

Chronological overview of the main legislative steps in the process of legal recognition of homosexuality in European countries

by Kees Waaldijk¹

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This overview (last updated April 2003) is roughly based on the hypothesis that most countries, at different times and different paces, go through a standard sequence of legislative steps recognising homosexuality.² The further (and sooner) a country has progressed along that sequence, the higher its place in the table.³ The fifteen Member States of the European Union are classified in Table 1. Twenty one other Member States of the Council of Europe are dealt with in Table 2. Both table will contain inaccuracies, and may have missed recent developments.⁴

Symbols Used

1993 = year in which the legislation came into force
(1993) = the legislation has a limited scope or is implicitly worded
[1993] = not the whole country is covered by legislation
i.p. = legislation is in preparation or not yet in force

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² Kees Waaldijk, 'Standard Sequences in the Legal Recognition of Homosexuality – Europe's Past, Present and Future', (1994) 4 *Australasian Gay and Lesbian Law Journal* 50.

³ A general source for the anti-discrimination and partnership information in this table can be found in Wintemute & Andenaes 2001, cited above, and especially in the excellent appendices compiled by Robert Wintemute in that book (p. 775-788). A general source for information on criminal law in this overview is Helmut Graupner, *Sexualitaet, Jugendschutz und Menschenrechte*, Teil 2, Frankfurt: P Lang, 1997, and Helmut Graupner 'Sexual Consent: The Criminal Law in Europe and Overseas', (2000) 29 *Archives of Sexual Behavior* 415. See also the databank at <www.cersgosig.informagay.it>, the *World Legal Survey* of the International Lesbian and Gay Association <www.ilga.org>, ILGA-Europe's monthly *Euro-Letter* <<http://inet.uni2.dk/~steff/eurolet.htm>>, as well as the ILGA-report by Tatjana Greif & Adrian Coman (eds.), *Equality for Lesbians and Gay Men. A Relevant Issue in the EU Accession Process*, Brussels, March 2001 <www.ilga-europe.org>.

⁴ Corrections and additions are always welcome <c.waaldijk@law.leidenuniv.nl>.

Table 1: European Union Member States	Decriminalisation of homosexual acts between (male) adults	Equalisation of age limits in sex offences	Prohibition of discrimination (in other fields than employment)	Prohibition of employment discrimination	First legislative recognition of not-registered same-sex cohabitation	Registered partnership legislation	Joint or second-parent adoption	Civil marriage
Netherlands	1811	1971	(1983) 1992 1994 ⁵	1992 1994 ⁶	(1979) 1980/1998 ⁷	1998	2001	2001
Denmark	1930	1976	1987	1996	(1986) ⁸	1989	1999	—
Sweden	1944	1978	1987	1999	1988	1995	2003	—
Belgium	1792	1985	2003	2003	—	(2000)	—	2003 ⁹
Finland	1971	1998	1995	1995	—	2002	—	—
France	1791	1982	(1985) 2001 ¹⁰	(1985) (1986) 2001 ¹¹	(1993) 1999	(1999)	—	—
Spain	1822 ¹²	1822	1995	1995	(1994) ¹³	[(1998 - 2002)] ¹⁴	[i.p.] ¹⁵	—
Luxembourg	1792	1992	1997	1997	—	—	—	—
Germany	[1968] 1969 ¹⁶	[1989] 1994	[1992/95] [(1998)] ¹⁷	[(1998)] ¹⁸ i.p.	—	(2001)	—	—
Ireland	1993	— ¹⁹	(1989) 2000 ²⁰	(1993) 1998 ²¹	(1995) ²²	—	—	—
United Kingdom	[1967] [1980] 1982 ²³	2001	i.p.	i.p.	(2000) ²⁴	i.p.	i.p.	—
Austria	1971	2002	(1993) [(2000)] ²⁵	i.p.	(1998) ²⁶	—	—	—
Italy	[1861] 1889 ²⁷	1889	—	i.p.	—	—	—	—
Portugal	1945	— ²⁸	—	i.p.	2001	—	—	—
Greece	1950	— ²⁹	—	i.p.	—	—	—	—

