

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 211 (2007)¹ Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons

1. True democracy requires the enjoyment of freedom of expression and assembly without interference by public authority, as enshrined in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 10 and 11);

2. The protection of these rights is essential for ensuring the accountability and responsiveness of governing authorities, and thus also critical to the protection of all other basic human rights;

3. Furthermore, the right to express and share one's identity with others is an integral part of tolerance – the principle of protecting society's diversity through a free exchange of ideas which can lead to an enrichment at the level of the individual and of society;

4. These freedoms naturally carry with them certain duties and responsibilities and as such, the state, regional or local authorities may impose restrictions, strictly only where these are prescribed by law, deemed necessary in a democratic society, and pursue the legitimate aims listed in the relevant regional and international human rights instruments;

5. Regrettably, recent homophobic incidents in a number of member states have highlighted not only the systematic violation of the basic rights of the lesbian, gay, bisexual and transgendered (LGBT) community but have shown that in many cases the very authorities who have the positive obligation to protect their citizens against discrimination are actually endorsing and in some cases actively supporting or perpetrating this injustice;

6. Given that freedom of expression and assembly is at the core of a democratic society, and that the role of local authorities in upholding these rights is fundamental, and in light of these recent events, the Congress of Local and Regional Authorities has drawn up an overview of the implementation of these rights at local level throughout Europe, together with the recommendations set out below;

7. The Congress recommends that the Committee of Ministers of the Council of Europe ask member states to ensure that:

a. they take a public stand against discrimination on the grounds of belonging to a sexual minority as well as

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. they investigate with all the rigour at their disposal all cases of violence, or hate speech during LGBT or LGBT-related events to determine whether discrimination or homophobia may have played a role in the commission of a crime, and ensure prosecution of those responsible;

d. where necessary they take positive measures as required by the European Court of Human Rights, to guarantee effective freedom of assembly and expression across their national territory at state, local and regional level;

e. any civil, criminal or administrative law measures that interfere with freedom of expression or assembly are prescribed by law, serve a legitimate aim (as stated in the relevant regional and international instruments) and are no more restrictive than is necessary to achieve that aim;

f. LGBT groups are consulted when reforming any of the above measures to ensure the mutual benefit of all concerned and foster a spirit of co-operation rather than confrontation;

g. organisers of events on which restrictions have been placed or which have been banned have the right of access to an independent court or tribunal so that they may challenge these restrictions;

h. local authorities are kept informed of all new legislation and relevant case law pertaining to freedom of assembly and expression and anti-discrimination measures;

i. while the provision of financial or other support by local authorities to the organisers of LGBT events must be provided equally to all similar groups, there should be no statutory bar to local authorities assisting or publicising LGBT events;

8. The Congress invites the Commissioner for Human Rights to work closely with its Committee on Social Cohesion 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)8, draft recommendation presented by V. Prignachi (Italy, L, EPP/CD) on behalf of V. Sharkey (Ireland, L, ILDG), rapporteur).