

# EUROPEAN PARLIAMENT



*s e s s i o n   d o c u m e n t s*

ENGLISH EDITION

26 January 1994

A3-0028/94

## REPORT

of the Committee on Civil Liberties and Internal Affairs  
on equal rights for homosexuals and lesbians in the EC

Rapporteur: Mrs Claudia ROTH

DOC\_EN\RR\244\244267

PE 206.256/fin.

De Or. NL

- Consultation procedure  
simple majority
- \*\*I Cooperation procedure (first reading)  
simple majority
- \*\*II Cooperation procedure (second reading)  
simple majority to approve the common position  
absolute majority of Parliament's component Members to reject or amend the common position
- \*\*\* Assent procedure  
absolute majority of Parliament's component Members to give assent  
except for simple majority under Articles 8a, 105, 106, 130d and 228 EC

- \*\*\*I Codecision procedure (first reading)  
simple majority
- \*\*\*II Codecision procedure (second reading)  
simple majority to approve the common position  
absolute majority of Parliament's component Members either to adopt a declaration of intent  
to reject the common position, or to amend or confirm the rejection of the common position
- \*\*\*III Codecision procedure (third reading)  
simple majority to approve the joint text  
absolute majority of Parliament's component Members to reject the Council text

DA

DE

EL

**EN**

ES

FR

IT

NL

PT

C O N T E N T S

	<u>Page</u>
Procedural page . . . . .	3
A. MOTION FOR A RESOLUTION . . . . .	4
B. EXPLANATORY STATEMENT . . . . .	9
<u>Annexes:</u> Motion for a resolution B3-0884/92 . . . . .	13
Motion for a resolution B3-1079/92 . . . . .	14
Motion for a resolution B3-1186/93 . . . . .	15

At the sitting of 18 September 1992 the President of the European Parliament announced that he had referred the motion for a resolution by Mr Blak and Mrs Jensen on discrimination in relation to freedom of movement, pursuant to Rule 45 of the Rules of Procedure, to the Committee on Civil Liberties and Internal Affairs as the committee responsible and to the Committee on Legal Affairs and Citizens' Rights for its opinion.

At its meeting of 4 November 1992 the Committee on Civil Liberties and Internal Affairs decided to draw up a report and appointed Mrs Roth rapporteur.

At its meetings of 4 November 1992 and 5 November 1993 the committee decided to include in its report the following motions for resolutions which had been referred to it:

- B3-1079/92; author: Mr Bettini and others; subject: recognition of civil unions for couples consisting of persons of the same sex; referred on 18 September 1992; responsible: Committee on Civil Liberties and Internal Affairs; opinion: Committee on Legal Affairs and Citizens' Rights.
- B3-1186/93; author: Mr Lomas and others; subject: civil rights for homosexuals and lesbians; referred on 28 October 1993; responsible: Committee on Civil Liberties and Internal Affairs.

At its meetings of 1 December 1992, 8 June, 2 December and 20 December 1993 and 24 January 1994, the committee considered the working document and the draft report.

At the last meeting it adopted the resolution and the report by 11 votes to 4, with no abstentions.

The following took part in the vote: Turner, chairman; Salish, vice-chairman; Roth, rapporteur; van den Brink, Buchan, Caudron, Defraigne, Elliott, Jarzembowski, Lafuente López, Newman, Piermont, Taradash, van Oustrive and Wysenbeek.

On 29 January 1993 the Committee on Legal Affairs and Citizens' Rights decided not to deliver an opinion.

The report was tabled on 26 January 1994.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

