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**Situation of lesbians and gays in Council of Europe member states**

Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Csaba Tabajdi, Hungary, Socialist Group

*Summary*

In some Council of Europe member states homosexual acts between consenting adults are punishable by a prison sentence and in almost half of the member states the age of consent is higher for homosexual acts than for heterosexual acts. This type of discrimination is aggravated by widespread incomprehension and intolerance which sometimes leads up to physical violence

The Assembly has not chosen a maximalist attitude, but simply reiterates its request to the Committee of Ministers that sexual orientation be added to the grounds for discrimination prohibited by the European Convention on Human Rights and asks member states to take the necessary measures to put an end to discrimination against homosexuals.

**I. Draft recommendation**

1. Nearly twenty years ago, in its [Recommendation 924 \(1981\)](#) on discrimination against homosexuals, the Assembly condemned the various forms of discrimination suffered by homosexuals in certain Council of Europe member states.
2. Nowadays, homosexuals are still all too often subjected to discrimination or violence at school or in the street. They are perceived as a threat to the rest of society, as though there were a danger of homosexuality spreading once it became recognised. Indeed, where there is little evidence of homosexuality in a country, this is merely a blatant indication of the oppression of homosexuals.
3. This form of homophobia is sometimes propagated by certain politicians and religious leaders, who use it to justify the continued existence of discriminatory laws and, above all, aggressive or contemptuous attitudes.
4. Under the accession procedure for new member states, the Assembly ensures that, as a prerequisite for membership, homosexual acts between consenting adults are no longer classified as a criminal offence.
5. The Assembly notes that homosexuality is still a criminal offence in some Council of Europe member states and that discrimination exists in a great many others with regard to the age of consent.
6. The Assembly welcomes the fact that the European Court of Human Rights, in its

Dudgeon v. United Kingdom judgment as early as 1981, held that the prohibition of sexual acts between consenting male adults infringed Article 8 of the European Convention on Human Rights, and that more recently, in 1999, it expressed its opposition to all discrimination of a sexual nature in its Lustig-Prean and Beckett v. United Kingdom and Smith and Grady v. United Kingdom judgments.

7. The Assembly refers to its [Opinion No. 216](#) (2000) on Draft Protocol No. 12 to the European Convention on Human Rights, in which it recommended that the Committee of Ministers include sexual orientation among the prohibited grounds for discrimination, considering it to be one of the most odious forms of discrimination.

8. While laws on employment do not explicitly provide for restrictions concerning homosexuals, in practice homosexuals are sometimes excluded from employment and there are unjustified restrictions on their access to the armed forces.

9. The Assembly is pleased to note, however, that some countries have not only abolished all forms of discrimination but have also passed laws recognising homosexual partnerships and even the right to adopt children, or recognising homosexuality as a ground for granting asylum where there is a risk of persecution on the basis of sexual orientation.

10. It is nonetheless aware that recognition of these rights is currently hampered by people's attitudes, which still need to change.

11. The Assembly therefore recommends that the Committee of Ministers:

i. add sexual orientation to the grounds for discrimination prohibited by the European Convention on Human Rights, as requested in the Assembly's [Opinion No. 216](#) (2000);

ii. extend the terms of reference of the European Commission against Racism and Intolerance (ECRI) to cover homophobia founded on sexual orientation;

iii. call upon member states:

*a.* to include sexual orientation among the prohibited grounds for discrimination in their national legislation;

*b.* to revoke all legislative provisions rendering homosexual acts between consenting adults liable to criminal prosecution;

*c.* to release with immediate effect anyone imprisoned for sexual acts between consenting homosexual adults;

*d.* to apply the same minimum age of consent for homosexual and heterosexual acts;

*e.* to take positive measures to combat homophobic attitudes, particularly in schools, the medical profession, the armed forces and the police, by means of training;

*f.* if necessary, to take disciplinary action against anyone discriminating against homosexuals;

*g.* to ensure equal treatment for homosexuals with regard to employment;

*h.* to adopt legislation which foresees registered partnership;

*i.* to recognise persecution against homosexuals as a ground for granting asylum.

