

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
*RESEAU U.E. D'EXPERTS INDEPENDANTS EN MATIERE DE DROITS
FONDAMENTAUX*

Opinion No. 2-2006:

**EQUALISATION OF TREATMENT BETWEEN HOMOSEXUAL AND HETEROSEXUAL
RELATIONS WITH REGARD TO THE AGE LIMITS FOR SEXUAL OFFENCES – THE
REMAINING EXCEPTIONS IN THE MEMBER STATES.**

27 March 2006

Ref.: CFR-CDF.Opinion 2-2006.doc



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon the request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Florence Benoît-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moysse (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.

Les documents du Réseau peuvent être consultés via :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The EU Network of Independent Experts on Fundamental Rights has been set up by the European Commission (DG Justice, Freedom and Security), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (substitute Birgitte Kofod-Olsen) (Denmark), Henri Labayle (France), Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moysse (Luxembourg), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ilvija Puce (Latvia), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), and Edita Ziobiene (Lithuania). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.

The documents of the Network may be consulted on :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

INTRODUCTION

By a letter of 1st February 2006 the European Commission requested the EU Network of Independent Experts on Fundamental Rights to draw up an opinion on the basis of the following question:

Are there certain legislative provisions in the Member States that enshrine a difference in treatment between homosexual and heterosexual relations with regard to the minimum age provided by law for engaging in consenting sexual relations?

This request by the Commission is to be understood in the framework of the issue, raised by certain Members of the European Parliament, regarding the maintenance, in the legislation in Gibraltar, of a form of discrimination on the basis of sexual orientation and more specifically, of a difference in treatment between homosexual and heterosexual sexual relations with regard to the age of consent to sexual relationships (this age being of 16 years for heterosexual (and female homosexual) sexual acts and of 18 for (male) homosexual sexual acts). Such a provision is in clear violation of the European Convention on Human Rights and Fundamental Freedoms (the case law of which is presented hereunder). It constitutes a discrimination based on the ground of sexual orientation, prohibited in Union law by Article 21 (1) of the Charter of fundamental rights. Unequal treatment based on sexual orientation is also condemned by the United Nations Human Rights Committee, which in its 1994 decision in the case of *Toonen v. Australia*¹, held that that the reference to ‘sex’ in Articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights is to be taken as including sexual orientation. In Recommendation 1474 (2000) on the *Situation of Lesbians and Gays in Council of Europe Member States*, the Parliamentary Assembly of the Council of Europe expressly recommended that the Committee of Ministers calls upon Member States of the Council of Europe “to apply the same minimum age of consent for homosexual and heterosexual acts”. This request was in fact already included in Resolution 924 (1981) on *Discrimination against homosexuals* adopted by the Parliamentary Assembly of the Council of Europe. With this background, the European Commission, on the basis of political considerations aiming at combating any form of discrimination in the Member States of the European Union, decided to raise the attention of the competent authorities on this particular issue. For this to be done, it requested from the Network a general overview of the situation in the Union.

* *
*

The case law of the European Court of Human Rights on the particular issue of the equalisation of the age of consent – understood as the minimum age provided by law for engaging in consenting sexual relations – for both heterosexual and homosexual relationships is relatively recent². In the case of *Sutherland v. the United Kingdom* of 27 March 2001, the applicant complained “that the fixing of the minimum age for lawful homosexual activities between men at 18, rather than 16 as for women, violated his right to respect for private life under Article 8 of the Convention and was discriminatory in breach of that Article taken in conjunction with Article 14 ECHR” (Eur. Ct. H.R., *Sutherland v. United Kingdom* (Appl. No. 25186/94), judgment (striking out) of 27 March 2001, para. 3). Under section 12(1) of the Sexual Offences Act 1956³ it was an offence for a person to commit ‘buggery’ with another person. Under section 13 it was an offence for a man to commit an act of ‘gross indecency’ with another man, whether in public or private. Notwithstanding these provisions, under section 1 of the Sexual Offences Act 1967 such acts should not be an offence provided that the parties had consented thereto and had attained the age of 21. In contrast, the age of consent with respect to

¹ Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

² Although the issue was already raised in Eur. Ct. H.R., *Dudgeon v. United Kingdom*, judgment of 22 October 1981, Series A, vol. 45, paras 64-66, but left undecided.

³ Valid only for England and Wales. Slightly different legislation in Scotland and Northern Ireland.

women was 16. Thus, while under section 14 (1) of the 1956 Act, it was an offence for a person to commit an indecent assault on a woman, section 14 (2) provided that a girl under the age of 16 could not give any consent which would prevent an act being an assault for the purposes of the section. Section 15 stipulated the same regulation, and therefore an age of consent of 16 years, for heterosexual “indecent assault” on boys. On 21 February 1994, the House of Commons rejected an amendment to reduce the minimum age of consent for male homosexual acts to 16, but accepted an amendment to reduce the minimum age to 18. The European Commission of Human Rights declared the application in Sutherland admissible. In its report of 1st July 1997, it expressed the opinion – on the basis notably of the fact that “equality of treatment in respect of the age of consent is now recognised by the great majority of Member States of the Council of Europe” (paragraph 59 of the report) – that there had been a violation of Article 8, taken in conjunction with Article 14, of the Convention (14 votes to 4). With the entry into force on 8 January 2001 of the Sexual Offences (Amendment) Act 2000 the case was eventually struck out by the European Court of Human Rights. The Court considered that “by equalising the age of consent for homosexual acts between consenting males to 16, the new provisions removed the risk or threat of prosecution that previously existed under the national law of the respondent State and which had prompted the applicant’s bringing an application under the Convention”.

Similar issues arose in **Austria**.

