Parliamentary Assembly
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Resolution 1728 (2010)[1]
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Discrimination on the basis of sexual orientation and gender identity

Parliamentary Assembly

1. The Parliamentary Assembly recalls that sexual orientation, which includes heterosexuality, bisexuality and homosexuality, is a profound part of the identity of each and every human being. The Assembly also recalls that homosexuality has been decriminalised in all member states of the Council of Europe. Gender identity refers to each person's deeply felt internal and individual experience of gender. A transgender person is someone whose gender identity does not correspond to the gender he or she was assigned at birth.

2. Under international law, all human beings are born free and equal in dignity and rights. Sexual orientation and gender identity are recognised as prohibited grounds for discrimination. According to the European Court of Human Rights, a difference in treatment is discriminatory if it has no objective and reasonable justification. Since sexual orientation is a most intimate aspect of an individual's private life, the Court considers that only particularly serious reasons may justify differences in treatment based on sexual orientation. In its 1999 judgment in *Lustig-Prean and Beckett v. the United Kingdom*, it emphasised that negative attitudes on the part of a heterosexual majority against a homosexual minority cannot amount to sufficient justification for discrimination, any more than similar negative attitudes towards those of a different sex, origin or colour.

3. Nevertheless, lesbian, gay, bisexual and transgender (LGBT) people, as well as human rights defenders working for the rights of LGBT people, face deeply rooted prejudices, hostility and widespread discrimination all over Europe. The lack of knowledge and understanding about sexual orientation and gender identity is a challenge to be addressed in most Council of Europe member states since it results in an extensive range of human rights violations, affecting the lives of millions of people. Major concerns include physical and verbal violence (hate crimes and hate speech), undue restrictions on freedom of expression, freedom of assembly and association, violations of the right to respect for private and family life, violations of rights to education, work and health, as well as regular stigmatisation. As a consequence, many LGBT people across Europe live in fear and have to conceal their sexual orientation or gender identity.

4. Transgender persons face a cycle of discrimination and deprivation of their rights in many Council of Europe member states due to discriminatory attitudes and to obstacles in obtaining gender reassignment treatment and legal recognition of the new gender. One consequence is the relatively high suicide rate among transgender people.

5. Discrimination on the basis of sexual orientation and gender identity can be magnified on the basis of sex and gender, with lesbian, bisexual and transgender women, in particular, running an increased risk of violence. The LGBT community itself is also not immune to sex discrimination.

1. *Assembly debate* on 29 April 2010 (17th Sitting) (see Doc. 12185, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gross; and Doc. 12197, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Memecan). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting). See also Recommendation 1915 (2010).

6. The Assembly is particularly concerned by the violation of the rights to freedom of assembly and freedom of expression for LGBT persons in a number of Council of Europe member states since these rights are pillars of democracy. This has been illustrated by the banning or attempted banning of peaceful rallies or demonstrations of LGBT persons and their supporters and the overt or tacit support some politicians have given to violent counter-demonstrations.

7. Hate speech by certain political, religious and other civil society leaders, and hate speech in the media and on the Internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimise and fuel discrimination or hatred based on intolerance. The boundary between hate speech inciting to crime and freedom of expression is to be determined in accordance with the case law of the European Court of Human Rights.

8. Homophobia and transphobia have particularly serious consequences for young LGBT people. They face widespread bullying, sometimes unhelpful or hostile teachers and curricula which either ignore LGBT issues or perpetuate homophobic or transphobic attitudes. A combination of discriminatory attitudes in society and rejection by the family can be very damaging for the mental health of young LGBT people, as evidenced by suicide rates which are much higher than those in the wider youth population.

9. It is important not to criticise the perceived or declared sexual orientation of young people, particularly of those aged under 18 still attending school, and to recognise that any exploitation of their perceived or declared sexual identity, or any humiliation or degrading treatment on that basis, can be both wrong in itself and potentially harmful to the well-being and personal growth of these young people both at that stage and later in life.

10. The denial of rights to de facto “LGBT families” in many member states must also be addressed, including through the legal recognition and protection of these families.

11. On the other hand, the Assembly welcomes the fact that, in some cases, political and judicial authorities have taken a number of measures against discrimination affecting LGBT persons.

