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Situation of lesbians and gays in Council of Europe member states

Recommendation 1474 (2000)

Reply from the Committee of Ministers

adopted at the 765th meeting of the Ministers' Deputies (19 September 2001)

1. The Committee of Ministers has carefully examined [Recommendation 1474](#) (2000) on the situation of lesbians and gays in Council of Europe member states. It agrees with the Parliamentary Assembly that, regrettably, discrimination and violence against homosexuals still occur. Differentiated treatment of homosexuals under the law and in practice still exists in member states as do contemptuous or intolerant attitudes towards them.
2. In preparing a reply to the recommendation, the Committee has requested the opinion of the European Commission against racism and intolerance (ECRI). ECRI adopted its opinion – to which the Committee of Ministers generally subscribes – at its 24th meeting in March 2001 (see appendix to this reply). With regard to the proposal concerning the Council of Europe Commissioner for Human Rights, the Commissioner, when consulted, considered that the problem of discrimination on grounds of sexual orientation was already fully covered by his mandate and sufficiently important to be an integral part of the work of his office as a whole rather than being reserved for a specific appointment.
3. The Committee of Ministers stresses the importance of covering all forms of discrimination within the framework of the Council of Europe's activities and underlines in this respect the relevance of the new Protocol No. 12 to the European Convention on Human Rights (general prohibition of discrimination). Clearly a broad range of legal instruments and activities have the potential to contribute to progress in combating discrimination against lesbians and gays. In this connection, it welcomes the ECRI's proposal concerning "a wide debate within the Council of Europe as to how the Organisation as a whole might best address the various areas of discrimination".
4. With reference to paragraph 11.i of [Recommendation 1474](#), the Committee of Ministers does not propose to re-open the debate concerning the need to include sexual orientation amongst the grounds for discrimination explicitly mentioned in Protocol No. 12 (or in Article 14 of the Convention). It recalls that careful consideration has been given to this issue by the drafters of the Protocol; reference can be made to the explanations given in paragraph 20 of the Protocol's Explanatory report. It would, however, like to draw attention to several cases in which the Court has adopted a strict scrutiny *vis-à-vis* distinctions based on grounds not explicitly mentioned in Article 14 (see, for example, the judgment in the case of *Gaygusuz v. Austria* of 11 January 1995, Reports 1996-IV) including distinctions based on sexual orientation (for example the judgment of 21 December 1999 in the case of *Salgueiro da Silva Mouta v. Portugal*).
5. The case-law of the organs of the European Convention on Human Rights also provides a strong general incitement to all member states, beyond the specific obligation of Contracting States to execute the judgments of the Court, to reform any discriminatory legislation or regulations and in this connection the Committee of Ministers refers not only to the cases

mentioned in the recommendation but also, for example, to the cases of Norris against Ireland or those of Modinos and of Marangos against Cyprus.

6. Progress remains to be made in member states' domestic law and practice, which must be kept under review to ensure best standards and practice. In this regard the Committee of Ministers can mark its agreement with several of the injunctions addressed to member states in paragraph 11.iii of the recommendation. In this regard it underlines in particular the need, mentioned in sub-paragraph 11.iii.e, for [...] measures in the areas of education and professional training to combat homophobic attitudes in certain specific circles. Homosexuality can still give rise to powerful cultural reactions in some societies or sectors thereof, but this is not a valid reason for governments or parliaments to remain passive. On the contrary, this fact only underlines the need to promote greater tolerance in matters of sexual orientation.

7. Finally, the Committee wishes to assure the Assembly that it will continue to follow the issue of discrimination based on sexual orientation with close attention.

Appendix

ECRI Opinion on Parliamentary Assembly Recommendation 1474 (2000)

1. ECRI examined with interest [Recommendation 1474 \(2000\)](#) on the situation of lesbians and gays in Council of Europe member States. It agrees with the Parliamentary Assembly that homosexuals are still too often subjected to discrimination or violence, and that the discriminatory legislation which sometimes exists and the homophobic climate that often reigns in member States lead to aggressive or contemptuous attitudes towards them. Oppression of homosexuals provides an indication of the degree of intolerance that may prevail in a society.

2. ECRI has not discussed this issue in its work to date. ECRI has thus far perceived its task as being to combat racism, xenophobia, antisemitism and related intolerance. Its action covers all measures necessary to combat violence, discrimination and prejudice faced by persons or groups of persons, in particular on grounds of race, colour, language, religion, nationality and national or ethnic origin.

3. ECRI welcomes the adoption of Protocol 12 to the European Convention on Human Rights, which contains a general prohibition of discrimination and stresses the importance of covering, within the framework of the Council of Europe's activities, all forms of discrimination.

4. For this reason, ECRI would welcome a wide debate within the Council of Europe as to how the Organisation as a whole might best address the various areas of discrimination, and expresses its readiness to participate in such a debate.

5. ECRI recalls that its own resources are at present very limited and already insufficient for it to cover its current field of activities. It stresses therefore that any decision taken on how best to cover the issue of discrimination in a wider sense should be accompanied by the necessary financial and human resources.