

# TABLE OF CONTENTS

Australia (Tasmania)	1
Belarus	3
Brazil	3
China	5
Colombia	6
Costa Rica	8
Estonia	9
Georgia	9
Greece	10
Iran	11
Ireland (Republic of)	12
Kazakhstan	13
Kyrgyzstan	13
Latvia	14
Lithuania	15
Mexico	16
Nicaragua	18
Romania	20
Russia	27
Turkey	32
Ukraine	34
United Kingdom (including Isle of Man)	34
United States of America	37
Uzbekistan	38

# @VIOLATIONS OF THE HUMAN RIGHTS OF HOMOSEXUALS

## Extracts from Amnesty International action materials

### AI CONCERNS BY COUNTRY

#### AUSTRALIA

##### Work for Legislative Change

Amnesty International is concerned that certain sections of the Tasmanian Criminal Code Act 1924 (Amended 1987) criminalize all male homosexual acts between consenting adults in private. Homosexuals imprisoned under these provisions would be considered by Amnesty International as prisoners of conscience.

Section 122 (a and c) states that "Any person who (a) has sexual intercourse with any person against the order of nature; ... (c) consents to a male person having sexual intercourse with him or her against the order of nature, is guilty of a crime," and could be charged with "unnatural sexual intercourse." Section 123 of the same Act states that "Any male person who, whether in public or private, commits any indecent assault upon, or other act of gross indecency with, another male person, or procures another male person to commit any act of gross indecency with himself or any other male person, is guilty of a crime", and could be charged with "indecent practice between male persons". It is clear that this law allows for the prosecution of consenting adults engaging in homosexual acts in private. There are no persons currently imprisoned under this law. The last time the law was used was in 1977 when several people were charged for "indecent practices between male persons".

#### LEGISLATION IN AUSTRALIA

AI Index: POL 30/01/94Amnesty International January 1994

## AI Concerns by Country

Under the constitution of Australia, power over the enactment and enforcement of criminal law resides primarily with the states comprising the federation. In general, the Federal Government only has direct responsibility for criminal law in the territories under its administration.

Male homosexual acts between consenting adults in private were decriminalized in the Australian Capital Territory in 1976; in the Northern Territory in 1983; in South Australia in 1972; in Victoria in 1980; in New South Wales in 1984; in Western Australia in 1989 and in Queensland in 1990. Tasmania has not decriminalized male homosexual acts between consenting adults in private despite recommendations from various government and non-government sources.

Amnesty International seeks the release of prisoners of conscience, a term the organization uses to describe those imprisoned for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence. Amnesty International also works for fair and prompt trials for all political prisoners and opposes the death penalty, extrajudicial executions, "disappearances" and torture. The organization has for many years opposed the violation of human rights of homosexuals through its work and by calling for the release as prisoners of conscience of people detained because of their advocacy of homosexual rights. At its International Council Meeting in Yokohama, Japan in 1991, Amnesty International affirmed its mandate to include a call for the release of individuals who have been imprisoned solely because of their homosexuality, including the practice of homosexual acts in private between freely consenting adults, and for the repeal of laws that may lead to the imprisonment of prisoners of conscience, such as Sections 122 (a and c) and 123 of the Tasmanian Criminal Code Act 1924 (Amended 1987).

### APPEAL TO THE GOVERNMENT

Amnesty International urges the Tasmanian State Government to repeal Sections 122 (a and c) and 123 of the Tasmanian Criminal Code Act 1924 (Amended 1987) and ensure that future legislation governing sexual offenses in the state of Tasmania will not permit the imprisonment of people for consensual homosexual acts between adults in private, who would be considered by Amnesty International to be prisoners of conscience.

Amnesty International wrote to the Premier of the State of Tasmania in July 1992 concerning this matter but has not received a response to date.

From AI INDEX: ASA 12/04/93, Australia: Tasmanian law discriminates against homosexuals. DATE: March 1993.

## BELARUS

### Work for Legislative Change

Amnesty International welcomes both the public recognition by Belarus of the importance of international

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

standards on human rights, and the developments in the republic in recent years to bring domestic laws into conformity with such standards. However the organization is continuing to address the authorities in Belarus on a number of outstanding issues of concern, including those indicated below....

...Male homosexual acts, specifically sodomy, were punishable by up to five years' imprisonment under Article 119 part 1, even if carried out in private by consenting adults. Neighbouring Ukraine moved to decriminalize such acts in December 1991, and Amnesty International is seeking further information on the current status of this article in Belarus.

From AI INDEX: EUR 49/01/92, Belarus: Summary of Amnesty International's concerns. DATE: September 1992.

## BRAZIL

### Work to Halt Extrajudicial Executions

Urgent Action: Renildo José dos Santos (March 1993)

Amnesty International is concerned that the abduction and killing of Renildo José dos Santos, a homosexual local councillor from the municipality of Coqueiro Sêco, State of Alagoas, may have been carried out by members of the security forces because he was a homosexual.

According to information received by Amnesty International, on the evening of Sunday 14 March 1993, Renildo José dos Santos was violently abducted from his home in Coqueiro Sêco, Alagoas, by a group of unidentified heavily armed men. Relatives of Renildo José dos Santos who witnessed the abduction believe that some of the men were plain clothes police officers. Renildo José dos Santos' head was found the following day on waste ground bearing apparent marks of torture. His body was found two days later in another area of waste ground also bearing apparent marks of torture.

Renildo José dos Santos had repeatedly denounced death threats which he had been receiving since 1989 which had come from the local mayor and the mayor's father, also a local political leader. He also accused a local police officer of making an attempt on his life. According to written testimony which he made in September 1991, he reported the death threats to a local judge but no steps were reportedly taken to ensure his physical safety. On 27 November 1991 Renildo José dos Santos was shot and wounded three times, allegedly by a local police officer whom he named in the testimony. Renildo José dos Santos attributed the death threats and the attempt against his life to political differences with the mayor and his father and to his homosexuality which he had publicly acknowledged. He claimed that the local police had not conducted a proper investigation into the attempt against his life and that the state Secretary of Public Security had refused his request to suspend the police officer from duty, pending the outcome of the investigation.

In January 1993 the local council of Coqueiro Sêco set up a parliamentary commission of inquiry to investigate the conduct of councillor Dos Santos under accusations of him committing acts "incompatible

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

with Parliamentary [i.e. the local council] decorum and bringing the House into disrepute.", Among the reasons given for the accusation was that councillor dos Santos had publicly admitted his homosexuality in a radio program. As a result of the inquiry councillor dos Santos was stripped of his local council seat by the Council. He was subsequently reinstated, pending a Judicial appeal.

On 25 February several human rights organizations in Alagoas wrote to the State Secretary for Public Security denouncing the death threats and attempts against the life of councillor dos Santos and the alleged involvement of military police officers in the attempts. The organizations also denounced the smear campaign against him. To Amnesty International's knowledge, no protection was granted to councillor dos Santos.

In a statement to the newspaper "Jornal de Alagoas", a few days before his assassination, councillor dos Santos reiterated his denunciations of death threats and [sexual] discrimination against him from the local mayor, and attributed the smear campaign to his public acknowledgment of his homosexuality. He said that he was frightened and desperate and that he feared a new attempt on his life or an abduction.

To Amnesty International's knowledge, nobody has been detained in relation to the abduction and killing of councillor dos Santos.

## BACKGROUND INFORMATION

Alagoas, in North East Brazil has a tradition of political violence. One of the poorest states of Brazil, politics and society in Alagoas are dominated by large landowners, coronéis, and their accomplices who often resort to violence against anybody who challenges their interests.

From AI INDEX: AMR 19/07/93, UA 78/93 - Brazil: possible extrajudicial execution: Renildo Jose does Santos. DATE: March 1993. See also Brazil: AI concerned at killing of homosexual politician (Renildo Jose dos Santos) (Weekly Update Service, April 1993).

## CHINA

### Work to oppose the Detention of Prisoners of Conscience

#### Update on AI concerns

Generally speaking, although homosexuality is more tolerated than in previous years, it continues to be the subject of strong social disapproval and may possibly still lead to detention or imprisonment in some areas. There are indications that AIDS is leading to more openness about homosexuality: an AIDS telephone helpline opened in Beijing in 1992, and in 1993 a men's club called Men's World was established in Beijing by the National Health Education Institute (a government body), which is intended to act as a forum to discuss AIDS prevention and to be a support group for homosexual men. However, this change in attitude is largely limited to Beijing and the major metropolitan areas and parts of the country which are more open to influence from abroad; in many of the more isolated areas of the country

Amnesty International January 1994 AI Index: POL 30/01/94

## AI Concerns by Country

the old attitudes still persist.

With regard to whether people in China might risk face imprisonment for their homosexuality, the situation is currently not very clear and varies from one region of the country to another. In the past, homosexuals have been harassed by the police and been sent to "re-education through labour camps" (this is an administrative punishment and so does not require a judicial process). Some were also reportedly sentenced to terms of imprisonment under the Criminal Law. Though there is no specific provision in the criminal law covering homosexuality, homosexuals have reportedly been sentenced on charges of "disturbing social order" or "hooliganism". Such cases are rarely publicly reported and there is little specific information available about individual cases.

