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Tackling discrimination on the grounds of sexual orientation and gender identity

Addendum to the report¹

Committee on Equality and Non-Discrimination

Rapporteur: Mr Håkon HAUGLI, Norway, Socialist Group

1. Amendments proposed to the draft resolution and the draft recommendation

Amendment A

In the draft resolution, after paragraph 5, insert the following paragraph:

“The Assembly particularly deplors the unanimous approval by the Russian Duma of the draft law on so-called ‘Propaganda of non-traditional sexual relationships among minors’ which, if approved also by the Council of the Federation, would be the first piece of legislation on the prohibition of homosexual propaganda being introduced at national level in Europe.”

Amendment B

In the draft resolution, after paragraph 5, insert the following paragraph:

“In this context, the Assembly takes note of the Opinion of the European Commission for Democracy through Law (Venice Commission) on the issue of the prohibition of so-called ‘propaganda of homosexuality’ in the light of recent legislation in some member States of the Council of Europe; it shares its analysis and endorses its findings, notably that ‘the measures in question appear to be incompatible with “the underlying values of the [European Convention on Human Rights]”, in addition to their failure to meet the requirements for restrictions prescribed by Articles 10, 11 and 14 of the Convention.”

Amendment C

In the draft resolution, replace paragraph 7.5 with the following paragraph:

“the Russian Council of the Federation to reject the law on so-called “Propaganda of non-traditional sexual relationships among minors;”

Amendment D

In the draft resolution, after sub-paragraph 7.5, insert the following paragraph:

“the Parliament of Ukraine not to pursue the examination of the draft law on the prohibition of so-called homosexual propaganda;”

1. Addendum approved by the committee on 25 June 2013.



Amendment E

In the draft resolution, after paragraph 7.6, insert the following paragraph:

“the Parliament of Lithuania not to pursue the examination of proposals to introduce administrative penalties for so-called “public denigration of constitutional moral values and of constitutional fundamentals of family life;”

Amendment F

In the draft recommendation, after paragraph 5.1, insert the following paragraph:

“devote special attention to the issue of legislation on so-called homosexual propaganda and ensure that Council of Europe member States respect the recommendations expressed by the Venice Commission in its Opinion on this matter;”

2. Explanatory memorandum by Mr Haugli, rapporteur

2.1. Introduction

1. Since the approval of my report on tackling discrimination on the grounds of sexual orientation and gender identity on 24 May 2013, important developments have occurred. In the present addendum, I would like to outline those developments and propose some amendments to the draft resolution and draft recommendation.

2.2. The Opinion of the Venice Commission on laws prohibiting so-called homosexual propaganda

2. Following a request by the Committee on Equality and Non-Discrimination, at its plenary session on 14 and 15 June 2013, the European Commission for Democracy through Law (Venice Commission) adopted an Opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation in some member states of the Council of Europe.²

3. After a detailed analysis on legislation and draft legislation in the Republic of Moldova, the Russian Federation and Ukraine, the Venice Commission concludes that such statutory provisions are “problematic”, because:

- they are not formulated with sufficient precision;
- the justifications put forward for prohibiting “homosexual propaganda” fail to meet the essential necessity and proportionality requirements set out in Article 10 of the European Convention on Human Rights (ETS No. 5);
- they discriminate on the grounds of sexual orientation.

4. For the sake of clarity, I would like to quote a passage from the conclusions of the Opinion:

“80. On the whole, it seems that the aim of these measures is not so much to advance and promote traditional values and attitudes towards family and sexuality but rather to curtail non-traditional ones by punishing their expression and promotion. As such, the measures in question appear to be incompatible with ‘the underlying values of the ECHR’, in addition to their failure to meet the requirements for restrictions prescribed by Articles 10, 11 and 14 of the Convention.

81. In the light of the above, the Venice Commission considers that the statutory provisions prohibiting “propaganda of homosexuality” are incompatible with ECHR and international human rights standards.”

2.3. The Russian Federation

5. It was disappointing that the Russian Duma decided to put on its agenda the examination of the draft law on so-called homosexual propaganda before the approval of the Opinion by the Venice Commission, despite reiterated calls to postpone the examination by the Secretary General of the Council of Europe and myself.

2. Opinion 707/2012, CDL-AD(2013)022.

6. It was even more disappointing that the draft law was passed unanimously, in two readings that took place on the same day. The wording was changed – the law now refers to “propaganda of non-traditional sexual relations” – but the substance is the same.

7. This law should be considered in connection with the so-called “foreign agent law”. This recently introduced piece of legislation sets out the obligation for non-commercial organisations that receive financial support from abroad and are involved in “political activity” to register as “foreign agents” with the Ministry of Justice. In June 2013, the non-governmental organisation (NGO) Coming Out, whose Acting Director, Polina Savchenko, participated in the Conference on freedom of expression for LGBT people organised by the Committee of Equality and Non-Discrimination (Warsaw, 19 March 2013), was found guilty of breaching such legislation. In this case, “political activity” consisted of organising a picket under slogans “We are for traditional values: love, family, respect of human dignity”; organising a campaign against adoption of the “propaganda” law in St Petersburg, and publishing a brochure “Discrimination of LGBT: What, How and Why?”.

8. Commenting on these developments, the NGO ILGA-Europe recently defined them as “state-sponsored homophobia”.³ As a matter of fact, as a result of this legislative framework, I am afraid that NGOs working to promote equality and non-discrimination will be confronted with a simple choice: either they stop their activities or they face sanctions and penalties which will make it impossible for them to operate, in addition to having their image completely tarnished as they are accused of being foreign spies.

2.4. Lithuania

9. In my report, I already mentioned that Lithuania – which is a member of both the Council of Europe and the European Union – is also considering introducing legislation on the prohibition of so-called homosexual propaganda.

10. In June, a group of parliamentarians proposed the following amendment to Article 170 of the Criminal Code (on incitement to harassment and violence against groups): “The criticism of sexual behaviour or sexual practices, convictions or beliefs, or persuasion to change this behaviour, practices, convictions or beliefs cannot per se be qualified as harassment, denigration, incitement to hatred, discrimination or incitement to discrimination.”

2.5. Conclusions

11. I am deeply concerned by these recent developments. What is at stake here is the common understanding of human rights values and standards, and their respect. I believe that the Council of Europe should be very firm in the face of any attempt by its member States to question or depart from basic human rights such as freedom of expression, assembly and association.

12. If we let it go now, for LGBTs, who will be next?

3. www.ilga-europe.org/home/news/for_media/media_releases/russia_adopts_homophobic_federal_law_banning_propaganda_of_non_traditional_sexual_relations.