

## **SITUATION OF LESBIANS AND GAYS IN COUNCIL OF EUROPE MEMBER STATES**

### ***Recommendation 1474 (2000) [1]***

1. Nearly twenty years ago, in its Recommendation 924 (1981) on discrimination against homosexuals, the Assembly condemned the various forms of discrimination suffered by homosexuals in certain Council of Europe member states.
2. Nowadays, homosexuals are still all too often subjected to discrimination or violence at school or in the street. They are perceived as a threat to the rest of society, as though there were a danger of homosexuality spreading once it became recognised. Indeed, where there is little evidence of homosexuality in a country, this is merely a blatant indication of the oppression of homosexuals.
3. This form of homophobia is sometimes propagated by certain politicians and religious leaders, who use it to justify the continued existence of discriminatory laws and, above all, aggressive or contemptuous attitudes.
4. Under the accession procedure for new member states, the Assembly ensures that, as a prerequisite for membership, homosexual acts between consenting adults are no longer classified as a criminal offence.
5. The Assembly notes that homosexuality is still a criminal offence in some Council of Europe member states and that discrimination exists in a great many others with regard to the age of consent.
6. The Assembly welcomes the fact that the European Court of Human Rights, in its *Dudgeon v. United Kingdom* judgment as early as 1981, held that the prohibition of sexual acts between consenting male adults infringed Article 8 of the European Convention on Human Rights, and that more recently, in 1999, it expressed its opposition to all discrimination of a sexual nature in its *Lustig-Prean and Beckett v. United Kingdom* and *Smith and Grady v. United Kingdom* judgments.
7. The Assembly refers to its Opinion No. 216 (2000) on draft Protocol No. 12 to the European Convention on Human Rights, in which it recommended that the Committee of Ministers include sexual orientation among the prohibited grounds for discrimination, considering it to be one of the most odious forms of discrimination.
8. While laws on employment do not explicitly provide for restrictions concerning homosexuals, in practice homosexuals are sometimes excluded from employment and there are unjustified restrictions on their access to the armed forces.
9. The Assembly is pleased to note, however, that some countries have not only abolished all forms of discrimination but have also passed laws recognising homosexual partnerships, or recognising homosexuality as a ground for granting asylum where there is a risk of persecution on the basis of sexual orientation.
10. It is none the less aware that recognition of these rights is currently hampered by people's attitudes, which still need to change.
11. The Assembly therefore recommends that the Committee of Ministers:
  - i. add sexual orientation to the grounds for discrimination prohibited by the European Convention on Human Rights, as requested in the Assembly's Opinion No. 216 (2000);
  - ii. extend the terms of reference of the European Commission against Racism and Intolerance (ECRI) to cover homophobia founded on sexual orientation, and add to the staff of the European Commissioner for Human Rights an individual with special responsibility for questions of discrimination on grounds of sexual orientation;
  - iii. call upon member states:
    - a. to include sexual orientation among the prohibited grounds for discrimination in their national legislation;
    - b. to revoke all legislative provisions rendering homosexual acts between consenting adults liable to criminal prosecution;
    - c. to release with immediate effect anyone imprisoned for sexual acts between consenting homosexual adults;
    - d. to apply the same minimum age of consent for homosexual and heterosexual acts;
    - e. to take positive measures to combat homophobic attitudes, particularly in schools, the medical profession, the armed forces, the police, the judiciary and the bar by means of basic and further education and training, as well as in sport;
    - f. to co-ordinate efforts with a view to simultaneously launching a vast public information campaign in as many member states as possible;
    - g. to take disciplinary action against anyone discriminating against homosexuals;
    - h. to ensure equal treatment for homosexuals with regard to employment;
    - i. to adopt legislation which makes provision for registered partnership;
    - j. to recognise persecution against homosexuals as a ground for granting asylum;
    - k. to include in existing fundamental rights protection and mediation structures or establish an expert on discrimination on grounds of sexual orientation.

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1. Assembly debate on 30 June 2000 (24th Sitting). See Doc. 8755, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Tabajdi). Text adopted by the Assembly on 26 September 2000 (27<sup>th</sup> Sitting).