

Sexual Consent

The Criminal Law in Europe and Overseas¹

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by Helmut GRAUPNER, JD

(www.graupner.at)

Abstract: What role can the criminal law play in the battle against child sexual abuse? Should sexual relations of, and with, persons under a certain age be criminalized regardless of the circumstances, even if they are consensual („age of consent“, „minimum age“)? Where should such a minimum age-limit be fixed? Should there be a special, higher age-limit for particular conditions (e.g. „seduction“, „corruption“)? Should sexual contacts with minors within a relationship of authority be criminalized generally or just if authority is abused? Should criminal proceedings be instituted ex officio or upon complaint only? Should authorities be provided with a power of discretion or should they be obliged to prosecute and sentence in each case? In answering these important questions, it is highly beneficial to have a look across the borders to the solutions other countries have reached in this area.

This presentation will provide an overview on the criminal law governing the sexual behavior of, and with, children and adolescents in all European jurisdictions and in selected jurisdictions outside of Europe. It will show which categories of offences exist and from which age onward young people can effectively consent to various kinds of sexual behavior and relations in the different countries. It turns out that all states in Europe and all of the studied jurisdictions overseas do have minimum age limits for sexual relations, do punish sexual relations with persons under a certain age. Nowhere is this age set lower than 12 years. In Europe in one-half of the jurisdictions, consensual sexual relations with 14-year-old adolescents are legal; in two-third with 15-year olds; in a majority, this is also the case when the older partner has started the initiative (and also when the initiative contains an offer of remuneration). In nearly all jurisdictions, such relations are legal from the age of 16 onwards. Most states apply a higher age limit for contacts in relationships of authority. If the authority is not misused the age limit in most jurisdictions is set between 14 and 16; if it is misused between 16 and 18. Most states make no difference between heterosexual and homosexual relations.

Key words: youth protection - youth rights - sexual offenses - age of consent - child sexual abuse - pedophilia - homosexuality - criminal law- human rights

Criminal law is the strongest weapon the state has in combating socially dangerous behavior and society always has used it to fight child sexual abuse. Today according to the case-law of the European Court of Human Rights states are even in an obligation to use the criminal law if effective deterrence cannot be achieved otherwise.² But while there is a basic consensus about the effectiveness and the necessity of the criminal law in this area there is a good deal of controversy about the exact construction of offenses.³

This controversy mainly centers around two questions:

1) *Should – in enforcing the law – be reserved the possibility to screen out cases of minor importance and cases where no harm has been done?* This question, on the one hand, arises out of the negative experience victims of sexual abuse have made with the criminal justice system and from the fear that in some cases criminal proceedings would do more harm than good; on the other hand the question arises out of the fact that each age limit – where ever it may be fixed – is arbitrary and that there always will be cases which do not require punishment.

2) *Up to which age should the special protection reach?* It is easy to hold that a sexual contact with a 5 year old always is abuse but it is much harder to hold that a sexual relation with a 12 year old in each and every case is abusive and it is definitely impossible to hold that a sexual contact with a 16 year old is abuse in each and every case. If the age limit is set too high the law easily can come into conflict with the need of adolescents to sexual liberty and it could easily turn from a mean of protection to a threat itself for the sexual self-determination of juveniles. So legislators have to find a reasonable and fair balance between the need of adolescents to protection from unwanted sex and their equally needed freedom to engage into self-determined sexual relationships.

Aware of the problems most jurisdictions have developed a multistage system consisting of 3 kinds of provisions in this area:

- 1) Minimum age limits
- 2) "Seduction" provisions and
- 3) Provisions on sexual contact in relations of authority

This multistage system reduces the protection with the decreasing need to protection and the increasing capacity to self-determination.⁴ A majority of jurisdictions stick to this multi-stage system. Only a minority to a single-stage system, which sets only one single minimum age limit. Below this limit all sexual contact is illegal; so once youths have reached this age limit they are treated the same way as adults. This system we can see mainly in the common-law countries and the jurisdictions on the territory of the former Soviet-Union.

It is this division into a multi-stage and a single-stage system of youth protection which makes many differences between the several countries understandable.

II. Minimum Age Limits

Minimum age provisions are provisions which generally declare sexual contact of and with persons under a certain age criminal.

Such minimum age limits are an invention of the past 200-300 years. The time before individual biological sexual maturity was the decisive factor. Sexual contact with immature children – consensual or not – always has been punished under the offences against (sexual) violence but consensual (heterosexual) relations with mature adolescents have been legal. With the exception of England & Wales⁵ and the German state of Saxony⁶ a fix minimum age has not been introduced before the 18th/19th century. This limits have been set very low, around the age of 10 to 12. In the 1920s the age limit in most European states still have been at 12 or 13 (as was the case with for instance Denmark, France, Finland, Greece, Ireland⁷, Italy, Spain, UK⁸ and in 11 Swiss cantons). The same is true for the US and Australia, where the age limits have been raised only as late as in the 50s, 60s or 70s of 20th century. In South Africa it was even 1988 when the age limit for sexual relations between women and boys has been raised from 7 (!) to 16 (and the one for lesbians from 12 to 19). In the beginning the minimum age limits just covered vaginal intercourse with girls. Only later these offences have been extended to cover (heterosexual) relations with boys as well. Girls traditionally have been seen more vulnerable than boys. Behind this historical background it is understandable why Estonia, Cyprus and Scotland have different age limits for girls and for boys (as you can see on Table I).

Today all states in Europe and all of the studied jurisdictions overseas do have minimum age limits (you can see on Tables I & VIII). When "no limit" is indicated on the table it must be said that in these countries there is no age limit only at first sight. If you study the respective jurisdictions you can see that in all these states there are age limits, just for some kinds of sexual conduct there are none. For such conduct individual capacity to give informed consent is the decisive factor or “depravation”, and the courts often look to the explicitly established limits for the other kinds of contact in determining if such a capacity is already given or if the conduct did “deprave”. So the explicitly set limit (for some kinds of contact) is used analogously (for the other kinds of contact for

which there is no expressed limit on the books). In addition in some of the jurisdictions on the territory of the former Soviet Union the law enshrines the criterion "individual sexual maturity"; the courts however elaborated the rule that it is irrebuttably presumed that under 14 everyone is immature. So the minimum age in these countries in fact is at 14, since adolescents over 14 seldom are still biologically sexually immature.

As you can see from Table I the lowest age limit is set at 12 and the highest one at 17.⁹ In most jurisdictions the limit is set at 14, 15 or 16. When we look in how many states consensual sexual relations (without "seduction" and out of a relationship of authority) are legal in a certain age-group we come to the following result:

14	46% (27 – 59)
15	68% (40 – 59)
16	98% (58 – 59)

So about 1/2 of the jurisdictions do not generally criminalize consensual sexual relations with 14 year olds. And more than 2/3 do not with 15 year olds. Only a minority established a general age limit of 16 and just one jurisdiction in Europe a higher one (namely Northern Ireland with 17).

When we have a look which countries fixed the limit at 16 and which ones lower we are confronted with the two systems mentioned in the beginning. As you can see from Table I the jurisdictions which established the age at 16 in most cases have a single-stage system (common-law countries, Belgium, Luxemburg, Latvia, Moldova). They do not have special provisions on authority-relations. So their general minimum age limit has to be valid for these – more problematic – relations as well. Once a juvenile has reached the age limit in these countries he is put on the same footing with adults, he enjoys no special protection against the misuse of authority. That's why in these countries the minimum age limit has to be higher than in countries with a multi-stage system. Besides this there are a few countries with a multi-stage system and nevertheless an age limit of 16. The characteristics of these is however that they allow for extensive screening, so that the law need not be and is not enforced in each and a very case (that is so in the NL - where about 2/3 of the cases

are dropped -, Andorra, Finland and Norway). So jurisdictions with an age limit of 16 either established a single-stage system or allow for extensive screening or both.¹⁰

Nearly all states allow for **screening** out of cases which do not require prosecution and punishment. That means that either authorities have a power of discretion not to instigate proceedings and to judge each case on its merits or that criminal proceedings can only be instituted upon a complaint by the juvenile or his/her legal guardian. Remarkably those jurisdictions without any possibility to screen out cases did set the age limit low, in most cases at 14 (as you can from Table I), and countries with an age limit of 16 do grant wide-ranging possibilities for screening.¹¹ The only exception is Switzerland which combines an age limit of 16 with the principle of legality¹² and proceedings (always) *ex officio*.¹³ No other state has a legislation as strict as this.

In some countries (as for instance Germany, Austria, Switzerland) the minimum age limit covers also (non-public) sexual acts in front of children and youths (**private exhibition**) and **incitement to masturbation**. Most jurisdictions however do not have such offenses. Private exhibition is not criminal in 2/3 of the European jurisdictions and incitement to masturbation not in 80%.¹⁴ Recently Portugal (1995) and Italy (1996) decriminalized incitement of children and youths (under 16) to masturbation.

Error about the age (if honest, not negligent) removes liability in nearly all European countries, with the only exceptions of the UK, Ireland, Italy and Norway. In the majority of jurisdictions also negligent error removes liability; *mens rea* (criminal intent) is afforded.

The **penalties** established are very diverse. They reach from 2 years in the UK (for vaginal intercourse with a girl between 13 and 16) to 21 years in Norway.

III. Homosexual Relations

As we turn to homosexual relations we can establish a clear international trend towards equality of lesbians and gay men. The European Court of Human Rights repeatedly ruled that a total ban on homosexual behaviour violates the European Convention on Human Rights, that also when more

than two persons are involved,¹⁵ and in 1997 the now defunct European Commission on Human Rights held that a higher minimum age limit for homosexual conduct than for heterosexual violates the European Convention on Human Rights (Art. 8 & 14).¹⁶ The Commission rejected the arguments put forward in favor of a special age limit. It stated that current medical opinion is to the effect that sexual orientation is fixed in both sexes before the age of puberty¹⁷, that the risk posed by predatory older men would appear to be as serious whether the victim is a man or woman and it denied that „society’s claimed entitlement to indicate disapproval of homosexual conduct and its preference for a heterosexual lifestyle ... could in any event constitute an objective and reasonable justification for inequality of treatment under the criminal law“¹⁸. Last year the Court of Human Rights declared admissible three application concerning such special age limits. A judgment by the Court is expected for later this year.

Also the United Nations Human Rights Committee held that a total ban on homosexual behavior violates the fundamental right to privacy (*Toonen v. Commonwealth of Australia* 1994). And in its concluding observations on the report of Austria under the International Covenant on Civil and Political Rights (ICCPR) the Committee declared higher age limits for homosexual conduct, as compared to heterosexual, as violating international human rights law and called on Austria to repeal its respective law: (quote) “The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions” (Human Rights Committee 1998, par. 13).¹⁹

The World Health Organisation (WHO) deleted homosexuality from its International Classification of Diseases (ICD) in 1993.

The parliamentary bodies of the Organisation for Security and Cooperation in Europe (OSCE)²⁰, the Council of Europe (COE) and the European Union (EU) all demanded to end discrimination of homosexuals with the COE- and EU-bodies calling on their member states to fully equalize homo- and bisexuals with heterosexuals before the law.²¹ More and more states not only have repealed special offences against homosexual conduct but even further have enacted anti-discrimination laws, outlawing discrimination of homo- and bisexuals,²² and legally recognized same-sex partnerships (cf. for extensive survey in Graupner 1998a, 1998c, 1999a). The Scandinavian

countries (Denmark; Greenland; Norway; Sweden; Iceland, Finland) and Germany even introduced de facto (not de iure) marriage of same-sex couples, so-called "registered partnership, (cf. for details in Graupner 1998a, 1998c, 1999a). The Netherlands in 2001 opened up civil marriage and more and more jurisdictions now also do allow for joint adoption by same-sex couples. The European Parliament repeatedly declared that it will not allow the accession of states to the European Union which in their legislation discriminate against lesbians and gay men (European Parliament 1998b).

In our field 2/3 of the jurisdictions in Europe today set equal age limits (as you can see on see table 2).^{23 24} In addition most of the countries with unequal limits are states from the former Communist bloc. In the Eastern bloc only Poland (since 1932), the GDR (since 1988) and Slovenia (since 1977) treated homo- and heterosexuality equally in their criminal law. All the other states had special provisions against homosexual conduct, often a total ban. Disintegration of the Communist bloc has been the starting point for a remarkably rapid development towards equality and decriminalization in these countries. So the picture given in Table II. in some way just reflects a snapshot of this development. Lithuania and Estonia for instance already have passed new Criminal Codes with equal age limits, which just have not entered into force yet.

Among the member states of the COE a vast majority (33 out of 44) has set equal age limits and only 2 of the 15 EU-states (Ireland and Portugal²⁵) still have a higher age limit for homosexual conduct.

IV. Seduction

As we turn to the second kind of provisions. We can see that most jurisdictions don't have a provision on "seduction" of youths (as you can see on Table III). The states which do have mostly set lower minimum age limits: at 12, 14 or 15. Just three states combine an age limit of 16 with an additional provision on "seduction" (Andorra, Finland and the NL). As can be seen from table III. in most jurisdictions the offense is restricted to certain forms of "seduction", certain means are afforded.

Generally we can speak of two types of "seduction-provisions", an older one and a more modern type. The older type covers all kinds of "seduction", regardless of the means employed (see Greece, Iceland, Germany before 1994). Under such laws each sexual contact with an adolescent is rendered criminal if the older partner has taken the initiative to the contact. Relations however are complex and in most cases it is not clearly discernible who took the initiative to which sexual contact. Moreover the quality of a relationship does not really depend on who started the initiative to a contact. So those general seduction-provisions emphasizing just on who took the initiative often lead to a "moralizing" case-law that protects more traditional moral norms than self-determination and autonomy of young people. "Seduction"-provisions which focus on the mean "false promise of marriage" also belong to this type of offenses.

The more modern type of "seduction"-provisions is restricted to certain constellations and certain kinds of behaviour. This type of offences aims to protect adolescents over the general age limit against certain inferences with their sexual self-determination. Inferences which do not reach the intensity needed for the enforcement of the offenses on sexual violence. An example for this more modern type of seduction provisions is the German law with its three constellations "*practising on a position of constraint*", "*against remuneration*" and "*practising on lacking capacity to sexual self-determination*" (Art. 182 CC).²⁶

Also this law of the modern type however mainly is based on the convictions of lawyers. During the hearings in both chambers of the German parliament experts of all other areas of science (physicians, psychologists, psychotherapists, criminologists, sexologists and social workers) did oppose the law. They expressed the opinion that in the case of adolescents over 14 years of age the law can not contribute to the solution of the problems involved and they expressed the fear that the law would do more harm than good to the adolescents involved. While the lawyers focused on the „immaturity“ of 14 and 15 year old adolescents and their need for protection against undue influences, the other experts pointed out that adolescents of 14 and over generally are sufficiently able to cope with such influences and emphasized their right to sexual self-determination. They took the view that this age group requires protection of the criminal law only against the use of force and coercion and against misuse of a relationship of authority and they feared that criminalization beyond that would endanger the sexual self-determination of adolescents. While they acknowledged that problematic situations could occur which bear the potential of leading to

negative experiences they were of the opinion that neither does the (attempted) eradication of all negative experiences further a positive psychosexual development nor are the criminal law and criminal investigations apposite means to solve the problems connected with such problematic situations.

