

Love versus Abuse: Crossgenerational Sexual Relations of Minors: A Gay Rights Issue?

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ABSTRACT. The question discussed is how far crossgenerational sexual relations with or by minors could be considered to be a gay rights issue. The author discusses the issue from the perspective of general principles found in the case-law of the European Court on Human Rights. These principles suggest that the basic right to privacy should be interpreted as providing comprehensive protection of the right of children and adolescents to sexual self-determination, namely both the right to effective protection from (unwanted) sex and abuse on the one hand and the right to (wanted) sex on the other. The analysis is based upon the findings of natural and social science as well as an extensive international survey of national legal provisions and it leads to the conclusion that consensual sexual relations of and with adolescents over 14 (out of relations of authority) should be qualified a gay rights issue; likewise (as the exception to the rule) the possibility of filtering out cases from prosecution where a contact/relation is proven (beyond reasonable doubt) as consensual and harmless even though the minor involved is under 14. The legalization of (objectively consensual) sexual relations with

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persons under 14 as such, however, should not be considered to be a gay rights issue. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-342-9678. E-mail address: getinfo@haworthpressinc.com <Website: <http://www.haworthpressinc.com>>]

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BACKGROUND¹

In June 1993 the International Lesbian and Gay Association (ILGA) was granted consultative (Roster) status with the United Nations Economic and Social Council (ECOSOC), only ten weeks after a right wing anti-gay group from the U.S. made public the membership of pedophile groups within ILGA. Bothered by the public debate, the U.S. government stated that it regretted voting for ILGA's ECOSOC status and threatened to call for a renewed vote in the immediate future with the intention of now voting to withdraw the consultative status.² This stirred up a new controversy about the place of (homo-)pedophiles and their issues within the gay and lesbian³ movement.

One part of the movement denies the possibility of consensual sexual activity between children and adults and consider all pedophile relations as child abuse. It understands the demands of pedophiles as advocacy of child sexual abuse and therefore does not accept them as issues of the gay and lesbian movement committed to human rights, which do include the right of children to sexual integrity. The other part of the movement claims that there can be and in fact are consensual sexual encounters between children and adults. They see pedophiles as a suppressed minority deprived of the right to their love-comparable to the early gays and lesbians. Therefore this part expects the gay and lesbian movement to fight for the right to consensual man/boy and woman/girl relations.

At its Annual Conference 1994 ILGA decided to stick to the first part, expelled its pedophile groups from membership, and accepted the following resolution:

Groups or associations whose predominant aim is to support or promote pedophilia are incompatible with the future development of ILGA

This nevertheless did neither prevent the suspension of ILGA's consultative status with the U.N. nor did it stop the discussion about the place of pedophiles within the gay and lesbian community. In summer 1994 the

religious right in the United States revealed that the Munich organisation VSG hosted meetings supportive of pedophilia, which induced the U.S. Senate to adopt a resolution threatening to block U.S. financial support for the U.N. unless the U.S. President, by September 30, could certify to Congress that no agency of the U.N. “*grants any official status, accreditation or recognition to any organisation which promotes, condones or seeks the legalization of pedophilia or which includes as a subsidiary or member any such organisation*” (the “Helms amendment”). Shortly thereafter the UN-Economic and Social Council decided to suspend ILGA’s consultative status until it proves that no member group promotes, condones or seeks the legalization of pedophilia.⁴

The controversy still is going on. The suspension holds.⁵⁻⁶

“PEDOPHILIA”

The term “pedophilia” means a sexual predilection for prepuberal children; pedophilic relations sexual contact between a person before and a person after puberty.⁷ It is this meaning that ILGA attributes to the term “pedophilia” when it refers to it.⁸ But the the word “pedophilia” sometimes—especially in the U.S.—is understood as encompassing sexual relations with minors of all age groups up to the age of majority (mostly 18) and many people not just disapprove of real “pedophilic” relations but—though to a lesser extent—also of encounters between adults and minors beyond puberty.⁹ As a result legislators (and courts) often confine decriminalization to contacts between so-called “consenting adults” and even the gay and lesbian movement sometimes restricts its demands for equality and liberty this way.¹⁰

Therefore this analysis deals with “crossgenerational sexual relations of minors” and their relevance as a gay rights issue rather than with “pedophilic” relations only. This also avoids the difficulties arising from the claim frequently put forward by pedophiles that just those sexual encounters between children and adults can be understood as “pedophile” relations which are consensual and engaged in by real “pedophiles,” namely adults with a sexual inclination for prepuberal children as opposed to the so-called “regressed” offenders, for whom children are not the prime objects of their loving desire but merely a substitute.¹¹ This definition would lead to a circular reasoning exempting by definition already abusive experiences from the scope of the analysis. The term “crossgenerational sexual relations with minors,” however, is neutral and as such generally understood.

“GAY RIGHTS ISSUE”

To be considered a “gay/lesbian rights issue” an issue has to consist of two elements. First it has to be an issue of gay and lesbian life, that means it

has to address gay or lesbian behaviour or identity. Second the behaviour (or identity) has to be one to which there is a right to; it has (legitimately) to be a "rights issue." Both of these elements are required an issue being a "gay rights issue." One alone is not enough. Same sex rape, for instance, constitutes an aspect of gay life, but since there is no right to rape (non-discriminatory) criminal prosecution of same sex rape can not lead to a gay rights issue. Both elements are essential, but-on the other hand-the fulfillment of the two elements suffices. The "rights issue" must not be restricted to "equality rights." This would deprive the concept of "gay rights" of its essential object: to preserve the right of gays and lesbians against all undue interference and attacks. It would mean that gay and lesbian pornography and prostitution could be banned as long as heterosexual pornography and prostitution are banned as well. Oral sex could be outlawed generally as long as the ban would not be confined to gays and lesbians. Even all sexual contact out of marriage could be criminalized, liable to the most severe sentences, if marriage would be opened to same-sex couples as well. All these infringements on the right of gays and lesbians to lead a gay/lesbian life could take place without establishing a "gay/lesbian rights issue."

But exempting violations of the rights of gays and lesbians from the scope of "gay rights"-and therefore from the scope of the gay and lesbian movement-(just) because the rights of heterosexual men and women are equally violated would run diametrically counter to the very concept of "gay and lesbian rights": to preserve the self-determination, the liberty, the human dignity of gay men and lesbians.^{11a}

Man/boy and woman/girl relations without doubt are same-sex relations and they do constitute an aspect of gay and lesbian life.¹² The question which therefore remains is in how far there can (legitimately) be claimed a right to crossgenerational sexual relations with and of minors. This will be examined subsequently.

A RIGHT TO CROSSGENERATIONAL SEXUAL RELATIONS WITH AND BY MINORS?¹³

The Test Established by the European Court on Human Rights

There is nothing in binding written International law that proscribes how states should treat (crossgenerational) sexual relations (of minors).¹⁴ Also the International Convention on the Rights of the Child (CRC) does not regulate, whether sexual relations of minors could (or should) be banned, i.e., if states could (or should) establish an age limit holding persons under that age (legally) incompetent to (effectively) consent to sexual contact ("age of consent," "minimum age"); it rather confines itself essentially to generally establish

the right of the child¹⁵ to self-determination and to respect for its private life on the one hand and the right to protection from sexual exploitation on the other. In finding the right balance between these rights the member states have to orient themselves on the best interests of the child.^{16,16a}

Among the tribunals established under the various international human rights conventions so far only the European Court on Human Rights and the European Commission on Human Rights¹⁷ have been confronted with cases concerning age of consent regulations.¹⁸ According to their case-law the right to respect for private life enshrined in the European Convention of Human Rights (Art. 8 ECHR) does also protect the right of the individual to sexual relations with other human beings (in private) and therefore any interference with (private) sexual life requires justification under Art. 8 par. 2 ECHR,¹⁹ which proscribes that there shall be no interference with the exercise of the right to respect for private life except such as is necessary in a democratic society to achieve certain legitimate aims.²⁰ In applying this rule the Court and the Commission laid down general principles for the analysis of (domestic) laws regulating sexual behavior (of minors) under the European Convention on Human Rights and they established that—to be compatible with the right to respect for private life—such laws have to pursue the aim of enabling children and adolescents to achieve true autonomy in sexual matters (European Commission on Human Rights 1975). To this end even a general ban on consensual sexual contacts in private would be admissible, if it is aimed *“to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence”* (European Court on Human Rights 1981).