A new official policy on homosexuals was reportedly adopted in 1992, though this has not been publicly confirmed by official sources. In November 1992 it was reported that the Communist Party no longer regards homosexuality as an offence, and provincial police departments had been instructed not to punish homosexuals. This new policy was reportedly published in an internal newsletter of the Ministry of Public Security which stated that detaining homosexuals was illegal, but that they should be told to confine their homosexual activity to their homes.

A case illustrating recent changes in official attitudes towards homosexuals was widely reported early in 1992: police were called to intervene in the case of a lesbian couple who set up house together in Anhui province; they were detained for 15 days on charges of "unruly behaviour" while the case was referred to a higher authority to decide on whether they should be prosecuted; in April 1992 the Ministry of Public Security reportedly found no legal basis on which to prosecute them and they were set free.

However, despite the official policy referred to above, there are still some quite recent cases where people have been imprisoned in connection with their homosexuality, and it seems clear that the practice on this varies from one region of the country to another. For example, there was a case reported in a Canton newspaper of February 1992 of a man who had allegedly had homosexual relations with 19 other men being sentenced to eight years in jail on a charge related to indecency, although AI is not able to confirm the details of the case or whether it would fall within AI's own mandate. There have also been some past cases reported where homosexuals have been charged and imprisoned for "hooliganism" or "indecent behaviour", and some cases where people have been subjected to compulsory detention in hospital on the grounds that they are mentally ill. However the risk of such imprisonment would seem to vary from one region to another and according to the case of the individual concerned.

From AI INDEX: POL 33/04/93 (Internal): Refugee coordinators circular 01/93. DATE: May 1993.

## COLOMBIA

### Work to Halt Extrajudicial Executions

Extrajudicial execution as "social cleansing"

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

Killings of "social undesirables" by "death squads" backed by the police in major cities and towns continued to be reported. Vagrants (including children), homosexuals and petty criminals were gunned down in the streets at night or were seized and driven away in unmarked cars. Their bodies, which were rarely identified, often bore signs of torture. Community leaders, students and unemployed youths in shanty towns surrounding major cities were also frequently threatened and killed by shadowy "death squads". In July heavily armed men entered the neighbourhood of Juan Pablo II in Ciudad Bolívar on the southern outskirts of Bogotá and opened fire on a group of teenagers leaving a birthday party: six were killed. Rosabel Jiménez, the grandmother of one of the victims, was shot dead as she attempted to apprehend one of the killers. A police cap was found beneath her body.

From Colombia, Amnesty International Report, 1993.

### Colombia: extrajudicial execution as "social cleansing"

Members and suspected sympathizers of guerrilla groups have not been the only victims of extrajudicial executions.

In urban areas many victims are killed by assailants on high-powered motorcycles or by individual assassins in public places, including restaurants, airports and on board aircraft. Others are gunned down by assailants who break into their homes or are seized in the street and forced into cars, their bodies generally being found hours or days later. Many of the victims abducted are tortured, and their bodies are mutilated or burnt by fire or with acid before being dumped by roadsides or in rivers. Assassins, generally heavily armed men in civilian clothes, almost invariably escape, sometimes in full view of uniformed police or army personnel who do nothing to intervene.

Sporadic incidents of multiple killings in the mid-1980s developed from 1988 into a new pattern of attacks on groups of unarmed civilians which left hundreds of people dead throughout the country. Although the likely motives varied, many killings appeared to be part of a campaign to terrify entire communities or sectors of society or to punish them for their perceived party allegiances.

In the cities people branded as "social undesirables", including homosexuals, prostitutes, minor drug peddlers and addicts, vagrants, "street children", and the mentally retarded have also been killed. Murder operations directed against these people are routinely termed "social clean-up operations" (*operaciones de limpieza social*). They are most frequently attributed to police officers (who in press reports are often characterized as "off-duty") or to collaborators working on information provided by them. Statistics for "clean-up" operations are harder to obtain than for politically connected killings, as the identity of the victims is often unknown. These deaths often go unreported or are not registered, although between April and November 1992, local human rights groups recorded 298 murders attributed to "social clean-up" operations by "death squads".

The large cities including Cali, Bogotá, Medellín and Barranquilla are most affected by these killings. Assailants often gun down their victims from motorcycles or

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

the cabs of trucks. In other cases, victims are rounded up from the streets and forced into trucks; their bodies, frequently tortured or mutilated, are found later dumped by the roadside or in rubbish tips.

[From Colombia: Strategies for evading accountability, AI Index: AMR 23/46/93, August 1993 (to be incorporated into the forthcoming book, "DISAPPEARANCES" AND POLITICAL KILLINGS: HUMAN RIGHTS CRISIS OF THE 1990s, A MANUAL FOR ACTION.)]

## COSTA RICA

### Work to oppose Torture, Cruel, Inhuman or Degrading Treatment or Punishment

#### Torture and cruel, inhuman or degrading treatment of transvestites

At least seven transvestites were reportedly arrested by police agents in San José, held for several hours and subjected to torture or cruel, inhuman or degrading treatment. One of them, Manuel Horacio Guevara Albornoz, was reportedly arrested in April wearing women's clothes. He was taken to the radio patrol unit, where policemen reportedly mocked him and fondled his buttocks. He was rearrested in May, taken to the same radio patrol unit, made to strip and subjected to mockery. Jorge Enrique Vargas González was arrested in May by two policemen, driven to the ruins of a house, and reportedly forced at gunpoint to have oral sex with one of the officers. Investigations into these cases were carried out by the Ministry of the Interior.

In December Amnesty International wrote to the government of President Rafael Calderón Fournier to express concern about the extrajudicial executions, torture and ill-treatment by [*Guardia de Asistencia Rural*] GAR agents and police officers, and to urge it to take measures to investigate such abuses and bring those responsible to justice. The organization also raised its concern about the torture or cruel, inhuman or degrading treatment of transvestites and asked to be informed about the methods and findings of the investigations into the reported cases.

From Costa Rica, Amnesty International Report 1993

#### Police attitudes toward sexual identity

Amnesty International wrote to the president of Costa Rica on 18 December 1992 concerning the reported torture or cruel, inhuman or degrading treatment of at least seven transvestites by police in the capital, San José. The letter noted that insofar as police attitudes toward the expression of their sexual identity by the victims have contributed to the alleged abuses, AI would be grateful to learn of any measures being contemplated to make clear to all law enforcement personnel that such attitudes will not be tolerated.

From letter of 28 December 1992, TG AMR 24/92.04.

AI Index: POL 30/01/94 Amnesty International January 1994

AI Concerns by Country

## ESTONIA

### Work for Legislative Change

...In October two Amnesty International delegates visited Estonia, Latvia and Lithuania in order to collect information on human rights issues related to the organization's mandate. This was the first research visit by Amnesty International to the three newly independent Baltic states....

...In May Amnesty International wrote to the Minister of Justice asking for confirmation that Article 118 of the Estonian criminal code had been abolished. Under the article homosexual acts between consenting adult males were criminal offenses punishable by imprisonment. The organization also asked whether anyone had been imprisoned under Article 118 at the time of its abolition and if so, whether they had subsequently been released. No reply had been received by the end of October. Persons imprisoned solely because of their practice of consensual homosexual acts with other adults in private are considered prisoners of conscience by Amnesty International.

From: Amnesty International's concerns in Europe May 1992 - October 1992 (EUR 01/04/92). DATE: December 1992.

## GEORGIA

### Work for Legislative Change

The first Amnesty International visit to Georgia took place in February. Planned while President Gamsakhurdia was still in power, it was postponed owing to fighting that resulted in a change of government. Amnesty International discussed its concerns with a range of people, both official and unofficial....

...The Minister of Justice told Amnesty International that he heads a commission working on amendments to the criminal code, and hoped that these could come before the new parliament, when elected, for approval. An article no longer being enforced is

121, the first part of which punishes consenting homosexual activity between adult males. It is intended to revise this to decriminalize such actions.

From AI INDEX: EUR 01/03/92, Concerns in Europe: November 1991 - April 1992. DATE: June 1992.

## GREECE

### Work for Prisoners of Conscience

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

On 8 November 1991 the chief editor of the gay and lesbian magazine *Amphi*, Irene Petropoulou, was sentenced to five months' imprisonment (convertible to a fine of 1,000 drachmas per day for each day of her prison sentence) and a 50,000 drachmas fine on charges of violating Articles 29, 30 and 31 of Law 5060/1931 for a comment she published in issue 4/1991 of the magazine. The comment was in the classified section and asked why so many homosexual and heterosexual men were interested in corresponding with lesbian women. The court ruled that the comment "offends public feelings of decency and sexual morals and cannot be considered to be a work of art and science". Irene Petropoulou is free pending appeal. If her appeal is rejected and she is unable or unwilling to convert her prison sentence into a fine, she will face a term of imprisonment. If she is imprisoned Amnesty International will consider her to be a prisoner of conscience.

