

**European Communities**

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**EUROPEAN PARLIAMENT**

**Working Documents**

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**13 February 1984**

**DOCUMENT 1-1358/83**

**Report**

**drawn up on behalf of the Committee on Social Affairs  
and Employment**

**on sexual discrimination at the workplace**

**Rapporteur: Mrs Vera SQUARCIALUPI**

**PE 87.477/fin.**



At its sitting of 10.5.1982 the European Parliament referred the motion for a resolution tabled by Mr Glinne and others (Doc. 1-172/82) pursuant to Rule 47 of the Rules of Procedure to the Committee for Social Affairs as the committee responsible, and to the Legal Affairs Committee for an opinion.

At its meeting of 18.1.1983, the Committee on Social Affairs and Employment decided to draw up a report and appointed Mrs Squarcialupi rapporteur.

The committee also decided to consider, in the context of the abovementioned report, the motion for a resolution tabled by Mrs van den Heuvel (Doc. 1-1072/82) pursuant to Rule 47 of the Rules of Procedure, which was referred at the sitting of 12.1.1983 to the Legal Affairs Committee as the committee responsible and the Committee on Social Affairs and Employment for an opinion.

The draft report was considered at the meetings of 13 and 14 June 1983, 21 and 22 November 1983, and 31 January and 1 February 1984. At the last meeting, the motion for a resolution was adopted unanimously with 4 abstentions.

The following took part in the vote: Mr Frischmann, acting chairman; Mrs Squarcialupi, rapporteur; Mr Abens (deputizing for Mr Motchane); Mr Ceravolo, Mrs Duport, Mr Eisma, Mr Geurtzen (deputizing for Mrs Pauwelyn), Mr Ghergo, Mrs van den Heuvel (deputizing for Mr Peters), Mrs Kellett-Bowman (deputizing for Mr Simpson), Mrs Krouwel-Vlam (deputizing for Ms Clwyd), (Mrs Maij-Weggen, Mr van Minnen, Mr Mommersteeg (deputizing for Mr Estgen), Mrs T. Nielsen, Mr Ouzounidis (deputizing for Mr Boyes), Mr Patterson, Mrs Phlix (deputizing for Mr Chantèrie), Mr Prag, Mrs Salisch, Mr Schinzel (deputizing for Mr Diddò), Mr Tuckman and Mrs Van Hemeldonck (deputizing for Mr Pattison).

The opinion of the Legal Affairs Committee is attached to this report.

The report was tabled in final form on 1 February 1984.

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A

The Committee on Social Affairs and Employment hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on sexual discrimination at the workplace

The European Parliament,

- having regard to the motions for resolutions by Mr Glinne and others on sexual discrimination (Doc. 1-172/82) and by Mrs van den Heuvel on statutory and other discrimination against homosexuals (Doc. 1-1072/82),
- having regard to Petition No. 14/83 by the PvdA Homogroep (PE 85.093),
- having regard to Recommendation 924 (1981) and Resolution 756 (1981) of the Council of Europe on discrimination against homosexuals,
- having regard to Article 8 of the European Convention on Human Rights, which asserts that every individual has the right to respect for his private and family life, his home and his correspondence,
- having regard to the ruling of 22 October 1981 of the European Court of Human Rights in the Dudgeon case,
- having regard to Articles 12 and 13 of the Universal Declaration of Human Rights,
- having regard to Articles 100 and 118 of the EEC Treaty,
- having regard to the report of the Committee on Social Affairs and Employment and the opinion of the Legal Affairs Committee (Doc. 1-1358/83),

- A. whereas the elimination of all forms of discrimination between individuals is a prerequisite to the achievement of a more just society and of the objectives laid down in the preamble and Article 117 of the EEC Treaty, in particular that of improving the living and working conditions of the people of Europe,
- B. whereas the Treaty or its implementing provisions directly confer on the citizens of the Community the right to move freely and to reside on the territory of another Member State and whereas the principle of free movement within the Community does not imply merely that there should be no discrimination on the grounds of nationality but is a fundamental right of independent validity, as asserted in Regulation (EEC) No. 1612/68 and Directive (EEC) No. 68/360 (1),
- C. whereas the WHO still classifies homosexuality as a mental illness and whereas this may have serious consequences on the life of homosexuals in society,
- D. whereas in some Member States homosexuals are barred from certain professions such as the armed forces, the diplomatic service and the merchant navy,
- E. whereas, moreover, even in those Member States whose legislation does not treat homosexuality between adults as an offence, in reality discrimination is practised against homosexuals with regard to work (recruitment, career prospects), job security, housing, prison conditions, respect for private life, and the right to visit or have custody of children,
- F. whereas it is unacceptable that homosexuality should be the reason, whether manifest or not for individual dismissals, as has happened in a number of well-known cases,
- G. noting that certain sections of society still maintain a discriminatory attitude towards homosexuals which may have serious consequences,

