



Doc. 11557

30 April 2008

Denial of freedom of assembly and expression to lesbian, gay, bisexual and transgender persons in Lithuania

Reply to Written question¹: Written question No. 540 (Doc. 11486)
Committee of Ministers

1. In reply to the honourable parliamentarian's question, the Committee of Ministers refers to its previous replies regarding the rights to freedom of expression and freedom of assembly of lesbian, gay, bisexual and transgender (LGBT) persons.² It considers that these replies, as well as the reply to the present question, serve as a useful reminder of the relevant human rights principles that have to be respected in this field. The Committee of Ministers recalls in particular that the rights to freedom of expression and freedom of assembly must be enjoyed by all without discrimination. While the convention allows for restrictions on the exercise of the rights to freedom of expression and freedom of assembly, such restrictions must be prescribed by law and be necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. According to the established case law of the European Court of Human Rights, peaceful demonstrations, be they in favour of the rights of LGBT persons or others, cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate. On the contrary, the state has a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. In a series of judgments, the Court has emphasised that any discrimination based on sexual orientation is contrary to the Convention.³ All member states must observe the Convention when they apply national law, notably in the light of the case law of the Court.

2. The Committee of Ministers furthermore recalls that its Recommendation No. R (97) 20 on "hate speech" asserts that public authorities and institutions have a "special responsibility to refrain from statements ..., speech ... and other forms of discrimination or hatred based on intolerance" (Principle 1), especially when it is disseminated through the media. Any legitimate interference with freedom of expression should be "narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria [and] ... subject to independent judicial control" (Principle 3).⁴ In this context, the Committee of Ministers

1. Adopted by the Committee of Ministers at the 1023rd meeting of the Ministers' Deputies on 2 April 2008.

2. Reply to Written Question No. 524 by Mrs Acketoft: "Ban on a Chisinău demonstration by homosexuals" (adopted on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), reply to Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on freedom of assembly and expression for lesbians, gays, bisexuals and transgender persons (adopted on 16 January 2008 at the 1015th meeting of the Ministers' Deputies), and reply to Written Question No. 527 by Mr Huss: "Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007" (adopted on 6 February 2008 at the 1017th meeting of the Ministers' Deputies).

3. Among other authorities, *Salgueiro da Silva Mouta v. Portugal*, judgment of 21 December 2001; *L. and V. v. Austria*, judgment of 9 January 2003; *Karner v. Austria*, judgment of 24 July 2003; and *B.B. v. the United Kingdom*, judgment of 10 February 2004.

4. See Recommendation No. R (97) 20 on "hate speech", which provides an excellent basis on which to ask member states to take a public stand against discrimination against sexual minorities in line with the principles of Congress Recommendation 211 (2007) (Point 7.a), to investigate and, where necessary, prosecute criminal offences against or related to lesbians, gays, bisexuals and transgender persons (Point 7.c) and to ensure that any legal interference with freedom of expression is, *inter alia*, no more restrictive than necessary (Point 7.e).



invites all member states to implement its Recommendation No. R (97) 20 on “hate speech” as well as its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance in respect of lesbians, gays, bisexuals and transgender persons.

3. The Lithuanian authorities have informed the Committee of Ministers that they have drawn the attention of the Mayor of Vilnius and the Lithuanian Office of Equal Opportunities Ombudsperson to the relevant human rights principles of the Council of Europe. More generally, the Committee of Ministers has already announced in its previous replies on the matter that it will consider how to enhance Council of Europe action in this area,⁵ in order to achieve more synergy, co-ordination and substantial results and has instructed the relevant services of the Secretariat to make proposals to this effect. In addition to the work undertaken by the Council of Europe Commissioner for Human Rights in this field, the Steering Committee for Human Rights (CDDH) has recently adopted a report on “hate speech” and will continue to consider this issue in the context of its work on human rights in a multicultural society. It has also recently examined the topic of human rights defenders with a view to identifying ways and means to improve their protection. As a result of this activity, the Committee of Ministers adopted, on 6 February 2008, a declaration on the protection of human rights defenders and promotion of their activities. Freedom of association and peaceful assembly is, of course, at the heart of this declaration, and this includes those who defend the rights of individuals who are particularly vulnerable to victimisation, such as LGBT persons.

5. Its Rapporteur Group on Human Rights (GR-H) has started to examine a number of proposals made in this respect by the Secretary General (see Document SG/Inf(2008)4).