From AI INDEX: EUR 01/03/92, Concerns in Europe: November 1991 - April 1992. DATE: June 1992.

## Work to Halt Torture, Cruel, Inhuman or Degrading Treatment or Punishment

Although the fall of the military government in 1974 brought to an end the systematic torture of political prisoners, the torture or ill-treatment of people in detention by law enforcement officials has not been eradicated in Greece....

...Greek newspapers periodically report cases of police officers torturing or ill-treating people either picked up in the street, apparently at random, during the course of operations aimed at clearing areas of drugs users, drugs dealers and homosexuals, or following demonstrations....

From AI INDEX: EUR 01/04/92, Concerns in Europe: May 1992 - October 1992. DATE: December 1992.

AI Concerns by Country

## IRAN

### Work to oppose the death penalty

#### Continuing political executions

In Iran, where sodomy is punishable by the death penalty, Amnesty International reported on charges of spying, adultery and sodomy as a pretext for the execution of a Sunni Muslim leader.

Dr Ali Mozaffarian, a well known surgeon and one of the leaders of the Sunni Muslim community in Fars province in southern Iran, was executed in Shiraz at the beginning of August 1992. He had been convicted of spying for the United States and Iraq, adultery and sodomy. His video taped "confessions", which may have been obtained as a result of physical or psychological pressure, were broadcast on television in Shiraz and in the streets of Kazerun and Lar.

Dr Mozaffarian was arrested in his office in late 1991, a day after he and other Sunni leaders had attended a meeting in the house of Shiraz's Friday Prayer cleric, Ayatollah Haeri, to discuss deteriorating Sunni/Shi'a relations in Fars. Reportedly, his arrest was in connection with his refusal to take part in a "unity prayer" and his outspoken opposition to the government. He was executed following riots in Shiraz in August 1992. According to official reports, Dr Mozaffarian was tried in Shiraz, but no information about the proceedings is available. Amnesty International believes that his trial may have been unfair.

Amnesty International opposes the death penalty in all cases, but an added concern in Iran is that it is frequently imposed on political suspects and others whose trials fail to meet international fair trial standards. In political cases, trials often last only a few minutes, the accused has no access to legal counsel at any stage; is denied both the right to appeal against conviction and sentence; and is denied any opportunity to seek commutation of his/her sentence.

Amnesty International is also concerned by the use of televised confessions, apparently intended to discredit political suspects and which further undermines the possibilities of their receiving a fair trial.

From: Iran: Amnesty International Concerned at Continuing Political Executions, AI Index: MDE 13/WU 08/92, in Weekly Update NWS 11/48/92ADD.

## IRELAND (Republic of)

### Work for Legislative Change

Republic of Ireland: Legislation decriminalizing homosexuality (June 1993)

The Government of the Republic of Ireland has just published the Criminal Law (Sexual Offenses) Bill

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

1993, which will repeal the existing law forbidding homosexual acts and introduce provisions prohibiting such acts with persons under 17 years.

Current legislation on homosexuality in the Republic of Ireland is in breach of the European Convention on Human Rights because it allows for the prosecution of consenting adults engaging in homosexual acts in private. The European Court of Human Rights ruled in the David Norris case in 1988 that Irish laws were in breach of Article 8 of the European Convention which states that

"everyone has the right to respect for his private and family life, his home and his correspondence".

David Norris, a senator and long-standing campaigner for homosexual rights in the Republic of Ireland, contested in 1987 before the European Court of Human Rights the existence in the Republic of Ireland of laws which make certain homosexual practices between consenting adult men criminal offenses. Although the Irish Government pleaded that the legislation had never been enforced against the applicant, and that he could not claim to be a "victim" within the meaning of Article 25/1 of the Convention, the court held that Article 25 of the Convention

"entitles individuals to contend that a law violates their rights by itself....if they run the risk of being directly affected by it".

It admitted that the risk of prosecution in this case was minimal but that as long as a law remained in the Statute Book it might be applied at any time.

The Court stated: "Moreover, it was found in the national proceedings that one of the effects of criminal sanctions against homosexual acts is to increase the anxiety and guilt of homosexuals leading, on occasions, to depression and the serious consequences which can follow from that unfortunate disease".

At its International Council Meeting in Yokohama in 1991, AI decided to consider as prisoners of conscience individuals who are imprisoned because of their homosexuality, including for the practice of homosexual acts in private between freely consenting adults.

AI therefore welcomes the Irish Government's introduction of new legislation governing sexual offenses which would decriminalize the practice of consensual homosexual acts between adults in private.

From AI INDEX: EUR 29/05/93, Republic of Ireland: Legislation decriminalizing homosexuality. DATE: June 1993. An internal action circular calling on members of the Irish parliament to support the proposed legislative change was issued shortly before the above. See AI INDEX: EUR 29/05/93, WERAN 21/93 - Republic of Ireland: Legislation decriminalizing homosexuality, DATE: June 1993.

## KAZAKHSTAN

### Work for Legislative Change

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

The first Amnesty International visit to Kazakhstan took place in April. The delegation discussed the organization's concerns with senior government officials and had meetings with a range of other people....

...The first part of Article 104 of the criminal code prohibits consenting homosexual activity between adult males. However, Justice Ministry officials told the Amnesty International delegation that in practice consenting homosexual activity between adult men in private was not punished.

From: Kazakhstan: the death penalty; legislative review; homosexuality; ratification of international human rights instruments. In: AI concerns in Europe November 1991 - April 1992 (EUR 01/03/92). DATE: June 1992.

## KYRGYZSTAN

### Work for Legislative Change

The first Amnesty International visit to Kyrgyzstan took place in April. The delegation discussed the organization's concerns with senior government officials and also had meetings with people outside official circles....

...The first part of Article 112 of the criminal code punishes consenting homosexual activity between adult males. The Justice Minister told the Amnesty International delegation that decriminalizing such actions would be considered when this article is revised. Other Justice Ministry officials informed Amnesty International that no criminal cases had been brought under this article in 1991, but that there had been convictions in 1990.

From: Kyrgyzstan: the death penalty; review of the criminal code; conscientious objection to military service; homosexuality; ratification of international human rights instruments. In: AI concerns in Europe November 1991 - April 1992 (EUR 01/03/92). DATE: June 1992.

## LATVIA

### Work for Legislative Change

In October two Amnesty International delegates visited Estonia, Latvia and Lithuania in order to collect information on human rights issues related to the organization's mandate. This was the first research visit by Amnesty International to the three newly independent Baltic states....

...In May Amnesty International wrote to the Minister of Justice asking for confirmation that Article 124 of the criminal code of Latvia had been abolished. According to this article homosexual acts between consenting adult males were criminal offenses punishable by imprisonment. The organization also asked whether anyone had been imprisoned at the time of the article's abolition and if so, whether they had subsequently been released.

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

In July the Minister of Justice replied that on 5 February the Supreme Council of the Republic of Latvia passed legislation to amend Article 124. According to this amendment homosexual acts are criminal offenses only if they involve violence or the threat of violence, are undertaken with respect to minors or if a victim's helplessness or condition of dependence is abused. The Minister informed Amnesty International that persons who had been imprisoned for homosexuality were released from prison immediately after the adoption of the legislative amendment. Persons imprisoned solely because of their practice of consensual homosexual acts with other adults in private are considered prisoners of conscience by Amnesty International.

From: The death penalty; homosexuality. In: Amnesty International's Concerns in Europe May 1992 - October 1992 (EUR 01/04/92). DATE: December 1992.

## LITHUANIA

### Work for Legislative Change

#### Update on Lithuania

...[I]n October two Amnesty International delegates visited Estonia, Latvia and Lithuania in order to collect information on human rights issues related to the organization's mandate. This was the first research visit by Amnesty International to the three newly independent Baltic states....

...In July Amnesty International wrote to the Ministry of Justice asking for information on the number of persons currently detained under Article 122 of the Lithuanian criminal code. According to Article 122 (part one) homosexual acts between males are punishable by up to three years' imprisonment. Similar acts with respect to minors or involving violence or the threat of violence or exploiting the dependent situation or helplessness of the victim, are punishable, under part two of Article 122, by three to eight years' imprisonment. Persons imprisoned solely because of their practice of consensual homosexual acts with other adults in private are considered prisoners of conscience by Amnesty International.

In September the Ministry of Justice replied that since the restoration of independence in March 1990, three persons had been convicted under Article 122. One person was sentenced to three and a half years' imprisonment for sexual assault and physical coercion; a second person received a sentence of five years' imprisonment for engaging in sexual acts with and assaulting a minor. In a third case a minor was sentenced to two and a half years' imprisonment, reduced from three and a half years after appeal, for engaging in consensual sexual intercourse with another minor. The convicted person was released on probation before completion of sentence. The Ministry concluded its reply by stating that a new draft of

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

the criminal code was currently being prepared and that this draft did not provide for prosecution of persons who engage in consensual homosexual relations.