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(1) OJ No. L 257, 19.10.1968

- H. noting, however, that all countries are witnessing a change in attitude which has also prompted adjustments to the legislation on sexuality,
  - I. convinced that social justice and respect for the dignity and freedom of the individual are essential for democracy and for the construction of Europe,
- 
- 1. Points out that in the campaign against discrimination of all kinds it is impossible to ignore or passively to accept de facto or de jure discrimination against homosexuals;
  - 2. Deplores all forms of discrimination based on an individual's sexual tendencies;
  - 3. Welcomes the fact that young people have rejected certain prejudices, as revealed by the Charter for Youth Employment presented by the Youth Forum, which includes among the forms of discrimination to be eliminated discrimination on the grounds of sexual affinity;
  - 4. Urges the Member States to:
    - (a) abolish any laws which make homosexual acts between consenting adults liable to punishment,
    - (b) apply the same age of consent as for heterosexual acts, as recommended by the Parliamentary Assembly of the Council of Europe,
    - (c) ban the keeping of special records on homosexuals by the police or any other authority,
    - (d) reject the classification of homosexuality as a mental illness;
  - 5. Calls on the Commission to:
    - (a) renew its efforts with regard to dismissals to ensure that, while bearing in mind the present situation of mass unemployment, certain individuals are not unfairly treated for reasons relating to their private life,

- (b) submit proposals to ensure that no cases arise in the Member States of discrimination against homosexuals with regard to access to employment and working conditions,
- (c) take steps to induce the WHO to delete homosexuality from its International Classification of Diseases;

6. Also calls on the Commission to:

- (a) invite Member States to provide, as soon as possible, a list of all provisions in their legislation which concern homosexuals,
  - (b) to identify, on the basis of such lists, any discrimination against homosexuals with regard to employment, housing and other social problems by drawing up a report, pursuant to Article 122 of the Treaty of Rome.
7. Requests, lastly, its Legal Affairs Committee to examine as soon as possible in what way differences between the laws of the various Member States with regard to the ban on homosexuality or the minimum age of consent constitute barriers to the right to freedom of movement and to freedom of establishment as an employee or self-employed person and, in so doing, also to indicate what Community measures might be applied to remove such barriers;
8. Instructs its President to forward this resolution to the Council and Commission of the European Communities and to the governments of the Member States.

EXPLANATORY STATEMENTI - The changed attitude of the Council of Europe

1. The two motions for resolutions which prompted the report on the problem of discrimination against homosexuals refer to Recommendation 924 and Resolution 756 adopted in October 1981 by the Parliamentary Assembly of the Council of Europe.
2. This problem had already been raised before the European Commission on Human Rights in 1955 by a group of German nationals who argued that Article 175 of the German Penal Code, which stated that male homosexuality was a punishable offence at any age, contravened the European Convention on Human Rights in that it violated the principle of respect for the private life of the individual (Article 8) and the ban on discrimination on the grounds of sex (Article 14). The European Commission on Human Rights ruled that the application was inadmissible because it was plain inopportune.

Subsequently, when the German legislature amended Article 175 by abolishing the ban on homosexuality between adults a second suit was brought before the European Commission on Human Rights on the grounds that the new law maintained a dual discrimination: both as regards the minimum age (higher for homosexual than for heterosexual relations) and from the point of view of sex (homosexual relations between women were not mentioned and did not therefore come under any form of regulation). There was no change of attitude towards the question on this occasion since the suit was rejected.

3. In 1977 a British citizen, sentenced to two and a half years imprisonment for having had homosexual relations with two 18 year-old men, appealed to the Commission on the grounds of violation of Articles 8 and 14 of the European Convention on Human Rights.

The Commission widely supported the arguments of the British Government. However, there was a slight shift in position since the Commission acknowledged the admissibility of the suit in stating that it should be established whether there was any objective explanation for the difference in treatment.

