimination at the workplace on the grounds of religion or belief and of **sexual orientation** by 2 December 2003, and on the grounds of disability and age by 2 December 2006.

Applying to as many as 28 countries (since countries wishing to join the European Union must also apply this directive), it is,

arguably, the single most important piece of implementing legislation in the history of the LGBT movement world-wide.

In October 2001 ILGA-Europe published guidelines to help its member organisations ensure that

■ the Framework Directive is properly and fully implemented at the national level with regard to sexual orientation discrimination;

■ any additional opportunities for strengthening anti-discrimination laws and processes arising during the implementation of

the Framework Directive are seized.

Progress on the implementation of the directive was reviewed at April’s meeting of ILGA-Europe’s EU national co-ordination network (see article page 8). This revealed a very mixed picture: Portugal had not commenced implementation at all. Italy was in a similar position, the Parliament having simply adopted the directive verbatim, leaving detailed implementation to be carried out through administrative regulations at a later stage. In Denmark, Austria and Greece

there was evidence of government activity, but no concrete proposals yet. The UK and Finland were in a consultative phase, while Belgium and Germany had published a draft law. France had been in the process of introducing anti-discrimination legislation when the directive came into force, and this was now completed. Ireland and Sweden already possess anti-discrimination legislation, which is relatively advanced, so that it is likely that rather few changes will be required to comply with the directive.

There was good news from Belgium and Germany where the laws proposed would go beyond employment protection into such areas as the provision of goods and services. In France the new legislation also provides protection from discrimination in housing.

**Workshop on implementation of employment directive and gender (employment) directive in candidate countries**

ILGA-Europe is also working with its member organisations to try to ensure full and successful implementation of the Employment Directive and of the new Gender (Employment) Directive<sup>1</sup> in the candidate countries. The latter provides protection from discrimination on the basis of

gender identity. This is because EU law regards discrimination against transgender persons as a form of sex discrimination, a principle that was established by the European Court of Justice in the 1996 case of *P v S and Cornwall County Council*.

On this front there has been a very positive development. The *TAIEX team*, an agency established by the European Commission to provide training for government officials and others from the candidate countries in the implementation of EU legislation, has agreed to hold a workshop on the implementation of these directives. The workshop, which will last for a day and a half and take place in Brussels, will be attended by up to 40 participants from LGBT NGOs in the candidate countries, together with rep-

resentatives of the government departments in those countries responsible for implementation. It will be addressed by speakers from the EU Enlargement Directorate, the Commission's anti-discrimination unit, ILGA-Europe, and experts both in the implementation of anti-discrimination law, and in operating such laws once they are in place.

The need for this workshop and for member organisations to monitor their government's implementation of these directives has been highlighted through developments in three countries. In Malta a draft employment protection law has been published which makes no reference to sexual orientation. In

Latvia, the Parliament removed "sexual orientation" from the government draft bill for a new labour code before voting it in June 2001. This caused explicit reprimand in the European Commission's progress report on Latvia published in November 2001. Last year, the Slovak Parliament also rejected proposals for inclusion of a ban on sexual orientation discrimination in the new labour code. Ján Figel, Slovakia's chief EU entry negotiator, commented that implementation of the Employment Directive was a medium-term priority, and that it was not necessary "to take over the directive word by word". No prizes for guessing which words he plans to leave out!

NW

<sup>1</sup> The full title is: *European Parliament and Council directive on amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions – COM (2000) 334.*

The Convention on the Future of Europe

# Civil society to participate



At the EU summit in Nice in 2000 the EU leaders agreed that there was a need for a deeper and wider debate about the future of Europe, which could form the basis for further reforms at the next Intergovernmental Conference scheduled for 2004. At the

Laeken summit in December 2001 the European Council adopted a declaration convening a Convention which, as its main task, would consider the key issues arising for the European Union's development and try to identify possible solutions.

In this Laeken Declaration the European Council drew up a long list of some 80 questions to be addressed by the Convention during its working period, which runs from February to December 2002 with several plenary and working group meetings scheduled for each month. In addition, a "Convention for the Young People of Europe" will be held in Brussels from 9 to 11 July 2002 in the European Parliament.

The Platform follows the work of the Convention and its working groups closely and plans to present more specific submissions. In addition the Social Platform is also part of

**Web info**

Relevant links to get informed and updated on the work of the Convention on the Future of Europe:

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

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

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

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

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

As a member of the Social Platform, ILGA-Europe is taking part in the Platform's contribution and work in relation to the Convention. On 15 April, the Platform launched its campaign on the future of Europe called "[Un]Conventional Europe – New Thinking for a New Future". It calls for the incorporation of the EU Charter of Fundamental Rights into the Treaties and for the Convention to reflect the true values of Europe prioritising areas such as social exclusion and the fight against discrimination.

**Toolkit**

**The Civil Society Contact Group to the Convention is preparing a toolkit to be used for national members interested in getting involved. It will be available at the beginning of June. Contact the ILGA-Europe office for more information.**

a broader co-operation, the so-called Civil Society Contact Group to the Convention. This group brings together representatives of four NGO "families", i. e. the social, environmental, human rights and development NGO sectors, as well as the European

Trade Union Confederation (ETUC). The Contact Group unites a strong civil society voice in the debate on the future of Europe, and it organises a series of informal meetings to update and inform NGOs from these different sectors interested in following the work of the Convention.

At the ILGA-Europe EU national co-ordination network meeting in April (see article on page 8) it was discussed how ILGA-Europe and its members could raise LGBT issues in the best way and how they could make sure that the Convention members take them into consideration. A couple of ideas on how to address

this body were debated at this meeting, and at the moment ILGA-Europe is finalising its written contribution to the Convention.

As the civil society dialogue with members of the Convention will be ongoing until the end of 2002, ILGA-Europe will inform about

developments relevant for the LGBT movement through its *Newsletter* and on its web-site. We would also like to encourage members to get involved, especially talking to their national Convention members.

METTE VADSTRUP

## ILGA-Europe EU national co-ordination network

# Successful meeting in Brussels

Last year ILGA-Europe established an EU national co-ordination network (see *Newsletter 2/01*, p. 7) in order to strengthen co-operation with national movements and to co-ordinate lobbying at national and EU level. Representatives of a nationally organised member organisation in each EU member state make up the network. The second meeting of the network took place in Brussels on 20 and 21 April 2002. 14 national representatives, expert Mark Bell and ILGA-Europe board members and staff participated. In addition, some members of ILGA-Europe's transgender working group attended this year's meeting in order to feed in their expertise on the activities concerning gender identity discrimination.

In the preparation of the meeting the members of the network had been asked to evaluate the first nine months of the network's existence and activities. This evaluation was revisited in a session during the weekend. It was agreed to improve the flow of information and updates in order to make the joint lobbying on EU matters at EU and national levels more effective.