On 21 June 2002 the Austrian Constitutional Court declared unconstitutional Section 209 of the Austrian Criminal Code. The provision in question criminalised homosexual acts (“same-sex lewdness”) as committed by males aged 19 and older with males aged between 14 and 18 with a term of imprisonment of up to five years. Some months later the Austrian Parliament introduced a new section 207 b to the Criminal Code, which indiscriminately punishes homosexual and heterosexual relationships with 14- to under 16/18 year-olds in special circumstances. Section 207b of the Criminal Code contains three offences. *Paragraph 1* makes it an offence to engage in sexual contact with a person under 16 who for certain reasons is not mature enough to understand the meaning of what is going on or to act in accordance with such understanding provided that the offender practices upon the person’s lacking maturity and his own superiority based on age. *Paragraph 2* makes it an offence to engage in sexual contact with a person under 16 by practicing on a position of constraint. *Paragraph 3* makes it an offence to immediately induce a person under 18 against remuneration. After years of public debate on the appropriate age limit for the protection of minors from homosexual contact under criminal law, following a reference for review by the Innsbruck Court of Appeal, the Constitutional Court ultimately declared unconstitutional Section 209 of the Criminal Code in 2002 (VfGH 21.06.2002,G 6/02). The Constitutional Court considered Section 209 of the Criminal Code incompatible with the principle of equality, as it made homosexual contacts between young men alternately punishable and non punishable, depending on the ages of and the age difference between the men in question. Pursuant to Section 209 an 18 year-old in a standing relationship with a 16 year-old would not have been guilty of any offence, but could have been prosecuted upon turning 19. However, once his partner had reached the age of 18 their relationship would have again fallen within the terms of law.

The decision of the Constitutional Court and the repeal of Section 209 from the books prevents future discriminatory convictions. However, it does not affect the situation of people having already been convicted according to Section 209 of the Criminal Code. Due to this fact the European Court of Human Rights has delivered up to date several judgements holding that Austria violated Article 14 in conjunction with Article 8 of the Convention. In the case of *L. and V. v. Austria* (Eur. Ct. H.R., *L. and V. v. Austria* (Appl. Nos. 39392/98 and 39829/98), judgment of 9 January 2003) the two applicants, born in 1967 and 1968 respectively, were convicted for consensual homosexual relations with adolescents between 14 and 18 years of age. They were sentenced to eight months suspended on probation for a period of three years and six months suspended on probation for three years, respectively. The Court held that the change in the law in 2002 did not affect their position as victims and that consequently their complaints were admissible. The Constitutional Court’s argumentation was based on other grounds – i.e. the wording of the law could lead to absurd results - than those put

forward by the applicants, namely that their right to respect for their private lives as safeguarded by Article 14 in conjunction with Article 8 of the Convention was violated. Above all the convictions still stood. It was not in dispute that the case fell within the ambit of Article 8 ECHR, concerning as it does a most intimate aspect of the applicants' private life (see, *inter alia*, Eur. Ct. H.R., *Dudgeon v. the United Kingdom* (Appl. No. 7525/76), judgment of 22 October 1981, Series A no. 45, p. 21, § 52, and Eur. Ct. H.R., *Smith and Grady v. the United Kingdom*, (App. Nos. 33985/96 and 33986/96), judgment of 27 September 1999, § 90, ECHR 1999-VI). Nor could it be contested that any interference with a person's sexual life and any difference in treatment based on sex or sexual orientation required particularly weighty reasons (see not. Eur. Ct. H.R., *Smith and Grady*, § 94, and Eur. Ct. H.R., *A.D.T. v. the United Kingdom* (App. No. 35765/97), judgment of 31 July 2000, § 36). What was decisive was whether there was an objective and reasonable justification why young men in the 14 to 18 age bracket needed protection against sexual relationships with adult men, while young women in the same age bracket did not need such protection against relations with either adult men or women.

There were no particularly weighty reasons to justify the differential treatment of homosexual acts since recent research proved that sexual orientation was established at the beginning of puberty and a European consensus was in favour of equal ages of consent. Thus "to the extent that Section 209 of the Criminal Code embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority those negative attitudes could not of themselves be considered by the Court to amount sufficient justification for differential treatment any more than similar negative attitudes towards those of a different race, origin or colour." Both applicants were awarded 15.000 euros as compensation for non-pecuniary damages, due to the criminal proceedings that laid their most intimate aspects of life open to the public. In *S. L. v. Austria* (Eur. Ct. H.R., *S. L. v. Austria* (Appl. No. 45330/99), judgment of 9 January 2003) the Court agreed with the applicant, a 17 year old adolescent, who alleged in a more abstract way that the incriminating provision had hampered him from living his life according to his sexual orientation and had put a stigma on homosexuals in general. The Court awarded him 5.000 euros compensation for, between the ages of 14 and 18, not having been allowed to enter into relations corresponding to his disposition which was a preference for older, adult men (par. 49, 52). Up to January 2006, Austria has to pay 10 applicants a total amount of more than 350,000 euros in compensation.⁴ In the case of *Thomas Wolfmeyer v. Austria* (Eur. Ct. H.R., *Thomas Wolfmeyer v. Austria* (Appl. No. 5263/03), judgment of 26 May 2005) the Court granted compensation, even though the applicant was acquitted, reasoning that "the acquittal, although it has to be taken into account in the assessment of non-pecuniary damage, cannot make undone the suffering associated with the public exposure of most intimate aspects of the applicant's private life or the loss of his employment." The criminal proceedings in the *Wolfmeyer* case had resulted in the decision of the Constitutional Court in 2002, declaring Section 209 unconstitutional, but the applicant received no compensation for non-pecuniary damage and only a tiny fraction of his defence-costs were reimbursed.

Only persons whose status as victims of a violation of the European Convention on Human Rights is determined by a judgement of the European Court of Human Rights can claim for the reopening of the criminal proceedings and subsequently demand the abrogation of their conviction in Austria. The Austrian League against Section 209 (*Plattform gegen § 209*) is arguing for the rehabilitation of all persons having been convicted on the basis of Section 209 or according to other criminal provisions penalising homosexual sexual relations which were gradually deleted since the 1970s. In 2003 the League has obtained that all electronic records collected in relation to Section 209 be deleted from the criminal police information system (*EKIS*) and that data collected by the police in order to identify a person, such as fingerprints, pictures and DNA data were destroyed.⁵ Pursuant to decisions of the

⁴ „Menschenrechtsgerichtshof verurteilt Österreich in aufsehenerregendem § 209 Fall“ available at <http://www.paragraph209.at> (08.02.06). The cases are: L. & V. vs. Austria (2003), S. L. vs. Austria (2003); Michael Woditschka & Wolfgang Wilfling vs. Austria (2004); Franz Ladner vs. Austria (2005), Thomas Wolfmeyer vs. Austria (2005); H. G. & G. B. vs. Austria (2005); R. H. vs. Austria (2006)

⁵ „§ 209-Polizeidaten – Auch VfGH ordnet Vernichtung manueller Dateien an“ available at <http://www.paragraph209.at> (08.02.06).