During its visit Amnesty International was given a copy of a letter from the Ministry of the Interior to the Lithuanian Aids Prevention Centre. In addition to the three cases described by the Ministry of Justice, the letter from the Interior Ministry named another 14 persons convicted under Article 122 (part two) since the beginning of

1990. At least one of the 14 convictions dated from 1991. It is not clear whether the

remaining 13 cases omitted from the Ministry of Justice's letter all dated from the period 1 January - 11 March 1990 (the date of the restoration of Lithuanian independence).

From: Lithuania: The death penalty; conscientious objection to military service; homosexuality. In: Amnesty International's Concerns in Europe May 1992 - October 1992 (EUR 01/04/92). DATE: December 1992.

## Update on Lithuania

In December Amnesty International wrote to the Minister of Justice and asked for clarification of the number of persons convicted under Article 122 of the Lithuanian criminal code since the restoration of Lithuanian independence in March 1990 (see AI Index: EUR 01/04/92). According to Article 122 (part one) homosexual acts between males are punishable by up to three years' imprisonment. Similar acts with respect to minors or involving violence or the threat of violence or exploiting the dependent situation or helplessness of the victim, are punishable, under part two of Article 122, by three to eight years' imprisonment. Persons imprisoned solely because of their practice of consensual homosexual acts with other adults in private are considered prisoners of conscience by Amnesty International.

From AI INDEX: EUR 01/01/93, Concerns in Europe November 1992 - April 1993. DATE: June 1993.

## MEXICO

### Work to Halt Torture, Cruel, Inhuman or Degrading Treatment or Punishment

Mexico: Human rights violations against gay activists (June 1993)

Amnesty International is deeply concerned about information regarding the arrest and ill-treatment of two gay activists in Mexico City who appear to have been targeted by the authorities as a result of their active campaigning on behalf of sectors of the Mexican gay community.

Gerardo Rubén Ortega Zurita, 36, and José Cruz Reyes Potenciano, 23, are both renowned in Mexico City for their AIDS-prevention voluntary work among male prostitutes in that city. As part of their campaign they have repeatedly denounced in the Mexican media the abuses allegedly suffered by gay  
Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

prostitutes at the hands of the police and other authorities, including beatings and extortion. Their arrest took place three days after Gerardo Rubén Ortega Zurita was interviewed on television, where he repeated his criticism against the authorities regarding gay issues.

Ortega Zurita and Reyes Potenciano were arrested on 16 June 1992 in the streets of Mexico City by members of the Federal District judicial police (Policía Judicial del Distrito Federal) who alleged they were detained in flagrante delicto. The two men were accused of the rape and sexual assault of a minor (violación y corrupción de menor). They were both transferred to a police station where the police announced their arrest to the press, despite the lack, at the time, of formal charges against the defendants. Both were reportedly beaten by the police and transferred on the same day to another police station in the neighbourhood of Coyoacán, where they remained incommunicado until the next day. On 17 June both were presented before a local prosecutor for their preliminary statements, and the charges were confirmed despite the lack of supporting evidence. A medical examination carried out on the day of arrest on both men reportedly certified injuries of the defendants consistent with their allegations of beatings by the police.

On 18 June 1992 Ortega Zurita and Reyes Potenciano were transferred to the Reclusorio Preventivo Sur, a prison in Mexico City, pending trial. On the days following their arrival both reportedly suffered beatings and harassment from prison inmates. On 31 March 1993 they were both sentenced to 13 years and 9 months' imprisonment. Their sentence is presently under appeal before the Appeals Court of Mexico City (Corte Superior).

Amnesty International is seriously concerned about the imprisonment and ill-treatment suffered by Ortega Zurita and Reyes Potenciano. Information recently received by the organization strongly suggests that both men were arrested and charged with offenses on the basis of uncorroborated accusations, and that their arrest and imprisonment may have been motivated by both men's active and outspoken criticism against the authorities' regarding gay issues in Mexico City, coupled with alleged prejudice against the defendants by the authorities in charge of the case.

Amnesty International believes that Gerardo Rubén Ortega Zurita and José Cruz Reyes Potenciano may be prisoners of conscience. The organization is therefore calling on the Mexican authorities to carry out a full, prompt and impartial investigation into the allegations of human rights violations suffered by both men, including their imprisonment and ill-treatment, and to bring those responsible to justice.

Update: gay activists cleared of all charges and released

Amnesty International appealed on behalf of the two men in June 1993, expressing concern to Mexican authorities that their arrests may have been motivated by their active campaigning on gay issues in the capital, including their outspoken criticism of alleged police abuse on homosexuals. It called for an inquiry into the alleged abuse of the two men who, it said, appeared to be prisoners of conscience, held solely for their advocacy of the rights of members of Mexico's gay community. On July 9, 1993, the two men were released following a successful appeal, cleared of all charges.

## AI Concerns by Country

From AI INDEX: AMR 41/03/93, Mexico: Human rights violations against gay activists. DATE: June 1993.

# NICARAGUA

## Work for Legislative Change

Nicaragua: AI concerned at proposed tightening of laws on homosexuality (July 1992)

Amnesty International has written to the government of Nicaragua to express its concern at proposed reforms to the Penal Code which AI fears could allow for the imprisonment of people for advocating homosexual rights or for homosexual acts in private with a consenting adult of the same sex.

On 11 June 1992 the Nicaraguan Assembly approved an amendment to Article 205 of the Penal Code which provides that "anyone who induces, promotes, propagandizes or practices in scandalous form sexual intercourse between persons of the same sex commits the crime of sodomy and shall incur 1 to 3 years' imprisonment". The approved amendment is awaiting ratification by the President, who has the power of veto.

In a letter to President Violeta Barrios de Chamorro, Amnesty International stated its concern that, by extending the crime of "sodomy", as currently defined in Article 205, to cover the "promotion" of homosexual acts, the proposed amendment appeared to open the way to the prosecution and imprisonment of individuals for exercising their right to freedom of expression, for example by advocating homosexual rights or making available sex and health education information. If imprisoned for this reason, such individuals would be considered by Amnesty International to be prisoners of conscience.

If ratified, the amendment to Article 205 could also allow for the imprisonment of individuals for consensual homosexual sex in private between adults. Article 205 of the current penal code, which criminalizes acts of "sodomy which outrage public morals", includes provisions apparently aimed at outlawing sexual acts which are public, coercive or involve minors. The amendment approved by the Assembly replace these provisions with an even broader and more undefined provision criminalizing homosexual sexual acts practised "in scandalous form". Amnesty International is concerned that the amendment apparently offer no guarantees that Article 205 will not be applied to individuals engaging in freely consensual homosexual relations between adults and in private; if imprisoned for these reasons, Amnesty International would demand the unconditional release of such individuals as prisoners of conscience.

Although the stated motivation for reforming certain articles of the penal code was to combat the perceived increase in sexual offenses, the amendment extending the application of Article 205 appear intended to criminalize the expression of homosexual identity in a broad range of forms, in a way that could lead to the violation of fundamental human rights.

Amnesty International January 1994 AI Index: POL 30/01/94

## AI Concerns by Country

Amnesty International urged the President to clarify the intended scope and application of the proposed penal code amendment awaiting ratification, and to ensure that the Nicaraguan penal code will never permit the imprisonment of people for non-violent advocacy of homosexual rights or for consensual and private homosexual acts between adults.

From: Nicaragua: AI concerned at proposed tightening of laws on homosexuality. In: Weekly Update Service 27/92 (NWS 11/27/92 add). DATE: July 1992.

### Nicaragua: AI concerned at proposed tightening of laws on homosexuality (August 1992)

The proposed legislation has been neither ratified nor vetoed by the President, although the deadline (15 days following receipt from the National Assembly) has passed. The National Assembly is authorised to publish the legislation, thus bringing it into force, once the ratification deadline has passed. However, the Assembly is currently in recess and the legislation has not been published.

Sections will be informed as soon as there is any change in the status of the legislation.

From AI INDEX: NWS 11/29/92, Weekly Update Service 29/92 (includes addition). DATE: August 1992.

### Update on Nicaragua: AI concerned at proposed tightening of laws on homosexuality (August 1992)

Amnesty International has recently learned that the package of proposed reforms to the Nicaraguan Penal Code, including an amendment to Article 205 concerning homosexuality, has been ratified by President Chamorro. AI is concerned that the amendment to Article 205 could lead to the prosecution and imprisonment of individuals for advocating homosexual rights or for practising homosexual acts between consenting adults in private.

The reforms to the Penal Code were approved by the National Assembly on 11 June and ratified by the President on 8 July. However, news of the ratification was not made public, and did not reach sources in Nicaragua until early August. The legislation has not been published in the official diary *La Gaceta* and has thus not entered into force.

Amended Article 205 (now Article 204 of the reformed Penal Code) provides that "anyone who induces, promotes, propagandizes or practices in scandalous form sexual intercourse between persons of the same sex commits the crime of sodomy and shall incur 1 to 3 years imprisonment". It also states that if one of the people engaging in sexual intercourse is in a position of power or authority over the other, even if in private, s/he will be punishable with 2 to 4 years in prison for unlawful seduction.