The meeting addressed a series of current and upcoming issues on the EU agenda, such as asylum and immigration, free movement of EU citizens and the recently agreed revision of the directive on equal treatment for men and women as regards access to employment, vocational training



The second meeting of the network took place in Brussels from 20 to 21 April 2002

and promotion, and working conditions.

In advance of the meeting the national co-ordinators had been asked to prepare information on the state of play of the implementation of the Framework Directive on equal treatment in employment and occupation. In the relevant session it became clear that the diversity of national laws and approaches in implementing EU directives would lead to very different forms of implementation. It was interesting and essential to get this overview of the implementation process in the member states and to receive this feedback from the national co-ordinators regarding their experience and involvement in the process (see also the article on p. 6).

Another session dealt with the Article 13 directive on gender discrimination covering areas outside employment which the European Commission is expected to publish in June 2002. The session was primarily aimed at introducing the new directive and the areas of LGBT relevance, and in addition, to discuss and develop a strategy for a future campaign. On several occasions the Commission has firmly explained that they were not intending to propose any new Article 13 directives in the near future. If further directives were to be considered by the Commission, it would be necessary to first demonstrate that there was a need for such new legislation. ILGA-Europe, however, insists that further legislation to prohibit discrimination on the grounds of

sexual orientation and gender identity be adopted. In April 2002, it published a 29-page policy paper – *After the Framework Directive: Combating discrimination outside employment* – to raise awareness and argue for this cause. One of the network meeting's sessions was dedicated to discuss and develop a common strategy for a campaign. One of ILGA-Europe's co-operation partners, the European Disability Forum (EDF), has already been working for some years now to promote a new directive on disability discrimination covering areas outside employment. Such a directive may be proposed soon by the Commission on the occasion of the 2003 European Year of People with Disabilities. Stefan Trömel, Director of EDF, therefore, was invited to

share their experiences in promoting such a new directive, their strategies and working tools. Stefan Trömel emphasised that it is crucial in this context to involve and activate all members at national level. It is important to prepare an own proposal for the directive and formulate the concerns to be addressed. For that purpose EDF is drafting their own proposal.

The current debate on the Convention on the Future of Europe was also part of the agenda for the weekend. Through the Social Platform ILGA-Europe is closely following the work of the Convention (see article on page 7). Social Platform Policy Officer Roshan Di Puppo was invited to give a brief overview on the Convention to the network meeting. It is important that the voice of

the LGBT movement is heard in this debate, and it is also an opportunity to raise awareness in general. The network reflected on how LGBT issues could be put forward and agreed that ILGA-Europe should prepare a written submission to be presented to the members of the Convention.

The final report of the weekend sets out a number of action

points agreed during the weekend. Judging from the number of these action points there is still a lot of work to be done. The ILGA-Europe EU national co-ordination network will have a opportunity to meet again in Lisbon in October during the ILGA-Europe annual conference.

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## European Parliament

# Re-launch of the Intergroup for Gay and Lesbian Rights

In June 2001, the Intergroup for Gay and Lesbian Rights held a quite successful hearing on the situation of lesbian women and gay men in the EU accession

### Info

**“Intergroups” at the European Parliament are loose groups of MEPs, assistants, officials of the European institutions, lobbyists and NGOs who work together on specific issues. They try to put their demands on the European agenda and compare notes on battles won and lost.**

countries (see *ILGA-Europe Newsletter # 2/02*, p. 4). After this event, the Intergroup became conspicuously silent. Although some individual members of the group have continued their actions for gay and lesbian rights in the EP, as reported in the two *ILGA-Europe Newsletters* published since, the Intergroup as such has not held any official meeting since.

The status of the Intergroup in the European Parliament until now has been very unclear. While all sorts of other intergroups (against racism, for animal wel-

fare, against crime or – for that matter – for the promotion of beer) have been holding regular meetings, the Gay and Lesbian Rights Intergroup has not yet received official recognition and the necessary support. Meetings using the premises and the facilities of the Parliament (i. e. a meeting room with simultaneous interpretation in at least the main languages) were only possible by courtesy of one of the political groupings. These groupings so far have preferred to look the other way and leave it to others to provide room and support for meetings on gay rights. This playing ball game or passing the buck is of course indicative for the half-hearted way in which the fight for gay rights is given support by the Parliament. Nobody would openly favour discrimination anymore, but lending your political authority to this issue is widely considered too high a risk. All the more reason to continue our fight inside the EP. Therefore, MEP Michael Cashman (PES/UK) and I have tried to use the royal road. We have re-tabled an official application for the recognition of the Gay and Lesbian Rights Intergroup, and after many bureaucratic hurdles we now have good hopes to collect the necessary signatures of the leaders of three political group-

ings in the Parliament. Some may be sceptical about this procedure – we are the first to agree. But we are no longer prepared to accept that some animals are more equal than others.

It is not difficult to guess what will be on the re-launched Intergroup’s agenda:

- The issue of same-sex couples is a constant bone of contention on the EU agenda, e. g. in the framework of dossiers on free movement of persons or asylum policies (see previous *ILGA-Europe Newsletters*). Co-ordinated strategies are needed here. How can we promote some form of “mutual recognition” between EU member states?

- Preparing for the final vote of the EP on the accession of new member states. How to make sure we really stick to the Copenhagen criteria and therefore say “no” to countries that still have discriminatory provisions in their penal codes? Time is beginning to run out.

- How can we make sure that gay rights are considered automatically as an integral part of human rights that the EU is supposed to “mainstream” in its foreign policies? Will human rights

clauses in agreements with third countries really be taken seriously when – such as in the case of Egypt – the human rights of homosexuals are trampled upon?



Joke Swiebel

- How to help member states and accession countries implement the Framework Employment Directive?

We are looking forward to a new period of concerted action at the EP for lesbian and gay rights. Please, feel free to contact us with suggestions for further action.

JOKE SWIEBEL  
Chair of the EP Intergroup for  
Gay and Lesbian Rights  
jswiebel@europarl.eu.int

European Parliament

# Recent activities

During the past months several reports and resolutions have been adopted in the European Parliament. ILGA-Europe has been following the debates of the various issues in both the committees and plenary. We have provided MEPs with information and proposals for amendments. We have closely monitored the developments regarding several reports, notably the ones in the area of harmonising the EU asylum policy. In some instances, we initiated fax campaigns in order to lobby MEPs on various issues and amendments relevant for us.

On 13 March the Parliament adopted an own initiative report on women and fundamentalism drafted by MEP María Izquierdo Rojo (PES/E). The report was dealt with in the Committee on Women's Rights and Equal

Opportunities. Draft recommendation 33 read as follows: "[The European Parliament] expresses support for the difficult situation of lesbians who suffer from fundamentalism, and calls on religious leaders including the Romanian Patriarch and the Pope to change their attitudes towards these women." Although ILGA-Europe called for support of this recommendation, the Parliament deleted the last part of the sentence when the report was adopted in plenary. Recommendation 33 now reads: "expresses its support for the difficult situation of lesbians who suffer from fundamentalism."