12. In this context, the Assembly welcomes the work of the Committee of Ministers, which adopted Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity on 31 March 2010, the high priority given by the Council of Europe Commissioner for Human Rights to this issue and the recent reports of the European Union Fundamental Rights Agency on homophobia and discrimination on grounds of sexual orientation in European Union member states.

13. Recalling its Recommendations 1474 (2000) on the situation of lesbians and gays in Council of Europe member states and 1117 (1989) on the condition of transsexuals, the Assembly again condemns the various forms of discrimination suffered by LGBT people in Council of Europe member states. LGBT people should not have to fear being stigmatised and victimised, either in the public or private spheres.

14. The Assembly considers that the Council of Europe has the duty to promote a clear message of respect and non-discrimination so that everybody can live in dignity in all its member states.

15. The eradication of homophobia and transphobia also requires political will in member states to implement a consistent human rights approach and to embark on a wide range of initiatives. In this respect, the Assembly stresses the specific responsibility of parliamentarians in initiating and supporting changes in legislation and policies in Council of Europe member states.

16. Consequently, the Assembly calls on member states to address these issues and in particular to:

16.1. ensure that the fundamental rights of LGBT people, including freedom of expression and freedom of assembly and association, are respected, in line with international human rights standards;

16.2. provide legal remedies to victims and put an end to impunity for those who violate the fundamental rights of LGBT people, in particular their right to life and security;

16.3. recognise that lesbian, bisexual and transgender women face an increased risk of gender-based violence (in particular rape, sexual violence and harassment, as well as forced marriages) and provide protection commensurate with the increased risk;

16.4. condemn hate speech and discriminatory statements and effectively protect LGBT people from such statements while respecting the right to freedom of expression, in accordance with the European Convention on Human Rights and the case law of the European Court of Human Rights;

16.5. adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;

16.6. revoke legislative provisions which are not in conformity with the case law of the European Court of Human Rights;

16.7. ensure that discrimination on the basis of sexual orientation and gender identity can be effectively reported to judicial and non-judicial bodies and ensure that national human rights structures and equality bodies effectively address these issues;

16.8. sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) providing for a general prohibition of discrimination;

16.9. ensure legal recognition of same-sex partnerships when national legislation envisages such recognition, as already recommended by the Assembly in 2000, by providing for:

16.9.1. the same pecuniary rights and obligations as those pertaining to different-sex couples;

16.9.2. "next of kin" status;

16.9.3. measures to ensure that, where one partner in a same-sex relationship is foreign, this partner is accorded the same residence rights as would apply if she or he were in a heterosexual relationship;

16.9.4. recognition of provisions with similar effects adopted by other member states;

16.10. provide the possibility for joint parental responsibility of each partner's children, bearing in mind the interests of the children;

16.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:

16.11.1. safety;

16.11.2. official documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy;

16.11.3. access to gender reassignment treatment and equal treatment in health care areas;

16.11.4. equal access to work, goods, services, housing and other facilities, without prejudice;

16.11.5. relationship recognition, in accordance with the case lawof the European Court of Human Rights;

16.12. introduce or develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of LGBT persons, in particular for public officials, the judiciary, law-enforcement bodies and the armed forces, as well as educational establishments, the media, the medical profession and sporting circles;

16.13. promote research on discrimination on the basis of sexual orientation and gender identity, establish and/or maintain regular contacts with human rights defenders working on the rights of LGBT persons and consult them on issues relating to such discrimination;

16.14. encourage dialogue between national human rights institutions, equality bodies, human rights defenders working for the rights of LGBT people and religious institutions, based on mutual respect, in order to facilitate public debates and reforms on issues concerning LGBT people;

16.15. recognise persecution of LGBT persons as a ground for granting asylum and implement the 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity of the Office of the United Nations High Commissioner for Refugees;

16.16. fully implement in their law and practice the recommendation of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity.

17. Member states may grant exemptions to religious institutions and organisations when such institutions and organisations are either engaging in religious activities or when legal requirements conflict with tenets of religious belief and doctrine, or would require such institutions and organisations to forfeit any portion of their religious autonomy, and if such exemptions are compatible with the European Convention on Human Rights, as interpreted by the European Court of Human Rights.