## **II. Explanatory memorandum by Mr Tabajdi, Rapporteur**

## A. Introduction

1. Under the accession procedure for applicant countries, the Committee on Legal Affairs and Human Rights has been verifying that any former classification of homosexuality as an offence is no longer current. It has had occasion to call for amendment of national legislation to divest it of provisions penalising homosexuality.
2. In spite of this, discriminatory provisions are retained in the legislation of some countries, and above all lesbians and gays still actually suffer not only discrimination but also hostility and even acts of violence, as witness the bomb explosion that occurred in a gay pub in London in April 1999, killing three and injuring over sixty.
3. Violence like this is the most vicious form of homophobia. It is akin to racist acts though, unlike racism, homophobia is considered justified by many. Furthermore, certain governments and parliaments purposely maintain discriminatory legislation, just as some religious leaders are opposed to lesbian and gay rights.
4. As early as 1981, two major advances were made in the Council of Europe: the Parliamentary Assembly adopted [Recommendation 924](#) (1981) on discrimination against homosexuals, and the same year the European Court of Human Rights, in its judgment in the *Dudgeon* case, held that the prohibition of sexual acts between consenting male adults infringed Article 8 of the European Convention on Human Rights (hereinafter ECHR).
5. In the latter months on 1999 there have been significant new developments. The European Court of Human Rights, in the judgment in the case of *Salgueiro Da Silva Mouta v. Portugal*, concluded that there was a difference of treatment between the applicant and the mother of M., founded on the applicant's sexual orientation, a notion indisputably covered by Article 14 of the Convention. In September 1999, in the cases of *Lustig-Prean and Beckett v. the United Kingdom* and *Smith and Grady v. the United Kingdom*, the Court had already ruled in favour of ending all discrimination of a sexual nature and delivered a judgment against the United Kingdom authorities for their exclusion of four homosexuals from the armed forces.
6. During the January 2000 part-session, in its [Opinion No 216](#), which it adopted for the attention of the Committee of Ministers concerning draft Protocol No. 12 to the ECHR, the Assembly asked the Committee of Ministers to include sexual orientation in the enumeration of grounds of discrimination, considering that experience had proved it to be one of the most insidious and odious forms of discrimination.
7. Sexual orientation already appears among the prohibited grounds of discrimination in the Treaty of Amsterdam amending the Treaty on European Union, which was adopted on 2 October 1997 and came into force on 1 May 1999. A new Article 6A of the Treaty is worded as follows: "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."
8. In an effort to assess the situation of homosexuals in the Council of Europe member states, the Sub-Committee on Human Rights of the Committee on Legal Affairs and Human Rights organised a hearing on 14 October 1999.<sup>1</sup>
9. Further to the hearing, and at the initiative of the Rapporteur, a questionnaire was sent to all Parliamentary Assembly national delegations in order to obtain detailed information. The questionnaire is reproduced in Appendix I to this document.
10. The following countries replied: Andorra, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Iceland, Malta, Netherlands, Poland, Romania, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.
11. It should be mentioned that Slovenia appended to its reply the comments of the NGOs which it consulted before answering. This accounts for the fact that the assessment of the de facto situation in its case is far more critical than for other countries.

12. The reply by Cyprus answers only the first question, since there are no statutory provisions dealing specifically with lesbians, gays and bisexuals on the topics raised in the other questions.

13. It should also be pointed out that the reported absence of a recognised homosexual community in a country is considered by your Rapporteur as meaning that it is forced into concealment by the social oppression of which it is a victim.

14. In the light of the hearing and of the replies to the questionnaire, this report sets out to examine the situation in the member countries from the angles of legislation, penalisation of homosexuality, employment and access to certain services such as the military, asylum, adoption and the right to have a child by recourse to artificial insemination.

15. It will go on to consider anti-discrimination legislation.

## **B. Situation with regard to legislation**

### **1. Laws on sexual offences**

16. Homosexuality is not an offence in Andorra, Belgium, the Czech Republic, Finland, France, Malta or the Netherlands, where the legislation on sexual offences is drafted in a gender-neutral way, or in Sweden since 1978 or Switzerland since 1992.