The non-legal experts did accept the concerns of the lawyers but they pointed out that the criminal law, as being not only the strongest but also the uncouthiest weapon of the state, would not be suited to solve the problems and to enable adolescents to a self-determined sexual life; instead the employment of the criminal law would create serious problems and dangers for the youths it intends to protect.²⁷ In reaction to this opposition by the non-legal experts heard by parliament, somewhat as a compromise a clause has been included into the law obliging the courts to drop a case if the wrong-doing was minor, whereby special consideration should be given to the behavior of the younger partner (Art. 182 par. 4 CC). This clause according to the case-law primarily is applied when the younger one starts the initiative or when he/she readily agrees to the initiative.²⁸ Moreover prosecution based on the alternative „practising on lacking capacity to sexual self-determination“ (Art. 182 par. 2 CC) has been bound to a complaint by the legal guardian of the juvenile.²⁹ Also in Austria recently a similar provision could only be passed against considerable resistance from experts, youth organisations and the public at large.

Table III. does not supply information, from which age onwards a minor can legally consent to "seduction"; since also in states which do not have special provisions on seduction, seduction of course can be prosecuted under the minimum age provisions, which do cover all sexual contacts, regardless of the means employed. Table IV shows in how many states consensual sexual relations (with "seduction" but out of a relationship of authority) are legal in a certain age-group (see table IV):

14	39% (23 – 59)
15	56% (33 – 59)
16	88% (52 – 59)

So in almost 1/2 of the jurisdictions a 14 year old can legally consent to "seduction"; and in a majority a 15 year old can. The countries which do allow this as of 16 only again are those with a single-stage system or with extensive possibilities to screen out.^{30 31}

V. Relations of Authority

As we turn to the third kind of offences, we can see that most jurisdictions do have special higher age limits for contact within relations of authority (look at table V); mainly those with a minimum age limit of under 16. Only a minority does not have such provisions; e.g. mainly common-law countries and former soviet-union-jurisdictions. In most jurisdictions it does not suffice that a relationship of authority exists but it is afforded that the authority is misused in order to gain consent to the sexual contact. With one regular exception: contacts between ascendants and their descendents always are criminal regardless if authority has been misused or not. Therefore two different situations must be separated:

a) *Authority has not been misused* (for instance a love relationship between a student and his/her teacher)

On table VI you see in how many states such relations are legal in a certain age-group (see table VI):

14 37% (22 – 59)

15 53% (31 – 59)

16 83% (49 – 59)

(This table does not cover sexual relations between ascendants and their descendents!)

b) *Authority has been misused* (but the misuse does not arise to intimidation, coercion or force covered by the offences on sexual violence)

Table VII shows in how many states such relations are no criminal offence in a certain age-group (see table VII):

14 17% (10 – 59)

15 25% (15 – 59)

16 47% (28 – 59)

18 95% (56 – 59)

(This table does not cover sexual relations between ascendants and their descendents!)

Accordingly if authority has been misused the age limit mostly is set at 16 or 18, and if it is not misused at 14, 15 or 16.

VI. Overseas³²

Table VIII gives you an overview of the situation outside of Europe. Remarkably common-law countries (or countries having been under their influence) set the age limit in most cases at 16 and sometimes even today they still do have a total ban on homosexuality or on certain kinds of sexual contact; or a special higher age limit for certain sexual practices.

Countries with French or Spanish influence or which never have been a colony in most cases set the minimum age low, with the notable exception of countries which have been a prime target of Western sex tourism: Thailand raised from 13 to 15 in 1987 and in 1996 (for contacts „in the place of prostitution“) to 18; and the Philippines, while letting the minimum age at 12, passed a law criminalizing sexual contact with under 18 year olds, if the contact occurred for money, gift or any other consideration or due to any influence of an adult. Apart from these cases seduction-provisions however are very rare outside of Europe.

In the USA legislation in our field is up to the several states. The various states did establish very divergent regulations and there are minimum age limits from 14 up to even 18 in some states. It is striking that in the US the age limits go a lot higher than in the rest of the world.³³ A specialty of the US-system is that many states have established different age limits for different kinds of sexual practices (vaginal, anal, oral intercourse, mutual masturbation etc.)³⁴ often combined with different limits for different age breaks between the partners. This leads to very complex legal situations which hardly can be understood by ordinary people without the help of a specialized lawyer.

There is only one Federal Law in our field.³⁵ In 1994 a provision has been introduced against sextourism into the Federal Criminal Code. This law is worded in a way that can produce obscure results. The law makes it an offence to travel in interstate or international commerce with the intent to engage in sexual contact with someone under 16 (§§ 2423, 2243 Federal Criminal Code). The minimum age limit is set at 14 in Puerto Rico for instance. A couple consisting of a 15 and a 21 year old therefore can legally have sex there. But when both travel to another U.S.-state or to another country their relation becomes a criminal offence and the older partner is liable to imprisonment of up to 10 years, even if the relation also is legal in the other U.S.-state (e.g. Florida) or in the other country (e.g. Canada).

In Europe in the recent years several countries (Austria³⁶, Belgium, Finland³⁷, Germany³⁸, France³⁹ and Norway⁴⁰) have passed legislation making their citizens liable to prosecution under their laws on sexual minimum age regardless where the contact occurred, even when the contact has been completely legal in the country where it occurred.⁴¹ These laws also can produce obscure situations. A 19 year old Belgian for instance who travels to Spain and there has sex with his 15 year old Spanish summer-love commits a criminal offense (under Belgian law). But he is the only one who does so. All the other people making holidays there, from Britain, Italy, Denmark or elsewhere, could legally engage in a relation with the 15 year old without getting a problem when returning home. While in Germany and Austria the respective laws address only the citizens of their countries going abroad,⁴² Belgium criminalizes everyone who is caught on its territory.⁴³ As a result for example a 20 year old German (or Austrian, French etc.) can be prosecuted in Belgium for sexual relations with his 15 year old girl friend in his homecountry, which are legal there. In the UK such a law-project has been rejected.⁴⁴ The Council of the European Union recommended to introduce the principle of extraterritoriality but expressly left it open to the member states to bind prosecution on the requirement that an act constitutes a criminal offence in the country itself and abroad (Council of the European Union 1998, 4). The Council of Europe did the same, also leaving it open to the member states to afford double punishability.

VII. Governmental Expert Commissions

National governments frequently appointed expert commissions to scrutinize the law on sexual offences and to make recommendations.

Most of these commissions in Europe recommended a **minimum age** limit of 14;⁴⁵ the Dutch „Melai-Commission“ even of 12.⁴⁶ Also the experts heard by both chambers of the German parliament and by the Austrian parliament favoured an age limit of 14.⁴⁷ Three commissions suggested 15⁴⁸ and only one 16⁴⁹. Nearly all of them called for effective **screening** of cases where criminal proceedings would do more harm than good to the child and made concrete proposals in this respect (as a necessity of a complaint, power of discretion for prosecution authorities and the courts, power for the victim to veto criminal proceedings etc.) (Graupner 1995, 2, 26ff; 1997b, Vol. 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.⁵⁰ Most of the European commissions proposed the not to criminalize „seduction“ over the age of 14.⁵¹ Three set this limit at 15⁵² and one at 16⁵³. 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.⁵⁴ The non-legal experts heard by both chambers of the German parliament opposed „seduction“-provisions (see above).⁵⁵

Since the late sixties only one of the European commissions proposed a special (higher) age limit for **homosexual contacts**.⁵⁶ All other commissions advocated uniform provisions.⁵⁷ The same is true for almost all of the experts heard by the German parliament⁵⁸ and by the Austrian parliament⁵⁹.

The European commissions did not find to uniform conclusions in the area of **relations of authority**. The English *Policy Advisory Committee* (1981) and based upon its findings *the Criminal Law Revision Committee* (1984) opposed a special provision on contacts in relationships of authority. 16 and 17 year old adolescents, they argued, don't require special protection against teachers, employers, youthclub-leaders and other persons in authority over them. Disciplinary law would suffice.⁶⁰ Moreover such a law would be contradictory since the partners could even marry in this age group. The other commissions advocated a special higher age limit for relationships of authority. As age limit the Dutch *Melai-Commission* (1980) recommended 16, the *Law Reform Commission of Ireland* (1990) 17 and the *Swedish Commission on Sexual Offences* as well as the *Swiss Law Reform Commission* (1977) 18. In Germany four of the experts heard by parliament advocated 16, two 18 Deutscher Bundestag (1970).⁶¹

VIII. Summary

To sum it up, All states in Europe and all of the studied non-European jurisdictions do have minimum age limits for sexual relations, do punish sexual relations with persons under a certain age. This age nowhere is set lower than 12 years.

In Europe in nearly 1/2 of the jurisdictions consensual sexual relations with 14 year old adolescents are legal; in almost 2/3 with 15 year olds; in a majority also when the older partner has started the initiative (and also when the initiative contains an offer of remuneration). In nearly all jurisdictions such relations are legal from the age of 16 onwards.

Most states apply a higher age limit for contacts in relationships of authority. If authority is not misused this age limit in most jurisdictions is set between 14 and 16; if it is misused between 16 and 18.

Most states make no difference between homo- and heterosexual relations.

Thank you for your attention!

IX. Conclusions

It was not the intention of this presentation to provide final answers to the two questions posed at the beginning. It should rather present a factual comparative law basis for further discussion of these problems.

I however do not conceal that in applying the rules established by the European Court on Human Rights⁶² in accordance with the recommendations of most of the European governmental expert commissions on the topic and in accordance with experts from the Council of Europe (Horstkotte 1984) I am of the opinion⁶³ that sexual acts with prepuberal children should (remain to) be criminalized, that a minimum „age limit of 14 is sufficient and a higher age limit for cases of ‘seduction’ neither workable nor necessary“ (Horstkotte 1984, 198). A higher age limit for contacts in relationships of authority should be set and it should be applied, when authority is used to pressure a young person into consenting to sexual acts. An age of 16 seems to be sufficient in this respect. And „the availability of some procedural reliefs should not obscure the fact that in many cases a complete dropping of the procedure and a crisis management by medical and youth welfare services and by private persons and organizations constitute the most efficient support“ (Horstkotte 1984, 197). Screening seems indispensable and states should provide for effective remedies for that.

Finally, the law should make no differences between heterosexual and homosexual behaviour (Horstkotte 1984, 202).

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1980; (2) see Council of Europe: Sexual Behaviour and Attitudes and Their Implications for Criminal Law, Reports presented to the 15th Criminological Research Conference 1982, European Committee on Crime Problems, Strasbourg 1984; (3) see Verband von 1974: *Ein Land schafft gleiches Recht – Beitrag zur Diskussion um Paragraph 175 StGB nach amtlichen Drucksachen des Schwedischen Reichstages*, Hamburg 1979

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Notes:

¹ The information given in this paper 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 (1995, 2, 359-748; 1997b, 2, 359-748). Where information is based on sources not given there or in Graupner (2000), explicit references are given in the text here. The author attempted to be as thorough and encompassing as possible. Due to the nature of such an extensive comparative law study it is however never possible to exclude all possibilities of error, inaccuracy, misunderstanding and deficiencies concerning up-to-date information. Therefore the author referenced each information in a way to facilitate the reader's way back to the sources.

² Case X and Y vs. NL 1985

³ Also the Council of the European Union did not proscribe specific detailed offences to the member states but remained in relatively vague terms and expressly stated that the terms (as "child", "sexual abuse" or "unlawful sexual acts") used by it have to be interpreted according to the national legal systems (Council of the European Union 1997, 2f). Also the Committee of Ministers of the Council of Europe did not define the terms "child" and "young adult" used in its recommendations to the member states on the issue (Committee of Ministers 1993, 22): "for the purposes of implementing the present recommendation in member states, the terms 'child' and 'young adult' are defined in accordance with the age limits laid down in national legislation" (ibid).

⁴ The German Constitutional Court for instance hold that a minor is „from the beginning and increasing with his age (...) a personality protected by Art. 2 I of the German Constitution (the right to free development of one's personality) in connection with Art. 1 I (the right to respect for human dignity)“. His competence increases according as his ability to self-determination exceeds his need for protection. In especially a discerning minor should be able to exercise rights on his own, which are central to his personality („höchstpersönliche Rechte“) (see BVerfGE 47, 46 (74) in: NJW 1978, 807; BVerfGE in: NJW 1982, 1375 (1378)). Similarly the case-law of Austrian Supreme Court. In Switzerland even the written law itself does contain this formula. According to Art. 19 II of the Swiss Civil Code „discerning minors“ without the consent of their legal representative can exercise the „rights accorded to them on the basis of their personality“ (details in Graupner 1995, Vol. 1, 63f; 1997b, Vol. 1, 63f).

⁵ which introduced an age limit as early as 1285 (at 12 years of age)

⁶ where in 1572 a fix limit of 12 has been set for vaginal intercourse with girls.

⁷ Only for vaginal intercourse with girls the age limit was 16 (since 1885).

⁸ Only for vaginal intercourse with girls the age limit was 16 (since 1885).

⁹ In England & Wales – as a rest of the old total ban (repealed in 1994) – a higher limit of 18 applies to anal intercourse only. The same is true for the Isle of Man (21). The total ban on (heterosexual) anal intercourse is even still in force in Gibraltar, Jersey, Guernsey and in Northern Ireland. In Turkey the higher age limit (of 18) applies to anal and vaginal intercourse only.

¹⁰ The only exception being Switzerland (cf. next paragraph).