Table 2: Other Council of Europe Member States ³⁰	Decriminalisation of homosexual acts between (male) adults	Equalisation of age limits in sex offences	Prohibition of discrimination (in other fields than employment)	Prohibition of employment discrimination	First legislative recognition of not-registered same-sex cohabitation	Registered partnership legislation	Joint or second-parent adoption	Civil marriage
Iceland	1930 ³¹	1992	1996	1996	—	1996	2000 ³²	—
Norway	1972	1972	1981	1998	1991	1993	2001	—
Slovenia	1977	1977	1995	1998	—	—	—	—
Czech Republic	1961	1990	(2001) ³³	1999/2001 ³⁴	—	—	—	—
Switzerland	1942 ³⁵	1992	(1999) ³⁶	—	—	[(2001)] ³⁷ i.p.	—	—
Hungary	1961	2002 ³⁸	(1997) ³⁹	—	1996	—	—	—
Romania	1996	2002	(2002) ⁴⁰	(2002) ⁴¹	—	—	—	—
Turkey	1858	1858	—	—	—	—	—	—
Poland	1932	1932	—	—	—	—	—	—
Malta	1973	1973	—	—	—	—	—	—
Slovakia	1961	1990	—	—	—	—	—	—
Ukraine	1991	1991	—	—	—	—	—	—
Russia	1993	1997	—	—	—	—	—	—
Latvia	1992	1998/2000 ⁴²	—	—	—	—	—	—
Cyprus	1998	2002	—	—	—	—	—	—
Lithuania	1993	i.p. ⁴³	i.p. ⁴⁴	i.p. ⁴⁵	—	—	—	—
Bulgaria	1968	—	—	—	—	—	—	—
Croatia	1977	—	—	—	—	—	—	—
Estonia	1992	—	—	—	—	—	—	—
Moldova	1995	—	—	—	—	—	—	—
Albania	1995	—	—	—	—	—	—	—

Notes to the two tables

⁵ In the prohibition of discrimination in Article 1 of the Dutch Constitution, which entered into force in 1983, the words 'or any ground whatsoever' were added with the explicit intention of covering discrimination based on homosexual orientation (see Kees Waaldijk, 'Constitutional Protection Against Discrimination of Homosexuals', (1986/1987) 13 *Journal of Homosexuality* 57 at 59-60). In 1992, 'hetero- or homosexual orientation' was inserted in several anti-discrimination provisions of the Penal Code. In 1994, the General Equal Treatment Act came into force, covering several grounds including 'hetero- or homosexual orientation'.

⁶ *Idem*.

⁷ Unregistered cohabitation (both for same-sex and different-sex couples) was first recognised in Dutch legislation in a Law of 21 June 1979 (amending art. 7A:1623h of the Civil Code, with respect to rent law), followed by a Law of 17 December 1980 on inheritance tax due by the surviving partner from a 'joint household'. Since then many more laws have been amended so as to recognise cohabitation for a multitude of purposes, including social security, tax, citizenship, and parental authority).

⁸ Surviving same-sex partner pays the same inheritance tax as surviving married spouse (Law of 4 June 1986, nr. 339, repealed by Law on Registered Partnership of 7 June 1989, nr. 372).

⁹ The Belgian law opening up marriage to persons of the same sex of 13 February 2003 (*Moniteur Belge*, 28 February 2003, Ed. 3, p. 9880) will enter into force on 1 June 2003.

¹⁰ With the intention of covering sexual orientation discrimination, the word "*moeurs*" (morals, manners, customs, ways) was inserted in several anti-discrimination provisions of the Penal Code (1985) and of the Labour Code (1986). "Sexual orientation" was added to both in 2002 (*Loi no. 2001-1066 du 16 novembre 2001 relative à la lutte contre les discriminations*).