On 9 April the Parliament adopted a report on one of the Commission's proposals (COM (2001) 447) for harmonising the EU asylum policy, which is an



The European Parliament adopted several reports and resolutions

area where the Parliament only has consultative status and no real legislative power. This proposal was to replace the Dublin Convention that determines which EU country will deal with an asylum application in cases where the asylum seeker has filed applications in several EU countries or has travelled in other EU

countries before applying for asylum. ILGA-Europe had produced a position paper\* including specific proposals that would improve the situation for LGBT asylum seekers. The report was drafted by MEP Luis Marinho (PES/P) who was not very supportive of the amendments proposed by ILGA-Europe. Some were tabled in both the committee and the plenary. Although ILGA-Europe lobbied intensely for these amendments, they were not adopted in the final vote.

## MEPs keep up the pressure on Egypt

In previous *Newsletters* we have reported on the actions undertaken by ILGA-Europe and several MEPs to protest against the prosecution of 52 allegedly gay men and the conviction of 23 of them in Egypt last year (*ILGA-Europe Newsletter* # 2/01, p. 11, # 3/01, p. 16, and # 1/02, pp. 12-13). MEP Michael Cashman (PES/UK) had initiated a meeting between MEPs and the Egyptian ambassador to Belgium, Mr. Soliman Awaad, to discuss human rights issues in Egypt. It took place in Brussels on 19 March. Representatives of ILGA-Europe, Human Rights Watch and Amnesty International also attended the meeting which was chaired by MEPs Sarah Ludford (ELDR/UK), Michael

Cashman and Marco Cappato (Lista Bonino/I). Mr. Awaad explained that a group of citizens could not be seen as superior and that if female prostitution was punished, male prostitution should accordingly be punishable. While the ambassador stuck to this line of arguments, Ludford pointed out that the convicted men were not accused of prostitution and that there was no evidence that any money had changed hands. Towards the end of the one and a half hour long meeting Cappato handed over a petition signed by 134 MEPs. The petition was modelled on the petition launched in France by Jean Michel Jarre.

After the meeting Cappato stated that "the ambassador's readiness to come to the EP to engage in a dialogue on the human rights situation in Egypt shall be praised, and I hope he has transmitted the concern of MEPs to President Mubarak. On the declarations he made during the meeting, that were based on a cultural relativism approach to human rights, we Radicals want to recall that human rights and fundamental freedoms – sexual freedoms included – are universal rights that have to be globalised, in Europe, in Egypt and in the world." And Cashman added that "the fight for justice and equality goes on and only when justice and equality are

achieved will our fight cease."

Later Cappato declared: "It is now to the Commission and the Council to act in the framework of the diplomatic relations and of the forthcoming Egypt-EU agreement to assure that the human rights clause at the basis of EU international relations and agreements is respected. This clause is now not implemented at all, and it is used as an excuse to make the EP 'digest' agreements with countries that do not respect their citizens' human rights, such as Laos or Egypt. We are closely looking at what Commissioner Patten is doing, and we are highly critical." An appeal ILGA-Europe only can echo.

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On 17 April the Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs organised a hearing on "the respect for fundamental rights: situation within the European Union in 2001". The hearing was organised in preparation of the Parliament's annual report on the situation of human rights in the EU in 2001 for which MEP Joke Swiebel (PES/NL) is the rapporteur. Commissioner for Home and Justice Affairs, António Vitorino, spoke very strongly in favour of the incorporation of the EU Charter of Fundamental Rights in the future EU constitutional Treaty and for the accession of the EU to the European Convention of Human Rights (ECHR). These views were backed throughout the meeting by MEPs and representatives of national parliaments and the Council of

Europe. ILGA-Europe submitted information to the rapporteur on those EU member states that still have discriminatory age of consent provisions in their penal codes: Austria, Greece, Ireland, and Portugal.

On 25 April the Parliament adopted its annual report “on human rights in the world in 2001 and European Union human rights policy” (document A5-0106/2002 final), drafted by MEP Johan van Hecke (PPE/B). In its chapter on a coherent and consistent EU strategy for human rights and democratisation, the report calls for the Council to ensure that particular attention be given to those groups of persons most vulnerable to human rights abuses including women, children, older people, disabled people, ethnic and religious minorities and homosexuals. The Parliament also recommends to designate an ambassador for human rights, entrusted with the task of representing the Parliament, mainly at international organisations and other EU institutions.

On the same day the Parliament adopted a report on the Commission Communication “on the European Union’s role in promoting human rights and democratisation in third countries” (document A5-0084/2002 final), drafted by MEP Rosa M. Díez González (PES/E). The Commission Communication (COM(2001) 252) puts focus on the need for a more coherent and consistent EU human rights policy and identifies areas where the Commission can act effectively. One of the specific areas mentioned is the integration of human rights and democratisation into dialogue and co-operation, which the so-called human rights clauses provide the opportunity for. Since 1992, the EU has included in all its agreements with third countries a clause defining the respect for human rights as an “essential element” in the relationship between the EU and the country concerned. The Parliament report on this Com-

## Commissioner Kinnock replies

**In our February Newsletter (pp. 14-15) we reported about the debate in the European Parliament on the equal rights for lesbian and gay staff members of the EU institutions. 33 MEPs had raised this issue with Commissioner Neil Kinnock who is responsible for the reform of the Staff Regulations of the EU institutions. On this occasion he declared that the Commission would seek to provide full statutory recognition of all staff members who are in a partnership shown to be stable in nature and fulfil four conditions: 1) The couple must provide a legal document of an EU member state which acknowledges their status as non-marital partners. 2) Neither partner may be married or in another non-marital partnership. 3) There must be no blood relationship in the first line between the partners. 4) The couple must not have access to legal**

**marriage in a member state. These conditions were criticised by several MEPs. On 13 February MEP Joke Swiebel (PES/NL) submitted a written question to the Commission pointing out that the four conditions for recognising a stable relationship would lead to discrimination on the grounds of nationality. Swiebel further asked what the Commission intends to do to prevent this kind of discrimination and to “maintain their freedom not to get married but to live in a different type of partnership without forfeiting rights”.**

**In his answer dated 6 May 2002 (E-0516/02), Kinnock stresses that a partnership must be formally recognised by a member state’s national authority: “This condition is necessary because the Commission has no competence in the attribution**

**of a civil status of an official. (...) As in the case of a conventional marriage between persons of different gender, national law will continue to be the authority which determines the legal beginning of such a partnership and, potentially (for administrative reasons this is particularly important) the legal end of such a partnership, as well as the detailed conditions of the termination.”**

**On the issue of discrimination on the grounds of nationality, due to the differences in national laws governing same-sex relationships, the Commissioner notes: “It will be clear from the above that the requirements for recognition of a partnership under national law can lead to a situation where access to family benefits is not identical for officials of different nationalities who are**



**living in a stable partnership. For the reasons of competence and legal authority set out above, however, such situations appear to be unavoidable.” Kinnock then points out that this divergence of status and treatment is a product of the diversity of legal provisions in member states and not a discriminatory provision or intention by the Commission.**

**Swiebel regrets the fact that Commissioner Kinnock denies to answer the essential point on how to solve the discrimination on the grounds of nationality. Therefore, she intends to table another question to the Commission.**

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munication calls for this requirement for democratisation and respect for human rights to take, without exception, primacy over the economic, commercial or other legitimate interests of the Union or any of its member states. The report also calls for the Commission to draw up a proposal for an inter-institutional code of conduct for the Union’s external relations in the field of human rights.