¹¹ In *England & Wales* 75% of the cases with 13 to 15 year old girls are dropped. Also with homosexual contacts most cases are dropped (Walmsley & White 1979, p. 42). In the years 1990-1992 only 9, 10 and 12 men over 21 have been prosecuted for homosexual contact with a young man under 21 (the then age of consent for homosexual conduct lowered to 18 in 1994) (House of Commons 1994, p. 102). Also in the *Netherlands* about 2/3 of the cases are dropped; moreover relations with minors over 12 can be prosecuted only upon complaint (of the adolescent, his legal representatives or the Council for Youth Protection). And as a result of extensive power of discretion granted to the prosecution authorities there have hardly been any prosecutions for sexual relations with 14 and 15 year old adolescents in *Norway* (personal communication Thore Langfeldt, World Congress for Sexology, Valencia 1997). As the *Netherlands* also *Portugal* (over 12) binds prosecution for (consensual) sexual relations with minors under the minimum age on a complaint (by the minor or his legal representative). But even some countries with an age limit lower than 16 do require a complaint: *Greece*, *Hungary* (heterosexual acts only), *Italy* (over 10), *Malta*, *San Marino*, *Spain* (also the state prosecutor can complain), *Vatican*.

¹² Principle of legality means that police authorities are obliged to investigate, prosecutors to prosecute and courts to convict in each and every case. No power of discretion is attributed to them.

¹³ Proceedings ex officio means that prosecution can take place without complaint or consent of the victim, its legal representative or a certain institution or organisation.

¹⁴ Recently *Portugal* (1995) and *Italy* (1996) decriminalized incitement of children and youths (under 16) to masturbation.

¹⁵ Case *Dudgeon v. UK* 1981; *Norris v. Ireland* 1988; *Modinos v. Cyprus* 1989

¹⁶ Case *Euan Sutherland v. UK* (appl. 25186/94, report 01.07.97)

¹⁷ *Euan Sutherland v. UK* (par. 59, 64)

¹⁸ *Euan Sutherland v. UK* (par. 64f)

¹⁹ Already the study of Fernand-Laurent (1988) on behalf of the UN-Commission on Human Rights (elaborated by appointment of the Economic and Social Council) called for an end of discrimination of homosexuals and for equal age of limits for homo- and heterosexual contact.

²⁰ former Conference for Security and Cooperation in Europe (CSCE)

²¹ For details cf. Graupner, 1995, Vol. 1, 433ff; 1997b, Vol. 1, 433ff), European Parliament (1997, 1998a, 1998b, 1998c)

²² Norway (1981), France (1985, 1986), Denmark (1986), Sweden (1987), Ireland (1989), the Netherlands (1992, 1994), Austria (1993), Slovenia (1995), Spain (1995), Luxemburg (1997). South-Africa (1994, 1996), Ecuador (1998) and Fiji (1998) even enshrined the principle of non-discrimination on the basis of "sexual orientation" in their national constitutions. For other examples outside of Europe and for sources cf. the extensive survey in Graupner (1998a, 1998c, 1999a).

²³ All countries which took over the french Code Napoléon or which oriented their criminal law after it, repealed the ban on homosexuality during the 19th century. Homosexuality has not been mentioned in the criminal law anymore, homo- and heterosexual relations were treated equally. Special offences - as there are higher minimum age limits, bans on homosexual prostitution only or higher penalties in the case of homosexual acts in a public place - did not exist. The (uniform) age limits have been set very low, between 12 and 14 in most states. Some countries in the beginning even had no fixed limit. The countries however which did not come under the influence of the Code Napoléon kept the total ban on homosexuality up to the 20th century. Decriminalization in the 19th century has been confined to the Romanic jurisdictions. But also there discriminatory regulations have been reintroduced, in most cases higher age limits for homosexual relations (for some time). Italy and Turkey have been the only countries in Europe which decriminalized homosexuality in the 19th century and ever since have been treating homosexual relations equally under its criminal legislation. But only Portugal (1912-1945), Spain (1928-1934), Serbia (1929-1994) and Romania (1948-1996) (and the Soviet Union 1934-1993 (year when Russia abolished the law; the Ukraine did 1991, Estonia 1992, Latvia 1992, Lithuania 1993, Belarus in 1994, Moldova 1995)) reintroduced the total ban on homosexuality (cf. for details Graupner 1997b, 1998a).

²⁴ In the case of seduction-provisions only two (Färöer, Greece) jurisdiction(s) do establish differences concerning minors (see Table III.). Bulgaria, Cyprus and Romania have general discriminatory provisions in this area (ibid).

²⁵ Portugal repealed all special laws against homosexual behaviour in 1982 and since 1945 established an equal age limit of 16. The current inequality results from a lowering of the minimum age limit in 1995 for heterosexual contact only (from 16 to 14). The following inequality between hetero- and homosexual contacts has been criticized in the literature (Pizarro Belezza 1996, 27).

²⁶ cf. also the similar provisions in Finland, Italy and Portugal

²⁷ Cf. Deutscher Bundesrat (1992), Deutscher Bundestag (1993), Graupner (1995, Vol. 1, 361-408; 1997b, Vol. 1, 361-408)

²⁸ Case-law of the German Supreme Court („Bundesgerichtshof“) on the identical Art. 174 par. 4 CC and the former Art. 175 par. 4 CC. In interpreting Art. 182 par. 4 CC the Federal Court sticks to this case-law (cf. BGH 06.04.1995, 1 StR 82/95).

²⁹ This complaint has to be made within three months after knowledge of deed and perpetrator (Art. 77b CC). The public prosecutor is entitled to prosecution only if due to an outstanding public interest in prosecution he deems prosecution necessary (Art. 182 CC). BGH 06.04.1995, 1 StR 82/95

³⁰ See the *Netherlands* where 80-90% of the cases (of seduction of 16 and 17 year old adolescents) are dropped. Many of these countries also bind prosecution upon a complaint (by the adolescent or his legal representative): *Germany* (for the alternative „practicing on lacking ability to sexual self-determination“, Art. 182 par. 2 CC), *Monaco* (girls over 15), the *Netherlands* (over 12; as soon as the minor is 16 even just he himself can complain, legal representatives can do so for minors under 16 only), *Portugal* (over 12), *Spain* (also the state prosecutor can complain). Also the offence of seduction by a false promise of marriage (which has not been considered for this calculation, see table IV/FN 1) in the successor states of the *former Yugoslavia*, in *San Marino* and in *Turkey* can be prosecuted on the basis of a complaint (by the minor or his legal representative) only. The same is true for the offences of „corruption of minors“ in *Malta* and the *Vatican* (see table IV/FN 1).

³¹ Switzerland and Iceland are the only countries which do allow legally effective consent into „seduction“ from the age of 16 only and do establish a multistage system and do not allow for extensive screening.

³² See table VIII

³³ Wyoming set the minimum age limit even as high as 19. Just one of the jurisdictions studied worldwide does establish a higher one: Chile, where the limit is 20. The most restrictive legislation the author found was Canadian legislation between the years 1955 and 1969: homosexual but also heterosexual "gross indecency" (potentially all kinds of sexual contact) has been a criminal offense regardless of the age of the partners. In 1969 the offense has slightly been modified: if not more than two persons were present and the partners were married or both above 21 years of age. In 1988 this law has been abolished (for details cf. Graupner 1997b, 334/46).

³⁴ With the exception of total bans on (certain) homosexual acts in some US-states (see table VIII) homosexual contacts are subject to the same regulations as heterosexual ones. Homosexual conduct (or some kinds of) therefore either is totally illegal or subject to the same regulations. Unequal laws for the protection of youths (as different age limits) for hetero- and homosexual contacts are not known in the US-law.

³⁵ Besides the provisions on "child"-pornography. These render all visual depiction of sexual acts by and with persons under 18 years of age criminal. Also visual depictions representing "laszivious exposure" of the "genitals or the pubic area" of a person under 18, even if this person is fully clothed and when the outlines of these areas are not discernible through clothing (§§ 2251-2256 Federal Criminal Code; Confirmation of Intent of Congress in Enacting Section 2252 and 2256. Section 160003 of Pub.L. 103-322). *Canada* passed a similar law in 1993 (ch. 46, 40-41-42 Elizabeth II.23.06.1993). In Europe *only Estonia, France, Germany, Italy, Latvia, Spain and Sweden* have an age limit for taking part in pornographic performances that is higher than the general age-limit (as far as the criminal law is concerned).

³⁶ Art. 64 CC. This regulation applies to the general age limit of 14 only, not to the higher minimum age for homosexual relations (18 years).

³⁷ Chapter 1 § 11 CC

³⁸ In 1998 Germany extended this principle of extraterritoriality also to its seduction-provision (Art. 182 CC) (cf. IV above and Table III.) (Art. 1 lit. 2b 6th Criminal Law Reform Act 1998).

³⁹ Art. 227-27-1 CP

⁴⁰ For sexual contacts with persons under 14.

⁴¹ This is of importance since these countries as a principle do confine the absolute application of their criminal law to offences on their territory. The question does not arise in countries, which bound their citizens to their criminal law wherever they are and irrespective of the law of the country where the offence occurs (for example the Netherlands, Italy, Poland, the Czech Republic). For Italy see also Art. 604 CP, as amended by law 02.08.1998 (no. 269), in relation to Art. 4ff CP.

⁴² France applies its law to its citizens and to foreigners permanently residing in France

⁴³ Also Norway applies its respective laws such extensively. But for the prosecution of an offence committed by a non-resident foreigner abroad a decision by the king is afforded.

⁴⁴ Traditionally the UK restricted the power of its jurisdiction to actions within its own territory. Sexual conduct outside the Kingdom did not fulfill an offence triable by British courts even if the conduct was an offence both at home and abroad. In 1997 the British parliament passed a law however making also (certain) sexual offences (against persons under 16) abroad triable by its courts. But as a requirement the conduct can only be prosecuted in the UK if it is an offence both in the UK and abroad (s. 7 & 8 Sex Offenders Act 1997).

⁴⁵ Schweizer Expertenkommission (1977), Swedish Commission on Sexual Offences (1976), Danish Council on the Criminal Law (1975), Bundesministerium für Justiz (1956-1962)

⁴⁶ Niederländische Strafrechtsreformkommission (Melai-Kommission) 1980

⁴⁷ Deutscher Bundesrat (1992), Deutscher Bundestag (1993); Österreichischer Nationalrat (1995)

⁴⁸ 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 minimum 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).

⁴⁹ Policy Advisory Committee on Sexual Offences 1981 (and just adopting its recommendations the Criminal Law Revision Committee 1984)

⁵⁰ Niederländische Strafrechtsreformkommission (Melai-Kommission) 1980

⁵¹ Schweizer Expertenkommission (1977), Swedish Commission on Sexual Offences (1976), Danish Council on the Criminal Law (1975), Bundesministerium für Justiz (1956-1962)

⁵² The Norwegian Criminal Law Commission 1997 (Justis- og politiedepartementet 1997); The Finnish Criminal Law Commission 1993 (Oikeusministeriön 1993); The Law Reform Commission of Ireland 1990 (only for vaginal and anal (not oral) penetration of (not by) adolescents it recommended an age limit of 17)

⁵³ Policy Advisory Committee on Sexual Offences 1981 (and just adopting its recommendations the Criminal Law Revision Committee 1984)

⁵⁴ Swedish Commission on Sexual Offences (1976)

⁵⁵ Deutscher Bundesrat (1992), Deutscher Bundestag (1993)

⁵⁶ Policy Advisory Committee on Sexual Offences 1981 (and just adopting its recommendations the Criminal Law Revision Committee 1984)

⁵⁷ The Norwegian Criminal Law Commission 1997 (Justis- og politiedepartementet 1997); The Finnish Criminal Law Commission 1993 (Oikeusministeriön 1993); 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)

⁵⁸ Deutscher Bundesrat (1992), Deutscher Bundestag (1973, 1990, 1993)

⁵⁹ Österreichischer Nationalrat (1995)

⁶⁰ June 1998 the House of Commons (by 234:194) rejected a motion to introduce an age-limit of 18 for relationships of authority (Stonewall 1998)

⁶¹ cf. Graupner (1995, Vol. 1, 596; 1997b, Vol. 1, 596)

⁶² See Introduction. So far the European Court on Human Rights never had to use this test to give a final ruling on an age of consent regulation. In the only case in which it had to deal with an age of consent issue, in the end – for formal reasons – it refused to decide the question (*Dudgeon vs. UK* 1981, §§ 62, 66). The European Commission on Human Rights, however, repeatedly did decide age of consent issues. All but one of these cases concerned special higher age limits for male homosexual relations (cf. the section on “Homosexual Relations” above). In the only case dealing with a general minimum age limit the Commission upheld a limit of 14 years (*M.K. vs. Austria* 1997). In all these decisions, however, the Commission merely referred to the necessity to protect the young without giving any special reasoning; i.e. not in detail referring to or applying the principles for review elaborated in its and the case-law of the Court. According to protocol No. 11 to the European Convention on Human Rights as of 1st November 1998 the Commission and the Court both have been replaced by a new and permanent European Court on Human Rights.

⁶³ For a detailed reasoning see Graupner (1997b, 1999b)

Minimum Age Limits for Sexual Relations (Europe)

I.: No Minimum Age Limits

*Estonia*¹

CIS²: Belarus

Moldova

Ukraine

Cyprus³

Finland⁴

France⁵

Guernsey⁶

Latvia⁷

Lithuania⁸

II.: Minimum Age Limits - screening possible⁹

	MA Mf	MA Fm
Albania	14	14
Andorra	16	16
Armenia	16	16
Azerbaijan	16	16
Belgium	16	16
Bosnia-Herzegovina	14	14
Bulgaria	14	14
CIS:		
Belarus	--/MT ¹⁰	--/MT ¹³
Georgia	16	16
Moldova	--/16 ¹¹	--/16 ¹⁴
Russian Federation	14	14
Ukraine	--/MT ¹²	--/MT ¹⁵
Croatia	14	14
Cyprus	--/13/16 ¹⁶	--/13 ¹⁷
Czechia	15	15
Denmark	15/18 ¹⁸	15/18 ¹⁹
Estonia	--/14 ²⁰ (14) ²¹	-- ²² (14) ²³
Färöer	15	15

Finland	--/16 ²⁴	--/16 ²⁵
FR Jugoslavia:		
(Cosovo	14	14)
Montenegro	14	14
Serbia	14	14
(Vojvodina	14	14)
France	--/15 ²⁶	--/15 ²⁷
Germany	14	14
Gibraltar	16 ²⁸	16 ²⁹
Greece	15	15
Greenland	15	15
Guernsey	16 ³⁰	16 ³¹
Hungary	14	14
Ireland	15/17 ³²	15/17 ³³
Isle of Man	16/21 ³⁴	16/21 ³⁵
Italy	13/14 ³⁶	13/14 ³⁷
Jersey	16 ³⁸	16 ³⁹
Latvia	--/14/16 ⁴⁰	--/14/16 ⁴¹
Lithuania	--/MT ⁴²	--/MT ⁴³
Luxembourg	16	16
Macedonia	14	14
Malta	12	12
Monaco	15	15
Netherlands	16	16
Norway	16	16
Poland	15	15
Portugal	14	14
Romania	15	15
San Marino	14	14
Slovakia	15	15
Slovenia	14	14
Spain	12	12
Sweden	15	15
UK:		
E & W	16	16
Northern Ireland	17 ⁴⁴	17 ⁴⁵
Scotland	16	MT
Vatican	12	12

III. Minimum Age Limits - no screening possible

	MA Mf	MA Fm
Austria	12/13/14 ⁴⁶	12/13/14 ⁴⁷
Iceland	12/14 ⁴⁸	12/14
Liechtenstein	14 ⁴⁹	14 ⁵⁰
Switzerland	16 ⁵¹	16 ⁵²
Turkey	15/18 ⁵³	15/18 ⁵⁴

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

Notes:

¹ In Estonia a minimum age limit exists for vaginal intercourse with girls only. There is no age limit for all other sexual relations. Such relations (up to the age of 16) however can be prosecuted if considered “depraving acts”. Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).