4. At about the same time, a citizen of Northern Ireland, Mr Jeffrey Dudgeon, appealed to the European Court on Human Rights claiming that the repressive laws on homosexuality in his country infringed human rights and fundamental freedoms. During a search of the plaintiff's apartment, on suspicion of the possession of drugs, the police had found evidence of homosexuality among the man's letters and he was subjected to close interrogation at the police station.

In October 1981 in its ruling on the Dudgeon case the European Court stated that there had been a violation of Article 8 of the Convention.

5. Again in October 1981, Resolution 756 and Recommendation 924, drawn up by the Committee on Health and Social Affairs of the Parliamentary Assembly of the Council of Europe, were adopted.

In addition to calling on Member States to abolish their laws on criminal prosecution for homosexual acts between adults, the recommendation urged in particular that homosexuals be guaranteed equality of treatment in employment and that their visiting rights or the custody of children in cases of divorce should not be restricted solely on grounds of their sexual preferences.

## II - Legal situation in the Member States with regard to the age of consent

6. With the exception of Ireland, homosexuality is not punishable in the Member States as long as it takes place in private between consenting adults.

However, in some Member States the minimum age of consent for sexual acts - i.e. below which a sexual act is considered an offence - is different for heterosexuals and homosexuals, as indicated by the following table:

Member State	Minimum age of consent for heterosexuals	Minimum age of consent for homosexuals
Belgium	16 years	18 years
Denmark	15 years	15 years
Federal Republic of Germany	14 years	18 years
France	15 years	15 years
Greece		17 years
Ireland	male homosexuality is banned	
Great Britain	16 years	21 years (1)
Italy	Italian law does not refer to homo- sexuality with regard to the age of consent	
Luxembourg	15 years	18 years
Netherlands	16 years	16 years

(1) Homosexuality in the armed forces is banned.

It should be pointed out that even where legislation refers to homosexuality it always denotes male homosexuality; no mention is made of female homosexuality which could be construed as discrimination between the sexes in violation of Article 14 of the Convention on Human Rights.

In 1981 the Ministry of Culture of the Netherlands published a document aimed at providing better protection for those social groups most vulnerable to discrimination. Among the categories listed are homosexuals for whom a number of laws are proposed to prevent their exclusion from certain jobs or detriment to their careers on account of their sexual preferences.

III - Observations on discrimination against homosexuals

7. Legislation in most of the Member States has evolved from its medieval origins when all homosexuals were considered as heretics and who should therefore be burnt at the stake, to an attitude of tolerance of homosexuality between adults.

However, tolerance in the eyes of the law in no way means protection from the discrimination from which this minority suffers. Thus the discrimination under criminal law in the various Member States as regards the age of consent affects homosexuals less in practice than the actual discrimination - whether overt or disguised - which they encounter in employment or in job security, housing, prison conditions, respect for private life and visiting rights or custody of children. In many instances, even when they have not broken the law, homosexuals are subject to acts of discrimination which can be compared in some sense to racism in that racism is a form of rejection of diversity.

8. In practice discrimination against homosexuals is rarely explicit which makes the task of identifying, combating and eliminating it much more difficult. In theory, homosexuality does not conflict with any type of employment nor does it jeopardize an individual's career prospects. In practice it often happens that the system of security checks used in hiring, particularly in public administration, enables people with homosexual tendencies to be rejected.

9. The so-called flexible clauses in legislation also discriminate against homosexuals in that, while not treating or punishing homosexuality as an offence, they do for example, as in Italy, maintain the article of the military code which grants exemption from military service on the grounds of 'sexual inversion', here treated as an illness. This reason is then disclosed every time the person concerned is required to provide evidence of good conduct.

Even in countries with fairly liberal legislation, there is also discrimination in daily life - for example the special records of homosexuals which are kept in certain Member States.

10. There have been many cases reported in the press in recent years which reveal an established practice of barring homosexuals from certain professions. One famous case is that of the Belgian teacher, Eliane Morissens, who was dismissed purely because she stated during a television programme that she was a lesbian. An official in the German army who stated in public that he was a homosexual without, however, ever having practised homosexuality, was pensioned off because it was felt that this was irreconcilable with the fulfilment of his duties. An Italian doctor who admitted to being homosexual was dismissed from the health institute where he worked.

11. The problems do not concern professional life alone, however. They also affect housing and the right to custody of children in the case of separation or divorce. For example, a number of homosexuals have been refused accommodation, supposedly to prevent complaints from other tenants and to avoid infringing the vice squad rules. Others have been refused the right to visit or have custody of their children on the pretext that they were not leading the kind of life compatible with a good mother or father.