Again on 25 April the Parliament adopted a report on another Commission proposal for harmonising the EU asylum policy. This proposal (COM(2001) 181) is about a directive laying down

minimum standards on the reception of applicants for asylum in the EU member states. ILGA-Europe had produced a position paper\* including specific proposals that would improve the situation for LGBT asylum applicants. The position paper was sent to the rapporteur, MEP Jorge Hernández Mollar (PPE/E), and other members of the committee dealing with the subject. ILGA-Europe was successful in getting the support from the Green group, the Liberal group, the Socialist group and the Lista Bonino/Italy. They voted in favour of an anti-discrimination clause, which is non-exhaustive and expressly mentions “health

status” and “gender identity”, in addition to the meanwhile “regular” exhaustive list of Article 13 non-discrimination grounds in these clauses, which already includes “sexual orientation”. The Parliament, however, again only plays a consultative role here, and the Council is free to completely ignore the Parliament’s recommendations when adopting the final text of the new directive.

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\* Available at our web-site: [www.ilga-europe.org](http://www.ilga-europe.org), click on Campaigns & Activities/European Union/The European Area of Freedom, Security and Justice (AFSJ).

United Nations

# Homophobia defeats ILGA's bid for consultative status

The United Nations Economic and Social Council voted by 29-17 on 30 April to reject ILGA's application for consultative status. Spain voted against the application, breaking ranks with other EU countries and voting alongside countries, such as Egypt and Zimbabwe, which have a notorious record for violating the human rights of LGBT people. No fewer than two-thirds of the countries opposing the application criminalise consensual sexual relations between people of the same sex.

The opposition to ILGA's application was led by Egypt, which in the last year has seen men subjected to arbitrary detention, torture and imprisonment for

being, or allegedly being, gay. Other opponents included Iran and Sudan, where the maximum penalty for consensual same-sex relationships is death, and Uganda, where in 1999 President Museveni ordered the arrest of homosexuals, and Zimbabwe, where President Mugabe has repeatedly incited hatred against lesbians, gays and bisexuals.

Spain was alone amongst EU member states and accession countries in not supporting ILGA. The fact that Spain currently holds the Presidency of the European Union made its behaviour all the more damaging, seriously undermining the EU's human rights and anti-discrimination policies, and caus-



The United Nations Economic and Social Council voted down ILGA's application for consultative status on 30 April 2002

ing considerable embarrassment to its partners. The EU Charter of Fundamental Rights specifically guarantees freedom from discrimination on the grounds of sexual orientation.

ILGA's opponents claimed that their opposition was based on doubts about ILGA's position concerning paedophilia. In making this claim they chose to ignore:

■ The vote by the ILGA world conference in 1994 by a majority of close on 90% to expel three paedophile groups then in membership precisely because their aims were incompatible with those of ILGA.

■ The decision of that conference – agreed without dissent – that the promotion of paedophilia is contrary to the objectives of ILGA.

■ The amendment at the following world conference in Rio in 1995 of ILGA's constitution to specifically include, in its aims and objectives, support for the realisation of the UN Convention on the Rights of the Child. ILGA's constitution requires

members to support the aims and objectives of ILGA, as set out in the constitution.

■ The adoption – again, without dissent – of resolutions insisting both on the right of every child to protection from sexual exploitation and abuse and stating categorically that ILGA neither promotes nor seeks the legalisation of paedophilia.

ILGA has issued statements calling for the strengthening of the rights of children and young people, in support of the UN Convention on the Rights of the Child, and condemning all forms of abuse (including sexual abuse), coercion, and exploitation of children and young people.

For example, in July 2001, ILGA-Europe made a submission to the EU on the "Proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography (COM (2000) 854)" which stated "ILGA-Europe welcomes the proposal for this Framework Decision and strongly supports

## Reactions

ILGA-World issued a press release on 3 May, ILGA-Europe released one (available at our web-site) on 4 May focusing on the deplorable behaviour of Spain which left its EU partners in fury. The Spanish national newspaper *El País* reported about the matter on 5 May quoting Catalanian Jordi Petit, ILGA secretary-general from 1995 to 1999, who characterised the position of the Spanish government as "incomprehensible". It also became an issue of internal politics. On 5 May Gaspar Llamazares, secretary-general

of the United Left party (*Izquierda Unida*), announced that his party would, by means of a parliamentary question, demand from the government an explanation for its behaviour. One day later, Iñaki Anasagasti, spokesperson of the Basque PNV party in the Chamber of Deputies, stated that Spain's position at the ECOSOC once more demonstrate the People's Party's nature as "the one of the eternal, reactionary, reality-denying right". MEPs Joke Swiebel and Michael Cashman have already

submitted written questions to the Council. They wish to receive explanations for the behaviour of Spain undermining the cohesion of the EU in the UN framework and thus jeopardising the Union's common foreign policy as laid down in Article 11.2 of the EU Treaty: "How will the Council redress the serious damage to the coherence and credibility of EU human rights and anti-discrimination policies caused by this defection of a Member State, currently holding the EU Presidency?"

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## The votes

### “Against” ILGA:

Angola, Argentina, Bahrain, Benin, Bhutan, Burkina Faso, Burundi, Chile, China, Costa Rica, Cuba, Egypt, El Salvador, Ethiopia, Fiji, Ghana, India, Iran, Libya, Nepal, Nige-

ria, Pakistan, Qatar, Russia, Spain, Sudan, Suriname, Uganda, Zimbabwe

### “For” ILGA:

Andorra, Australia, Austria, Croatia, Finland, France, Georgia, Germany, Hungary, Italy,

Japan, Malta, Netherlands, Romania, Sweden, United Kingdom, United States

### Abstentions:

Brazil, Guatemala, Mexico, (Republic of) Korea, Peru, South Africa, Ukraine.

## Good news

However, there is also good news to report from the United Nations. On 11 April 2002, Mr. Aditya Bondyopadhyay, an Indian lawyer and gay activist, was allowed to speak to the UN Commission on Human Rights in Geneva. This was made possible by the Transnational Radical Party that enjoys consultative status with ECOSOC and which had ceded its right to address the Commission to the international LGBT movement. It is somehow comforting to see that LGBT people still can have their voice heard at the United Nations without ILGA having consultative status

with ECOSOC, although such a status would make things much easier. Mr. Bondyopadhyay denounced the treatment of sexual minorities in India and reported that also HIV/AIDS workers doing outreach to them have been subjected to police harassment, arbitrary arrest, imprisonment, and torture. He referred to the “Lucknow 4” case (see *IE Newsletter # 2/01*, p. 11) and called on the UN to hold the government of India responsible for such abuses.