Administrative Court⁶ and of the Constitutional Court delivered in December 2005⁷, also those data collected conventionally on paper, except for the copy of the files, have to be destroyed. Nevertheless, as per 12 July 2005 there were still 1.434 entries in the national registry of criminal records for convictions under Section 209 and other related criminal provisions, e.g, 558 entries relating to convictions according to the former section 129, repealed in 1971, prohibiting sexual relations between homosexuals in general. While the Ministry of Justice initially refused to grant a general amnesty of those cases, the incumbent Minister of Justice, Karin Gastinger now seems to have changed her attitude in this matter after a public statement by the President of the Republic, Heinz Fischer, who is competent under the Constitution to decide in this matter on a proposal of the Government. However, she made a reservation in so far as she will not support those cases, in which convictions pursuant to the “new” section 207b of the Criminal Code would be possible. The argument did not convince the League, who argued that this would perpetuate the discriminatory effect of the previous sect. 209, by only affecting homosexual contacts.⁸ Cases are pending before the Administrative Court and the Constitutional Court. In Parliament, Terezija Stoisits, MP for the Green Party, submitted a bill for an Act to provide for amnesty, rehabilitation and compensation of victims of laws criminalising homosexual sexual relations.⁹

Six months after the Constitutional Court declared Section 209 to be unconstitutional the Austrian parliament passed a neutral follow-up provision prohibiting under certain conditions listed above sexual relations with under 16/18 year-olds. Already during the consultation phase concerns were raised that the provision might be applied in practice in a discriminatory manner. Although the government always stressed that it was only intended to punish abusive sexual relations with young people that are seduced by improper means, it is evident from the following figures that the new section 207 b was especially in the beginning considered by the judiciary as primarily prohibiting any homosexual contacts with adolescents, just as it was explicitly stated in Section 209 before it was abolished. While in the period from September to December 2002 100 % of all instituted criminal proceedings concerned homosexual contacts, the figures dropped to 50 % in the first half of 2003 of which all cases resulted in an imprisonment of the accused. In the second half of 2003 the share of proceedings against homosexuals further decreased to 33 %, but jumped again to 78 % in the first half of the year 2004. In the second half of 2004 25 % of all criminal proceedings concerned homosexual contacts and in the first half of 2005 not a single homosexual was charged under section 207b, while the only person sent, under section 207b, to an institution for mentally abnormal offenders for an indefinite period has been sent there for (male) homosexual contacts with 16- and 17-year olds.¹⁰ The latest developments of numbers are a positive sign, but the oscillating figures of the previous years demand further monitoring of the practice of the public prosecution and the judiciary.

* *
*

⁶ VwGH 19.12.2005, 2005/06/0140.

⁷ VfGH 15.12.2005, B 1590/03-10.

⁸ „Halbherziges Einlenken der Justizministerin“ available at <http://www.paragraph209.at> (08.02.06).

⁹ Initiativantrag 707/A vom 28.09.2005 (XXII. GP) für ein Amnestie- Rehabilitierungs- und Entschädigungsgesetz (AREG), available at http://www.parlament.gv.at/portal/page?_pageid=908,966829&_dad=portal&_schema=PORTAL

¹⁰ Anfrage der Abgeordneten Dr. Jarolim und GenossInnen an die Bundesministerin für Justiz betreffend die Vollziehung der Ersatzbestimmung für das anti-homosexuelle Sonderstrafgesetz § 209 StGB (207b), XXII.GP.-NR 3641/J of 24 November 2005; Anfragebeantwortung der Bundesministerin für Justiz of 23 January 2006, XXII GP 3890/AB:

As regards the situation in the Member States of the European Union, it appears, as described hereunder in the table,¹¹ that most of the national legislations have achieved a full equalisation of treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences or, in other words, the authorised age for sexual relations – the so-called ‘age of consent’.

