

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Resolution 230 (2007)¹ Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons

1. The Congress of Local and Regional Authorities is gravely concerned by the violation of the rights to freedom of assembly and expression for lesbian, gay, bisexual and transgendered persons (LGBT) in a number of Council of Europe member states, an infringement epitomised by the banning or attempted banning of peaceful rallies or demonstrations by LGBT and their supporters, and the overt or tacit support some local politicians have given to violent counter-demonstrations;

2. It is the paramount duty of local authorities not only to positively protect the rights to freedom of assembly and expression in a practical and effective manner, but also to refrain from speech likely to legitimise discrimination or hatred based on intolerance;

3. Furthermore, local authorities have an obligation to enable lawful assemblies to proceed peacefully through the provision of, *inter alia*, adequate measures to prevent attacks by violent opponents. A theoretical risk of disorder, or the mere presence of opposition, is insufficient to justify restrictions on public events;

4. The rights of lesbian, gay, bisexual and transgendered persons to freedom of expression and assembly are essential not only for their own personal development, dignity and fulfilment as citizens, but also for the promotion and protection of equality and democracy and for the progress of society as a cohesive whole;

5. The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) proclaims, in Articles 10 and 11, that every person has the right to enjoy freedom of expression, assembly and association without interference by public authorities, and free from discrimination (Article 14);

6. The Congress, believing these rights to be at the core of a democratic society, and the role of local authorities in upholding them to be fundamental, has drawn up the recommendations set out below to guarantee that LGBT citizens, throughout Council of Europe member states, enjoy their full rights to freedom of assembly and expression. The Congress calls on local authorities to:

a. take appropriate steps to combat hate speech on the basis of the principles laid down in Committee of Ministers Recommendation No. R (97) 20;

b. take note of and apply the forthcoming "Guidelines on Freedom of Peaceful Assembly" being drafted by the OSCE/ODIHR expert panel on freedom of assembly;

c. restrict the right to peaceful assembly only as a last resort, having exhausted all other means of reaching agreement about the event, following an open, objective and transparent assessment of all available information, and in such cases to:

i. ensure that the legitimate aims listed in international instruments for restricting events or meetings are strictly complied with and that the interpretation of these grounds is consistent with established jurisprudence and in no case subordinated to the principles of a particular political creed or religion;

ii. impose the least restrictive time, place or manner possible to achieve the stated legitimate aim;

iii. offer the organiser of the proposed event an opportunity to respond to any particular concerns raised by the regulatory authority, or in evidence to it;

iv. publish the reasons for imposing any restrictions sufficiently far in advance of the notified date of the event so as to enable the organiser to challenge the legality of the restrictions in a court of law before the event is due to take place;

v. implement reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully while avoiding regulations which would fundamentally alter the character of an event, such as unnecessary use of crowd control barriers or routing marches through less central areas of a city;

vi. make available adequate policing resources to see that sufficient measures are in place, where counter-protests against an LGBT event have been notified, to ensure that participants in the latter need not fear being subjected to physical violence, in application of Article 2 of the ECHR which imposes a positive obligation on authorities to protect the right to life, and Article 3 which states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment;

d. make certain that they and their employees set an example of tolerance and:

i. discharge their duties in a manner which is neither arbitrary nor discriminatory and do not impose restrictions on the basis of the content or message of an event;

ii. do not withhold the provision of services to members of the LGBT community on the basis of matters of conscience or religion where the services in question are clearly specified in the terms of their contract of employment;

e. ensure that with regard to the holding of LGBT events:

i. notification procedures are as free from bureaucracy as possible;

ii. the public has adequate access to reliable information relating to forthcoming events, as well as to information on discrimination and intolerance;

iii. the costs of cleaning up after an event are not imposed on the organiser of a non-commercial event;

f. consolidate and enhance local police-community relationships to reduce the escalatory potential of public demonstrations, and in this respect:

i. ensure police officers receive the necessary human rights, neutrality and non-discrimination training and instruction and apply it;

ii. use the dispersal of assemblies as a measure of last resort;

iii. ensure that law enforcement officials avoid the use of force or restrict such force to the minimum extent necessary, adhering strictly to international standards on policing which provide specific and detailed guidance regarding its use;

iv. ensure that police officials take immediate and effective action (subject to normal public order considerations) to remove from an event any persons intent on disrupting it;

v. never require event organisers to hire their own security personnel or cover the cost of policing assemblies (in itself a form of prior restriction, undermining the positive obligation of authorities to protect the exercise of these rights);

g. seek to build capacity for the mediation of disputes, thereby supporting efforts to reach mutually acceptable accommodations between opposed groups by linking up

with local civil society organisations with mediation experience, and by expanding the available pool of trained third party mediators;

h. use trained, independent monitors to provide an objective account of LGBT events, oversee policing arrangements involving counter-protesters or sensitive locations or check compliance with the terms of any mediated agreement, and to consider forging links with the OSCE/ODIHR in developing and piloting a monitoring programme in relation to LGBT events;

7. The Congress further decides to:

a. suggest that discussions on LGBT freedom of assembly and expression be incorporated at future high-level meetings with OSCE/ODIHR representatives with a view to increased co-operation between the two organisations in this respect;

b. mandate its Committee on Social Cohesion to work closely with the Commissioner for Human Rights with regard to questions of discrimination against members of the LGBT community, for example in the context of co-operation with ombudspersons.

1. Debated and approved by the Chamber of Local Authorities on 27 March 2007 and adopted by the Standing Committee of the Congress on 28 March 2007 (see Document CPL(13)9, draft resolution presented by V. Prignachi (Italy, L, EPP/CD) on behalf of V. Sharkey (Ireland, L, ILDG), rapporteur).