² These countries set an age limit for certain sexual contacts only (mostly for vaginal, anal and oral intercourse). There is no fix age limit for other kinds of sexual contact. Such contacts (up to a certain age) however can be prosecuted if considered “depraving acts” (cf II. below).

³ In Cyprus an age limits exists for vaginal intercourse with girls (16) and for anal intercourse (with boys and girls) only. For other sexual contacts individual capacity to give informed consent is decisive.

⁴ The limit for sexual penetration (which is penetration by a sexual organ or directed at a sexual organ, Chapter 20 § 10 CC as amended by law EV 60/1998vp) is set at 16 (Ch. 20 § 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 § 6 CC as amended 1998). There is no fix minimum age for such sexual contacts not considered being “conducive to impairing his/her development”.

⁵ The age limit (of 15) applies to partners over 18 only. Persons under 18 having sexual contacts with other persons under 18 are not covered.

⁶ Express minimum age limit for vaginal intercourse with girls only.

⁷ There is no express age limit for sexual contacts not “imitating natural” sexual intercourse (as mutual masturbation, touching etc.). Such contacts can however be prosecuted, if considered “depraving”, when the young person is under 14 or his/her partner is over 18 (Art. 162 CC).

⁸ In Lithuania a minimum age limit exists for vaginal, anal and oral intercourse only. There is no fix age limit for other kinds of sexual contact. Such acts (up to 16) however can be prosecuted if considered depraving.

⁹ 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).

¹⁰ For “sexual intercourse” (presumably vaginal, anal, oral sex) (with persons of 16 or older) the limit is individual biological maturity. For sexual contacts not deemed to constitute “sexual intercourse” (with persons of 16 or older) there is no fix age limit. Such contacts (up to the age of 18) however can be prosecuted if deemed “depraving acts”. (Persons under 16 can never be prosecuted under these offences).

¹¹ For “sexual intercourse” (presumably vaginal, anal, oral sex) the limit is individual biological maturity. For sexual contacts not deemed to constitute “sexual intercourse” there is no fix age limit. Such contacts (up to the age 16) however can be prosecuted if deemed “depraving acts”.

¹² For “sexual intercourse” (presumably vaginal, anal, oral sex) with persons of 16 or older the limit is individual biological maturity (Art. 120 CC). For “sexual intercourse” with persons younger than 16 and for sexual contacts not deemed to constitute “sexual intercourse” there is no fix age limit. These contacts, if committed by a person of 16 or over, however can be prosecuted if deemed “depraving acts” (Art. 121 CC) (Ministry of Justice 1997).

¹³ For “sexual intercourse” (presumably vaginal, anal, oral sex) (with persons of 16 or older) the limit is individual biological maturity. For sexual contacts not deemed to constitute “sexual intercourse” (with persons of 16 or older) there is no fix age limit. Such contacts (up to the age 18) however can be prosecuted if deemed “depraving acts”. (Persons under 16 can never be prosecuted under these offences).

¹⁴ For “sexual intercourse” (presumably vaginal, anal, oral sex) the limit is individual biological maturity. For sexual contacts not deemed to constitute “sexual intercourse” there is no fix age limit. Such contacts (up to the age 16) however can be prosecuted if deemed “depraving acts”.

¹⁵ For “sexual intercourse” (presumably vaginal, anal, oral sex) with persons of 16 or older the limit is individual biological maturity (Art. 120 CC). For “sexual intercourse” with persons younger than 16 and for sexual contacts not deemed to constitute “sexual intercourse” there is no fix age limit. These contacts, if committed by a person of 16 or over, however can be prosecuted if deemed “depraving acts” (Art. 121 CC) (Ministry of Justice 1997).

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

¹⁷ In Cyprus an age limit exists for vaginal intercourse with girls (16) and for anal intercourse (with boys and girls) (13) only.

- ¹⁸ The age-limit of 18 applies only to persons, who fully or in part make a living through prostitution (Art. 223a CC). Contacts with such persons under 18 are completely illegal, even if non-commercial and not related to prostitution.
- ¹⁹ The age-limit of 18 applies only to persons, who fully or in part make a living through prostitution (Art. 223a CC). Contacts with such persons under 18 are completely illegal, even if non-commercial and not related to prostitution.
- ²⁰ In Estonia a minimum age limit exists for vaginal intercourse with girls only. There is no age limit for all other sexual relations. Such relations (up to the age of 16) however can be prosecuted if considered “depraving acts”.
- ²¹ Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).
- ²² In Estonia a minimum age limit exists for vaginal intercourse with girls only. There is no age limit for all other sexual relations. Such relations (up to the age of 16) however can be prosecuted if considered “depraving acts”.
- ²³ Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).
- ²⁴ see note 4
- ²⁵ see note 4
- ²⁶ The age limit (of 15) applies to partners over 18 only. Persons under 18 having sexual contacts with other persons under 18 are not covered.
- ²⁷ The age limit (of 15) applies to partners over 18 only. Persons under 18 having sexual contacts with other persons under 18 are not covered.
- ²⁸ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.
- ²⁹ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.
- ³⁰ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be. Express minimum age limit for vaginal intercourse with girls only.
- ³¹ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be. Express minimum age limit for vaginal intercourse with girls only.
- ³² 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.
- ³³ The limit for anal intercourse is set at 17. For other kinds of sexual contact the age limit is 15.
- ³⁴ The limit for anal intercourse is set at 21. For other kinds of sexual contact the age limit is 16.
- ³⁵ The limit for anal intercourse is set at 21. For other kinds of sexual contact the age limit is 16.
- ³⁶ The age limit is 13 when the older partner is not more than 16. In all other cases it is 14.
- ³⁷ The age limit is 13 when the older partner is not more than 16. In all other cases it is 14.
- ³⁸ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.
- ³⁹ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.
- ⁴⁰ There is no express age limit for sexual contacts not “imitating natural” sexual intercourse (as mutual masturbation, touching etc.). Such contacts can however be prosecuted, if considered “depraving”, when the young person is under 14 or his/her partner is over 18 (Art. 162 CC). For “natural” sexual intercourse and for sexual contacts “imitating natural” sexual intercourse (as oral and anal sex, interfemora intercourse etc.). the minimum age limit is 16, if the partner is 18 or older (Art. 161 CC 1998), it is 14, if the partner is under 18 (Art. 160 CC 1998).
- ⁴¹ There is no express age limit for sexual contacts not “imitating natural” sexual intercourse (as mutual masturbation, touching etc.). Such contacts can however be prosecuted, if considered “depraving”, when the young person is under 14 or his/her partner is over 18 (Art. 162 CC). For “natural” sexual intercourse and for sexual contacts “imitating natural” sexual intercourse (as oral and anal sex, interfemora intercourse etc.). the minimum age limit is 16, if the partner is 18 or older (Art. 161 CC 1998), it is 14, if the partner is under 18 (Art. 160 CC 1998).
- ⁴² In Lithuania a minimum age limit (MT) exists for vaginal, anal and oral intercourse only. There is no fix age limit for other kinds of sexual contact. Such acts (up to 16) however can be prosecuted if considered depraving.
- ⁴³ In Lithuania a minimum age limit (MT) exists for vaginal, anal and oral intercourse only. There is no fix age limit for other kinds of sexual contact. Such acts (up to 16) however can be prosecuted if considered depraving.
- ⁴⁴ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.
- ⁴⁵ Anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.
- ⁴⁶ The three limits apply to various kinds of contacts as follows:
Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.
Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)
Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be. (Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).
- ⁴⁷ The three limits apply to various kinds of contacts as follows:
Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.
Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)
Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be. (Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).
- ⁴⁸ Age limit is 12 when disparity in age is not more than three years, and 14 in all other cases.
- ⁴⁹ Sexual contact (save vaginal intercourse) is not punishable if the age difference is no more than two years.
- ⁵⁰ Sexual contact (save vaginal intercourse) is not punishable if the age difference is no more than two years.
- ⁵¹ Sexual contact is not punishable if the age difference is no more than three years.
- ⁵² Sexual contact is not punishable if the age difference is no more than three years.
- ⁵³ 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.
- ⁵⁴ 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.

For a map of Europe see
www.RKLambda.at
 (Rechtsvergleich)

Table II

Minimum Age Limits for Homosexual Relations (Europe)

I: Uniform Age Limits for Hetero- and Homosexual Relations:

	R DMA	HTS	HSF	HSM
<i>Andorra</i>	n.k.	16	16	16
<i>Austria</i>	2002	12/13/14 ¹	12/13/14 ²	12/13/14 ³
<i>Azerbaijan</i>	2001	16	16	16
<i>Belgium</i>	1985	16	16	16
CIS:				
<i>Russian Federation</i>	1997	14	14	14
<i>Ukraine</i>	1991	--/MT ⁴	--/MT ⁵	--/MT ⁶
<i>Czech Republic</i>	1990	15	15	15
<i>Croatia</i>	1998	14	14	14
<i>Denmark</i>	1976	15/18 ⁷	15/18 ⁸	15/18 ⁹
<i>Germany</i>	1994	14	14	14
<i>Finland</i>	1998	--/16 ¹⁰	--/16 ¹¹	--/16 ¹²
<i>France</i>	1982	--/15 ¹³	--/15 ¹⁴	--/15 ¹⁵
FR Yugoslavia:				
Montenegro	1977	14	14	14
(Vojvodina)	1977	14	14	14)
<i>Greece</i>	1951	15	15	15
Greenland	1978	15	15	15
<i>Hungary</i>	2002	14	14	14
<i>Iceland</i>	1992	14	14	14
<i>Italy</i>	1889	13/14 ¹⁶	13/14 ¹⁷	13/14 ¹⁸
<i>Latvia</i>	1998	--/14/16 ¹⁹	--/14/16 ²⁰	--/14/16 ²¹
<i>Liechtenstein</i>	2001	12/14 ²²	12/14 ²³	12/14 ²⁴
<i>Luxembourg</i>	1992	16	16	16
<i>Macedonia</i>	1996	14	14	14
<i>Malta</i>	1973	12	12	12
Monaco	n.k.	15	15	15
<i>Netherlands</i>	1971	16	16	16
<i>Norway</i>	1972	16	16	16
<i>Poland</i>	1932	15	15	15

<i>Romania</i>	2001	15	15	15
<i>San Marino</i>	1865	14	14	14
<i>Slovakia</i>	1990	15	15	15
<i>Slovenia</i>	1977	14	14	14
<i>Spain</i>	1822	12	12	12
<i>Sweden</i>	1978	15	15	15
<i>Switzerland</i>	1942	16 ²⁵	16 ²⁶	16 ²⁷
<i>Turkey</i>	1858	15/18 ²⁸	15	15/18 ²⁹
UK:				
<i>England & Wales</i>	2000	16	16	16
<i>Northern Ireland</i>	2000	17 ³⁰	17 ³¹	17 ³²
Vatican	1929	12	12	12

II. Different Age Limits - screening possible³³

	R TB	HTS	HSF	HSM
<i>Albania</i>	1995	14	18 ³⁴	18 ³⁵
<i>Bulgaria</i>	1968	14	16/18 ³⁶	16/18 ³⁷
CIS:				
Belorus	1994	--/MT ³⁸	--/MT ⁴⁰	--/18 ⁴²
<i>Moldova</i>	1995	--/16 ³⁹	--/16 ⁴¹	--/16/18 ⁴³
<i>Cyprus</i>	1998	--/13/16 ⁴⁴	-- ⁴⁵	--/18 ⁴⁶
<i>Estonia</i>	1992 (2001) ⁴⁷	--/14 ⁴⁸ (14) ⁴⁹	-- ⁵⁰ (14) ⁵¹	--/16 ⁵² (14) ⁵³
Färöer	1930	15	18	18
Gibraltar	1993	16 ⁵⁴	16	18 ⁵⁵
Guernsey	1983	--/16 ⁵⁶	-- ⁵⁷	18 ⁵⁸
<i>Ireland</i>	1993	15/17 ⁵⁹	15	17
Isle of Man	1992	16/21 ⁶⁰	16	21 ⁶¹
Jersey	1990	--/16 ⁶²	-- ⁶³	16/21 ⁶⁴
<i>Lithuania</i>	1993 (2000) ⁶⁵	--/MT ⁶⁶	--/MT ⁶⁷	--/18 ⁶⁸
<i>Portugal</i>	1945	14	14/16 ⁶⁹	14/16 ⁷⁰
Serbia	1994	14	14	14/18 ⁷¹
UK:				
<i>Scotland</i>	1980 (2000) ⁷²	16/MT ⁷³	16	16

III. Different Age Limits - no screening possible

No jurisdiction.

IV. Total Ban on Homosexuality

	HTS	HSF	HSM
<i>Armenia</i>	16	16	--/16 ⁷⁴
<i>Bosnia-Herzegovina (M)</i> ⁷⁵	14	14	--/14 ⁷⁶
CIS: <i>Georgia (M)</i> ⁷⁷	16	16	--/16 ⁷⁸
FR Yugoslavia: (Cosovo (M))	14	14	--/14 ⁷⁹

Abbreviations:

R DMA: year of the repeal of the different age limit. In states where a different limit never existed the year of the repeal of the total ban on homosexual behaviour is given.⁸⁰

R TB: year of the repeal of the total ban on homosexual behaviour.

MT: individual (biological) sexual maturity

HTS: Minimum age for heterosexual relations

HSF: Minimum age for homosexual relations between females

HSM: Minimum age for homosexual relations between males

(M): the total ban covers male homosexual relations only

(MF): the total ban covers male and female homosexual relations

n.k.: not known

Member states of the European Union

Member states of the Council of Europe

Notes:

¹ The three limits apply to various kinds of contacts as follows:

Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.

Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)

Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be.

(Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).

² The three limits apply to various kinds of contacts as follows:

Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.

Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)

Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be.

(Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).

³ The three limits apply to various kinds of contacts as follows:

Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.

Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)

Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be.

(Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).

⁴ For "sexual intercourse" (presumably vaginal, anal, oral sex) with persons of 16 or older the limit is individual biological maturity (Art. 120 CC).

For "sexual intercourse" with persons younger than 16 and for sexual contacts not deemed to constitute "sexual intercourse" there is no fix age limit. Such contacts, if committed by a person of 16 or over, however can be prosecuted if deemed "depraving acts" (Art. 121 CC) (Ministry of Justice 1997).

⁵ For "sexual intercourse" (presumably vaginal, anal, oral sex) with persons of 16 or older the limit is individual biological maturity (Art. 120 CC).

For "sexual intercourse" with persons younger than 16 and for sexual contacts not deemed to constitute "sexual intercourse" there is no fix age limit. Such contacts, if committed by a person of 16 or over, however can be prosecuted if deemed "depraving acts" (Art. 121 CC) (Ministry of Justice 1997).

⁶ For "sexual intercourse" (presumably vaginal, anal, oral sex) with persons of 16 or older the limit is individual biological maturity (Art. 120 CC).

For "sexual intercourse" with persons younger than 16 and for sexual contacts not deemed to constitute "sexual intercourse" there is no fix age limit. Such contacts, if committed by a person of 16 or over, however can be prosecuted if deemed "depraving acts" (Art. 121 CC) (Ministry of Justice 1997).

⁷ The age-limit of 18 applies only to persons, who fully or in part make a living through prostitution (Art. 223a CC). Contacts with such persons under 18 are completely illegal, even if non-commercial and not related to prostitution.

⁸ The age-limit of 18 applies only to persons, who fully or in part make a living through prostitution (Art. 223a CC). Contacts with such persons under 18 are completely illegal, even if non-commercial and not related to prostitution.

⁹ The age-limit of 18 applies only to persons, who fully or in part make a living through prostitution (Art. 223a CC). Contacts with such persons under 18 are completely illegal, even if non-commercial and not related to prostitution.

¹⁰ The limit for sexual penetration (which is penetration by a sexual organ or directed at a sexual organ, Chapter 20 § 10 CC as amended by law EV 60/1998vp) is set at 16 (Ch. 20 § 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 § 6 CC as amended 1998). There is no fix minimum age for such sexual contacts not considered being “conducive to impairing his/her development”.

¹¹ See note 7

¹² See note 7

¹³ The age limit (of 15) applies to partners over 18 only. Persons under 18 having sexual contacts with other persons under 18 are not covered.

¹⁴ The age limit (of 15) applies to partners over 18 only. Persons under 18 having sexual contacts with other persons under 18 are not covered.

¹⁵ The age limit (of 15) applies to partners over 18 only. Persons under 18 having sexual contacts with other persons under 18 are not covered.

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

¹⁷ The minimum age is 13 when the older partner is not more than 13. In all the other cases it is 14.

¹⁸ The minimum age is 13 when the older partner is not more than 13. In all the other cases it is 14.

¹⁹ There is no express age limit for sexual contacts not “imitating natural” sexual intercourse (as mutual masturbation, touching etc.). For “natural” sexual intercourse and for sexual contacts “imitating natural” sexual intercourse (as oral and anal sex, interfemora intercourse etc.) the minimum age limit is 16, if the partner is 18 or older (Art. 161 CC 1998), it is 14, if the partner is under 18 (Art. 160 CC 1998).

²⁰ There is no express age limit for sexual contacts not “imitating natural” sexual intercourse (as mutual masturbation, touching etc.). For “natural” sexual intercourse and for sexual contacts “imitating natural” sexual intercourse (as oral and anal sex, interfemora intercourse etc.) the minimum age limit is 16, if the partner is 18 or older (Art. 161 CC 1998), it is 14, if the partner is under 18 (Art. 160 CC 1998).

²¹ There is no express age limit for sexual contacts not “imitating natural” sexual intercourse (as mutual masturbation, touching etc.). For “natural” sexual intercourse and for sexual contacts “imitating natural” sexual intercourse (as oral and anal sex, interfemora intercourse etc.) the minimum age limit is 16, if the partner is 18 or older (Art. 161 CC 1998), it is 14, if the partner is under 18 (Art. 160 CC 1998).

²² The three limits apply to various kinds of contacts as follows:

Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.

Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)

Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be.

(Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).

²³ The three limits apply to various kinds of contacts as follows:

Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.

Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)

Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be.

(Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).

²⁴ The three limits apply to various kinds of contacts as follows:

Age limit 12: applies to non-penetrative sexual contact when disparity in age between the partners is not more than four years.

Age limit 13: applies to penetrative sexual contact when disparity in age is not more than three years (but only in case of penetration with a part of the body not in case of penetration with an object)

Age limit 14: applies (a) to non-penetrative sexual contact when disparity in age is more than four years, (b) to penetrative sexual contact with parts of the body when disparity in age is more than three years and (c) to penetrative sexual contact with objects whatever the age of the partners may be.

(Art. 206, 207 CC as amended by the Criminal Law Amendment Act 1998 (BGBl. 153/1998)).

²⁵ Sexual contact is not punishable if the age difference is no more than three years.

²⁶ Sexual contact is not punishable if the age difference is no more than three years.

²⁷ Sexual contact is not punishable if the age difference is no more than three years.

²⁸ The higher age limit of 18 covers vaginal and anal intercourse only.

²⁹ The higher age limit of 18 covers vaginal and anal intercourse only.

³⁰ Anal intercourse is punishable with life imprisonment regardless of the age of the partners.

³¹ Anal intercourse is punishable with life imprisonment regardless of the age of the partners.

³² Anal intercourse is punishable with life imprisonment regardless of the age of the partners.

³³ 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).

³⁴ “Homosexual Intercourse”

³⁵ “Homosexual Intercourse”

³⁶ 16 applies when the older person is under 18, 18 applies when the older person is 18 or above (Art. 157 CC as amended by Criminal Law Amendment Act 1997 (Official Gazette 62/1997)).

³⁷ 16 applies when the older person is under 18, 18 applies when the older person is 18 or above (Art. 157 CC as amended by Criminal Law Amendment Act 1997 (Official Gazette 62/1997)).

³⁸ In Belarus there is a minimum age limit (MT) for certain kinds of sexual contact (vaginal, oral, anal) only. For other sexual contacts there is no minimum age limit. Such contacts (up to the age of 18) can be prosecuted if considered “depraving”.

³⁹ In Moldova a minimum age limit exists for certain kinds of sexual contact only. For other kind of sexual contact there is no fix minimum age. Such contacts can be prosecuted (up to 16) if considered “depraving acts”.

⁴⁰ See note 24

⁴¹ In Moldova a minimum age limit exists for certain kinds of sexual contact only. For other kind of sexual contact there is no fix minimum age. Such contacts can be prosecuted (up to 16) if considered “depraving acts”.

⁴² The limit of 18 covers anal and oral intercourse between men only. For other male homosexual contact there is no minimum age. Such contacts (up to age 18) can (only) be prosecuted if considered “depraving” (Art. 119 CC as amended 01.03.1994).

⁴³ The age limit of 18 covers anal intercourse only, the age limit of 16 oral intercourse only. For other kind of sexual contact there is no fix minimum age. Such contacts can be prosecuted (up to 16) if considered “depraving acts”.

⁴⁴ In Cyprus there is a minimum age for vaginal intercourse with girls (16) and for anal intercourse (heterosexual: 13; homosexual: 18) only. For other sexual acts individual capacity to give informed consent is decisive.

⁴⁵ In Cyprus there is a minimum age for vaginal (penile) intercourse with girls and for anal intercourse only. For other sexual acts individual capacity to give informed consent is decisive.

⁴⁶ The European Court on Human Rights in 1993 held that the total ban on anal intercourse (“carnal knowledge against the order of nature”) violates the right to respect for private life (Modinos vs. Cyprus). In 1998 parliament repealed the total ban but kept a special age limit of 18 for anal

intercourse between males (Art. 171 CC as amended by the Criminal Code (Amendment) Law 40 (I) of 1998). For male homosexual acts not constituting anal intercourse there is no fix minimum age limit. Individual capacity to give informed consent is decisive in these cases.

⁴⁷ Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).

⁴⁸ In Estonia there is a minimum age limit for vaginal intercourse with girls only. For other kind of sexual contact there is no fix minimum age. Such contacts can be prosecuted (up to 16) if considered “depraving acts”.

⁴⁹ Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).

⁵⁰ In Estonia there is no minimum age for lesbian relations. Such contacts can be prosecuted (up to 16) if considered “depraving acts”.

⁵¹ Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).

⁵² In Estonia there is a minimum age limit for male homosexual anal intercourse only. For other kinds of male homosexual contact there is no fix minimum age (Rebane 1980, 387f). Such contacts can be prosecuted (up to 16) if considered “depraving acts”.

⁵³ Parliament in June 2001 passed a new Criminal Code establishing a minimum age limit of 14 for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).

⁵⁴ Heterosexual anal intercourse is punishable with life-imprisonment whatever the age of the partners may be.

⁵⁵ Also male homosexual relations between persons over 18 are an offence if more than two persons are present.

⁵⁶ There is a total ban on heterosexual anal intercourse regardless of the age of the partners. Express minimum age limit for vaginal intercourse with girls only.

⁵⁷ Express minimum age limit for vaginal intercourse with girls only.

⁵⁸ Also male homosexual relations between persons over 18 are an offence if more than two persons are present.

⁵⁹ The minimum age limit of 17 covers vaginal intercourse with girls and anal intercourse with girls and boys. For all other kinds of (heterosexual and lesbian) contact there is a minimum age limit of 15.

⁶⁰ On the Isle of Man the age limit for anal intercourse is fixed at 21; for all other kinds of heterosexual contact at 16.

⁶¹ Also male homosexual relations between persons over 21 are an offence if more than two persons are present.

⁶² Heterosexual anal intercourse is punishable with life imprisonment regardless of the age of the partners. Express minimum age limit for vaginal intercourse with girls only.

⁶³ Express minimum age limit for vaginal intercourse with girls only.

⁶⁴ The age limit of 21 covers anal intercourse only. For other male homosexual contact the limit is 16. Also male homosexual relations between persons over these limits are an offence if more than two persons are present.

⁶⁵ Parliament in September 2000 passed a new Criminal Code establishing a uniform minimum age limit for all kinds of sexual contact, but this Code will only come into force along with other laws which still have to be passed (i.e. on Criminal Procedure).

⁶⁶ In Lithuania there exists a minimum age limit for vaginal, anal and oral intercourse only. This limit is fixed at the individual (biological) maturity for heterosexuals and lesbians and at 18 for homosexual males. There is no fix age limit for other kinds of sexual contact. Such acts (up to 16) however can be prosecuted if considered depraving.

⁶⁷ In Lithuania there exists a minimum age limit for vaginal, anal and oral intercourse only. This limit is fixed at the individual (biological) maturity for heterosexuals and lesbians and at 18 for homosexual males. There is no fix age limit for other kinds of sexual contact. Such acts (up to 16) however can be prosecuted if considered depraving.

⁶⁸ In Lithuania there exists a minimum age limit for vaginal, anal and oral intercourse only. This limit is fixed at the individual (biological) maturity for heterosexuals and lesbians and at 18 for homosexual males. There is no fix age limit for other kinds of sexual contact. Such acts (up to 16) however can be prosecuted if considered depraving.

⁶⁹ 14 applies when the older person is under 18 (Art. 172 CP 1995), 16 applies when the older person is 18 or above (Art. 175 CP 1995).

⁷⁰ 14 applies when the older person is under 18 (Art. 172 CP 1995), 16 applies when the older person is 18 or above (Art. 175 CP 1995).

⁷¹ The age limit of 18 covers anal intercourse; the limit of 14 all other kinds of sexual contact.

⁷² In 2000 the higher age limit of 18 for male homosexual acts was repealed. Since then the only inequality lies in the fact that for sexual relations of women with boys the limit is individual biological maturity, not 16.

⁷³ For man/girl relations there is a minimum age of 16; for woman/boy relations the individual (biological) sexual maturity of the boy is decisive.

⁷⁴ The total ban applies to homosexual anal intercourse only. For other male homosexual contact the minimum age is 16. Upon admission to the Council of Europe in 2001 Armenia assured that it will repeal the total ban.

⁷⁵ The International Lesbian and Gay Association (ILGA) reports that the total ban would have been repealed. This reports however could not yet be confirmed.

⁷⁶ The total ban covers anal intercourse between men only. For other male homosexual contact the minimum age is 14.

⁷⁷ The International Lesbian and Gay Association (ILGA) reports that the total ban would have been repealed. This reports however could not yet be confirmed.

⁷⁸ The total ban covers certain kinds of male homosexual contacts only. For other sexual contact there is a minimum age of 16.

⁷⁹ The total ban covers anal intercourse between men only. For other male homosexual contact the minimum age is 14.

⁸⁰ Following the French Revolution numerous European countries decriminalized homosexual relations and did establish uniform minimum age limits for hetero- and homosexual relations (mostly the age of individual maturity or 12 to 14). With the exception of Italy and Turkey only all of these jurisdictions (which decriminalized homosexuality in the 18th or 19th century) did (for some time) reintroduce discriminatory legislation in the 20th century (for details see Graupner 1998; 1997b, 2, 359ff). The years shown in the table therefore do indicate the year, from which on uniform age limits (without interruption) have been in force until today (that is the year, when a total ban has been repealed and uniform age limits established or when prior unequal limits have been equalized).