However exceptions still remain.¹²

1. The first kind of exception noted down in the table relates to the maintenance in the legislation of certain Member States of differences regarding the authorised age for homosexual and for heterosexual sexual relations. This is the case in **Cyprus, Greece, Ireland and Portugal**. In **Cyprus**, the Criminal Code establishes an age of consent only for “carnal knowledge” (“fornication”) which traditionally is understood as covering only penile vaginal and penile anal penetration. There is no age of consent for other kinds of sexual acts (as oral and manual). So the age of consent in Cyprus is set in the following way: (1) Man/Girl: 17 years for vaginal and anal intercourse; no age limit for other contacts; (2). Man/Boy: 17 years for anal intercourse; no age limit for other contacts; (3) Woman/Boy: 13 years for anal intercourse; no age limit for other contacts; (4) Woman/Girl: no age limit. In **Greece**, Article 347 of the Penal code specifically discriminates against male homosexuals. Indeed, this article provides for a higher age of consent of 17 for ‘seducing’ a male person if the person who seduces is an adult (i. e., over 18) and penalises the abuse of a relationship of dependence (there is no corresponding heterosexual offence), stating that : (1) Acts of lewdness against nature between males which involve the abuse of a relationship of dependence created by employment, or which are committed by an adult seducing a person below the age of 17, or which are committed with the intention of profiteering, are punishable by at least 3 months' imprisonment. (2) The same sentence is applied to anyone practising acts of lewdness of the kind referred to in paragraph 1 as a profession. In **Ireland** the ages of consent are as follows: (1) Man/Girl: 17 for vaginal intercourse (Sections 1 and 2 Criminal Law (Amendment) Act 1935) and for anal intercourse (Section 3 Criminal Law (Sexual Offences) Act 1993), 15 for other contacts (Section 14 Criminal Law (Amendment) Act 1935); (2) Woman/Boy: 17 for anal intercourse (Section 3 Criminal Law (Sexual Offences) Act 1993), 15 for all other sexual contacts (Section 14 Criminal Law (Amendment) Act 1935); (3) Woman/Girl: 15 years for all kinds of sexual contact (Section 14 Criminal Law (Amendment) Act 1935); (4) Man/Boy: 17 years for all kinds of sexual contact (Section 4 Criminal Law (Sexual Offences) Act 1993). In **Portugal**, Article 175 of the Criminal Code states: *Whoever being of the age of majority, practices homosexual acts with minors of 14-16 years of age or incites other persons to such acts can be punished by imprisonment of up to 2 years or a fine*. The same types of acts do not constitute a criminal offence when the persons involved belong to different sexes. Article 174 of the Criminal Code reads: *Whoever, being of the age of majority, has sexual relations of copulation, anal or oral intercourse with minors of 14-16 years of age, abusing of his/her inexperience can be punished by imprisonment of up to 2 years or a fine*. The sexes involved in these acts are not defined. Thus the penalty is always the same (imprisonment up to 2 years) but the requirements of the crime do not coincide. In the case of *heterosexual* relations between an adult and a minor below 16, there is a crime only when both of these conditions apply: (1) when the former “takes advantage of the inexperience” of the latter and (2) when there is actual intercourse or anal or oral coitus (Article 174 of the Criminal

¹¹ Although this information was collected under the responsibility of the members of the Network, we also benefited from being able to consult a related table contained in K. Waaldijk and M. Bonini, *Sexual orientation discrimination in the EU: national laws and the Employment Equality Directive*, Asser Press, forthcoming in 2006.

We are also extremely grateful for the information provided by Dr. Helmut Graupner from the Austrian Society for Sex Research.

¹² Apart from the exceptions mentioned hereunder, it cannot be excluded that the minimum age for marriage will be lower than the age for sexual consent. Where this is the case, if marriage is open only to opposite-sex couples, this results in a situation where the heterosexual relationships may be authorized under the law at an earlier age than homosexual relationships, even where the age of sexual consent outside has been made equivalent between homosexual and heterosexual relationships. Although the difference in treatment here is between sexual relations within marriage and sexual relations outside marriage, rather than directly between sexual relationships between two persons of the same sex and two persons of the opposite, such situations may be seen as resulting in an indirect discrimination against homosexuals. This opinion, however, has not examined this aspect of the question which the opinion addresses.

Code). In the case of *homosexual* relations, the crime is established whenever “relevant sexual acts” occur (and not only in the case of anal or oral coitus) between an adult and a minor under 16, irrespective of whether the former takes advantage of the inexperience of the latter (Article 175 of the Criminal Code). Accordingly, the same type of freely consented sexual relations, which are not constituting a crime when involving persons of different sexes, constitute a crime when practiced by two persons of the same sex. The Portuguese Constitutional Court has ruled already, in two different cases, that this difference of treatment is not in accordance with the Constitution, and violates the equality principle in respect of heterosexual and homosexual acts (Decisions 247/2005 and 351/2005). It is expected that the legislation will change accordingly.

2. Even though it does constitute a discrimination on the basis of sexual orientation, the second kind of exception highlighted in the table does not directly relate to the ‘age of consent’ for sexual relationships but refers to the maintenance of a gender-specific definition of the crime of rape in the legislation. Such a definition implies that a male cannot be the victim of the crime of rape.

This is the case in **Cyprus**, **Latvia** and the **Slovak Republic**. In **Cyprus**, rape is only recognised as committed against women. The crime of rape against women is punished by life imprisonment (Section 145 of the Criminal Code) whereas Section 172 of the Criminal Code provides that “ anyone who by force fornicates with another person is guilty of an offence and is punished to 14 years’ imprisonment.” This crime is not characterised as rape but as ‘fornication by force’. In **Latvia**, the Criminal law (Chapter XVI. Criminal Offences against Morals and Sexual Inviolability) contains two different provisions concerning forcible sexual acts. The first of them is termed Rape (Sect. 159) and covers sexual offences of a heterosexual character where the victim is female. The other provision is termed Forcible Sexual Assault (Sect. 160) and covers forcible sexual intercourse of a gay and lesbian nature. The penalties provided by the Criminal law for forcible homosexual acts are lower than for heterosexual rape. In the **Slovak Republic** according to the Section 199 paragraph 1 of the Criminal Code, *a person* (man or woman), *who forces a woman* to sexual intercourse (coitus; in Slovak: ‘súlo_’) by violence or by threat of imminent violence or who abuses her helplessness for committing such offence, shall be sentenced to a term of imprisonment from 5 years up to 10 years. Under this provision only woman can be the object of the crime of rape. The term ‘sexual intercourse’ is not explicitly defined in the Criminal Code, but according to the legal doctrine it relates only to the sexual intercourse (coitus; in Slovak: ‘súlo_’) between man and woman. As to Section 200 of the Criminal Code (regarding the crime of sexual violence) and Section 201 of the Criminal Code (regarding the crime of sexual abuse), the situation is different since both man and woman can be the object and also the offender of the crime. As regards the **United Kingdom**, the offence of rape is one that can only be committed by a man but in England, Northern Ireland and Wales it can be committed against either a woman or a man. However, although in Scotland the offence of rape can only be committed against a woman, non-consensual intercourse with a man can constitute two specific common law crimes: ‘indecent assault’ and ‘sodomy’, with a potentially identical penalty to rape, namely, life imprisonment. England and Wales also has an offence of sexual assault by penetration involving penetration of the vagina or anus by a part of the body or anything else with a sexual purpose and the maximum penalty for this offence, which can be committed by women as well as men, is also life imprisonment. It is not clear whether the Scottish offence of indecent assault would be applied to cover such penetration but the Human Rights Act 1998 could result in the common law being so developed.