To be compatible with the Convention, however, such laws must not only pursue that aim but they have to be necessary for the achievement of this aim. The state must prove a “pressing social need.” It is not enough that a regulation can be considered as “reasonable,” “desirable” or “useful,” there rather must be “particularly serious reasons” (European Court on Human Rights 1981, 1988, 1993) and the necessity must be based on a far-reaching scientific consensus, based on various concordant analysis of the position, particularly those of psychologists, sociologists and specialists in social protection (European Commission of Human Rights 1975, 1978). Additionally there must be a relationship of proportionality between the aim pursued and the (negative impacts of the) means. This proportionality has to be measured against the principles of “pluralism,” tolerance and broadmindedness” (European Court on Human Rights 1981, 1988, 1993). General non-differentiating regulations as well as norms, which drive people into areas with minor medical supply, have to be scrutinized particularly strict on their proportion-

ality (European Court on Human Rights 1992). The moral convictions of the majority could not justify criminal sanctions against consensual relations between sufficient discerning persons (European Court on Human Rights 1981, 1988, 1993) and bans which do not significantly restrain a banned behavior the Court holds to be inproportionate (European Court on Human Rights 1992).

The Court and the Commission, however, did not interpret the European Convention on Human Rights as just establishing "negative obligations" requiring states to refrain from infringements. In their case-law they repeatedly held that the Convention also enshrines "positive obligations" for the states to protect the individual from infringements by other individuals (European Court on Human Rights 1985). Generally the Court and the Commission let it up to the national authorities to choose the means to achieve this aim but they accepted an obligation to employ criminal sanctions if "basic values and essential aspects of private life" are concerned and if effective deterrence is indispensable and can be achieved by criminal sanctions only (European Court on Human Rights 1985).

In applying these general principles the Court and the Commission frequently refer to regulations in other (member) states and to the results of scientific research. Legal and scientific consensus in the member states of the Council of Europe has become a crucial element in their review of domestic laws on their compatibility with human rights law (European Court on Human Rights 1981, 1988, 1993; European Commission on Human Rights 1997a). A finding of the afforded "particularly serious reasons" for a law interfering with (private) sexual life must be based on a concurring analysis of psychologists, sociologists and specialists in social protection (European Commission of Human Rights 1975, 1978) and the more jurisdictions do not penalize a certain behavior the less "necessary" a law will appear and the stricter the review by the Court and the Commission will be (European Court on Human Rights 1981, 1988, 1993; European Commission on Human Rights 1997).

So far the European Court on Human Rights never finally had to use this test. In the only case in which it had to address an age of consent issue, in the end-for formal reasons-it refused to decide the question (European Court on Human Rights 1981).²¹

In the following, the test elaborated by the European Court on Human Rights and the European Commission on Human Rights (with its special emphasis on a comparative analysis of domestic legal provisions and on findings of natural and social science) will be used to discuss the question whether there can legitimately be claimed a right to crossgenerational sexual relations by and with minors.

Domestic Laws in Europe²²

Comparative analysis of domestic laws²³ shows that sexual relations with prepuberal children constitute a criminal offence in all European jurisdictions. The age of consent nowhere is set lower than 12 years. In more than half of the states consensual sexual relations (out of a relationship of authority) with 14-year-old adolescents are legal; in three-quarters this is true for adolescents of 15. Only a minority of European jurisdictions set an age limit of 16 and only one of more than 16.²⁴ For most of these jurisdictions this also is true when the older partner started the initiative ("seduction"), even when this initiative contains an offer of remuneration.²⁵ Nearly all jurisdictions do allow for the filtering out from criminal persecution cases which do not require punishment; by either granting prosecution authorities and courts a power of discretion or binding criminal proceedings on a complaint by the minor or its legal representatives.

Governmental and Parliamentary Commissions and Private Associations

National governments and parliaments frequently appointed expert commissions to scrutinize the law on sexual offences regarding minors and to make recommendations for necessary revisions. Most of these commissions in Europe recommended a minimum age limit of 14;²⁶ the Dutch "Melai-Commission" even of 12.²⁷ Also the experts heard by both chambers of the German parliament and by the Austrian parliament favoured an age limit of 14.²⁸ Just three commissions suggested 15²⁹ and only one 16.³⁰ Nearly all of them called for effective screening out of cases where criminal proceedings would do more harm than good to the child and made concrete proposals in this respect (necessity of a complaint, power of discretion for prosecution authorities and the courts, power for the victim to veto criminal proceedings etc.) (Graupner 1997a, 2, 26ff).

Just one of the commissions proposed a special age limit for "seduction": the Dutch "Melai-Commission," which recommended a minimum age limit of 12 suggested to criminalize sexual contacts with 12- to 16-year-olds, if the older partner initiated the contact.³¹ Most of the European commissions proposed the non-criminality of "seduction" over the age of 14.³⁵ Three set this limit at 15³³ and only one at 16.³⁴ No European commission recommended a special provision for sex against remuneration. The Swedish Commission explicitly called for the repeal of the respective provision in the Swedish law.³⁵ The experts heard by both chambers of the German parliament opposed "seduction"-provisions (Graupner 1997a, 2, 26ff).³⁶

Since the late sixties only one of the European commissions proposed a special (higher) age limit for homosexual contacts.³⁷ All other commissions advocated uniform provisions.³⁸ The same is true for almost all of the experts

heard by the German parliament³⁹ and by the Austrian parliament⁴⁰ (Graupner 1997a, 2, 26ff).

Also many well-reputed and well-appreciated private associations have called for an age of consent of 14 years; sometimes even the repeal of the inflexible age limits or the introduction of more flexible regulations under those limits have been demanded.⁴¹

Traditional Reasons

Reasons traditionally put forward as justification for age of consent laws do not seem to bear closer examination against current findings of social scientific research.⁴²

Sexualization. The argument that children are sexualized by sexual contacts does fail since it ignores the fact that humans are sexual from birth on and that sexual arousal, even orgasmic experience, can take place from an very early age on. Children basically are capable of the same range of physiological sexual acts as adults are. As soon as their ability evolves to use their arms and hands in that respect they normally masturbate. Most of prepuberal children do engage in sexual play, on principle including all forms of sexual activity, up to (attempted) intercourse. Research on child sexuality defeated the concept of latency and the idea of the child as an asexual being. Sexology today not anymore views sexual activity of children as negative in itself, rather it increasingly does underline the right of the child to pleasurable experience of its own body.⁴³

Developmental Impairment. The classical argument for a ban on sexual contacts with children is that such contacts cause psychic and emotional damage in the child leading to permanent developmental impairment. This argument, however, is overbroad and generalizing and therefore cannot serve as a justification for a total ban on all sexual contacts with children. A thorough analysis of empirical research⁴⁴ shows that not each child automatically and necessarily will be harmed in its development by a sexual contact (with an adult). Not sexual stimulation in itself seems to cause developmental impairment but violation of the autonomy and self-determination of the child. Of overwhelming importance for the probability of impairment of a child by sexual contact with an adult seems to be the perception of control the child has, its perception of its ability to choose or reject participation in the act, the perception of the child of his or her participation as voluntary or involuntary. That perception of the amount (or the absence) of freedom and control seems to be crucial for the experience of sexual contacts and its effects on later life. Empirical data thereby suggests that positively experienced sexual relations could also have positive effects on the life of the child.

Abuse. Sexual contact between adults and children is traditionally seen as always being abusive to the child, as exploiting the child. But also this

argument turns out to be too overbroad and generalizing. It is true that according to empirical research in most cases prepuberal children do not consent to a sexual contact with an adult (or a mature adolescent); mostly they dislike the contact and react distractedly and scared. But empirical data⁴⁵ also shows that a minority of about 5 to 20% experiences the sexual contact as a consensual and positive event. This especially is true for children around the age of puberty; in the 12 to 13 years age group about one-third to one-half of the cases turn out to be consensual partnership-relations. The percentage for all consensual contacts, including sex play and casual sexual relations, even is higher. In mid-adolescence (over 14 years) the vast majority of sexual relations with adults turn out to be consensual and experienced positively. In all age groups boys do experience sexual contact with adults more often positively than girls. While most girls do perceive the sexual experiences as "abuse" many boys qualify their experiences with adults not as abusive but (more positive) as "initiation."