On 5 May 2002 the UN Commission on Human Rights voted a resolution (# 2002/36) on “extrajudicial, summary or arbitrary execution” in which the words “sexual orientation” were mentioned twice. The resolution calls upon governments to investigate “cases of killings committed in the name of passion or in the name of honour, all killings sanctioned for any discriminatory reason, including sexual orientation...” (para. 6). Paragraph 12 of the resolution refers to the report of Special Rapporteur Asma Jahangir on “extrajudicial, summary or arbitrary execution” (doc. E/CN.4/2002/74) which dedicated a chapter to the “violation of the right to life of members of sexual minorities”.

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all EU efforts to combat sexual exploitation of children and child pornography”.<sup>1</sup>

ILGA has done its best to get the facts across. Many people have

tries, particularly France and Germany.

Much was made by some opponents of ILGA’s refusal to submit its total membership list for scrutiny by the ECOSOC NGO

## Spain was alone amongst EU member states and accession countries in not supporting ILGA

played a part in this, but particular mention must be made of the excellent work of Claudine Ouellet, one of the North American regional representatives on the ILGA-World board, and the support of her organisation, the *Coalition gaye et lesbienne du*

Committee. The reason for this was the very real concern that providing the details of member organisations in certain countries to national governments would expose individuals to the risk of persecution – a fear amply justified by the legal situation and governmental attitudes in the countries concerned.

Opponents also repeatedly misrepresented ILGA’s policy on the age of consent, stating that ILGA calls for the abolition of age of consent laws. The facts are that ILGA’s policy on the age of consent is that whatever the

vention on the Rights of the Child, and its provisions on combating sexual exploitation and abuse.

As ILGA’s co-secretary-general Kürşad Kahramanoğlu commented after the vote: “This is a sad day for human rights at the United Nations. Governments

ILGA-Europe has called on Spanish organisations that support human rights to protest to the Spanish government and on Spanish politicians of all parties to repudiate the position of their government. We have also requested the support of MEPs to raise the issue of Spain’s behaviour within the EU.

ILGA cannot now re-apply for consultative status until 2005, but as Claudine Ouellet said following the decision, “It is because of this decision that ILGA exists. If they think we are going to go away, it’s an absolute mistake. We’ll be there. Members of the board will change in the future but the goal is to absolutely strip out on the face of the earth discrimination of all forms.”



ILGA secretary-general Kürşad Kahramanoğlu spoke of a “sad day for human rights”

Québec, that enabled her to do such vital work on behalf of ILGA. ILGA was also given strong support by several coun-

age of consent is in a country, it should be an *equal* age of consent. We do not have a policy on what the age of consent itself should be in any country (nor does the UN). But any age of consent, by definition, relates to *consenting* sexual acts. This is completely consistent with ILGA’s support for the UN Con-

who have no interest in observing the fundamental principles of human rights have triumphed. The homophobic position of so many countries only emphasises yet again the need for energetic and effective campaigning around the world for the rights of lesbian, gay, bisexual and transgendered persons.”

<sup>1</sup> See *ILGA-Europe Newsletter # 3/01*, pp. 15-16.

European Court of Human Rights

# France permitted to ban adoptions by lesbian and gay individuals

On 26 February 2002, in *Fretté v. France* (Application No. 36515/97), the European Court of Human Rights held, by 4

was initially refused because of the absence of a “maternal representation” in his household, and his lack of concrete plans

crimination”, violating Article 14 (together with Article 8). Judge Kūris (Lithuania) agreed on the first issue (making the

lation”. Because there were two different but intersecting majorities on the two issues, the single, unsigned, majority opin-



Philippe Fretté filed a complaint...

votes to 3, that sexual orientation discrimination in adoption by unmarried individuals does not violate Article 14 (non-discrimination) of the European Convention on Human Rights, combined with Article 8 (respect for private life).

Philippe Fretté applied for a preliminary determination of eligibility to adopt a child (an “agrément” or “preliminary approval”) in 1991. This involved a home-study by social workers and interviews with a psychiatrist and a psychologist. He disclosed that he was gay at the first interview and was urged not to proceed with his application. The reports were largely favourable, concluding: “A child would probably be happy with him. Do his circumstances, unmarried homosexual man, permit us to place a child with him?” (All translations are by the author and are unofficial.) In 1993, his application

regarding the disruption that would be caused by the arrival of a child. The final reason was his “choices of life” or “lifestyle”. His appeal to the Paris Administrative Tribunal was successful in 1995, but the judgement was reversed in 1996 by the *Conseil d’État* or Council of State (France’s highest administrative court), which referred to his “conditions of life”.

A seven-judge Chamber of the European Court of Human Rights split 3-1-3. Judges Bratza (United Kingdom), Fuhrmann (Austria), and Tulkens (Belgium) wrote a strong dissent, holding: (i) that Article 14 applies to sexual orientation discrimination in relation to adoption, because it sufficiently affects an individual’s “private or family life”; and (ii) that the difference in treatment based on sexual orientation does not have an objective and reasonable justification and is therefore “dis-



... to the European Court of Human Rights in Strasbourg

judgement 4-3 that Article 14 does apply to sexual orientation discrimination in adoption), but not on the second. He held that the difference in treatment has an objective and reasonable justification, is not therefore “discrimination”, and does not violate Articles 14 and 8. Judges Costa (France), Jungwiert (Czech Republic), and Traja (Albania) effectively abstained on the main issue in the case (the justifiability of the difference in treatment), by holding: (i) that Article 14 does not apply to any kind of discrimination in relation to adoption, because no other Convention right is sufficiently affected; and (ii) that it was therefore unnecessary to decide whether the difference in treatment was justifiable.

However, their analysis led to the same result as that of Judge Kūris, which created a majority of four for a finding of “no vio-

tion the Court always produces would appear to reflect the reasoning of four judges on issue (i) (applicability of Article 14), and the reasoning of only one judge on issue (ii) (justifiability of the difference in treatment based on sexual orientation). It is important to stress that, out of seven judges, only Judge Kūris held that excluding lesbian, gay and bisexual individuals from adoption can be justified. In abstaining on this issue, Judges Costa, Jungwiert and Traja said that they were “very hesitant ... There were factors pointing in both directions.”

The majority opinion began by examining whether the facts of the case fell “within the ambit” of Article 8 (respect for private life). This is an essential condition before a claim of discrimination can be made under Article 14, which does not prohibit discrimination by public authorities generally but only in

the enjoyment of other Convention rights. Protocol No. 12 to the Convention would create a “free-standing” prohibition of discrimination by public authorities in any area.