The situation in **Ireland** is in this regard specific. The definition of rape is contained in Section 2 of the Criminal Law (Rape) Act, 1981 as amended by the Criminal Law (Rape) (Amendment) Act 1990, and is gender-specific. Indeed Section 2 of the Criminal Law (Rape) Act 1981 states that: "a man commits rape if (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it". However, the Criminal Law (Rape) (Amendment) Act 1990 created a gender neutral offence of ‘rape under section 4’. The offence is equally applicable to men and women. Section 4 states: "in this Act ‘rape under section 4’

means a sexual assault that includes (a) penetration (however slight) of the anus or mouth by the penis, or (b) penetration (however slight) of the vagina by any object held or manipulated by another person. (2) A person guilty of rape under section 4 shall be liable on conviction on indictment to imprisonment for life. (3) Rape under section 4 shall be a felony".

Another issue that has arisen during the preparation of the present Opinion is the maintenance, in certain Member States which have adopted laws on partnerships, of a difference with regard to the age requirements for entering a partnership when compared to the age requirements for entering a marriage. It is not the purpose of this Opinion to develop this issue here at length since it does not directly relate to the age of consent. However, it will be noted that where the age requirements for entering a partnership (open to same-sex couples) are higher than the age requirements for entering a marriage, the derogations regarding the minimum age requirement for entering marriage would imply that the age of sexual consent may in fact differ between homosexuals and heterosexuals (as may be the case where the minimum age for marriage and/or registered partnership, taking into account the possible derogations, is lower than the normal age of sexual consent outside marriage). These discrepancies, although not necessarily amounting to forms of discrimination on the basis of sexual orientation, should nevertheless be brought to the attention of the authorities. Although no exhaustive review of this question in this opinion, the following examples may be given.

In **Sweden** for instance, currently a heterosexual person below the age of 18 may be granted dispensation from the minimum age requirement for entering marriage (18 years of age) while this is not possible for a person willing to contract partnership¹³. In April 2004 the Swedish Parliament instructed the Government to appoint a parliamentary commission of enquiry to carry out an independent investigation into the question of gender-neutral marriage legislation. The report is expected before the summer 2006. Similarly in **Germany** a heterosexual person under the age of 18 may be granted dispensation from the minimum age requirement for entering marriage (18 years of age, identical with legal age; Section 1303 para 2 Civil Code) whilst according to Section 1 para 2 n. 1 Act concerning Life Partnerships, this is not possible for a person willing to contract partnership. In **Luxembourg**, as far as heterosexual or homosexual registered partnerships are concerned, the Law of 9 July 2004 (*Loi du 9 juillet 2004 relative aux effets légaux de certains partenariats*) provides that the minimum age is 18 (i.e. capacity to enter into a contract). The same reference to the capacity to enter a contract – instead of to the age requirements, including their derogations, to enter a marriage – is referred to in **Belgium**, in the Law of 23 November 1998 on legal cohabitation (*Loi du 23 novembre 1998 instaurant la cohabitation légale*¹⁴). As to **Finland**, the Act on Registered Partnership (No. 950 of 2001) has in Section 1 a minimum age requirement of 18 years. According to Section 8, subsection 3, of the Act, any provision in an Act of Parliament referring to marriage is applicable to a registered partnership, unless the law otherwise prescribes. According to Section 4, subsection 1, of the Marriage Act (No. 234 of 1929, as amended by Act No. 411 of 1987) the minimum age for marriage is 18 years. However, subsection 2 gives the Ministry of Justice the power to grant “when specific reasons exist” a permission to marry, to a person who is under 18 years of age. The text of the law does not exclude the possibility to apply Section 8.3 of the Act on Registered Partnership in conjunction with Section 4.2 of the Marriage Act, to the effect that the Ministry of Justice would give, on equal grounds, permission to enter a registered partnership to a person who has not reached 18 years of age. However, the Government Bill (No. 200 of 2001) for the Act on Registered Partnership seeks to exclude this possibility in the detailed explanations for Section 2 of the Act on Partnership. According to the Bill, permission to marry before reaching 18 years of age has in practice only been granted in cases of pregnancy or for reasons related to religion. Hence, the Government underlined that it did not propose an analogous clause in the Act on Registered Partnership. The resulting situation is somewhat ambiguous. In the light of its *travaux préparatoires*, the Act on Registered Partnership does not include the possibility to obtain a permission to enter a partnership before the age of 18. At the same time, a systematic interpretation of the two Acts would lead to the conclusion that the relevant clause

¹³ See HomO, Införandet av en könsneutral äktenskapsbalk, 25 November 2003, www.homo.se

¹⁴ *Moniteur belge*, 12 janvier 1999

of the Marriage Act is applicable in respect of persons who wish to enter a registered partnership before reaching the age of 18 years. Even under the latter construction, it could be argued that the right to equality before the law does not require the granting of such a permission, as similarly situated persons would also be denied permission to marry if they sought special permission to marry a person of the opposite sex.

**EQUALISATION OF TREATMENT BETWEEN HOMOSEXUAL AND HETEROSEXUAL
RELATIONS WITH REGARD TO THE AGE LIMITS FOR SEXUAL OFFENCES**