Pregnancy, STDs and AIDS. Sometimes also the need to protect children (and adolescents) from pregnancy, STDs and AIDS is put forward to justify age-consent regulations. This argument, however, seems to be even less convincing than the ones presented above. Left alone that conception is not possible before the onset of puberty not all sexual practices do carry the danger of pregnancy or of an infection with HIV or STDs; and even the case of those practices the use of protective measures can prevent the danger. So that argument could possibly serve as justification for a ban on unprotected sex with minors but nor for all kinds of contacts including protected ones.

"Informed Consent." Since traditional arguments for age of consent regulations fail⁴⁶ a new kind of argument has been put forward, which says that (prepuberal) children could indeed actually consent to a sexual act but that such consent could not be considered as "valid" or "true" consent. Finkelhor (1984, 17) for instance argued that "true" consent were impossible since a child would not be aware of (a) the social rules concerning sexuality, (b) the rules concerning the "acceptability" of a sexual partner, (c) the "natural" history of a sexual relationship, and (d) the reactions of other persons to one's sexual contacts. Many adults, however, do not fulfill these criteria. Sexual encounters rather would lose much of their special excitement if we could foresee all of its consequences and events. Much of the charm of sexuality essentially is based in its mystery, in the possibility to get surprised by the events. What we often hope for in a sexual encounter is exactly that something new and unexpected might occur. Accordingly "consent" should not be understood as to imply a "mature" understanding of the consequences of an action but merely a willingness that it should take place.

Endangered Self-Determination⁴⁷

Children. As shown above, the self-determination of the child not necessarily is interfered with by pedosexual contacts but, nevertheless, the risk has to be considered very high. The relationship between adults and children is characterized by an enormous inequality of power. The child is dependent from adults concerning all its resources. Only when the child develops the ability to discern realizable alternatives the enormous inequality of power starts to dissolve. It is true that this imbalance in power not only exists in the sexual field but in all areas where children are in contact with adults; but there has to be considered a basic difference in sexual experience between (immature) children on the one side and (adolescents or) adults on the other. This difference renders the power-imbalance more dangerous in the field of sexuality than in other areas of life. Physiologically, sexual activities before and after puberty show identical forms and children do engage in the same range of sexual acts as adults do; but the subjective feeling, the motivation behind these activities seems to be entirely different. The sexuality of the prepuberal child is hedonistic, playing and entirely autoerotic, even in sexual play with others. The child views sex largely as being confined to himself; as just another play arousing good feelings. Children do not continually seek orgasmic release in a relationship of arousal with another person, like adolescents and adults do. Child eroticism just knows sexual satisfaction in the sense of satiation, not the systematic striving for destructive orgasmic release during sexual intercourse. When the play is not interesting anymore the child stops it, like any other play; orgasmic sexual satisfaction is not an end in itself for the prepuberal child. Only after a process of sexual-erotic learning and development which has been called "eroticization" does orgasmic sex become an end in itself. Not all children pass through this process equally and with the same speed but in general it is not before the age of 12 that a person perceives sexual acts like an (adolescent or) adult.

So normally the child is unfamiliar with (adolescent or) adult sexuality striving for orgasmic release in a contact with another person. What is strange for the child causes its fear or at least uncertainty. Both-fear and uncertainty-can paralyse the child, particularly since children in our society do not learn to react adequately in such situations. This paralization is the reason why children often do not or just scarcely do resist although they do not consent. They have not yet developed the skills to reject importunities, i.e., by adults, and therefore they often try to stay polite in spite of inner feelings of reluctance. Therefore, it seems very difficult to decide whether a child consented to a sexual contact with an adult (or an adolescent) or if it just submits passively or even cooperates out of fear but without inner willingness. Even the adult (or the adolescent) himself frequently cannot be sure about the consent of the child since the fear (or the uncertainty) of the child

often is caused not by the specific behavior of the partner but by other reasons. Empirical data shows that even in those cases where the child perceives the adult as friendly, the large majority of the children do experience the contact as unpleasant; often they are afraid and want to run away.

The danger of such violations of the self-determination of the child is evident but this danger, however, need not be realized in each case and in fact—as shown above—it is not realized in each case. In especially open-minded sex education, furthering sexual self-determination can reduce the fear and uncertainty of children in such situations and increase the ability to self-determination. For some prepuberal children their sexual contacts with (adolescents or) adults are a positive experience which they highly enjoy despite the imbalance in power. This—as shown above—particularly is true for boys.

Adolescents. When a person reaches puberty (these days generally at the age of 12/13) sexuality starts to be psychically experienced like in adults. The specific dangers arising from the qualitative difference between adult and child sexuality then disappear. On the other hand, the power imbalance itself now starts to resolve rapidly. Experimental sexual play becomes substituted by the claim to the right to one's own sexuality, to self-determination of one's body. From this time on the quality of sexual relationships changes clearly. That's why—as shown above—about one-third to one-half of the relations of 12- or 13-year-olds to adults are motivated by mutual affection, to even real love. These relationships often resemble normal partnerships of homo- or heterosexual nature and it is only the law which makes them an object of forensic investigation.

But adolescents, however, immediately after reaching puberty, namely in the age range of 12 to 13, sometimes still do encounter difficulties in succeeding with self-determination in cases where they feel obliged to respect and politeness for an adult, as it can be the case with well-known family-acquaintances, teachers and similar persons. A significant degree of psychic impairment and stress could also arise where an ambivalence out of benefits connected with the adult leads to sufferance of a sexual contact. In general, however, a universal danger to the self-determination caused by each sexual contact with an adult cannot be assumed anymore in this age group.

From the age of about 14 such a universal danger caused by non-violent, non-coercing contacts (out of relations of authority) seems to be out of the question. Teenagers over 14 turn out to be significantly independent these days; their contact with the outer world is increasingly broader, more vivid and more active than in former times. Sexuality forms a central aspect of teenage life. Juveniles of this age group frequently do engage in sexual relations and desire continued sexual experiences. They not only claim the right to self-determined sexual contacts but their contacts in fact turn out to

be highly self-determined and responsible. In this age group a big age difference in itself constitutes no impairing factor anymore. Essential seems rather violence and the abuse of relations of authority.

History, Ethnology, Ethology. It seems remarkable that historical and ethnologic research demonstrates that sexual contacts with prepuberal children frequently were/are disapproved of—if not always punished; sexual relations with postpubertal adolescents, however, were/are tolerated and accepted; and what is more in large parts of the world and over significant periods in history—even in our occidental culture—relations with adolescents constituted even the norm (Graupner 1997a, 1, 267f). This borderline between sexual contacts before and after puberty also draws ethologic research for the animal world (Graupner 1997a, 1, 268).

*Negative Impacts of Age of Consent Regulations*⁴⁸

Impairment by Criminal Proceedings. Reaction of society to sexual contacts between children and adults, particularly enforcement of criminal proceedings with its repeated and intense interrogations and investigations, frequently cause so-called secondary harm, which can sometimes be more severe than the negative effects of the contact itself. A lot of parents and professionals, therefore, shrink back from reporting such incidents. This especially is true for prepuberal children. In the case of adolescents, however, it turns out that parents often do report sexual contacts against the will of the juvenile to end disapproved intimate relations of their teenage children. Only a tiny minority of adolescents report their partner to authorities. In proceedings which are instituted without the consent of the juvenile pressure frequently has to be exerted on the boy or the girl to get them to testify against their partner. Moreover, it is often humiliating for a teenager to see his intimate life disclosed and discussed in the course of public court proceedings. In the Western world these days juveniles from the age of 14 years on start to engage in sexual relations on a broad basis. Therefore, age limits of 15 or 16 or even more years mean that young people have to develop their sexual identity under especially negative conditions, namely the criminalization of a significant proportion of their potential partners. In fact, experience in those countries with an age of consent of 16 shows that two-thirds to three-fourths of the accused partners of 14- and 15-year-olds are under 25; only a tiny minority is over 40. The resistance of juveniles against criminal proceedings against their partners, therefore, turns out to be very strong. When Canada, for instance, still had an age of consent of 16 (before 1987) in proceedings for consensual sexual intercourse with a girl of 14 or 15 nearly half of the dropped prosecutions have been dropped since the girl refused to testify against her partner. Moreover, criminalization of consensual sexual relations, causing fear, secrecy and distress, does hinder the responsible use of and the supply with contraceptives as

well as protective measures against STDs and AIDS. It should finally also not be overlooked that the danger of criminal prosecution can enormously tempt youths to blackmail their partner thereby not only creating tensions within the relation but endangering the sexual and moral development of the young as a whole.