17. The current version of Article 200 of the Romanian penal code, adopted in 1996, defines sexual relations between persons of the same sex as an offence punishable by a prison sentence of one to five years where the relations occur in public or cause public outrage. The terms "in public" and "public outrage" are very broad. "In public" is defined in Article 152 of the Romanian penal code to include "a place always accessible to the public, even if no person is present" or "in a way which the perpetrator is aware is likely to come to the knowledge of the public". "Public outrage" can mean "known to more than two persons who reprove it".

18. The current version of Article 200 also creates the following offences: "Inciting or encouraging a person to the practice of sexual relations between persons of the same sex, as well as propaganda or association or any other act of proselytism committed in the same scope", the sentence again being one to five years imprisonment.

19. In 1993 the Assembly had approved Romania's membership of the Council of Europe subject to the repeal of an earlier version of Article 200, which placed an outright ban on same sex relations between men. In 1997 the Assembly, commenting inter alia on the revised version of Article 200, noted "that certain provisions of the Penal Code now in force [in Romania] are unacceptable and seriously imperil the exercise of fundamental freedoms" and called on the Romanian government to repeal them.

20. In Bulgaria, same-sex sexual acts are also unlawful and punishable by up to two years' imprisonment or by corrective labour in the event of scandal, of one person inciting another or if a person under 16 is involved. Homosexual men are submitted to a medical test for hepatitis B.

21. In the United Kingdom, discriminatory provisions regarding private life and age of consent are in force. These provisions have raised complaints which are now before the European Court of Human Rights.

22. In Estonia the Code of Criminal Procedure punishes forcible buggery.

23. In many countries the age of consent for same-sex and opposite-sex sexual acts differs: Albania, Austria, Bulgaria, Croatia, Cyprus, Estonia, Hungary, Ireland, Liechtenstein, Lithuania, Moldova, Portugal, Romania and the United Kingdom (see Appendix II).

24. A bill is currently before the United Kingdom Parliament to fix the same age of consent for homosexual and heterosexual acts, namely sixteen years in England, Wales and Scotland and seventeen years in Northern Ireland. The bill also provides that a person under

the age of consent will no longer commit an offence by having relations with a person over the age of consent.

25. In Cyprus same-sex sexual acts are an offence under Sections 171 to 174A of the Criminal Code.

26. In its decision of 1 July 1997 in the case of *Sutherland v. the United Kingdom*, the European Commission of Human Rights found that Articles 8 and 14 of the Convention were violated by the discrimination as to age of consent, on the ground that there was no objective and reasonable justification for maintaining a higher minimum age for male homosexual acts.

27. Among the applicant countries, Armenia, Azerbaijan and the Republika Srpska entity of Bosnia and Herzegovina prohibit male homosexual acts. In Armenia there were seven prosecutions in 1996 and four in 1997.

## **2. Situation in the armed forces<sup>2</sup>**

28. In Belgium, the Czech Republic, Finland, France, Malta, the Netherlands, Sweden and Switzerland there is no restriction on homosexuals entering the armed forces.

29. In Poland, homosexuality is not allowed for regular service personnel. In Spain, although the statutes proscribe all discrimination founded on sexual orientation, in practice the military shows less tolerance than civil society.

30. In Slovenia homosexuals are not explicitly banned from the services but there is discrimination in practice according to the NGOs consulted by the Slovenian authorities before they answered the questionnaire.

31. In the United Kingdom, 600 men and women have been forced to leave the armed forces over the past ten years because of their homosexual orientation. The European Court of Human Rights declared these exclusions unlawful in the cases of *Lustig-Prean and Beckett v. the United Kingdom* and *Smith and Grady v. the United Kingdom*. Following these judgments, the Secretary of State for Defence announced the introduction of a new Government policy on homosexuality in the armed forces.

## **3. Employment**

32. In Andorra, Belgium, the Czech Republic, Finland, France, Malta, the Netherlands, Sweden and Switzerland, the law foresees no discrimination against homosexuals with regard to employment in State institutions.