12. Homosexuality still appears on the WHO's official list of illnesses, although the theories on which such classification is based no longer have any foundation and have all been scientifically refuted, to the extent that, as long ago as 1973, the US Psychiatric Association deleted homosexuality from its list of mental illnesses.

13. Lesbianism frequently has separate connotations. There is a fundamental difference between male and female homosexuality, which is that the former concerns men and the second women. Homosexuals are discriminated against solely on the basis of their sexual tendencies, while at the same time, being male, they receive full recognition in every sphere of private and public life and enjoy economic advantages and positions of power. They are accepted by other men within the context of male values and structures. A study of history would reveal that male homosexuality has always been practised and allowed to exist as a result of family, social and cultural structures which totally excluded women. Lesbianism, on the other hand, and gynocratic or matriarchal structures are kept quiet or relegated to mythology and ancient history.

Without denying the existence of discrimination against homosexuals, lesbians claim that they, for their part, are discriminated against in every aspect and context of private and social life. Any manifestation of female sexuality which is not directed towards male pleasure or reproduction is systematically penalized. The male feels negated by lesbianism, because lesbian women are a challenge not only to the value of the male body but also to the power symbols which it incarnates.

These aspects and many others show that the campaign by women to win certain rights cannot be separated from the struggle for women's rights in general and therefore receives full recognition within the feminist movement.

14. In addition to the abovementioned forms of discrimination, homosexuals are also the victims of entrenched prejudices still held by the general public, as revealed by various surveys, which often amount to persecution.

An inquiry carried out amongst French general practitioners confirms the existence of certain social prejudices:

- 71% regard homosexuality as an anomaly;
- 54% consider that homosexuals should consult a psychiatrist in order to seek a cure;
- 57% feel that too much importance is attributed to homosexuality;
- only 11% feel that too little consideration is given to this problem;
- 48% believe that homosexuals are to be pitied;
- 35% would like more information on ways of preventing contact between homosexuals and children.

On the other hand, another survey carried out in France, by the IFOP, showed that:

- 55% of those questioned regard the right to be homosexual as a fundamental human right,
- only 1% consider this form of sexuality to be a crime.

Such prejudices are thus gradually being overcome, particularly among young people.

As far as Italy is concerned, a very recent inquiry sponsored by the alderman responsible for culture of the city of Turin and the Sandro Penna Foundation for homosexual culture and carried out by the Demoskopea institute of social research, revealed that:

- 74% of Italians would do anything to stop their children being homosexuals;

- 33% are unaware of being heterosexual themselves and are thus unable to judge homosexuals;
- 30% would like to see homosexuals imprisoned;
- 83% use derogatory expressions to designate homosexuals;
- 46% regard homosexuality as an illness;
- 15.1% as a vice, - 21% as one of the many forms of sexuality;
- 9.4% as a condition created by society;
- 7.4% as a matter of free choice.

Half the Italians thus regard homosexuality as an illness, one in two consider homosexuals to be 'unsuccessful women' and only 35% feel that it is impossible to recognize homosexuality in an individual.

When asked how they would react if they found a friend to be homosexual, only 11% would break off all relations, 25.5% would try and help him become 'normal', that is heterosexual, 34.2% would not change in any way and only 6.9% would help him to come to terms with his homosexuality.

If a member of the family was found to be homosexual:

- 4.9% would adopt a punitive attitude, particularly fathers;
- 73.9% would help the person concerned to become normal;
- 10.5%, particularly mothers, would help him to come to terms with his homosexuality.

In the city of Turin, however, very different results were obtained:

- 43% regard homosexuality as one of the many forms of sexuality;
- 78.7% would help their child to cope with his homosexuality, without seeking to change him.

This attitude is without doubt the result of the great diversity of Turin's population and to the active presence of the movement for homosexual rights.

Mention should finally be made of the scandalous situation of homosexual detainees, who are the constant victims of violence that is ignored.

15. It cannot be discounted that such prejudices have been encouraged to some extent by ambiguities in the attitude of the Church. Catholic morality for example makes a distinction between homosexuality as such which is not blameworthy and the homosexual act which it judges unacceptable since it is not aimed at procreation. In actual fact the Catholic Church considers that homosexuality should be treated with respect and profound understanding.

In some ecclesiastical circles it is questioned whether silence and a repressive attitude towards sex on the part of the Catholic Church (which ruled only that consorting too often with the opposite sex created the opportunity for sin) might not have contributed to the emergence and growth of homosexual tendencies.