In a letter to President Chamorro on 30 June, Amnesty International expressed its concern that the broad and undefined provisions of the proposed legislation could be applied in a way that would criminalize the expression of homosexual identity in a broad range of forms. Individuals detained or imprisoned solely on the basis of their homosexuality, including for homosexual acts between consenting adults in private,

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

would be considered by Amnesty International to be prisoners of conscience. The organization would demand their unconditional release.

From AI INDEX: NWS 11/32/92 addendum, Update Nicaragua: AI concerned at proposed tightening of laws on homosexuality. DATE: August 1992.

### Nicaragua update, December 1993

A package of amendments to the Penal Code, mostly regarding sexual offenses, was approved by the National Assembly in July and became law in September. The amended Penal Code criminalized as "sodomy" the "induction, promotion and practice in scandalous form" of homosexual sex, punishable by up to three years' imprisonment. Amnesty International was concerned that this could lead to the imprisonment of people solely on the basis of their homosexuality, including the practice of homosexual acts in private between consenting adults. Such prisoners would be prisoners of conscience. An appeal challenging the law as unconstitutional was presented in November to the Supreme Court, which was due to make a ruling in early 1993.

From Nicaragua, Amnesty International Report 1993.

## ROMANIA

### Work for Legislative Change

...The Penal Code and Code of Penal Procedure, as in most other Central and East European countries, have not yet been radically reformed. Although some articles have been abolished since December 1989, the Romanian Penal Code under Article 200 paragraph 1 still punishes anyone "who has sexual relations with a person of the same sex" with one to five years' imprisonment. In July 1992 representatives of Amnesty International were told by Romanian authorities that no one had been prosecuted for this offence since the fall of Ceaușescu in December 1989 and that the proposed reform of the Penal Code will abolish this crime. Amnesty International urged the Romanian Minister of Justice, Petre Ninosu, to ensure that the proposed reform of the Romanian

Penal Code will not permit the imprisonment of people solely because of their homosexuality....

AI INDEX: EUR 39/07/93. TITLE: Romania: Continuing violations of human rights. DATE: May 1993.

### Work for Prisoners of Conscience

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

### Urgent Action for Mirel Ciprian Cucu, Milorad Mutaşcu (April 1993)

Amnesty International has recently learned and is concerned that Mirel Ciprian Cucu and Milorad Mutaşcu have been arrested and charged solely for their homosexuality. The organization is further concerned that Milorad Mutaşcu, who is still in detention pending trial, may be subjected to torture or ill-treatment.

Mirel Ciprian Cucu and Milorad Mutaşcu were arrested on 22 January 1993 in Sînnicolau Mare, near Timişoara, and placed in preventive detention. Mirel Ciprian Cucu has been charged under Article 200 paragraph 1 of the Romanian Penal Code and faces a possible prison sentence of one to five years for "having sexual relations with a person of the same sex". He was released after two months' detention and is now awaiting trial. Milorad Mutaşcu has been charged under the same article, paragraph 2, for homosexual relations with a minor and faces a possible prison sentence of two to seven years. He is being held in preventive detention pending trial.

Mirel Ciprian Cucu reportedly met Milorad Mutaşcu in late November 1992 through an advertisement he had placed in the newspaper *Publitem*, asking to meet someone interested in "long-term friendship". The two men lived together in Timişoara in the apartment of Milorad's family. On 5 January 1993 they moved to a room in Sînnicolau Mare where they were arrested on 22 January 1993.

An article in the official police newspaper, *Tim-polis*, described the reason for the arrests exclusively in terms of the two men having had consensual sexual relations in private in a relationship which, without distinguishing between the ages of the two young men, was described as representing a danger to society. To this end the police newspaper vilified the younger man in particular as a "social danger" for initiating the relationship, while characterizing the two as "youths out of the control of society". *Tim-polis* while publicizing the case also implied that homosexual behaviour was a form of mental illness and disregarded the reputations or well-being of the two men, by publishing the names, photographs and addresses of the two even before formal charges were brought against them. There is no evidence that elements of coercion or exploitation were present in the relationship, both men have been treated as adults in terms of police procedure and preventive detention. Romanian law punishes sexual relations between men at any age, although a heterosexual relationship between people of the same ages would be lawful.

Amnesty International has recently received reports that homosexual men or persons suspected of being homosexual have been tortured or ill-treated in Romanian police stations and prisons and has asked the authorities to investigate these allegations.

Amnesty International considers Milorad Mutaşcu to be a prisoner of conscience and is calling for his immediate release. Should Mirel Ciprian Cucu be tried and again imprisoned he, too, would be considered a prisoner of conscience. There is further concern that, pending release, Milorad Mutaşcu may be at risk from ill-treatment by police officers.

## BACKGROUND INFORMATION

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

Article 200 paragraph 1 of the Romanian Penal Code states that "sexual intercourse between persons of the same sex is punishable by one to five years' imprisonment". In July 1992 representatives of Amnesty International were told by Romanian authorities that no one had been prosecuted for this offence since the fall of the Ceaucescu regime in December 1989 and that the proposed reform of the Penal Code will abolish this crime. Amnesty International urged the Romanian Minister of Justice, Petre Ninosu, to ensure that the proposed reform of the Romanian Penal Code will not permit the imprisonment of people solely because of their homosexuality.

From AI INDEX: EUR 39/06/93, UA 125/93 - Romania: legal concern / fear of ill-treatment: Mirel Ciprian Cucu, Milorad Mutaşcu. DATE: April 1993.

Follow-up urgent action, prisoners of conscience Milorad Mutaşcu and Mirel Ciprian Cucu

On 12 May 1993 Milorad Mutaşcu was released by the County Court of Timişoara from pre-trial detention. According to his lawyer, Milorad Mutaşcu was not ill-treated by police officers while in detention.

The trial of Milorad Mutaşcu and Mirel Ciprian Cucu, who have been charged solely for their homosexuality under Article 200 of the Romanian Penal Code, has been postponed until 9 June 1993.

Should Milorad Mutaşcu and Mirel Ciprian Cucu, after the trial on 9 June 1993, be again imprisoned Amnesty International would consider them to be prisoners of conscience.

From AI INDEX: EUR 39/09/93, Further information on UA 126/93 (EUR 39/06/93, 2 April: and follow-up EUR 39/08/93, 20 May) - Romania: legal concern / fear of ill/treatment. DATE: June 1993. See also AI INDEX: EUR 39/07/93, TITLE: Romania: Continuing violations of human rights, DATE: May 1993; AI INDEX: EUR 01/01/93, TITLE: Concerns in Europe November 1992 - April 1993, DATE: June 1993.

Update: The case of Milorad Mutaşcu and Mirel Ciprian Cucu (October 1993)

Mirel Ciprian Cucu and Milorad Mutaşcu were arrested on 22 January 1993 in Sînnicolau Mare, near Timişoara, and placed in preventive detention. Mirel Ciprian Cucu was charged under Article 200 paragraph 1 of the Romanian Penal Code and faced a possible prison sentence of one to five years for "having sexual relations with a person of the same sex". He was released after two months' detention. Milorad Mutaşcu was charged under the same article, paragraph 2, for homosexual relations with a minor and faced a possible prison sentence of two to seven years. In April, Amnesty International called for the immediate release of Milorad Mutaşcu from prison. Timişoara court released Milorad Mutaşcu on 12 May 1993. Mirel Ciprian Cucu and Milorad Mutaşcu were tried by the County Court of Timişoara on 9 June 1993. They received suspended sentences of one and two years' imprisonment respectively.

## Work to Halt Torture, Cruel, Inhuman or Degrading Treatment or Punishment

Romania: Continuing violations of human rights (May 1993)

Amnesty International has recently also received reports that homosexual men or persons suspected of

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

being homosexual have been tortured or ill-treated in Romanian police stations and prisons and has asked the authorities to investigate these allegations.

### The case of Doru Marian Beldie

Doru Marian Beldie was arrested in Bucharest on 16 June 1992, a month after his 19th birthday. He was taken to the 17th District police station where he was reportedly beaten with truncheons on the palms of the hands and soles of the feet for several hours in order to force him to sign a confession.

He was charged under Article 200 paragraph 2 of the Romanian Penal Code for homosexual relations with a minor. He had no previous criminal record and at the time of his arrest he was studying in a technical school to be a mechanic. He is currently serving a four years' and six months' prison sentence in Jilava prison in Bucharest.

### The case of Marcel Brosca

Marcel Brosca, a 20-year-old student, was arrested on 7 March 1992 in Tecuci. After spending the night in the railway station waiting-room he was reportedly woken by four policemen accompanied by a 17-year-old boy. Pointing to Marcel the policemen asked the boy if this was the man they had been looking for and the boy responded affirmatively.