Proposals for Solution. Experts made numerous proposals for the reduction of these negative impacts and to adapt criminal proceedings to the needs of the child. But the negative effects can only be reduced by such measures, not eradicated. The possibilities to reduce negative impacts are limited by certain legitimate basic rights of the defense. Therefore, it has to be the primary object to screen; to avoid criminal proceedings, where they are not necessary. This means that in the case of prepuberal children it should always be examined if proceedings and prosecution do more harm to the child than the contact itself and that in the case of adolescents on principle there should no prosecution be brought and no proceedings instigated against the will of the juvenile. The negative effects of criminalization were a decisive element for the recommendation of most of the governmental and parliamentary commissions in Europe not to criminalize consensual sexual relations (out of relationships of authority) over the age of 14.

Assessment of a "Right"

Using the findings presented above (par. 3 to 7) the test elaborated by the European Court on Human Rights (par. 2) could be applied to cross-generational sexual relations with and by minors as follows.

General. Most of the governmental and parliamentary commissions of experts in Europe recommended an age of consent of 14. More than half of the European jurisdictions do not criminalize consensual sexual relations over the age of 14 and three-quarters do not over the age of 15. According to the test used by the European Court on Human Rights the scrutiny of age of consent provisions, therefore, should be strict for limits exceeding the age of 14, and particularly strict for the ones exceeding the age of 15. Nearly all European expert commissions demanded effective screening of respective cases and nearly all jurisdictions in Europe do allow for such screening. Regulations without the possibility of filtering out cases not requiring prosecution, therefore, should be scrutinized particularly strict.

Legitimate aim. Age of consent provisions normally are intended to protect children and adolescents against abuse, exploitation and corruption. This end without doubt can be qualified as a legitimate aim under human rights legislation.

Pressing social need. Traditional reasons given for a ban on sexual contacts with prepuberal children fail. Nevertheless it has been shown above that such contacts do carry a massive risk for the psychosexual development of the child.

This risk need not be realized in each case and in fact it is not, but what is most important is that later on—i.e., in criminal proceedings—it cannot be ascertained with the afforded certainty if the risk has been realized or not. Frequently even the adult at the time of the contact cannot. Therefore all European jurisdictions do criminalize sexual contacts with prepuberal children. A pressing social need for a general infringement in (objectively) consensual sexual contacts with prepuberal children, therefore, cannot legitimately be contested. This is true for boys as well. For them the risk is less, but, nevertheless, it seems high enough.

For adolescents, however, a general risk out of consensual sexual contacts with adults cannot be assumed any more. Nevertheless it has been demonstrated above that immediately after puberty even adolescents have not yet developed the ability to full sexual self-determination. There do exist situations where a young adolescent could not yet be capable to succeed with self-determination. Since these situations cannot be discerned from harmless situations with the necessary certainty (for a criminal offence) a pressing social need for a ban of (objectively) consensual contacts with such juveniles—in the view of the author—can legitimately be claimed. From the age of 14, however, such a claim should not legitimately be made anymore. Sexology does not supply any fact for the opinion that consensual sexual contacts (out of relations of authority) with teenagers of this age group generally endanger their psychosexual development. On the contrary, research shows that adolescents of this age are sufficiently capable of sexual self-determination. The particularly weighty reasons necessary for criminalization of consensual contacts in this age group, therefore, are not discernible, especially since more than half of the European jurisdictions do not punish such relations over the age of 14.

Proportionality. As demonstrated—due to the risks involved—there is a pressing social need to generally outlaw (objectively) consensual sexual relations with persons under 14. But it has been shown as well that especially in the area of sexual contacts with children screening out cases not requiring prosecution turns out to be crucial for the well-being of the child; on the one hand to avoid impairments by the criminal proceedings themselves and on the other hand to guarantee the right of young adolescents to sexual self-determination. Particularly with young adolescents shortly after the onset of puberty, who are not “children” anymore, effective screening seems important, since there cannot be ascertained a general risk out of sexual contacts with adults anymore. The assumption of a pressing social need for a ban in this age group, however, is based upon specific dangerous constellations which are hardly discernible from harmless contacts. In cases where such a dangerous constellation clearly is not present a prosecution would be incompatible with the autonomy of the individual. Considering the European legal and scientific consensus on this issue sexual contacts with persons under 14,

therefore, can legitimately be banned generally, but the law should allow for effective screening out of cases not requiring prosecution.

Right to protection. According to the case-law of the European Court of Human Rights the right to sexual self-determination contains not only the right to be free from infringements on consensual sexual contacts but also the right to be protected against assaults by other individuals (see par. 2). Using the test elaborated in this case-law considering the importance of sexuality for human personality and the harms caused by non-consensual sex with children, the author assumes even a duty of states to generally criminalize sexual contact with prepuberal children, particularly since all European jurisdictions punish such contacts. The duty to allow for effective screening, however, should be unaffected by this obligation.

CONCLUSION

As demonstrated above-applying the test of the European Court on Human Rights for the review of sexual offences laws on their compatibility with human rights law-there could legitimately be claimed a right to consensual sexual relations with and by adolescents over the age of 14 years (out of relationships of authority). On the other hand (homo-)pedophiles could not-under human rights law-legitimately claim a right to legalization of sexual contacts with prepuberal children, to pedophile relations as such; also not to sexual relations with young adolescents under 14. But, nevertheless, they could legitimately claim (as the exception to the rule) the possibility of filtering out cases from prosecution where a contact/relation is clearly consensual and harmless even though the minor involved is under 14. The proof of burden, however, in each case lies upon them. And whenever they fail to furnish this proof beyond any doubt they will have to be prosecuted and convicted. In so far crossgenerational same-sex relations with and by minors should be considered a gay rights issue, organizations which are advocating these rights should be accepted as part of the gay and lesbian rights movement. Organizations which are promoting pedophilia or seeking its legalization should not.

Understood this way, ILGA's policy expressed in its resolution of 1994 seems to be correct. The interpretation given by the Secretariat's Committee's (SC) position paper of spring 1995⁴⁹ however not. The assumption that sexual relations with prepuberal children always and in each case are abusive and damaging is overbroad and generalizing. It is ignoring the fact that sometimes there are consensual relations of children with adolescents and adults, which are experienced positively by the child at the time of the relation and later as an adult. Thus the position of the SC turns out as unrealistic and incorrect as the position of the pedophile groups and their supporters who are ignoring the other side of the right to self-determination: the right to be protected from unwanted sexual acts and sexual abuse; by claiming a right to pedophile relations as such

thus ignoring the massive risk to sexual self-determination and autonomy inherent in each pedophile contact.

The lesbian and gay rights movement committed itself to the very heart of human rights: self-determination and the autonomy of the individual. There is nothing like "a little bit" of human rights. So the gay and lesbian community should struggle for the enforcement of both sides of the right to sexual self-determination. Only then it will promote the welfare of all its members: children, adolescents and adults.

NOTES

1. For details of the controversy over ILGA's consultative status with the UN and the respective internal debate over the place of pedophile organisations within ILGA see *ILGA-Bulletin 1/93 to 2/97* (International Lesbian and Gay Association) and the enclosures thereto.

2. Canada and Australia supported the U.S. in this respect.

3. Although very rare, lesbian pedophile groups do exist (see the manifesto of the Berlin based group "Kanalratten," reprinted in *Homosexuelle Initiative Wien* 1990).

4. The resolution called support for pedophilia contrary "to international human rights standards and therefore the spirit, purpose and principles of the Charter of the United Nations" (cf. *ILGA-Bulletin 3/95*, 6).