– THE REMAINING EXCEPTIONS IN THE MEMBER STATES

	Equalisation of treatment between homosexual and heterosexual relations with regard to the age limits for sexual offences	Exceptions to the full equalisation of treatment between homosexual and heterosexual relations with regard to the age limits for sexual offences
Austria	<p>On 21 June 2002 the Austrian Constitutional Court declared unconstitutional Section 209 of the Austrian Criminal Code. The provision in question criminalised homosexual acts (“same-sex lewdness”) as committed by males aged 19 and older with males aged between 14 and 18 with a term of imprisonment of up to five years.</p> <p>Since the repeal of Section 209 the age of consent is equally 14 years for hetero- and for homosexual acts (Sections 206, 207 CC).</p> <p>Some months later, the Austrian Parliament introduced a new Section 207b to the Criminal Code, which indiscriminately punishes homosexual and heterosexual relationships with 14 - to under 16/18 year-olds in special circumstances. In particular Section 207b makes it an offence : (1) to engage in sexual contact with a person under 16 who for certain reasons is not mature enough to understand the meaning of what is going on or to act in accordance with such understanding provided that the offender practices upon the person’s lacking maturity and his own superiority based on age, (2) to engage in sexual contact with a person under 16 by practicing on a position of constraint, and (3) to immediately induce a person under 18 against remuneration.</p>	<p>The decision of the Constitutional Court of 21 June 2001 and the repeal of Section 209 from the books prevents future discriminatory convictions, but does not affect the situation of people having already been convicted according to Section 209 of the Criminal Code.</p> <p>Due to this fact the European Court of Human Rights has delivered up to date several judgements holding that Austria violated Article 14 in conjunction with Article 8 of the Convention (see the landmark case <i>Eur.Ct.H.R., L & V v. Austria</i> (Appl. No.45330/98), judgment of 9 January 2003).</p> <p>Moreover already during the consultation phase concerns were raised that the new Section 207 b to the Criminal Code, might be applied in practice in a discriminatory manner. Although the government always stressed that it was only intended to punish abusive sexual relations with young people that are seduced by improper means, it is evident that the new Section 207 b was especially in the beginning considered by the judiciary as primarily prohibiting any homosexual contacts with adolescents, just as it was explicitly stated in the old Section 209 (see the introduction to this Opinion).</p> <p>The latest developments in this regard are however positive, but the oscillating figures of the previous years demand further monitoring of the practice of the public prosecution and the judiciary.</p>
Belgium	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is, according to the Criminal Code of 16 years of age.</p>	

<p style="text-align: center;">Cyprus</p>	<p>Cyprus Criminal Code establishes an age of consent only for “carnal knowledge” (“fornication”) (“synousia”) which traditionally is understood as covering only penile vaginal and penile anal penetration. There is no age of consent for other kinds of sexual acts (as oral and manual).</p> <p>The age of consent in Cyprus is set in the following way:</p> <ol style="list-style-type: none"> 1. Man/Girl: 17 years for vaginal and anal intercourse; no age limit for other contacts; 2. Man/Boy: 17 years for anal intercourse; no age limit for other contacts; 3. Woman/Boy: 13 years for anal intercourse; no age limit for other contacts 4. Woman/Girl: no age limit 	<p>The Criminal Code also provides that the lack of knowledge of a woman’s (or girl’s) age does not constitute a defence when it comes to sexual crimes related to the age consent (Section 170), whereas the same provision is not explicitly stated for crimes against men.</p> <p style="text-align: center;">***</p> <p>As to the differences between homosexual and heterosexual sexual crimes not directly related to the age of consent, it should be noted that the crime of rape is only recognised as committed against women. The crime of rape against women is punished by life imprisonment (Section 145) whereas Section 172 provides that “anyone who by force fornicates with another person is guilty of an offence and is punished to fourteen years’ imprisonment.” This crime is not characterised as rape but as “fornication by force”.</p>
<p style="text-align: center;">Czech Rep.</p>	<p>The age limit for sexual offences, for the purpose of Section 242 is currently 15 years. There are some proposals to change it to 14 years in connection with a proposed age of criminal liability (to be 14 years).</p> <p>The crime of sexual abuse (Section 242 Penal Code) and the crime of rape (Section 241) are worded in ‘gender neutral’ way as they refer to both sexual intercourse or other (similar) form of sexual practice (or sexual abuse in Section 242).</p>	

<p>Denmark</p>	<p>The age limit for sexual offences, is, according to Danish law (cf. the Criminal Code Section 222 cf. Section 225), the same for homosexual as for heterosexual sexual relationships, namely 15 years of age. If violated the perpetrator risks a maximum penalty of 8 years in prison - 12 years if aggravating circumstances are present. However, in practice the sentences are in the lower end of the penalty frame. The prohibition is absolute and cannot be deviated from.</p> <p>According to the Danish Criminal Code¹⁵ Section 225, the provisions (Sections 216-220 and 222-223 a), which deals with sexual morality, including incest, sexual assault, age of consent, taking advantage of superior position, etc, <i>also</i> covers incidents of sexual intercourse (in Danish: kønslig omgængelse) where the perpetrator is of the same sex as the victim.</p> <p>The special provision was introduced (L 1981:256) for sexual intercourse where the perpetrator is of the same sex as the victim, since the Danish word “samleje” is considered as sexual intercourse between persons of different sex. The word: “kønslig omgængelse”, is considered reserved for sexual acts other than “traditional” sexual intercourse. The provision was introduced to make the maximum and minimum penalties identical for homosexual and heterosexual sexual relationships. By Act 1976:195, the special age limit for homosexual sexual relationships (18 years) was abolished.</p>	
<p>Estonia</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 14, according to Article 145 of the Criminal Code.</p>	

¹⁵ Consolidated Act 2005-09-27 no. 909 The Danish Criminal Code.

<p>Finland</p>	<p>The relevant clauses in the Penal Code (39/1889, as amended until Act 54/2006) are in Chapter 20 on Sexual Crimes. The definitions of ‘sexual intercourse’ and ‘sexual act’ in Section 10 (563/1998) are formulated in a way that they are equally applicable when the victim of the crime is male or female. For instance, ‘sexual intercourse’ is defined as "the sexual penetration, by a sex organ or directed at a sex organ, of the body of another". Consequently, the crime of rape is on Section 1 defined as coercing another into sexual intercourse by the use or threat of violence.</p> <p>The specific sexual crimes against minors are defined in Sections 5-8, which apply in equal terms irrespective of the gender of the victim of the crime. The age of consent is 16 years (section 20:6).</p>	
<p>France</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 15, according to Article 227-27 of the Penal Code.</p>	
<p>Germany</p>	<p>There are no differences in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences.</p> <p>Chapter 13 "Crimes against sexual Self-Determination" (Sections 174 – 184 f) of the Criminal Code does not distinguish between homosexual and heterosexual relations. The age of consent is 14 years (section 176).</p>	