16. In recent years, however, a considerable number of associations of Christian homosexuals have sprung up in many countries, including Italy, where associations have been formed within the Evangelical, Baptist, Methodist and Waldensian Churches. In addition, homosexuals now have access to many of the Catholic associations best known for their efforts to help social outcasts.

Although a recent article in the Jesuit periodical 'Civiltà cattolica' stated that the Church does not condemn homosexual tendencies, only homosexual acts, the declaration by John Paul II that homosexuality is morally dishonest (Chicago 1979) nevertheless still stands.

In the Netherlands in particular the Catholic hierarchy has substantially relaxed its attitude to homosexuality.

Leaving aside the ideological and cultural aspects, however, the fact remains that male and female homosexuality is a real problem and there is thus every justification for raising it in a supranational political body such as the European Parliament, as proof of genuine respect for personal freedom and individual differences.

17. The European Parliament, for its part, has already addressed itself to the problem of homosexuality in the resolution on human rights in the Soviet Union which it adopted on 17 May 1983(1), in which it
- 'Condemns the Soviet Government's arbitrary interference with their citizens' privacy, family, home and correspondence, which contravenes Article 12 of the UN Universal Declaration on Human Rights and Article 17 of the International Covenant on Civil and Political Rights (para. 6),

and calls on the Soviet Government

'to cease the KGB tactic of discrediting dissidents by accusing them of immorality and homosexuality,' (para. 10 (vi)), and  
'to cease the persecution of homosexuals' (para. 10 (ix)).

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(1) OJ No. C 161, 20.6.1983, pp.67 et seq.

Associations which have been in contact with the rapporteur and  
the Committee on Social Affairs and Employment

- Les lesbianaires - Centre de Documentation et de Recherches - Bruxelles -
- CGHE - Conservative Group for Homosexual Equality - London -
- The Mothers' Union - Social Concern Department - London -
- Libgay - Liberal Gay Action Group - London -
- PvdA - Homogroep - Amsterdam
- Fondazione Sandro Penna - Torino
- FUORI - Movimento di liberazione delle lesbiche e degli omosessuali - Torino
- International Gay Association - Stockholm -
- Gruppo Gay milanese - Milano -
- ARCI Gay - Roma -
- Le triangle rose au poing - Groupe Homosexuel socialiste - Bruxelles -
- C.H.E. Campaign for Homosexual Equality - London -
- A.S.P.E. - Torino -
- Circolo culturale 28 giugno - Bologna -
- Gruppo Phoenix - Milano -
- N.C.C.L. - National Council for Civil Liberties - London -
- Irish Gay Rights Movement - Cork -
- LOLF - Landelijk Overleg van Linske Flikkers - Amsterdam -
- Gruppo Tadzio - Milano -
- ILIS - International Lesbians - Helsinki -
- Collettivo Ass. Pastorale Omosessuale - Mestre -
- Scottish Homosexual Rights Group - Edinburgh -
- Federation des groupes homosexuels de la Communauté Française de Belgique -  
Bruxelles -
- Communauté du Christ Libérateur - Bruxelles  
(Groupe de chrétiens homosexuels)
- The University of Sydney (Australia)  
Department of Economic History

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ANNEX\_I

MOTION FOR A RESOLUTION (Doc. 1-172/82)  
tabled by Mr GLINNE and others  
pursuant to Rule 47 of the Rules of Procedure  
on sexual discrimination

The European Parliament,

- having regard to Article 48 of the Treaty of Rome on the free movement of workers within the Community,
  - having regard to Recommendation 924 on discrimination against homosexuals, adopted on 1 October 1981 by the Parliamentary Assembly of the Council of Europe, which calls on the Committee of Ministers 'to assure equality of treatment, no more no less, for homosexuals with regard to employment, pay and job security, particularly in the public sector',
  - whereas in several Member States of the Community homosexuals are still, to this day, subject to discrimination as regards employment,
1. Calls on the Commission and the Council of Ministers to take the measures necessary to bring an end to all forms of discrimination against homosexuals in the field of employment;
  2. Instructs its President to forward this resolution to the Commission and the Council.

