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# Conditions in Norway

## *I. The Law and the Proposed Amendments to the Penal Code.*

A special provision on homosexual intercourse between men is given in the art. 213 of our penal code. The text of this article is as follows:

«When indecent intercourse takes place between persons of male sex, the persons convicted of the said crime or of contributing to its commission, shall be liable to imprisonment for a maximal term of one year.

Whoever practices indecent intercourse with animals, or contributes thereto, is liable to the same punishment.

Action takes place only when necessitated by considerations of public welfare.»

The clause dates from 1902, when an entirely new penal code was enacted. But it is worth noticing that in the first draft, made in 1889, no special provision concerning homosexuality was proposed. The «father» of the new code, the brilliant jurist Bernhard Getz, accounted for this by saying that there would be no gain in taking such cases into the court. Further he pointed out that if a special regulation were to be given for «crimes against nature», female homosexuality and certain forms of sexual relationship between man and woman would have to be taken into consideration as well.

This proposal, however, was not supported by the majority of the committee in question, and so the article quoted above came into existence. But the reservation made in its last section was a result of Getz' argument.

Yet, the clause was seldom used. Instead other articles in the penal code concerning both heterosexual and homosexual acts were applied. — In 1925 the Penal Law Council proposed that general punishment for homosexual activity between men be abolished. But the proposal was declined by the Department of Justice, with the following motivation: «We consider it inadvisable in every respect to legalize perverse relationships of the kind here mentioned.»

Another 25 years passed, a new war had made people reconsider old views, the regulations concerning homosexuality had been altered in Denmark and Sweden, and in 1951 the Department of Justice requested the Penal Law Council to deal with the question of a possible modification or abolition of the art. 213.

In February 1953 the Council submitted to the Department a proposal with motives, which was published in November the same year. Two articles were proposed, one concerning homosexual relations in general (art. 213), the other dealing with homosexual associations (art. 379).

As the proposed art. 213 has later been altered by the Department of Justice, we will — where alterations have been made — mark the original text as «I» and the new text as «II», so as to avoid repetitions.

«A person above the age of 18 years who commits an indecent act together with another person of the same sex below the age of 18, shall be liable to imprisonment for a maximal term of two years. The punish-

ment may be waived if the two persons concerned are about the same age and the same stage of mental development.

II: or if special circumstances oppose the application of punishment.

The same punishment will be awarded to a person above the age of 21 years who

1) commits an indecent act together with another person of the same sex between the age of 18 and 21

I: who is in a position of dependency on him, or

II: by abuse of a position of dependency, or

2) inveigles another person of the same sex between the age of 18 and 21 into performing indecent acts together with himself, or

3) furthers an indecent act between two other persons of the same sex, of whom one is below the age of 21 years.

I: If the offender believed the other party to be above the age mentioned here, but did not show sufficient care in this respect, the punishment shall be imprisonment for a maximal term of 6 months.

II: Ignorance with regard to the age of the person concerned will not exonerate from guilt.

As the proposed art. 379, dealing with homosexual associations, has been entirely dropped by the Department, and as its text is rather hard to understand without consulting the motives, we will only mention its two principal items:

a) that the only way left open for making known the name and address of a homosexual club was through «a casual remark to one or more persons»,

b) that the police, under the threat of imprisonment for 3 months, could interdict the continuance of a meeting, if persons below the age of 21 loitered in or even outside of the premises where the gathering was held.

Although of course we were glad that the general ban against homosexual activity had been dropped, so many new restrictions had been put up that we began to doubt whether the new drafts were to be considered an improvement at all. Especially art. 379 we found very severe, as it represented an indirect prohibition against homosexual organisations, but we also reacted against art. 213, which, with its items 1) and 3), was far more extensive than the corresponding provisions in Danish and Swedish law.