For a map of Europe see
www.RKLambda.at
(Rechtsvergleich)

“Seduction”

(Europe)

I.: No Laws Against “Seduction”

Albania

Armenia

Azerbaijan

Belgium

CIS:

Belorus

Georgia

Moldova

Russia

Ukraine

Czechia

Former Yugoslavia:

(3 jurisdictions additional to Slovenia)

France

Gibraltar

Greece (heterosexual and lesbian relations)

Guernsey

Hungary

Isle of Man

Jersey

Latvia

Lithuania

Luxemburg

Malta

Norway

Poland

Slovakia

Slovenia

Switzerland

UK:

E & W

Northern Ireland

Scotland

Vatican

II. Laws Against "Seduction" - screening possible¹

	Age	G	Sex. Cont	Means Afforded
Andorra	18	MF	All	"Deception"; "Abuse of a superiority based on authority or situation";
Austria	16	MF	All	“Practising on a position of constraint”; “Practising upon lacking maturity ² and upon a superiority based on a considerable difference in age”
	18	MF	All	“Seduction immediately against remuneration”
Bulgaria	--	Mm	All	“against payment”, “incitement to perversion”
Cyprus ³	18	Mm	AI	“indecent behaviour, incitement, or provocation or advertising”
Denmark ⁴	18	MF	All	"Gross abuse of a superiority based on age and experience"
Färöer	18/21 ⁵	MF	All	"(Gross) Abuse ⁶ of a superiority based on age and experience"
Finland	18	MF	All	“promising or giving remuneration” ⁷ "taking advantage of immaturity" ⁸
Former Yugoslavia: 4 jurisdictions	18	Mf	VI	"false promise of marriage"
Germany	16	MF	all	"Practising on a position of constraint"; "Against remuneration"; "Practising on lacking capacity to sexual self-determination"
Greenland	18	MF	all	"Gross abuse of a superiority based on age and experience"
Ireland	17	MF	all	“using for the purpose of prostitution”
Italy	16	MF	all	"against remuneration" ⁹
Monaco	21	F	all	"false promise of marriage or deceitful acts"
Netherlands ¹⁰	18	bM F	all	"money and goods"; "abuse of superiority"; "deception"
Portugal	16	MF	VV	„practising on inexperience“
Romania	18	Mf	VI	"false promise of marriage"
San Marino	21	Mf	all	"promise of marriage under deception over one’s marital status"

Spain	--	MF	all	“abusing a manifest situation of superiority which restricts the victims sexual liberty”
	16	MF	all	"Deception"
Sweden	--	MF	All	"to the participation in pornographic productions"
	18	MF	All	"casual relations against remuneration";
Turkey	"girls" ¹¹	Mf	"deflorati on"	"false promise of marriage"

III. Laws Against Seduction - no screening possible

	Age	G	Sex. Cont.	Means afforded
Greece	17	Mm	all	--
Iceland	16	MF	all	"Deception, gifts or other ways"
Liechtenstein	16	MF	All	"Practising on a position of distress"; "Against remuneration"; "Practising on lacking capacity to sexual self-determination"

Abbreviations:

Age: "Seduction" is punishable up to the age of

G: "protected" gender:

M: Law covers "seduction" of males only

F: Law covers "seduction" of females only

MF: Law covers "seduction" of males and females

Mf: Law covers "seduction" of females by males only

Mm: Law covers "seduction" of males by males only

Mf: Law covers "seduction" of females by females only

bMF: Law covers "seduction" of "blameless" males and females only

Means afforded: Only "seduction" by the mentioned means is punishable

Sex, Cont.: Punishable is only "seduction" to

AI: anal intercourse

OI: oral intercourse

VI: vaginal intercourse

all: all sexual contacts

Remarks:

¹ 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).

² "Lacking maturity" means an inability to understand the nature of a sexual act or to act according to such an understanding. Such a lack has to be the result of delayed development and to be established on the basis of specified facts.

³ Art. 174A CC as amended by the Criminal Code (Amendment) Law 40 (I) of 1998.

⁴ The law is hardly ever enforced. The offence of having sexual contact with a prostitute, which is under 18, (Art. 223a CC) has not been included in the table since it hardly can be seen as a "seduction"-provision. It seems to outlaw all, even non-commercial, sexual contacts of persons under 18, who prostitute themselves.

⁵ Heterosexual "seduction": 18; Homosexual "seduction": 21;

⁶ Heterosexual "seduction": the abuse must be "gross"; Homosexual "seduction": the abuse need not be "gross".

⁷ Art. 20:8 CC (as amended by law EV 60/1998 vp-HE 6 ja 117/1997 vp)

⁸ 1998 the following provision has been introduced: "Section 5 *Sexual Abuse* (1) 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 blatantly takes advantage of that immaturity ... shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years" (Ch. 20 CC).

⁹ Art. 600bis CP as amended by law 269 (02.08.99)

¹⁰ The law is hardly ever enforced.

¹¹ The law does not set a fix age limit. It just speaks of the defloration of "girls".

Table IV

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

individual sexual maturity	from 12	from 13	from 14	from 15	from 16	from 17	from 18	from 21
Belorus Lithuania Scotland ² Ukraine	Malta Vatican	Cyprus ³	Albania Bosnia- Herzegovina Bulgaria Croatia Estonia <u>FR</u> <u>Yugoslavia</u> (Cosovo) Serbia Montenegro (Vojvodina) Hungary Italy ⁴ Latvia ⁵ Macedonia Portugal ⁶ Russia San Marino Slovenia	Czechia France ⁷ Greece Ireland ⁸ Monaco ⁹ Poland Romania Slovakia Sweden ¹⁰ Turkey	Armenia Azerbaijan Austria ¹¹ Belgium Cyprus ¹² Germany England & Wales Georgia Gibraltar ¹³ Guernsey ¹⁴ Iceland Isle of Man ¹⁵ Italy ¹⁶ Jersey ¹⁷ Latvia ¹⁸ Liechtenstein Luxemburg Moldova Norway Portugal ¹⁹ Scotland ²⁰ Spain Switzerland	Ireland ²¹ Northern Ireland ²²	Andorra Austria ²³ Denmark Färöer Finland Greenland Netherland Sweden ²⁴	Isle of Man ²⁵ Monaco ²⁶

From the individual capacity to give informed consent: Cyprus²⁷, France²⁸

General ban on “seduction”: Sweden (“against remuneration”), Spain (cf. Table III.)

Remarks:

¹ Some jurisdictions (*Czech Republic, Malta, Romania, Slovak Republic, the Vatican and jurisdictions on the territory of the former Soviet Union*) have laws against "corruption" or "depravation" 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 Monaco, Romania, San Marino and Turkey have laws against "seduction of minor girls under false promise of marriage". This offence however is intended to protect 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. In addition 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 *Austria, Finland, Germany, Italy, Liechtenstein* and *Sweden*, there is a higher age limit for „sexual acts with a minor against remuneration“. Contacts with minors against remuneration in many cases do not constitute „seduction“ (in many 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. *Special offenses for homosexual "seduction"* (only in Greece still on the books) have been excluded from this table to keep it clear and legible. Moreover they are based upon very special reasoning making it unapposite to mix them together with general seduction provisions.

² in the case of heterosexual "seduction" of boys

³ In the case of seduction to heterosexual anal intercourse.

⁴ Seduction is legal from 13 onwards, if the older partner is not older than 16 and 14 if he is older than 16. Except "against remuneration".

⁵ If the "seducer" is not 18 or older.

⁶ for all contacts but vaginal intercourse with boys and girls

⁷ For partners over 18 only.

⁸ for all contacts save anal intercourse and penile vaginal intercourse with girls and not for using for the purposes of prostitution

⁹ for "seduction" of boys

¹⁰ except "against remuneration" and "seduction" to the participation in pornographic productions.

¹¹ Except "against immediate remuneration"

¹² for vaginal intercourse with girls

¹³ Heterosexual anal intercourse is a criminal offense regardless of the age of the partners.

¹⁴ Heterosexual anal intercourse is a criminal offense regardless of the age of the partners.

¹⁵ For anal intercourse there is a special limit of 21

¹⁶ "Against remuneration"

¹⁷ Heterosexual anal intercourse is a criminal offense regardless of the age of the partners.

¹⁸ If the "seducer" is 18 or older.

¹⁹ for vaginal intercourse with boys and girls

²⁰ in the case of "seduction" of girls

²¹ for anal intercourse and penile vaginal intercourse with girls as well as for using a person (under 17) for the purposes of prostitution

²² Anal intercourse is a criminal offense regardless of the age of the partners.

²³ "Seduction immediately against remuneration"

²⁴ "seduction" to the participation in pornographic productions.

²⁵ For anal intercourse

²⁶ for "seduction" of girls

²⁷ valid for all sexual contact except vaginal intercourse and anal intercourse with girls and boys.

²⁸ The minimum age limit of 15 applies not to partners under 18.

Sexual Relations with Juveniles
in
Relations of Authority
(Europe)

I.: No Laws

Albania (I)

Armenia

Azerbaijan

Bulgaria (I)

CIS:

Belorus

Georgia

Moldova

Ukraine

Cyprus (I)

Estonia

Gibraltar (I)

Greenland

Guernsey (I)

Ireland (I)

Isle of Man (I)

Jersey (I)

Latvia

Lithuania

Luxembourg

Malta

Monaco (for boys; for girls see II. below)

San Marino (I)

Turkey

UK:

E & W (I)¹

Northern Ireland (I)²

II. Laws - screening possible³

		Age	G	Sex Cont	Abuse of Authority
Andorra	Asc	18		all	--
	other	18		all	afforded
Austria	Asc	--		VI	--
	other	18		other contacts than VI	--
Belgium	Asc	18		all	--
	other			no provisions	
Bosnia-Herzegovina	Asc	--		VI	--
	other	18		all	afforded
Croatia	Asc	--		VI	--
	other	18		all	afforded
Czechia	Asc	--		VI	--
	other	18		all	afforded
Denmark	Asc	--		all	--
	other	18		all	--
Färöer	Asc	--		all	--
	other	18		all	--
Finland	Asc	18		All	--
	Other	18		All	Afforded
FR Yugoslavia: (Cosovo	Asc	--		VI	--
	other	18		all	afforded)
Montenegro	Asc	--		VI	--
	other	18		all	afforded
Serbia (Vojvodina	Asc	--		VI	--
	other	18		all	afforded
France	Asc	18		all	--
	other	18		all	afforded, if the authority is based upon a public office (teacher, educator etc.)

Germany	Asc other	-- 18		VI all	-- up to 16 not afforded; from 16 onwards afforded
Greece	other	18		all	--
Hungary	Asc other	-- 18		all all	-- "Endagering of the moral development" afforded
Macedonia	Asc other	-- 18		VI all	-- afforded
Monaco	Asc other	18 21	F	all all	-- afforded
Netherlands	Asc other	18 18		all all	-- --
Norway	Asc other	-- 18		all all	-- --
Poland	Asc other	-- -- ⁴		all all	afforded afforded
Portugal	other	16 18		all all	-- up to 16 not afforded; from 16 onwards afforded
Romania	Asc other	-- 18		VI all	-- afforded
Russia	other	-- ⁵		all	afforded
Slovakia	Asc other	-- 18		VI all	-- afforded
Slovenia	Asc other	18 18		VI all	-- afforded
Spain	Asc other	-- ⁶ -- ⁷		all all	afforded afforded
Sweden	Asc other	-- 18		all all	-- --
UK: Scotland	Asc other	-- 16		VI VI	-- "common household" afforded
Vatican ⁸	other	15		all	--

III. Laws - no screening possible

		Age	G	Sex Cont	Abuse of Authority
Greece	Asc	18		all	--
Iceland	Asc	--		all	--
	other	18		all	--
Italy	Asc	-- ⁹		all	--
	other	16		all	--
Liechtenstein	Asc	--		VI	--
		18		other contacts than VI	--
	other	18		all	afforded
Switzerland	Asc	--		VI	--
	other	20		all	afforded
Vatican	Asc	-- ¹⁰		all	--

Abbreviations:

Age: Sexual relations in relations of authority are punishable with persons up to the age of

other: relations of authority which are not ascendent/descendent-relations (e.g. education, care, supervision etc.)

Asc: Ascendents/Descendents-Relations

Abuse of Authority:

--: abuse of authority is not afforded for prosecution

afforded: not all sexual contacts in relations of authority are punishable but only if the authority has been abused

G: "protected" gender (where nothing is indicated the law covers males and females):

F: law covers authority relations over females only

(I): there is a general offence of incest regardless of the age of the partners

Sex Cont: punishable is only

AV: anal intercourse

OV: oral intercourse

VI: vaginal intercourse

all: all sexual acts

all HTS: all heterosexual acts

all HS: all homosexual acts

Remarks:

¹ In 2000 sexual contact with persons under 18 have been outlawed which are kept in certain institutions (childrens home, hospital, penitentiaries etc.) Due to the very limited nature of this offence it has not been included for the purpose of this table.

² In 2000 sexual contact with persons under 18 have been outlawed which are kept in certain institutions (childrens home, hospital, penitentiaries etc.) Due to the very limited nature of this offence it has not been included for the purpose of this table.

³ 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).

⁴ In Poland there is a general law against the abuse of dependency for sexual purposes regardless of the age of the partners

⁵ In Russia it is an offence (irrespective of age) to practise upon a financial or other dependency to gain sexual contact.

⁶ In Spain there is a general law against the abuse of authority for sexual purposes regardless of the age of the partners.

⁷ In Spain there is a general law against the abuse of authority for sexual purposes regardless of the age of the partners.

⁸ no screening possible if the offence is committed by abuse of parental power or of the power of a guardian

⁹ Sexual relations between ascendents and descendents (over 16 years of age) are punishable only if they are held in a way that invokes a public scandal

¹⁰ Sexual relations between ascendents and descendents (over 15 years of age) are punishable only if they are held in a way that invokes a public scandal.

Table VI

Sexual Relations with Juveniles in Relations of Authority
*without coercion and without misuse of authority*¹
(Europe)²

Legal from the age of

individual maturity	12	13	14	15	16	17	18	21
Belorus Lithuania Scotland ³ Ukraine	Austria ⁴ Liechtenstein ⁵ Malta Spain	Austria ⁶ Cyprus ⁷	Albania Austria ⁸ Bosnia- Herzegovina Bulgaria Croatia Estonia <u>FR Yugoslavia:</u> (Cosovo) Montenegro Serbia (Vojvodina) Latvia ⁹ Liechtenstein ¹⁰ Macedonia Russia San Marino Slovenia	Czechia Greenland Ireland ¹¹ Monaco Poland Romania Slovakia Turkey Vatican	Andorra Armenia Azerbaijan Belgium Cyprus ¹² England & Wales Finland Georgia Germany Gibraltar ¹³ Guernsey ¹⁴ Isle of Man ¹⁵ Italy Jersey ¹⁶ Latvia ¹⁷ Luxemburg Moldova Portugal Scotland ¹⁸ Switzerland	Ireland ¹⁹ Northern Ireland ²⁰	Denmark Färöer France Greece Hungary Iceland Netherlands Norway Sweden	Isle of Man ²¹

From the individual capacity to give informed consent: Zypern²²

Remarks:

¹ Excluding relations between ascendants with their descendents.

² *Special offenses for homosexual relations* have been excluded from this table to keep it clear and legible. Moreover they are based upon very special reasoning making it unapposite to mix them together with general provisions.