Marcel Brosca was then taken to the police office in the railway station where reportedly he was beaten for three or four hours. He was allegedly pulled by the hair; the sides and the back of his head were beaten against the table and the wall until blood poured over his face; his arms were twisted; and he was beaten on the soles of his feet with truncheons.

During the first two hours of the interrogation he was not given any idea of what he was charged with. Eventually one of the police officers reportedly read a statement of the victim, a minor, who allegedly was forced to perform oral sex on a stranger, whom he identified as Marcel Brosca. After this Marcel Brosca was allegedly beaten again in order to force him to confess to this crime. Finally he consented and the police reportedly dictated what he had to write down in his declaration. He was convicted under Article 200 paragraphs 1 and 2 and sentenced by the County Court in Galați to five years' imprisonment. He is serving his sentence in the prison in Galați.

### The case of Ienel S

Ienel S, aged 21, was arrested on 29 October 1990 in the village of Corod, Galați County, where he was attending a wedding. Around 2am, he reportedly left the festivities to go back to the house where he was staying. He was followed by a 24-year-old man (who had been reportedly previously arrested for homosexual acts and released in 1988 and is suspected of being a police informer). This person allegedly proposed that Ienel go with him to a garden or into the park. Ienel asked the man to come back with him to the house where he was staying. The man refused, insisting that they go some place outside. At around 6am Ienel was woken by police officers who took him to the village police station.

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

He was accused of having forced the other man to have oral sex with him. This was supported by the testimony of an eye-witness, a cousin of the alleged victim, who claimed to have seen the entire scene through a window of the house.

Ienel S was reportedly beaten by police officers from 7am to 8pm. They beat him with wooden sticks on the torso and on the back, as well as on the hands and feet in order to force him to confess to the crime. After signing a confession he was reportedly taken in semi-conscious state to a doctor to be examined. Without a proper examination the doctor signed a certificate which made no mention of his injuries.

According to the report received by Amnesty International, the allegations that Ienel S used force in connection with the sexual acts for which he was charged appear unfounded.

Ienel S was convicted under Article 200 paragraphs 1 and 2 and sentenced to four years' imprisonment. He is now in Galați prison and will soon be eligible for parole.

From AI INDEX: EUR 39/07/93, Romania: Continuing violations of human rights. DATE: May 1993.

### Update on Ienel S (October 1993)

According to the Romanian authorities Ienel S was charged with abduction of a minor under Article 189 paragraph 2 and homosexual relations with a minor under Article 200 paragraph 2 of the Penal Code. An official inquiry did not corroborate allegations of Ienel's ill-treatment in prison while serving his sentence. However, Amnesty International had urged the authorities to fully and impartially investigate allegations of Ienel's torture in the police station immediately after his arrest in Corod. No allegations were made concerning his treatment in the Galați Penitentiary.

From AI INDEX: EUR 39/07/93, Romania: Update to Amnesty International's concerns.

### Romania: summary of concerns

Amnesty International continues to receive information on serious human rights violations in Romania which are described in a report published by the organization in May 1993 (see Romania - Continuing Violations of Human Rights, AI Index: EUR 39/07/93)....

...Although some articles of the Romanian Penal Code have been abolished since December 1989, Article 200 paragraph 1 still punishes anyone "who has sexual relations with a person of the same sex" with one to five years' imprisonment. In April, Amnesty International urged the Romanian authorities to release from prison Milorad Mutașcu who had been imprisoned and charged solely because of his homosexuality.

The organization also called on the authorities to investigate allegations that homosexual men or persons suspected of being homosexual have been tortured and ill-treated in Romanian police stations and prisons.

Amnesty International January 1994 AI Index: POL 30/01/94

## AI Concerns by Country

AI INDEX: EUR 01/01/93, Concerns in Europe November 1992 - April 1993. DATE: June 1993.

### Romania: Amnesty International Calls for Release of Three Prisoners of Conscience Imprisoned Solely for Practising Homosexual Acts in Private

Amnesty International today wrote to President Ion Iliescu of Romania expressing concern that three men have been sentenced to up to two and a half years' imprisonment solely for practising homosexual acts in private.

The three men, Marius Aitai, Cosmin Hutanu and Ovidiu Chetea, were among 57 people detained in Romanian prisons on 18 November who had been convicted under Article 200 of the Romanian Penal Code. The three were imprisoned under the provisions of paragraph 1 of this article which states that "sexual intercourse between persons of the same sex is punishable by one to five years' imprisonment".

Marius Aitai, a 22-year-old prisoner in Gherla prison, was sentenced in 1992 by the court in Dej to two years and six months' imprisonment for having sexual relations with another prisoner. Cosmin Hutanu, a 21-year-old man, was sentenced during 1993 by the court in Focşanu to one year and two months' imprisonment and is currently serving his sentence in Focşanu prison. Ovidiu Chetea, a 20-year-old man, was sentenced in 1993 by the court of Timișoara to one year and six months' imprisonment. He is currently serving his sentence in the Oradea prison.

Amnesty International had previously explained to the Romanian authorities that its work for the release of prisoners of conscience includes individuals who have been imprisoned solely because of their homosexuality - including the practice of homosexual acts in private between freely consenting adults. The organization had urged the Romanian authorities to take appropriate steps for the legislative reform of Article 200 and had stressed that it considered the provisions of paragraphs 1 and 4 of the article to contravene the European Convention for the Protection of Fundamental Freedoms and Human Rights, which Romania signed on 4 November 1993.

Amnesty International considers Marius Aitai, Cosmin Hutanu and Ovidiu Chetea to be prisoners of conscience and is calling for their immediate and unconditional release.

AI Index: EUR 39/WU 02/93 - 21 December 1993.

### Romania: Update to Amnesty International's Concerns

The Penal Code and Code of Penal Procedure, as in most other Central and East European countries, have not yet been radically reformed. Although some articles have been abolished since December 1989, the Romanian Penal Code under Article 200 paragraph 1 still punishes anyone "who has sexual relations with a person of the same sex" with one to five years' imprisonment. In July 1992 representatives of Amnesty International were told by Romanian authorities that no one had been prosecuted for this offence since the fall of Ceaușescu in December 1989 and that the proposed reform of the Penal Code will abolish this

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

crime. Amnesty International urged the Romanian Minister of Justice, Petre Ninosu, to ensure that the proposed reform of the Romanian Penal Code will not permit the imprisonment of people solely because of their homosexuality.

...

## ALLEGED ILL-TREATMENT OF HOMOSEXUALS

Amnesty International has recently also received reports that homosexual men or persons suspected of being homosexual have been tortured or ill-treated in Romanian police stations and prisons and has asked the authorities to investigate these allegations.

## RUSSIA

### Work for Prisoners of Conscience

#### The Case of Vladimir Mironov

At present male homosexual acts, specifically sodomy, are illegal in Russia even between consenting adults. The draft criminal code would decriminalize such activity, which is currently punishable by up to five years' imprisonment under Article 121, while continuing to penalize homosexual acts committed by use of force, threats, or against minors. During the period under review Amnesty International sought further information on the case of one person whom the organization believed may have been imprisoned under Article 121 (part 1) solely as a result of his consenting homosexual activity with an adult, consenting partner in private. Vladimir Mironov was arrested on 11 October 1990 and sentenced to three years' imprisonment by a Moscow court on 7 May 1991, but was eventually acquitted on 17 March 1992 after a reinvestigation of the case was ordered. The court accepted Vladimir Mironov's contention that the acts involved did not constitute sodomy, and also that police had threatened witnesses in order to obtain testimony during the preliminary investigation.

From AI INDEX: EUR 01/03/92, Concerns in Europe: November 1991 - April 1992. DATE: June 1992.

#### Update on the Case of Vladimir Mironov, December 1993

Vladimir Mironov, a possible prisoner of conscience who had been sentenced to three years' imprisonment by a Moscow court in May 1991 for his homosexual activity (see *Amnesty International Report 1992*), had his sentence quashed on appeal in March. He had been sentenced under Article 121 of the criminal code, which punishes sodomy between adult males even if consensual, but a reinvestigation of his case found that his acts did not constitute sodomy. According to official statistics, 10 people were sentenced under this article in the first six months of the year, but stigmatization of offenders continued to make it difficult to obtain details on individuals or the circumstances in which the acts took place.

Amnesty International January 1994 AI Index: POL 30/01/94

## AI Concerns by Country

From Russia, Amnesty International Report 1993.

# RUSSIAN FEDERATION: Overview of recent legal changes

## 1. INTRODUCTION

Since the failed coup of August 1991, and the subsequent breakup of the former USSR, Amnesty International has welcomed Russia's continued implementation of various legislative changes aimed at bringing its laws into line with international standards. This paper gives an overview of some of those changes which have an impact on current human rights concerns within Amnesty International's mandate.

### Background to reforms

Russia, like many republics of the former USSR, has frequently expressed its desire to be a "law-based state" (правовое государство), and break away from the Soviet practice of constitutional and other provisions being overridden or undercut by unpublished, secret directives. Work has been undertaken periodically on various items of basic law such as a new constitution and criminal code, which are intended to replace the Communist models and reflect, among other things, the country's obligations under international standards. However, various factors have combined to make these lengthy tasks. At the time of writing neither a new constitution nor a totally revised criminal code has been adopted, and the reforms that have taken place have been by piecemeal amendments to both.