MOTION FOR A RESOLUTION

on equal rights for homosexuals and lesbians in the EC

The European Parliament,

- having regard to the motions for resolutions by:
  - (a) Mr Blak and Mrs Jensen, on discrimination in relation to freedom of movement (B3-0884/92),
  - (b) Mr Bettini and others, on recognition of civil unions for couples consisting of persons of the same sex (B3-1079/92),
  - (c) Mr Lomas, on civil rights for homosexuals and lesbians (B3-1186/93),
- having regard to its resolution of 13 March 1984 on sex discrimination at work<sup>1</sup>,
- having regard to its resolution of 15 March 1991 on a plan of action in the context of the 1991-1992 'Europe against AIDS' programme<sup>2</sup>,
- having regard to its recommendations on sexual harassment at work and the corresponding provisions on protection for lesbians and homosexuals,
- having regard to the Commission report, 'Homosexuality, a Community Issue', on the impact on lesbians and homosexuals of the completion of the European internal market,
- having regard to its resolution of 8 July 1992 on a European Charter of children's rights<sup>3</sup>,
- having regard to the legal discrimination against lesbians and homosexuals which still exists in a number of Member States,
- having regard to the draft directive on combating discrimination on the basis of sexual orientation at work and in other legal areas, drawn up by the German Gay Union (SVD),
- having regard to the law on registered partnerships in Denmark and other anti-discrimination laws for homosexual people,
- having regard to Clause 28 of the Local Government Bill in the United Kingdom,
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties and Internal Affairs (A3-0028/94),

---

<sup>1</sup> OJ No. C 104, 16.4.1984, p.46

<sup>2</sup> OJ No. C 158, 17.6.1991, p.54.

<sup>3</sup> OJ No. C 241, 21.9.1992, p.38.

- A. having regard to its action in support of equal treatment for all citizens, irrespective of their sexual orientation,
- B. having regard to the greater public visibility of lesbians and homosexuals and the growing pluralization of lifestyles,
- C. whereas lesbians and homosexuals are still exposed, nonetheless, to ridicule, intimidation, discrimination and violent attacks in many social spheres, often from their earliest youth,
- D. whereas social change in many Member States calls for a corresponding adjustment of the civil, penal and administrative provisions in force, to end discrimination on the basis of sexual orientation, and whereas such adjustments have already been made in a number of Member States,
- E. whereas the application of discriminatory provisions by Member States in a number of fields covered by EC legislation amounts to a violation of the fundamental principles of the EC Treaties and the Single European Act, particularly where freedom of movement, pursuant to Article 3 of the EEC Treaty, is concerned,
- F. having regard to the European Community's special responsibility to ensure equal treatment for all citizens, irrespective of their sexual orientation, within the framework of its activities and areas of responsibility,

#### General considerations

- 1. Affirms its conviction that all citizens must be treated equally, irrespective of their sexual orientation;
- 2. Considers that the European Community is under the obligation to apply the fundamental principle of equal treatment, irrespective of each individual's sexual orientation, in all legal provisions already adopted or which may be adopted in future;
- 3. Believes, furthermore, that the EC Treaties must make stronger provision for the defence of human rights, and therefore calls on the Community institutions to make preparations, in the context of the institutional reform scheduled for 1996, for setting up a European institution able to ensure equal treatment, without reference to nationality, religious faith, colour, sex, sexual orientation or other differences;
- 4. Calls on the Commission and Council to accede to the European Convention on Human Rights, provided for in the Community's 1990 programme, as a first step towards more vigorous protection for human rights;

#### To the Member States

- 5. Calls on the Member States to abolish all legal provisions which criminalize and discriminate against sexual activities between persons of the same sex;
- 6. Calls for the same age of consent to apply to homosexual and heterosexual activities alike;

7. Calls for an end to the unequal treatment of persons with a homosexual orientation under the legal and administrative provisions of the social security system and where social benefits, adoption law, laws on inheritance and housing and criminal law and all related legal provisions are concerned;
8. Calls on the United Kingdom to abolish its discriminatory provisions to stem the supposed propagation of homosexuality and thus to restore freedom of opinion, the press, information, science and art for homosexual citizens and in relation to the subject of homosexuality and calls upon all Member States to respect such rights to freedom of opinion in the future;
9. Calls on the Member States to ban discrimination on the basis of sexual orientation in all spheres and to make available to homosexual couples all the legal arrangements which exist for heterosexual couples or to establish other institutions with equal status for their benefit;
10. Calls on the Member States, together with the national lesbian and homosexual organizations, to take measures and initiate campaigns against the increasing number of acts of violence perpetrated against homosexuals and to ensure prosecution of the perpetrators of these acts of violence;
11. Calls upon the Member States, together with the national lesbian and homosexual organizations, to take measures and initiate campaigns to combat all forms of social discrimination against homosexuals;
12. Recommends that Member States take steps to ensure that homosexual women's and men's social and cultural organizations have access to national funds on the same basis as other social and cultural organizations, that applications are judged according to the same criteria as applications from other organizations and that they are not disadvantaged by the fact that they are organizations for homosexual women or men;