The situation was not very bright. Members of the Penal Law Council were, among others, the chief Public Prosecutor, the Chief Constable of Oslo, our most capable criminologist, or rather, our only one; and the medical expert of the Council was one of our leading psychiatrists. Besides the weight that would be attributed to the opinion of these persons in their capacity of experts, we knew that it would be very hard to find men who would dare to express a view differing from that of their colleagues.

The answer we had previously received to a letter addressed to an organisation of psychiatrists, did not make things better. We quote from this reply «. . . Our association cannot actively support — through lectures or in other ways — a club which must be considered abnormal and

unhealthy. Our association cannot help people who want to continue being ill, and who separate themselves from society in order to live an abnormal life. Our association is, however, willing to help single individuals who want to consult us . . . »

Most happily, one of our members went to Denmark on studies by this time, and there obtained valuable comments on the proposed provisions from various experts, among whom was Professor H. Helweg, the psychiatrist, whose name is well-known in Scandinavia.

Through the I. C. S. E. we got into contact with the Dutch Professor Th. Kempe, who had given a lecture at the Congress of Amsterdam last year. His observations to the draft were inestimable to us, for two reasons. First, because he is a criminologist, and the only expert we have got in this field in Norway is precisely the one who was a member of the Penal Law Council. Secondly because, having had close contact with the Dutch organisation, he knew what he was talking about so that he could refer to facts and not only to suppositions, as the Council had done when dealing with the art. 379.

Further we obtained statements from the police surgeon of Oslo, a psychiatrist, who had always been very sympathetic, and from a Norwegian psychologist, Ingjald Nissen.

In February our lawyer sent a memorandum to the Department of Justice, including the observations we had received.

In the summary given below of our main objections to the draft, we have included chiefly the points which we suppose to be of general interest.

One of the principal arguments given by the Council for introducing special provisions concerning homosexual relationships in general and concerning homosexual associations, was the detrimental effect which a homosexual influence was supposed to have on youths. Thus, in order to prevent the spread of homosexuality, the provisions took into consideration even the most remote possibilities for creating such contacts. (This applies especially to the art. 379). — Our retort was that nobody had as yet proved that a person above the age of 16, which is the general age limit for heterosexual relationships, could be made homosexual in such a way. Moreover, if society nourishes such very strong fears concerning the possible increase of homosexuality, it is not very logical to attack, out of the many factors which here must be assumed to be decisive, only one, viz. the influence from a homosexual person. There are other factors, such as family conditions, the general sex taboo, the separation of the two sexes, etc., which must surely be considered far more important. Consequently it would have been natural for society to have made studies and examinations in this field. In Norway, up to now, nothing of the sort has been done.

Probably the reason why society tends to stress this factor so much, is simply the facility of referring to one single, exterior act. In this way the explanation of the deviation becomes very simple, and the heterosexual society is exonerated from every burden of responsibility for it.

A similar procedure would be to prohibit the production of a particular kind of wine, with the motivation that this was done as a part of

society's campaign against alcoholism — without taking any measures whatever against the production of other alcoholic beverages.

Other arguments will be found in the comments made by Professor H. Helweg, which are quoted below (cf. II).

The Council found another base for their views in the statement made by their psychiatric expert, which contains, inter alia, the following passage: «A certain desire for expansion is the very essence of homosexuality. — The homosexual will feel a craving for propagating the view that his special form of sexuality is biologically, mentally and socially equivalent — — —».

Besides pointing out that this is not a common opinion among psychiatrists, we quoted what the Swedish expert, Bo Gere, had written in the draft of amendment of the Swedish Penal Code. He states that the hostile attitude of the heterosexuals can create a militant state of defence on the part of the homosexuals, resulting in an aggressive behaviour.

And it is noteworthy that while Bo Gerle regrets the condemnatory attitude of the public opinion, finding that this renders the problem more difficult, in the motives of the Norwegian Council it is repeatedly maintained that exactly such an attitude constitutes the best possible protection against homosexuality.

