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## Equal rights for homosexual partnerships

Written question No 559 to the Committee of Ministers

Reply from the Committee of Ministers  
adopted at the 1061<sup>st</sup> meeting of the Ministers' Deputies (17 June 2009)

### I. Written Question No. 559 by Mr Acketoft (Doc. 11808)

The principles of the equal value of all human beings is fundamental to liberals, and to the Council of Europe. Though progress has been made in many countries in many aspects of the question of human rights, there is still a lot to be done before we can guarantee each and everybody the same rights and possibilities to live free lives in Europe.

Among our member states, positions on the question of sexual orientation vary. In many aspects homosexuality is still considered by many as a "strange and unwanted phenomenon" rather than a part of a person's nature – and correspondingly our different legal frameworks discriminate against anything different from the heterosexual norm. One example of this is the fact that homosexual families in many countries are treated differently from heterosexual families in e.g. migration and asylum questions. The UNHCR consistently refers to "the family" as the natural and fundamental group unit in society and that state parties should take measures to facilitate its reunification – however this does not apply to homosexual families in an exceedingly larger number of our member countries, with the effect that families are being torn apart with no legal means of reunification.

The European Court of Human Rights has played an important role in the decriminalisation of homosexual conduct, and article 14 of the European Convention of Human Rights together with Protocol 12 form a solid basis for protecting the access of all persons to fundamental rights, without discrimination. In 2000 the Parliamentary Assembly adopted Recommendation 1474 (2000) on the Situation of lesbians and gays in the Council of Europe member states.

The Council of Europe should also provide expertise and advice for reform, support for civil society, as well as serving as a forum for reflection and debate. If we accept the fact that our member states are not recognising and allowing the same rights to homosexual partnerships – the result is discrimination.

What plans does the Committee of Ministers have to take concrete steps with the aim to guaranteeing equal rights for homosexual partnerships in the Council of Europe member states?

### II. Reply by the Committee of Ministers

1. The Committee of Ministers recalls the message that it adopted at its 1031<sup>st</sup> meeting (2 July 2008),<sup>1</sup> in which it underlines its strong attachment to the principle of equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender (LGBT) persons, and deplores widespread instances of discrimination, homophobia and intolerance towards LGBT persons in Council of Europe member states. In

<sup>1</sup> Decision adopted by the Ministers' Deputies on 2 July 2008, 1031<sup>st</sup> meeting, item 4.3b.

this message, the Committee of Ministers furthermore invites all committees involved in intergovernmental co-operation, within their terms of reference, to make proposals for specific activities to strengthen, in law and in practice, the equal rights and dignity of LGBT persons and combat discrimination towards them (see Appendix).

2. Regarding the question specifically raised by the Honourable Parliamentarian, the Committee of Ministers would like to recall that, on 2 July 2008, it also instructed the European Committee on Legal Co-operation (CDCJ) to examine the topic of various forms of marital and non-marital partnerships and cohabitation with a view to identifying possible measures to avoid discrimination on grounds of sexual orientation or gender identity and to report back.<sup>2</sup>

3. Further to this decision, the CDCJ commissioned a comparative study on this topic. The study, which was completed on 2 March 2009, takes into account the relevant work of the EU Fundamental Rights Agency<sup>3</sup> and addresses issues of partnership, family life, health, housing, and property rights. At its 84th meeting (Strasbourg, 12-13 March 2009), the Bureau of the CDCJ decided to forward this study to the Committee of Experts on family law (CJ-FA), the Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT), the Committee for Human Rights and Legal Affairs of the Parliamentary Assembly, as well as to the Office of the Commissioner for Human Rights for information and possible comments by 15 April 2009. In the light of the study and possible comments, the CDCJ will prepare an opinion for the attention of the Committee of Ministers.

#### *Appendix to the reply*

#### **Message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of lesbian, gay, bisexual and transgender persons (Adopted by the Committee of Ministers on 2 July 2008, at the 1031st meeting of the Ministers' Deputies)**

The Committee of Ministers recalls that it is strongly attached to the principle of equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons.<sup>4</sup> The Council of Europe's message of tolerance and non-discrimination applies to all European societies, and discrimination on grounds of sexual orientation or gender identity is not compatible with this message.

It notes that instances of discrimination on grounds of sexual orientation or gender identity as well as homophobia and intolerance towards transgender persons are regrettably still widespread in Europe.

Therefore, it invites all steering committees and other committees involved in intergovernmental co-operation at the Council of Europe to give, within their respective terms of reference, due attention in their current and future activities to the need for member states to avoid and remedy any discrimination on grounds of sexual orientation or gender identity and to make proposals for specific intergovernmental and other activities designed to strengthen, in law and in practice, the equal rights and dignity of lesbian, gay, bisexual and transgender persons and to combat discriminatory attitudes against them in society.

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<sup>2</sup> Decision adopted by the Ministers' Deputies on 2 July 2008, 1031st meeting, item 4.3c.

<sup>3</sup> EU Fundamental Rights Agency report on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States – Part 1 Legal Analysis".

<sup>4</sup> See replies adopted by the Committee of Ministers regarding the rights of lesbian, gay, bisexual and transgender (LGBT) persons: reply to Written Question No. 524 by Mrs Acketoft: "Ban on a Chişinau 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), 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), reply to Written Question No. 540 by Mr Huss: "Denial of freedom of assembly and expression to lesbian, gay, bisexual and transgender persons in Lithuania" (adopted on 2 April 2008 at the 1023rd meeting of the Ministers' Deputies), and reply to Written Question No. 539 by Mr Hancock: "Laws discriminating against gay men in Gibraltar" (adopted on 23 April 2008 at the 1024th meeting of the Ministers' Deputies).