ANNEX II

Motion for a Resolution (Doc. 1-1072/82)  
tabled by Mrs van den HEUVEL  
pursuant to Rule 47 of the Rules of Procedure  
on statutory and other discrimination against homosexuals

The European Parliament,

- (a) whereas the legislation on the living and working conditions of homosexuals varies widely between the Member States,
  - (b) whereas in certain Member States criminal law may be applied in a discriminatory fashion to homosexuals as compared with heterosexuals,
  - (c) whereas the authorities of certain Member States of the European Community discriminate between homosexuals and heterosexuals without any statutory justification,
  - (d) whereas in certain Member States homosexuality continues to be considered as an illness and treated as such by the health authorities despite scientific evidence to the contrary,
  - (e) having regard to the judgement of the European Court of Human Rights that the application of criminal sanctions to homosexual relations is incompatible with Article 8 of the European Convention on Human Rights,
  - (f) whereas homosexuality is mistakenly included on the official WHO list of illnesses,
  - (g) having regard to the future accession of Spain and Portugal,
  - (h) having regard to the report of the Council of Europe on discrimination against homosexuals and its recommendation to the Council of Ministers of the Council of Europe,
  - (i) convinced that all men and women have the right to their individual sexual dispositions,
1. Protests against all forms of statutory or other discrimination against individuals or certain groups in society;
  2. Requests the Member States to bring all statutory provisions affecting homosexuals into line with those affecting heterosexuals;

3. Condemns all forms of registration of homosexuals as such;
4. Requests the Commission, in view of the accession to the Community of Spain and Portugal, to make a proposal to prohibit discriminatory action against homosexuals in the Community, and to include this proposal in the accession negotiations with Spain and Portugal;
5. Requests the Council to make representations to the WHO with a view to removing homosexuality from the list of illnesses;
6. Requests the Council to examine how the rights and freedoms referred to in the Convention for the Protection of Human Rights and Fundamental Freedoms may be recognized as applying to sexual dispositions with regard to non-discrimination (Article 14 of the Treaty);
7. Requests the Commission to formulate proposals in the near future to eliminate all forms of discrimination in the Member States (anti-discrimination legislation);
8. Requests its President to forward this resolution to the Commission and Council.

**PETITIONS**

pursuant to Rules 108-110 of the Rules of Procedure

**Petition No. 14/83**

by the PvdA (Dutch Labour Party) Homogroep

**Subject :Abolition of all forms of legal discrimination against  
homosexuals and lesbians**

**Homosexual men and women consider that the following are essential for  
European integration :**

- 1. abolition of all forms of legal discrimination against homosexuals  
and lesbians in the various Member States and applicant countries;  
homosexuals must be guaranteed all fundamental rights within Europe;**
- 2. implementation throughout the Community of the same watertight legislation  
against all forms of sex discrimination, including discrimination on the  
grounds of homosexuality; such legislation could also include the  
implementation of the various directives on equal treatment for men and  
women;**
- 3. support for the emancipation activities of homosexual men and women  
in all Member States.**

**Luxembourg, 25 May 1983**

**PvdA Homogroep**

**Willemien RUYGROK**

**Dutch Staff Member**

**Nicolaas Witsenkade 30**

**NL - 1017 ZT AMSTERDAM**

**PARLIAMENTARY ASSEMBLY  
OF THE  
COUNCIL OF EUROPE**

**THIRTY-THIRD ORDINARY SESSION**

**RECOMMENDATION 924 (1981)<sup>1</sup>  
*on discrimination against homosexuals***

The Assembly,

1. Recalling its firm commitment to the protection of human rights and to the abolition of all forms of discrimination ;
2. Observing that, despite some efforts and new legislation in recent years directed towards eliminating discrimination against homosexuals, they continue to suffer from discrimination and even, at times, from oppression ;
3. Believing that, in the pluralistic societies of today, in which of course traditional family life has its own place and value, practices such as the exclusion of persons on the grounds of their sexual preferences from certain jobs, the existence of acts of aggression against them or the keeping of records on those persons, are survivals of several centuries of prejudice ;
4. Considering that in a few member states homosexual acts are still a criminal offence and often carry severe penalties ;
5. Believing that all individuals, male or female, having attained the legal age of consent provided by the law of the country they live in, and who are capable of valid personal consent, should enjoy the right to sexual self-determination ;
6. Emphasising, however, that the state has a responsibility in areas of public concern such as the protection of children.

