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Private and family life: achieving equality regardless of sexual orientation

Contents	Page
A. Draft Resolution	2

A. Draft Resolution

1. The right to respect for private and family life is a fundamental right, enshrined in Article 8 of the European Convention on Human Rights (ETS No. 5). This right is of equal importance in everyone's lives, yet progress towards achieving equality in this field regardless of sexual orientation has often been slower than in other fields.
2. Same-sex couples and other rainbow families exist throughout Europe, whether or not legislation provides for them. These families have the same needs as any other family, yet many are deprived of their rights on the grounds of the sexual orientation or gender identity of the partners or parents. It is crucial and urgent that our legal systems acknowledge this reality and that States work to overcome the discrimination experienced by both adults and children in rainbow families.
3. Since the Parliamentary Assembly last considered these issues in its Recommendation 1474 (2000) on the situation of lesbians and gays in Council of Europe member States and Resolution 1728 (2010) on discrimination on the basis of sexual orientation and gender identity, and since the Committee of Ministers adopted its Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, there have been significant developments in the case law of the European Court of Human Rights, and important advances towards greater equality for rainbow families have been achieved in member States. These developments throw new light on the extent of the efforts required from member States in order to achieve equality in the field of private and family life regardless of sexual orientation.
4. In the light of the above, and bearing in mind also the relevant recommendations made in its Resolution 2048 (2015) on discrimination against transgender people in Europe and Resolution 2191 (2017) on promoting the human rights of and eliminating discrimination against intersex people, as well as the recommendations made in this field by the Council of Europe Commissioner for Human Rights and numerous treaty bodies of the United Nations, the Assembly calls on Council of Europe member States to:
 - 4.1. ensure that their constitutional, legislative and regulatory provisions and policies governing the rights of partners, parents and children are applied without discrimination on grounds of sexual orientation or gender identity, eliminating all unjustified differences in treatment based on these grounds;
 - 4.2. refrain from adopting changes to their Constitutions and legislation that would prevent the recognition of same-sex marriage or of other forms of rainbow families, and instead leave such decisions to the legislature or the highest court;
 - 4.3. align their constitutional, legislative and regulatory provisions and policies with respect to same-sex partners

with the case law of the European Court of Human Rights in this field, and accordingly:

- 4.3.1. ensure that same-sex partners have available to them a specific legal framework providing for the recognition and protection of their unions;
- 4.3.2. grant equal rights to same-sex couples and different-sex couples as regards succession to a tenancy;
- 4.3.3. ensure that cohabiting same-sex partners, whatever the legal status of their partnership, qualify as dependants for the purposes of health insurance cover;
- 4.3.4. when dealing with applications for residence permits for the purposes of family reunification, ensure that, if same-sex couples are not able to marry, there is some other way for a foreign same-sex partner to qualify for a residence permit;
- 4.4. ensure that other basic needs which are fundamental to the regulation of a relationship between a couple in a stable and committed relationship are provided for without discrimination on the grounds of sexual orientation, and accordingly:
 - 4.4.1. as regards migration, extend residence rights to same-sex partners on an equal footing with different-sex partners and give equal recognition to same-sex partnerships in the context of applications for citizenship;
 - 4.4.2. as regards situations giving rise to the need for medical care, recognise same-sex partners as next of kin for medical purposes and extend to them entitlements to leave for the purpose of caring for a sick partner or for the sick parent of a partner, without discrimination on the grounds of sexual orientation;
 - 4.4.3. as regards property, treat as joint property the possessions acquired by a same-sex couple during their relationship without discrimination on the grounds of sexual orientation;
 - 4.4.4. as regards criminal law, ensure the applicability of statutory protection against domestic violence and guarantee the right to refuse to testify against one's partner in criminal procedures without discrimination on the grounds of sexual orientation;
 - 4.4.5. as regards separation, ensure the applicability to same-sex couples of rules on alimony without discrimination on the grounds of sexual orientation;
 - 4.4.6. as regards death and inheritance, extend access to survivor's pensions to same-sex couples as well as entitlements to compensation for wrongful death of one's partner and entitlements to inherit when one's partner dies intestate, and grant exemption from inheritance tax to same-sex couples, without discrimination on the grounds of sexual orientation;
- 4.5. protect the rights of parents and children in rainbow families without discrimination based on sexual orientation or gender identity, and accordingly:
 - 4.5.1. in line with the case law of the European Court of Human Rights, ensure that all rights regarding parental authority,

- adoption by single parents and simple or second-parent adoption are granted without discrimination on the grounds of sexual orientation or gender identity;
- 4.5.2. provide for joint adoption by same-sex couples without discrimination on the grounds of sexual orientation;
- 4.5.3. extend automatic co-parent recognition to the same-sex partner of the parent who has given birth in all cases where this would be extended to a mother's male spouse;
- 4.5.4. where single women are granted access to medically assisted procreation, ensure that such access is granted without discrimination on the grounds of sexual orientation or gender identity;
- 4.5.5. where unmarried different-sex couples are granted access to medically assisted procreation, ensure that such access is granted to same-sex couples;
- 4.6. in addition to the recommendations already adopted by the Assembly in Resolution 2048 (2015) and Resolution 2191 (2017) regarding the effects of legal gender recognition of transgender and intersex people on their access to or the continuity of their civil partnership or marriage and of rights of spouses and children, provide for transgender parents' gender identity to be correctly recorded on their children's birth certificates, and ensure that persons who use legal gender markers other than male or female are able to have their partnerships and their relationships with their children recognised without discrimination;
- 4.7. work actively, in consultation with civil society, to promote acceptance of and respect for rainbow families in our societies.
5. The Assembly emphasises that intolerance that may exist in society towards people's sexual orientation or gender identity can never be used as a justification for perpetuating discriminatory treatment, as this serves, unacceptably, to legitimise violations of human rights. States must on the contrary work vigorously to combat the prejudice that enables such discrimination to persist, in order to fulfil their responsibility to protect and promote the human rights of all those within their jurisdiction and to eliminate discrimination on all grounds, including sexual orientation or gender identity.

Amendment 1

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In the draft resolution, at the end of paragraph 4.5.5, insert the following words: ", including the regulation of altruistic surrogacy."