Art. 213, item 2 and 3 will no doubt contribute in making homosexual youth more active. The section concerning inveiglement will mean that if a homosexual boy between 18 and 21 wants to have a sexual relationship with a person above the age of 21, he must take the initiative himself. Otherwise the other party will risk punishment. — As for the term «further», it comprises, inter alia, the act of bringing the two persons together. Thus, if a homosexual boy between the age of 18 and 21 wants to get into contact with similarly disposed persons, it must not be done through a person above 21 years of age (although he may have a sexual relationship with such a person!) If this boy does not have a friend of his own age to assist him, he must arrange things himself — which, in most cases, means street-hunting.

At Easter the proposition of the Department of Justice appeared, and our relief was great when we discovered that the whole article dealing with homosexual associations had been dropped. Further, in the text of the art. 213, there were some modifications, mostly in our favour. «Abuse of dependence» had been put instead of only «dependence», and a new item had been added.» «The punishment may be waived if special circumstances oppose its application». According to the motives, this item is meant for cases where the party below 18 is a prostitute; and it will possibly also be applied when the younger person has already had several similar experiences.

In the proposition a statement given by the Director of Health, (to whom the proposal of the Council had been submitted) was quoted. He criticises several points in the draft, and concludes as follows: «According to the opinion of the Director of Health, the proposed art. 213 ought perhaps to be reconsidered. There seem to be two possibilities: either simply to abolish the special provision now in existence and, instead,

have recourse to other articles in the penal code (applicable to both heterosexual and homosexual acts), or to formulate a new art. 213 in more general terms, so that a more flexible adjustment will be possible. Our present medical knowledge concerning the nature of homosexuality and, particularly, the little we know about the rôle of experiences made in early age, can hardly justify the adoption of so distinct limits as those proposed in the new art. 213. If we are to have special provisions in this field in the future, I should think it advisable — from several points of view — to retain the precautionary measure taken in the former art. 213: «Action takes place only when necessitated by considerations of public welfare».

If we strongly support this appeal for preserving the said reservation, we do so for other reasons, too, than the ones expressed by the Director of Health. — What a homosexual fears is not only punishment; he is almost equally frightened by the idea of being dragged before a court. He knows that even if he is acquitted, he will all the same be condemned, by public opinion, which does not distinguish between criminal and not-criminal homosexuality. And, especially, in small places, such a case will easily become generally known. — Therefore a homosexual will be better served by a provision which entails possibilities of *avoiding* prosecution, than by one which will only be considered by the court during the trial.

The proposition is now to be discussed by a special Parliament committee who has also the authority of making alterations, after which it will be brought before Parliament. The debate on the question will probably take place before Christmas.

## *II. The Statement by Professor H. Helweg*

(The following extract from the above-mentioned statement, dealing with the proposed art. 213, was published in the *Aftenposten* on June 17th 1954.)

«I am glad to note that, according to the proposed wording of art. 213 homosexual acts between adults should not longer be considered criminal. The age limits, however, which correspond exactly with those of the Danish Penal Law, might give reason to divergent views. Considering the rather low age limit allowed for heterosexual relations, it is not self-evident that homosexual relations with persons under 18 years of age must be liable to prosecution. In support of such regulations it is often being maintained that conscripts must be protected against homosexual seduction, to which they are believed to be particularly exposed. This is a rather weak argument. Persons who are considered to be sufficiently mature for military service should indeed be left in charge of their own sexual functions. Neither can one feel convinced that the harm done to a young man of 16—17, deluded into homosexual activity, is generally greater than that which may befall a young girl of the same age, when seduced by a heterosexual man.

It seems to me that higher age limit for homosexual relations which is generally accepted as a matter of course, must be a result of

the fact that heterosexuals form the vast majority of society and are apt to look upon homosexuality as something abnormal against which some counteraction should be taken. When, therefore, a young person gets into an impass through premature heterosexual connections — which happens very often — this is considered most regrettable but inevitable. If, however, a young person through the influence of others is lead on to a discovery of his homosexual disposition which he might perhaps otherwise have avoided, this calamity is not judged in the same way, but is regarded as such an offence against society that it must be punished.

