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Tackling discrimination on the grounds of sexual orientation and gender identity

Reply to Recommendation¹: Recommendation 2021 (2013)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2021 (2013) on “Tackling discrimination on the grounds of sexual orientation and gender identity”, which it has transmitted to the Steering Committee for Human Rights (CDDH) for information and possible comments.

2. The Committee of Ministers recently conducted a review of the implementation of its Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity (paragraph 5.1 of the Assembly recommendation), which reflected different views among member States. In this context, member States were encouraged to continue their efforts to implement the various provisions of the recommendation and to translate and disseminate it as widely as possible. The Committee of Ministers also encouraged the organisation, upon request from member States, of assistance and capacity building activities to facilitate implementation of the recommendation. Finally, it agreed, in the light of the conclusions of the CDDH report, to revert to the issue of the implementation of the provisions of the recommendation in four years' time.

3. The Committee of Ministers further recalls that the European Convention on Human Rights provides for protection against discrimination on grounds of sexual orientation or gender identity in accordance with its general anti-discrimination provision (Article 14), and that States Parties enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court.

4. The Committee of Ministers notes that a pilot LGBT project (2011-2013) financed by voluntary contributions has been carried out in six beneficiary member States (Albania, Italy, Latvia, Montenegro, Poland, Serbia), in order to support them in their efforts to combat discrimination on grounds of sexual orientation or gender identity. These six member States were supported bilaterally with tailor-made assistance, awareness-raising and capacity building measures. Assistance was also provided for reviewing national legislation. In addition, a number of combined multilateral activities were organised in order to share information, experiences and good practices between the beneficiary countries. The results of the pilot project will be analysed.

5. The Committee of Ministers observes that the European Commission against Racism and Intolerance (ECRI) has decided that, in the course of its 5th round country monitoring, LGBT issues will be addressed if they are relevant to the overall thrust of the analysis of the situation in a member State, where they occur under one of the common topics (topics that will be examined in all reports), such as hate speech or violence. The Committee has been informed that ECRI has used the European Union Agency for Fundamental Rights' LGBT survey as a source of information for the drafting of two recent reports (paragraph 5.7 of the Assembly recommendation).

1. Adopted at the 1204th meeting of the Ministers' Deputies (2-3 July 2014).



6. The Committee of Ministers wishes to assure the Parliamentary Assembly that effective implementation of the Court's judgments is a priority in all fields, including judgments concerning discrimination on grounds of sexual orientation and gender identity (paragraph 5.8 of the Assembly recommendation). In its supervision of the implementation of judgments, it pays particular attention to the adoption of general measures to prevent further violations. In this context, the Committee of Ministers has considered and expressed its concern about legislation prohibiting the so-called propaganda of non-traditional sexual relations amongst minors (paragraph 5.2 of the Assembly recommendation). It has also made reference to the Venice Commission's opinion on the subject.
7. The Committee of Ministers notes that both Article 10 of the European Convention on Human Rights and Article 13 of the United Nations Convention on the Rights of the Child may be of relevance to these issues, subject to their respective convention conditions.
8. The Committee of Ministers wishes to inform the Parliamentary Assembly that the Council of Europe's work against homophobia and transphobia, in particular in the fields mentioned in the Assembly recommendation, has been intensified in recent years (paragraph 5.4 of the Assembly recommendation). The issue of non-discrimination on the grounds of sexual orientation and gender identity has also been mainstreamed to a larger extent in those fields (paragraph 5.3). The Committee notes that the No Hate Speech Movement has organised Europe-wide online action around hate speech targeting Roma, LGBT people, religious communities, national minorities, migrants and refugees. Within the framework of the Enlarged Partial Agreement on Sport (EPAS), a good practice handbook on LGBT inclusion in sport has been elaborated and a conference on combatting homophobia in sports was organised in 2012.
9. With respect to paragraph 5.5 of the Assembly recommendation, the Committee of Ministers notes that in the framework of the Help project, the online anti-discrimination training for lawyers, judges and prosecutors includes a specific module on LGBT. This module will be adapted to the national curricula for the training of law enforcement authorities upon request from member States.
10. The Committee of Ministers recalls that each Council of Europe convention is elaborated and negotiated in a specific context by the relevant expert committee within its particular field of competence. These committees work on the basis of terms of reference given to them by the Committee of Ministers, which are broad enough to allow the experts to arrive at a result taking all aspects of the problem they are addressing into consideration. For this reason, the Committee of Ministers currently sees no need for taking a general decision to include sexual orientation and gender identity as a prohibited ground for discrimination in all future relevant conventions (paragraph 5.6 of the Assembly recommendation), and will deal with this issue on a case-by-case basis.