³ for other contacts with boys than vaginal intercourse

⁴ non-penetrative sexual contact with a partner not more than four years older

⁵ if the partner is not more than three years older

⁶ for penetrative sexual contact (with parts of the body), if the partner is not more than three years older.

⁷ In the case of heterosexual anal intercourse.

⁸ The limit 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), if the partner is not more than three years older. In other cases it is 14.

⁹ If the partner is under 18

¹⁰ if the partner is more than three years older

¹¹ for all contacts save anal intercourse and penile vaginal intercourse with girls

¹² for vaginal intercourse with girls

¹³ Heterosexual anal intercourse is a criminal offense regardless of the age of the partners.

¹⁴ Heterosexual anal intercourse is a criminal offense regardless of the age of the partners.

¹⁵ For anal intercourse there is a special limit of 21

¹⁶ Heterosexual anal intercourse is a criminal offense regardless of the age of the partners.

¹⁷ If the partner is over 18

¹⁸ for sexual contacts with girls and for vaginal intercourse with boys

¹⁹ for anal intercourse and penile vaginal intercourse with girls

²⁰ Anal is a criminal offense regardless of the age of the partners.

²¹ For anal intercourse

²² not for vaginal intercourse with girls, and not for heterosexual anal intercourse

Table VII

**Sexual Relations with Juveniles in Relations of Authority
without coercion but under misuse of authority¹
(Europe)²**

Legal from the age of

individual maturity	12	13	14	15	16	17	18	21
Belorus Lithuania Scotland ³ Ukraine	Malta	Cyprus ⁴	Albania Bulgaria Estonia Latvia ⁵ San Marino	Greenland Ireland ⁶ Monaco ⁷ Turkey Vatican	Armenia Azerbaijan Belgium ⁸ Cyprus England & Wales Georgia Gibraltar ⁹ Guernsey ¹⁰ Isle of Man ¹¹ Italy Jersey ¹² Latvia ¹³ Luxemburg Moldova Scotland ¹⁴	Ireland ¹⁵ Northern Ireland ¹⁶	Andorra Austria Bosnia-Herzegovina Croatia Czechia Denmark Färöer Finland <u>FR Jugoslavia:</u> Cosovo Montenegro Serbia Vojvodina France Germany Greece Hungary Iceland Liechtenstein Macedonia Netherlands Norway Portugal Romania Slovakia Slovenia Sweden Switzerland	Isle of Man ¹⁷ Monaco ¹⁸

No Age Limit: Poland¹⁹, Russia²⁰, Spain²¹

From the individual capacity to give informed consent: Cyprus²²

Remarks:

¹ Excluding relations between ascendants with their desendants

² *Special offenses for homosexual behaviour* have been excluded from this table to keep it clear and legible. Moreover they are based upon very special reasoning making it unapposite to mix them together with general provisions.

³ for other contacts with boys than vaginal intercourse

⁴ for heterosexual anal intercourse

⁵ if the partner is under 18

⁶ for all contacts save anal intercourse and penile vaginal intercourse with girls

⁷ for contacts with boys

⁸ for vaginal intercourse with girls

⁹ Heterosexual anal intercourse is a criminal offence regardless of the age of the partners.

¹⁰ Heterosexual anal intercourse is a criminal offence regardless of the age of the partners.

¹¹ For anal intercourse there is a special age limit of 21.

¹² Heterosexual anal intercourse is a criminal offence regardless of the age of the partners.

¹³ if the partner is 18 or older

¹⁴ for sexual contacts with girls and for vaginal intercourse with boys

¹⁵ for anal intercourse and penile vaginal intercourse with girls

¹⁶ Anal intercourse is a criminal offence regardless of the age of the partners.

¹⁷ For anal intercourse

¹⁸ for sexual contacts with girls

¹⁹ In Poland it is an offence regardless of the age of the partners to gain consent to a sexual contact by abusing a dependency

²⁰ In Russia it is an offence (irrespective of age) to practise upon financial or other dependency to gain sexual contact.

²¹ In Spain it is an offence regardless of the age of the partners to gain consent to sexual acts by abusing a relationship of superiority which restricts the victims sexual liberty.

²² For sexual contacts save vaginal intercourse with girls and anal intercourse with girls and boys.

Table VIII

Sexual Consent (Overseas)

I. Age Limits for Sexual Relations:¹

	Mf	Fm	Ff	Mm	Sed	Auth	FRO	MST	R TB
Australia:									
Australian Capital Territory	10/16				--	--	10/16	--	1976
New South Wales	16	16	16	18	--	17	16	16	1987/90
Northern Territory	16	14	16	18	--	--	--/16		1983
Queensland	16/18 ²	16/18 ³	16	16/18 ⁴	--	--	16	16	1990
South Australia	16/17				--	18	16	16	1972
Tasmania	--/12/15/17				--	--	--	--	1997
Victoria	--/10/16				--	17/18	--/16		1980
Western Australia	16	16	16	21	--	17	(A)	16	1989
Brasilia	14	14	14	14	18	--	n.k.	--	n.k.
Canada	--/14/18 ⁵				18	18	--/14		1969
Chile	20	20	20	20	--	--	--	--	1998 ⁶
Ghana	14	--	--	--	--	--	--	--	--
India	15/16	--	--	--	--	--	--	--	--
Japan	13	13	13	13	18 ⁷	--	--	--	1880 ⁸
New Zealand	12/16	--	--/12/16	16	--	--/20	--	--	1986
Papua New Guinea	--/16	--/14	--/16	--	--	--	--	--	--
Philippines	12	12	12	12	18 ⁹	18	--	--	--
South Africa	--/16	--/16	19	--	--	--	16/19	16/19	1998 ¹⁰
South Korea	13	13	13	13	--	--	--	--	--
Taiwan	16	16	16	16	--	--	--	--	1912/30
Thailand	15/18 ¹¹	15/18 ¹²	15/18 ¹³	15/18 ¹⁴	--	--	[?]	[?]	1957 ¹⁵
Tuvalu	--/15	--	--/15	--	--	--	--	--	--
USA^{16 17}									
	Mf	Fm	Ff	Mm	sed	AV	VOR	MST	AHTV
Alabama	--/12/16				--	--	(A)	--	--
Alaska	16	16	16	16	--	18	(A)	--	1980
American Samoa	14	14	14	14	--	--	n.k.	n.k.	n.k.
Arizona	--15/18				--	--	(A)	--	2001
Arkansas	--/14/16				--	--	--	--	2001 ¹⁸
California	14/16/18 ¹⁹				18	--		(?)	--/1976
Colorado	--/15				--	18	(A)	--	1972
Connecticut	--/15/16				--	18	--	--	1971
D.C.	16	16	16	16	--	--	(A)	--	1992
Delaware	14/16				--	--	(A)	--	1973
Florida ²⁰	16/18 ²¹	16/18 ²²	16/18 ²³	16/18 ²⁴	--	18	n.k.	n.k.	--
Georgia	14	14	14	14	--	--	14	14	1998 ²⁵
Guam	16	16	16	16	--	--	n.k.	n.k.	n.k.
Hawaii	14/16	14/16	14/16	14/16	--	--	--	--	1973
Idaho	18				--	--	--	--	--
Illinois	16	16	16	16	--	18	--	--	1962
Indiana	--/16				--	--	--	--	1977

Iowa	--/14/16				--	16	(A)	--	1976/ 1978 ²⁶
Kansas	16	16	16	16	--	--	(A)	--	--
Kentucky	14/16				--	--	(A)	--	1992 ²⁷
Louisiana	--/12/15/17				--	--	--/17	--/17	--
Maine	--/14/16				--	--	--	--	1976
Maryland	--/14/16				--	--	--	--	1999 ²⁸
Massachusetts	14/16				--	--	--	--	1974 ²⁹
Michigan	13/16				--	16	--	--	--
Minnesota	13/16				--/15 ³⁰	16/18	--	--	--
Mississippi	--/14/18 ³¹				--	18	--	--	--
Missouri	14/17				--	--	--	--	1999 ³²
Montana	16				--	--	--	--	1996 ³³
Nebraska	--/14/16				17	--	--	--	1978
Nevada	14/16 ³⁴	14/16 ³⁵	14	14	--	--	14	--	1993
New Hampshire	13/16				--	16	16 ³⁶	--	1975
New Jersey	--/13/16				--	16/18	--	--	1978/ 1979 ³⁷
New Mexico	13/16				--	16	--	--	1975
New York	14/17				--	--	--	--	1980 ³⁸
North Carolina	--/13/16				--	18	16	16	--
North Dakota	15/18				--	18	(A)	15	1973
Ohio	13/16				--	--	(A)	--	1974
Oklahoma	--/14 ³⁹ /16/18	--	--	--	--	--	16	16	--
Oregon	14/18				--	--	--	--	1972
Pennsylvania	13/16 ⁴⁰				18 ⁴¹	--	(A)	--	1980/ 1995 ⁴²
Puerto Rico	14	14	14	14	--	--	n.k.	n.k.	--
Rhode Island	15 ⁴³ /16				--	--	(A)	--	1998
South Carolina	--/14/15 ⁴⁴				--	16	(A)	--	--
South Dakota	16 ⁴⁵				--	--	(A)	--	1977
Tennessee	13/18				18	--	--	--	1996 ⁴⁶
Texas	--/14/17				--	--	(A)&14	--	-- ⁴⁷
Utah	14	14	14	14	18	18	(A)	--	--
Vermont	16	16	16	16	--	--	--	--	1977
Virgin Islands	--/16				--	--	n.k.	n.k.	--
Virginia	13/14/ 15	13/14/ 15	13/14	13/14	14	--	14	13	--
Washington	--/12/14/16				--	18	(A)	--	1976
West Virginia	--/11/16				--	--	--	--	1976
Wisconsin	15/18 ⁴⁸				--	--	"child" ⁴⁹	"child" ⁵⁰	1983
Wyoming ⁵¹	19	19	19	19	--	--	--	--	1977
People's Republic of China	--/14	--	--	--	--	--	--	--	1912/30
Vietnam	16	16	16	16	--	--	n.k.	n.k.	n.k.

II. Total Ban on (Certain) Homosexual Contacts

Australia: Northern Territory (HSM)⁵²

Chile (HSM,HSF)

USA: Kansas (AnI,F,C,PA)

Oklahoma (HSF, HSM)

Texas (AnV,F,C,PV,PA,PP,Va/An)⁵³

III. Total Ban on (Hetero- and Homosexual) Anal and Oral Intercourse

Canada (AnI)⁵⁴

USA: Alabama (AnI,F,C)

California (AnI, F, C)⁵⁵

Minnesota [M] (AnI,F,C)⁵⁶

Utah [M] (AnI,F,C,Va/An)

Virginia [M] (AnI,F,C a.o.)

Virgin Islands (AnI,F,C)

IV. Total Ban on Heterosexual Anal and Oral Intercourse and on (All) Kinds of Homosexual Contact

Papua Newguinea [M] (AnI,HSM)

Tuvalu [M] (AnI,HSM)

USA: Puerto Rico ("Sodomy", "Homosexual Intercourse")

V. Total Ban on "Unnatural and Perverse Acts"⁵⁷

Ghana [M] (AnI,HS a.o.)

India [M] (AnI,F,HSPV a.o.)⁵⁸

USA: Florida (AnI, F, C a.o.)⁵⁹

Idaho [M] (AnI,F a.o.)

Louisiana [M] (AnI,F,C a.o.)

Michigan [M] (AnI,GI)⁶⁰

Mississippi [M] (AnI,F,C a.o.)

North Carolina [M] (AnI,F,C a.o.)

South Carolina [M] (AnI a.o.)

VI. "Fornication"⁶¹ & Cohabitation⁶²

USA: D.C. (FORN)

Florida (FORN, COH)

Georgia (FORN)

Idaho (FORN)

Illinois (FORN)

Massachusetts (FORN)⁶³

Michigan (FORN, COH)

Minnesota (FORN)

Mississippi (FORN)

New Mexico (COH)

North Carolina (FORN, COH)

North Dakota (COH)

Oklahoma (FORN)⁶⁴

South Carolina (FORN, COH)

Utah (FORN)
Virginia (FORN, COH)
West Virginia (FORN, COH)

Abbreviations:

(G): There does exist a general offence covering exhibition in private regardless of the age of the persons involved
R TB: year in which the total ban on certain sexual relations (e.g. homosexual contacts, anal intercourse etc.) has been lifted (if such a total ban ever existed in this country)⁶⁵
Auth: Sexual Relations within certain relations of authority are punishable up to the age (of the juvenile) of
AnI: anal intercourse
C: Cunnilingus
COH: Cohabitation
D.C.: District of Columbia
F: Fellatio
Ff: Minimum age for sexual relations of a girl with a woman
Fm: Minimum age for sexual relations of a boy with a woman
FORN: Fornication
GI: "Gross Indecency"
HSF: Homosexual relations between females
HSM: Homosexual relations between males
HSMAS: mutual masturbation between persons of the same sex
HSPV: homosexual penetration of the vagina
[M]: The total ban of the listed kinds of sexual contact does also cover contact between married partners
MAST: mutual masturbation
Mf: Minimum age for sexual relations of a girl with a man
Mm: Minimum age for sexual relations of a boy with a man
MST: incitement to masturbation punishable up to age (of the juvenile) of
n.k.: not known
PA: penetration of the anus
PP: penetration of the penis
PV: penetration of the vagina
Va/An: vagina/anus-contacts
Sed: provisions on "seduction" of youths up to the age (of the adolescent) of - mostly restricted to certain means of seduction
FRO: Sexual contacts in front of children or adolescents (without bodily contact) punishable up to age (of the juvenile) of

Remarks:

¹ Where in this table different age limits are indicated this means that there are established different limits for different kinds of sexual acts and/or for different kinds of age difference between the partners. The respective regulations are to complex to represent them here in detail. A detailed representation is given in H. Graupner (*Sexualität, jugendschutz und Menschenrechte*, Fft./M. et. al.: Peter Lang, 1997, Vol. 2, 324-357).

² The age limit of 18 applies to anal intercourse.

³ The age limit of 18 applies to anal intercourse.

⁴ The age limit of 18 applies to anal intercourse.

⁵ The age limit of 18 applies to anal intercourse between unmarried persons. In the recent years however several (superior) courts have invalidated this higher age limit as unjustified discrimination on the basis of age, sexual orientation and marital status (R. v. C.M. (1995), Henry Halms v. The Minister of Employment and Immigration (1995), R. v. Roy (1998); for more decisions cf. R.v.Roy (1998)).

