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Laws discriminating against gay men in Gibraltar

Written question No. 539 to the Committee of Ministers
by Mr Mike HANCOCK, United Kingdom, Alliance of Liberals and Democrats for Europe

1. In *Sutherland v. the United Kingdom*, adopted on 1 July 1997, the European Commission of Human Rights found that the United Kingdom's discriminatory age of consent for gay men violated Article 14, combined with Article 8 of the European Convention on Human Rights. The substance of this ruling has subsequently been confirmed by the Court in *L. and V. v. Austria* and *S.L. v. Austria* (9 January 2003), and, specifically in respect of the United Kingdom, in *B.B. v. the United Kingdom* (10 February 2004).

In *A.D.T. v. the United Kingdom* (31 July 2000) the Court found that the United Kingdom's laws on privacy, which imposed discriminatory provisions on gay men, violated Article 8 of the Convention.

As the Committee of Ministers has itself pointed out, in a series of judgments the Court has emphasised that any discrimination based on sexual orientation is contrary to the Convention.

2. The Government of the United Kingdom has declared that the Convention applies in respect of Gibraltar.

3. Ten years after the ruling in *Sutherland v. the United Kingdom* and seven years after the judgment in *A.D.T. v. the United Kingdom*, the United Kingdom Government has still failed to fulfil its Convention obligations in the following respects:

– Section 116 A (1) of the Gibraltar Criminal Offences Act 1960, as amended in 1993, stipulates an age of consent for sexual relationships between males of 18. This compares with 16 for heterosexual relationships;

– Section 116 A (2) of this act includes the same discriminatory privacy provisions as those found to constitute a violation of the Convention in *A.D.T. v. the United Kingdom*.

Moreover, the whole basis for the treatment of sexual relationships between men in the Gibraltar Criminal Offences Act 1960 is discriminatory. Sexual acts between men are treated prima facie as criminal (in Sections 115 and 116 of the act), and only permitted in the exceptional circumstances set out in Section 116 A. In addition, the acts themselves are described in negative terms.

4. To ask the Committee of Ministers to request the United Kingdom Government to:

– comply with its obligations under the Convention in respect of Gibraltar;

– set out the actions it will now take to ensure such compliance through the elimination of all aspects of the Gibraltar Criminal Offences Act 1960 that discriminate on the basis of sexual orientation.