**To the Commission of the European Community**

13. Calls on the Commission to present a draft Council directive on combating discrimination on the basis of sexual orientation.
14. Considers that the directive should at least specify that:
  - Equal treatment of homosexuals and heterosexuals in the Community shall be guaranteed;
  - 'Sexual orientation' within the meaning of the directive shall mean sexual orientation towards the same or the opposite sex;
  - 'Discrimination on the basis of sexual orientation' shall mean any legal discrimination against homosexual individuals, communities or associations forming legal persons vis à vis other individuals, communities or legal persons, that is to say:
    - (a) different age limits for homosexual and heterosexual acts,
    - (b) prosecution of homosexuality as a public nuisance or gross indecency,
    - (c) all forms of discrimination in labour and public service law,

- (d) dismissal of homosexuals employed by churches and religious communities,
  - (e) any discrimination in criminal, civil, contract and commercial law,
  - (f) non-promotion of homosexual servicemen or women,
  - (g) classification of 'homosexuality' as a security risk,
  - (h) electronic storage of data concerning the sexual orientation of an individual without his knowledge and consent, or the unauthorized disclosure or improper use of such data,
  - (i) ban on marriage between persons of the same sex without providing an equivalent legal framework for registration of couples of the same sex,
  - (j) barring homosexual couples from legal institutions alternative to marriage or excluding homosexual couples from legal benefits granted to unmarried heterosexual couples,
  - (k) non-recognition of marriages between persons of the same sex contracted abroad or couples registered under private international law within a Member State,
  - (l) refusal of adoption and custody rights,
  - (m) committing of young homosexuals to psychiatric institutes or subjecting them to medical treatment in order to change their sexual orientation,
  - (n) restriction of public representation of the culture and way of life of homosexual men and women,
  - (o) prohibition or restriction of action to promote social and cultural institutions for lesbians and homosexuals;
- The suppression of homosexual practices in penal establishments and a discrimination against homosexual prisoners with regard to the allocation of cells or the granting of parole shall be prohibited;
  - Homosexual men and women from third countries in which homosexuality is subject to criminal proceedings shall be entitled to asylum in the Community;
  - The Commission shall submit a report to Parliament at five-yearly intervals on the situation of homosexual men and women in the Community;
  - Member States shall make the necessary amendments to their legal and administrative provisions to bring them into line with the directive at the latest four years after its entry into force and notify the Commission of this immediately.'

15. Calls on the Commission to set up a task force consisting of internal and external staff with the following tasks:

- drawing up a declaration in which the Community undertakes to combat any discrimination on the basis of sexual orientation within its sphere of responsibility,
- to examine the current Staff Regulations for any form of discrimination at the place of work on the basis of sexual orientation and the removal of any such discrimination so as to set an example as an employer to other Community institutions, national authorities and companies,

- to examine present and planned internal market and Social Charter provisions for any discriminatory effects on homosexual men and women, ensuring that directives on equality include provisions prohibiting discrimination on the basis of sexual orientation,
  - examination of the possibilities available to the Commission to support national authorities and non-government organizations in combating discrimination on the basis of sexual orientation.'
16. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States and the states which have applied for membership of the Union.

EXPLANATORY STATEMENT**I. Overview of the activities to date of the Community institutions and other organizations**

1. Discrimination against gays and lesbians, in all its many forms, is a controversial topic of public discussion. One example is President Clinton's declared intention of allowing homosexuals to serve in the US armed forces. As a result of the resistance this generated, he felt obliged to water his plans down. For many people, the masculine image associated with 'the soldier' is incompatible with 'homosexuality'. In Europe too, however, gays and lesbians are becoming increasingly visible in the EC Member States. By holding a mass wedding ceremony, a matter which is currently occupying the highest courts in the Federal Republic of Germany, homosexuals are mounting an attack on the remaining forms of discrimination against their way of life. The churches are faced with the phenomenon of homosexual priests, and there is public speculation as to which members of European royal families are homosexual. There are Members of the European Parliament, too, who lead a double life as a result of the continuing discrimination against gays and lesbians.