⁶ Law 1047 (Official Gazette 23.12.1998)

⁷ "giving or promising to give a remuneration" (Art. 2, 4 Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children of 18th May 1999, published 26th May 1999, entered into force 1st November 1999)

⁸ In Japan just one time there was a law outlawing some sexual acts generally. At the beginning of the Meije restauration in 1873 - in the course of the reform of the Japanese criminal law under western influence - homosexual acts have been criminalized. This law however has not been adopted to the first Criminal Code of the year 1880.

⁹ "Seduction" of "well-reputed" unmarried women under 18 by "deception". In addition in 1992 the Philippines outlawed sexual contacts indulged by minors (under 18) for money, profit or other consideration or due to the coercion, or influence of any adult, syndicate or group (Sec. 5 RA 7610, approved 17th June 1992).

¹⁰ The total ban on male homosexual acts has been declared unconstitutional by the High Court and the Constitutional Court of South Africa (National Coalition for Gay and Lesbian Equality v. Minister of Justice (08.05.1998 & 09.10.1998: with the declaration having been granted effect even back to 27.04.1998)). Heterosexual intercourse inter femora and heterosexual oral sex has been decriminalized in 1932 (R v. K & F); heterosexual anal intercourse in 1961 (R v N).

¹¹ The age limit of 18 (introduced with the Suppression of Prostitution Act 1996) applies to (extra-marital) sexual contacts „in the place of prostitution“ only (Sec. 4, 8 Prevention & Suppression of Prostitution Act B.E. 2539 (1996)).

¹² The age limit of 18 (introduced with the Suppression of Prostitution Act 1996) applies to (extra-marital) sexual contacts „in the place of prostitution“ only (Sec. 4, 8 Prevention & Suppression of Prostitution Act B.E. 2539 (1996)).

¹³ The age limit of 18 (introduced with the Suppression of Prostitution Act 1996) applies to (extra-marital) sexual contacts „in the place of prostitution“ only (Sec. 4, 8 Prevention & Suppression of Prostitution Act B.E. 2539 (1996)).

¹⁴ The age limit of 18 (introduced with the Suppression of Prostitution Act 1996) applies to (extra-marital) sexual contacts „in the place of prostitution“ only (Sec. 4, 8 Prevention & Suppression of Prostitution Act B.E. 2539 (1996)).

¹⁵ The Criminal Code of 1908 - the first one - made „carnal knowledge of man or woman against the order of nature“ an offence (incarceration of three months up to 3 years and a fine). The adoption of this provisions seems to have been the result of influence of Western advisers in elaborating Thailand's first Criminal Code and seems to have found its way into Thailand's law from English law over the Indian Criminal Code 1860 and the Egyptian Criminal Code 1904 since all other Criminal Codes used as a model (France 1810, German Empire 1870, Hungary 1878, Netherlands 1886, Japan 1907) did not know such an offence. It has been wording similar to the offence of „buggery“ of the anglo-saxon law and therefore seems to have been applied to anal intercourse (on the other side it has to be considered that India applied and applies its offence of „carnal knowledge against the order of nature“ to all sexual acts which cannot lead to conception). How alien this law seems to have been to the Thais is shown on the penalty prescribed for it: while in the anglo-saxon countries (from where the law originated) stiff penalties have been applied (the death penalty or at least life imprisonment) the Thais established rather low penalties. The law has not been taken over into the Criminal Code 1957 anymore.

¹⁶ **The United States Federal Criminal Code** establishes a general minimum age of 12 years (§ 2241) and an additional limit of 16, if the partner is 4 or more years older than the adolescent (§ 2243), but these provisions do apply to territories only which come under the special territorial and maritime jurisdiction of the U.S. and to federal correctional institutions.

Mostly under state legislation there is no special age afforded for the older partner. Therefore sexual contacts of youths under the respective age limits always are criminal; even if their partner also is under this limit.

Additionally in most states sexual relations with minors can be prosecuted under the offence of "contributing to the delinquency of a minor" (if the relation contributed to the "moral corruption" of the minor; and if the minor has not already been "delinquent" in this sense before).

The Military Code renders oral and anal intercourse by military personnel a felony (regardless of the age of the partner).

The Federal Crime Bill 1994 introduced a new offence: whoever travels in interstate or international commerce with the intent to engage in sexual contact with someone under 16 is liable to imprisonment of up to 10 years (§§ 2423, 2243 Federal Criminal Code). Liable for prosecution is also who prepares for such a travel. This leads to an obscure legal situation: the minimum age for sexual relations is set at 14 in Hawaii for instance. A couple consisting of a 15 and 21 year old therefore can legally have sex. But when both travel to another U.S.-state or to another country their relation becomes a criminal offence and the older partner can be jailed up to 10 years, even if the relation also is legal in the other U.S.-state (e.g. Florida) or in the other country (e.g. Canada).

Under federal law it is also an offence to "knowingly transport, or knowingly persuade, induce, or coerce any individual to travel in interstate or foreign commerce, or in any territory or possession of the United States, with intent that such individual engage in any sexual activity for which any person can be charged with a criminal offense" (18 U.S.C.A. §§ 2421 [enacted 1948], 2422 [enacted 1948]) (Posner & Silbaugh, *A Guide to America's Sex Laws*, The University of Chicago Press, Chicago & London 1996, 71)

¹⁷ In 1981 the U.S.-Supreme Court held that stricter rules for males do not violate the equal protection clause of the Constitution, on the theory that men lack the disincentives associated with pregnancy that women have to engage in sexual activity, and the law may thus provide men with those disincentives, in the form of criminal sanctions (*Michael M. v. Superior Court*, 450 U.S. 464 [1981])

¹⁸ Homosexual penetrations of the vagina the anus by parts of the body are by law liable to imprisonment of up to one year and/or a fine of up to 1000 Dollars. The *Circuit Court of Pulaski County, Arkansas Sixth Division* however on 23th March 2001 *Picado vs. Jegley* declared the ban to be in violation of the fundamental rights of "privacy" and "non-discrimination".

¹⁹ cf. *The People v. T.A.J.* (1998)

²⁰ cf. *B.B. v. State* (1995)

²¹ General age of consent is 16 (Fla. Stat. Ann. § 800.04 [enacted 1993]); Moreover "unlawful carnal intercourse with any unmarried person, of previous chaste character" under 18 is also a felony (Fla. Stat. Ann. § 794.05 [enacted 1892]) (Posner & Silbaugh 1996, 49). The latter provision has been declared unconstitutional by Florida Supreme Court in *B.B. v. State* (1995).

²² General age of consent is 16 (Fla. Stat. Ann. § 800.04 [enacted 1993]); Moreover "unlawful carnal intercourse with any unmarried person, of previous chaste character" under 18 is also a felony (Fla. Stat. Ann. § 794.05 [enacted 1892]) (Posner & Silbaugh 1996, 49). The latter provision has been declared unconstitutional by Florida Supreme Court in *B.B. v. State* (1995).

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²⁵ *State v. Anthony Powell*, Supreme Court of Georgia (23.11.1998)

²⁶ *State v. Pilcher* (1976); formally repealed in 1978

²⁷ *Commonwealth v. Wasson*, Supreme Court of Kentucky (1992)

²⁸ *Williams v. State*, 1998 Extra LEXIS 260, Baltimore City Circuit Court, January 14, 1999; Maryland had two laws criminalizing private adult sex. The "Unnatural and Perverted Sexual Practice" Act made oral sex between people of the same gender a crime, while Maryland's sodomy law prohibited anal sex. The oral sex statute was struck down in October 1998 as a result of an ACLU lawsuit. In order to end the ACLU lawsuit, the state agreed that the sodomy law should be struck down as well. In January 1999 the Baltimore City Circuit Court entered a final judgment prohibiting the state from enforcing either law for private sex acts. Because the state conducts all criminal prosecutions in Maryland, both laws are now invalid and unenforceable.

²⁹ *Commonwealth v. Balthazar* (1974)

³⁰ Age limit of 15 only for "seducers" 18 or over (Minn. Stat. Ann. § 609.352 [enacted 1986]) (Posner & Silbaugh 1996, 54)

³¹ Age limit of 18 only for "carnal knowledge" ("illicit connection") with an adolescent of "previous chaste character" and only if perpetrator is "older" than the adolescent (Miss. Code Ann. §§ 97-3-67 [enacted 1917], 97-5-21 [enacted 1857]) (Posner & Silbaugh 1996, 55).

³² In 1999, a Missouri appeals court, in *State v. Cogshell*, has construed the sodomy statute not to apply to consensual sexual relations.

³³ *Gryczan v State of Montana*, Supreme Court of Montana (1997)

³⁴ The age limit of 16 covers only heterosexual vaginal, anal and oral intercourse, and only if the partner is 18 or over (Nev. Rev. Stat. §§ 200.364 [enacted 1977], 200.368 [enacted 1977]) (Posner & Silbaugh 1996, 56)

³⁵ The age limit of 16 covers only heterosexual vaginal, anal and oral intercourse, and only if the partner is 18 or over (Nev. Rev. Stat. §§ 200.364 [enacted 1977], 200.368 [enacted 1977]) (Posner & Silbaugh 1996, 56)

³⁶ N.H. Rev. Stat. Ann. § 645:1 (enacted 1971) (Posner & Silbaugh 1996, 57)

³⁷ *State v. Saunders* (1977), *State v. Cuiffini* (1978); formally repealed in 1979

³⁸ *People v. Onofre* (1980), *People v. Uplinger* (1983)

³⁹ Okla. Stat. Ann. tit. 21, § 1114 (enacted 1981) (Posner & Silbaugh 1996, 59)

⁴⁰ 18 PA. Cons. Stat. Ann. §§ 3121, 3122.1, 3123, 3125, 3126 (enacted 1995) (Posner & Silbaugh 1996, 60)

⁴¹ It is (also) an offense to seduce a female of "good repute", under eighteen, with promise of marriage (18 PA. Cons. Stat. Ann. § 4510 [enacted 1939]) (Posner & Silbaugh 1996, 60).

⁴² *Commonwealth v. Bonadio* (1980); Gesetz formally repealed in 1995.

⁴³ R.I. Gen. Laws §§ 11-37-8.1 (enacted 1984), 11-37-8.3 (enacted 1984) (Posner & Silbaugh 1996, 60)

⁴⁴ S.C. Code Ann. § 16-3-655 (Posner & Silbaugh 1996, 61)

⁴⁵ S.D. Codified Laws Ann. §§ 22-22-7, 22-22-7.3 (Posner & Silbaugh 1996, 61)

⁴⁶ Campbell v. Sundquist, Supreme Court of Tennessee (1996)

⁴⁷ The ban on same-sex acts has been declared unconstitutional in 1992 by two courts of first instance (England v. State of Texas; Morales v. Texas). In *Lawrence & Garner vs. The State of Texas* a panel of the Texas (14th) Appeals Court struck down the law on 8th June 2000. On motion of the state of Texas the full court reheard the case and on 15th March 2001 reversed the decision and upheld the law. The judgement has been appealed to the Texas Court of Criminal Appeals.

⁴⁸ Between 15 and (under) 18 it is rebuttably presumed that the minor is incapable of consent (Wis. Stat. Ann. §§ 940.225, 948.09 [enacted 1987]) (Posner & Silbaugh 1996, 63)

⁴⁹ Wis. Stat. Ann. § 948.10 (enacted 1987) (Posner & Silbaugh 1996, 64)

⁵⁰ Wis. Stat. Ann. § 948.10 (enacted 1987) (Posner & Silbaugh 1996, 64)

⁵¹ cf. Campbell v. State (1985)

⁵² In the Northern Territory homosexual contact is an offence if more than two persons are present.

⁵³ *Homosexual anal intercourse, homosexual fellatio, homosexual cunnilingus, homosexual anus/vagina-contacts and homosexual penetration of the vagina, anus oder penis* are punishable with a fine of up to 200 Dollars regardless of the age of the partners. Respective heterosexual contacts have been decriminalized by law in 1974, after a federal district court declared the law unconstitutional as it comes to consensual acts of married partners (Buchanan v. Batchelor, 308 F. Supp. 729 (N.D. Tex. 1970), cert. denied, 401 U.S. 989 (1971)). The ban on same-sex acts has been declared unconstitutional in 1992 by two courts of first instance (England v. State of Texas; Morales v. Texas). In *Lawrence & Garner vs. The State of Texas* a panel of the Texas (14th) Appeals Court struck down the law on 8th June 2000. On motion of the state of Texas the full court reheard the case and on 15th March 2001 reversed the decision and upheld the law. The judgement has been appealed to the Texas Court of Criminal Appeals.

⁵⁴ In Canada anal intercourse between unmarried partners is an offence if more than two persons are present.

⁵⁵ Applies in state prisons only (Cal.Penal Code §§ 286 [enacted 1872], 288a [enacted 1921], 289 [enacted 1978]) (Posner & Silbaugh 1996, 66f)

⁵⁶ A State District court judge on 18th May 2001 declared the law to be in violation of the state constitution. This decision however is not a binding precedent in other court districts of the state (St. Paul Pioneer Press, May 21, 2001, <http://www.pioneerplanet.com/>)

⁵⁷ Named differently ("Abominable and detestable crime against nature", "Infamous crime against nature", "unnatural and lascivious acts" etc.)

⁵⁸ India punishes all sexual penetration which can not lead to conception („carnal intercourse against the order of nature“).

⁵⁹ "Unnatrual and lascivious acts" (Fla.Stat.Ann. § 800.02 [enacted 1993]) (Posner & Silbaugh 1996, 67)

⁶⁰ In *Michigan Organization for Human Rights v. Kelley*, No. 88-815820 CZ (Mich. Cir. Ct. July 9, 1990) a trial court ruled Michigan's sodomy law unconstitutional under the state constitution. Because the attorney general did not appeal that ruling, Michigan law makes it binding on all state prosecutors, at least absent future litigation that might attempt to resuscitate the sodomy statute.

⁶¹ Consensual heterosexual acts performed in private between unmarried persons (regardless of the age of the partners); for details see Posner & Silbaugh (1996, 98ff).

⁶² Heterosexual (unmarried) cohabitation (regardless of the age of the partners); for details see Posner & Silbaugh (1996, 98ff).

⁶³ cf. however Commonwealth v. Balthazar (1974)

⁶⁴ Only seduction of a female of "previous chaste character" under promise of marriage".

⁶⁵ If „-“, is indicated this can either mean that in this jurisdiction a total ban on certain sexual acts never existed or that such a ban still is in force. Where this sign („-“) is given and the country is not listed under II. to V. this means that the author could not find any period where certain sexual acts have been generally criminalized.