5. After its own suspension by ECOSOC, ILGA's Secretariat's Committee in October 1994, on the basis of the resolution passed at the Annual Conference 1994, decided to suspend membership of VSG until the World Conference 1995. At this Conference ILGA (in its constitution) expanded its goals to include the promotion of universal respect for and observance of "human rights and fundamental freedoms" and committed itself to support the major international human rights treaties, including the Convention on the Rights of the Child and the Convention on Civil and Political Rights. Moreover, a specific resolution on accreditation at the UN confirmed the fact that ILGA does not promote paedophilia or seek its legalization. The controversial word "condone" was left out on purpose, because that would constitute a restriction of the freedom of expression since no group could be a member of ILGA which does not actively reject pedophilia or that is conducting a discourse about the phenomenon. The resolution was linked to two further important statements. ILGA supported the principle "that there should be informed, rational and ongoing discussion of the social, legal, psychological and moral issues involved in pedophilia." And ILGA repeated the words of a 1990 resolution recognizing "the right of every individual, regardless of age, to explore and develop their own sexuality. . . ." It was agreed that this position would have to be sufficient for the UN; if not, then the status would be lost. In 1996 ILGA had to learn that it would not be recognized or funded by UNAIDS and that the United States would block consultative status for any organization that was a member of ILGA. At its World Conference 1997 (the first after 1995) it amended its constitution with the statement that it is "concerned with the protection of children and young people from abuse and working to ensure that children and young people find freedom and support as they develop their own sexuali-

ties and identities” and it called on ECOSOC to give it a hearing and lift the suspension. In this resolution ILGA made clear that—as an umbrella organisation of more than 300 poorly organized associations all over the world and with one half-time staff person only—it could not comply with a request by the chair of ECOSOC to certify each member or supply copies of the publications of members.

6. In January 1998 the Council of Europe nevertheless granted full consultative status to ILGA. The respective opinion of the Secretary General reads: “The ILGA is an active and representative organisation in its field of competence. It has already established working relations with the Council of Europe. Furthermore, the organisation has a specific contribution to make to any discussion on discrimination generally as well as on more specific issues such as discrimination against people with HIV and AIDS.” (Euroletter 55, 2; 57, 2).

7. See American Psychiatric Association (1980, 1987, 1994); for more references see Graupner (1997a, 1, 257, note 10). Only slightly different World Health Organisation, WHO (1994, F 65.4): “A sexual preference for children, boys, or girls or both, usually of prepubertal or early pubertal age.”

8. ILGA stated this in a letter of October 1994 to Rechtskomitee LAMBDA, Vienna answering an inquiry by this organisation (International Lesbian and Gay Association, ILGA 1994). ILGA repeated this in its questionnaire for membership survey attached to ILGA-Bulletin 4/94.

9. For detailed reports about the situation in the U.S. see the various issues of *NAMBLA Bulletin, The Voice of the North-American Man/Boy Love Association (NAMBLA)*, published by NAMBLA, N.Y., U.S.A.

10. The author remembers U.S. delegates to the *ILGA-Annual Conference 1992* in Paris who expressed their surprise that (discriminatory) age of consent regulations were such an issue in Europe; in the U.S. the movement would not bother with such issues. Also the *Euro-Working Party of ILGA* confined its demand to refusal of admittance to membership in the Council of Europe for states which discriminate against gays and lesbians to states which criminalize homosexual contact between consenting adults (see *letter by HOSI-Wien of 21.6.1991*, reprinted in COE/CSCE-letter No. 5, 19.8.1991; *letter by ILGA-action secretariat to the Council of Europe*, reprinted in Euroletter No. 1, 25.2.1992; different: *letter by Helmut Graupner to the COE-Working Party of 31.8.1991*, reprinted in COE/CSCE-letter No. 8, 29.9.1991).

11. For this position see the various issues of *NAMBLA Bulletin*; see also Brongersma (1970, 1986, 1990).

11a. That position seems to be taken also by *ILGA-Europe*, which at its Annual Conference 98 passed a resolution protesting the (re-)criminalization of prostitution in Sweden as decided by the Swedish parliament in May 1998 and in force as of 1st January 1999. ILGA-Europe did not see itself hindered to protesting this measure as violating the rights of homosexuals (“*the fundamental rights to sexual self-determination and sexual privacy*”. . . “*Stressing that since Romania did reintroduce a total ban on consensual homosexual relations between adults in 1948 this is the first time a European country has (re-)introduced criminalization of (some form of) consensual homosexual behavior between adults*” (International Lesbian and Gay Association Europe 1998)) due to the fact that the law equally outlaws heterosexual and homosexual prostitution. The resolution (passed on 25th October 1998) finally has

not been delivered to the Swedish government for another reason. ILGA-Europe, in accordance with its policy not to take action against the will of the l/g movement in the country affected, passed the resolution under the condition that RFSL, the Swedish national l/g federation, consented to the resolution. In May 1999 RFSL vetoed the resolution "*because of the reference to human rights where we object to the view that being a sex-worker is a human rights issue*" and stating that RFSL "*oppose(s) prostitution as a phenomena -RFSL oppose the new law because it fails to combat prostitution*" (RFSL 1999). So also RFSL did not express the view that the issue was not a gay rights issue because the law equally does affect heterosexuals and homosexuals; they contended the concept of a right to sex against remuneration, but not the violation of gay rights if there were such a right, even when heterosexuals are affected in the same way.

12. That is why NAMBLA and other pedophile groups have been admitted to ILGA-membership originally.

13. The following analysis is a summary of Graupner (1997a). For detailed discussions and extensive references concerning the following arguments see that work.

14. Only in the area of "girl-trafficking" (or "white slavery") do exist more specific norms (*International Agreement for the Suppression of White Slave Traffic*, 18.05.1904; Additional Protocol 03.12.1948; *International Convention for the Suppression of White Slave Traffic* 04.05.1910; Additional Protocol 03.12.1948; *Convention for the Suppression of the Traffic in Persons and of the Prostitution of Others*, 21.03.1950).

15. The Convention defines as "child" anyone under the age of 18 (Art. 1 CRC).

16. *International Convention on the Rights of the Child* 1989 (Art. 3, 12, 16, 34, 39).

16a. Also (non-binding) international "soft-law" does not contain calls or recommendations more specific than calls for combating (and making a criminal offence) "sexual exploitation," child prostitution, "child pornography," "child trafficking," and sometimes also (though constantly undefined) "pedophilia" as such; i.e., international soft-law (as international binding law) does not enshrine (recommendations for) specific (minimum) age limits. Also the *World Congress against Commercial Sexual Exploitation of Children*, held in Stockholm in August 1996, in its hitherto widely cited *Declaration and Agenda for Action*, while stressing the principles and provisions of the Convention on the Rights of the Child (par. 3, 4, 12 of the Declaration), generally calls "to criminalise" (commercial) "sexual exploitation of children" (par. 12 of the Declaration; par. 4 lit. a of the Agenda for Action). The more specific call "to establish the criminal responsibility of service providers, customers and intermediaries in child prostitution, child trafficking, child pornography, including possession of child pornography, and *other* (emphasized by the author) unlawful sexual activity" (par. 4 lit. b of the Agenda for Action) refers to activities (already) rendered "unlawful" by the domestic law; it demands to establish the criminal responsibility for such "unlawful" acts but does not proscribe what acts specifically should be outlawed, i.e., what (minimum) age limits should be fixed; the latter being expressly left open by the World Congress by calling on the States to "bear(. . .) in mind that the different types of perpetrators and ages and circumstances of victims require differing legal and programmatic responses" (par. 4 lit. a of the Agenda for Action). Also the *European Union* in its (non-binding) measures to combat sexual

exploitation of children while constantly referring to the Declaration and the Agenda for Action passed by the Stockholm World Congress, does not proscribe certain age limits. The Council of Ministers called on the member states to make "sexual exploitation or sexual abuse of children" a criminal offence but expressly stated that the terms used ("exploitation," "abuse," "child") have to be interpreted according to their meaning under domestic law (Council of Ministers of the European Union 1997, par. 15 Preamble & Title I.B., II.A.a). And also the European Parliament, while calling for the criminalization of "pedophile acts" and the harmonization of domestic laws, i.e., as regards age limits, did not demand or recommend specific age limits by or with minors (European Parliament 1997, par. 2).

Only once an international body called for a specific (minimum) age limit. In 1996 the Parliamentary Assembly of the *Council of Europe* called on the member states "to incorporate into their legislation the principle that a minor under the age of 15 cannot give his or her consent to sexual relations with an adult" (Parliamentary Assembly of the Council of Europe 1996, par. 12.vi.). This resolution, however, remained a unique instance and seems to have been prompted more by the impression and the emotions stirred up by the then highly publicized and intensively discussed Belgium Dutroux-affair than by sound reasoning, the Assembly itself one and a half years later holding that "(t)he discovery of serious crimes committed against children and the existence of pedophile networks in Europe prompted a painful awareness of this problem and led the Assembly to hold an *emergency debate* (emphasized by the author) in September 1996 and to adapt Resolution 1099 (1996) on the sexual exploitation of children" (Parliamentary Assembly of the Council of Europe 1998, par. 3). In 1998 the Assembly already withdrew its 1996 demand for a minimum age limit of 15 and restricted it to a demand for criminalization of sexual contact with persons under 15 "against money" (Parliamentary Assembly of the Council of Europe 1998, par. 13.c.i. & iv.). Moreover, this time the Assembly directed its call not to the member states directly (as it did in 1996) but to the Committee of Ministers of the Council of Europe who should recommend to the member states to introduce such an offence (ibid.). The Committee of Ministers, however, hitherto did not act upon this demand its last recommendation in this area (No. R (91) 11) not giving an opinion on the right age limits and expressly leaving these questions to the domestic law (Council of Europe 1993, p. 22f). Also the *European Follow-Up Conference to the 1996 World Congress against Commercial Sexual Exploitation of Children* on whose occasion the Parliamentary Assembly of the council of Europe passed its 1998 recommendation mentioned above did not express such conclusions or recommendations (Council of Europe 1998, p. 21ff).