¹¹ *Idem*.

¹² Although the formal age limits for heterosexual and homosexual acts were equalised at the time of decriminalisation of homosexual acts in 1822, in practice homosexual acts with minors continued to be penalised until 1988 under a general provision against "serious scandal and indecency" (see Graupner 1997, cited above, at p. 665-666).

¹³ Law on Urban Housing of 24 November 1994.

¹⁴ Registered partnership legislation has so far only been enacted in several regions: Catalonia (1998), Aragon (1999), Navarra (2000), Valencia (2001), Balearic Islands (2002), Asturias (2002), Madrid (2002).

¹⁵ The provisions on joint adoption by unmarried different-sex and same-sex couples have been suspended pending a challenge to the constitutional power of Navarra (vs. the national government) to enact them. See Nicolás Pérez Cánovas, 'Spain: The Heterosexual State Refuses to Disappear', in Wintemute & Andenaes 2001, cited above, p. 503.

¹⁶ In the former German Democratic Republic (East Germany), homosexual acts between men were decriminalised in 1968, and the age limits were equalised in 1989. In the pre-unification Federal Republic of Germany (West Germany), the dates were 1969 and 1994. See Graupner 1997, cited above, p. 407-410.

¹⁷ Anti-discrimination provisions specifically referring to sexual orientation have been included in the constitution of three *Länder* (states): Brandenburg (1992), Thuringia (1993) and Berlin (1995). Anti-discrimination legislation has been enacted in one *Land*: Saxony-Anhalt (in force in 1998).

¹⁸ *Idem*.

¹⁹ For oral and non-penetrative sex, the age limit is higher for male homosexual acts (17) than for heterosexual and lesbian acts (15). Since decriminalisation in 1993, the age limit for male homosexual anal sex and for heterosexual vaginal and anal sex is equal at 17. See Graupner 1997, cited above, p. 481, 487.

²⁰ In 1989, only incitement to hatred was prohibited. Discriminatory dismissal became unlawful in 1993, other employment discrimination in 1998, and discrimination in education, housing, goods and services in 2000.

²¹ *Idem*.

²² Domestic Violence Act, 1995, and Powers of Attorney Act, 1995 (see Leo Flynn, 'From Individual Protection to Recognition of Relationships? Same-Sex Couples and the Irish Experience of Sexual Orientation Law Reform', in Wintemute & Andenaes 2001, cited above, p. 596).

²³ Decriminalisation of most sex between two men over 21 took place in England and Wales in 1967, in Scotland in 1980 and in Northern Ireland in 1982 (see Graupner 1997, cited above, p. 711, 727, 739).

²⁴ In 1997 the government introduced a 'concession outside the Immigration Rules' allowing unmarried long-term cohabiting partners who could not marry each other (for example because they are of the same sex), to apply for leave to enter/remain in the United Kingdom; in 2000 this concession was incorporated into the Immigration Rules (paras 295A-295O). The first piece of parliamentary legislation recognising same-sex partners was enacted in 2000 by the Scottish Parliament: *Adults with Incapacity (Scotland) Act 2000* (section 87(2)). In 1999 and 2002 some older legislation has been interpreted so as to also cover same-sex cohabitants. See the judgement of the House of Lords in *Fitzpatrick v. Sterling Housing Association* [1999] 4 All ER 707, and the judgment of the Court of Appeal in *Mendoza v. Ghaidan* [2002] EWCA Civ 1533.

²⁵ Sexual orientation was first included in the anti-discrimination provision of the Guidelines Ordinance for Police Forces (1993). The first law to include the term is the Youth Protection Law of the City of Vienna (2002).

²⁶ Several partner-related aspects of criminal law, including the right to refuse testimony against your partner in a criminal court (see Helmut Graupner, 'Legal Recognition of Same-Sex Partnerships in Austria', in Wintemute & Andenaes 2001, cited above, p. 557-559).