### The Declaration on Rights and Freedoms of the Individual and Citizen

One of the first acts of the Russian parliament following the failed coup was to adopt, on 22 November 1991, a Declaration on Rights and Freedoms of the Individual and Citizen (Декларация прав и свобод человека и гражданина). This begins with the iteration that a person's rights, freedoms, honour and dignity are the highest value of society and the state, and notes the necessity of bringing Russian law into line with internationally-acknowledged human rights standards (much of its language, and the rights laid down, reflect the International Covenant on Civil and Political Rights). The Declaration was subsequently incorporated into the Russian Constitution under a law dated 21 April 1992.

.....

Early in 1992, the Ministry of Justice published the draft of a new criminal code for parliamentary discussion. According to the then Minister, it was designed to "remove ideology from the law" and it contained a number of proposals welcomed by Amnesty International. These included a reduction of the number of peacetime offences punishable by death to three; the decriminalization of consensual homosexual acts between adult males; and an explicit statement that those who refused military conscription on grounds of their religious or pacifist beliefs would be exempt from criminal responsibility. For further information on this draft please see the entry on Russia in Amnesty International Concerns in Europe: November 1991 - April 1992.

## 2. THE CURRENT SITUATION AND AMNESTY INTERNATIONAL'S CONCERNS

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

However, no parliamentary approval of the draft as a whole was obtained and since then tensions between the legislative and executive arms of the state have delayed adoption of both a new constitution and criminal code.

Amendments to the existing criminal code continue to be passed as separate pieces of legislation and the most recent changes of interest to Amnesty International are contained in a law, signed by President Boris Yeltsin on 29 April 1993, which came into force on publication in the parliamentary newspaper *Rossiyskaya gazeta* on 27 May this year. Amnesty International welcomes changes it makes to two areas of concern to the organization, in reducing the application of the death penalty and decriminalizing

consensual male homosexuality. These changes are described below, with a background on Amnesty International's concerns.

...

### ii) Homosexuality - amendment of Article 121

#### Amnesty International's position

At its International Council Meeting (ICM) in Japan in September 1991, Amnesty International decided to consider as prisoners of conscience persons imprisoned solely because of their homosexuality, including the practice of homosexual acts in private between consenting adults.

#### Background

In the former Soviet Union male homosexual acts (specifically sodomy) were illegal, and the criminal codes of each of the constituent republics contained a law, in two parts, punishing such activity. The first part of the law punished sodomy between consenting adults by up to five years' imprisonment. The second part carried a maximum eight-year sentence for such acts carried out by the use of force; threats; against a minor or using the dependent position of the other party.

Previously a taboo subject, with the advent of "perestroika" homosexuality began to be discussed more openly, and occasionally sympathetically, in the official press. Several unofficial groups of lesbians and gay men were set up, although public hostility remained high.

#### The case of Vladimir Mironov

The absence of official statistics and the stigmatization of offenders made it very difficult to determine the numbers of men imprisoned for consensual homosexual activity. One case that did become known to Amnesty International following the organization's decision at the September 1991 ICM was that of Vladimir Mironov, at the time aged 43 and from Moscow.

## AI Concerns by Country

Vladimir Mironov was arrested on 11 October 1990, and charged under the first part of Article 121 with consensual homosexual acts. He stood trial on 7 May 1991 at Volgograd District People's Court in Moscow. Despite reports that he and at least one other witness retracted testimony given during pre-trial detention on the grounds that it had been extracted under physical duress, he was sentenced to three years' imprisonment. He lodged an appeal with Moscow City Court, which sent the case back to Volgograd District Court for review. Amnesty International, having ascertained that the events concerned took place in private, regarded Vladimir Mironov as a prisoner of conscience and called for his immediate and unconditional release.

At the end of January 1992 Vladimir Mironov was released from custody on health grounds pending the rehearing, which took place on 17 March that year. He and his partner admitted having sexual relations but denied sodomy, and the case was closed because of insufficient evidence. The court also accepted allegations by witnesses questioned during the preliminary investigation that testimony had been obtained from them by police using threats.

## Decriminalization of consensual homosexuality

After the failed coup of August 1991, Ukraine became the first republic of the former USSR to amend its sodomy law when in December that year it repealed the first part, thereby decriminalizing consensual adult homosexual acts. Pressure from gay and lesbian activists mounted on the Russian authorities to follow suit regarding Article 121, the Russian law against sodomy.

The necessary legislative change was initiated on 29 April 1993, when President Boris Yeltsin signed the above-mentioned law on a number of amendments to the criminal code. In accordance with this the first part of Article 121 has been dropped, leaving a revised form modelled on the old part two in which the maximum sentence has been cut by one year. The article now reads:

### "Article 121. Sodomy

Sexual relations between a man and another man (sodomy), committed with the use of physical force, threats or in relation to a minor, or using the dependent or helpless position of the victim, are punishable by a term of up to seven years."

The amendment came into force on 27 May 1993, when it was published in the parliamentary newspaper *Rossiyskaya gazeta*. Speaking at that time Vladimir Zimonenko, a spokesperson for the Ministry of Justice, said that the law had retroactive force and that those convicted under the first part of Article 121 would be released. He said that 25 men had been imprisoned under this part of the law in 1992.

This figure was augmented in July, when the Ministry of Internal Affairs reported to the San Francisco-based International Gay and Lesbian Human Rights Commission that there were 73 men still imprisoned solely for consensual homosexuality, and a further 192 men imprisoned under multiple charges including the first part of Article 121. Amnesty International is seeking further information on the progress of releases following the amendment of AI Index: POL 30/01/94 Amnesty International January 1994

AI Concerns by Country

Article 121.

## TURKEY

### Work for Prisoners of Conscience and to oppose Cruel, Inhuman or Degrading Treatment of Punishment

Gay and lesbian activists detained, ill-treated

TURKEY: Hüseyin Kuskaya  
Cem Özipek  
Onur Sarvaut  
and 28 conference delegates from abroad

Amnesty International is concerned about the arbitrary detention of gay rights activists Hüseyin Kuskaya, Cem Özipek and Onur Sarvaut as well as 28 supporters of homosexual rights from abroad. Amnesty International believes that they were detained solely by reason of their advocacy of homosexual equality and their real or presumed sexual orientation. The organization is also concerned about the humiliating and degrading treatment which some of the above mentioned individuals faced while in detention.

There is concern about the legal situation and treatment of the three Turkish activists. Though Hüseyin Kuskaya and Onur Sarvaut have now been released, Cem Özipek continues to be held in police custody.

Amnesty International is concerned that these detentions represent a serious deterioration of the human rights situation of homosexuals in Turkey and those seeking to stand up for their rights. As such there is need for rapid action to bring international concern to the attention of the Turkish authorities over the situation of the three Turkish citizens initially detained and the future treatment of people who advocate respect for the rights of homosexuals in Turkey.

The first Congress of Homosexual Solidarity was to be held in Istanbul during the weekend of 2-6 July 1993. However, after initial permission from the Interior Ministry, the congress was reportedly banned at the last minute by the Governor of Istanbul on the grounds that it would be contrary to the "traditions and moral values" of Turkish society and that it might disturb the peace. On 3 July delegates who were planning to attend the conference decided to hold a press conference in protest at the ban. The three people named above were detained before the press conference, while the majority of the foreign delegates were detained on their way to the press conference; the remaining delegates were detained at their hotel.

The Turkish detainees were Hüseyin Kuskaya, chair of the organising committee of the conference, Cem Özipek and Onur Sarvaut. No details are available on their treatment in custody.

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

Police initially took the foreign detainees to a local police station and said they would be strip searched. When they protested this was not carried out. They were then held in a police bus for most of the day, until other delegates had been brought from their hotel. They were then taken to Istanbul airport to be deported that same evening. However, en route to the airport, the police bus turned off the airport road and took the prisoners to a local hospital; the delegates were told they had to submit to a blood test for the HIV virus. They refused to permit blood to be taken and the authorities ultimately withdrew their demand. They were then deported to Germany.

The sole motivation of the attempts to force the detainees to submit to strip searches and blood tests appears to have been to punish and humiliate them for their actual or presumed sexual orientation. There was no apparent security or medical rationale for either measure: the delegates were in police custody and already en route to the Istanbul airport. Amnesty International considers these measures to be deliberately degrading treatment intended to punish and intimidate the detainees.

## BACKGROUND INFORMATION

Although homosexuality is not proscribed by Turkish law, gay rights activists have been subjected to harassment, intimidation and ill-treatment. In recent years homosexuals and transvestites, in particular in Istanbul, have begun to address these problems publicly. Some have spoken nationally and internationally on behalf of those marginalized in Turkish society.

From Urgent Action, AI Index: EUR 44/65/93, UA 221/93, Prisoner of Conscience/Degrading Treatment, 8 July 1993.