17. The European Convention in Human Rights established the European Commission on Human Rights as tribunal of first instance and the European Court on Human Rights as second (and final) instance. These tribunals should not be confused with the European Court of Justice (of the European Union). According to Protocol No. 11 to the ECHR as of 1st November 1998 the Commission and the Court both have been replaced by a new and permanent European Court on Human Rights.

18. European Court on Human Rights (1981, 1988); European Commission on Human Rights (1975, 1978, 1982, 1983, 1986, 1992, 1995a, 1995b, 1997a, 1997b). All these cases concerned age of consent regulations for male homosexual relations.

By far there have been no cases presented to the Convention organs concerning an age of consent regulation for heterosexual or lesbian relations.

19. European Court on Human Rights (1981, 1988, 1993); European Commission on Human Rights (1976, 1977); for more references see Graupner (1997a, 1, 84ff).

20. Art. 8 European Convention on Human Rights:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

21. The European Commission on Human Rights, however, repeatedly had to decide age of consent issues and—with one exception in which it declared higher age limits for homosexual relations than for heterosexual in violation of the right to non-discrimination (Art. 14 & 8 ECHR) (1997a)—it upheld all contested age of consent laws (see Note 18; all of these cases, save one, which concerned an age limit of 14 (1997b) concerned age limits for male homosexual relations which were fixed between 18 and 21). Thereby it, however, merely referred to the necessity to protect the youth without giving any special reasoning in any of the cases. In especially it did not in detail refer to and apply the principles for review elaborated in its and the case-law of the Court.

22. See Appendixes I and II.

23. The information given in this section is based upon a thorough analysis of the respective provisions of the national criminal law and of the jurisdiction of the courts in each state. The author studied the text of the laws, the case-law of the courts, commentaries to the criminal law and other literature and sought information from the Ministries of Justice and from University law schools in the respective countries. The sources are too numerous to represent them here but detailed references to these sources and the full text of the laws are given in the country-by-country survey contained in Graupner (1997a, 2, 359-748). For a summary and update see Graupner (1997b, 1999). For legal developments hitherto the sources are given in Appendixes I and II.

24.

**Jurisdictions which do not criminalize sexual contacts
(without seduction and out of relations of authority)**

from	Council of Europe (%)	Europe (%)
12 years	3 (7)	4 (7)
14	22 (54)	29 (52)
15	31 (76)	41 (73)
16	41 (98)	56 (98)
17	42 (100)	57 (100)

For the domestic law in the respective countries see Appendixes I and II.

For the purpose of this table the *general age limits* have been used. Special age limits, which exist in some countries, have been omitted. They are based upon discriminatory reasoning and therefore cannot serve as a basis for this analysis.

Estonia and Romania have an age limit for vaginal intercourse with girls only (14 years). It can be assumed therefore that with the 14th birthday at latest also other sexual contacts are not generally banned anymore.

Lithuania, the Ukraine and Belarus refer to puberty rather than a certain age. Immaturity is irrebuttably presumed in persons under 14. Since adolescents over 14 nearly always are mature in the end these provisions contain an age limit of 14.

Cyprus knows an age limit for vaginal intercourse with girls (16 years) and for anal intercourse (13 years). Other sexual contacts are judged upon the individual capacity to consent. The upmost sexual contacts, therefore, cannot be classified for the purpose of this table. With 16 years at latest also these consensual contacts seem to be legal. The percentages in the above table, therefore, refer for the 12th, the 14th and the 15th year to 41 jurisdictions in the Council of Europe and to 56 in Europe. From the 16th year onwards Cyprus is added and the percentages refer to all 42 jurisdictions in the COE and 57 in Europe.

Scotland has different age limits for boys and girls. In the above table the age limit for boys has been used. If the age limit for girls is used the picture does not change significantly:

from	COE (%)	Europe (%)
12 years	2 (5)	3 (5)
14	21 (51)	28 (50)
15	30 (73)	40 (71)
16	41 (98)	56 (98)
17	42 (100)	57 (100)

25.

Jurisdictions which do not criminalize sexual contacts (with seduction but out of relations of authority)

from	Council of Europe (%)	Europe (%)
12 years	2 (5)	3 (5)
14	19 (46)	26 (46)
15	27 (66)	35 (63)
16	37 (88)	50 (88)

(for details see Graupner 1997b, 1999)

26. Schweizer Expertenkommission (1977), Swedish Commission on Sexual Offences (1976), Danish Council on the Criminal Law (1975), Bundesministerium für Justiz (1956-1962).

27. Niederländische Strafrechtsreformkommission (Melai-Kommission) 1980.

28. Deutscher Bundesrat (1992), Deutscher Bundestag (1993), Nationalrat der Republik Österreich (1995).

29. The Norwegian Criminal Law Commission (which recommended to lower the minimum age limit in Norway from 16 to 15; Justis- og politiedepartementet 1997); The Finnish Criminal Law Commission 1993 (which recommended to lower the age limit in Finland from 16 to 15, Oikeusministeriön 1993); The Law Reform Commission of Ireland (1990); but also: "Although age limits are necessarily arbitrary, the age in this country of 15 on one view seems particularly difficult to justify . . . No doubt, prosecutorial discretion and flexible sentencing can, and probably does, avoid the grosser injustices which such a law could produce: nonetheless, its retention on the statute book in this form is at least questionable" (The Law Reform Commission of Ireland 1989, 65).

30. Policy Advisory Committee on Sexual Offences 1981; This commission, however, rejected the idea of a special (higher) age limit for contacts in a relationship of authority; so the age limit they recommended had to cover these (more problematic) relations as well.

31. Niederländische Strafrechtsreformkommission (Melai-Kommission) 1980.

32. Schweizer Expertenkommission (1977), Swedish Commission on Sexual Offences (1976), Danish Council on the Criminal Law (1975), Bundesministerium für Justiz (1956-1962).

33. The Law Reform Commission of Ireland (1990); The Norwegian Criminal Law Commission (which recommended to lower the minimum age limit in Norway from 16 to 15; Justis- og politiedepartementet 1997); The Finnish Criminal Law Commission 1993 (Oikeusministeriön 1993).

34. Policy Advisory Committee on Sexual Offences 1981.

35. Swedish Commission on Sexual Offences (1976).

36. Deutscher Bundesrat (1992), Deutscher Bundestag (1993).

37. Criminal Law Revision Committee (1984).

38. The Law Reform Commission of Ireland (1990), Niederländische Strafrechtsreformkommission (Melai-Kommission) 1980, Schweizer Expertenkommission (1977), Swedish Commission on Sexual Offences (1976), Danish Council on the Criminal Law (1975), Health Council of the Netherlands (1969).

39. Deutscher Bundesrat (1992), Deutscher Bundestag (1973, 1990, 1993).

40. Nationalrat der Republik Österreich (1995).

41. Among them *German Sexological Associations*, *The Howard League* (UK), the *Sexual Law Reform Society* (UK), the *National Council for Civil Liberties* (UK), the *Catholic Youth Council* (NL), the *Dutch Bar Association*, the *British Criminological Society*; see the list in Graupner (1997a, 1, 187f).

42. The information given in this section is based upon a thorough analysis of empirical surveys on child sexuality, on the sexual behavior of young people and on sexual contacts between children/adolescents and adults and their effect on the young. The author studied all such surveys with a population of at least 100 he could find in English and German language. The sources, therefore, are too numerous to represent them here but detailed references and a compilation of the most important findings of empirical research can be found in Graupner (1997a, 1, 199-309, 357-414, 481-580; 2, 73-244). See also Rind et al. (1998), Rind et al. (1997), Bauserman and Rind (1997), Bach, Stumpe and Weller (1993), Leahy (1992).