Despite the increasing public acceptance of homosexual lifestyles, violent attacks on lesbians and homosexuals have increased over the last few months. The perpetrators are people sympathizing with racist and extreme right-wing ideologies. In addition, efforts to make gay and lesbian lifestyles taboo and to prevent those concerned from developing confident personalities persist.

2. The European Parliament considered the issue of discrimination against gays and lesbians for the first time in the Squarcialupi report on sexual discrimination at the workplace, which called on the Council and Commission to abolish discriminatory legal and administrative provisions in this area.

Parliament has since reiterated on a number of occasions its aim of improving the situation of gays and lesbians:

- The 1990 AIDS report stressed the need to include homosexuals in preventive measures against AIDS and in other AIDS policies at Community level.
- In the code of conduct relating to sexual harassment at work, Parliament supported the Commission proposals to devote particular attention to the problem of the sexual harassment of lesbians and gays.
- Members have tabled written questions on discrimination against homosexual lifestyles to the Commission on a number of occasions.

3. The Commission, in the person of the Commissioner then responsible for social affairs, Ms Papandreou, has also concerned itself with this issue. Ms Papandreou worked together on this issue with the International Lesbian Gay Association (ILGA), a non-governmental organization with over 400 sections in over 60 countries (including 10 EC Member States).

In 1989 and 1991, five European universities put on summer courses in lesbian and homosexual studies within the framework of the ERASMUS Programme. In 1990 the Danish Gay and Lesbian Union (LBL) received a

grant of ECU 40 000 for a research project into the 'visibility of lesbians in the Community'.

In 1991 Ms Papandreou set up a unit within DG V responsible for contacts with the national and international lesbian and gay associations. In the same year, the Commission, in a contract with the European Human Rights Foundation, commissioned a study on the impact on lesbians and homosexuals of the legal provisions on the internal market, from the European University Institute in Florence and the Homosexual and Lesbian Studies Department of the University of Utrecht. As a result, Andrew Clapham of the European University Institute and Kees Waaldijk of the University of Utrecht submitted a detailed 300-page study entitled 'Homosexuality, a Community Issue' in the autumn of 1992.

This is the first comprehensive study of discrimination against lesbians and gays in the Community. It provides a detailed overview of what has been achieved in the field of equal rights for gays and lesbians, but also of the aspects which have been neglected to date. Unfortunately, the Commission has only made an abridged version of the survey available so far.

4. At international level, the World Health Organization (WHO) deleted 'homosexuality' from its list of diseases as of 1 January 1993. Since 1991, Amnesty International has taken the view that a general ban on sexual activities involving persons of the same sex is a violation of human rights and supports those who are persecuted and given criminal sentences under such laws. Moreover, governments and non-governmental organizations have discussed discrimination against gays and lesbians at numerous international conferences. Measures have been taken in the Economic and Social Committee of the United Nations and within the framework of the CSCE and the Council of Europe to help eliminate discrimination against gays and lesbians.

## II. The present situation and the need for action

### 1. The legal and social situation of gays and lesbians in the European Community and the individual Member States

The list of areas in which lesbians and gays are subject to discrimination is a lengthy one. Moreover, there are considerable divergences in the legal and social position of gays and lesbians between and within the Member States. For instance, none of the Member States yet provides full legal protection against discrimination at work on the basis of sexual orientation. A person who misses out on promotion or is even dismissed on the grounds of his or her homosexuality can only complain that the decision was unjustified or unfair. The employer, however, can argue that the employee's sexual orientation was an intolerable problem. In a number of Member States, gay men have been refused health insurance benefits or prevented from taking out insurance policies, for fear of HIV infection.

Discrimination may be found in nearly all fields: in the health care and education systems, as in the areas of work, housing and upbringing. The Commission report draws attention to the particular problems faced by young gays and lesbians. They still suffer stigmatization, and many of them see suicide as the only way out.