## Update

Two of the Turkish activists were released, while one was formally arrested and charged with possession of marijuana.

## UKRAINE

### Work for Legislative Change

In December 1991 Ukraine became the first republic of the former USSR to decriminalize consenting homosexual acts (specifically sodomy) between adult males. Prior to this, Article 122 of the criminal code made such acts punishable by up to three years' imprisonment. Amendments to the law passed on 12 December limited criminal responsibility to those engaging in sodomy with a minor, or with the use of physical violence, threats, or by taking advantage of the dependent condition of the other party.

From: Ukraine: the death penalty; conscientious objection to military service; homosexuality. In: AI concerns in Europe November 1991 - April 1992 (EUR 01/03/92). DATE: June 1992.

AI Index: POL 30/01/94 Amnesty International January 1994

AI Concerns by Country

## UNITED KINGDOM

### Work to Halt Torture, Cruel, Inhuman or Degrading Treatment or Punishment

...There were frequent allegations that police and military patrols in Northern Ireland ill-treated people they stopped on the streets, and some allegations of ill-treatment at interrogation centres...

Allegations of ill-treatment by police in Britain were also made, among others by racial and ethnic minorities and by homosexuals; some victims were awarded civil damages.

From United Kingdom, Amnesty International Report 1993.

## UNITED KINGDOM (Isle of Man)

### Work for Legislative Change

AI urges government to end legislation allowing imprisonment for homosexual acts

Amnesty International has written to the government of the Isle of Man, urging them to change legislation which allows imprisonment for homosexual acts between consenting adults in private.

Amnesty International sent delegates on a fact-finding visit to the Isle of Man on 21 - 23 February to investigate existing legislation. With the new Sexual Offences Bill about to be debated in the Isle of Man parliament, the House of Keys, Amnesty International is concerned that present legislation allows for the arrest, prosecution and imprisonment of consenting adults engaging in homosexual acts in private, with sentences ranging from two years to life imprisonment. On 19 March Amnesty International wrote to the Chief Minister of the Isle of Man urging the House of Keys and the government to ensure that the island's legislation governing sexual offenses will no longer permit the imprisonment of people for consensual homosexual acts between adults in private, who would be considered by the organization to be prisoners of conscience.

The provisions of the current law do not conform with the European Convention on Human Rights. Article 8 of the Convention states that "everyone has the right to respect for his private and family life, his home and his correspondence". In its judgments the European Court of Human Rights has maintained that legislation categorically prohibiting homosexual acts breach Article 8.

Amnesty International also expressed concern that the right of individual petition to the European Court of Human Rights, which was withdrawn in respect of the Isle of Man in 1976, has not yet been restored. Amnesty International has been informed that the government's position is that restoration of that right should await an amendment of the legislation on sexual offenses which would bring Isle of Man law into conformity with Council of Europe human rights standards. Amnesty International noted this commitment, and urged the restoration of the right of individual petition to the European Court of Human

Amnesty International January 1994 AI Index: POL 30/01/94

## AI Concerns by Country

### Rights at the earliest possible date.

From, Isle of Man / United Kingdom: AI urges government to end legislation allowing imprisonment for homosexual acts. In: Weekly Update Service 12/92 (NWS 11/12/92). DATE: April 1992.

### Parliament votes to legalize homosexuality

Amnesty International is sending two delegates, a Belgian lawyer and researcher in international law and a member of staff of the International Secretariat, to visit the Isle of Man to investigate the legal situation of homosexuals there.

The Isle of Man and Gibraltar are the only territories in Western Europe where homosexual acts by consenting adults in private remain a criminal offence and the delegates will be gathering information on relevant law and practice. While the British Government in London retains responsibility for matters concerning defence and foreign affairs, the Isle of Man has considerable autonomy over its internal affairs - with the island's own parliament responsible for legislation on domestic matters.

The government of the United Kingdom has pressed for the Isle of Man parliament to bring its legislation into accordance with the European Convention on Human Rights. A legislative debate on the decriminalization of homosexuality, expected to begin shortly, has become the subject of renewed public attention in the wake of a series of recent arrests and charges for alleged homosexual acts in a public place.

TITLE: Isle of Man / United Kingdom: Parliament votes to legalize homosexuality. In: Weekly Update Service 13/92 (NWS 11/13/92 add). DATE: April 1992.

### Legalization of homosexuality on the Isle of Man

In February Amnesty International delegates visited the Isle of Man to investigate the legal situation of homosexuals. With a new Sexual Offences Bill about to be debated in the Isle of Man parliament, the House of Keys, Amnesty International was concerned that the existing legislation allowed for the arrest, prosecution and imprisonment of adult males for engaging in homosexual acts in private, with sentences ranging from two years to life imprisonment.

On 19 March Amnesty International wrote to the Chief Minister of the Isle of Man urging the House of Keys and the government to ensure that the island's legislation governing sexual offences would no longer permit imprisonment solely for homosexual acts between adult men in private, who would be considered by the organization to be prisoners of conscience.

On 31 March the House of Keys voted to amend the Sexual Offences Bill in order to legalize homosexual acts in private between men over the age of 21.

From Legalization of homosexuality on the Isle of Man. In: AI concerns in Europe November 1991 - April 1992 (EUR 01/03/92). DATE: June 1992

AI Index: POL 30/01/94 Amnesty International January 1994

## AI Concerns by Country

### Parliament votes to legalize homosexuality

The Isle of Man parliament, the House of Keys, has voted to legalize homosexuality after a debate on the issue on 31 March. The approved amendments to the Sexual Offenses Bill will decriminalize homosexual acts in private between consenting men over 21. Previously, the law allowed for the arrest, prosecution and imprisonment of consenting male adults engaging in homosexual acts in private, with sentences ranging from two years to life imprisonment.

In February, Amnesty International sent delegates on a fact-finding visit to the island to investigate existing legislation on homosexuality, and to discuss the matter with authorities. The organization wrote to the Chief Minister of the Isle of Man urging the House of Keys and the government to ensure that the island's legislation governing

sexual offenses will no longer permit the imprisonment of people for consensual homosexual acts between men in private, who would be considered by the organization to be prisoners of conscience.

TITLE: Isle of Man / United Kingdom: Parliament votes to legalize homosexuality. In: Weekly Update Service 13/92 (NWS 11/13/92 add).  
DATE: April 1992.

## UNITED STATES OF AMERICA

### Work to Halt Torture, Cruel, Inhuman or Degrading Treatment or Punishment

United States of America: Torture, ill-treatment and excessive force by police in Los Angeles, California

...Amnesty International's investigation into police brutality in Los Angeles over the past year -- part of its ongoing monitoring of police ill-treatment throughout the country -- focused on police brutality in both the LAPD which polices the city of Los Angeles and the Los Angeles Sheriff's Department (LASD) which polices a wider area of Los Angeles County.

The investigation which included a fact-finding trip to Los Angeles showed there is a serious problem of excessive force by police -- a problem which has gone unchecked for many years....

#### Robert Cervantes

Robert Cervantes, a homosexual latino male, was beaten by two LAPD officers in an adult cinema in December 1986, during an arrest on suspicion of lewd conduct. Cervantes alleged that the police pounced on him before he reached his seat, striking him in the face with their metal badges and generally assaulting him. He also alleged that he was hit on the head with a sap while handcuffed in the back of the officers' vehicle. Cervantes was later acquitted on criminal charges of lewd conduct, battery on police officers and resisting arrest.

Amnesty International January 1994AI Index: POL 30/01/94

## AI Concerns by Country

Although the two officers denied any wrongdoing - continuing to claim that Cervantes had resisted arrest - a jury awarded punitive damages (of \$29,000 and \$55,000) against them in October 1991. The jurors found that the officers had used excessive force and that there was a "code of silence" by police officers tolerated within the LAPD that had caused harm to the plaintiff. Medical records showed that Cervantes had received stitches for a head injury following his arrest, although the officers denied striking him in the car. The records also showed bruising to his forehead, back, ribs and other injuries. The city failed to file a timely appeal and their motion against execution of the judgment was therefore denied.

From AI INDEX: AMR 51/76/92, United States of America: Torture, ill-treatment and excessive force by police in Los Angeles, California. DATE: June 1992.

## UZBEKISTAN

### Work for Legislative Change

The first Amnesty International visit to Uzbekistan took place in April. The delegation discussed the organization's concerns with senior government officials and had meetings with a range of other people....

...The first part of Article 100 of the Criminal Code punishes consenting homosexual activity between adult males. The Justice Minister told Amnesty International that a small number of convictions continue to be brought under this article. He also stated that, while serving as Chairman of the Supreme Court prior to his appointment as Minister, he had proposed abolition of the first part of this article, and expects this to be considered by the Supreme Soviet.

From Uzbekistan: the death penalty; legislative review; conscientious objection to military service; homosexuality; administrative detention; ratification of international human rights instruments. In: AI concerns in Europe November 1991 - April 1992 (EUR 01/03/92). DATE: June 1992.