43. See also the resolutions of ILGA stressing "the right of every individual, regardless of age, to explore and develop their own sexuality" (see Note 5).
44. See Note 42, cf. i.e., Rind et al. (1998, 1997), Bauserman and Rind (1997).
45. See Note 42.
46. See also Finkelhor (1984).
47. See Note 42.
48. See Note 42.
49. International Lesbian and Gay Association, ILGA (1995).

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APPENDIX I

Minimum Age Limits for Sexual Relations¹ (Europe)²

I.: No Minimum Age Limits

Estonia;³ CIS (Belorus; Moldova; Russia, Ukraine);⁴ *Cyprus*;⁵
Lithuania;⁶ *Romania*;⁷ *Finland*^{7a}

II.: Minimum Age Limits-screening possible⁸

	MA Mf	MA Fm
<i>Albania</i>	14	14
<i>Andorra</i>	16	16
<i>Belgium</i>	16	16
Bosnia-Herzegovina	14	14
<i>Bulgaria</i>	14	14
CIS:		
Belorus	--/MT ⁹	--/MT ¹³
Georgia	16	16
<i>Moldova</i>	--/16 ¹⁰	--/16 ¹⁴
<i>Russia</i>	--/14 ¹¹	--/14 ¹⁵
<i>Ukraine</i>	--/MT ¹²	--/MT ¹⁶
<i>Croatia</i>	14	14
<i>Cyprus</i>	--/13 ¹⁶	--/13 ¹⁸
<i>Czechia</i>	15	15
<i>Denmark</i>	15	15
<i>Estonia</i>	--/14 ¹⁹	-- ²⁰
Färöer	15	15
<i>Finland</i>	--/16 ^{20a}	--/16 ^{20b}
FR Jugoslavia:		
(Cosovo	14	14)
Montenegro	14	14
Serbia	14	14
(Vojvodina	14	14)
<i>France</i>	15	15
<i>Germany</i>	14	14
Gibraltar	16 ²¹	16 ²²
<i>Greece</i>	15	15
Greenland	15	15

	MA Mf	MA Fm
Guernsey	16 ²³	16 ²⁴
Hungary	14	14
Ireland	15/17 ²⁵	15/17 ²⁶
Isle of Man	16/21 ²⁷	16/21 ²⁸
Italy	13/14 ²⁹	13/14 ³⁰
Jersey	16 ³¹	16 ³²
Latvia	14/16 ^{32a}	14/16 ^{32b}
Lithuania	--/MT ³³	--/MT ³⁴
Luxembourg	14/16 ^{32a}	14/16 ^{32b}
Macedonia	14	14
Malta	12	12
Monaco	15	15
Netherlands	16	16
Norway	16	16
Poland	15	15
Portugal	14	14
Romania	--/14 ³⁵	-- ³⁶
San Marino	14	14
Slovakia	15	15
Slovenia	14	14
Spain	12	12
Sweden	15	15
UK:		
E & W	16/18 ³⁷	16/18 ³⁹
Northern Ireland	17 ³⁸	17 ⁴⁰
Scotland	16	MT
Vatican	12	12

III. Minimum Age Limits-no screening possible

	MA Mf	MA Fm
Austria	12/13/14 ^{40a}	12/13/14 ^{40b}
Iceland	14	14
Liechtenstein	14 ^{40c}	14 ^{40d}
Switzerland	16 ^{40e}	16 ^{40f}
Turkey	15/18 ⁴¹	15/18 ⁴²

Abbreviations:

MT: individual (biological) sexual maturity

MA Mf: Minimum age limit for sexual relations between a man and a girl

MA fm: Minimum age limit for sexual relations between a woman and a boy

REMARKS

1. This table shows the *general age limits* in the several countries. Please note that some countries still have special age limits for homosexual contacts. For a list and details see Graupner (1997a, 2, 359-742) and Graupner (1999). They are, however, based upon discriminatory reasoning and therefore cannot serve as a basis for the analysis in this study.

2. Member States of the Council of Europe in italics.

3. In Estonia a minimum age limit exists for vaginal intercourse with girls only (see below II.). Other kinds of sexual relations under 16 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

4. These countries set an age limit for certain sexual contacts only (mostly for vaginal, anal and oral intercourse). Other kinds of sexual relations under a certain age are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

5. In Cyprus an age limit exists for vaginal intercourse with girls and for anal intercourse (with boys and girls) only (see below II.)

6. In Lithuania a minimum age limit exists for vaginal, anal and oral intercourse only. Other kinds of sexual relations under 18 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

7. In Romania a minimum age limit exists for vaginal intercourse with girls only (see below II.). There is no fixed age limit for other kinds of sexual contact.

7a. The limit for sexual penetration (which is penetration by a sexual organ or directed at a sexual organ, Chapter 20 Section 10 Criminal Code as amended by law EV 60/1998 vp) is set at 16 (Ch. 20 s. 6 CC as amended 1998). Other kinds of sexual relations with persons under 16 are outlawed only if the contact is "conducive to impairing his/her development" (Ch. 20 s. 6 CC as amended 1998). There is no fixed minimum age for such sexual contacts not considered being "conducive to impairing his/her development."

8. These jurisdictions allow for screening of cases which do not require prosecution. This means that either prosecution authorities are being granted power of discretion to prosecute or not and to judge each case on its merits or that prosecution does require a complaint (mostly by the minor, his legal representative or a youth protection authority).

9. See above I. The limit for vaginal, anal and oral sex is set at individual biological sexual maturity (whereby immaturity is irrebuttably presumed under 14). Other kinds of sexual relations with persons under 18 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

10. See above I. The limit for vaginal, anal and oral sex is set at individual biological sexual maturity (whereby immaturity is irrebuttably presumed under 14). Other kinds of sexual relations with persons under 18 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

11. The age limit for some sexual acts (vaginal, oral, anal) is 14; for others it is 14 only if the act is considered "depraving."

12. See above I. The limit for vaginal, anal and oral sex is set at individual biological sexual maturity (whereby immaturity is irrebuttably presumed under 14). Other kinds of sexual relations with persons under 18 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

13. See above I. The limit for vaginal, anal and oral sex is set at individual biological sexual maturity (whereby immaturity is irrebuttably presumed under 14). Other kinds of sexual relations with persons under 18 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

14. See above I. The limit for vaginal, anal and oral sex is set at individual biological sexual maturity (whereby immaturity is irrebuttably presumed under 14). Other kinds of sexual relations with persons under 18 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

15. The age limit for some sexual acts (vaginal, oral, anal) is 14; for others it is 14 only if the act is considered "depraving."

16. See above I. The limit for vaginal, anal and oral sex is set at individual biological sexual maturity (whereby immaturity is irrebuttably presumed under 14). Other kinds of sexual relations with persons under 18 are outlawed only in "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

17. In Cyprus there is an age limit for vaginal intercourse with girls only. This limit is set at 16. There is no fixed minimum age for other kinds of sexual contact save oral intercourse. Hitherto Art. 171 CC outlawed anal intercourse without reference to the age of the partners (life imprisonment). On 21 May 1998 parliament passed a law abolishing this total ban on anal intercourse (Criminal Code Amendment Law 40(1) of 1998). While the minimum age limit for homosexual acts has been set at 18 (Art. 171 CC), for heterosexual anal intercourse, the limit has been chosen to be 13 (Art. 174 CC).

18. The minimum age for oral intercourse is 13. For other kinds of sexual contacts there is no minimum age. Decisive is the individual capacity of the young person to give informed consent.

19. In Estonia an age limit exists for vaginal intercourse with girls only. Other kinds of sexual relations under 16 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

20. In Estonia an age limit exists for vaginal intercourse with girls only. Other kinds of sexual relations under 16 are outlawed only if "depraving" the minor. There is no fixed minimum age for such sexual contacts not considered "depraving."

20a. See above I.

20b. See above I.

21. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

22. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

23. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

24. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

25. The limit for vaginal intercourse with girls and for anal intercourse (with boys and girls) is set at 17. For other kinds of sexual contact the age limit is 15.