33. None of the replies received indicate any restriction prescribed in the statutes as regards employment of homosexuals. In practice, however, self-confessed homosexuals are excluded from employment, in Slovenia for instance, to the extent of dismissal in certain cases.

34. In the United Kingdom the requirement to declare sexual orientation was recently removed from the application form for judicial appointments. The United Kingdom nevertheless states that there is no law protecting homosexuals against discrimination at the workplace. The Equal Opportunities Commission has recommended the enactment of such legislation. The United Kingdom Government proposes to draft a Code of Practice in the matter.

35. The European Commission issued a draft Directive in November 1999 which, if adopted, will compel member states to introduce legislation prohibiting of discrimination on any ground, sexual orientation included.

## **4. Medical definition of homosexuality**

36. As from 1991 the WHO has removed homosexuality from the International Classification of Diseases. No Council of Europe member country still classes it as an illness. Although in practice, in Slovenia for example, the medical profession and in particular

psychiatrists treat homosexuality as a disorder.

## **5. Right of asylum**

37. Sexual orientation is generally not a ground for granting political asylum but in certain countries it can constitute one if a person is in danger of ill-treatment in his/her country of origin within the meaning of Article 3 ECHR. This is the case particularly in Belgium, Hungary, the Czech Republic, Sweden and Spain.

38. In the Netherlands, sexual orientation has been recognised as a ground for membership of a specific social group within the definition of a refugee in the 1951 Geneva Convention. The status conferred by the convention can be secured in three situations: where asylum seekers are persecuted on the ground of sexual orientation; where persecuted on the ground of overt homosexual conduct; where discriminated against on the ground of sexual orientation.

39. Under the new Czech law on asylum, which took effect in January 2000, refugee status may be granted to a foreigner who risks persecution as a member of a specific social group.

40. Most countries claim not to have had to deal with an asylum request founded on sexual orientation.

## **6. Adoption**

41. Homosexual couples are not allowed to adopt children in Andorra, Belgium, the Czech Republic, Finland, France, Hungary, Malta, Poland, Romania, Sweden or Switzerland; only married couples are allowed to do so. However, in principle, a single person may. In Finland, a lesbian or gay couple cannot adopt together, but they can be joint foster parents/custodians for a child.

42. A bill has been tabled in the Netherlands to allow same-sex couples as well as individuals to adopt children.

43. In Slovenia a bill on registration of partners of the same sex is being drawn up; it neither prohibits nor permits adoption. In practice adoption is not possible for either homosexual individuals or couples.

44. In the United Kingdom, adoption is possible only for married couples or single persons. No reference to sexual orientation is found.

45. In Spain, adoption by a homosexual couple is not possible under the legislation as the law provides that nobody may be adopted by more than one person except a married couple. In practice it is not possible individually either. Adoption by one partner would indeed be possible but in practice this is left to the discretion of the competent regional administration.

46. In practice, admitting that one is homosexual reduces the chances of acceding to adoption. This is the case in France where approval is often withheld from homosexual applicants; even though homosexuality cannot be invoked as a ground for refusal, the reason given for withholding approval is that such persons do not offer all the appropriate guarantees as regards psychological fitness, family values and child-rearing ability.

47. This amounts to a form of discrimination, usually supported by the opinion that being brought up by homosexual parents would be injurious to the child, perhaps because it might cause confusion as to gender roles or sexual identity or difficulties with social relations. Another misgiving often expressed is that children brought up by lesbians or gays are themselves likely to develop a homosexual orientation.

48. Plentiful research has been conducted on this subject over the last twenty years (see for example "Lesbian and gay parenting, summary of research findings", Patterson C.J., 1995). None of it has established that children could have suffered a handicap through being

brought up by homosexual parents, or that they are worse parents than heterosexual ones, or that such children are any more likely to become homosexuals themselves.