<sup>1</sup>. Assembly debate on 1 October 1981 (10th Sitzung) (see Doc 4755, report of the Committee on Social and Health Questions)

*Text adopted by the Assembly on 1 October 1981 (10th Sitzung).*

7. Recommends that the Committee of Ministers :
  - i. urge those member states where homosexual acts between consenting adults are liable to criminal prosecution, to abolish those laws and practices ;
  - ii. urge member states to apply the same minimum age of consent for homosexual and heterosexual acts ;
  - iii. call on the governments of the member states :
    - a. to order the destruction of existing special records on homosexuals and to abolish the practice of keeping records on homosexual persons by the police or any other authority ;
    - b. to assure equality of treatment, no more or less, for homosexuals with regard to employment, pay and job security, particularly in the public sector ;
    - c. to ask for the cessation of all compulsory medical action or research designed to change the sexual orientation of adults ;
    - d. to ensure that custody, visiting rights and accommodation of children by their parents should not be restricted on the sole ground of the homosexual tendencies of one of them
    - e. to ask prison and other public authorities to be vigilant against the risk of rape, violence and sexual offences in prisons.

**PARLIAMENTARY ASSEMBLY  
OF THE  
COUNCIL OF EUROPE**

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**THIRTY-THIRD ORDINARY SESSION**

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**RESOLUTION 756 (1981)<sup>1</sup>**

***on discrimination against homosexuals***

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**The Assembly,**

- 1. Reaffirming its vocation to fight against all forms of discrimination and oppression ;**
- 2. Believing that all individuals, once they have reached the legal age provided for in the country they live in, should have the right to sexual self-determination ;**
- 3. Convinced that the theory whereby homosexuality, whether male or female, is a form of mental disturbance has no sound scientific or medical basis, and has been refuted by recent research ;**
- 4. Noting that the label of mental disturbance can constitute a severe handicap to homosexuals as regards their social, professional and, particularly, psychological development, and can be used in some countries as a pretext for repressive psychiatric practices ;**
- 5. Acknowledging the World Health Organisation's world-wide competence and influence in medical and psychiatric circles,**
- 6. Calls upon the World Health Organisation to delete homosexuality from its International Classification of Diseases.**

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**1. Assembly debate on 1 October 1981 (10th Sitting) (see Doc. 4755, report of the Committee on Social and Health Questions).**

***Text adopted by the Assembly on 1 October 1981***

OPINION

of the Legal Affairs Committee

Draftsman: Miss HOOPER

At its meeting of 19 and 20 January 1983, the Committee appointed Miss Hooper draftsman of an opinion on discrimination against homosexuals.

The committee considered the draft opinion at its meeting of 25 and 26 January 1984, and adopted it with seven votes in favour and three abstentions.

The following took part in the vote; Mr LUSTER, vice-chairman and acting chairman; Mr TYRRELL, acting draftsman; Mr DEL DUCA, Mr GEURTSEN, Mr MEGAHY, Mrs Tove NIELSEN, Mr PROUT, Mr SIEGLERSCHMIDT, Mrs VAYSSADE and Mr VETTER.

## INTRODUCTION

1. Two motions for resolutions and one petition concerning discrimination against homosexuals have been referred to the Legal Affairs Committee as the Committee responsible (Doc. 1-1072/82), and for an opinion (Doc. 1-172/82 and Petition No. 14/83). In view of the similarity of the subject matter, and in order to preserve a certain consistency of thought, it has been decided to deal with the three documents in a single opinion to be transmitted to the Social Affairs Committee and to the Committee on the Rules of Procedure and Petitions. The adoption of this opinion is to be considered as closing the Committee's consideration of the motion for a resolution tabled by Mrs van den HEUVEL on statutory and other discrimination against homosexuals (Doc. 1-1072/82) in accordance with rule 47(2) of the Rules of Procedure.

## DISCRIMINATION AGAINST HOMOSEXUALS

2. Two major aspects of the question of discrimination against homosexuals are raised by these motions for resolutions and Petition No. 14/83. The first, discrimination against homosexuals in employment, is a social phenomenon which would require a number of positive steps, including possibly legislation, to combat it; the second aspect is the general problem of what may be termed "statutory discrimination", i.e. the application of different legal provisions (notably in the criminal law) to homosexuals.

3. There is a certain amount of evidence that homosexuals are discriminated against in employment, in particular in the hiring of employees and in their career advancement; in a number of cases, employees appear to have been dismissed solely on the grounds of being homosexual, without any evidence that this factor would affect their ability to perform the job or in any other way affect their suitability to occupy the post. As yet, though the constitutions and legislation of some of the Member States prohibit discrimination on grounds of sex, in particular in the field of employment, none prohibit discrimination against homosexuals. It may be therefore that there is a problem which requires the attention of the Community authorities.