The criminal laws of the Member States still contain discriminatory provisions on sexual behaviour and the age of consent. This applies particularly to Great Britain, the Federal Republic of Germany and Luxembourg. In Greece, homosexuals can be prosecuted under criminal law (Article 347 of the Greek Criminal Code) for the 'seduction' of a 15 or 16-year old partner leading to anal intercourse. Since 1981, the law on the prevention of venereal disease has been used on many occasions as a sanction against gays, who are obliged to undergo HIV tests against their will.

In many cases, prosecution under criminal law is followed by official humiliation in the press and the other media. In addition, gays and lesbians are often subjected to humiliating treatment by the police and to attacks by other inmates in jail.

On 28 May 1988 the House of Commons adopted Clause 28 by a tiny majority of three votes. Clause 28 forbids local authorities to promote 'homosexuality'. The 'promotion of homosexuality' is open to very broad interpretation. At all events, the law has had a restrictive impact on educational institutions, libraries, theatres and art galleries. Similar provisions exist in Italy, Ireland and Belgium. Such laws stir up prejudice and give no help to those concerned, who are left alone with their problems. It is precisely in Britain that there have been numerous violent attacks on gays over the past few years. Such attacks are increasing on a worrying scale in Germany.

In a number of Member States, the authorities keep lists of gays and lesbians, which are exchanged among them. This violates the right of self-determination with regard to personal information. The Schengen Information System (SIS) and the EIS, with its inadequate provisions on data protection, are particularly open to criticism in this respect.

## 2. Positive developments, jeopardized by extreme right-wing ideologies

The fact that growing numbers of gays and lesbians are coming out and standing up for their way of life in most of the Member States is a very positive development. The many interest groups have helped to bring about a change in public opinion.

Moreover, in a number of Member States gays and lesbians have been guaranteed a certain degree of legal protection against discriminatory treatment. Through a general law on equal treatment, the Netherlands has given gays and lesbians the possibility of instituting legal proceedings on the grounds of discrimination. Since 1985, France has guaranteed gays and lesbians protection against discrimination, which has been made a punishable offence, in the fields of work and business. In 1987 Denmark extended the ban on unequal treatment to include 'sexual discrimination'. Ireland protects homosexuals against popular incitement, and in Germany, the constitution of the Land Brandenburg guarantees its citizens protection against discrimination on the basis of their 'sexual identity'.

Despite these positive developments, acts of violence against gays and lesbians have increased precisely over the last few months. In the wake of the resurgence of racist ideologies, gays and lesbians are being seen as symbols of the hated liberalism of European societies and are thus falling victim to extreme right-wing violence.

Against this background, it is becoming all the more important to ensure equal treatment and equal recognition for the new gay and lesbian lifestyles. This applies to the social security and health insurance system, the social benefits system, the education system, labour, marriage and inheritance law, adoption law and rent law. In the field of asylum law, persecution on the grounds of sexual orientation must at last be recognized as grounds for asylum.

### **3. Restrictions on freedom of movement**

Owing to the differing levels of civil rights enjoyed by gays and lesbians in the various Member States, changing their place of work and residence within the European Community can result in the loss of rights and legal security for gay and lesbian workers. This will adversely affect both the free movement of gays and lesbians and undertakings' investment decisions.

Incompatibilities with existing legal provisions are also emerging as a result of radical changes in heterosexual relations. In a number of Member States, legal arrangements for non-marital partnerships have been created or developed by the judicial administration. Partnerships between persons of the same sex have not so far been included in the process of recognition of non-marital cohabitation, or only to a limited extent.

As a result, many gay and lesbian associations are demanding that couples of the same sex should have the right to marry or that gay and lesbian couples should have the same legal rights as those pertaining to civil marriage. Special forms of civil registration of partnerships between persons of the same sex have accordingly been introduced in Denmark. Registration has essentially the same legal consequences as marriage. However, the 'Danish model' needs to be developed further, as registered gay and lesbian couples are not entitled to adopt or bring up children. The law would even enable the children of lesbians to be taken away from their mothers. This is a particularly serious problem, as many women only discover their lesbian identity after long years of a heterosexual lifestyle and often already have children at this stage. Under the 'Danish model', it is also impossible to transfer legal entitlements in the event of the death of a long-term partner. This shortcoming must also be remedied.