49. This is the proper place to recall the line recently taken by the European Court of Human Rights in the above-mentioned case of *Salgueiro Da Silva Mouta*, where a homosexual father was deprived by the Lisbon Court of Appeal of parental authority on the ground of his sexual orientation. The Court of Appeal, having regard to the fact that the applicant was a homosexual and lived with another man, ruled that the child should live in a conventional Portuguese family and that there was no need in the present instance to enquire whether or not homosexuality was an illness or whether it was a sexual inclination towards persons of the same sex; in either case there was an abnormality and a child ought not to grow up under the shadow of abnormal situations.

50. The European Court of Human Rights decided otherwise and found a violation of Article 8 in conjunction with Article 14 of the Convention.

51. More recently, a French court granted visiting rights to a female homosexual partner. Stressing in its judgment that, having regard to the exceptional circumstances, the family affairs judge could grant other persons, whether or not parents, a right to correspond with or visit a child, it found that the family nature of the dispute was beyond doubt.

## **7. Reproductive rights**

52. Access to medical facilities for artificial insemination is possible in Hungary only for heterosexual couples whether married or unmarried, in Slovenia for a married woman, and in Sweden for a married or cohabiting woman. In France, such access is expressly restricted to couples consisting of a man and a woman who are married or can prove that they have lived together for at least two years. It is possible for strictly medical reasons in Poland, and Romania has no regulations in the matter. The Czech Republic does not allow it.

53. In Andorra artificial inseminations is not carried out.

54. In Finland, the Netherlands and the United Kingdom, a woman living either singly or as another woman's partner can gain access to medical facilities for artificial insemination.

55. In Malta there is no law prohibiting artificial insemination of a single woman.

56. In Spain there is theoretically no prohibition, but health restrictions preclude artificial insemination.

## **C. Other questions – the actual situation**

57. The purpose of the questionnaire was to identify the various areas where discrimination against homosexuals is due to legislation. However, this reveals only a part of the picture. During the hearing on 14 October 1999 the Sub-Committee on Human Rights was presented with evidence covering many other areas of discrimination, some of which are summarised as follows:

### **1. Homophobic hate crimes**

58. Three important reports dealing with homophobic hate crime in three very different countries – Ireland, Sweden and the United Kingdom – demonstrate a very similar picture of violence and abuse. In Ireland, a 1995 government-sponsored survey found that a quarter of the 159 respondents had been punched, beaten, hit or kicked. In Sweden a 1996 survey showed that 23% of the 600 lesbian and gay respondents had been victims of violent hate crime, and 40% of the sample reported that they were often in fear of hate crimes. In 1996, in a United Kingdom survey of hate crimes against lesbian and gay men involving over 4000 respondents, one in three gay men and one in four lesbians reported that they had experienced a violent attack in the last five years. The scale of the violence was often very extreme and included stabbing, shootings, severe beatings, rape and assault. This survey also asked questions about harassment and verbal abuse. Overall 32% of respondents had

been harassed and 73% reported that they had been victims of verbal abuse.<sup>3</sup>

## **2. Youth**

59. The problems faced by young lesbians and gays are particularly acute. Research carried out in many countries confirms that negative images of homosexuality, rejection by family, peer group hostility, isolation, and lack of information and support can combine to create the most intense pressures. Moreover homophobic violence and bullying are a common experience for many young lesbians and gays: in one survey in the United Kingdom 48% of those under 18 reported violent attacks and 50% of these attacks took place in schools and were carried out by fellow students.

60. The result is a sort of self-hate that leads an alarmingly high percentage of gay and lesbian youth to inflict violence upon themselves through suicide attempts, drug and alcohol abuse or other high-risk behaviours. Studies in several countries show that young lesbians and gays are between two and three times more likely to attempt suicide than their heterosexual counterparts. In Italy, for example, in a study within the framework of the EU funded Daphne programme 40 % of respondents had contemplated suicide and 13% had attempted suicide. The age in which thoughts about suicide were most prevalent was between 14 and 16, whereas the suicide attempts tended to take place in the following two years.<sup>4</sup>