The majority (Judges Kūris, Bratza, Fuhrmann and Tulkens at this stage) held that the Convention does not guarantee a right to adopt a child (at least not for an individual, as only married couples have the right to “found a family” under Article 12), that the Article 8 right to respect for “family life” does not protect “the mere desire to found a family”, and that the rejection of his application did not interfere with Mr. Fretté’s Article 8 right to respect for his “private life”. However, Article 14 of the Convention applies, combined with Article 8, because the right of any unmarried individual, man or woman, to apply to adopt a child (under Article 343-1 of the French Civil Code), “which falls within the ambit of Article 8 ... , has been interfered with on the decisive ground of his sexual orientation”. The majority did not

## Info

The judgement is available (currently in French only) at [www.echr.coe.int/hudoc](http://www.echr.coe.int/hudoc) (access HUDOC, tick “French” at top, Title=Fretté). A press release in English is available at [www.echr.coe.int/Eng/PressReleases.htm](http://www.echr.coe.int/Eng/PressReleases.htm)

specify whether the right to apply to adopt falls within the “family life” or “private life” branch of Article 8.

The undersigned submitted written comments on behalf of ILGA-Europe on 15 June 2000 and presented the case for the applicant on 2 October 2001, arguing both times that Article 14 applies because: (a) all sexual orientation discrimination

affects and therefore falls “within the ambit” of “private life”; or (b) adoption falls “within the ambit” of “family life”. All seven judges rejected the French Government’s argument that the difference of treatment was not based on Mr. Fretté’s sexual ori-

## The Council of State’s decision rests on “the opinion that to be raised by homosexual parents would be, ... in every situation, prejudicial for the child”

entation, but on his “choices of life”: “It must be observed that, implicitly but certainly, this criterion referred in a decisive manner to his homosexuality.” Any other circumstances considered were secondary.

The reasoning of the majority (effectively Judge Kūris at this point) then turned to the question of whether there was an objective and reasonable justification for the difference in treatment, absent which there would be “discrimination” violating Article 14 (combined with Article 8). The challenged refusal of the “preliminary approval” to adopt pursued a “legitimate aim”, protection of the health and rights of children to be adopted. But in deciding whether or not the refusal was proportionate to this aim, and the breadth of the “margin of appreciation” (degree of judicial deference) granted to national governments, “one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States”. Judge Kūris found no such common ground.

The joint dissenting opinion of Judges Bratza, Fuhrmann and Tulkens expanded on the reasons why Article 14 applies, and then said: “[W]e think that the refusal of the application for a ‘preliminary approval’, based on the sole ground of [the applicant’s] sexual orientation, constitutes a violation of Article 14 of the Convention. ... Unless homosexuality – or race, for

example – is considered as constituting in itself a contra-indication, the homosexuality of Mr. Fretté could justify the refusal of a ‘preliminary approval’ only if it was accompanied by behaviour that was prejudicial to the raising of a

child, which had in no way been established.” Sexual orientation is without doubt covered by Article 14, either as discrimination based on “sex” or “other status”. The express inclusion of sexual orientation in Article 21 (non-discrimination) of the (not yet legally binding) Charter of Fundamental Rights of the European Union, and the recommendation of the Parliamentary Assembly of the Council of Europe that sexual orientation be added to the list of prohibited grounds of discrimination in the Convention, indicate that “today a European consensus is taking shape in this area”. Only “very weighty reasons”, “particularly serious reasons” or “particularly convincing and weighty reasons” can justify a difference in treatment based on sex. Even though the protection of the rights of the child could be a legitimate aim, the Council of State acknowledged that the record disclosed “no specific factor giving rise to fear for the interest of the child”. The legitimate aim had not, therefore, in any way been concretely established. The Council of State’s decision rests on “the opinion that to be raised by homosexual parents would be, ... in every situation, prejudicial for the child.”

On the question of proportionality, the three dissenting judges acknowledged that States had “a certain margin of appreciation ... in the sensitive field of adoption by homosexual persons”, and that the Court should not “pronounce itself in favour of

any model of the family whatsoever”. But the majority opinion had allowed “a total margin of appreciation” to States, which was contrary to the case-law of the Court and “such as to provoke a regression in the protection of fundamental rights”. The Council of State took a “decision of principle, without applying a test of proportionality precisely or concretely, and without taking into account the situation of the person concerned. The refusal was absolute and pronounced without any explanation other than the choice of life of the applicant, considered in a general way and in the abstract, which became itself an irrebuttable presumption of contra-indication against any proposed adoption, whatever it may be. Such a position prevents a court, radically, from taking concretely into account the interests at stake and finding a way to reach a practical agreement between them. At the moment when every country in the Council of Europe is undertaking resolutely to reject every form of prejudice and discrimination, we regret that we cannot join the opinion of the majority.”

In view of his success on issue (i), Mr. Fretté has decided not to request, under Article 43 of the Convention, that a panel of five judges refer his case to the Grand Chamber of seventeen judges. Having established that Article 14 applies to sexual orientation discrimination in adoption, and that Protocol No. 12 is not essential for this particular issue, he will leave it to the next applicant to persuade the Court that the three dissenting judges were correct in finding that the Convention does not permit this form of discrimination.

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NGO co-operation at EU level

# European Network Against Racism

ENAR is a network of European NGOs working to combat racism in all the EU member states. Its mission statement specifically includes the fight against racism, xenophobia, anti-Semitism and islamophobia, and the promotion of equality of treatment. Such a wide scope is vital because the notion of racism is not all that easy to grasp. "There are as many descriptions of the word racism as there are people to describe it. To some it is an ideology only. Some describe it as discriminatory practices against specific groups of people, while others see it as an attack on the religions, cultures or beliefs which are other than one's own", says journalist Bashy Quraishy of Denmark, elected in December 2001 as Chair of ENAR.

ENAR saw the light of the day in 1998, as an outcome of the European Year against Racism (1997). In that year, the European Commission established both the European Monitoring Centre on Racism and Xenophobia (EUMC) in Vienna and provided financial and moral support for the founding of ENAR, in Brussels. While EUMC is an independent adviser to EU governments on topics related to racism, ENAR came into existence as a response to needs of anti-racism NGOs at the grass-roots level.

In 1997 consultations at national level were undertaken to investigate whether such a network of NGOs would be accepted. The response was extremely encouraging. Round-tables of NGOs were formed in all 15 countries of the EU. The constitutive conference of ENAR (October 1998, Brussels) was attended by 220 delegates. The content and structure of the network were discussed and agreed. In autumn 1999, after the appointment of four staff members, the ENAR office was opened.

ENAR then proceeded to establish national co-ordinations in every EU country. These national structures brought together local, regional and national organisations working on anti-racism issues, in order to discuss and develop common strategies for combating racism. A number of organisations also came together at the European level to form a European co-ordination.