## LEGAL BASIS FOR COMMUNITY ACTION

4. It is a truism that the EEC Treaty extends far beyond simply economic

objectives, and indeed the preamble<sup>1</sup> gives as the "essential objective" of the signatories "the constant improvement of the living and working conditions of their peoples" and they resolve "to ensure ..... the social progress of their countries by common action". This ideal is further set down in Title III (devoted to social policy) of Part 3 of the Treaty and in particular Article 117. Member States recognise in the first paragraph of this Article that improved working conditions will not come about without some action on their part and hence acknowledge "the need to promote" such improvement. The second paragraph of Article 117 outlines the means by which this end is to be achieved : the functioning of the Common Market, the procedures provided for in this Treaty, and the approximation of provisions laid down by law, regulation or administrative action.

5. The Legal Affairs Committee would point out that the Community already has one legal instrument specifically designed to eliminate discrimination, in this case between men and women, as regards access to employment, vocational training, promotion and working conditions<sup>2</sup>. The directive in question sets out to put into effect the principle of equal treatment which is defined in Article 2(1) as meaning that "there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status". It would appear to be technically feasible to re-define this principle so as to prohibit discrimination against homosexuals.

6. It would be to usurp the competence of the Social Affairs Committee for the Legal Affairs Committee to decide on the necessity for Community action in this area, as distinct from the legal possibilities which are open. It is for the Committee responsible, with the aid of the Commission if need be, to examine the extent of the problem and decide on the necessity and the content of legislation which would be required to combat it. The Committee responsible should also examine other possible solutions, as experience shows that legislation alone will not suffice to abolish ingrained prejudice against sections of society, or to establish conditions of equality in a particular sphere of human activity such as employment.

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<sup>1</sup> As noted by the European Court of Justice in case No. 43/75, Defrenne v. SABENA, ECR 1976, 455.

<sup>2</sup> Directive 76/207/EEC, OJ L 39, 14 February 1976, page 40

## HOMOSEXUALS AND THE CRIMINAL LAW

7. The second aspect of discrimination against homosexuals which has been raised refers largely to the criminal law, which in some Member States treats homosexual conduct differently from similar heterosexual activity. Matters of criminal law do not per se come within the sphere of activities of the Community; while it has been suggested that the continuance in force in some Member States of more restrictive criminal legislation on homosexual acts than exists in others could affect the free movement of persons, it should be noted that the relevant provisions in the EEC Treaty and secondary legislation limit the rights provided where such limitations are "justified on grounds of public policy, public security or public health", and that, in any case, the actual or potential effect of the existence of such laws on the freedom of movement of persons is so minimal as to not, without more, give good grounds for Community action in this area.

8. Mention has also been made of the decision of the European Court of Human Rights in the case of Dudgeon against the United Kingdom.<sup>1</sup> It should be pointed out that the Court's judgement in this case establishes that the continuance in force of legislation which makes certain homosexual acts between adult males a criminal offence constitutes a violation of the right to respect for the applicant's private life safeguarded by Article 8 of the European Convention on Human Rights. Following the European Commission on Human Rights, the Court found that the legislation in question is not "necessary in a democratic society... for the protection of ... morals", and that a violation of Article 8 had been established.

9. It may be that Article 14 of the Convention, which the European Court on Human Rights did not consider in this case, prohibits discrimination against homosexuals as far as the rights protected by the Convention are concerned; the list of prohibited grounds for discrimination is non-exhaustive, as is clear from the wording of the provision which obliges the High Contracting Parties to ensure the enjoyment of the Convention's rights "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Were such discrimination prohibited by the Convention, an employee dismissed because of his homosexuality who had no form of redress under his national law might possibly have grounds for a complaint to the European Commission on Human Rights.

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<sup>1</sup> Eur. Court H.R., judgment of 22 October 1981, Series A No. 45.

## CONCLUSION

10. a) The Legal Affairs Committee takes the view that the objective of social progress laid down in the Treaty could justify Community action to ensure that homosexuals are not discriminated against in employment and that Article 117 (if necessary along with Article 235) is a valid legal basis for Community action to achieve this end. The Social Affairs Committee should examine the extent of the problem and on the basis of this examination take a position on the necessity for legislation or other action in this field.
- b) Criminal law provisions in respect of homosexual activity do not, in the Committee's view, so affect the free movement of persons as to give good grounds for Community action.
- c) The European Convention for the Protection of Human Rights and Fundamental Freedoms could be interpreted as giving the possibility of taking action against discrimination on grounds of homosexuality in the protection of the rights and freedoms by the Convention.