## **3. Employment discrimination by individual employers**

61. There has been little systematic research in Europe into employment discrimination against lesbians and gays by private employers. Nonetheless, the hearing in October 1999 was presented with the results of a survey carried out in the United Kingdom which revealed a disturbing picture: 16% of respondents had at least one experience of discrimination, while 21% suspected that they had been discriminated against. 8% said that they had been dismissed because of their sexuality, while 48% said that they had been harassed at work. Similar high levels of discrimination and harassment are also revealed by a survey carried out by the Swedish Ministry of Labour in 1997.<sup>5</sup>

### **D. Anti-discrimination legislation**

62. Spain and Slovenia have adopted legislation prohibiting discrimination on the ground of sexual orientation.

63. Certain European countries go beyond plain prohibition of discrimination and recognise homosexual relations in law with all the consequences which this entails. Such recognition exists in the following European countries: Denmark, the first country in the world to grant it, Norway, Sweden, Iceland and the Netherlands. In Hungary, the legal framework established for unmarried heterosexuals was extended to homosexual couples in 1996 pursuant to a Constitutional Court decision. In France the "Civil Solidarity Pact" (PACS) offers certain facilities<sup>6</sup>, in Belgium a law has been enacted creating the new institution of statutory cohabitation which affords limited rights, while in Finland draft laws are under discussion.

64. The rights enjoyed under these arrangements vary considerably: in general the Scandinavian countries and the Netherlands grant all the more significant benefits of civil marriage, except the right to adopt and the right to medically assisted procreation. The rights granted in the other countries are more limited.

65. Only nine countries in Europe (Belgium, Denmark, Finland, Germany, Iceland, Netherlands, Norway, Sweden, United Kingdom) grant a right of residence to homosexual couples of two nationalities, and moreover subject to highly restrictive conditions in some cases.

66. In most European countries, where one member of a homosexual couple has a child the partner has no right to recognition of his/her relationship with the child. This causes problems, for instance in dealings with the school and the doctor. In the event of separation the relationship with the child is broken off, and this has prompted some courts to recognise such rights.



67. In most countries, homosexual partners are not granted survivor's pension or the benefit of health insurance other than in their own name.

68. Lastly, if there is no will the survivor has no claim on the estate.

## **E. Conclusions**

69. Forms of discrimination against homosexuals, legislative discrimination included, are still very significant and are even considered legitimate in practice by a majority of our fellow citizens.

70. Nevertheless positive developments are afoot. The case-law of the European Court of Human Rights has greatly contributed to these changes by securing to homosexuals the rights available to any person. At national level too, changes for the better have occurred in some Council of Europe member countries. However, as demonstrated by the hearing as well as by the replies to the questionnaire, much remains to be achieved

71. A consensus emerged within the Committee on Legal Affairs and Human Rights in favour of recommending the elimination of existing discriminatory legislation and upholding recommendations already adopted by the Assembly.

72. However, as far as granting homosexuals the same rights as married couples was concerned, the majority of the committee felt that the child's interests should override all other concerns and that homosexual couples were not in the best position to satisfy these interests. Consequently, it would seem premature to make recommendations in this area, even if some member states have already recognised the right of homosexual couples to adoption and medically assisted procreation in their legislation and case-law.

73. Member states should therefore be called upon:

- to remove the offence of homosexuality from their penal codes where it still exists, and to take action directed at the medical profession, the army and the police in some countries;
- to amend their legislation in order to fix the same age of consent for homosexual and heterosexual relations;
- to take measures to eliminate any form of discrimination, in particular regarding access to employment;
- to adopt legislation which foresees registered partnership;
- to recognise persecution against homosexuals as a ground for granting asylum.

74. The European Convention on Human Rights should be amended in the light of the Court's case-law and the Assembly's opinion on draft Protocol No. 12 by placing sexual orientation among the grounds of discrimination specified in the draft protocol and in Article 14 ECHR.

## **APPENDIX I**

### **Situation of Lesbians and Gays**

#### **in Council of Europe Member States**

#### **Questionnaire**

#### **sent to the national parliamentary delegations**

We would be very grateful if you could reply to the following questions.

In the case of an affirmative answer to questions 1, 2.b, 3, 4 or 5, or a negative answer to questions 2.a, 6 or 7, please provide the text of the applicable paragraphs in the legislation or regulations (in your own language and translated into English or French), or in the case of a court judgment, the title of the case. If there are any statistics for the number of persons affected annually by the legislation or regulations in question, please provide them.