<p style="text-align: center;">Greece</p>	<p>There is, in general, no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 15 (Article 339).</p> <p>(see however the <u>exception</u> of Article 347 of the Penal Code).</p>	<p>Article 347 of the Penal Code discriminates against male homosexuals since it provides for a higher age of consent of 17 for 'seducing' a male person if the partner is an adult (i.e. over 18) and which penalises the abuse of a relationship of dependence (there is no corresponding heterosexual offence):</p> <p>(1) Acts of lewdness against nature between males which involve the abuse of a relationship of dependence created by employment, or which are committed by an adult seducing a person below the age of 17, or which are committed with the intention of profiteering, are punishable by at least 3 months' imprisonment.</p> <p>(2) The same sentence is applied to anyone practising acts of lewdness of the kind referred to in Paragraph 1 as a profession.</p>
<p style="text-align: center;">Hungary</p>	<p>Since 2002, there is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 14 (section 201).</p> <p>Constitutional Court Decision 37/2002 (03.09.2002, 1040/B/1993/23) repealed section 199 CC which stipulated an age of consent of 18 years for homosexual acts. The Constitutional Court also ordered the review of all convictions under section 199 as far as a convict still suffers from negative consequences.</p>	

<p style="text-align: center;">Ireland</p>	<p>The ages of consent are as follows:</p> <p>(1) Man/Girl: 17 for vaginal intercourse (Sections 1 and 2 Criminal Law (Amendment) Act 1935) and for anal intercourse (Section 3 Criminal Law (Sexual Offences) Act 1993), 15 for other contacts (Section 14 Criminal Law (Amendment) Act 1935);</p> <p>(2) Woman/Boy: 17 for anal intercourse (Section 3 Criminal Law (Sexual Offences) Act 1993), 15 for all other sexual contacts (Section 14 Criminal Law (Amendment) Act 1935);</p> <p>(3) Woman/Girl: 15 years for all kinds of sexual contact (Section 14 Criminal Law (Amendment) Act 1935);</p> <p>(4) Man/Boy: 17 years for all kinds of sexual contact (Section 4 Criminal Law (Sexual Offences) Act 1993).</p>	<p style="text-align: center;">***</p> <p>The definition of rape is contained in Section 2 of the Criminal Law (Rape) Act, 1981 as amended by the Criminal Law (Rape) (Amendment) Act 1990, and is gender-specific. Indeed Section 2 of the Criminal Law (Rape) Act 1981 states that: "a man commits rape if (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it".</p> <p>However, the Criminal Law (Rape) (Amendment) Act 1990 created a gender neutral offence of 'rape under section 4'. The offence is equally applicable to men and women. Section 4 states: "in this Act 'rape under section 4' means a sexual assault that includes (a) penetration (however slight) of the anus or mouth by the penis, or (b) penetration (however slight) of the vagina by any object held or manipulated by another person. (2) A person guilty of rape under section 4 shall be liable on conviction on indictment to imprisonment for life. (3) Rape under section 4 shall be a felony".</p>
<p style="text-align: center;">Italy</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences.</p> <p>According to Article 609 <i>quater</i> of the Penal Code (introduced by Law nr. 66 of 1996) sexual relations are punishable only when one member of the couple is under 14.</p>	
<p style="text-align: center;">Latvia</p>	<p>In the Criminal law (Chapter XVI. Criminal Offences against Morals and Sexual Inviolability), there is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is 14 if the partner is under 18 (Article 159, 160), and 16 if the partner is 18 or older (Article 161).</p>	<p style="text-align: center;">***</p> <p>As to the differences between homosexual and heterosexual sexual crimes not directly related to the age of consent, it should be noted that the Criminal Law contains two different provisions concerning forcible sexual acts.</p> <p>The first of them is termed Rape (Sect. 159) and covers sexual offences of a heterosexual character where the victim is female. The other provision is termed Forcible Sexual Assault (Sect. 160) and covers forcible sexual intercourse of a gay and lesbian nature.</p> <p>The penalties provided by the Criminal law for forcible homosexual acts are <u>lower</u> than for heterosexual rape.</p>

Lithuania	<p>The provisions of the Criminal Code are drafted in a neutral manner and do not provide any difference as regards the age limit for sexual offences for heterosexual or homosexual relations (see in particular Article 142 on Sexual Abuse of Young Child, Article 149 on the crime of Rape, Article 150 on Sexual Assault, Article 151 on Sexual Abuse, Article 152 on Sexual Harassment and Article 153 on Depravation of a Child).</p> <p>The age of consent is 14 (Article 142 CC).</p>	
Luxembourg	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 16.</p> <p>According to Article 372 of the Penal Code : "Tout attentat à la pudeur commis sans violence ni menaces, sur la personne ou à l'aide de la personne d'un enfant de l'un ou de l'autre sexe, âgé de moins de 16 ans accomplis, sera puni d'un emprisonnement d'un an à cinq ans. La peine sera la réclusion de cinq à dix ans, si l'enfant était âgé de moins de 11 ans accomplis".</p>	
Malta	<p>The age of majority for performing all acts of civil life is fixed by section 188 of the Civil Code¹⁶ as <i>the completion of the eighteenth year of age</i>.</p> <p>As to the laws regulating sexual offences, they are gender neutral and the age of consent is the same for both heterosexual and same sex relations.</p> <p>The age of consent is 12 years (section 201 CC).</p>	
Netherlands	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 16.</p> <p>The relevant provisions (Articles 245 and 247 of the Criminal Code) do not make any distinction in this respect anymore.</p>	

¹⁶“(1) Majority is fixed at the completion of the eighteenth year of age.”