A relationship between people of the same sex can be extremely difficult if one of the partners comes from a third country. This partner can be turned back at the internal borders, depending on his or her country of origin. Measures to guarantee freedom of movement therefore need to be taken.

### **4. Strengthening the legal basis for the protection of human rights**

The study drawn up for the Commission shows that the European Court of Justice has already considered the above issues over the last few years.

Community law, however, has not so far taken developments in lifestyles and types of relationship into account. The exclusive emphasis on marriage between people of different sexes fails to take account of today's reality. There is thus an urgent need for Community law to adjust to the reality of the lives of people in the Community.

As in other areas, the special situation of women must be taken into account, since lesbians - unlike gay men - have to face not only discrimination as a result of their sexual orientation but also the effects of the patriarchal structures in place

MOTION FOR A RESOLUTION (B3-0884/92)

by Mr BLAK and Mrs JENSEN

on discrimination in relation to freedom of movement

The European Parliament,

- A. whereas Danish law now provides for 'registered partnership' between two members of the same sex, where one of them is a Danish citizen,
- B. whereas many local authorities in the Netherlands now permit the registration of lesbian and homosexual relationships,
- C. whereas homosexuality is still a criminal offence under the legislation of one EC Member State,
- D. whereas widespread discrimination against lesbian women and homosexual men still exists in the criminal and civil law of many Member States,
  - 1. Considers that existing discrepancies in criminal and civil legislation between one Member State and another will restrict the right to freedom of movement within the European Community for a significant minority of EC citizens after 1992;
  - 2. Calls on its committee responsible to investigate and submit a statement on the extent of discrimination against lesbian and homosexual citizens;
  - 3. Calls on the Commission to take the necessary measures to ensure freedom of movement and equality of opportunity for the EC's lesbian and homosexual citizens.

MOTION FOR A RESOLUTION (B3-1079/92)

by the following Members: BETTINI, TARADASH, PANNELLA, ROTH, AGLIETTA, BONTEMPI, VECCHI, FREMION and MELANDRI

on recognition of civil unions for couples consisting of persons of the same sex

The European Parliament,

- A. whereas in many Community countries, namely in Denmark, Holland, France and Germany, the problem has arisen of legal recognition of de facto homosexual and heterosexual couples,
- B. whereas in Italy a public ceremony was held on 28 June 1992 to celebrate the 'civil union' of ten homosexual couples, thereby reopening the political debate as to the necessity of recognizing the right of homosexual couples to contract a civil marriage and the right of de facto couples, whether heterosexual or homosexual, to acquire the rights and obligations of the de jure family,
- C. whereas a problem also arises as to the certainty of the law in the field of inheritance and the communal estate,
  1. Calls for recognition of the right of homosexuals to marry one another;
  2. Calls for the Community to become a party to the European Convention on Human Rights of 1956, as envisaged in the Commission's programme of work for 1990, and, in that context, to advocate a broad interpretation of the concept of the family so as to ensure that de facto heterosexual and homosexual unions are expressly equated with de jure families, as regards both their rights and their obligations.

MOTION FOR A RESOLUTION (B3-1186/93)  
by Mr LOMAS  
on civil rights for homosexuals and lesbians

The European Parliament,

- A. noting its former resolutions regarding homosexuals and lesbians,
  - B. regretting that little progress has been made on the matter of civil rights,
1. Calls on all Member States to introduce legislation on the following matters:
- (i) to introduce and implement legislation to end harassment at the workplace and unfair dismissal;
  - (ii) to give partnership rights, so that homosexuals and lesbians living together have the same rights as married couples;
  - (iii) to ensure that homosexuals and lesbians serving in the armed forces are free of harassment and discrimination;
  - (iv) to introduce similar immigration rights for partners of homosexuals and lesbians as apply for heterosexuals.

DA

DE

EL

**EN**

ES

FR

IT

NL

PT