**1. Sexual Offences Law**

Do your country's sexual offences laws contain specific provisions in respect of same-sex sexual acts that do not apply equally to opposite-sex sexual acts?

Please give specific consideration to such areas as the age of consent, definitions of what constitutes a private or public place, and concepts which feature in some jurisdictions, such as "affront to public decency", "public scandal", and "seduction".

**2. The Armed Forces**

a. Are lesbian, gay or bisexual people allowed to serve in the armed forces.

b. Are there restrictions with regard to the positions they may hold?

**3. Employment**

Are lesbian, gay or bisexual people excluded from employment in any particular field?

Please give particular consideration to the following areas: the judiciary and the legal profession, the police, the teaching profession.

**4. The medical definition of homosexuality**

Is homosexuality officially classified as an illness in any law or regulation?

**5. Asylum**

Is "sexual orientation" recognised as a ground for membership of a particular "social group" in defining refugee status under the 1951 United Nations Convention?

Alternatively, do you afford asylum to lesbian, gay and bisexual refugees under some other humanitarian status?

**6. Adoption and fostering**

**a. Second parent adoption**

May the same-sex partner of a woman or man who has a child adopt that child?

**b. Fostering and adoption (where the child is not related biologically to either partner)**

May lesbians and gay men foster or adopt children:

i. As individuals?

ii. As couples?

**7. Reproductive rights**

May lesbians conceive children by donor insemination either as a single person or within the context of a lesbian partnership:

- i. Without medical assistance?
- ii. With medical assistance?

## APPENDIX II

### Countries in Europe with a discriminatory age of consent for same-sex sexual activity<sup>7</sup>

	Age of Consent			Custodial Penalties	Section number of criminal code or applicable statute
	Female-female	Male-male	Opposite sex		
Albania	18	18	14	Up to 5 years	Art 116
Austria	14	18	14	6 months to 5 years	Art. 209
Bulgaria	18	18	14	1 to 5 years	Art 157 par. 3
Croatia	18	18	14	?	?
Cyprus <sup>8</sup>	None	18	13 or 16	Up to 7 years	Art. 171
Estonia <sup>9</sup>	None	16	14	Up to 10 Years	Art 118
Hungary	18	18	14	Up to 3 years	Art. 199
Ireland	15	17	15/17 <sup>10</sup>	Up to 2 years	s.3, s.4 C.L (S.O) Act 1993
Liechtenstein	14	18	14	6 months to 5 years	Art. 208
Lithuania <sup>11</sup>	14	18	14	3 to 8 years	Art. 122, Par. 2
Moldova <sup>12</sup>	16	16/18	16	2 to 5 years	Art 106
Portugal	16	16	14	Up to 2 years	Art. 175
Romania	18	18	14 <sup>13</sup>	2 to 7 years	Art. 200, par. 2
UK:	16	18	16	Up to 5 years	s. 143 C J & P O Act 1994
England/Wales	16	18	16	Up to life <sup>14</sup>	As above
Scotland	17	18	17	Up to 5 years	As above
N. Ireland					As above

*Reporting committee:* Committee on Legal Affairs and Human Rights

*Budgetary implications for the Assembly:* none

*Reference to committee:* [Doc 8319](#) and References 2358 and 2384 of 30 March 1999 and 26 April 1999

*Draft recommendation* adopted unanimously by the committee on 23 May 2000 with one abstention