Whether society at large is right in holding this opinion seems rather doubtful. It is obvious that the sexual integrity of a person must be protected by law until a certain stage of maturity has been reached, but we fail to see why the law must abandon the protection of young girls several years before it dares to leave young men in charge of their own bodies. There is no doubt, however, that the existing view is so firmly established that the age limits, as proposed in art. 213, must be looked upon as final.»

### *III. The Attitude of our Men of Science.*

As for men of science, their indifference towards the problem is really astonishing. There has been made no serious attempt at scientific research. Yet, Ingjald Nissen, the psychologist mentioned above, has touched upon the subject in his study «The Dictature of the Psychopaths». In this book he discusses the connection between homosexuality and the social phenomenon called «The Men's League» (Der Männerbund), with special reference to Germany.

We must also mention the campaign for sexual enlightenment, lead by Dr. Karl Evang, the present Director of Health. In the beginning of the Thirties, he started a «Popular Review for Sex Information», which ran for some two or three years. After the war, Dr. Evang has brought up to date and gathered in one big volume the material contained in the issues of the «Popular Review». In this volume, there is an excellent chapter on homosexuality, where Kinsey's writings have been taken into consideration.

But what is still more surprising is the fact that many psychiatrists seem unable to enter into the social position of a homosexual. We have already mentioned the statement we received from an association of psychiatrists, and here we quote part of a letter from the chief physician of a big hospital, who is also a psychiatrist. Referring to the proposed art. 379 he says: «In my opinion, generally speaking, homosexuals ought to observe the same rules as heterosexuals in their sexual behaviour. And one may question the right of starting clubs, especially intended for establishing heterosexual contacts. I do not know of any such club».

Moreover, our impression is that Norwegian psychiatrists do not want to shock people in any way. Besides that they seem to lack personal courage. When making a more or less official statement they prefer the

formula «We think» instead of «I think». In short, we need a personality of Professor Helweg's stature.

However, there seem to be certain signs of a change in this passive attitude. In a trial concerning homosexual relations with minors, the psychiatrist expert in his speech asked the court to consider whether the accused might possibly be given the opportunity of going through a «Christine Jørgensen operation» in Denmark.

#### *IV. Traits of Norwegian Mentality*

We Norwegians, like other Scandinavians, are probably more «cold» than the peoples of the South. But our general reserve is also due to another factor. Our pattern of social behaviour requires that Norwegian men should be masculine, and one of the salient features of this masculinity is the will to show no emotions. A consequence of this will easily lead to a crippled emotional life, and a great lack of self-knowledge. This may partly explain the fact that a great many Norwegian homosexual men seem to get married simply because, at the time of the marriage, they are still unaware of their deviation.

What is the general attitude towards the homosexual problem in Norway? Mostly a condemnatory one. But such an attitude may have different sources. One is religious conviction (as is probably the case in Italy); another is the severity of sex taboo in general (as in the Anglo-Saxon countries). A third cause is simply mental laziness; by this attitude one avoids the trouble of discussing a problem. We suspect that this may be the chief reason for the general hostility here in Norway. Of course, for the homosexual the effect is the same, but if sheer ignorance and thoughtlessness are at the root of it, there is perhaps more hope of a «conversion». — In this connection we should like to mention that during the last six months there have been several articles in the papers, discussing the proposed reform, and nearly all of them have expressed a very tolerant point of view. We must confess that this surprised us a little, we had at least expected unfavourable reactions from the Christian camp, but we feel grateful that this did not happen and take it as a sign of a growing understanding. (On the other hand some voices have been raised against the proposed abolishment of an old «heterosexual» provision, that of punishment for concubinage.) — Is this a sign of a change for the better in people's feelings towards our minority?

*Det Norske Forbundet av 1948.*

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