

International Lesbian and Gay Association

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WRITTEN PRESENTATION

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submitted by the

INTERNATIONAL LESBIAN AND GAY ASSOCIATION (ILGA)

Progress on the Implementation of Human Rights for Lesbians and Gay Men

The issue of non-discrimination based on sexual orientation has been discussed within the work of the OSCE on several occasions, such as the Follow-Up Meeting in Helsinki (1992), the Human Dimension Seminars on "Tolerance" (1992), "Free Media" (1993), and on "Building Blocks for Civic Society - Freedom of Association and NGOs" (1995), as well as in the Budapest Review Conference (1994) and the joint OSCE/Council of Europe International Seminar on Tolerance in Bucharest last May. This topic was also discussed two years ago at the (first) OSCE Implementation Meeting and eventually included in its Final Report adopted unanimously in the Final Plenary by all delegations. The relevant paragraph reads as follows:

Participants pointed out to groups which were not "national minorities" but which none the less suffered discrimination, including women, homosexuals, migrant workers, and conscientious objectors...

It was pointed out that CSCE commitments in the area of non-discrimination cover homosexuals as well. Suggestions were made that discriminatory State policies against homosexuals, and criminalizing legislation, should be eliminated.

In July 1995, the Parliamentary Assembly of the OSCE, in its 4th (annual) session in Ottawa, adopted a Resolution which called on member States

...to ensure that all persons belonging to different segments of their population be accorded equal respect and consideration in their constitutions, legislation and administration and that

there be no subordination, explicit or implied, on the basis of ethnicity, race, colour, language, religion, sex, sexual orientation, national or social origin or belonging to a minority...

Achievements on the international level

In the past two years since the last Implementation Meeting, we have witnessed remarkable progress and important achievements in the recognition of the human rights of lesbians and gay men both on the international and national levels:

On March 31, 1994 the United Nations Human Rights Committee ruled that the rights of lesbians and gay men to privacy and equality were guaranteed by the provisions of the *International Covenant on Civil and Political Rights (ICCPR)*. The Committee ruled that criminal laws prohibiting homosexuality among consenting adults violate Article 17 of the ICCPR. Additionally, the UN Human Rights Committee noted in its decision that *the reference to "sex" in articles 2 (1) and 26 [of the ICCPR] is to be taken as including sexual orientation*. For us in the lesbian and gay rights movement, this is the most important decision to date in the international human rights law.

Another recent landmark achievement was the adoption of the *Resolution on equal rights for homosexuals and lesbians in the EC* by the European Parliament on 8 February 1994. In this Resolution, the EP, the only democratically elected institution of the European Union, calls on all Member States to repeal all anti-homosexual law provisions and to end any discrimination on the basis of sexual orientation, and calls on the Commission of the EU to present a draft Recommendation on equal rights for lesbians and homosexuals which should, as a minimum, seek to end, among other things such as the discrimination by criminal law provisions, *the barring of lesbian and homosexual couples from marriage or from an equivalent legal framework, and any restriction on the right of lesbians and homosexuals to be parents or to adopt or foster children.*

Achievements on the national level

Since the 1993 Implementation meeting, total bans on homosexuality were repealed from the law books of Albania, Belarus, Cyprus, Kazakhstan, Moldova, and Serbia. Discriminatory ages of consent were reduced in the United Kingdom and completely abolished in West-Germany.

Anti-discrimination legislation explicitly including "sexual orientation" has been adopted in Finland this year. In a May 1995 ruling, the Canadian Supreme Court stated that the country's *Charter of Rights and Freedoms* also prohibits discrimination based on sexual orientation.

Proposals to include "sexual orientation" as a non-discrimination category in the new constitutions are debated in Poland and Germany.

In 1994, Greenland and Sweden have joined Denmark and Norway in enacting "registered partnership" laws recognizing same-sex relationships. Similar laws are proposed and debated in Iceland, Finland, Spain, the Netherlands, and the Czech Republic. In March 1995, the Hungarian Constitutional Court ruled unconstitutional the definition of common-law marriages restricting them to those formed between adults of different sex only. The Court ordered Parliament to change the existing law on common-law marriages or to enact new legislation which would give the same common law rights to same-sex couples by March 1, 1996.

Actions to be taken

Despite these positive developments in various OSCE member states, continuing legal and social discrimination against gays and lesbians have to be observed in other OSCE countries.

To our knowledge, the penal codes of Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Romania, Tajikistan, Turkmenistan, Uzbekistan and more than 20 States of the USA still provide for a total ban on homosexual activity.

Discriminatory ages of consent still exist in the penal codes of Austria, Cyprus, Hungary, Liechtenstein and the United Kingdom.

The penal codes of Austria and Liechtenstein prohibit positive information on homosexuality, thus violating the fundamental freedom of thought and expression. In Austria, this law has also led to the confiscation of AIDS prevention material for gay men, thus contributing to the further spread of this pandemic.

The penal codes of Austria and Liechtenstein prohibit the founding of homosexual organisations, thus violating the fundamental freedom of association.

We therefore appeal to those countries to take their commitments under the CSCE process seriously and to bring their legislation in line with the human rights standards already prevailing in the OSCE region.