*Members of the Committee: MM Jansson (Chairperson), Bindig, Frunda, Mrs Err (Vice-Chairpersons), Mrs Aguiar, MM Akçali, Arzilli, Attard Montalto, Bal, Bartumeu Cassany, Bruce, Bulavinov, Clerfayt, Contestabile, Demetriou, Derycke, Dimas, Enright, Floros, Mrs Frimansdóttir, MM Fyodorov, Gustafsson (alternate: Mr von der Esch), Holovaty, Mrs Hren-Vencelj, Mrs Imbrasiene, MM Jaskiernia, Jurgens, Kelemen, Lord Kirkhill (alternate: Mrs Cryer), MM S. Kovalev, Kresák, Mrs Krzyzanowska, Mr Le Guen, Mrs Libane, MM Lintner, Lippelt, Loutfi, Magnusson, Mrs Markovic-Dimova, MM Marty, McNamara, Moeller, Nastase (alternate: Mrs Ionescu), Mrs Ninoshvili, MM Pavlov, Pollo, Mrs Pourtaud, MM Robles Fraga, Rodeghiero (alternate: Mr Provera), Mrs Roudy, Mrs Serafini, MM Simonsen, Skrabalo, Solonari, Spindelegger, Svoboda, Symonenko (alternate: Mr Khunov), Tabajdi, Tallo, Vera Jardim, Verhagen (alternate: Mr Dees), Mrs Vermot-Mangold, Mr Vyvadil (alternate: Mr Kroupa), Mrs Wohlwend, Mrs Wurm, Mr Yáñez-Barnuevo*

*N.B. The names of those members who were present at the meeting are printed in italics.*

*Secretaries to the committee: Mr Plate, Ms Coin and Ms Kleinsorge*

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<sup>1</sup> The record of the hearing is available from the Secretariat on request (AS/Jur/DH (2000) 03).

<sup>2</sup> There is no army in Andorra.

<sup>3</sup> Ireland: Gay and Lesbian Equality Network and NEXUS Research Cooperative (1995) Poverty, Lesbians and Gay Men: The Economic and Social Effects of Discrimination". Dublin: Combat Poverty Agency

Sweden: Tiby, E and Lander, I (1996) – "Hat, hot, våld - utsatta homosexuella kvinnor och män. En pilotstudie i Stockholm." Stockholm: Folkhälsoinstitutet.

Mason, A. and Palmer, A. (1996) - "Queer Bashing -- a national survey of hate crimes against lesbians and gay men". London: Stonewall.

<sup>4</sup> UK: Mason, A. and Palmer, A. (1996) - "Queer Bashing -- a national survey of hate crimes against lesbians and gay men". London: Stonewall.

Bertozzo, G. (1998): "From Internet: The Voices of 'Quella Ragazza, Quel Ragazzo' (That Girl, That Boy). Finisterrae, n° 1, October, Firenze (Italy).

<sup>5</sup> UK: Palmer, A., (1993) – "Less Equal Than Others -- A Survey of Lesbians & Gay Men at Work". London: Stonewall.

Sweden: Arbetsmarknadsdepartementet. Stockholm (1997). Förbud mot diskriminering i arbetslivet på grund av sexuell läggning. Betänkande av utredningen mot diskriminering i arbetslivet på grund av sexuell läggning (SEDA). Statens offentliga utredningar 1997:175.

<sup>6</sup> Since its adoption in 1999, 40% of heterosexuals and 60% of homosexuals have concluded such a Pact.

<sup>7</sup> Age of consent laws vary considerably between countries, and are often complex in their details. This table shows only those aspects in which there is discrimination against same-sex acts. Source: Graupner, H. (1997). "Sexualität. Jugendschutz & Menschenrechte", Vienna: Peter Lang, with updates by the author.

<sup>8</sup> Minimum ages are for vaginal intercourse (16) and anal intercourse (heterosexual: 13, homosexual: 18).

<sup>9</sup> Minimum age limits are for vaginal intercourse and homosexual anal intercourse only.

<sup>10</sup> The age limit for heterosexual anal intercourse is 17; for vaginal intercourse, 17, except for

women with boys, where it is 15; for all other heterosexual acts, 15; for all male homosexual acts, 17.

<sup>11</sup> The position is the same as for Belarus

<sup>12</sup> The minimum age limits quoted apply to vaginal, anal and oral intercourse only, with 18 applying to male-male anal intercourse

<sup>13</sup> The minimum age limit of 14 applies to the female partner in vaginal intercourse only

<sup>14</sup> For the common law offence of "sodomy" (see Allsop, P. 1981, 62/80, ann. to subs. 7)