ENAR deliberately chose a structure that is open and transparent. Formal membership is not essential. This may be the most appropriate structure for NGOs in this sphere. From the start, the intention was to develop a network as dynamic and flexible as possible. Indeed, there are considerably more organisations involved in the ENAR information distribu-

tion stronger voice. ENAR brings together a wide range of organisations, including minority groups, trade unions, charities and grass-roots organisations. You can find, on our web-site, groups as diverse as the Iraqi Kurdish Community of Finland, the Churches' Commission for Racial Justice (London), the Centre for Bi-national and Intercultural Couples and Families (Vienna) or the "Clube Marítimo Africano" (Lisbon).

Within this framework it is possible to carry out major, wide-reaching campaigns and lobbying work. This introduces another focal point: ENAR wants to influence policy now rather than waiting until it is too late. At EU level the first binding steps in anti-racism and migration policy have

at national level. The directive establishes a common minimum which must be respected throughout the EU. However, there is nothing preventing the national legislation from establishing a higher level of protection. This is why it is imperative that this process of implementation is monitored and accompanied by the organisations combating racism.

ENAR is campaigning for equal rights for EU nationals and non-EU nationals, and for a concept of citizenship linked to residence rather than to nationality. We believe that in order to be viable, the EU must be built on the basis of its diversity and by allowing all those who live within its borders to take part fully in this project of developing society.



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tion network than the 600 participating.

A major focus of ENAR's work is the transfer of information about activities and legislative projects at European level to the national level and back again, as local and regional organisations are often unaware of the importance of European legislative initiatives. Another important focus is networking among anti-racist groups. This enables the groups involved to develop common political strategies that can then be widely publicised with a

already been taken. This is precisely where lobbying work is important so that influence can be brought to bear on these policies.

Currently, ENAR is focusing on several campaigns. The two main campaigns are:

Since July 2000 an EU directive exists to harmonise the level of protection for people who are victims of discrimination based on race or ethnic origin throughout the 15 member states. ENAR aims at helping to ensure the best implementation of this directive

ILGA-Europe has, through the Social Platform working groups<sup>1</sup>, established good relations with ENAR, notably in the sub-working group on anti-discrimination. ILGA-Europe also participated in the anti-discrimination group ENAR had organised to exchange information in particular in relation to the lobbying for the two Article 13 directives. Since December 2000 ENAR and ILGA-Europe have also been working together in the framework of the SOLIDAR project,<sup>2</sup> which has been a good opportunity for getting familiar with the specific issues different NGOs are working with. "It is vital for ENAR to reinforce the links and partnerships with other networks that share our vision for a Europe of social justice and equality", notes María Miguel Sierra, ENAR's Deputy Director.

ISTVÁN ERTL  
ENAR Information Officer

<sup>1</sup> See Newsletter # 3/01, pp. 14-15.

<sup>2</sup> See Newsletter # 1/01, p. 7, # 2/01, p. 10, and # 1/02, p.10)

# news clips

## Serious and persistent human rights violations in Austria

Austria is one of very few European countries that still have special provisions against lesbians and gays in their law books. Article 209 of the penal code stipulates a higher age of consent of 18 years for male-to-male sexual relations, while this is 14 for all other sexual relations. The special features of Article 209, however, make it the most serious human rights violation against gay men not only in the European Union, but also in the whole of Europe. Any case coming to the knowledge of the authorities must be officially prosecuted, Article 209 provides for a minimum sentence of six months in jail. Law reform attempts were frustrated on several occasions by the conservative majority in Parliament that has been existing since 1983. With the forming, in 2000, of a coalition government between the Christian-Democratic ÖVP and right-wing Freedom Party, FPÖ, a repeal of Article 209 at political level has become even more unlikely.

On the occasion of the European Parliament hearing on “the respect for fundamental rights: situation within the European Union in 2001” on 17 April (see p. 10), ILGA-Europe issued a press release<sup>1</sup> expressing its great concern about the continuous existence and application by the courts of Article 209. Co-chair Jackie Lewis said, that “because of the political reluctance to eliminate this human rights violation, all hopes of human rights defenders, both inside and outside Austria, are now residing with the Constitutional Court of Austria where a complaint against Article 209 is pending.”

Unfortunately, the Court continues to delay its decision. Last year, the court of second instance in Innsbruck had refused to apply Article 209 on the grounds of the judges’ concerns regarding Article 209’s constitutionality and consequently submitted a request to the Constitutional Court to examine the matter. In November 2001 the Constitutional Court

dismissed the complaint for extremely formalistic reasons. The Innsbruck court later re-submitted the complaint, but the CC closed its spring session in March 2002 without delivering any ruling. The Court’s reluctance to apply human rights standards here and to declare Article 209 unconstitutional certainly has to do with the Court’s ruling in 1989 when it declared Article 209 in line with the constitution. The Court may feel a certain embarrassment to reverse its 1989 decision which has been heavily criticised all these years by human rights defenders, scientists, jurists, LGBT activists and progressive politicians and which has caused the imprisonment of around 250 people since. Altogether, more than 1200 people have been jailed on the basis of this provision since its introduction in 1971. These delaying tactics of the Constitutional Court are unacceptable as they have already caused new arrests, court trials and prison sentences and will continue to do so until Article 209 will be repealed.

In February ILGA-Europe wrote to EP president Patrick Cox and urged him to take appropriate steps, including to invite the Austrian CC to speed up its decision. The case is clear anyway: In 1997 the European Human Rights Commission in Strasbourg ruled in the complaint of Euan Sutherland against the United Kingdom that *any* unequal age of consent for homosexual and heterosexual relations is a violation of the European Convention on Human Rights. Last year, Amnesty International adopted a gay man persecuted under Article 209 as a prisoner of conscience. The EP itself has already urged Austria in six resolutions to repeal Article 209, including in all annual reports and resolutions on the respect for fundamental rights in the European Union since 1995 when Austria joined the EU. However, the Austrian parliament and government have ignored not only these EP resolutions, but also the similar demands put forward by the United Nations Human Rights Committee and the Parliamentary Assembly of the Council of Europe.<sup>2</sup> Cox referred the letter to the EP Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs. Its president, MEP Ana Palacio Vallelersundi (PPE/E), informed us that the Committee has asked Joke Swiebel to deal with this matter in the annual report on the situation of human

rights in the EU in 2001 which she is drafting.

For ILGA-Europe it is completely unacceptable that Austria can ignore all these resolutions and its human rights obligations without any consequence. Both the European Parliament and the European Commission must put more pressure on Austria. This is also creating a huge credibility problem for the European Union which is demanding the strict observance of human rights by accession countries and putting the repeal of any anti-homosexual law provision as a pre-condition for admission to the EU. If Austria wanted to join today, it could not be admitted as it does not meet the Copenhagen criteria for accession.