²⁷ In several parts of Italy decriminalisation of sex between men took place before 1889 (e.g. in 1861 in the Neapolitan province). See Graupner 1997, cited above, p. 505, and Flora Leroy-Forgeot, *Histoire juridique de l'homosexualité en Europe* (Paris, Presses Universitaires de France, 1997) at 66.

²⁸ Between 1945 and 1995 the age limits were equal. See Graupner 1997, cited above, p. 597-598.

²⁹ In the case of "seduction", the age limit for sex between men is higher (17) than for lesbian or heterosexual sex (15). See Graupner 1997, p. 466.

³⁰ Table 2 does not include Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Georgia, Liechtenstein, Macedonia and San Marino, as well as two European states which have yet to join the Council of Europe (Belarus, Serbia-Montenegro).

³¹ Graupner (1997, cited above, p. 491) assumes that decriminalisation took place in the same year as in Denmark (1930). From 1918 until 1944, Iceland was an independent Kingdom in personal union with the Kingdom of Denmark.

³² On 8 May 2000, the Icelandic Parliament passed an amendment allowing a person in a registered partnership to adopt the child of his or her registered partner (see *EuroLetter*, cited above, No. 80, June 2000).

³³ Art. 49 of the Law on Misdemeanors, as amended by Law No. 273/2001.

³⁴ Art. 1 of the Law on Employment, as amended per 1 October 1999 by Law 167/1999; art. 1 of the Labour Code, as amended by Law 155/2000; art. 2 of the Law on Soldiers, as amended by Law 155/200.

³⁵ In five Swiss cantons sex between men had been decriminalised before the entering into force of the first national Penal Code in 1942. See Graupner 1997, cited above, p. 640.

³⁶ Since 1999, the Swiss Constitution has included "way of life" ("*mode de vie*", "*Lebensform*", "*modo di vita*") in the list of grounds in its non-discrimination clause, which is intended to cover "sexual orientation".

³⁷ The canton of Geneva adopted a limited registered partnership law in 2001, the canton of Zurich in 2002. National legislation introducing registered partnership is in preparation.

³⁸ Art. 199 of the Penal Code has an age limit of 18 for homosexual acts, and of 14 for heterosexual acts. In 2002 the Constitutional Court ruled that this discriminatory age of consent is unconstitutional.

³⁹ In 1995 the Constitutional Court ruled that sexual orientation is covered by the words 'other situation' in the Constitution's non-discrimination clause. The anti-discrimination provision in the Act of Public Health of 1997 (Act No. 154) explicitly mentions sexual orientation.

⁴⁰ The 2002 law was preceded by a Government Ordinance 137/2000 'on preventing and punishing all forms of discrimination'. Of the latter it has been said that it had no practical effect because of lack of

implementing regulations (Adrian Coman, 'Romania', in: Greif & Coman 2001, cited above, p. 58). Whether the same applies to the 2002 law (which was published in Romania's *Official Gazette*, Part I, no. 65/30.01.2002), remains to be seen.

⁴¹ *Idem*.

⁴² The age limits were equalised in by the Latvian Criminal Law of 1998. In 2000 the text was further clarified so as to make clear that for all sexual acts the minimum age is the same (16 if the other is over 18); between 1998 and 2000 it had been argued that the minimum age of 16 applied only to vaginal heterosexual acts, and that a minimum age of 14 applied to all other acts (see Juris L. Lavrikovs, 'Latvia: Criminal law amended to clarify that age of consent is equal for all', in *Euro-Letter* nr. 91 (September 2001), p. 4).

⁴³ The new Penal Code adopted in 2000 abolishes the higher age of consent of 18 years for sexual acts between men (for heterosexual and lesbian acts the age limit is 14 years). This Penal Code has yet to come into force.

⁴⁴ The new Penal Code adopted in 2000 contains two anti-discrimination provisions that mention sexual orientation. This Penal Code has yet to come into force.

⁴⁵ *Idem*.