<p>Poland</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 15.</p> <p>Article 200 of the Criminal Code¹⁷ defines the age of 15 as the age of criminal liability for sexual relations with a minor. Neither this regulation nor any others have differentiated age thresholds for criminal liability dependant on sexual orientation.</p>	
----------------------	---	--

¹⁷ Art. 200 ustawy z dnia 6 czerwca 1997 r. Kodeks karny (Dz.U. z 1997 r. nr 88, poz. 553, z późn. zm.) „Kto obcuje pociowo z małoletnim poniżej lat 15 lub dopuszcza się wobec takiej osoby innej czynności seksualnej lub doprowadza ją do poddania się takim czynnościom albo do ich wykonania, podlega karze pozbawienia wolności od lat 2 do 12. Tej samej karze podlega, kto w celu zaspokojenia seksualnego prezentuje małoletniemu poniżej lat 15 wykonanie czynności seksualnej”

<p style="text-align: center;">Portugal</p>	<p>The age of consent for heterosexual acts is 14 years (Article 172 CC) and 16 for homosexual acts (Article 175 CC).</p>	<p>Article 175 of the Criminal Code states: <i>Whoever being of the age of majority, practices homosexual acts with minors of 14-16 years of age or incites other persons to such acts can be punished by imprisonment of up to 2 years or a fine.</i> The same types of acts do not constitute a criminal offence when the persons involved belong to different sexes.</p> <p>Article 174 of the Criminal Code reads: <i>Whoever, being of the age of majority, has sexual relations of copulation, anal or oral intercourse with minors of 14-16 years of age, abusing of his/her inexperience can be punished by imprisonment of up to 2 years or a fine.</i> The sexes involved in these acts are not defined.</p> <p>Thus the penalty is always the same (imprisonment up to 2 years) but the requirements of the crime do not coincide. In the case of <i>heterosexual</i> relations between an adult and a minor below 16, there is a crime only when both of these conditions apply: (1) when the former “takes advantage of the inexperience” of the latter and (2) when there is actual intercourse or anal or oral coitus (Article 174 of the Criminal Code). In the case of <i>homosexual</i> relations, the crime is established whenever “relevant sexual acts” occur (and not only in the case of anal or oral coitus) between an adult and a minor under 16, irrespective of whether the former takes advantage of the inexperience of the latter (Article 175 of the Criminal Code).</p> <p>Accordingly, the same type of freely consented sexual relations, which are not constituting a crime when involving persons of different sexes, constitute a crime when practiced by two persons of the same sex. The Portuguese Constitutional Court has ruled already, in two different cases, that this difference of treatment is not in accordance with the Constitution, and violates the equality principle in respect of heterosexual and homosexual acts (Decisions 247/2005 and 351/2005). It is expected that the legislation will change accordingly.</p> <p>Meanwhile, Parliament may step in to change the Criminal Code in order to equalize the criminal treatment of sexual relations between minors under 16 and adults irrespective of the sexual identity of the partners. It remains to be seen whether the new regime will be the one that today is applicable to the heterosexual relations (Art. 174 of the Criminal Code) or the one that applicable today to the heterosexual relations (Art. 175), or a mix of the two legal provisions.</p>
--	---	---

<p>Slovak Rep.</p>	<p>Since 1990, there is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 15.</p> <p>This is confirmed by the new Criminal Code, which came into force on 1st January 2006. According to the Section 201 paragraph 1 of the new Criminal Code (which regulates the elements of the crime of sexual abuse), a person who performs sexual intercourse with the person under 15 years of age or who such person otherwise sexually abuses, shall be sentenced to a term of imprisonment from 3 years up to 10 years.</p>	<p>***</p> <p>As to the differences between homosexual and heterosexual sexual crimes not directly related to the age of consent, it should be noted that under the mentioned provisions of the Criminal Code, only women can be the object of the crime of rape.</p> <p>According to the Section 199 paragraph 1 of the Criminal Code, regarding the crime of rape, a person (man or woman), who forces a woman to sexual intercourse (coitus; in Slovak: “súlo_”) by violence or by threat of imminent violence or who abuses her helplessness for committing such offence, shall be sentenced to a term of imprisonment from 5 years up to 10 years.</p> <p><i>The term “sexual intercourse” is not explicitly defined in the Criminal Code, but according to the legal doctrine it relates only to the sexual intercourse (coitus; in Slovak: “súlo_”) between man and woman.</i></p> <p><i>As to Section 200 of the criminal Code (regarding the crime of sexual violence) and Section 201 of the Criminal Code (regarding the crime of sexual abuse), the situation is different since both man and woman can be the object and also the offender of the crime.</i></p>
<p>Slovenia</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 14.</p> <p>Article 183 of the Penal Code reads: “Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of 14 years shall be sentenced to imprisonment for not less than six months and not more than five years”.</p>	
<p>Spain</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age limit for sexual offences, which is of 13 (see Articles 181 (2) and 183 of the Penal Code).</p>	
<p>Sweden</p>	<p>There is no difference in treatment between homosexual and heterosexual relations with regard to the age of consent, which is, according to the Criminal Code (Brottsbalken) (BrB, Chapter 6), of 15 years of age.</p>	

United Kingdom	<p>The age of consent is the same for hetero- and homosexual relations.</p> <p>It is 16 in England, Scotland and Wales and 17 in Northern Ireland. This position was effected by the Sexual Offences (Amendment) Act 2000 but the governing legislation is now the Sexual Offences Act 2003.</p>	<p>Maintenance, in the legislation in Gibraltar, of a difference in treatment between homosexual and heterosexual sexual relations with regard to the age of consent to sexual relationships (this age being of 16 years for heterosexual (and female homosexual) sexual acts and of 18 for (male) homosexual sexual acts).</p> <p style="text-align: center;">***</p> <p>The offence of rape is one that can only be committed by a man but in England, Northern Ireland and Wales it can be committed against either a woman or a man. However, although in Scotland the offence of rape can only be committed against a woman, non-consensual intercourse with a man can constitute two specific common law crimes: indecent assault and sodomy, with a potentially identical penalty to rape, namely, life imprisonment. England and Wales also has an offence of sexual assault by penetration involving penetration of the vagina or anus by a part of the body or anything else with a sexual purpose and the maximum penalty for this offence, which can be committed by women as well as men, is also life imprisonment.</p> <p>It is not clear whether the Scottish offence of indecent assault would be applied to cover such penetration but the Human Rights Act 1998 could result in the common law being so developed.</p>
-----------------------	--	---