26. The limit for anal intercourse is set at 17. For other kinds of sexual contact the age limit is 15.

27. The limit for anal intercourse is set at 21. For other kinds of sexual contact the age limit is 16.

28. The limit for anal intercourse is set at 21. For other kinds of sexual contact the age limit is 16.

29. The age limit is 13 when the older partner is not more than 16. In all other cases it is 14.

30. The age limit is 13 when the older partner is not more than 16. In all other cases it is 14.

31. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

32. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

32a. In Latvia the age limit for vaginal intercourse is 16 (Art. 161 CC 1998). For other sexual contact it is 14 (Art. 160 CC 1998).

32b. In Latvia the age limit for vaginal intercourse is 16 (Art. 161 CC 1998). For other sexual contact it is 14 (Art. 160 CC 1998).

33. See above I.

34. See above I.

35. The age limit covers vaginal intercourse with girls only (see above I).

36. The age limit covers vaginal intercourse with girls only (see above I).

37. For anal intercourse there is an age limit of 18.

38. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

39. For anal intercourse there is an age limit of 18.

40. Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

40a. The minimum age is 12 in the case of non-penetrative sexual contact with a partner not more than four years older, and it is 13 in the case of penetrative sexual contact (with parts of the body; not with objects), if the partner is not more than three years older. In all other cases it is 14 (Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998).

40b. The minimum age is 12 in the case of non-penetrative sexual contact with a partner not more than four years older, and it is 13 in the case of penetrative sexual contact (with parts of the body; not with objects), if the partner is not more than three years older. In all other cases it is 14 (Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998).

40c. Sexual contact (save vaginal intercourse) is not punishable if the age difference between the partners is not higher than two years.

40d. Sexual contact (save vaginal intercourse) is not punishable if the age difference between the partners is not higher than two years.

40e. Sexual contact (save vaginal intercourse) is not punishable if the age difference between the partners is not higher than three years.

40f. Sexual contact (save vaginal intercourse) is not punishable if the age difference between the partners is not higher than three years.

41. The age limit of 18 covers vaginal and anal intercourse only. The minimum age for all other kinds of sexual contact is set at 15.

42. The age limit of 18 covers vaginal and anal intercourse only. The minimum age for all other kinds of sexual contact is set at 15.

APPENDIX II

“Seduction” (without coercion and out of relationships of authority) legal from the age of¹ (Europe)a

individual sexual maturity	from 12	from 14	from 15	from 16	from 17	from 18	from 21
Belorus Lithuania cScotland ² Ukraine	Malta Vatican	Albania Austria ³ Bosnia- Herzegovina Bulgaria Croatia Estonia FR Yugoslavia (Cosovo) Serbia Montenegro (Vojvodina) Hungary Italy ⁴ Latvia ^{4a} Liechtenstein Macedonia Portugal ⁵ Romania Russia ⁶ San Marino Slovenia	Czechia France Greece Ireland Monaco ⁷ Poland Slovakia Sweden ⁸ Turkey	Belgium Cyprus ⁹ Germany ^{9a} England & Wales Georgia Gibraltar Guernsey Iceland Isle of Man Italy ⁴ Jersey Luxemburg Moldova Norway Portugal ¹¹ Scotland ¹³ Spain ^{13a} Switzerland	Northern Ireland	Andorra ^{13b} Denmark ^{13c} Färöer ^{13d} Finland ¹⁴ Greenland ^{13e} Netherlands ^{13f} Sweden ¹⁵	Monaco ¹⁶

From the individual capacity to give informed consent: Cyprus¹⁷

General ban on “seduction”: Sweden (“usual sexual contact against remuneration”),¹⁸ Spain⁹

REMARKS

1. *Some jurisdictions (Czechia, Malta, Romania, Slovakia, the Vatican and the jurisdictions on the territory of the former Soviet Union)* have laws against “corruption” of youths or against “seduction” to an “idle or indecent life.” But these provisions have in common that they are intended to protect the “orderly life” of the youths. Therefore often a more intensive and repeated influence on the youth is afforded, so that he (or she) as a result of the offence is led into a “disorderly” life. A single contact, for instance against remuneration, normally does not invoke criminal liability. Likewise it is not punishable to “seduce” a juvenile (for instance by offering money for sexual contact) who already does lead a “disorderly” life. Such offences therefore have not been counted as “seduction”-provisions for the purpose of this table.

Four jurisdictions on the territory of the former Yugoslavia and Romania, Monaco, San Marino and Turkey have laws against “seduction of minor girls under false promise of marriage.” This offence however is intended to protect the virginity of the girls. The intention of these laws therefore is so narrow that they have not been counted as “seduction”-provisions for the purpose of this table. Additionally these laws (with the exception of Monaco and San Marino) do cover vaginal intercourse with girls only and they are seldom enforced and of no practical importance. In *Finland, Germany, Italy, and Sweden*, there is a higher age limit for “casual sexual acts with a minor against remuneration.” Contacts with minors against remuneration in most cases do not constitute “seduction” (in most cases the adolescents offer themselves or readily agree to such an offer); the intention of legislators for such provisions, however, mostly are based upon the suggestion that the offer of remuneration contains an element of “seduction.” Therefore such provisions have been included here.

Please note that some countries still do have special minimum age limits for (male) homosexual contact (a special provision for homosexual “seduction” does exist in only one jurisdiction: Greece). For a list and details see Graupner (1997a, 2, 359-748) and Graupner (1999). Such provisions are based upon discriminatory reasoning and therefore cannot serve as a basis for the analysis in this study. They have, therefore, not been included in this table. *Among the countries* which did set an additional special provision for seduction of adolescents over the minimum age limit (which are a minority among European jurisdictions) even more than in the case of minimum age limits (see Appendix I.) do allow for effective screening of cases, e.g., by binding prosecution upon a complaint of the adolescent and/or his legal representative (as so for example in Finland [except in the case of “remuneration”], Germany [in the case of “practising upon lacking capacity to sexual-self-determination”], Monaco, the Netherlands and Portugal).

2. In the case of heterosexual “seduction” of boys.

3. “Seduction” is legal from 12 in the case of non-penetrative sexual contact with a partner not more than four years older, and it is 13 in the case of penetrative sexual contact (with parts of the body, not with objects), if the partner is not more than three years older. In other cases it is legal as of 14.

4. For sexual contact "in exchange of remuneration" the age limit is 16 (Art. 600 bis C1 as amended by law no. 269 of 3rd. August 1998). Otherwise "seduction" is legal from 13 onwards, if the older partner is not older than 16 and 14 if he is older than 16.

4a. The (minimum) age limit in Latvia is 16 for vaginal intercourse and 14 for other kinds of sexual contacts (see App. I.).

5. For all contacts but vaginal intercourse with boys and girls

6. For some sexual acts (vaginal, oral, anal) the age limit is 16, for others it is 14.

7. For "seduction" of boys.

8. Except "against remuneration" and "seduction" to the participation in pornographic productions.

9. For vaginal intercourse with girls.

9a. Under one of the following three circumstances the age limit is 16: (a) "practising upon a position of constraint," (b) "against remuneration," (c) "practising upon lacking capacity to sexual self-determination."

10. For getting a person to sexual contact by promising or giving remuneration the limit is 18.

11. For vaginal intercourse with boys and girls.

12. For some sexual acts (vaginal, oral, anal) the age limit is 16, for others it is 14.

13. in the case of "seduction" of girls.

13a. For sexual contacts "by deception."

13b. For sexual contacts "by deception."

13c. For inducement "by gravely abusing superior age or experience."

13d. For inducement "by gravely abusing superior age or experience."

13e. For inducement "by gravely abusing superior age or experience."

13f. For inducement "by giving or promising money or pills," "by deception," or "by abusing a superiority based upon matters of fact."

14. For getting a person to sexual contact by promising or giving remuneration the limit is 18 (Ch. 20 s. 8 CC as amended 1998). Moreover the Criminal Code stipulates:

A person who abuses his/her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his/her right of sexual self-determination, or into submission to such an act,

...

(2) a person younger than eighteen years of age, whose capacity to independently decide on his/her sexual acting is essentially weaker than that of offender's owing to his/her immaturity and the age difference between the parties, where the offender blantly takes advantage of that immaturity (Ch. 20 s. 5 CC as amended in 1998)

15. "Seduction" to the participation in pornographic productions.

16. For "seduction" of girls by fraudulent actions.

17. Valid for all sexual contact except vaginal intercourse and anal intercourse with girls and boys. See Appendix I.

18. As of 1999 according to the Action Against Violence Against Women Act, 1998.

19. For sexual contacts by "abusing a manifest situation of superiority which restricts the victim's sexual liberty."