When Social Affairs and Employment Commissioner Anna Diamantopoulou was confronted with this credibility problem on the occasion of a visit to Slovenia on 16 April she said she was not aware of any human rights violations in Austria. Therefore, ILGA-Europe also wrote a letter to Diamantopoulou to make sure that she gets all the background information and our media release. Indeed, Austrian ILGA member *HOSI Wien* had, already in February 2000, written to all Commissioners including Diamantopoulou, presenting detailed information about the serious and persistent human rights violations in Austria, and requested that a procedure against Austria as provided for by Article 7 TEU be considered by the Commission.

## Recent Board activities

In advance of the EU spring summit in Barcelona the Social Platform organised a seminar “From Lisbon to Barcelona: Creating a Social Europe” on 13 March to discuss progress, develop strategy and a deeper understanding of the so-called Lisbon process. On the following day, a conference on sustainable development jointly organised by the Platform, the European Trade Union Confederation (ETUC) and the European Environmental Bureau (EEB) was held at the university of the Catalan capital. ILGA-Europe was represented by co-chair Kurt Krickler.

On 23 March, co-chair Jackie Lewis spoke at a one-day conference in Brussels – “Fight against discrimination – current situation in Europe and in Belgium” – which was organised by the Belgian Centre for Equal Opportunities and Combating Racism. ILGA-Europe also had an info stand at the event.

<sup>1</sup> The full text is available at our web-site: [www.ilga-europe.org](http://www.ilga-europe.org)

<sup>2</sup> A detailed fact sheet with the international requests to repeal Article 209 is available in English or German from the ILGA-Europe office.

On 16 and 17 May, board member Riccardo Gottardi participated in the European Commission conference “EQUAL – NetWORKing for Inclusion” in Barcelona. The conference dealt with the EQUAL Community Initiative funded by the European Social Fund.

Again in Barcelona, Jackie Lewis will participate in a Forum on same-sex partnerships organised by the City of Barcelona and the LGBT movement of Catalonia on 24-26 May.

### Transgender rights in Finland

A historical law “on the legal recognition of a transsexual person’s sex” was adopted by the Finnish parliament on 3 May. Juridical sex reassignment is granted to diagnosed transsexuals that are 18 years or older, sterile and residents of Finland. In the government’s original bill it was further required that the person is not married or in registered partnership. The proposal, however, was amended in the committees of law and social and health affairs so that this no longer is an absolute requirement. Marriage will be automatically converted into registered partnership or vice

### First Gay & Lesbian Pride in Moldova

The first Moldovan Gay and Lesbian Pride, “Rainbow over the Dniester”, was held in Chişinău from 26 to 28 April 2002. The festival gathered over 350 persons from all over the country as well as many foreign guests.

The pride activities included the presentation of the first Moldovan gay anthology, an art exhibition, a travesty musical and travesty show, a round-table on safe sex and free HIV testing, a concert, a one-day movie festival, and a football match Gays vs. Lesbians which the lesbians won 5:1. They did not include a parade, because Moldovan society is not yet prepared to see gays and lesbians on the streets, and the organisers, therefore, feared provocations.

One of the key events was the two-day international conference “For tolerance and cooperation”, in which honorary guests from Sweden participated: Tasso Stafilidis, openly gay member of the Swedish parliament from the Left Party (*Vänsterpartiet*), Ulf Lidman, openly gay priest from Stockholm, Bill

information centre *GenderDoc-M* (Moldova) and *RFSL* (Sweden). *GenderDoc-M* works in co-operation with *COC Nederland* and with support of the Dutch Embassy in Moldova and Ukraine (see *ILGA-Europe Newsletter* # 3/01, p. 18).

### Poland: LGBT people not welcome

In January 2002 Robert Biedroń, President of the Campaign Against Homophobia (*Kampania Przeciw Homofobii*) applied on behalf of *KPH* and *Lambda Warszawa* to participate in the meetings and parade of the Robert Schuman Foundation of Poland. He emphasised that the participation of gay and lesbian groups in these events would help “realise the goals of the Foundation to support the activities of organisations which seek to develop democracy in Poland as well as to further the cause of independent social movements”. In March his request was refused. *KPH* received a response from Róże Thun, president of the Foundation: “The premise of the Schuman Parade is based on a joyous and enthusiastic



“Rainbow over the Dniester” was the title of the first Moldovan Gay and Lesbian Pride in April 2002

versa in case of spousal agreement. The sex legally recognised in accordance with the new law will then be considered the person’s sex when applying any other legislation.

In the future, a person’s application for sex reassignment will be handled by the Registry Office at the person’s domicile. This is a very important legislative change that had been demanded for a long time. Until now, genital surgery of transgender people was only possible after getting a permission from the so-called Castration Board, an institution originally founded to decide in castration matters of sexual delinquents. This board was now abolished.

Schiller, Nordic co-ordinator of *Tupilak*, and Stig-Åke Petersson (*RFSL*). Other international guests included Dennis van der Veur (*COC Nederland*) and activists from *ACCEPT* (Romania) and *Nash Mir* (Ukraine). Tasso Stafilidis emphasised: “Sweden closely monitors the respect for gay and lesbian rights in Moldova”. Although attempts were made to set up a meeting between him and Moldovan MPs, all of them refused after finding out the background of the visit of the Swedish guest.

The pride increased the visibility of sexual minorities in society and attracted the attention of mass media towards the humiliating situation of LGBT people in the Moldovan society. The festival was organised by the

manifesto, one that does not support contentious claims from any one particular group of society. For this reason, we are of the opinion that your proposal to participate in the Schuman Parade with banners expressing such claims and protests should not be approved.” Nowhere in Biedroń’s letter were banners or protests even mentioned.

TIIA AARNIPUU/KK



**Cologne celebrates diversity –  
let's make Europe  
a place for all of us!**

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[www.europride.de](http://www.europride.de)

# ANNUAL CONFERENCE AT LISBON, PORTUGAL

23-27 October 2002



## Plans for Lisbon conference moving ahead well

ILGA-Europe's annual conference is to take place this year in Portugal's capital city from Wednesday 23<sup>rd</sup> to Sunday 27<sup>th</sup> October.

We are very fortunate that one of Europe's most distinguished parliamentarians, Peter Schieder, President of the Parliamentary Assembly of the Council of Europe, has agreed to attend the conference, and to be honorary patron.

A wide and varied programme is currently being prepared. This will address

all topics of major concern for LGBT people at European level, including implementation of anti-discrimination legislation covering both sexual orientation and gender identity, free movement within the European Union, refugee status, EU enlargement, and recent important cases under the European Convention on Human Rights.

We will also explore the situation of Europe's LGBT Islamic community, with a view to developing strategies to support this community. Several workshops will draw on experience of the Portuguese and Spanish communities, looking at LGBT rights and the Catholic

Church, lesbian organising in the Iberian peninsula, and organising within political parties in Portugal and Spain, and within trades unions. We will also explore co-operation between organisations in Eastern and Western Europe.

We have applied for funds for scholarships from a number of sources, and hope for a wide participation of delegates from Eastern Europe.

Further details of the conference, including registration and scholarship application forms, will be published at the ILGA-Europe web-site in early June.